

# EXAMINING FRAUD, WASTE, AND ABUSE AT THE EXPORT-IMPORT BANK

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## HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH CARE,  
BENEFITS AND ADMINISTRATIVE RULES

OF THE

COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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JUNE 11, 2015  
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## EXAMINING FRAUD, WASTE, AND ABUSE AT THE EXPORT-IMPORT BANK

Thursday, June 11, 2015

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON HEALTH CARE, BENEFITS AND  
ADMINISTRATIVE RULES  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 1:00 p.m., in Room 2154, Rayburn House Office Building, Hon. Jim Jordan [chairman of the subcommittee] presiding.

Present: Representatives Jordan, Walberg, DesJarlais, Meadows, Mulvaney, Walker, Hice, Carter, Chaffetz, Cartwright, Norton, and DeSaulnier.

Mr. JORDAN. The committee will come to order.

We will start with opening statements like we do, swear the witness in, and then get right to testimony and questions.

Today's hearing continues the committee's important work examining the Export-Import Bank. In just 19 days, the Bank's charter is set to expire. When this happens, the sky will not fall; seas will not rise. In fact, in my view and the view of many economists, quite the opposite will happen. The expiration of the Bank's charter will mean that companies doing business overseas will reorient themselves away from Washington and toward market signals. The Bank's absence will make our economy stronger.

Besides the economic rationale, there are also serious problems with the manner in which the Bank has operated that make its continued existence untenable.

In just the past couple months, one former Export-Import Bank loan officer was indicted and pled guilty for accepting over \$78,000 in bribes, and we learned that the Inspector General's Office, who we have with us today, has dozens of other investigations open that may yield more indictments.

Over its history, the Bank has been plagued by scandal and systemic corruption. Many people forgot—excuse me—forget that the \$90,000 in cash found in former Representative William Jefferson's freezer related directly to a bribe taken to help a company secure financing from the Export-Import Bank.

Recently another scandal has emerged. NewSat, an Australian satellite company that received over \$300 million in direct loans from Ex-Im, defaulted on its payments and declared bankruptcy. It is now clear that there were significant problems at NewSat. Had the Bank done proper due diligence, it almost certainly would have been aware of these issues before putting taxpayer dollars at risk.

Even more troubling is that NewSat's disgraced CEO appears to have had a cozy relationship with Ex-Im Chairman Hochberg.

These kinds of revelations have become all too common at the Export-Import Bank, and it is another reason that I am glad it appears my colleagues will finally let the Bank expire.

This is a no-brainer for Congress. Like ending earmarks after the bridge to nowhere, the problems at the Bank are so awful that they should be a wake-up call not just about Ex-Im but about the problems with corporate welfare across the Federal Government.

At the end of June, the Bank will not fire all of its employees. It will not lock its doors. Won't board up its windows. The Bank will be allowed to continue servicing existing loans and go through an orderly wind-down. The stories of calamity are overstated, and no one outside of the few major corporations benefiting from its finance will even notice. Many will make a push to revive the Bank after its charter lapses, but much like Dr. Frankenstein and his monster, the world would be much better off letting the Bank remain dead after it expires at the end of the month.

It's now time to show the Bank the door. The chairmen of all the relevant committees, Chairman Ryan of Ways and Means, Chairman Chaffetz at Oversight, Chairman Price with Budget, and Chairman Hensarling at Financial Services, support ending the Bank. Majority Leader McCarthy, Majority Whip Scalise have both expressed opposition publicly. And as I mentioned at our last hearing, the best part about this is that all we need to do is nothing. Something the American people think Congress is pretty darn good at.

And, with that, I'd yield to the ranking member, gentleman from Pennsylvania.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

And welcome to our witness this afternoon. I look forward to your testimony.

Here we are again for another hearing on the Export-Import Bank, this time to examine the Bank's efforts in dealing with waste, fraud, and abuse. There are, as the chairman mentioned, nine legislative days left until the Bank's charter expires. This is nine legislative days before the country stands to start to lose the billions of dollars of exports that Ex-Im Bank is responsible for; nine legislative days before we start to jeopardize the hundreds of thousands of American jobs that the work of this Bank supports; nine legislative days before the shutdown crowd gets their way and closes an institution with a default rate of only 0.0167 percent as of this March, an institution that returns money to the United States Treasury, so something taxpayers ought to cheer and applaud and be proud of, not shut down.

When I look at the Bank, I see a patriotic institution. An institution that supports American-made products and American jobs. The kind of things that we ought to be proud of.

You know, earlier this week, I had the pleasure of speaking with Mr. Bill Weller. Bill Weller is the vice president of marketing and sales of Space Systems/Loral, also known as SSL. SSL is a world leader in commercial GEO satellites, and they have more communications capacity in orbit than any other manufacturer in the world. We ought to be proud of SSL. They employ approximately



2,800 people domestically building satellites for companies such as Dish Network and DirecTV. SSL has customers in 15 countries, and their exports account for 60 percent of their sales.

But SSL faces stiff competition from manufacturers in France, China, Israel, and Japan. Companies in those countries compete with SSL using attractive government financing terms. And to simply help level the playing field, SSL works with the Ex-Im Bank to obtain crucial financing and guaranties. Without the Bank's financing, SSL would lose contracts to our foreign competitors and be forced to cut their work force. It's not just SSL, remember, that benefits. It's the over 1,600 U.S. suppliers in 47 States that benefit from it.

Given all of this, I ask: When are we going to start to be proud of the efforts and the work of the Ex-Im Bank.

Many of my friends on the other side of the aisle contend that the Bank is rife with fraud and corruption, and in his semiannual report to Congress, Deputy Inspector General Mike McCarthy identified 31 cases of fraud, waste, or abuse that his office was investigating. And, Mr. McCarthy, I think you'll reaffirm that only three of those involve allegations of employee misconduct.

To quote Fred Hochberg, chairman and president of the Bank, who testified repeatedly before this committee and testified before the Financial Services Committee on June 3, "There will always be outsiders who attempt to defraud the government." How agencies respond to those attempts is what we should be focusing on. The Bank has responded quite well.

In addition, it's clear from the deputy IG's report that the Bank has fully cooperated with the IG's Office in rooting out cases of employee and outside misconduct and is dealing with these individuals appropriately. The report also cites a number of instances of investigative successes. Moreover, there has been only one indictment of a Bank employee. The other incidents were dealt with by administrative action or found to be groundless. Exactly how the system ought to work.

Now, there are always instances of waste, fraud, and abuse in government. In fact, the United States Army is rife with waste, fraud, and abuse. So are all of our armed services, and they always have been. But that's not a reason to shut them down. We're proud of our Army. We're proud of our Navy. And we'll continue to combat waste, fraud, and abuse that will always be there. But they're not reasons to shut down the operation.

We have nine legislative days to renew the Bank's charter. And we shouldn't be wasting this time playing political and ideological games. I hope today's hearing will highlight the good work the Bank does in assisting businesses, will resolve any questions concerning the IG's report, and provide additional support for this Bank's continuing reauthorization.

It's time at long last, Mr. Chairman, that we are proud of American exports and the help that the Ex-Im Bank assists in those exports.

Thank you, Mr. Chairman, and I yield back.

Mr. JORDAN. I thank the gentleman.

We'll hold the record open for 5 legislative days for any member or members who would like to submit a written statement.

Without objection, the chair is authorized to declare a recess at any time.

We now turn to our witness. Again, Mr. McCarthy, thank you. This is the second time I think in front of the Oversight Committee on this issue you have been here. We appreciate you coming back.

So I'm pleased to welcome Mr. Michael McCarthy, who is currently acting inspector general of the Export-Import Bank of the United States.

And you know how this works, Mr. McCarthy. You have 5 minutes for your testimony, and we look forward to that, and then we'll get right to questions. Gentleman is recognized.

Oh, we got to swear you in. Yeah. Forgot. We always do that.

Please stand and raise your right hand. Thank you.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Let the record reflect that the gentleman answered in the affirmative.

You got 5 minutes, Mr. McCarthy, and you're recognized,

#### **WITNESS STATEMENT**

##### **STATEMENT OF MICHAEL T. MCCARTHY**

Mr. MCCARTHY. Well, thank you, Chairman Jordan, Ranking Member Cartwright, and members of the subcommittee. I'm pleased to be back here to discuss the work of the Ex-Im Bank Office of Inspector General.

The committee already has my written testimony, which highlights the work that our professional auditors, inspectors, and special agents have done to promote efficiency and detect and deter fraud at Ex-Im Bank.

The committee has asked me to discuss instances of fraud, waste, and abuse at the Bank, and steps taken to address deficiencies in management and internal controls.

So let me briefly cover a few highlights.

Since 2009, OIG investigations into fraud schemes that target Ex-Im Bank have yielded 84 criminal indictments and informations, 50 convictions, and \$255 million in judgments and repayments. The most common fraud schemes that we have encountered involve outside parties obtaining loans or guarantees through false representations and submissions of false documents.

We work closely with the Bank's Asset Management Division, which makes referrals of transactions or claims with indicators of fraud. We currently have 29 open investigations, and nearly all of them address persons committing fraud against the Bank and have no indication of Ex-Im employee involvement.

However, as the chairman and ranking member noted, one of those fraud cases involves former Ex-Im loan officer Johnny Gutierrez, who pleaded guilty to one count of bribery of a public official. Mr. Gutierrez admitted accepting more than \$78,000 in bribes in return for recommending the approval of unqualified loan applications to the Bank, among other misconduct. This case remains an active fraud investigation as to other parties.

We have closed other employee integrity cases in the past year that led to findings of misconduct and personnel being separated from employment at the Bank but no criminal charges.

As I have previously testified, our open investigations are at various stages, and working with the Department of Justice, some of those cases may result in more prosecutions for bank fraud and money laundering. At this time, I would not expect charges against any Ex-Im Bank employees from our current caseload.

As to our recommendations from audits and inspections, we have 48 open and unresolved recommendations; 24 from the current fiscal year and 24 from prior fiscal years.

The written testimony summarizes recent audit work on internal controls. Our independent audit of the Bank's financial statements found that they were fairly presented in all material respects and had no material weaknesses. Our audits also found substantial compliance with the cybersecurity requirements of FISMA and that internal controls for the short-term multibuyer insurance program provided reasonable assurance of compliance.

A recent annual audit found noncompliance with the Improper Payments Act, and we recommended changes to the risk-assessment process which the Bank is implementing. And the required risk assessment of the purchase card and travel card programs at the Bank found them to be low risk.

Every year, we review our work and identify the top management challenges facing the Bank. Last fall, the OIG reported that the top challenge was managing risk, specifically managing the Bank's core business activities to reduce the risk of loss to the Treasury and, by extension, the taxpayer. To manage that risk, we have recommended the Bank design an agencywide risk management framework so that in addition to rating the risk of any individual transaction, the Bank is also evaluating and mitigating the risks generated by the overall composition of the portfolio and any outsized exposures the Bank has in certain regions, industry sectors, or single companies. To accomplish this, we have recommended a chief risk officer which the Bank has established. The Bank has also conducted stress testing and monitoring of exposure levels.

We hope the Bank will build on these steps by developing and implementing key risk policies covering both credit and noncredit risks.

We have also recommended improvements to due diligence and know-your-customer policies, and the Bank has deployed improvements in those areas.

Finally, we have previously reported that internal policies providing clear guidance to staff had not been prevalent at Ex-Im Bank. So we recommended that the Bank rely more on clear policies, controls, and documentation and less on institutional knowledge. Many of our recommendations have been for specific internal control policies, which the Bank is working on implementing.

Mr. Chairman, this concludes my statement. I'm happy to answer the members' questions.

[Prepared statement of Mr. McCarthy follows:]



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

INSPECTOR GENERAL

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Statement of

Michael T. McCarthy  
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.

OIG 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.

Mr. JORDAN. I thank the gentleman.  
We now recognize the gentleman from South Carolina, Mr. Mulvaney.

Mr. MULVANEY. Thank you, Mr. Chairman.

Thank you, Mr. McCarthy, for coming back again.

I want to focus on—move away a little bit from the waste, fraud, and abuse part of the hearing and more on the deficiencies in management, if any, for the internal controls that—you've been here a couple times before, and I think you've either been on panels or were here when we had discussions regarding the 2012 reauthorization bill. And I want to focus for a few minutes on one part of the 2012 reauthorization bill, which was a—which required the Bank to start taking steps to get out of the long-haul aircraft business.

Are you familiar with those reforms, sir, from the 2012 act?

Mr. MCCARTHY. I'm familiar with those provisions, yes.

Mr. MULVANEY. And let me just ask you, have you had a chance to investigate whether or not steps are being taken in order to bring the Bank into compliance with the 2012 law?

Mr. MCCARTHY. So that portion of the 2012 reauthorization, that was a responsibility to assign to the Secretary of the Treasury. So we—our office within Ex-Im Bank wouldn't necessarily have jurisdiction. So I—we haven't done specific work in that area.

Mr. MULVANEY. Does it ever come up?

Mr. MCCARTHY. Not in the work that we've been doing.

Mr. MULVANEY. Okay. So you've not had a chance to talk to Mr. Hochberg about it.

Mr. MCCARTHY. Just to the extent that—the same information you've received.

Mr. MULVANEY. The 2012 reform is essentially—are you familiar, Mr. McCarthy, with the home market rule?

Mr. MCCARTHY. No. I'm not.

Mr. MULVANEY. It's a gentlemen's agreement between the American Export-Import Bank and the European export credit facilities—

Mr. MCCARTHY. Regarding aircraft.

Mr. MULVANEY. Sorry?

Mr. MCCARTHY. Regarding aircraft.

Mr. MULVANEY. Regarding aircraft. You are familiar it, then, a little bit?

Mr. MCCARTHY. Yes.

Mr. MULVANEY. It strikes me that the 2012 reforms are very similar to that, or at least not similar, an extension of that. Right now, there's an agreement, for folks who aren't familiar with it, there's an agreement, a gentlemen's agreement, ladies' agreement, between Ex-Im and the European export credit facilities that we won't offer export/import financing to British, French and German air carriers for airplanes, and the European facilities won't offer it to American carriers.

Is that your basic understanding, Mr. McCarthy, of the—

Mr. MCCARTHY. That's my understanding. Yes.

Mr. MULVANEY. Okay. So I guess my question to you is this: In your work, have you seen any erosion of that home market rule in the last couple of years?

Mr. MCCARTHY. I don't believe that we've looked into that or seen that in the aircraft sector.

Mr. MULVANEY. What other sector would there be?

Mr. MCCARTHY. Well, so is the question, is that being expanded to other sectors?

Mr. MULVANEY. No. My question is, is it still in place? Are you still seeing it respected? I guess what I'm getting at is have you seen any circumstances where we've used Export-Import financing to allow British, French, or German air carriers to buy American-made airplanes?

Mr. MCCARTHY. Well, I don't think we've looked at that specifically, but I'm not aware of any.

Mr. MULVANEY. Okay. And I guess you would be aware of it if it happened. Right?

Mr. MCCARTHY. I would hope so.

Mr. MULVANEY. Yeah. Any examples, Mr. McCarthy, of British, French, or German airlines—excuse me—of American airlines receiving European export credit facility assistance in buying Airbus airplanes?

Mr. MCCARTHY. Not that I'm aware of.

Mr. MULVANEY. Okay. So, to the best of your knowledge, there's been no erosion in that home market rule in the last couple years?

Mr. MCCARTHY. To the best of my knowledge.

Mr. MULVANEY. Okay.

I've got some more questions, Mr. Chairman, but I won't be able to get to them in 2 minutes. I hope maybe we'll stick around.

Thank you very much, Mr. McCarthy.

Mr. JORDAN. With that, I recognize the ranking member.

Mr. CARTWRIGHT. Well, thank you, Mr. Chairman.

Mr. McCarthy, according to your most recent semiannual report, in addition to trainings and briefings with the Ex-Im Bank, your office also conducted briefings on fraud scenarios and money-laundering patterns for private sector banks ranging from the Royal Bank of Scotland right on down to JPMorgan Chase. Am I correct in that?

Mr. MCCARTHY. That's correct.

Mr. CARTWRIGHT. So would you agree with me that fraud is an industrywide problem in banking, not just one that is unique to the Export-Import Bank of the United States. Right?

Mr. MCCARTHY. I would agree with that. The frauds that we see are often when we have transactions that involve the private sector and the Ex-Im Bank. Both are being defrauded at the same time.

Mr. CARTWRIGHT. Okay. In fact, isn't it true that in a number of your fraud investigations, it's not just Ex-Im Bank that's defrauded, but it's also commercial banks that are defrauded hand in hand?

Mr. MCCARTHY. Yes. That's correct. Especially in these guaranty programs where there is a commercial bank making a loan and Ex-Im guaranteeing, both will be the targets of the fraud.

Mr. CARTWRIGHT. Okay. So it would seem, then, that the only sure-fire way for any bank, not just the Export-Import Bank, to obtain a zero-percent fraud rate on any loan would be to stop lending money. Is that it?

Mr. MCCARTHY. Well, the goal is always to minimize fraud. Getting it all the way to zero is a challenge for everybody.

Mr. CARTWRIGHT. Okay. Well, since I really can't imagine members of our committee wanting to end the banking industry as we know it, I would like briefly to examine with you how successful this Bank has been at detecting and decreasing fraud.

First, are you familiar with the Bank's medium-term program?

Mr. MCCARTHY. Yes.

Mr. CARTWRIGHT. And could you briefly describe what that is?

Mr. MCCARTHY. Well, in 2009, when the OIG started its law enforcement operations, one of the key areas we focused on was the medium-term program, which had a much higher fraud rate and a much higher loss rate than the Bank's other programs. So when we started looking into that, we found a fairly high fraud rate in there, and a lot of our investigations stemmed from that program. And at that point in time in 2009, I think that program was experiencing somewhat close to \$100 million in claims filed every year. We had an audit report that we issued that found deficiencies in internal controls, and we also investigated the fraud cases that resulted from those deficiencies.

Mr. CARTWRIGHT. Okay. Now, in fiscal year 2009, this program paid out \$100 million in fraudulent claims. Is that correct?

Mr. MCCARTHY. It paid \$100 million in claims. Not all of them were due to fraud.

Mr. CARTWRIGHT. Okay. And now, as a result of that number, your offices became very involved in attempting to address the high fraud rates in the medium-term program. Am I correct in that?

Mr. MCCARTHY. Yes. That's correct.

Mr. CARTWRIGHT. Now, fast forward to fiscal year 2012. The number of fraudulent claims in the medium-term program had declined to approximately \$15 million. Am I correct in that?

Mr. MCCARTHY. I believe that's the number we reported. The number of claims, not all of them. Again, not all of them were due to fraud.

Mr. CARTWRIGHT. And that number dropped again in fiscal year 2013 down to \$9 million. Am I correct in that?

Mr. MCCARTHY. Yes. I believe that's correct.

Mr. CARTWRIGHT. All right. And for fiscal year 2014, the number dropped yet again to \$6 million. Am I correct in that?

Mr. MCCARTHY. Yes. That's correct.

Mr. CARTWRIGHT. So please feel free to correct my arithmetic, but I believe that with respect to the medium-term program, that's a decrease in the fraud rate of 94 percent in the past 5 years. Am I correct in that?

Mr. MCCARTHY. It's a decrease in the claims, right, in that program.

Mr. CARTWRIGHT. So, based on these numbers, it would seem that anybody who characterizes this Bank as one that does not take fraud seriously is simply not paying attention.

I also want to address with you individual failings—instances of failures of Bank customers to repay their loans. All of those, no matter where they are or no matter how much money they failed to pay back, all of those are included in the default rate. Am I correct in that?

Mr. MCCARTHY. Yes. That's correct.

Mr. CARTWRIGHT. So that any company that defaults, you can talk about how much they defaulted on. That's all already built in and included in the Bank's default rate. Right?

Mr. MCCARTHY. That's right. In the loss rate that the Bank reports.

Mr. CARTWRIGHT. And am I correct when I say, as of March this year, that default rate was 0.0167 percent?

Mr. MCCARTHY. Yes. That's the default rate that's reported under the methodology the Congress put in place in the 2012 reauthorization.

Mr. CARTWRIGHT. Thank you, Mr. McCarthy.

I yield back.

Mr. JORDAN. I thank the gentleman.

We have got votes on the floor. So we're going to do one more round with the gentleman from Michigan. We'll do 5 minutes.

And then, Mr. McCarthy, we'll have to take a recess, and we'll be back. But it should be a fairly long vote series. It may be 45 minutes to an hour, and I apologize, but nothing we can do about it.

Mr. Walberg's recognized.

Mr. WALBERG. Thank you, Mr. Chairman.

And thank you, Mr. McCarthy, for being here.

Mr. McCarthy, according to your latest semiannual report, of the 139 recommendations issued by your office in the past few years, 48—over one-third—remain open or unresolved, if my records are accurate. Some of those open items go back to 2010. Can you tell us why the Bank still has not closed these recommendations that you've given?

Mr. MCCARTHY. I can't specifically speak to why the Bank hasn't closed all the recommendations. We've been working with them to try to close out more recommendations, and we've made some progress in the past.

In my opening statement, I divided that 48 into recommendations that were issued in the current fiscal year, which are half of them, and recommendations that were issued in prior fiscal years.

For the current fiscal year, things take time, policies need to be put in place, et cetera. So there's going to be some lag time.

The ones that you identified, ones from 2010, 2010 to 2014, we would like to see more progress made on those recommendations.

Mr. WALBERG. So it's not good enough, at least with those items, for them to still be working?

Mr. MCCARTHY. Well, on those, we have back and forth on the recommendations at some times. On some of them, they've given us interim steps that they've taken, and we requested more information. Some of them we think we're closer on resolving, that they've actually taken action on. Others that we're not satisfied that they've implemented those recommendations that they've agreed to implement.

Mr. WALBERG. Have any of those open recommendations at least given rise to potential increased fraud or abuse?

Mr. MCCARTHY. I think in general our recommendations are designed to improve the internal control environment so that when they're put in place, there'll be less risk at the Bank.



Mr. WALBERG. In the first of our series of hearings with the Bank, Mr. Hochberg told the committee that he was completely unaware of reports that nearly \$2 million of Export-Import loans intended to bring electricity to 1,200 communities in Ghana was instead used to buy luxury automobiles, foreign government officials. Are you aware of that transaction?

Mr. MCCARTHY. I'm aware of some of the press reports on that transaction. We did do some work in Ghana that was published in the report. We did not cover that specific transaction in that report, but it's something that we're aware of.

Mr. WALBERG. Have you—are you planning on following up and reviewing that transaction?

Mr. MCCARTHY. We're looking into it. We're looking into it, but I don't have additional information at this time. It's something that caught our attention as well, those reports.

Mr. WALBERG. So, at this point, you can't explain as to why taxpayer funds were used to purchase 38 luxury vehicles, including Lexus SUVs and Chrysler 300s, one of which my wife would enjoy having because she's told me.

I guess the question would be, does this type of abuse warrant aggressive oversight from your office?

Mr. MCCARTHY. It's something that we're aware of and something that we're looking into.

Generally, one of the recommendations that we've made across a number of our reports is that the Bank should improve monitoring of how funds are being disbursed, and once the transactions are approved and originated and underwritten, that's one step in the process. But then there's another step in the process. And once things are in the approval pipeline, there needs to be monitoring of what exactly the funds are being used for.

Mr. WALBERG. So it is difficult to monitor the disbursement of the moneys and where they go once they are disbursed?

Mr. MCCARTHY. Well, once the funds are disbursed, the Bank needs to continue monitoring to make sure that the items that are purchased are appropriate, that it's supporting U.S. exports.

Mr. WALBERG. But you've given them recommendations on how they can upgrade their ability to monitor?

Mr. MCCARTHY. Yes. We've made some specific recommendations on monitoring, and we've also recommended they increase the resources—the human resources that are assigned to that function, and they have done so. They're adding personnel in that area.

Mr. WALBERG. How do they work it now? What tools do they use in monitoring and following up, especially with foreign countries?

Mr. MCCARTHY. Well, there's a number of different tools. There are generally reporting requirements in these transactions. So making sure that those reports are coming in when they're due. Reading them, reviewing them, looking for discrepancies, asking for additional documentation. There are—also site visits are an important part of monitoring. Sometimes you need to go someplace and look at what's actually going on on the ground and talk to people who are there to determine whether the funds are being used—

Mr. WALBERG. Any penalties that are available to them with these foreign countries if they're not following the rules and the plans of reporting?

Mr. MCCARTHY. Well, if there are—generally these are covenants in the loan transactions for this type of reporting, and if they're not being met, the Bank would have options of either calling the loan in or cutting off further financing, considering that in additional applications.

Mr. WALBERG. My time is expired. Thank you.

Mr. JORDAN. Thank the gentleman.

We will reconvene upon the conclusion of the last vote.

The subcommittee stands in recess.

[Recess.]

Mr. JORDAN. The committee is back in order.

Gentlelady from the District is recognized, Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

It would be pretty reckless to leave the United States the only advanced nation without an Export-Import Bank, and I don't think the entire majority is with this subcommittee on that score.

But the determination to shut down the Bank I suppose is exemplified by the fact that we're into the fourth hearing aimed to do precisely that, even though the IG has previously reported that there's no evidence of widespread employee misconduct or systemic involvement in the Bank in fraud. So I'm not sure what more the IG has to tell us.

But I do want to ask about the only thing I could think to ask about that would assure members who had anything approaching an open mind on this issue would be to ask about internal controls as they exist now. So I'm interested in your findings on internal controls, assuming that the Bank can be reauthorized and we won't be left an orphan in the advanced world.

Let me ask you if there are any aspects of the Bank's internal controls where you still believe improvement is needed, and what those areas might be.

Mr. MCCARTHY. We've made several recommendations as far as internal controls go, starting from some of our original work back in 2009, 2010, looking at the medium-term program, and we did find deficiencies at that time. A lot of those deficiencies have been corrected.

What we've reported back to the committee on the outstanding recommendations that we believe are most important and which I touched on in my opening statement is that we believe that the senior management and the Board of Directors of the Bank should play more of a role in the overall enterprise risk management. So with the board of directors—

Ms. NORTON. As opposed to who plays that role now?

Mr. MCCARTHY. Well, right now, it's really just a function of the employees of the Bank. And the Board of Directors, who are the Presidential appointees, Senate-confirmed, five people, who are supposed to be in charge of the Bank, their role is really to serve as more of a credit committee and approve individual transaction. We believe if they had more of a role in looking at enterprise risk, that that would be a better governance structure for the Bank.

Ms. NORTON. Have they agreed to do so?

Mr. MCCARTHY. No, they have not agreed. That's one of our unresolved recommendations. Some of the legislation does contemplate that.

Ms. NORTON. Does that need to be—do they believe that needs to be in legislation? And it is often that—there is often a line on who can do what in such an enterprise.

Mr. MCCARTHY. Right. I think that there's a difference in terms of policy and in terms of how it's accomplished.

Ms. NORTON. Have you seen the bill? You say it is in the bill.

Mr. MCCARTHY. Yes, I believe it's in all of the form proposals.

Ms. NORTON. Overall, have you seen improvements in the Bank's internal controls when they have been brought to their attention by the IG?

Mr. MCCARTHY. Yes, we have seen improvements. There were problems that we've identified in the past years. They've improved many of them, put a lot more internal controls in place, updated their policy manual to put things in writing and have clear policies that employees can follow. So we've seen significant improvement in that area.

We do have outstanding recommendations that we believe that there are further improvements that would help reduce risk at the Bank.

Ms. NORTON. And you've testified it takes time to implement those recommendations?

Mr. MCCARTHY. With recommendations, it will generally take some period of time to fully implement them.

Ms. NORTON. Thank you very much. I appreciate your testimony, Mr. McCarthy.

Mr. JORDAN. I thank the gentlelady.

Is the gentleman from Georgia prepared to ask questions, or does he want the chair to go?

Are you comfortable, Mr. Hice? Are you ready to go?

Mr. HICE. I can be.

Mr. JORDAN. I yield to the—or the gentleman from Georgia is recognized.

Mr. HICE. Thank you. Thank you, Mr. Chairman.

Thank you for joining us today, Mr. McCarthy. I appreciate your willingness to come back. A couple of questions that come to my mind on the green type things. Are you aware that when Ex-Im made a \$32-plus million loan to LM Wind Power that that company, at the time the loan was made, was about to make some huge layoffs here in the United States?

Mr. MCCARTHY. I'm not familiar with that particular transaction.

We did look at a wind project that had similar issues, whereas a wind project in India and the exporter of the—or excuse me, this wasn't wind. It was solar, but in the green energy space—that there were issues with the exporter going bankrupt at the time that it was shipping the products overseas that were being supported by Ex-Im.

Mr. HICE. Right. I'm familiar with that one too. You know, there's cases like this particular one, LM Wind Power had branches in both Arkansas and North Dakota, as I—as I—if I'm correct. And they laid off hundreds after a loan was made, \$32 million. And is that a normal practice to you? Does Ex-Im check in to those type of things before making a loan? Do you inspect the company in their, as you mentioned, if they're on the verge of bankruptcy or

if they're on the verge of making a decision that's going to impact U.S. jobs? Do you all look into that?

Mr. MCCARTHY. Well, that's an issue, that we encountered in the solar project in India that we looked at and did an inspection on. The Bank makes a loan to the foreign company that's purchasing the equipment from the U.S. company. And so as the—as part of the due diligence process, they're doing due diligence and looking at the credit profile of the company that's buying the product.

We suggested that the due diligence needs to be expanded to include all of the parties in the transaction because, for example, if the U.S. exporter is shipping equipment to a specific project, if that U.S. exporter isn't going to be able to fulfill the terms of the contract or isn't going to be able to fulfill the warranties, that's a risk in making a loan to the company that's making the purchase.

So we did identify that issue and recommended that the Bank expand its due diligence into the U.S. exporter, and their financial state and—

Mr. HICE. Okay. I'm not talking about financial state. I'm talking about U.S. jobs. I mean, that's part of the goal of the Bank as well, to secure U.S. jobs. When something like that happens, are there any consequences for companies that you give huge loans to and then they lay off U.S. workers? Are there any consequences, or are loans ever revoked or anything along those lines?

Mr. MCCARTHY. Well, because the loans are generally to the foreign purchasers of those products, I don't believe that they would be reversed because of problems at the U.S. company.

Mr. HICE. Okay. Well, there was a similar one in Canada, a project, First Solar, \$455 million loan to them. And that particular company and ended up with their solar panels or whatever, they bought them from themselves. Are you familiar with that scenario?

Mr. MCCARTHY. I don't believe I'm familiar with that particular case.

Mr. HICE. Okay. Well, they received Ex-Im financing to export to themselves, \$455 million. You're not familiar with that?

Mr. MCCARTHY. Not with that transaction.

Mr. HICE. Does that type of thing happen very often? Are you aware of companies that take loans from Ex-Im and then just use it themselves rather than for what it was intended to be used?

Mr. MCCARTHY. Well, I think the issue is that the loans have to have U.S. products going overseas. If there are related-party transactions, if they're a U.S. company and a foreign subsidiary, there may be related-party transactions, but the goods still have to leave the United States to be qualified for export support.

Mr. HICE. All right. Well, you mentioned the one in India. That's a similar type deal. Ex-Im awarded that particular loan some \$400 million, and their credit rating was not very good. Was that just a fluke? Or, I mean, you were referring to that a little bit a while ago.

Mr. MCCARTHY. Right. What we identified with that particular project, we did review that transaction. Their transaction at this time is performing and is in repayment. The main issue that we identified is that because the U.S. exporter had gone bankrupt, that there were issues that the warranty of the solar panels that were shipped was no longer valid, and so it could create potential

problems in the future. If that project isn't able to generate enough energy to repay the loans that have been given to the project, that puts Ex-Im in a vulnerable position.

Mr. HICE. Do you know how many jobs were lost when they went bankrupt?

Mr. MCCARTHY. I do not.

Mr. HICE. Okay.

Thank you, Mr. Chairman.

Mr. JORDAN. I thank the gentleman from Georgia.

Mr. McCarthy, about a year ago, former Ex-Im employee Johnny Gutierrez sat at that table and took the Fifth Amendment when we were attempting to question him about some of his activities at the Ex-Im Bank. About 6 weeks ago, you sat right where you're sitting today and told us that Mr. Gutierrez had been indicted by the Justice Department just 2 days before that particular hearing, and then about a week later Mr. Gutierrez pled guilty to bribery and fraud charges.

You also indicated that day that there may be more indictments coming in the Gutierrez case. And you said there are 31 open fraud investigations, and there may be indictments in some of those. Has any of that changed? Is that still the number, 31? Or is it a bigger number today? Or is it a smaller number? Has there been more indictments? Where are we at?

Mr. MCCARTHY. Our current number, I think, is 29 open investigations.

Mr. JORDAN. Twenty-nine, okay.

Mr. MCCARTHY. Right. As of today.

Mr. JORDAN. What about the indictment issue?

Mr. MCCARTHY. The indictments, I believe that we've had—we have had some new cases that we've reported and it's still the same. When we have cases that we investigate, the fact that we're investigating that matter means that there is a possibility the charges will—

Mr. JORDAN. When you say new cases you've reported, does that mean there are new referrals for indictment? Because you told me last time you work closely with Justice Department. These fraud investigations are both the inspector general and the Justice Department working together. So have there been indictments—additional indictments to the—in addition to Mr. Gutierrez?

Mr. MCCARTHY. Not in the Gutierrez matter.

Mr. JORDAN. And the other 31? Other 29?

Mr. MCCARTHY. I would need to check as to the timing as to when I last testified. I believe we've had other indictments, guilty pleas that I've reported to you.

Mr. JORDAN. Do you have an idea how many?

Mr. MCCARTHY. A handful.

Mr. JORDAN. A handful in just the past 6 weeks? More indictments? More guilty pleas?

Mr. MCCARTHY. I need to check on the records for that. For example, we are with someone—

Mr. JORDAN. Are they in the Gutierrez case you said or other cases?

Mr. MCCARTHY. They are other cases.

Mr. JORDAN. So we have Mr. Gutierrez who has been indicted and pled guilty, and in the last 6 weeks, you've had other indictments and guilty pleas with employees in those 29 open fraud investigations?

Mr. MCCARTHY. Not with employees.

Mr. JORDAN. Not with employees?

Mr. MCCARTHY. Not with employees. These are—we have cases that are at various stages.

Mr. JORDAN. I understand.

Mr. MCCARTHY. So there are people who have been indicted who have pled guilty recently. There are people who have previously been arrested who have pled guilty. There are people who have previously pled guilty who have been sentenced.

Mr. JORDAN. And so these aren't employees, but they're people from the public sector or the private sector trying to get the financing from the Ex-Im Bank?

Mr. MCCARTHY. That's correct.

Mr. JORDAN. Okay. And have they received financing, or was it while they were trying to get financing?

Mr. MCCARTHY. In these particular matters, it was they had already received financing.

Mr. JORDAN. They had already gotten the taxpayer money?

Mr. MCCARTHY. Yes.

Mr. JORDAN. Okay. So now, are you familiar with the company NewSat?

Mr. MCCARTHY. Yes.

Mr. JORDAN. And did Ex-Im loan them some money?

Mr. MCCARTHY. Yes, they did.

Mr. JORDAN. Was it a direct loan?

Mr. MCCARTHY. I believe so.

Mr. JORDAN. Yeah. Do you know how many millions of dollars?

Mr. MCCARTHY. I believe it was north of a \$200 million commitment, although it hasn't been all disbursed at this point.

Mr. JORDAN. North of \$200 million?

And were you the largest financier of NewSat when they were seeking financing for the business?

Mr. MCCARTHY. I believe the U.S. Ex-Im Bank is the lead financier on that transaction.

Mr. JORDAN. You were the lead financier. And isn't it true that NewSat now went bankrupt?

Mr. MCCARTHY. That's correct.

Mr. JORDAN. And how much are the taxpayers on the hook for?

Mr. MCCARTHY. I believe at this point it's around \$150 million, but there's potential for recoveries in that matter that could reduce that amount.

Mr. JORDAN. Potentially \$150 million of north of \$200 million debt the Ex-Im loaned to this company.

A review commissioned by independent NewSat directors reported: "Appalling corporate behavior, complete lack of control at NewSat, including opulent \$10,000 dinners, extensive overseas travel, millions in executive bonuses and raises, tax evasion, and \$400,000 in undisclosed payments to a yacht company owned by NewSat's former CEO."

Pretty bad stuff going on. How did this all fly under the Bank's radar?

Mr. MCCARTHY. We've announced—this transaction has been on our radar screen for some time, since last summer. We've announced that we're going to conduct an inspection of this transaction. We're currently in the process of gathering documents, so we're going to be speaking with people. And I know that—

Mr. JORDAN. Since last summer, my understanding is they were still getting money as late as last summer. So—

Mr. MCCARTHY. I believe that there were issues that were raised by an independent auditor in the Australian securities regulators last summer. At that point, I believe, Ex-Im stopped disbursing on that commitment.

Mr. JORDAN. I would ask—like to place in the record a copy of a report which includes some limited redactions by the Financial Services Committee based on concerns over certain business and personal information those redactions are. But this is the Rudd Report. Are you familiar with this, Mr. McCarthy, the Rudd Report?

Mr. MCCARTHY. I'm familiar with it, yes. It was requested by the Financial Services Committee.

Mr. JORDAN. Without objection, so entered.

Mr. JORDAN. So you're familiar with this, Mr. McCarthy?

Mr. MCCARTHY. I'm familiar with the existence of the report. I'm not familiar with its contents, personally.

Mr. JORDAN. Let me read a little bit to you. This is from Mr. Rudd himself. Again, these are part of the independent directors here at NewSat who commissioned this report: "Within 2 hours of commencing"—let me back up.

"I've been at NewSat for 6 weeks now." In the report. One of the confidential documents—documents. Not confidential. It has been redacted. "Within 2 hours of commencing, I realized the company had some serious performance issues and that there was a total disconnect between what the lenders were expecting in terms of financial outcomes and what was actually happening. Of course, this often resulted in the earnings downgrade announcement into the market but has also led me to look into past activities." Much of this information was fed in to directors.

So, within 2 hours, this guy comes in—this is clear back in early summer last year—within 2 hours of being there, he says, there are big problems. So what we want to know is, how in the world did the Bank miss this?

Mr. MCCARTHY. As part of our inspection, we're going to be looking into the due diligence that the Bank conducted or did not conduct into that transaction, but I don't have that information at this time.

Mr. JORDAN. So you mentioned 29 ongoing, open fraud investigations. Is this one of the 29?

Mr. MCCARTHY. Right now what we've announced is that we're going to conduct an inspection, which is different than an investigation. It's more in the nature of an audit where we go in and try to figure out what happened in the transaction. Depending on what evidence develops, it could be converted or referred into an investigation, but it's not an investigation at this time.

Mr. JORDAN. And what kicks it to the investigation level? I mean, if the fact that the taxpayers are on the hook for \$150 million, you've got this guy figuring it out within 2 hours, you were the lead financier in this deal, what kicks it up to a real investigation?

Mr. MCCARTHY. It would be evidence of fraud or misrepresentations that were made to the Ex-Im Bank as opposed to bad business practices.

Mr. JORDAN. Wow, this sure seems—sure looks like fraud to me. I think it would look like fraud to the American taxpayer, and something, obviously, we need to get to the bottom of.

My time is over. I apologize. I will give an extra few minutes on the second—we'll do a quick second round, and then I know we have all got pressing things.

Well, wait a minute. The gentleman from North Carolina is still first round, so the gentleman from North Carolina is recognized, and then we'll go to Mr. Cartwright.

Mr. MEADOWS. I'll be very brief.

Thank you, Mr. Chairman, for leading the way.

Mr. McCarthy, you are not new to the inspector general's role, just new at this particular role, having dealt in a number of other areas. I guess the troubling thing is, the chairman was just talking about, with regards to an inspection versus an investigation. Have we not seen enough of a pattern here of perhaps corruption that we could go ahead and go to that investigative mode?

Because what I've found with inspector generals is they do their inspection and then there's a long period of time and then they do the investigation after it. Why are you making that choice here?

Mr. MCCARTHY. I don't anticipate that there would be a long period of time, but what we need to do is that some of these—there are a lot of press reports on this. There are—there's information from people in Australia. When we need to do an analysis of the documentation and speak to some people to discover—to learn more information about whether there's evidence that there are crimes committed or frauds that are committed against Ex-Im Bank.

There are certainly irregularities in this transaction, but as far as our jurisdiction goes, that's what we're looking for. If we develop that evidence, we'll convert it into an investigation.

The issue is that, I know Congress always wants a lot of information. When we're doing inspections and audits, that's one thing. If something is converted into an investigation, then information will not be as accessible.

Mr. MEADOWS. All right. So we have a number—Mr. Hice, from Georgia, mentioned a couple of issues. The chairman has mentioned a couple of issues. As we start to look at this, I mean, we're talking about real dollars, taxpayer dollars in terms of the amount of money that has been fraudulently, in many cases, obtained, or at least disposed of. How would you characterize the reforms that the Ex-Im Bank has embarked on?

Because here's my concern is, is we reauthorized this just a few years ago, and with that came a series of reforms to try to make sure that the accountability is not there. And now we're being asked again to reauthorize it. And would you say that there is a



culture of corruption in and around much of the Import-Export transactions?

Mr. MCCARTHY. I wouldn't characterize it that way. As far as the internal controls and the improvements that need to be made at the Bank, there have been significant improvements that have been made in the past—over the past several years. But as our reports show and as our open recommendations show and as our continuing fraud cases show that there are more things that need to be done to try to detect and deter these frauds to prevent them from happening in the first place.

But I do see some progress. So one of the questions that the chairman had was, were these people caught after they stole the money or before? I mean, we do have, just last week, we got a referral on the Bank on something that was stopped before it happened. And then we're looking into that now to see what further action that we might take on that.

So we are seeing progress in some of these areas. But as you recognize, these are large dollar amounts, and no amount of fraud is acceptable against the United States.

Mr. MEADOWS. So what you're saying is that you're characterizing this that import-export is just like every other Federal program? Because that's not what I'm seeing. I mean, so are you saying it's no worse than some of the other loan programs that we have?

Mr. MCCARTHY. Well, I don't have specific data that I can make those comparisons, but—

Mr. MEADOWS. Well, but you've been around the IRS and a number of other agencies throughout your career with the Federal Government. So you have some institutional knowledge. So are you saying that this is better or worse?

Mr. MCCARTHY. I don't think that the problems with fraud that Ex-Im is encountering are unique to Ex-Im. I think their problems are—

Mr. MEADOWS. I'm looking for you to give me a qualitative, not necessarily, you know, how you responded. But is it better or worse than some of the other institutions that you're familiar with or have worked with?

Mr. MCCARTHY. I think that it's—on the fraud question?

Mr. MEADOWS. Yes.

Mr. MCCARTHY. I think that it's comparable. I don't think that it's worse than other agencies. So, for example, like the SBA, they've had 30 convictions in their last 6-month period for similar types of fraud schemes.

Mr. MEADOWS. Yeah, the difference is the dollar amount with SBA.

Mr. MCCARTHY. In some instances. But most of the frauds that we're seeing are generally in the, you know, \$1 million to \$5 million space, which is where SBA is operating as well.

Mr. MEADOWS. Right. Okay.

Mr. Chairman, I yield back.

Mr. JORDAN. I thank the gentleman.

Gentleman from Pennsylvania is recognized, and then we'll go to Mr. Hice.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Well, Mr. McCarthy, my dear friend Mr. Meadows just asked you flat out whether there was a culture of corruption at the Ex-Im Bank. And that's a fair question. And you said you would not characterize it that way, didn't you?

Mr. MCCARTHY. That's what I said. And I think that—what you made reference to, what I discussed last summer, is that there are cases of serious employee misconduct that we've discovered at the Bank. There are four employees who have committed either criminal or fireable offenses within the past few years. On the other hand, there are more than 400 employees who work at this Bank.

I know that the chairman of this committee and others have generally said 99 percent of Federal employees are doing a good job and that those numbers, those types of statistics, would indicate that the Ex-Im Bank was more common in that area. I certainly don't mean to minimize the very serious issues of Mr. Gutierrez and the other employees, but we're talking about a small number of employees at this point. We are concerned—

Mr. CARTWRIGHT. I don't mean to cut you off, but here's the—suppose somebody just walked into this hearing room or maybe just clicked on the television if it's on TV someplace, they might think you're kind of sticking up for the Ex-Im Bank, that you're kind of in with it. Maybe you're an employee of the Ex-Im Bank, and I think maybe one thing you and I ought to make clear to everybody is what your role is. You are the acting inspector general. Does that mean you're an employee of the Ex-Im Bank?

Mr. MCCARTHY. It means that I'm an employee of the Bank, but we are independent from the Bank's management.

Mr. CARTWRIGHT. And does that mean you need to be sticking up for the Ex-Im Bank no matter what?

Mr. MCCARTHY. The goal of my—my goal and the goal of my office, and I've conveyed this to everyone on our staff is that Congress is having a policy dispute about how to handle the Ex-Im Bank. Our goal is to provide facts. So I can give you information and tell you, these are the number of employees, this is what we know about the cases that we have.

Mr. CARTWRIGHT. Are you independent, Mr. McCarthy?

Mr. MCCARTHY. Yes, we are an independent office.

Mr. CARTWRIGHT. That's the point I'm trying to establish.

Mr. MCCARTHY. We have our own budget. We don't—

Mr. CARTWRIGHT. You're not here to stick up for the Ex-Im Bank no matter what. You're an independent voice, and that's why you're kind of the auditor, aren't you?

Mr. MCCARTHY. We have an arm's length relationship from the Bank so that we can be independent in conducting audits and investigations.

Mr. CARTWRIGHT. So when you disagree that there was a culture of corruption at the Ex-Im Bank, you don't do so as somebody that is going to stick up for the Ex-Im Bank no matter what. You do so as an independent observer. Is that correct?

Mr. MCCARTHY. Well, I'm trying to not—rather than doing characterizations, I'm trying to present Congress with all the facts and let you make your own determinations about culture and those types of issues.

Mr. CARTWRIGHT. All right. Now, we talked about the Johnny Gutierrez case, brazen bribery scheme at the Bank. At the time that you—last summer, when members of this committee asked you when you testified about the case involving Mr. Gutierrez, you indicated you could not discuss it because it was an ongoing investigation. That makes sense. Your written testimony today indicates you are now in a position to discuss the matter in light of recent proceedings concerning Mr. Gutierrez in court.

According to your testimony, on April 22 this year, Mr. Gutierrez pled guilty to bribery for accepting over \$78,000 in bribes from June 2006 to December 2013 in exchange for recommending the approval of loans to applicants who were basically unqualified during the course of his employment. Is that correct?

Mr. MCCARTHY. That's all correct.

Mr. CARTWRIGHT. All right.

Now, even before Mr. Gutierrez had pleaded guilty to the bribery, can you tell us what action, if any, the Bank took against Mr. Gutierrez?

Mr. MCCARTHY. So Mr. Gutierrez' involvement in the scheme was discovered in the course of a fraud investigation. When we developed the evidence that Mr. Gutierrez was involved, we developed documentary evidence. And, at one point, we consulted with the Bank and we—our agents confronted Mr. Gutierrez and interviewed him about that, about his involvement. At that point, he was placed on administrative leave, and termination proceedings were begun against him, and eventually he was removed from his position at the Bank while the investigation was pending.

Mr. CARTWRIGHT. I only have so much time.

Were any other employees implicated in the Gutierrez case?

Mr. MCCARTHY. Yes, there is another employee who was also removed from his position.

Mr. CARTWRIGHT. He was removed from his position.

Now, beyond that, what other employee—has your office uncovered any evidence that the bribery scheme involving Mr. Gutierrez and this other employee was widespread among other employees at the Bank?

Mr. MCCARTHY. We have not developed evidence of that.

Mr. CARTWRIGHT. No evidence of other employees involved in this scheme. I'm pleased to hear it. I also want to know how the matter involving Mr. Gutierrez was first brought to the attention of the OIG. How did your office first find out about it?

Mr. MCCARTHY. We received a referral about suspicious claims activity in the transactions, and then in the course of looking into fraud in those transactions, we discovered evidence pointing us to Mr. Gutierrez.

Mr. CARTWRIGHT. Was it the Bank's own employees that reported it to you?

Mr. MCCARTHY. Yes.

Mr. CARTWRIGHT. All right. So, in the course of your investigation, did you uncover any evidence that anyone in the Bank's senior management was involved in that misconduct?

Mr. MCCARTHY. We did not.

Mr. CARTWRIGHT. What about with respect to any political appointees at the Ex-Im Bank?

Mr. MCCARTHY. No.

Mr. CARTWRIGHT. Okay. No evidence of any involvement in that scheme?

Mr. MCCARTHY. No evidence.

Mr. CARTWRIGHT. All right. Well, now, in your assessment, did the Gutierrez bribery scheme go undetected for a long time due to deficiencies in the Bank's internal controls at the time?

Mr. MCCARTHY. Yes. The fact that he was able to perpetrate the scheme for a period of time suggests deficiencies in the internal controls.

Mr. CARTWRIGHT. And that's one of your jobs, to make recommendations about internal controls, right?

Mr. MCCARTHY. That's correct.

Mr. CARTWRIGHT. Did you make recommendations?

Mr. MCCARTHY. Following the Gutierrez scheme, we made some additional recommendations about internal controls.

Mr. CARTWRIGHT. What were they?

Mr. MCCARTHY. Well, one of the things that the Bank has done in response, one of the ways that Mr. Gutierrez was able to thwart the system and to circumvent controls was that he concealed information about previous credit histories of people applying for new applications. So now the Bank requires documentation of the previous experience of those companies be attached to the documents that go up to the decisionmakers.

Mr. CARTWRIGHT. So that's a control that you recommended and the Bank accepted. Is that correct?

Mr. MCCARTHY. I don't know that we recommended that control specifically. I know that they put that control into place, and we've recommended more checks and balances generally for things like individual delegated authority program. Some of our recommendations have been that you need to have cross checking and more than one employee looking at these transactions and doing cross checks so that you can't have one employee exploiting the system.

Mr. CARTWRIGHT. All right. Last question.

Mr. McCarthy, as acting IG, do you continue to keep an eye on the Ex-Im Bank? Do you continue to serve as the watchdog for that organization?

Mr. MCCARTHY. That's the role of our office.

Mr. CARTWRIGHT. Thank you, sir. Thanks for your testimony. I yield back.

Mr. JORDAN. I thank the gentleman.

Mr. McCarthy, I want to go back to a question I asked earlier. So employees and folks at NewSat smell trouble. They hire an outside consultant to come in and look at it. Within 2 hours, he says, Whoa, this thing's mess. This is Mr. Rudd. He issues this report. Have you seen the report?

Mr. MCCARTHY. I personally haven't read the report.

Mr. JORDAN. And is there a reason you haven't read the report?

Mr. MCCARTHY. We generally have our inspectors who are working on that project.

Mr. JORDAN. So is anyone at the inspector general in your office read the report?

Mr. MCCARTHY. I don't know.

Mr. JORDAN. Have you asked—do you have the report in your possession?

Mr. MCCARTHY. I don't know.

Mr. JORDAN. Have you asked Mr. Hochberg for the report?

Mr. MCCARTHY. We've made document requests surrounding the transaction. I would assume that it was included, that that report would have been included in that.

Mr. JORDAN. Wait. Wait. You've got to tell me exactly. Have you asked for the Rudd Report or haven't you?

Mr. MCCARTHY. We've asked for a number of different documents in a number of different categories. I believe the Rudd Report would be included in that standard request that we have, but I can't confirm that we've asked for that specifically.

Mr. JORDAN. Well, okay. So you believe you've asked for it. Have they given it to you?

Mr. MCCARTHY. I don't know what the current document production status is on that at this time.

Mr. JORDAN. Well, it's pretty important. I mean, within 2 hours, they know there's a mess there. The Financial Services Committee gets it. We want to know if you've got it. You think—well, you tell me you don't have it. You think you've asked for it. What I want to know is, why hasn't the Export-Import Bank given it to you?

Mr. MCCARTHY. We will get from the Export-Import Bank all of the documents. That's our goal. That will be one of the key documents that we'll look at. But we want to get all of the documents that are relevant to the—

Mr. JORDAN. Do you think—Mr. McCarthy, do you think you have it in your possession now, you being the Inspector General's Office at the Export-Import Bank, do you think you have this in your possession right now?

Mr. MCCARTHY. I don't know.

Mr. JORDAN. You do not know?

Mr. MCCARTHY. I don't know.

Mr. JORDAN. And you didn't think to check on this before you came here, knowing how important this was, how, you know, damning this information was and this report was of what went on with the NewSat deal?

Mr. MCCARTHY. We have a number of different transactions that we're looking at at any given time.

Mr. JORDAN. Yeah, but you don't have anywhere—you know you're on the hook—the taxpayers are on the hook for \$150 million, right? That's pretty big. And based on what you're telling me is you believe you've asked for it, but they haven't given it to you. And I want to know why. Why won't Mr. Hochberg and the Bank give you this information?

Mr. MCCARTHY. I don't know that we've received it yet.

Mr. JORDAN. You said you—when did you start your audit, which we hope gets pumped up and jumped up to an investigation—when did you start the audit of the NewSat deal?

Mr. MCCARTHY. I believe we announced the audit within the past month.

Mr. JORDAN. I mean, 20 days ago? 30 days ago?

Mr. MCCARTHY. I don't know. I can get you the exact date.

Mr. JORDAN. Sometime in May?

Mr. MCCARTHY. I don't know.

Mr. JORDAN. And you believe you've asked for it, and they haven't given it to you?

Mr. MCCARTHY. I don't know if they've given it to us or not. I don't keep tabs on every individual document that we—

Mr. JORDAN. Okay. So here's what we want you to do. Here's what we want you to do. We want to go back and we want you to confirm you've actually asked for it.

Mr. MCCARTHY. Yes.

Mr. JORDAN. And then we want you to let us know if they've given it to you.

Mr. MCCARTHY. Okay.

Mr. JORDAN. If they've already given it to you.

Mr. MCCARTHY. Okay.

Mr. JORDAN. If they haven't given it to you and they give it to you tomorrow, that doesn't count.

Mr. MCCARTHY. Okay.

Mr. JORDAN. Understand?

Mr. MCCARTHY. Understood.

Mr. JORDAN. All right. One last question. Where is Mr. McCarthy's testimony? So we have four folks who have got some problems in the Gutierrez case. And your testimony when you're getting near the end, you mention: Another Ex-Im employee was separated from employment due to substantiated misconduct in this case.

This is in the Gutierrez case. So what's that mean? "Separated from employment due to substantiated misconduct." I mean, that seems like government speak for "this person was fired." Is that what happened?

Mr. MCCARTHY. This person no longer works for the Bank.

Mr. JORDAN. Okay. Can you tell me something about this person? Are they going to be indicted and plead guilty and then when we bring them here take the fifth, or other order, but is that all going to happen with this person too?

Mr. MCCARTHY. As I've indicated, this still remains an open matter. This is an open investigation. This individual is a potential witness against other subjects, and therefore, I can't provide a lot of information about this employee at this time.

Mr. JORDAN. Have the other two—there were four in this case. Have the other two been separated from employment due to substantiated misconduct? Has that happened with the other two?

Mr. MCCARTHY. There were four last summer overall in separate cases. Yes, the other two cases, which have been reported on, both of those employees have left the Bank.

Mr. JORDAN. Okay. It's real important we get that information on the Rudd Report as soon as possible. That should be easy to check, Mr. McCarthy. You should be able to get that to us hopefully even as early as tomorrow.

Mr. MCCARTHY. I'll get back to you promptly.

Mr. JORDAN. I appreciate it.

The gentleman from Georgia is recognized.

Mr. HICE. Thank you, Mr. Chairman.

Mr. McCarthy, does the Bank have any kind of policy regarding sending funds to countries that we here in the United States have

imposed sanctions upon, countries that are known to be violating human rights and other abuses?

Mr. MCCARTHY. I believe there are charter requirements that specifically limit countries that can't or are ineligible to receive funds. And, yes, the Bank, as a matter of policy, consults with the State Department and has countries that it won't do business with for those reasons.

Mr. HICE. Were you aware that the Bank does provide assistance to some of those countries?

Mr. MCCARTHY. Specifically?

Mr. HICE. Yeah. According to the Bank's annual report, 2014, for example, the Bank has hundreds of billions of dollars, of U.S. tax dollar exposures in countries like the Democratic Republic of Congo, Sudan, Venezuela, Iraq. \$4.5 billion in China. \$1.5 billion in Russia. Are you not aware of this? This is your annual report or the Bank's annual report.

Mr. MCCARTHY. I believe it's the Bank's annual report.

Mr. HICE. Yeah, the Bank's.

Mr. MCCARTHY. There are—we've looked at some of the programs like Iran sanctions and have concluded that the Bank is complying with that and haven't found any issues. As far as outstanding loans to some of these other countries, I don't know the timing of when those loans were issued. It's possible that there may have been loans issued previously that are still on the books, and subsequent to that, they aren't doing new business because of new developments. I just—but I don't know the details on that.

Mr. HICE. Well, do you have any idea how long the Bank has had a policy not to do business with countries that we have imposed sanctions on for their human rights violations?

Mr. MCCARTHY. I don't know the specifics of each one.

Mr. HICE. Do you have any idea, say, the countries that I mentioned, Sudan, Venezuela, any of these countries, are you aware of the average labor rates, the wages in those countries?

Mr. MCCARTHY. I'm not personally familiar with all that information.

Mr. HICE. Is that something that your office monitors?

Mr. MCCARTHY. What we look at is that in some of our inspections the Bank has social and environmental policies that are conditions of the transactions, and some of our inspections we look at compliance with those policies.

Mr. HICE. So is that a yes or no? Do you all monitor the wages in some of these countries?

Mr. MCCARTHY. I don't know whether wage—the specifics of the wages. There are—whatever the Bank's social and environmental policies are, if there are policies that specifically address wages, we would look at that.

Mr. HICE. Do you think that's something that ought to be monitored?

Mr. MCCARTHY. To the extent that it affects the charter requirements and the policies of the United States, it should be monitored.

Mr. HICE. So it should be. Is that correct? Is that what your answer is?

Mr. MCCARTHY. I'm saying that—

Mr. HICE. This is your opinion. Is that something that should be monitored? I mean, we're talking about countries that we have sanctions upon because there are human rights violations. I mean, these countries are paying extremely low wages. That seems to me it would be a reasonable thing for us to monitor if these countries are indeed involved in human rights violations.

Mr. MCCARTHY. The Bank has policies on those issues, and we monitor compliance with those policies.

Mr. HICE. So you do monitor?

Mr. MCCARTHY. We monitor whether the Bank is complying with its policies. I don't know the details on that particular policy.

Mr. HICE. All right. Let's look at the Congo, for example. As a country that is under U.S. sanctions, a country that was recently identified as the third worst human rights offender in the world, should that country be benefiting from U.S. tax dollars?

Mr. MCCARTHY. I believe, if the policy is that countries that are under sanctions, that's a determination that's made by the Ex-Im Bank and the State Department not to do business with that country. If that's the determination that has been made, then the Ex-Im Bank should not be doing business with that country.

Mr. HICE. Okay. But you said there is a policy, and here we are doing business with hundreds of millions of dollars to the third worst country in the world. Why would that be? How in the world could something like that just slip through the cracks?

Mr. MCCARTHY. I don't know the timing of those transactions versus—

Mr. HICE. Does it matter?

Mr. MCCARTHY. Well, if they are previous commitments that have been made and longstanding and long-term commitments and then sanctions are imposed at a later date, there's a certain amount of time that needs—there has to be an unwinding of those transactions.

Mr. HICE. All right. Well, let's go beyond. I feel like you're just beating around the bush, quite frankly, on these. We're talking about some U.S. sanctions. These are not things that are hidden in a closet somewhere. We, as a country, have sanctions against these countries that the Ex-Im Bank is doing business with. And you don't know what the wages are. You don't know anything. You know, it's rather stunning to me.

Are you aware that we have many deals with sub-Saharan African countries in the portfolio where there is tremendously low index, if you will, for corruption?

Mr. MCCARTHY. Yes, I'm aware of that.

Mr. HICE. You're aware of that. And you're aware of the fact that we're doing business with a lot of these countries. Is it concerning that the Bank is involved in facilitating businesses in countries where there is great corruption?

Mr. MCCARTHY. When the Bank is doing business in countries that have corruption problems, there need to be appropriate safeguards in place—there's the Foreign Corrupt Practices Act—and the due diligence done to ensure that that money isn't being diverted to corruption.

Mr. HICE. So you're saying that you can assure us and guarantee us that those countries that money is being loaned to through Ex-



Im Bank where there is great corruption, you can assure us that none of that money is being involved in corruptive activity?

Mr. MCCARTHY. If the Bank is sending money over there, they need to take appropriate steps to ensure compliance with the sanctions that the U.S. has in place.

Mr. HICE. I'm sure they need to, but can you assure us that that money is not being used for corruption?

Mr. MCCARTHY. We haven't done work specifically in that area. I can say the only thing we've looked specifically at is compliance with Iran sanctions, and we found the Bank was compliant with that.

Mr. HICE. Thank you, Mr. Chairman. My time is up.

Mr. MEADOWS. [presiding.] I thank the gentleman from Georgia.

Mr. McCarthy, thank you for your time, your service to our country. Obviously, these are not fun times when you get to come and testify. I do appreciate though your expeditious way that you've agreed to supply some of those documents to the committee. That's duly noted.

And if there is no further business before the committee, without objection, the subcommittee stands adjourned.

[Whereupon, at 3:53 p.m., the subcommittee was adjourned.]



## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD

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1. Email from B. Rudd to [REDACTED] at 11:09 pm on 27 June 2014 regarding allegations

From: Brendan Rudd [mailto:[REDACTED]]  
 Sent: Friday, 27 June 2014 11:09 PM  
 To: [REDACTED]  
 Cc: [REDACTED], [REDACTED], [REDACTED]  
 Subject: NewSat Limited

[REDACTED]

As you are aware, I was effectively recruited by the independent directors of NewSat to help clean up the Company. This followed the Lancaster Report which highlighted the poor governance and more particularly, the Lenders' Report to the Company, which highlighted the dire financial performance as well as the poor governance. The Board of Directors agreed to make financial changes necessary to turn the Company around and to also implement the Lancaster Report recommendations relating to governance.

I have been at NewSat for six weeks now. Within two hours of commencing, I realised the Company had some very serious performance issues and that there was a total disconnect between what the lenders were expecting in terms of financial outcomes and what was actually happening. Of course, this ultimately resulted in the earnings downgrade announcement to the market, but it also had me looking into past activities. Much of this information was fed to the independent directors.

Some disturbing things have been observed at NewSat:

1. The apparent installation of Richard Green as Chairman in 2009 by his son-in-law John Stewart at a time that Adrian Ballintine was to be sacked by the previous Chairman of the Company. This effectively secured Adrian's ongoing employment and ensured a special relationship between the Chairman, the CEO and John Stewart.
2. An increase in Adrian's combined salary and bonus in July 2012 from \$900,000 to \$2,400,000. This was approved by the Remuneration Committee comprising the Chairman and [REDACTED], neither of whom can be regarded as independent directors in accordance with ASX principles and occurred prior to the successful equity and debt raising, i.e. there could never have been any rationale for such an increase.
3. An apparent contractual arrangement put in place by the Remuneration Committee to seek to award Adrian 15 million performance rights in NewSat, seven months after he was granted 5 million performance rights by shareholders.

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4. John Stewart, who had previously saved Adrian's job, was paid the equivalent of \$3.1 million for advisory services provided to the Company.
5. An attempt by John Stewart to charge the Company \$1.2 million in May 2014 for an advice prepared on the impact of unwinding mezzanine debt. This task may have taken one to two days to prepare and was forwarded to the Board by management, without reference to the included fee. It was only the questioning of the fee by the independent directors that resulted in its removal.
6. [REDACTED], a shareholder in the Company and associate of [REDACTED], was paid \$1.3 million for consultancy services provided to the Company over 18 months. He was also awarded 20 million shares for advisory services in relation to the Company's equity raising.
7. Payments of \$582,000 made to Cresta Motor Yachts, a business part-owned and chaired by Adrian and run by his son. The services appear to be related to "marketing activities" and have been charged to the Jabiru project. Many of the payments have been made without reference to an invoice or service.
8. The effective use by Adrian, of the Company to fund his personal expenses as well as the business expenses of Cresta Motor Yachts. Invoices were paid by the Company on behalf of Cresta and ultimately a balance of \$1.167 million was built up by Adrian as being owed to the Company.
9. A bonus of \$1.2 million awarded to Adrian, in questionable circumstances, by the Remuneration Committee. This bonus, coincidentally, was roughly the amount Adrian owed the Company and Adrian requested the finance staff offset it against the amount owing, with no supporting documentation. The Company's Legal Counsel later told the CFO that he believed that the bonus agreed to by the Remuneration Committee was only \$800,000. No minutes were available to support this because [REDACTED] claims the details he kept of the meeting were only on his computer, which had since been lost. Paperwork approving the \$1.2 million bonus was prepared months after the event.
10. Advice received from the Company's tax advisor, [REDACTED] of [REDACTED], that PAYG tax was not required to be deducted from the bonus of \$1.2 million. This effectively allowed the outstanding debt to be repaid, however, the advice was incorrect at law and PAYG tax of \$558,000 should have been deducted. The Company is now liable to remit the tax to the Australian Taxation Office and Adrian has a liability to the Company of \$558,000.
11. The insistence by the head of the Audit Committee for Adrian to repay the \$558,000 prior to the Company's year-end balance date of 30 June 2014

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was countered by a legal claim from Adrian that the Company owes him \$2.2 million in damages arising from the first tranche of shares that were never awarded under his contract. The Board, led by the Chairman, agreeing that legal representatives on both sides should get together and resolve the issue. This will possibly result in the \$558,000 never being repaid.

12. Additional invoices from ██████████ of ██████████ totalling \$357,000 for the provision of taxation advice on the Jabiru project. These appear to have been approved by Adrian, with the then CFO unaware of the initial engagement. Not only does ██████████ work for ██████████, but he appears on the website of Cresta Motor Yachts as their Chief Financial Officer.

13. Director and Remuneration Committee member ██████████ was paid in addition to his director's fees US\$772,000 for consulting services to the Company over a period of 2 years. He was also awarded 1.2 million performance rights - twice the amount awarded to other directors. To observers within the Company, he ostensibly did nothing. ██████████ is on the Advisory Board of Cresta Motor Yachts.

14. ██████████ was paid \$1.0 million for consulting services to the Company over a period of three years in relation to Jabiru marketing. Upon leaving, he was gifted 250,000 shares for no apparent reason and awarded 500,000 performance rights. As a consultant, there was no reason for him to receive anything. ██████████ is on the Advisory Board of Cresta Motor Yachts and the view of some I have spoken to within the Company was that he spent most of his time on Cresta business.

15. An arrangement with ██████████ which has resulted in payments in cash and shares of \$11.9 million to protect ██████████ orbital slots. ██████████ refuses to do anything unless more money is paid and it appears that ██████████ of the slots will shortly lapse. It is highly questionable whether the remaining slots are worth this amount. The management of this activity has been appalling and there is significant difference between statements made publicly regarding the value of these slots and real value.

16. Possible share trading concerns, with Adrian moving 2.5 million shares into a trading account and then into a custody account six days after calling for a company-wide trading blackout due to concerns regarding the declining financial performance of the Company. A further 0.7 million shares were moved three weeks later, also during the blackout period, and prior to the earnings downgrade being made public. There has been no desire by the management and Board to continue investigating the whereabouts of these shares or to determine whether they have been sold or used as security to raise funds during a blackout period.

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17. A complete lack of control by the Company on expenditure relating to overseas travel, with most of it being charged to the Jabiru project. Numerous trips by Adrian, accompanied by the then Investor Relations Manager, including numerous \$10,000 dinners.

18. The Company paying for 50% of the rental of an apartment for the Investor Relations Manager close to the office under the pretence that other Company officers would stay there while visiting. This never occurred.

19. An attempt by Adrian to undermine the Company's recent retrenchment activities by advising the Investor Relations Manager that she was to be retrenched and then confirming in writing that she would receive her bonus in full. No-one was receiving a bonus and Adrian's authority to award bonuses had been revoked by the Board six months earlier. The written advice from the CEO will likely ensure that the legal process she has begun against the Company to receive the bonus will be successful.

20. There were numerous consultancy arrangements put in place whereby amounts ranging from \$5,000 per month to \$25,000 per month were routinely paid for consultancy activities that were never adequately explained or understood by the Company's employees.

I have never seen nor heard of more appalling corporate behaviour than at NewSat. The Company's sole purpose appears to be to fund Adrian's lifestyle. Some of the above issues have been communicated to [REDACTED] and he has decided that Adrian still has his support to lead the Company.

In relation to governance, the biggest issue is the lack of independence of the Board. Not only has this been raised through the governance review, but numerous investors have raised concerns. Some have said they want to invest in this company, but won't until the governance and the Board is fixed up. The reality is, that the biggest governance issue is the simplest thing to fix up - it requires a couple of resignations. It appeared that we were making progress in this regard, with the Chairman and [REDACTED] apparently set to resign. The Company even announced to the ASX on 6 June 2014 that there would be a reduction in the number of directors, which would have the effect of making the Board more independent - yet nothing has happened. The so-called interest in implementing the Lancaster Report is sheer folly.

With the impending resignation of the independent directors, the truth regarding any desire to improve governance or the way things are done at NewSat, will shortly become apparent. I cannot in good conscience continue to work here and pretend to initiate governance improvements, while Adrian and the Chairman are in control of the Company. So I will finish today.

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NewSat is a good company with good assets and good people, but it cannot survive with Adrian leading it and management practices apparently designed to feather the nest of certain individuals. I only hope that the lenders can take control and rid Newsat of the people that are responsible for this shareholder destruction. If this was to occur, I would be happy to come back and provide any assistance you may need to restore the Company.

Regards  
Brendan



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

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June 15, 2015

The Honorable Jim Jordan  
Chairman  
Subcommittee on Health Care, Benefits, and Administrative Rules  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Jordan:

Thank you for the opportunity to testify about the activities of the Office of Inspector General and the operations of the Export-Import Bank. I am following up with the information I committed to provide regarding whether and when the OIG reviewed certain documents related to Ex-Im Bank's direct loan to Jabiru Satellite Ltd. and the guarantor NewSat Limited.

The Office of Inspections and Evaluations announced a formal inspection of Jabiru Satellite Ltd. (AP0886539XX) on April 23, 2015. The following week, I met with CJ Hall, EVP and Chief Risk Officer, to discuss how to proceed with the inspection without interfering with ongoing bankruptcy litigation and restructuring efforts. The OIG issued a request to the Bank for specific categories of documents and to interview certain personnel. However, I agreed that to avoid interfering with current proceedings, the inspectors would initially focus on research into the Bank's activities in the satellite sector generally and documents already compiled for the current litigation in the United States and related proceedings in Australia.

On June 1, I again met with Mr. Hall and received an update on the status of the bankruptcy litigation. Due to resolution of the litigation taking longer than initially anticipated and the level of interest expressed by Members of Congress at a June 3 House Financial Services hearing, on June 8 I advised Mr. Hall that the inspectors required access to all of the documents that had been initially requested, and Mr. Hall agreed that the Bank would provide them.

While the Rudd e-mail you referred to at the hearing was covered by our prior request, on June 11 we requested that document specifically and received it from the Bank. I have reviewed it, along with the inspection team. We were already aware of the potential issues discussed in that e-mail from our initial work on this matter. Following our normal inspection procedures, we will be evaluating the issues discussed in this email along with other documentation and interviews in order to assess Ex-Im Bank's due diligence, underwriting, and monitoring of this transaction, and assess any evidence of fraud.

At the hearing, I stated that Ex-Im Bank's exposure in this matter was approximately \$150 million, but there was potential for recovery of some of that amount. To be more precise,

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