

REPORT ON PROGRAMME MANIPULATION

CHAPTER FOUR

THE ESCROW BANK AND CONFLICTING INTERESTS

I. INTRODUCTION AND SUMMARY

In 1996, the Secretary-General selected Banque Nationale de Paris S.A., now BNP Paribas (“BNP” or the “Bank”), a French banking corporation, to serve as the Programme’s escrow bank.⁷¹⁶ The United Nations and BNP negotiated a Banking Services Agreement (“Banking Agreement”), setting forth BNP’s duties principally to include: (1) establishing and managing an escrow account to receive proceeds from the sale of Iraqi oil and to disburse funds for Iraq’s purchase of humanitarian goods; (2) confirming letters of credit issued from banks retained by companies buying oil from Iraq; and (3) issuing letters of credit for the purchase of humanitarian goods. The Agreement further provided that all of the requirements of Resolution 986, the Iraq-UN MOU, and the 661 Committee’s rules and procedures for review and approval of transactions under the Programme were “essential and fundamental terms and conditions” of the agreement.⁷¹⁷

Over the course of the Programme, BNP confirmed all letters of credit (“L/Cs”) for the purchase of oil, and it maintained the account into which \$64.2 billion in oil proceeds ultimately was deposited. BNP also issued letters of credit for all of the Government of Iraq’s humanitarian purchases under the Programme, which totaled approximately \$34.5 billion.⁷¹⁸

One highly significant provision of the Banking Agreement allowed BNP not only to confirm letters of credit issued by other banks for oil purchases, but also to “issue [letters of credit] directly as the Purchaser’s Bank on behalf of its customers who are approved purchasers of Iraqi petroleum and petroleum products.” BNP frequently availed itself of this option—either directly or through subsidiaries and affiliates, principally BNP’s offices in Geneva, Switzerland, which together issued approximately three-fourths of all letters of credit for oil transactions during the Programme.⁷¹⁹

For BNP, already a major provider of financial services for the oil sector, the opportunity to issue a letter of credit in the first instance rather than simply to confirm a letter of credit issued by another bank meant that BNP acquired a second customer, and with it, the possibility for a conflict of interest with its primary customer—the United Nations. BNP operated during the Programme through various branches, subsidiaries, and affiliates, including BNP New York, the

⁷¹⁶ As later discussed in Section II.A below, the Bank undertook several acquisitions and mergers after 1996, including the acquisition of United European Bank and the merger with Banque Paribas. Accordingly, the term “BNP” as it is used in this Chapter refers to the Bank in its entirety.

⁷¹⁷ “First Interim Report,” pp. 73-83 (describing the process leading to BNP’s selection); Agreement for Banking Services between BNP and the United Nations (Sept. 12, 1996) (hereinafter “Banking Agreement”), pt. I, art. 1.3 (regarding escrow account), and Part II, arts. 1.2 (incorporating Resolution 986, the Iraq-UN MOU, and the 661 Committee’s rules and procedures), 2.2 (regarding oil letters of credit), 2.3 (regarding humanitarian letters of credit). The Chief Executive Officer of BNP’s subsidiary in New York signed the agreement on behalf of BNP’s President and Chief Operating Officer. *Ibid.*

⁷¹⁸ TaR (1997-2003); “Programme Management Report,” vol. II, p. 15.

⁷¹⁹ Banking Agreement, art. 2.2.8; TaR (1997-2003).

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branch responsible for maintaining the escrow account. These other branches, subsidiaries, and affiliates will hereinafter be referenced by the designation “BNP,” followed by the location of the branch, subsidiary, or affiliate (e.g. BNP Geneva, BNP Hong Kong, and BNP New York).

This Chapter of the Report does not re-examine the operation of Iraq’s oil surcharge scheme or the many opportunities presented and lost for the Security Council and others within the United Nations to have redressed the surcharge scheme. Instead, it addresses (1) the manner in which BNP—conflicted by its allegiance to private party contractors and financiers—was inhibited from disclosing fully the firsthand knowledge it acquired of the true nature of financial relationships that fostered the payment of illicit surcharges, and (2) the way in which surcharge payments passed through BNP and what steps, if any, BNP took to detect and interrupt them.

Part II of this Chapter briefly reviews BNP’s structure and functions under the Programme, as well as fees associated with client work under the Programme. Part II also reviews the Banking Agreement and the manner in which Resolution 986 functioned as its context.

Part III describes the manner in which BNP failed to question layered banking relationships that evolved over time and that facilitated the making of surcharge payments without detection. Part III also describes BNP’s involvement in two examples of oil purchase transactions that resulted in the payment of oil surcharges: (1) the sale of two million barrels of oil to ACTEC of Russia and financed by Glencore International AG, and (2) the sale of two million barrels of oil to Bulf Oil of Romania and financed by Texaco, Inc. These examples demonstrate not only the manner in which BNP was positioned within the Programme to identify relationships and transactions that undermined the administration of the Programme, but also the manner in which BNP facilitated these transactions rather than disclosing them to the United Nations.

Part IV discusses evidence of approximately \$10 million of surcharge payments made through customer accounts held at BNP (including its Swiss subsidiary and affiliate).⁷²⁰ This discussion will examine the adequacy of the due diligence BNP performed upon payment authorization requests by lesser known companies that were clients of the Bank (principally its Geneva affiliate) and who sought approval from the Bank for the transfer of funds. This Part will also examine the Bank’s level of scrutiny in light of standards at the time and against the backdrop of its claim to the Committee that it exceeded minimal anti-money laundering and due diligence requirements.

Part V details the response of the Bank to the Committee’s anticipated findings.

Part VI discusses the Committee’s evaluation of how the Bank managed its apparent conflicts of interests and the rigor of its due diligence on high-risk transactions in the Programme.

⁷²⁰ See Table 3 (below). All transactions conducted in euros were converted to USD using daily currency exchange converter from OANDA.com. OANDA, “The Currency Site: Foreign Exchange Services and Trading,” <http://www.oanda.com>.

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II. BACKGROUND

A. STRUCTURE OF BNP AND ITS PROGRAMME ACTIVITIES

BNP is a French *société anonyme*, or public company, that has been listed on the Paris Stock Exchange since 1993. BNP is licensed to do business in New York, and is the parent of various subsidiaries and affiliates located throughout the world, including the Americas, Europe, and Asia.⁷²¹

Over the course of the Programme, the Bank grew through acquisitions and a merger, both of which increased its profile in oil trade finance and heightened its degree of participation in aspects of the Programme. First, in 1998, BNP acquired United European Bank (“UEB”) in Geneva, and later, in 2000, it merged with another significant French bank, Banque Paribas, to form BNP Paribas S.A.⁷²²

As noted above, the Bank’s main duties under the Banking Agreement were to confirm letters of credit for the purchase of oil and ensure that deposits were fully credited to the escrow account, maintain the account, and issue letters of credit and make payments to vendors for humanitarian purchases. In previous reports, the Committee assessed receipts to the escrow account, the management of funds in the account, and transfers from the account for the payment of humanitarian goods. The Committee found no exceptions in these areas and therefore has no remarks critical of the Bank’s performance with respect to these functions.⁷²³

This Chapter is mainly concerned with potential conflicts resulting from the Bank’s activities in issuing letters of credit for the purchase of oil. Over the course of the Programme, the Bank taken as a whole, meaning its various branches, subsidiaries, and affiliates, issued seventy-two percent of the letters of credit used to purchase oil in the Programme, amounting to \$45.7 billion.⁷²⁴ Table 1 below lists the number and amount of letters of credit for oil purchases issued by the Bank. For ease of presentation, the Table combines the figures for BNP entity by city.⁷²⁵

⁷²¹ BNP record, BNP annual report (2004); BNP, Corporate Leaflet 2005; BNP Paribas, “The Bank for a Changing World,” <http://www.bnpparibas.com>; Banking Agreement. Currently, the Bank operates in over eighty-five countries; while in 1997, the Bank operated in over seventy-nine countries with more than 2,000 branches worldwide. BNP record, BNP annual reports (1997 and 2004).

⁷²² BNP’s purchase of the UEB was effective on September 30, 1998. UEB, “UEB (SWITZERLAND),” <http://www.ueb.com>. The merger between BNP and Banque Paribas was approved by the shareholders on May 23, 2000. BNP record, BNP annual report, p. 89 (2000).

⁷²³ “First Interim Report,” pp. 217-18; “Programme Management Report,” vol. IV, 1-39, 85-108, 173-76.

⁷²⁴ TaR (1997-2003).

⁷²⁵ The data for this table, with the exception of the surcharge delineation, was derived from the United Nations Treasury database of oil purchase contracts and associated letters of credit. The information tying letters of credit to surcharge payments is derived from SOMO surcharge payment records.

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Table 1 – BNP Letter of Credit Issuance by Branch/Subsidiary/Affiliate

BNP by City	Number of L/Cs	Value of L/Cs
Geneva	1,224	\$25,897,061,250
Paris	495	\$9,716,040,610
London	172	\$3,507,013,659
Milan	60	\$856,101,638
Hong Kong	52	\$1,157,795,138
Basel	36	\$727,568,066
Other (13 branches)	195	\$3,905,122,639
Total BNP	2,234	\$45,766,703,001
Total Programme	3,120	\$64,181,293,181
% of BNP to Total Programme	71.6%	71.3%

As shown in Table 1, the BNP entities in Geneva had an especially important role within the Programme. The Geneva subsidiaries and affiliates (“BNP Geneva”) collectively issued nearly forty percent of the letters of credit used to purchase oil in the Programme and, by the testimony of Bank officials, operated more or less as independent banks with respect to the Bank’s contractual roles in the Programme.⁷²⁶

B. FEES EARNED FOR PROGRAMME ACTIVITIES

The Committee has estimated the Bank’s fees regarding the major Programme activities in which it engaged. The Committee does not take issue with the fees in regard to their amount, which appears fair. Rather, it identifies the fees in order to gain a fuller understanding of the Bank’s Programme related client relationships. The fees fall into several categories corresponding to major Programme activities:

1. *Issuing letters of credit for the sale of humanitarian goods.* The Bank was solely responsible for issuing letters of credit guaranteeing payment for humanitarian goods imported by Iraq. From the inception of the Programme through May 2005, the Bank has earned, according to United Nations records, \$84 million in fees for the issuance of, and subsequent amendments to, humanitarian letters of credit. These fees are based on prices established in the Banking Agreement.⁷²⁷

⁷²⁶ TaR (1997-2003); BNP Geneva officials interviews (Oct. 3-5, 2005).

⁷²⁷ Banking Agreement, Annex 5; Amendment Four to Banking Agreement (hereinafter “Amendment Four”) (Nov. 13, 2000); Teklay Afeworki e-mail to the Committee (Nov. 2, 2004); Teklay Afeworki e-mail to the Committee (Oct. 7, 2005) (attaching a schedule of banking fees charged by BNP). Prior to November 2000, L/C fees were borne by the escrow account in conformity with the Agreement. In

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2. *Confirming letters of credit for the purchase of oil.* In addition to issuing humanitarian letters of credit, BNP was also tasked with confirming letters of credit issued by other banks for the purchase of Iraqi oil. The Banking Agreement stipulated that BNP could charge up to a five basis-point fee for confirming another bank's letter of credit, assuming that the other bank is of "investment grade." BNP could charge a higher fee at its discretion for non-investment-grade banks. Based on a review of a sample of letter of credit files provided by BNP New York, it appears that fees charged by BNP were generally lower than these benchmarks. BNP charged a three basis-point fee (as opposed to five) for the confirmation of letters of credit issued by other banks. It is estimated that BNP earned approximately \$7 million in fees for confirming letters of credit issued by other banks. These fees are described in the Banking Agreement.⁷²⁸
3. *Negotiating, advising, and amending letters of credit for the purchase of oil.* In addition to the fees for issuing humanitarian letters of credit and confirming oil letters of credit, the New York branch charged a payment/negotiation fee which typically amounted to eight basis points of the value of the payments drawn on the oil letter of credit, regardless of issuing bank. This rate is less than the ten basis-point rate stipulated in the Banking Agreement. This fee was charged to compensate the bank for its work in negotiating the payment of the letter of credit with the purchaser, ensuring that documents were consistent and properly executed. It is estimated that the Bank earned approximately \$51 million in payment/negotiation fees throughout the course of the Programme.⁷²⁹
4. *Issuing letters of credit for the purchase of oil.* Because these fees were paid by the purchasers of the oil and were not charged to the escrow account, the United Nations accounting records do not indicate the amount of such fees earned by BNP; nor is the basis for the fee established in the Banking Agreement. However, based on a sample review of letter of credit files, it appears that the Bank charged an issuance fee of between 3.75 and 10 basis points of the value of the letter of credit. It appears that lower fees were assessed to preferred clients, whereas certain other clients were assessed the

November 2000, the United Nations and BNP amended the Agreement to reflect that fees related to the issuance of letters of credit for humanitarian purchases were no longer to be borne by the escrow account, but instead were to be charged to the vendors supplying the goods. Under this amendment, BNP collected its issuance fee from the escrow account and reimbursed the escrow account upon collection of the fee from the vendor at the time payment was rendered under the letter of credit. Of the \$84 million in fees earned by BNP, approximately \$50 million was paid from the escrow account prior to this change. Amendment Four; Teklay Afeworki e-mail to the Committee (Jan. 26, 2005).

⁷²⁸ Banking Agreement, Annex 5; see, e.g., BNP L/Cs, nos. W733232, W732681, N730032, J712070, P724993, X735312, D727451, N730272, N729342, V718801, N732032, N731013, N730417.

⁷²⁹ Eva Millas Russo interview (Oct. 20, 2005). Ms. Russo, a Vice-President in the Commodity Trade Finance Group of BNP New York, played an integral role in preparing BNP's response to the United Nations' solicitation for banking services and was involved in the Programme for its entire duration. *Ibid.*; see Banking Agreement, Annex 5; see, e.g., BNP L/Cs, nos. W733232, W732681, N730032, J712070, P724993, X735312, D727451, N730272, N729342, V718801, N732032, N731013, N730417.

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higher fee. For purposes of its own fee estimate, the Committee uses a straight average fee rate of 6.875 basis points. By applying this rate to the value of letters of credit issued by BNP (and UEB), it is estimated that the Bank earned approximately \$30 million for the issuance of oil letters of credit under the Programme.⁷³⁰

There are several additional Programme-related activities in which the Bank is known to have engaged, and earned fees, but which the Committee cannot estimate because of incomplete information. These include fees for making assignments of proceeds on humanitarian letters of credit, and fees for providing financing to vendors supplying goods.⁷³¹

Table 2, below, provides a summary of the fees earned by the Bank throughout the Programme. The fees are described and listed in Annex five to the Banking Agreement.⁷³²

Table 2 – Estimated Fees Earned by BNP (in millions)

Humanitarian L/C Fees	
Issuance fees*	\$84
Assignment fees	<i>unknown</i>
Humanitarian supply financing fees	<i>unknown</i>
Total Humanitarian Fees	\$84
Oil Fees	
Payment/Negotiation fees*	\$52
Issuance fees	\$30
Confirmation fees*	\$7
Total Oil Fees	\$89
Total Estimated Fees Earned	\$173

* These fees are described in Annex 5 of the Banking Agreement

⁷³⁰ See, e.g., BNP L/Cs, nos. L/CIM1168254, L/CIM4174132, L/CIM4226651, L/CIM4226671, L/CIM4274701, L/CIM2212108, L/CIM4226285, L/CIM 4235400, L/CIM4214632, L/CIM2218878, L/CIM 2148386, L/CIM2145412, L/CIM2148639; Banking Agreement, art. 2.2.8, and Annex 5; TaR (1997-2003).

⁷³¹ This is based on assignment requests in which the beneficiary stated that it agreed to the Bank's charge of amounts resulting from the application of twenty-five basis points. The Bank has indicated that it made a substantial number of assignment payments. BNP Paribas Interim Report to the United States House of Representatives, House International Relations Committee, "Payments under UN Oil-For-Food Program Letters of Credit to Persons Other than Beneficiaries and Banks Providing Direct Loans to Beneficiaries" (April 25, 2005); see, e.g., Al Wasel and Babel record, Al Wasel and Babel letter to BNP New York (June 26, 2001) (assigning letter of credit payment to BNP Vietnam); BNP New York record, BNP Frankfurt SWIFT message to BNP New York (Feb. 12, 2002) (accepting assignment of proceeds from Belmetalenergo).

⁷³² Banking Agreement, Annex 5.

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While the amount of fees earned by BNP is substantial, it is important to bear in mind that BNP's decisions and actions related to its dealings in the Programme were not driven by these fees alone. Many of the Bank's longstanding clients, especially in the oil market, became participants in the Programme, and the Bank had an interest in ensuring the continuation of these relationships beyond the Programme's duration.⁷³³

C. CONTRACTUAL CONTEXT FOR BNP'S PROGRAMME ACTIVITIES

The Banking Agreement between BNP and the United Nations specifically contemplated that all letters of credit would be issued, executed and confirmed "in accordance with Resolution 986 and the 661 Committee Procedures." A principal concern of Resolution 986 was transparency. The Resolution reads that oil could be sold subject to the following conditions:

a) Approval by the Committee established by resolution 661 (1990), in order to ensure the transparency of each transaction and its conformity with the other provisions of this resolution, after submission of an application by the State concerned, endorsed by the Government of Iraq, for each proposed purchase of Iraqi petroleum and petroleum products, including details of the purchase price at fair market value, the export route, the opening of a letter of credit payable to the escrow account to be established by the Secretary-General for the purposes of this resolution, and of any other directly related financial or other essential transaction;

(b) Payment of the full amount of each purchase of Iraqi petroleum and petroleum products directly by the purchaser in the State concerned into the escrow account to be established by the Secretary-General for the purposes of this resolution.⁷³⁴

Resolution 986 was also referenced throughout the Banking Agreement. Article 1.2 of the Banking Agreement states that "[t]he procedures and requirements set forth in SCR 986, the Memorandum of Understanding and the 661 Committee Procedures constitute essential and fundamental terms and conditions of this Agreement." Article 1.4 provides that "[t]ransactions with respect to ... the United Nations Iraq Account shall be only those authorized by the Security Council in and pursuant to SCR 986." Specifically concerning letters of credit, the Agreement provides that "[t]he Bank undertakes to provide the Services ... with respect to Letters of Credit... in accordance with SCR 986, the Memorandum of Understanding, the 661 Committee Procedures...."⁷³⁵

Based upon the language in the Agreement, it was therefore clearly incumbent upon the Bank to consider the principles and concerns espoused in Resolution 986 in connection with the

⁷³³ BNP Geneva officials interview (Oct. 3-5, 2005); Committee Meeting with BNP (Oct. 20, 2005).

⁷³⁴ S/RES/986, para. 1 (Apr. 14, 1995) (emphasis added).

⁷³⁵ Banking Agreement, arts. 2.1.1, 2.1.2, 2.1.4; S/RES/986, para. 1(a) (Apr. 14, 1995).

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performance of its banking services. In particular, Resolution 986 and the underlying sanctions resolution (Resolution 661), in addition to the 661 Committee's procedures, contemplated in both express and implied terms that the United Nations would be made aware of, and approve, the parties to whom Iraq sold its oil.⁷³⁶

To this end, the Banking Agreement prohibited the Bank from selling, assigning, or transferring its letters of credit to any third party. This was in keeping with the standard provisions of the SOMO sales contract approved by the United Nations that prohibited the assignment of an oil buyer's contract rights without the approval of the 661 Committee and that generally restricted the buyer from reselling Iraqi oil to third parties.⁷³⁷

It is clear from the Agreement that the Bank had a duty to the United Nations to fulfill the basic parameters of Resolution 986 and act in a manner consistent with the interests of the United Nations under this Resolution. Despite BNP's suggestion to the Committee that banks do not generally owe fiduciary duties to their customers, the Banking Agreement and its incorporation of the terms of Resolution 986 and the SOMO standard sales contract plainly required BNP to perform the contract in a manner consistent with the transparency purposes of Resolution 986—to ensure capture of the full value of oil sales for the escrow account (rather than for middlemen) and to prevent the illegal diversion of funds to the Iraqi regime.⁷³⁸

⁷³⁶ S/RES/986, para. 1 (Apr. 14, 1995); S/RES/661, paras. 3(c), 4 (Aug. 6, 1990); "Procedures to be Employed by the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait in the Discharge of its Responsibilities as Required by Paragraph 12 of Security Council Resolution 986 (1995)," S/1996/636, para. 2 (Aug. 12, 1996) (hereinafter "661 Committee Procedures").

⁷³⁷ Banking Agreement, arts. 2.2.2(c) (requiring terms of letter of credit to provide that "This Letter of Credit is not assignable and not transferable"), 2.2.11 (stating that "[t]he Bank hereby undertakes not to sell, assign or transfer any LOC to any person or entity, whether governmental or otherwise"), 2.2.4 and 2.2.6 (referencing the standard SOMO sales contract); "Programme Management Report," vol. II, pp. 128-30 (discussing non-transfer provisions of standard SOMO sales contracts).

⁷³⁸ Banking Agreement, arts. 2.1.1, 2.1.2, 2.1.4; BNP letter to the Committee (Oct. 22, 2005) (citing the common law rule that banks do not owe a fiduciary duty to their customers).

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III. LETTERS OF CREDIT AND TRANSPARENCY

This Part describes the layered financing arrangements that were typical of the transactions in the later phases of the Programme. These developments occurred despite the contractual provisions that nominally restricted the rights of the parties to assign their rights and to resell Iraqi oil. Part A discusses in general the way in which letters of credit came to work in the Programme, and Part B reviews two case examples.

A. LETTERS OF CREDIT ISSUED IN THE NAME OF PARTIES OTHER THAN THE CONTRACT HOLDER

Although many purchases of Iraqi oil under the Programme were the result of direct transactions between the purchaser as the contracting party, and SOMO as the seller of oil, numerous other transactions were infused by the addition of third parties that financed the purchases of oil for the contracting party and ultimately received the oil from the original purchaser.⁷³⁹ These companies will be referred to throughout as “third-party purchasers.” One of the reasons given by staff members of BNP Geneva for intercession of a third party in such transactions was that contract holders who obtained the right to buy oil from SOMO often did not have sufficient credit to finance the purchase, nor the technical expertise to fulfill the obligations of the oil transaction (i.e., to charter a ship to lift the oil and deliver it to a refinery). Therefore, the contracting party turned to established oil traders and oil companies with capability to receive the requisite financing from a financial institution.⁷⁴⁰ On the other hand, as discussed in Chapter One of this Report, a more nefarious purpose for an oil trader or oil company to purchase oil from a contractor rather than directly from SOMO was to maintain an apparent distance from the payment of any illicit oil surcharges.

⁷³⁹ While the Committee has been unable to establish the percentage of letters of credit financed by third parties over the history of the Programme, it has been able to assemble a relatively complete view of the surcharge period. During the surcharge period, at least seventy-five percent of all letters of credit were financed by underlying parties. The Committee was prohibited from posing questions to, or requesting information from, BNP bank employees concerning specific transactions of BNP's clients based upon BNP's representation, as confirmed by the Swiss regulatory authority representative present for the interviews, that such disclosure could violate Swiss bank secrecy law. The Committee was advised that this prohibition extended to information outside the bank if the information related to a client of the Bank. Examples of such information includes details of parties on both sides of wire transfers, even if one of the parties is not a client of the bank. BNP letter to the Committee (Oct. 22, 2005); BNP Geneva officials interviews (Oct. 3-5, 2005); Alan Suchley interview (Oct. 20, 2005). Alan Suchley joined BNP New York in 2001 as a Vice-President in the Commodity Trade Finance Section. *Ibid.*

⁷⁴⁰ BNP Geneva officials interviews (Oct. 3-5, 2005); Morten Buur-Jensen interview (Sept. 9, 2004); “The Programme Management Report,” vol. II, p. 145. The Committee has agreed, at the request of BNP's counsel, that the employees of BNP Geneva who were interviewed would not be mentioned by name. This restriction applies only to the interview and does not extend to any other relevant information gathered by the Committee. BNP letter to the Committee (Oct. 22, 2005).

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BNP Geneva financed many letters of credit within the Programme on behalf of third-party purchasers. Often, the third-party purchaser requested BNP Geneva to withhold any mention of its company's name from the letter of credit, as illustrated in the figure below showing such a request by Vitol in connection with the purchase of oil in the name of Al-Rasheed International:⁷⁴¹

TO: BNP PARIBAS (SUISSE) S.A., GENEVA
ATTN: VANESSA DE CABODA / HELLEN BARBIER

FROM: VITOL S.A., GENEVA

TEST: 9759

RE : L/C OPENING REQUEST FOR EURO 40.000.000.--
FAVOUR THE UNITED NATIONS BY ORDER OF AL RASHEED
VITOL REF 40.944



WITHOUT ANY MENTION OF OUR COMPANY'S NAME AND UPON RECEIPT BY YOU OF THE AUTHORISATION FROM AL-RASHEED INTERNATIONAL COOPERATION, WE HEREBY REQUEST YOU TO ISSUE FOR OUR ACCOUNT BY THE DEBIT OF OUR ACCOUNT WITH YOURSELVES AND UNDER OUR FULL AND ENTIRE RESPONSIBILITY AN IRREVOCABLE L/C F/O UNITED NATIONS IN THE FRAME OF THE UNCOMMITTED CREDIT LINE YOU ARE EXTENDING TO OUR COMPANY IN ACCORDANCE WITH THE BELOW MENTIONED TEXT.

SINCE SUCH L/C HAS TO BE ISSUED BY USING THE NAME OF AL-RASHEED INTERNATIONAL WE HEREBY CONFIRM TO YOUR BANK THAT OUR COMPANY:

Figure: Sample instruction requesting that the Bank not disclose the financier's identity in the letter of credit (excerpt).

BNP Geneva did not disclose the third-party purchaser involvement to its own affiliate in New York that received all letters of credit for the United Nations; nor did it disclose to the United Nations itself. When interviewed, employees of BNP Geneva explained that these financing arrangements, and the non-disclosure of the purchasing entity's identity, were routine in the oil trade business. These officials offered three reasons for this practice: (1) that the third-party purchaser client requested non-disclosure; (2) that the disclosure would cause complications to the confirmation process and would place the letter of credit in a position of likely rejection by the beneficiary if a name other than the purchaser was identified; and (3) that disclosure might violate Swiss bank secrecy laws.⁷⁴²

⁷⁴¹ BNP Geneva record, L/C request (May 17, 2001) (excerpt). For a discussion of Vitol, see Chapter 2 of this Report.

⁷⁴² BNP Geneva officials interviews (Oct. 3-5, 2005); see also Eva Millas Russo interview (Oct. 20, 2005).

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The Committee does not dispute the first reason—that BNP Geneva’s clients requested non-disclosure; however, BNP’s other client was the United Nations who did not share in the request. The latter two reasons offered by BNP Geneva are less compelling. Certainly, the issuance of a letter of credit in another party’s name would cause complications with confirmation by the beneficiary, but this would not be a detrimental result—as such disclosure *should have* caused complications. Lastly, it is evident that Swiss law would not restrict such disclosure to the Bank’s parent and, in any event, the Bank could have sought a waiver from its immediate client for such disclosure (similar to the Bank’s conduct at the request of the Committee in anticipation of interviews with employees of BNP Geneva in seeking waivers from clients to provide information to the Committee).⁷⁴³ However, the Bank did not avail itself of this opportunity. Instead the Bank substituted the interests of its oil buying clients for those of its principal client in the Programme, the United Nations, to the detriment of its principal client.

Notwithstanding the purportedly commonplace nature of such financing arrangements, the failure to disclose the name of the third-party purchasers of oil resulted in a lack of transparency between BNP offices, as well as between BNP and the United Nations. This was contrary to the obligations to the United Nations imposed on the Bank by the Banking Agreement.

The Bank has stated to the Committee that it fulfilled its obligations to the United Nations as defined by the Banking Agreement and further, that it had no greater fiduciary responsibility to the United Nations. Specifically, bank employees on repeated occasions indicated that they undertook no efforts to perform due diligence upon the contract holder, and did not believe they had an obligation to undertake this responsibility. The Bank asserted that because all contract holders were vetted through the 661 Committee, it believed that the United Nations had given its explicit approval and clearance to the contract holders after they had been approved by Iraq.⁷⁴⁴ However, the following examples demonstrate the conflict between the Bank’s competing obligations, first, to the United Nations to which it owed an obligation to perform in light of Resolution 986, and second, to its client, the third party purchaser, from which it received requests to keep its identity in the transaction confidential. The examples demonstrate the potential conflict of interest faced by the Bank, and describe the manner in which the United Nations’ interests were not fully honored as a result of BNP’s competing interests.

B. CASE STUDY: ACTEC, GLENCORE, AND BNP PARIBAS GENEVA

An example that clearly illustrates the exploitation of the Programme through the concealment of the third party that ultimately financed and controlled the transaction, and the payment of surcharges, is that of Council for Trade and Economic Cooperation with Middle East and North

⁷⁴³ “Loi Fédérale sur les banques et les caisses d’épargne de L’Assemblée Fédérale de la Confédération Suisse” (Swiss Federal Banking Law), arts. 4^{quinquies}, 23^{sexies}, 23^{septies} (status as of June 8, 2004).

⁷⁴⁴ BNP letter to the Committee (Oct. 22, 2005); BNP Geneva officials interviews (Oct. 3-5, 2005); Bill Greten interview (Oct. 14, 2005); Alan Suchley interview (Oct. 20, 2005). Bill Greten was manager of the Letter of Credit Unit at BNP New York throughout the Programme. Bill Greten interview (Oct. 14, 2005).

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Africa Countries (“ACTEC”).⁷⁴⁵ This example shows how: (1) the Bank allowed a third party to step into the initial transaction to buy oil, seemingly in violation of contractual restrictions against assignment and resale of the oil, and (2) the Bank cooperated with a request by the third party to hide its identity in a Programme-related transaction; and (3) effects transfer of ownership.

The transaction proceeded in the following manner. At the outset of Phase XI, the Iraqi regime allocated nine million barrels of oil jointly to “Russia - Communist Party” and to ACTEC. According to records held by the United Nations Treasury Department, ACTEC secured three letters of credit from BNP Geneva to pay for the oil. Each letter of credit lists ACTEC as the ordering party and the United Nations as the beneficiary.

Records from BNP Geneva, however, present a much different picture of the genesis of the transaction. BNP Geneva records do not show that ACTEC was the true party responsible for securing from BNP Geneva any of the letters of credit involved with this contract. Two of the three letters of credit were ordered from BNP Geneva not by ACTEC, but by Glencore. The third letter of credit was ordered from BNP Geneva by a company called Scandinavian T. LTD (“Scandinavian”).⁷⁴⁶ As established in Chapter One of this Report, Scandinavian was also a Russian company and was related to ACTEC.

Further, the written request submitted to BNP Geneva for the second letter of credit under this contract had language requesting that the true ordering party not be mentioned in correspondence, identical to the language described above. In this case, Glencore specifically instructed BNP Geneva not to reveal its name. The ordering document also makes clear that Glencore, and not ACTEC, was the true party in interest and principal behind the transaction—stating that Glencore had full responsibility for the transaction and that the costs of the transaction were to be drawn from Glencore’s credit line with the Bank. By accepting these instructions, the Bank effectively represented ACTEC as the purchaser in the transaction, concealing from the United Nations Glencore’s identity and participation in the transaction. Significantly, Glencore’s request was repeated three times in the body of the request for the letter of credit. In addition to the first instance, Glencore writes: “We repeat that Glencore International AG’s name must not appear on

⁷⁴⁵ In its official record of the allocation, SOMO assigned contract M/11/39 to the allocation. This was not the only allocation and contract for ACTEC. Rather, as described fully in Chapter 2 of this Report, between Phases V and XIII, ACTEC was allocated a total of 99.5 million barrels. ACTEC eventually lifted seventy-two million barrels for which \$1.5 billion was paid. As in the case of the Phase XI allocation, each was a joint allocation with a Communist Party, either of Russia, Belarus, or Slovakia. SOMO sales contract, no. M/11/39 (Dec. 22, 2001) (contracting with ACTEC); Committee oil company table, contract no. M/11/39.

⁷⁴⁶ BNP L/Cs, nos. L/CIM2216348, L/CIM4226285, L/CIM4229292; Committee oil company table, contract no. M/11/39; UN record, “Notice of BNP NY approval”; BNP Geneva record, Instructions for issuing L/CIM4226285.

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any correspondence you send to third parties We remind you that there must be absolutely no mention of the name of Glencore International AG.”⁷⁴⁷

Glencore also instructed the Bank to include in the body of the letter of credit, among the “Special Conditions” required by the United Nations, the condition that the letter of credit was not assignable and not transferable. This restriction is a special condition which flowed from the Bank’s contract with the United Nations and the 661 Procedures that are included in it as an annex. While the addition of Glencore’s interests in the initial transaction to buy the oil was properly neither an assignment nor a transfer of the letter of credit per se, it was, as noted, constructively a replacement of one party by another. Such a substitution has the same effect as an assignment or transfer of rights under the contract, a circumstance specifically prohibited by the oil purchasing contract and the Banking Agreement. The underlying concern of the United Nations which led to the prohibition of assignments, as expressed by the United Nations Treasurer Suzanne Bishopric, was that the value of the proceeds that would flow to the escrow account would be diminished if there were multiple parties in succession in the initial transaction. In fact, in this instance, at least three parties had economic interests in participating in this initial transaction as a result of the Bank’s execution of Glencore’s request. The Bank’s actions inserted another layer of interest into the transaction which already had two, the Russian Communist Party and ACTEC.⁷⁴⁸

In order for the Bank to insert ACTEC’s name into Glencore’s transaction, ACTEC submitted a power of attorney to the Bank giving the Bank the power to, among other things, use ACTEC’s name in the letter of credit to be issued. In the power of attorney, ACTEC recognized that the transaction was at Glencore’s risk and responsibility. The power of attorney also included a statement from ACTEC that it effectively divested its rights in the transaction to Glencore. ACTEC also instructed the Bank to endorse the bills of lading which were otherwise in its name to any entity named by Glencore. ACTEC wrote: “We hereby confirm that, as per the terms of our agreement with Glencore International AG, we relinquish and forfeit any and all of our rights to interest in and claims in respect of, 1) the material purchased, 2) the receivables arising from the sale of the material, 3) the proceeds arising from collection of the receivable.”⁷⁴⁹

The Bank followed the instructions of both Glencore and ACTEC, including endorsing the bills of lading and other ownership documents to Glencore. Documents internal to BNP Geneva and

⁷⁴⁷ BNP Geneva record, Instructions for issuing L/CIM4226285. A comparison between the BNP record of the request for the letter of credit and the United Nations record of the letter of credit, cited above, makes it clear that the United Nations had no indication that Glencore was involved in the transaction. See *ibid.*; BNP L/C, no. L/CIM4226285.

⁷⁴⁸ BNP Geneva record, Instructions for issuing L/CIM4226285; Banking Agreement, art. 2.2.11; S/RES/986, para. 1(a) (Apr. 14, 1995); 661 Committee Procedures, Annex 2; SOMO sales contract, no. M/11/39, sect. 1, art. 9, para. 6 (Dec. 22, 2001) (providing that “assignment of the rights or obligations of the seller or the buyer shall be subject to approval by the 661 Committee”); Suzanne Bishopric interview (Oct. 4, 2005); Committee oil company table, contract no. M/11/39.

⁷⁴⁹ ACTEC fax to BNP Geneva (Mar. 21, 2002).

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BNP Paris show the transaction was controlled by Glencore notwithstanding the fact that documents regarding payment and timing sent to BNP New York and to the United Nations were in the name of ACTEC.⁷⁵⁰

The Bank's acceptance of the instructions of Glencore and ACTEC clearly violated the letter and the spirit of the Bank's contract with United Nations. The Banking Agreement, under which Resolution 986 and the 661 Procedures are significant components, contains provisions to ensure relative transparency in transactions. Importantly, in terms of this transaction, the Bank's acceptance of the instructions from ACTEC and from its client may have also violated the contract between SOMO and ACTEC, which was the predicate condition for this transaction. The contract clearly states, in Article 9, Paragraph 6 that "Assignment of the rights or obligations of the SELLER or BUYER shall be subject to the approval of the 661 Committee." There was no approval from the United Nations sought by any party, neither the seller, the nominal buyer, the buyer, nor by the Bank.⁷⁵¹ Therefore, the assignment of rights by ACTEC in favor of Glencore was not valid, and the Bank impermissibly allowed Glencore to assume the rights and duties of ACTEC.

Some days after the payments within the Bank were settled and the United Nations account at BNP New York was credited in the amount of the oil purchase, the Iraqi Embassy in Moscow began receiving cash payments from ACTEC credited as surcharge payments to the same SOMO contract.⁷⁵² A total of \$1,190,000 was deposited between May 24 and June 26, 2002.⁷⁵³

C. CASE STUDY: BULF DRILLING, TEXACO, AND BNP NEW YORK

A further example that similarly illustrates the lack of transparency in the Programme is that of Bulf Drilling and Oil Servicii, SRL ("Bulf"). Importantly, the Bulf example was transacted in New York, the branch of the Bank directly involved with the United Nations in relation to the Programme.

⁷⁵⁰ BNP Geneva records; BNP Paris records.

⁷⁵¹ Banking Agreement, art. 2.2.11; S/RES/986, para. 1(a) (Apr. 14, 1995); 661 Committee Procedures, Annex 2; SOMO contract sample, art. 9, para. 6; BNP Geneva officials interviews (Oct. 3-5, 2005).

⁷⁵² Committee oil surcharge and company table, contract no. M/11/39; BNP Geneva record, Instructions for issuing L/CIM4226285; BNP Geneva telex to BNP Paris (May 3, 2002); BNP Paris telex to BNP Geneva (May 6, 2002); BNP Geneva telex to BNP New York (Mar. 22, 2002); SOMO invoice to United Nations Treasury (Apr. 20, 2002); Banking Agreement, art. 2.2.11; S/RES/986, para. 1(a) (Apr. 14, 1995); 661 Committee Procedures, Annex 2; SOMO sales contract, no. M/11/39 (Dec. 22, 2001); BNP New York record, BNP New York telex to BNP Geneva (May 2, 2002); BNP Geneva record, credit advice (May 6, 2002); Iraq embassy records (May 24 and June 26, 2002).

⁷⁵³ Iraq embassy records (June 23 and 26, 2002); Committee oil surcharge table, contract no. M/11/39; SOMO sales contract, no. M/11/39 (Dec. 22, 2001).

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Bulf, through its United States representative, Midway Oil of Reston, Virginia, secured two letters of credit issued by BNP New York by assigning its interests in the transaction with Texaco, without notice to the United Nations. Associated with this transaction, the Bulf representative made five separate surcharge payments amounting to nearly half a million dollars over the course of Phases IX and X of the Programme. In this example, BNP New York acted as both the issuing and receiving bank for the letter of credit.⁷⁵⁴

The transaction proceeded in the following manner. In February 2001, SOMO signed a contract with Bulf that allowed Bulf to lift two million barrels of Iraqi oil under the Programme for shipment to Europe. On March 12, 2001, Bulf executed a power of attorney in favor of its US representative, Midway Oil, to act on its behalf, awarding Midway Oil the right to sign contracts, to open letters of credit, and to make payments in the name of Bulf. Immediately, the representative of Midway, on Bulf letterhead, exercised the Power of Attorney to provide Texaco, Inc. (“Texaco”) the authority to open a letter of credit at BNP New York in favor of the United Nations under the SOMO contract, and on behalf of Bulf. A few days later on March 15, 2001, the Midway representative, together with Texaco, communicated with BNP New York to request the Bank to open a letter of credit for the purchase of one million barrels of oil, to be issued in the name of Bulf, in favor of the United Nations. The Midway representative agreed that in doing so, Texaco would have full authority regarding any future transactions related to the financing of the letter of credit, as well as to the possession, movement, and disposition of the oil. Despite earlier referenced prohibitions in the SOMO contract, and despite similar limitations in the Banking Agreement between the United Nations and BNP, by this action the representative of Midway effectively re-assigned Bulf’s oil allocation to Texaco without the required approval of the 661 Committee.⁷⁵⁵

Thereafter, Texaco directed and controlled the transaction as the purchaser, including providing instructions to BNP and the United States representative of Bulf. On March 16, 2001, and again on April 3, 2001, as directed by Texaco, the Bank opened oil letters of credit in Bulf’s name in favor of the United Nations. These letters of credit, which were forwarded to the United Nations, did not include any reference to Texaco, except, as the Bank points out, on one transmittal document, as the ultimate buyer and financing entity of the letter of credit. In this case as well, Texaco specifically requested that the letter of credit be issued in the name of Bulf. In both

⁷⁵⁴ Bulf fax to Caroline Watkins (Mar. 12, 2001); Bulf letter to BNP New York and Texaco International Trader Inc. (Mar. 15, 2001); Committee oil surcharge and company tables, contract no. M/11/39 (Dec. 22, 2001).

⁷⁵⁵ SOMO sales contract, no. M/09/55, sec. I, arts. 2-3 (Feb. 11, 2001); BNP New York record, Texaco-Bulf power of attorney (Mar. 2001) (translated from Romanian); Bulf fax to Caroline Watkins (Mar. 12, 2001); Bill Greten interview (Oct. 14, 2005); Bulf letter to BNP New York and Texaco International Trader Inc. (Mar. 15, 2001); Rebecca Dwyer letter to Bill Greten (Mar. 15, 2001); SOMO sales contract, no. M/09/55, sect. 2, art.6 (Feb. 11, 2001) (requiring approval of 661 Committee for assignment of rights); Banking Agreement, art. 2.2; BNP New York record, Midway Trading letter to BNP New York and Texaco International Trader Inc. (Mar. 15, 2001).

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instances, BNP failed either to seek approval, or notify the United Nations of, Texaco's role in the transaction.⁷⁵⁶

SOMO records reflect that a total of \$490,790 in illicit surcharge payments was made to the Iraqi regime between February 8, 2001 and November 25, 2001 in connection with the Bulf transaction. However, the surcharge payments were not disclosed to the United Nations. To the contrary, Texaco requested, and Bulf provided, an attestation that *no* surcharges were paid to the Iraqi regime.⁷⁵⁷ An excerpt of the letter is reproduced below:

SELLER SPECIFICALLY WARRANTS THAT NO SURCHARGE OR ANY OTHER PAYMENT WAS MADE TO SOMO BY THE SELLER, OR TO SELLER'S KNOWLEDGE BY ANY OTHER THIRD PARTY OUTSIDE THE UN ESCROW ACCOUNT IN OBTAINING THE CRUDE OIL SOLD TO BUYER HEREUNDER.⁷⁵⁸

The document below is a portion of SOMO's surcharge payment record reflecting the five surcharge payments deposited by Bulf in favor of SOMO paid against these lifts.

⁷⁵⁶ Diane Cortese fax to Bill Greten (Apr. 2, 2001); William W. Mulvihill letter to Bill Greten (Apr. 2, 2001); Martin Fuller fax to Midway Trading (May 2, 2001); Martin Fuller fax to Bulf (May 1, 2001); Rebecca Dwyer letter to Bill Greten (Mar. 15, 2001); BNP L/Cs, nos. D726367, D726647; Bill Greten interview (Oct. 14, 2005); BNP letter to the Committee (Oct. 22, 2005); Eva Millas Russo interview (Oct. 20, 2005); Alan Suchley interview (Oct. 20, 2005); Suzanne Bishopric interview (Oct. 19, 2005).

⁷⁵⁷ SOMO records reflect that this surcharge payment, made in two installments on the same day, was effected by Midway Trading against the contract held by Bulf Drilling. SOMO record, Ledger of surcharge payments into SOMO bank accounts (Aug. 23, 2004); Dun & Bradstreet record, Midway Trading report (establishing a relationship between Midway and Bulf); Midway Trading handwritten ledger (Feb. to Apr. 2001) (showing payment of \$225,000, one of five surcharge payments); Midway money transfer report, ref. no. 010404-001811 (undated); Committee oil surcharge table, contract no. M/09/55; Bulf letter to "Whom it may concern" (Mar. 12, 2001); Confidential witness interview (Oct. 21, 2005) (confirming that Texaco requested a document stating that no surcharges were paid on the purchased oil).

⁷⁵⁸ Bulf letter to Texaco (Mar. 12, 2001).

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 شركة تسويق النفط / التحصيلات

الى

تفاصيل التحصيلات للفترة من

رقم الاصل	تاريخ الاصل	بلغ بالعملة المودعة	اسم العميل	اسم المودع	نوع
44944	2001/06/17	269.966-00 دولار	BELPHARM	SVETLAND	عمولات
35097	2001/05/15	99.973-00 دولار	BELPHARM	SVETLAND KHREBTKENKO	عمولات
16890	2001/03/12	49.983-00 دولار	BELPHARM	RULE EUROPEAN	عمولات
57858	2001/07/26	99.985-00 دولار	BULA RESOURCES	AMBERTEY ASSOCIDES	عمولات
9819	2001/02/08	50.000-00 دولار	BULF DREILING AND OIL SERVIC	BULF DREILING AND OIL SERVIC	عمولات
95878	2001/11/25	385-00 دولار	BULF DREILING AND OIL SERVIC	BULF DREILING AND OIL SERVIC	عمولات
80773	2001/10/01	215.410-25 دولار	BULF DREILING AND OIL SERVIC	اسماعيل ابراهيم سراد	عمولات
24436	2001/04/08	200.311-25 دولار	BULF DREILING AND OIL SERVIC	MIDWAY TRADI	عمولات
24436	2001/04/08	24.683-75 دولار	BULF DREILING AND OIL SERVIC	MIDWAY TRADI	عمولات
17910	2001/03/15	150.000-00 دولار	CAMTECH	شركة كاتيك	عمولات

Figure: Ledger of surcharge payments into SOMO bank accounts (Aug. 23, 2004).

While these surcharge payments did not pass through BNP New York, the Bulf case nevertheless illustrates the manner in which the Programme ultimately lacked transparency through the infusion of third parties that were not divulged to the United Nations. Significantly, BNP New York, a party to the Banking Agreement, executed documents and processed the letters of credit in the name of Bulf, with an awareness of Texaco's role in the transaction. The true purchaser and party of interest in the transaction was not the "end user" for whom approval was sought and obtained for the oil sales. The transaction shows how BNP's interest in maintaining its private client's confidentiality conflicted with the transparency requirements of the Banking Agreement.

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IV. SURCHARGE PAYMENTS AND DUE DILIGENCE

Iraq derived approximately \$229 million from illicit oil surcharges. BNP was among the banks that transferred surcharge payments to Iraqi-controlled accounts in Jordan, Lebanon, and the United Arab Emirates.⁷⁵⁹

A. BNP AND SURCHARGES

As detailed in the chart below, BNP branches, subsidiaries and affiliates accounted for approximately \$10 million of surcharge payments—with most of the payments flowing through Geneva.⁷⁶⁰

⁷⁵⁹ “Programme Management Report,” vol. I, pp. 85-87 (discussing surcharge payments).

⁷⁶⁰ Committee oil surcharge and company tables, contract nos. M/10/48 (involving AMEP); M/08/13, M/09/113, M/10/10, M/11/06 (involving China National United Oil Corporation); M/09/07 (involving Italtech); M/08/38 (involving Zangas); M/08/37 (involving Machinoimport); M/08/02 (involving Zarubezhneft); M/08/05 (involving ACTEC); UEB Geneva record, Ben Hur account, debit advice (Oct. 17, 2001); Fransabank record, SOMO account, SWIFT messages (Feb. 21 and Nov. 30, 2001; June 6, 2002) (relating to Glasford Shipping); UEB Geneva record, Italtech account, credit advices (May 3, 2000; Apr. 19, 23, and 30, 2001); Fransabank record, SOMO account, SWIFT messages (Sept. 20 and Oct. 16 and 25-26, 2000) (relating to Taurus Petroleum Ltd. Nassau (“Taurus Nassau”)); UEB Geneva record, Taurus Nassau account, account statements (Sept. 30 and Oct 31, 2000); UEB Geneva record, Taurus Nassau fax to UEB Geneva (Sept. 18, 2000); Fransabank record, SWIFT messages (Oct. 20 and 24 and Nov. 6, 2000) (relating to Scandinavian). Euro transactions were converted to USD using daily currency exchange converter from OANDA. See OANDA, “The Currency Site: Foreign Exchange Services and Trading,” <http://www.oanda.com>.

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Table 3 – Examples of surcharges that flowed through BNP

Company Name	BNP Branch or Affiliate	Date of Surcharge Payment	Recipient	USD Amount	Euro Amount
Ben Hur (affiliate of African Middle East Petroleum)	UEB Geneva	October 17, 2001	SOMO controlled account, Jordan National Bank, Amman		€177,978.00
Glasford Shipping Limited	BNP Hong Kong	February 21, 2001	SOMO controlled account, Fransabank, Beirut	\$227,358.00	
Glasford Shipping Limited	BNP Hong Kong	November 30, 2001	SOMO controlled account, Fransabank, Beirut	\$1,777,970.40	
Glasford Shipping Limited	BNP Hong Kong	June 6, 2002	SOMO controlled account, Fransabank, Beirut		€1,235,370.61
Italtech	UEB Geneva	April 19, 2001	Al-Wasel and Babel, Abu Dhabi Commercial Bank		€1,531,943.00
Italtech	UEB Geneva	April 23, 2001	Al-Wasel and Babel, Abu Dhabi Commercial Bank		€2,258,341.00
Italtech	UEB Geneva	April 30, 2001	Al-Wasel and Babel, Abu Dhabi Commercial Bank		€1,717,518.00
Italtech	UEB Geneva	May 3, 2000	Mohammed Ibrahim, Arab Bank, Geneva	\$200,000.00	
Taurus (Identity masked by UEB Geneva)	UEB Geneva	September 20, 2000	SOMO controlled account, Fransabank, Beirut	\$230,220.90	
Taurus (Identity masked by UEB Geneva)	UEB Geneva	October 16, 2000	SOMO controlled account, Fransabank, Beirut	\$130,000.00	
Taurus (Identity masked by UEB Geneva)	UEB Geneva	October 25, 2000	SOMO controlled account, Fransabank, Beirut	\$160,000.00	
Taurus	UEB Geneva	October 26, 2000	SOMO controlled account, Fransabank, Beirut	\$200,000.00	
Scandinavian T. Ltd.	UEB Geneva	October 20 2000	SOMO controlled account, Fransabank, Beirut	\$100,000.00	
Scandinavian T. Ltd.	UEB Geneva	October 24, 2000	SOMO controlled account, Fransabank, Beirut	\$100,000.00	
Scandinavian T. Ltd.	UEB Geneva	November 6, 2000	SOMO controlled account, Fransabank, Beirut	\$100,000.00	
Total				\$3,225,549.30	€6,921,150.61

When asked about the degree of diligence performed on clients of the Bank, BNP employees responded that they exercised a greater degree of scrutiny upon newer customers. The Bank claimed to have examined some customers to a greater degree. The Committee's investigation of the Bank's activities comprised a thorough examination of Bank documents, witness interviews including BNP Geneva and New York staff, as well as a review of information supplied to the

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Committee by counsel for BNP. This examination did not reveal thorough scrutiny of new customers.⁷⁶¹

Several of these new customers made surcharge payments to the Iraqi regime, a number of which flowed through BNP as detailed in Table 3. The Committee does not have evidence that BNP was specifically aware of these illegal payments. BNP officials in Geneva and New York acknowledged awareness at the time of the Iraqi oil surcharge policy as a condition precedent for the purchase of Iraqi oil. Nevertheless, the Bank failed to implement an adequate system to identify such payments.

B. REVIEW OF HIGH RISK TRANSACTIONS

Several account officers at BNP Geneva stated that they learned through media reports and otherwise, that Iraq was imposing a requirement that purchasers of oil pay a sum of money for the benefit of contracting to purchase Iraqi oil under the Programme. However, the account officers recognized that the Bank did not issue a formal policy or implement any particular practice to address this issue. While these officials claimed that they exercised a greater degree of scrutiny of payment requests, they were unable to point to any policies or procedures that required a standard of care. Nor did the Bank increase the level of scrutiny of payment requests in general as a uniform practice. The account officers did, however, assert that they received anti-money laundering training on a regular basis which was provided by and through the Bank.⁷⁶²

Regardless of the customer, account officers who handled client accounts as front line representatives of BNP were vested with discretion in approving payment requests. Only expense payments of significant amounts required the signature of a supervisor or the signature of the head of the Commercial Group. Despite this requirement, very few requests were directed to managers or higher level bank officials for approval, and bank employees conceded that they were not aware of any payment requests that were rejected. No bank official with whom the Committee staff spoke identified any payment request that was not granted.⁷⁶³

Some account officers informed Committee staff that they posed questions to clients seeking authorization for payments, and that this practice increased during the time frame that the surcharge payments were demanded. However, very few officials acknowledged that more was done than accept the explanation provided by the client. In most, if not all cases, clients' explanations for the payments were accepted at face value without further scrutiny. The beneficiary of the funds was typically not scrutinized.⁷⁶⁴

⁷⁶¹ BNP Geneva officials interviews (Oct. 3-5, 2005); Eva Millas Russo interview (Oct. 20, 2005).

⁷⁶² BNP Geneva officials interviews (Oct. 3-5, 2005); Bill Greten interview (Oct. 14, 2005).

⁷⁶³ BNP Geneva officials interviews (Oct. 3-5, 2005).

⁷⁶⁴ Ibid. Committee staff were prohibited from speaking with BNP Geneva representatives about the details of client transactions and particular payments.

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Most account officers recounted that their review of client requests depended upon the history of the client with the Bank, the client's track record, and the nature and amount of the request. Account officers were of the view that they instituted a higher level of scrutiny for lesser established companies that had less of a history with the Bank. Bank officials stated that they provided a greater degree of deference to account holders with an established track record with the Bank and long term customers with established reputations as oil traders. It seems reasonable to the Committee that Bank customers with established risk profiles would face less scrutiny than newer, lesser established customers of the Bank. One account officer stated that he was told, as part of the regular Anti-Money Laundering training offered by the Bank, to scrutinize large unusual proposed transactions, or a series of large incoming deposits, followed shortly thereafter by large disbursements.⁷⁶⁵

However, as previously described, the Committee has identified a number of surcharge payments made at the request of lesser known clients of the Bank (companies established for the sole purpose of engaging in transactions under the Programme such as Alcon, Fenar and Italtch) that were directed to SOMO linked bank accounts in Jordan, Lebanon and the UAE. While the Bank may not have been able to discern that SOMO maintained secret accounts in Jordan or Lebanon, in light of the publicity that the Iraqi surcharges generated at the time and the duty the Bank owed to the United Nations under the Agreement, it should have inquired of its less established clients concerning the business purpose of the transactions and to make sure the economics of the deal were consistent with the explanation of its business purpose.⁷⁶⁶

Among the surcharge transactions noted above, are several that should have been given a greater degree of scrutiny under the Bank's self-imposed definition. In April 2001, Italtch, which maintained an operating account at UEB, requested that the Bank issue three wire transfers amounting to approximately \$5 million to Al-Wasel and Babel, an Iraqi controlled company operating in Abu Dhabi, and a contractor in the Programme. While the Bank made an inquiry to Italtch regarding Al-Wasel and Babel's background, it failed to request adequate information about the business purpose of these multimillion dollar transactions, despite the fact that Italtch was a relatively new customer, and heavily reliant on Bayoil to actively participate in the Programme. Even though Italtch's business only involved transactions under the Programme, the Bank failed to engage in the requisite due diligence to determine if these payments were linked to the widely-known allegations of corruption in the Programme.⁷⁶⁷ However, as the examples set forth in Table Three demonstrate, no such monitoring occurred. The Bank made four such surcharge payments on behalf of Italtch in 2000 and 2001.

⁷⁶⁵ BNP Geneva officials interviews (Oct. 3-5, 2005).

⁷⁶⁶ *Ibid.* For further discussion on Taurus and Bayoil, see Chapter 2.

⁷⁶⁷ UEB bank record, Italtch account, wire transfers; Ibrahim S. Lootah interview (May 3, 2005) (acknowledging that Al-Wasel and Babel was an Iraqi-controlled company); Committee oil surcharge table, contract no. M/09/07; UEB bank record, Customer profile information (June 6, 2000); BNP Geneva officials interviews (Oct. 3-5, 2005).

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According to a confidential source whose information has been verified by the Committee, a BNP compliance officer in the year 2000 identified Augusto Giangrandi of Italtel as a party involved in legal proceedings in South Florida in connection with an illegal sale of controlled American technology to Iraq, as well as money laundering activity. As a result, the compliance officer voiced the view to BNP that based upon Giangrandi's past record, a close monitoring of all accounts opened was necessary.⁷⁶⁸

Furthermore, some of the movements of funds, such as large deposits followed quickly by similarly large withdrawals from the account, combined with other factors, including the identity of the recipient of the funds, are examples of possible money laundering behavior perpetrated by some of these lesser known companies, which went undetected by the Bank.⁷⁶⁹ An example of such activity was found within the operating accounts of Alcon Petroleum and Fenar Petroleum, both of which maintained accounts at BNP Geneva. These companies clearly engaged in high risk banking activity. Their transactions were limited to large, often six-figure incoming wire transfers from Taurus, another customer of the Bank and their parent. These companies, in turn, disbursed similarly large sums to Jabal Petroleum and Petrocorp, companies located in Lebanon and associated with the Iraqi regime.⁷⁷⁰

⁷⁶⁸ Confidential source (verified by the Committee). Mr. Giangrandi's involvement with Italtel and manipulation of the Programme by Bayoil is described in Chapter 2 of this Report.

⁷⁶⁹ Financial Action Task Force on Money Laundering ("FATF"), "The Forty Recommendations," recs. 11, 15, 21, 22 (2003); FATF Non Cooperative Countries and Territories ("NCCT") List, Annex 3. Lebanon was first identified as an NCCT jurisdiction on June 22, 2000, and it was de-listed on June 21, 2002, hence Lebanon was on the NCCT List throughout most of the surcharge period.

⁷⁷⁰ BNP Geneva record, Fenar account, statements of account, credit advices, and debit advices (2001-2002); BNP Geneva record, Alcon account, statements of account, credit advices, and debit advices (2001-2002); Fenar internal cost accounting analysis (2001-2002); Alcon internal cost accounting analysis (2001-2002); Alcon record, Alcon internal cost accounting analysis (2001-2002); Fenar record, Fenar and Petrocorp invoices; Alcon record, Alcon and Jabal invoices; UEB Geneva record, Taurus account, statements of account (2001-2003); Patrick Hilty interview (Apr. 13, 2005); BNP Geneva officials interviews (Oct. 3-5, 2005).

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Table 4: Examination of Fenar's BNP Account Transactions⁷⁷¹

Fenar's receipts from Taurus		Fenar's Payments to Petrocorp		Shipping Details	
Date of Receipt of Funds from Taurus	Amount Received from Taurus	Date of Payment to Petrocorp	Amount Paid to Petrocorp	B/L Date	Vessel
September 17, 2001	\$355,508.42	September 25, 2001	\$324,140.00	July 18, 2001	Crude Tria
September 18, 2001	\$896,824.70	October 5, 2001	\$849,623.00	August 14, 2001	Kraka
September 24, 2001	\$321,368.32	October 3, 2001	\$321,368.00	August 22, 2001	Bosco Tapias
September 25, 2001	\$291,015.58	September 28, 2001	\$291,015.00	August 23, 2001	Crude Horn
October 15, 2001	\$228,000.00	October 25, 2001	\$174,000.00	September 13, 2001	Napa
October 30, 2001	\$651,313.92	November 7, 2001	\$651,314.00	September 25, 2001	Berge Phoenix
January 16 & 22, 2002	\$704,334.48	January 23, 2002	\$662,903.00	December 13, 2001	Berge Phoenix
April 11, 2002	\$282,300.93	May 28, 2002	\$271,845.00	February 27, 2002	Iria Tapias
March 6, 2002	\$616,222.62	March 11, 2002	\$571,133.00	March 5, 2002	Olympia Spirit
April 11, 2002	\$175,612.92	April 23, 2002	\$169,341.00	March 8, 2002	Atalandi
May 2, 2002	\$738,749.31	June 7 & July 17, 2002	\$700,824.00	March 27, 2002	Olympic Breeze
June 27, 2002	\$193,434.82	September 16, 2002	\$254,519.00	May 30, 2002	Crude Star
August 7, 2002	\$54,197.20	September 23, 2002	\$57,603.00	June 24, 2002	Gelibolu
September 3, 2002	\$281,427.24	October 15, 2002	\$162,931.00	July 12, 2002	Krithild
September 23, 2002	\$95,000.00	October 15, 2002	\$115,000.00	July 13, 2002	Stena Concept
September 24, 2002	\$120,000.00	October 15, 2002	\$75,000.00	July 21, 2002	Nuria Tapias
October 29, 2002	\$61,968.84	October 30, 2002	\$56,804.00	August 1, 2002	Crude Star
October 29, 2002	\$78,827.20	October 30, 2002	\$88,680.00	August 9, 2002	Crudemed
November 25, 2002	\$59,062.29	November 29, 2002	\$100,000.00	September 22, 2002	Ness
November 25, 2002	\$60,000.00	November 25, 2002	\$60,000.00	September 24, 2002	Stena Constellation
Totals	\$6,265,168.79		\$5,958,043.00		

Percentage of funds received by Fenar from Taurus and forwarded to Petrocorp: 95.10%

⁷⁷¹ BNP Geneva record, Fenar account, statements, credit advices, and debit advices (2001-2002); BNP Geneva record, Alcon account, statements, credit advices, and debit advices (2001-2002); Fenar record, Fenar internal cost accounting analysis (2001-2002); Alcon record, Alcon internal cost accounting analysis (2001-2002); Fenar record, Fenar and Petrocorp invoices; Alcon record, Alcon and Jabal invoices.

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As can be noted in Table 4, Fenar received more than \$6.2 million from Taurus during a 15-month period for specific Programme-related oil contracts, and Fenar used these funds to issue over \$5.9 million in wire transfers to Petrocorp's bank account in Lebanon, representing roughly ninety-five percent of these deposits to the account. Similarly, as described in Table 5, Alcon received more than \$8.6 million from Taurus or one of its affiliates over the course of a 16-month period for specific Programme related oil contracts. Alcon used these funds to disburse more than \$8.4 million in subsequent wire transfers to Jabal Petroleum's account in Lebanon, also close to ninety-eight percent of these deposits. It should be noted that Taurus was the only identified source of deposits into the accounts of Alcon and Fenar.⁷⁷²

Both Fenar and Alcon's outbound wire transfers had similar characteristics in that they were generally of high dollar volumes (five or six figure wire transfers) and were often issued immediately following large incoming wire transfers from Taurus. The outbound wire transfers were labeled as loading and handling fees associated with the purchase of Programme related oil, however, the handling fees were as high as forty-five cents per barrel, approximately nine times what a BNP banker who handled these accounts anticipated would be a reasonable fee. During the period of these wires, both of these clients were newly-established and therefore, should have been subjected to additional scrutiny of the business purpose of their transactions. These were newly-formed companies that received contracts for oil in the Programme around the same time the bankers' acknowledged their awareness that the former Government of Iraq was requesting kickbacks. In addition to being new customers involved in a high risk business, the vast majority of each company's wire transfers were issued to a particular counterparty banking in Lebanon, which at the time, was listed as a Non-Cooperative Country or Territory (NCCT) in fighting Money Laundering.⁷⁷³

⁷⁷² BNP Geneva record, Fenar account, statements, credit advices, and debit advices (2001-2002); BNP Geneva record, Alcon account, statements, credit advices, and debit advices (2001-2002); Fenar record, Fenar internal cost accounting analysis (2001-2002); Alcon record, Alcon internal cost accounting analysis (2001-2002); Fenar record, Fenar and Petrocorp invoices; Alcon record, Alcon and Jabal invoices; UEB Geneva record, Taurus account, statements (2001-2002). The December 24, 2001 deposit of \$644,768.96 was received from Sonatrach, a company that shares an address with Taurus in London. BNP Geneva record, Alcon account, credit advice (Dec. 24, 2001); Touch London, "Touch London local business directory," <http://www.touchlondon.co.uk>.

⁷⁷³ BNP Geneva officials interviews (Oct. 3-5, 2005); Patrick Hilty interview (Apr. 13, 2005).

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Table 5: Examination of Alcon's BNP Account Transactions⁷⁷⁴

Alcon's receipts from Taurus		Alcon's Payments to Jabal Petroleum		Shipping Details	
Date of Receipt of Funds from Taurus	Amount Received from Taurus	Date of Payment to Jabal Petroleum	Amount Paid to Jabal Petroleum	B/L Date	Vessel
August 28, 2001	\$752,269.66	August 31, 2001	\$613,693.00	July 16, 2001	Eastern Power
August 30, 2001	\$680,434.02	September 6, 2001	\$599,429.00	July 19, 2001	Dorset
August 30, 2001	\$282,167.76	September 4, 2001	\$231,780.00	July 20, 2001	Shravan
September 7, 2001	\$364,644.35	September 11, 2001	\$302,133.00	August 8, 2001	Front Champion
October 12, 2001	\$310,927.52	November 5, 2001	\$320,957.00	September 7, 2001	Crudehorn
October 15, 2001	\$498,194.28	October 25, 2001	\$401,323.00	September 14, 2001	Napa
October 30, 2001	\$380,261.06	November 5, 2001	\$360,247.00	September 24, 2001	Crudestar
November 26, 2001	\$310,746.48	November 23, 2001	\$370,891.00	October 26, 2001	Crudemid
November 27, 2001	\$319,527.85	November 28, 2001	\$329,835.00	October 28, 2001	Venetia
November 30, 2001	\$671,174.70	December 3, 2001	\$719,115.00	October 30, 2001	Eaton
December 24, 2001	\$644,786.96	January 8, 2002	\$765,663.00	November 25, 2001	Dundee
January 22, 2002	\$115,500.00	February 1, 2002	\$112,000.00	December 12, 2002	Berge Ingrid
February 4, 2002	\$572,791.47	February 8, 2002	\$553,040.00	December 31, 2001	Pride Independ.
February 13, 2002	\$754,323.12	February 13, 2002	\$712,416.00	January 12, 2002	Front Champion
February 19, 2002	\$667,429.00	February 19, 2002	\$648,359.00	January 15 & 16, 2002	Ancona
February 27, 2002	\$216,000.00	February 28, 2002	\$278,755.00	January 28, 2002	Orient Tiger
August 20, 2002	\$62,755.02				
June 27, 2002	\$280,795.41	July 23, 2002	\$270,395.00	May 22, 2002	Karvounis
August 16, 2002	\$257,384.75	August 16, 2002	\$288,270.00	July 3, 2002	Unicorn
September 2, 2002	\$141,677.93	August 15, 2002	\$61,599.00	July 24, 2002	Seasong
September 23, 2002	\$33,300.00	October 28, 2002	\$29,600.00	July 30, 2002	Tamara
October 29, 2002	\$299,968.20	October 28, 2002	\$173,665.00	August 12, 2002	Berge Boss
			\$205,241.00		
November 25, 2002	\$48,000.00	October 26, 2002	\$96,000.00	November 28, 2002	Stella Constellation
			\$28,000.00		
Subtotal	\$8,665,059.54		\$8,444,406.00		
Percentage of Funds Received by Alcon from Taurus (and Taurus linked party) and forwarded to Jabal					97.80%

⁷⁷⁴ BNP Paribas Geneva record, Alcon account, statements (Aug. 2001 to Nov. 2002); BNP Paribas Geneva record, Alcon account, debit advices (Aug. 2001 to Nov. 2002); BNP Paribas Geneva record, Alcon account, credit advices (Aug. 2001 to Nov. 2002); Alcon record, internal financial analysis (2001-2002); Alcon record, Taurus invoices; Alcon record, Jabal invoices.

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The lack of review by the Bank should be assessed in light of anti-money laundering standards in effect at the time. Anti-money laundering efforts worldwide were not as advanced as they are currently, including in Switzerland. During the Programme, Switzerland's Money Laundering Act ("MLA") of 1997 was in effect. The Act has since been amended by the passage of an additional statute in 2003 which largely expanded requirements on banking institutions to engage in a systematic mapping of all high risk business.⁷⁷⁵

However, the 1997 law did impose baseline requirements on BNP Geneva to exercise due diligence in certain types of transactions. Article 5 of the MLA required that banks engage in verification within the meaning of the Act "[w]hen in the course of business relations, doubts arise as to the identity of the customer or beneficial owner of funds." Article 6 required banks to "clarify the economic background and the purpose of a transaction or business relationship when . . . a) the transaction or business relationship appears unusual, except where it is manifestly legal; or, b) there is reason to suspect that assets are the proceeds of a crime or that a criminal organization has power of disposal over them." Article 8 provided that "[f]inancial intermediaries shall in their respective fields take all steps necessary to prevent money laundering. They shall in particular ensure that their staff receive adequate training and that checks are carried out."⁷⁷⁶ Surely, the financing of oil transactions involving Iraq between 1996 and 2003 within an international sanctions framework qualifies as high risk activity.

BNP contends that Swiss bank secrecy laws prohibited it from disclosing client information to anyone other than its parent, including officials at other BNP affiliates outside of Switzerland (including BNP New York). The Bank contends that such a prohibition extends to details of all transactions, including those which are considered high risk. The Swiss Federal Banking Commission, the government regulatory body charged with the responsibility of oversight of all financial institutions operating in Switzerland, did not dispute this claim. However, it appears that BNP Geneva could have shared such information with its parent entity.⁷⁷⁷ It will be for the Swiss authorities to determine whether the Bank has met the standard set by Swiss domestic law.

⁷⁷⁵ Switzerland Federal Act on the Prevention of Money Laundering in the Financial Sector (Money Laundering Act, MLA) (Oct. 10, 1997).

⁷⁷⁶ *Ibid.*, arts. 5, 6, 8.

⁷⁷⁷ BNP Geneva officials interviews (Oct. 3-5, 2005). A Swiss Federal Banking Commission (EBK) representative was present at the BNP Geneva interviews as an observer and did not play an active role; "Loi Fédérale sur les banques et les caisses d'épargne de L'Assemblée Fédérale de la Confédération Suisse" (Swiss Federal Banking Law), arts. 4^{quinquies}, 23^{sexies}, 23^{septies} (status as of June 8, 2004).

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V. THE BANK'S RESPONSE

A. THE BANK'S CONTENTIONS

BNP has cooperated in part with the Committee's investigation and raised several objections to the Committee's anticipated conclusions in this Report.⁷⁷⁸ Three of its objections warrant discussion. First, to the extent that BNP suggests that it operated through subsidiaries and affiliates that could not freely share all customer information with one another, this contention is unpersuasive in light of evidence that information about market developments and practices could be shared among BNP entities without intruding upon the privacy interests of particular customers. Indeed, the degree to which BNP now seeks refuge in legal secrecy provisions underscores the costs of the initial choice that BNP made to undertake financial transactions on behalf of private customers while at the same time subject to the interests of the United Nations in transparent market transactions and the capture of the full value of oil transactions for the escrow account.

Second, to the extent that BNP suggests that it did not violate any particular provision of the Banking Agreement, its financing practices were plainly inconsistent with the numerous provisions of the Banking Agreement and the SOMO contract that were designed to impede the substitution of additional parties into these transactions. BNP's performance of the Banking Agreement was compromised by its conflicting loyalty to private party customers. In the service of the interests of its private clients, BNP did not affirmatively disclose the full range of information peculiarly known to it or take steps to restore normal financial conditions to the Iraqi oil market.

Third, to the extent that BNP suggests that the role of oil traders was generally known to the United Nations, this is not disputed. The scope of knowledge of the United Nations oil overseers and the Security Council has been thoroughly described in the Committee's Programme Management Report.⁷⁷⁹ Nevertheless, this did not relieve BNP from complying with its own contractual obligations. With primary access to the true parties in interest and control over whether any letters of credit would be approved, BNP stood in a unique position within the Programme's financial and transactional framework to take further action. BNP had sole access to specific transaction information and the ability through its worldwide affiliates to monitor payments it controlled involving the escrow account and the accounts of its private clients.

⁷⁷⁸ The Committee provided the Bank with a notice letter on October 15, 2005, and the Bank responded raising a number of issues by letter dated October 19, 2005, and raised these issues again with the Committee in a meeting on October 20, 2005.

⁷⁷⁹ "Programme Management Report," vol. II, pp. 134-51 (describing the evolution of the surcharge scheme and the repeated warnings of the oil overseers concerning distorted market conditions).

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In support of its contention that the United Nations was aware of the third parties involvement in these deals, counsel for the Bank refers the Committee to telex messages sent to Treasury which contain references to third parties. These documents certainly do not provide an explanation of the full nature and scope of the participation of these entities in these transactions, let alone the Programme in general. These documents further do not represent the third party is purchasing and receiving the oil, and stood fully behind the front line purchaser whose interest in the transaction was virtually ministerial. The documents were not sufficient notice to the United Nations of the full scope and nature of the transactions involving the third party purchasers, and the full extent of their involvement in these transactions.

B. THE UNITED NATIONS' KNOWLEDGE OF PROGRAMME ABUSES

The United Nations bears responsibility for the lack of transparency in the Programme as well. It is evident that third party financing arrangements were brought to the attention of the United Nations oil overseers, who in turn, alerted the United Nations Office of Legal Affairs ("OLA") of this circumstance. The oil overseers were advised by OLA that enforcement of this provision was outside the scope of the overseers' authority, but that the Overseers could bring this issue to the attention of the [661] Committee. As such, on February 20, 2001, the oil overseers wrote to the 661 Committee that "there are very few companies that can be classified as end-users of crude oil," and that "contract holders seem to be intermediaries who are not known in the petroleum industry" and "are very small in size and seem to have limited credit facilities." In this correspondence, the Overseers further informed the 661 Committee that Iraqi oil sales under the Programme had "gradually evolved from a situation in which SOMO by and large [was] directly selling to end-users," then was "selling via traders to end-users," and "now...[was] selling via intermediaries to traders who on-sell to end-users." According to the overseers, the result was that there were now two "companies in the contractual chain between SOMO and the end-users, both of which naturally want to make a profit."⁷⁸⁰

However, this circumstance does not mitigate BNP's obligations in the first instance to likewise advise the United Nations of matters, transactions and circumstances that amounted to violations of the principles underlying its agreement with the United Nations. BNP was under a separate obligation from the oil overseers, although they should have shared similar concerns.

⁷⁸⁰Ibid., pp. 138-39; Morten Buur-Jensen interviews (Sept. 9, 2004 and Aug. 12, 2005); Eva Millas Russo interview (Oct. 20, 2005).

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VI. THE COMMITTEE'S EVALUATION

As noted above, BNP was obliged in the first instance to the United Nations to conduct transactions in light of the requirements of Resolution 986 and the Banking Agreement—requirements that were designed to provide for financing of Programme transactions in a transparent manner and to discourage subterfuges of the sanctions regime. By contrast, with BNP's choice to issue letters of credit for private party oil purchasers, it acquired a duty to maintain each private party's confidentiality, including related financing relationships and affiliations with other companies, such as oil traders. In other words, BNP acquired a competing incentive to act in the interests of the private purchaser or true financer of its letters of credit rather than in the interests of the United Nations. This duty of secrecy to a private contracting or financing party was potentially inimical to the interests of full disclosure to BNP's primary customer—the United Nations—of the true financial arrangements underlying transactions conducted under the Programme.

The Committee notes that BNP was permitted under the terms of the Banking Agreement to issue letters of credit for oil purchasers (or to confirm letters of credit issued from one of its own affiliates). BNP was not otherwise contractually barred from doing business with parties such as oil traders that furnished financing for many of the thinly capitalized companies that won contracts for oil under the Programme. Moreover, there appears to be nothing in the Security Council resolutions and the Banking Agreement to prevent the Bank from issuing the letters of credit in the name of a front company and authorizing payments for expenses, had the fact of the role of the financing party been adequately disclosed and the purpose of the expenses examined.

The conflict began when the Bank agreed to the concealment of the financing party in letter of credit arrangements and in payments ordered by the financing party. It deepened when the Bank acted as agent for the financing party and facilitated the arrangement.

In opposition to its concealment of the identity of the true financing party, BNP was obligated to the United Nations to perform its duties under the Agreement in full contemplation of Resolution 986 and the 661 Committee's procedures. Therefore, when third party purchasers were thrust into these transactions unbeknownst to the United Nations and with full knowledge and participation by BNP, the Bank's actions ran afoul of its duty to the United Nations. Similarly, when BNP authorized and permitted illicit payments, it failed to perform adequate review of client transactions.

In short, BNP's dual role burdened it with divided loyalties that ultimately facilitated—among many other factors described elsewhere in the Committee's reports—the success of Iraq's oil surcharge scheme. The success of the scheme relied on the ability of the true parties in interest to conceal their roles and the flow of funds stemming from oil purchase transactions.

And once the surcharge scheme took root, BNP itself became an instrument for the payment of millions of dollars in illegal surcharges while doing little to detect or prevent such payments. In these instances, the Bank failed to implement an adequate system to identify such payments otherwise disguised as legitimate expenses proposed for the Bank's approval. This is especially true for those customers of the Bank that lacked an established track record of otherwise proper

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conduct outside the Oil-for-Food Programme. There are examples of customers for whom the Bank claimed it exercised a greater degree of scrutiny. However, the Committee's investigation, which consisted of witness interviews (including employees of BNP Geneva and BNP New York), examination of BNP bank documents, and a review of information supplied to the Committee by counsel for BNP, did not find examples in which the Bank scrutinized relatively new customers who caused the delivery of surcharge payments through accounts at the Bank. As a result, it appears that not one surcharge payment was interrupted by any BNP affiliate during the Programme.

BNP's loyalty to the interests of its private clients—in the midst of well-publicized allegations of Iraq's surcharge policy—apparently inhibited BNP's undertaking a system-wide review of its practices to prevent such surcharge payments, much less adopting proactive measures to redress market practices that distorted the implementation of Resolution 986. Although there is no evidence that BNP knew of, or approved of the use of its own facilities to pay illegal surcharges, BNP was uniquely positioned to probe such payments—but failed to do so.

Under standards existing today, including advances in the law and the additional measures the Bank asserts that it now employs, it would be appear that the Bank's existing practices, as set forth in its recent statement regarding ethics and compliance, would be sufficient to have identified and interrupted these impermissible surcharge payments. Unfortunately, the Bank did not impose the same level of scrutiny at the time even though it had a special obligation arising from its contract with the United Nations to do so. The Bank also appears not to have instituted earlier its conflict of interest policy dated December 2002. According to the statement of policy, "when conflicts of interest put at stake significant matters" certain steps should be taken including defining "a clear road map for the solution of the potential conflict" and steps ensuring "adequate communication."⁷⁸¹

⁷⁸¹ BNP record, "Managing conflicts of interest within BNP Paribas" (Dec. 2002); BNP record, BNP Paribas annual report (2004).