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PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

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Rob Portman, Chairman

Review of U.S. Treasury Department's License to Convert Iranian Assets Using the U.S. Financial System

MAJORITY REPORT

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INVESTIGATIONS**

UNITED STATES SENATE



**REVIEW OF U.S. TREASURY DEPARTMENT’S
LICENSE TO CONVERT IRANIAN ASSETS
USING THE U.S. FINANCIAL SYSTEM**

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I. EXECUTIVE SUMMARY

For 30 years, the United States and its international partners imposed a strict sanctions regime against the Government of Iran to influence Iranian policy. In 2011, the United States and other world powers implemented crippling financial sanctions on Iran in response to the country's enrichment of uranium and development of nuclear weapons. The sanctions took a toll on the country and its people. The pressure of effective sanctions afforded the United States an opportunity to work to achieve concessions in exchange for sanctions relief.

As the United States negotiated with Iran, one important U.S. interest consistently remained off-limits: Iran would not be granted access to either the U.S. financial system or the U.S. dollar. Foreign financial institutions were free to conduct business with the government of Iran and Iranian entities, but U.S. financial institutions continued to be barred from engaging Iran. Senior U.S. government officials repeatedly testified to Congress that Iranian access to the U.S. financial system was not on the table or part of any deal. This notwithstanding, the U.S. Department of the Treasury, at the direction of the U.S. State Department, granted a specific license that authorized a conversion of Iranian assets worth billions of U.S. dollars using the U.S. financial system. Even after the specific license was issued, U.S. government officials maintained in congressional testimony that Iran would not be granted access to the U.S. financial system.

Joint Plan of Action. In November 2013, the United States, along with the permanent members of the United Nations Security Council ("Security Council") China, France, Russia, and the United Kingdom, plus Germany (collectively known as the "P5 +1") signed the Joint Plan of Action ("JPOA") with Iran in Geneva, Switzerland. The JPOA was a temporary measure that lifted limited economic sanctions on Iran in exchange for Iran suspending portions of its nuclear program while working towards a permanent solution. The JPOA went into effect in January 2014 as the parties negotiated the terms of a permanent deal.

Joint Comprehensive Plan of Action. In July 2015, Iran and the P5+1 signed the Joint Comprehensive Plan of Action ("JCPOA"), which replaced the JPOA. The Security Council adopted the JCPOA on October 18, 2015, and the JCPOA went into effect on January 16, 2016 ("Implementation Day"). Iran agreed to several nuclear-related limitations, including limiting the production of enriched uranium for 15 years and granting the International Atomic Energy Agency access to certain facilities to monitor compliance with the agreement.

In exchange, the United States committed to lifting some economic sanctions on Iran, including sanctions by the United States on foreign entities and countries that conducted business with Iran outside of the United States (commonly referred to as "secondary sanctions"). Iran was also allowed to access assets previously frozen abroad. On Implementation Day, Iran had \$5.7 billion in assets at Bank Muscat in Muscat, Oman in Omani rials.

Notwithstanding this relief, primary U.S. sanctions impacting Iran generally remained in place. It remained illegal for U.S. persons, entities, and financial institutions to do business with Iran or parties on behalf of Iran. This ban also included any “U-Turn” transactions—which are transactions by or on behalf of an Iranian bank in which a U.S. bank acted solely as an intermediary to convert one foreign currency into dollars and then to another foreign currency.

U.S. government officials testified before Congress that Iran would not have access to the U.S. financial system. Members of Congress raised concerns about Iran’s ability to access the dollar and the U.S. financial system under the JCPOA. The primary agencies responsible for administering and policing the United States’ sanctions program are the Departments of State and Treasury. Several State and Treasury Department officials testified before congressional committees concerning the relief provided under the JCPOA. For example, in July 2015, Treasury Secretary Jack Lew testified before the Senate Foreign Relations Committee that, under the JCPOA, Iran “will continue to be denied access to the [U.S.’s] financial and commercial market.” Later that same month, the Treasury Department’s Acting Under Secretary for Terrorism and Financial Intelligence, Adam Szubin, testified to the Senate Banking Committee: “Iranian banks will not be able to clear U.S. dollars through New York, hold correspondent account relationships with U.S. financial institutions, or enter into financing arrangements with U.S. banks.”

The message to Congress and the American people was clear: Iran was not given access to the U.S. financial system under the terms of the JCPOA.

U.S. government officials encouraged other countries to do business with Iran. Shortly after the P5+1 reached a deal with Iran in July 2015, officials from the Departments of State and Treasury traveled the globe meeting with foreign financial institutions to encourage business with Iran. Their purpose was to make clear that other countries could conduct transactions with Iran, as long as they avoided U.S. persons, the U.S. financial system, and U.S. sanctioned Iranians. In total, U.S. officials participated in over 200 of these “roadshows” in major cities such as London, Geneva, Tokyo, Berlin, Rome, and Paris. The roadshows amounted to the U.S. government telling the world that Iran was open for business, as long as the rest of the world left the United States out of it.

During these roadshows, U.S. officials also signaled that it would not aggressively enforce violations of the new sanctions regime. For example, during a roadshow in London in March 2015 with representatives from 10 major global financial institutions, the head of the U.S. Treasury Department’s Office of Foreign Asset Control (“OFAC”) assured attendees that “95 percent of the time OFAC sees an apparent violation it results in a simple warning letter or no enforcement action.” He explained OFAC would only take action in egregious situations.

Iran requested access to the U.S. dollar. Foreign banks had problems converting Iran’s assets. Just days after Implementation Day, Bank Muscat contacted OFAC seeking access to the U.S. dollar. The request related to the

Central Bank of Iran's ("CBI") desire to convert the \$5.7 billion in assets held by Bank Muscat in Omani rials to euros. Because the Omani rial's value is pegged to the U.S. dollar, the conversion through the U.S. financial system required two steps. First, the Omani rials had to be converted to U.S. dollars, and, second, the U.S. dollars would be converted to euros. But a conversion to U.S. dollars on behalf of the CBI was prohibited under U.S. sanctions. Other options existed to convert the funds from rials to euros without using the U.S. financial system. But using the U.S. dollar as an intermediary step was the most efficient means, even though U.S. sanctions prohibited it.

The inability to convert the funds held at Bank Muscat through the U.S. financial system frustrated key Iranian officials. On January 24, 2016, a lead Iranian negotiator, wrote to his U.S. State Department counterpart, complaining that Iran could not convert its assets as it requested. Confused by Iran's frustration, Treasury officials reviewed the JCPOA and determined it was consistent with Iran's position, allowing the Government of Iran to engage in "transfers," "foreign exchange (including Rial related transactions)," and the "purchase or acquisition by the Government of Iran of U.S. bank notes." After reviewing the JCPOA's relevant provisions, one Treasury official wrote in an email, "Yikes. It looks like we committed to a whole lot beyond just allowing the immobilized funds to settle out."

The Treasury Department issued a specific license granting Iran access to the U.S. financial system. Treasury Department officials began working on a specific license authorizing Bank Muscat's transaction. A specific license allows specified transactions to occur that would otherwise violate U.S. sanctions. On February 24, 2016, the Treasury Department issued a specific license to Bank Muscat to authorize the conversion of Iran's rials to euros through "any United States depository institution ... involved as a correspondent bank ... where such foreign exchange conversion provides an indirect benefit to persons subject to the jurisdiction of the Government of Iran." Iran was then free to use a U.S. bank to act as the intermediary (called a "correspondent bank") to convert its assets at Bank Muscat (Omani rials) through the correspondent bank account in the United States (U.S. dollars) to a designated bank in Europe (euros).

OFAC encouraged two U.S. correspondent banks to convert the funds. Even with the license, Iran needed a willing U.S. correspondent bank to convert the Omani rials. Bank Muscat maintained correspondent relationships with at least two U.S. banks. U.S. officials at OFAC contacted both of the banks to encourage them to convert the funds. Convincing a U.S. bank to convert the funds was crucial. To further encourage the banks, one U.S. government official wrote "I agree it would be a good idea to have [Secretary] Lew engage [the U.S. bank]. If they refuse we can suggest [Secretary] Kerry will call, which will drive them nuts."

Both U.S. banks eventually declined, primarily due to the unwillingness to take on the legal and compliance risk posed by the complex conversion, but also

reputational concerns in doing business with a comprehensively sanctioned country like Iran. Without a willing U.S. correspondent bank, Iran's assets remained at Bank Muscat.

Treasury and State Department officials sought other ways to move the funds. Discussions involved coordinating with the Federal Reserve Bank of New York, the Bank for International Settlements, and the Central Bank of Germany. None of these alternatives were effectuated.

The funds remained at Bank Muscat; Iranian officials remained frustrated. Iranian officials continued to express great frustration that funds could not be converted as requested. In March 2016, one Iranian official wrote to a Senior State Department Official that "OFAC is almost all the time invoked as the reason for other countries' unwillingness to let us have unhindered access to our funds abroad." That same Iranian official also wrote, "Please note that our inability to convert and use our bank deposits is causing challenges, particularly after the [Implementation Day] when we have expected free access and use of our funds abroad." In defense, the Senior State Department Official responded that the United States "exceeded our JCPOA commitments by OFAC's issuing a license to enable Bank Muscat to work with any U.S. financial institution to facilitate the conversation of assets in the banks from rials to other non-dollar currencies." That same Senior State Department Official also explained that the Bank Muscat transaction was "prohibited by U.S. sanctions that are still in place, and which we were clear we would not be removing as part of the JCPOA."

U.S. officials continued to assure Congress that Iran would not be able to access the U.S. financial system. As the Treasury and State Department worked behind the scenes to help Iran access the dollar, the message to Congress remained the same: The JCPOA did not allow Iran to access the U.S. financial system.

In March 2016, Senators Marco Rubio and Mark Kirk wrote to the Treasury Department to seek clarity on "new reports suggesting the Administration is working to give Iran access to the U.S. financial system or to dollar transactions outside of the U.S. financial system." The Treasury Department responded in June 2016:

To be clear, the U.S. Department of Treasury is not working on behalf of Iran to enable Iranian access to U.S. dollars elsewhere in the international financial system, nor are we assisting Iran in gaining access to dollar payment systems outside the U.S. financial system. The Administration has not been and is not planning to grant Iran access to the U.S. financial system.

Just three months earlier, the same agency issued a specific license for Iran to access to the U.S. financial system and the U.S. dollar.

Eventually, Iranian officials stopped complaining to the State Department about the inability to convert their rials into dollars. In the end, State Department

officials believed Iran moved the money slowly over time by converting small amounts of rials directly to euros without using the U.S. financial system. A January 2017 State Department email indicated that Iran still “expressed concern” that the Iranian fund issue remained fully unresolved.

II. FINDINGS OF FACTS AND RECOMMENDATIONS

Findings of Fact

- (1) **Under the JPOA, Iran transferred roughly \$13.4 billion in oil revenue assets to restricted accounts overseas.** Iran deposited \$8.8 billion of that oil revenue in one restricted account at Bank Muscat in Muscat, Oman.
- (2) **Following Implementation Day for the JCPOA, Iran began to seek the benefits of the deal, including requesting access to assets frozen in restricted accounts.** While other countries were free to do business with Iran, primary sanctions by the United States remained in place under the terms of the JCPOA. This meant it continued to be illegal for U.S. persons and entities to do business with Iranian persons and entities.
- (3) **Iran requested access to the U.S. financial system.** Three days after Implementation Day, Bank Muscat contacted OFAC on behalf of the Central Bank of Iran. Bank Muscat sought to convert \$5.7 billion in Omani rials into euros on behalf of Iran. Because the rial is pegged to the U.S. dollar, the most efficient conversion was with an intermediary step through a U.S. bank using U.S. dollars. However, other options to convert the rials into euros without using the U.S. dollar existed.
- (4) **U.S. government officials testified before Congress that Iran was not granted access to the U.S. financial system under the JCPOA.** In July 2015, Treasury Secretary Jack Lew testified before the Senate Foreign Relations Committee that, under the JCPOA, Iran “will continue to be denied access to the [U.S.’s] financial and commercial market.” Later that same month, the Treasury Department’s Acting Under Secretary for Terrorism and Financial Intelligence, Adam Szubin, testified to the Senate Banking Committee: “Iranian banks will not be able to clear U.S. dollars through New York, hold correspondent account relationships with U.S. financial institutions, or enter into financing arrangements with U.S. banks.” Ambassador Thomas Shannon from the State Department testified that there would not be an “exchange of

dollars inside the U.S. financial system” and that Iran would not have access to the larger U.S. financial system.

- (5) **The Treasury Department issued a specific license to authorize Iran’s assets at Bank Muscat to be converted to U.S. dollars through the U.S. financial system.** On February 24, 2016, OFAC issued a specific license to Bank Muscat authorizing Iranian assets worth roughly \$5.7 billion to flow through the U.S. financial system. The Bank Muscat specific license expired on February 28, 2017.
- (6) **For the duration of the specific license, Bank Muscat was authorized to use the U.S. financial system to convert additional future Iranian deposits, known as “fresh funds.”** One Bank Muscat executive wrote this was a “gigantic breakthrough which has assured Iran of almost full global financial inclusion.”
- (7) **U.S. government officials encouraged two U.S. banks to convert Iran’s rials.** Following the issuance of the specific license, OFAC contacted two U.S. banks to convert Iran’s rials to U.S. dollars. A State Department official even suggested that Secretary Kerry or Secretary Lew should contact the U.S. banks and encourage them to facilitate the conversion. Both banks declined to complete the transaction due to compliance, reputational, and legal risks associated with doing business with Iran.
- (8) **The Senior State Department Official negotiating implementation of the JCPOA understood giving Iran access to the U.S. financial system was prohibited by U.S. sanctions and outside the relief under the JCPOA or JPOA.** That official wrote to his Iranian counterpart that the specific license “exceeded” the U.S. commitments under the JCPOA. He continued that the Treasury Department authorized the transaction “as a gesture of support” to Iran.
- (9) **Treasury Department officials strongly considered issuing a general license authorizing all foreign financial institutions to conduct similar transactions using the U.S. financial system to convert Iranian assets.** One official at the National Security Council emailed concerns about linking the general license to the JCPOA. In response, a Treasury Department official disagreed and asserted a general license must be linked to the JCPOA and revoked in the event of a snapback. That general license was never issued once it was evident that U.S. financial institutions did not appear eager to conduct foreign currency exchanges on behalf of Iran.

- (10) **Materials prepared for Treasury Secretary Lew to testify before Congress about the JCPOA suggested he disclose the specific license to Bank Muscat “if pressed.”** In his testimony, Secretary Lew did not disclose the specific license authorizing Iran to access the U.S. financial system. In fact, the Treasury Department maintained Iran was not given access to the U.S. financial system, nor was the U.S. government working to give them access.
- (11) **When the two U.S. correspondent banks declined to convert the funds, other options were considered.** The other options considered included Bank Muscat coordinating with the Federal Reserve Bank of New York, the Bank for International Settlements, and the Central Bank of Germany. None of these options were effectuated.
- (12) **The State Department and Treasury Department held at least 200 meetings or “roadshows” around the world to encourage other countries to do business with Iran.** Treasury Department officials downplayed any potential future penalties or fines, stating that 95 percent of the time, OFAC sends a warning letter or takes no action. And at least one European regulator who attended an OFAC roadshow, commented that foreign financial institutions felt “political pressure” to conduct business with Iran and Iranian companies.
- (13) **Treasury Department officials proactively contacted foreign financial institutions to provide information about the JCPOA’s sanctions relief.** In one example, an OFAC compliance officer proactively contacted a foreign financial institution to make sure they “understood Iran sanctions relief.” The communication left the foreign financial institution confused, since that foreign financial institution “had no business with Iran.”
- (14) **Iran’s assets remained at Bank Muscat.** Despite issuing the specific license to allow Iran to access the U.S. financial system, Bank Muscat was unable to effectuate the conversion using the U.S. dollar. The State Department indicated Iran converted the funds in small increments using European banks and without accessing the U.S. financial system.

Recommendations

- (1) **Informed future negotiations with Iran.** The current Administration should be aware of the importance of Iran accessing the U.S. financial system in any future negotiations regarding sanctions relief with Iran. The Administration should brief congressional committees of jurisdiction

and oversight committees periodically and on request of the status of any future negotiations.

- (2) **Congress should require the Treasury Department to provide notice of any specific license to Congress.** The notice to Congress should be provided to all congressional committees of jurisdiction and oversight committees within a reasonable time prior to the license taking effect. The notice should, at minimum, include a copy of the specific license.
- (3) **Understand other sanctions relief granted to Iran.** The Treasury Department should immediately provide all JPOA and JCPOA related specific licenses and comfort letters to congressional committees of jurisdiction and oversight committees.
- (4) **Agencies should increase coordination with regard to sanctions.** The State and Treasury Departments should closely coordinate when discussing sanctions relief to ensure that State Department policy goals can be properly executed with Treasury Department tools, such as general or specific licenses.
- (5) **Increased policing of U.S. sanctions policies.** OFAC should effectively police U.S. sanctions and ensure the current sanctions regime is properly enforced. OFAC officials should also refrain from telling foreign persons and entities that violations of U.S. sanctions only result in an enforcement action five percent of the time.

III. BACKGROUND

A. United States' Sanctions Against Iran

United States' sanctions have been a “significant component of U.S. Iran policy for decades.”¹ “The United States has imposed restrictions on activities with Iran under various legal authorities since 1979, following the seizure of the U.S. Embassy in Tehran.”² While sanctions on Iran were partially lifted following the release of hostages in 1981, the United States continued to apply significant sanctions on Iran through a number of Executive Orders and statutory authorities.³

¹ Kenneth Katzman, Iran Sanctions, Cong. Research Service, at 1 (Apr. 18, 2018) (“Katzman”).

² *Iran Sanctions*, U.S. Dep’t of State, <https://www.state.gov/e/eb/tfs/spi/iran/index.htm>.

³ *See i.e.*, Exec. Order No. 12205 (Apr. 17, 1980); Exec. Order No. 12277 (Jan. 23, 1981); Exec. Order No. 12278 (Jan. 23, 1981); Exec. Order No. 12280 (Jan. 23, 1981); Exec. Order No. 12613 (Oct. 30, 1987); Exec. Order No. 12959 (May 9, 1995); Exec. Order No. 13059 (Aug. 19, 1997); Exec. Order No.

In 2010, a series of European Union and United Nations finance and trade-related sanctions also increased pressure on Iran’s economy as oil output dropped and Iran’s economy floundered.⁴ As the sanctions successfully pressured the Iranian economy, the United States undertook efforts to negotiate certain sanctions relief in exchange for concessions regarding Iran’s nuclear program.⁵

1. The Joint Plan of Action

On November 24, 2013, a group of countries known as the P5+1—China, France, Germany, Russia, the United Kingdom, and the United States—reached a preliminary understanding with Iran, which was identified as the Joint Plan of Action (“JPOA”).⁶ The U.S. State Department described the JPOA as the “first meaningful limits Iran has accepted on its nuclear program in close to a decade” and sought to constrain Iran’s nuclear program while providing the country with “sanctions relief [focused] on a limited number of commercial activities and associated services.”⁷ When announcing the deal, however, U.S. officials maintained that sanction reductions were “limited, temporary, targeted, and reversible.”⁸

The JPOA focused on freezing aspects of Iran’s nuclear program to provide time to negotiate a comprehensive understanding.⁹ If Iran complied and refrained from “any further advances of its [nuclear] activities,” the JPOA promised Iran certain, limited financial relief.¹⁰ Specifically, the sanctions relief involved several commercial sectors and activities, including “exports of petrochemical products; Iran’s purchase and sale of gold and precious metals; the provision of goods and services to Iran’s automotive sector; and the licensing of safety-of-flight inspections and repairs for Iranian civil aviation.”¹¹

13553 (Sept. 28, 2010); Exec. Order No. 13574 (May 23, 2011); Exec. Order No. 13590 (Nov. 20, 2011); Exec. Order No. 13599 (Feb. 5, 2012); Exec. Order No. 13606 (Apr. 22, 2012); Exec. Order No. 13622 (July 30, 2012); Exec. Order No. 13645 (June 3, 2013).

⁴ Katzman, at 56-60.

⁵ *Id.* at Summary (“The multilateral nuclear accord (Joint Comprehensive Plan of Action, or JCPOA) provides Iran broad relief from U.S., U.N., and multilateral sanctions on Iran’s civilian economic sectors, including U.S. secondary sanctions (sanctions on foreign firms that do business with Iran).”).

⁶ Press Release, *Overview of Temporary Suspension of Certain U.S. Sanctions Pursuant to the Initial Understanding Between the P5+1 and Iran*, U.S. Dep’t of State (Jan. 20, 2014) (*hereinafter* *Temporary Suspension*), <https://2009-2017.state.gov/r/pa/prs/ps/2014/01/220046.htm>.

⁷ *Id.*

⁸ Press Release, *Fact Sheet: First Step Understandings Regarding the Islamic Republic of Iran’s Nuclear Program*, White House (Nov. 23, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/11/23/fact-sheet-first-step-understandings-regarding-islamic-republic-iran-s-n>.

⁹ *Id.*

¹⁰ Kenneth Katzman & Paul Kerr, *Iran Nuclear Agreement*, Cong. Research Service, at 5 (Oct. 25, 2017).

¹¹ *Temporary Suspension*.

One component of the JPOA relief included giving Iran access to some of its oil revenues held outside Iran and outside the United States.¹² Between January 20, 2014 and July 20, 2014, Iran was given access to the oil revenue worth roughly \$4.2 billion through several installments.¹³ These installments released oil revenues held in countries such as Japan, South Korea, and India, after which they were transferred to Oman, Switzerland, or the United Arab Emirates.¹⁴ The JPOA also permitted “nearly \$15 billion of [Iran’s] revenues during [the JPOA] period [to] go into restricted overseas accounts.”¹⁵ These restricted accounts held Iranian funds “to establish financial channels to facilitate Iran’s import of certain humanitarian goods to Iran, payment of medical expenses incurred by Iranians abroad, payments of Iran’s UN obligations” and other negotiated payments.¹⁶

While the understanding was reached in November 2013, it was not implemented until January 20, 2014, with an initial expiration date of July 20, 2014.¹⁷ That deadline was extended five times until a comprehensive understanding was reached on July 14, 2015.¹⁸

2. The Joint Comprehensive Plan of Action

On July 14, 2015, following nearly 20 months of negotiations, the P5+1, the European Union (“E.U.”), and Iran came to an understanding on a Joint Comprehensive Plan of Action (“JCPOA”).¹⁹ The aim was to “ensure the exclusively

¹² Press Release, *Fact Sheet: First Step Understandings Regarding the Islamic Republic of Iran’s Nuclear Program*, White House (Nov. 23, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/11/23/fact-sheet-first-step-understandings-regarding-islamic-republic-iran-s-n>.

¹³ *Frequently Asked Questions Relating to the Temporary Sanctions Relief to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran*, U.S. Dep’t of Treasury (Jan. 20, 2014), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_faqs.pdf.

¹⁴ PSI BM – 000326.

¹⁵ Press Release, *Fact Sheet: First Step Understandings Regarding the Islamic Republic of Iran’s Nuclear Program*, White House (Nov. 23, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/11/23/fact-sheet-first-step-understandings-regarding-islamic-republic-iran-s-n>.

¹⁶ *Frequently Asked Questions Relating to the Temporary Sanctions Relief to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran*, U.S. Dep’t of Treasury (Jan. 20, 2014), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_faqs.pdf.

¹⁷ JCPOA, available at <https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/>.

¹⁸ Louis Charbonneau & Fredrik Dahl, *Iran warned of ‘last chance’ in nuclear talks after deadline missed*, Reuters (Jul. 18, 2014), <https://www.reuters.com/article/us-iran-nuclear/iran-warned-of-last-chance-in-nuclear-talks-after-deadline-missed-idUSKBN0FN27020140719>; George Jahn, *Iran Nuke Talks Face Obstacles Even With More Time*, Assoc. Press (Nov. 25, 2015), https://web.archive.org/web/20141129130025/http://hosted.ap.org/dynamic/stories/I/IRAN_NUCLEAR_TALKS?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2014-11-24-07-58-13. Michael R. Gordon, *Deal Reached on Iran Nuclear Program; Limits on Fuel Would Lesson With Time*, N.Y. Times (Jul. 14, 2015), <https://www.nytimes.com/2015/07/15/world/middleeast/iran-nuclear-deal-is-reached-after-long-negotiations.html>.

¹⁹ JCPOA, available at <https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/>.

peaceful nature of Iran’s nuclear program.”²⁰ The deal touted “the comprehensive lifting of all U.N. Security Council sanctions as well as multilateral and national sanctions related to Iran’s nuclear program ... including steps on access in areas of trade, technology, finance, and energy.”²¹ The JCPOA sought to “enable Iran to fully enjoy its right to nuclear energy for peaceful purposes under the relevant articles of the nuclear Non-Proliferation Treaty.”²²

Annex V of the JCPOA outlined a multi-step implementation plan that provided for a Finalization Day, an Adoption Day, an Implementation Day, a Transition Day, and an U.N. Security Council Resolution (“UNSCR”) Termination Day.²³ Implementation Day occurred on January 16, 2016, following the International Atomic Energy Agency’s (“IAEA”) and the U.S. Secretary of State’s verification and confirmation that Iran “implemented its key nuclear-related measures described in the JCPOA.”²⁴ Implementation Day marked the date on which the United States lifted its nuclear-related sanctions related to Iran, as specified in the JCPOA.²⁵

Iran’s nuclear-related commitments included restrictions on Iran’s enrichment capability.²⁶ For example, Iran was prohibited from installing “additional heavy water reactors or accumulati[ng] ... heavy water” for 15 years.²⁷ Iran was permitted to maintain a heavy water reactor in Arak, Iran, for the purpose of “peaceful nuclear research and radioisotopes production for medical and industrial purposes.”²⁸ Finally, Iran had to “allow the IAEA to monitor the implementation of the voluntary measures for their respective durations, as well as to implement transparency measures, as set out in this JCPOA and its Annexes.”²⁹

In return, the United States committed to lifting “all nuclear-related sanctions.”³⁰ This impacted a variety of U.S. secondary sanctions focusing on

²⁰ JCPOA, Preamble and General Provisions, at ii.

²¹ *Id.* at v.

²² *Id.* at iv. See also Carl Behrens, *Nuclear Nonproliferation Issues*, Cong. Research Service (Jan. 20, 2006) (“Under the terms of the [Treaty on the Nonproliferation of Nuclear Weapons], the five declared nuclear weapons states — the United States, the United Kingdom, Russia, France and China — agreed ‘not in any way to assist’ any nonweapons state to acquire nuclear weapons. They also agreed to reduce and eventually eliminate their own nuclear arsenals.”).

²³ JCPOA at Annex V.

²⁴ *Secretary of State’s Confirmation of IAEA Verification*, U.S. Dep’t of State (Jan. 16, 2016), <https://www.state.gov/e/eb/rls/othr/2016/251284.htm>; *JCPOA Implementation*, U.S. Dep’t of Treasury (Jan. 16, 2016), https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/jcpoa_implementation.aspx.

²⁵ *Id.*

²⁶ See *JCPOA*, Annex I.

²⁷ *Id.* at § 10.

²⁸ *Id.* at Annex I § 2.

²⁹ *Id.* at § 15.

³⁰ *Id.* at Annex II § 4.

Iranian economic sectors, including finance, banking, insurance, energy and petrochemical, shipping, shipbuilding, precious metals, software, and automobiles.³¹ Among the items included in the JCPOA sanctions relief package were the removal of “bilateral trade limitations on Iranian revenues held abroad, including limitations on their transfer.”³² The United States also “removed over 400 individuals and entities” from OFAC’s List of Specially Designated Nationals and Blocked Persons (SDN List), which included the Central Bank of Iran and additional Iranian financial institutions.³³

Notwithstanding this relief, primary U.S. sanctions impacting Iran generally remained in place. For example, Iran continued to be banned from directly accessing the U.S. financial system, including “U-Turn” transactions.³⁴ “U-Turns” are “transactions with non-Iranian foreign banks that were handling transactions on behalf of an Iranian bank.”³⁵ Before they were banned in 2008, U-Turn transactions were initiated by one non-U.S. financial institution and “passed through the U.S. financial system en route to another offshore, non-Iranian, non-U.S. financial institution.”³⁶

B. United States Sanctions Enforcement

Sanctions remain a critical tool in combatting national security threats and advancing foreign policy objectives. Several U.S. government agencies create, administer, and enforce sanctions. These agencies have separate and distinct roles, but together they establish U.S. policy. Two of the primary federal agencies tasked with administering and enforcing sanctions regimes are the Treasury Department and the State Department.

1. The United States Treasury Department

Congress established the Treasury Department in 1789³⁷ as the executive agency responsible for promoting economic prosperity and ensuring financial security.³⁸ The Treasury Department’s mission is to “maintain a strong economy

³¹ *Id.* at Annex II, §§ 4.1 to 5.1.3.

³² *Id.* at Annex II § 4.1.4.

³³ *Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day*, U.S. Dep’t of Treasury (Jan. 16, 2016), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf.

³⁴ *See, infra*, Sections C, G(1), & J. *See also* Katzman, at 29.

³⁵ Katzman, at 29.

³⁶ Press Release, *Treasury Revokes Iran’s U-turn License*, U.S. Dep’t of Treasury (Nov. 6, 2008), <https://www.treasury.gov/press-center/press-releases/Pages/hp1257.aspx>.

³⁷ *Act of Congress Establishing the Treasury Department*, U.S. Dep’t of Treasury, <https://www.treasury.gov/about/history/Pages/act-congress.aspx>.

³⁸ *Duties and Functions of the U.S. Department of the Treasury*, U.S. Dep’t of Treasury (Jan. 4, 2018), <https://www.treasury.gov/about/role-of-treasury/Pages/default.aspx>.

and create economic and job opportunities by promoting the conditions that enable economic growth and stability at home and abroad, strengthen national security by combatting threats and protecting the integrity of the financial system, and manage the U.S. Government's finances and resources effectively.”³⁹ The Treasury Department's wide range of responsibility reflects its central role in the U.S. economic and financial systems.

The Treasury Department also performs the critical national security role of implementing economic sanctions against foreign actors and entities.⁴⁰ Established in 2004, the Treasury Department's Office of Terrorism and Financial Intelligence is responsible for providing policy, strategy, and guidance concerning combatting terrorist financing and enforcing economic sanctions programs.⁴¹ The term “sanction” typically refers to comprehensively or selectively “using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.”⁴²

The Office of Foreign Assets Control (“OFAC”), within the Office of Terrorism and Financial Intelligence, reports directly to the Undersecretary for Terrorism and Financial Crimes.⁴³ OFAC is responsible for administering and enforcing economic and trade sanctions based on U.S. foreign policy and national security goals.⁴⁴ OFAC implements sanctions based on “[p]residential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction.”⁴⁵

OFAC focuses its targeting on sanctions that are “expected to generate the most impact in achieving [U.S.] national security and foreign policy goals.”⁴⁶ For example, on November 30, 2017, OFAC Director John Smith testified before the House Committee on Financial Services Subcommittee on Monetary Policy and Trade, “when deployed strategically and with precision, sanctions are a highly effective way of pressuring regimes and malign actors to change their behavior.”⁴⁷ Director Smith further asserted that:

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 31 U.S.C. § 312.

⁴² *Resource Center: Basic Information on OFAC and Sanctions*, U.S. Dep't of Treasury (Oct. 31, 2017), https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#basic.

⁴³ *Id.*

⁴⁴ *Terrorism and Financial Intelligence: Office of Foreign Assets Control (OFAC)*, U.S. Dep't of Treasury (Feb. 6, 2018), <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>.

⁴⁵ *Id.*

⁴⁶ Press Release, *Testimony of John E. Smith, Director of the Office of Foreign Assets Control*, U.S. Dep't of Treasury (Nov. 30, 2017), available at <https://www.treasury.gov/press-center/press-releases/Pages/sm0226.aspx>.

⁴⁷ *Id.*

[B]y freezing the assets of illicit actors, cutting them off from the U.S. financial system, and restricting their ability to interface with the international financial system, the choice to them becomes clear: either modify your behavior or accept the isolation and negative economic effects of remaining on our financial blacklist.⁴⁸

OFAC also has the ability to define “prohibited transactions,” which are “trade or financial transactions and other dealings in which U.S. persons may not engage unless authorized by OFAC or expressly exempted by statute.”⁴⁹ Additionally, OFAC can “block” assets by freezing the exercise of powers and privileges normally associated with the targeted property unless the owner receives OFAC’s authorization.⁵⁰

a. OFAC can Authorize Otherwise Prohibited Transactions using General Licenses and Specific Licenses

In certain situations, OFAC can authorize transactions otherwise prohibited by issuing general or specific licenses.⁵¹ A general license “authorizes a particular type of transaction for a class of persons without the need to apply for a license.”⁵² A specific license is “a written document issued by OFAC to a particular person or entity, authorizing a particular transaction in response to a written license application.”⁵³ Parties engaging in transactions pursuant to licenses “must make sure that all conditions of the licenses are strictly observed.”⁵⁴ General licenses are publicly available, whereas specific licenses are not.⁵⁵

In addition to issuing licenses, OFAC can also issue “comfort letters” that provide assurances that certain transactions are authorized by the Treasury Department or that the proposed transactions are not prohibited or sanctionable.⁵⁶ Comfort letters are designed to alleviate concerns of receiving penalties from the U.S. government for conducting certain transactions, but they do not provide an

⁴⁸ *Id.*

⁴⁹ *Resource Center: Basic Information on OFAC and Sanctions*, U.S. Dep’t of Treasury (Oct. 31, 2017), https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#basic.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *OFAC FAQs: General Questions*, U.S. Dep’t of Treasury (Apr. 12, 2018),

https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#licenses.

⁵⁶ *See* Letter from Eric Thorson, Inspector General, Dep’t of the Treasury, to Hon. Orrin Hatch, Chairman, S. Comm. on Finance (Nov. 10, 2016), <https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-CA-17-006%20Iran%20Payment%20Inquiry.pdf>.

authorization like a general or specific license.⁵⁷ Rather, a comfort letter provides the receiving party assurance that an action is not subject to sanctions.⁵⁸

2. The United States Department of State

The State Department also plays a critical role in creating and enforcing U.S. sanctions. The State Department's Deputy Assistant Secretary for Counter Threat Finance and Sanctions within the Bureau of Economic and Business Affairs is responsible for coordinating sanctions regimes, developing strategies for implementing specific aspects of sanctions regimes, providing foreign policy guidance to other bureaus and agencies, and promoting financial transparency.⁵⁹ The Economic and Business Affairs Bureau includes two sanctions-related offices: the Office of Economic Sanctions Policy and Implementation and the Office of Threat Finance Countermeasures.⁶⁰

The Office of Economic Sanctions Policy and Implementation is "responsible for developing and implementing foreign policy-related sanctions adopted to counter threats to national security posed by particular activities and countries."⁶¹ It focuses on building international support for economic sanctions, providing foreign policy guidance on sanctions implementation to the Treasury Department and the Department of Commerce, and working with Congress to draft legislation that advances U.S. foreign policy goals through sanctions.⁶² The goal is to enforce sanctions in a way that maximizes economic impact on the targeted entity while minimizing damage to U.S. economic interests.

The Office of Threat Finance Countermeasures is responsible for developing policies that seek to minimize the funding available to groups posing threats to U.S. interests and security.⁶³ The office develops policies that target groups that exploit illicit trade to finance operations against legitimate governments. It also

⁵⁷ *Id.*; See also *Comments and Recommendations for Guidance Pertaining to the Transfer Pricing of Related Party Guarantees*, American Bar Association, at 11 (Sep. 13, 2012), <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/091312comments.authcheckdam.pdf> (explaining that in the financial guarantee context, comfort letters are further down the "spectrum of enforceability.").

⁵⁸ Letter from Eric Thorson, Inspector General, Dep't of the Treas., to Hon. Orrin Hatch, Chairman, S. Comm. on Finance, at 8 (Nov. 10, 2016), <https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-CA-17-006%20Iran%20Payment%20Inquiry.pdf>.

⁵⁹ *Counter Threat Finance and Sanctions*, U.S. Dep't of State, <https://www.state.gov/e/eb/tfs/>.

⁶⁰ *Id.*

⁶¹ *Economic Sanctions Policy and Implementation*, U.S. Dep't of State, <https://www.state.gov/e/eb/tfs/spi/>.

⁶² *Id.*

⁶³ *Threat Finance Countermeasures*, U.S. Dep't of State, <https://www.state.gov/e/eb/tfs/tfc/index.htm>.

coordinates with a wide range of domestic agencies and international partners in pursuit of U.S. foreign policy and security objectives.⁶⁴

IV. FINDINGS OF FACT

This report details four principal findings. *First*, after the JPOA and the JCPOA, Iran collected assets worth billions of U.S. dollars in overseas restricted accounts from oil sales. Following the JCPOA's Implementation Day, the Central Bank of Iran requested to convert its funds in Omani rials located at Bank Muscat to euros. Bank Muscat wanted to use the U.S. financial system to efficiently complete the bulk conversion as an intermediary conversion to U.S. dollars between Omani rials and euros. *Second*, even though other options existed, Treasury Department officials drafted and issued a specific license authorizing Bank Muscat to convert the Iranian assets using the U.S. financial system. The specific license is at odds with senior administration officials' testimony before Congress that Iran would not receive access to the U.S. financial system. *Third*, Treasury Department officials encouraged at least two U.S. financial institutions to facilitate the conversion authorized by the specific license. Both financial institutions refused. And *fourth*, Bank Muscat eventually converted the Iranian assets in small amounts without using the U.S. financial system.

A. Iran Collected Billions in Overseas Restricted Accounts

As part of the JPOA and JCPOA negotiated sanctions relief, the United States permitted Iran access to its oil revenue worth roughly \$13.4 billion held in restricted accounts outside of Iran.⁶⁵ Iran ultimately distributed those funds to restricted accounts at several financial institutions outside both the United States and Iran—including Oman, Japan, South Korea, India, Switzerland, and the United Arab Emirates.⁶⁶ Bank Muscat, located in Muscat, Oman, received more than 65 percent of the total funds.⁶⁷

Between March 2015 and October 2015, Bank Muscat accepted approximately \$8.8 billion in JPOA-related oil revenue in 17 installments.⁶⁸ Bank Muscat also facilitated the repatriation of the equivalent of approximately \$2.4 billion in Emirati dirham banknotes by converting Omani rials to Emirati dirham banknotes.⁶⁹ Additionally, using the Bank Muscat assets, the Central Bank of

⁶⁴ *Id.*

⁶⁵ Briefing with the U.S. Dep't of Treasury (Sept. 13, 2017); Interview with Sandra Oudkirk, U.S. State Dep't, Bureau of Energy Resource, Deputy Assistant Sec'y (Oct. 17, 2017) (*hereinafter* Oudkirk Interview (Oct. 17, 2017)).

⁶⁶ PSI BM – 00326.

⁶⁷ Briefing with the U.S. Dep't of Treasury (Sept. 13, 2017).

⁶⁸ *Id.*

⁶⁹ PSI_BM_000596.

Oman provided approximately \$600 million worth of Omani rial banknotes to Iran and “facilitated several trade-related transactions on behalf of Iran.”⁷⁰

As of Implementation Day, Iran’s balance at Bank Muscat was approximately \$5.7 billion in Omani rials—the local currency.⁷¹

B. Bank Muscat Informed OFAC it Required the U.S. Financial System to Convert the Iranian Assets

Following Implementation Day, the CBI requested that Bank Muscat convert its assets at the bank from Omani rials to euros.⁷² This would not be a simple Omani rial to euro exchange. According to an Iranian official, to convert Omani rials to euros, the bank needed to use the U.S. dollar as a “bridge” or “leg.”⁷³ In other words, Bank Muscat would first have to sell Omani rials and buy U.S. dollars, and then sell those U.S. dollars to buy euros.⁷⁴ The purchase and sale of U.S. dollars in this case would therefore require a U.S. financial institution to complete the currency conversion.⁷⁵ The U.S. financial system remained off limits to Iran unless authorized by OFAC under existing law.⁷⁶ The relief specified in the JCPOA, however, did not include such access to the U.S. financial system.

Upon receiving the CBI’s request, Bank Muscat contacted U.S. government officials to seek permission to effectuate Iran’s requested conversion.⁷⁷ In approaching the U.S. government, Bank Muscat claimed it would be impossible to complete Iran’s requested conversion to euros without first changing the Omani rials to U.S. dollars.⁷⁸ According to a contemporaneous internal Treasury Department analysis, the foreign transaction could also be “cheaper and more efficient when financial institutions utilize the [U.S. dollar] to convert two non-[U.S. dollar] currencies.”⁷⁹ A Bank Muscat executive also expressed frustration that the

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² PSI-000046.

⁷³ PSI000456 (OFAC OFFICIAL 1 explained to a lead Iranian negotiator that “that there may be a dollar leg in most currency conversions” because Omani rial is “pegged” or fixed to the U.S. dollar); Oudkirk Interview (Oct. 17, 2017).

⁷⁴ PSI BM – 000341 (A Treasury Department memo describes how the proposed conversion would take place: “In this process, the purchase and/or sale of USD generally involves a U.S. financial institution, though the U.S. financial institution would have no actual knowledge or reason to know the identity of the Omani financial institutions’ client (including whether the client was subject to OFAC sanctions.”).

⁷⁵ *Id.*

⁷⁶ *See* Section C; Katzman, at 29 (“U.S. regulations ban Iran from direct access to the U.S. financial system”).

⁷⁷ Briefing with the U.S. Dep’t of Treasury (Sept. 13, 2017); Oudkirk Interview (Oct. 17, 2017).

⁷⁸ *Id.*

⁷⁹ PSI BM 000325.

primary sanctions banning the use of the U.S. financial institution created a “challenge to convert one currency to another.”⁸⁰

In this case, the primary hurdle was that the Omani rial is “pegged” to the U.S. dollar.⁸¹ In 1986, Oman created a fixed exchange rate and established a .38 Omani rial peg to the U.S. dollar.⁸² A draft Treasury Department background memorandum, as shown below, described the process for a foreign financial institution to exchange Omani rials to euros with a middle exchange using the U.S. dollar:

1. A client of the Omani financial institution requests an exchange of OMR to EUR and the Omani financial institution debits the client’s OMR account;
2. The Omani financial institution sells the OMR and buys USD in the interbank market, and the USD are deposited into the Omani financial institution’s USD account (generally held on the books of a U.S. financial institution);
3. In a separate transaction, the Omani financial institution sells USD and buys EUR in the interbank market;
4. The Omani financial institution then completes the transaction requested by its client by crediting the customer’s account with EUR.

In this process, the purchase and/or sale of USD generally involves a U.S. financial institution, though the U.S. financial institution would have no actual knowledge or reason to know the identity of the Omani financial institution’s client (including whether the client was subject to OFAC sanctions). Given the connection between the two conversions—which occur as a direct result of the sanctioned client’s request—it would be consistent with OFAC’s past practice to determine that the USD transactions involve the property or interests in property of, or represent a prohibited service provided from the United States to, the sanctioned client.

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Even before Implementation Day, Bank Muscat expressed difficulty in planning for the currency conversion to OFAC officials. For example, according to one Bank Muscat executive, “As early as last Thursday 14th Jan[uary] bank representatives communicated with OFAC officials” about currency conversion troubles.⁸⁴ The bank’s executive made “several attempts to get a response from OFAC” but was unable to “reach any one in their office.”⁸⁵ While it was initially perceived as a “very straight forward issue” by a lead Iranian negotiator for

⁸⁰ PSI BM 000296.

⁸¹ PSI BM 000325-000326.

⁸² Luiz Lino, *Sustaining the GCC Currency Pegs: The Need for Collaboration*, Brookings (Feb. 19, 2018), <https://www.brookings.edu/research/sustaining-the-gcc-currency-pegs-the-need-for-collaboration/>.

⁸³ PSI BM 000326.

⁸⁴ PSI BM 000296-000297.

⁸⁵ PSI BM 000297.

financial issues, the billions held by Bank Muscat eventually required actions by both the Treasury Department and State Department over the next several months.⁸⁶

C. Treasury Department Officials Assured Congress that Iran would not Receive Access to the U.S. Financial System

In the year leading up to Implementation Day, congressional committees held hearings to discuss the scope and nature of the financial relief that the terms of the JCPOA would provide to Iran. On at least four occasions, administration officials publicly stated that Iranian access to the U.S. financial system was not part of the relief specified in the JCPOA.

First, on July 23, 2015, U.S. Treasury Secretary Jack Lew testified before the U.S. Senate Committee on Foreign Relations concerning the nature of the potential sanctions relief contained in the JCPOA. Secretary Lew stated that the JCPOA would “suspend nuclear-related secondary sanctions,” but that “a number of key sanctions will remain in place.”⁸⁷ Specifically, Secretary Lew explained that “Iranian banks will not be able to clear U.S. dollars through New York, hold correspondent account relationships with U.S. financial institutions, or enter into financing arrangements with U.S. banks.”⁸⁸ He further testified that “Iran, in other words, will continue to be denied access to the world’s largest financial and commercial market.”⁸⁹

Second, on August 5, 2015, Adam Szubin, the Acting Under Secretary of the Treasury for Terrorism and Financial Intelligence, testified before the U.S. Senate Committee on Banking, Housing, and Urban Affairs that “Iran will be denied access to the world’s most important market and unable to deal in the world’s most important currency,” referring to the U.S. financial system and the U.S. dollar.⁹⁰ He also stated that “Iranian banks will not be able to clear U.S. dollars through New York, hold correspondent account relationships with U.S. financial institutions, or enter into financing arrangements with U.S. banks.”⁹¹

⁸⁶ PSI_BM_000647.

⁸⁷ *Iran Nuclear Deal, Hearing Before the S. Comm. On Foreign Relations*, 114th Cong. (2015) (testimony of Jacob J. Lew, Secretary, U.S. Department of the Treasury); Press Release, Testimony of Treasury Secretary Jacob J. Lew before the Senate Foreign Relations Committee on the Iran Nuclear Agreement, U.S. Dep’t of Treasury (July 23, 2015).

⁸⁸ *Id.*

⁸⁹ Press Release, Testimony of Treasury Secretary Jacob J. Lew before the Senate Foreign Relations Committee on the Iran Nuclear Agreement, U.S. Dep’t of Treasury (July 23, 2015).

⁹⁰ *Assessing the Nature, Implications, and Potential Consequences of Iran Sanctions Relief that are Proposed to be Provided to Iran in Return for the Nuclear-Related Commitments Set Forth in the Joint Comprehensive Plan of Action*, 114th Cong. (2015), (oral testimony of Adam Szubin, Acting Under Secretary of Treasury for Terrorism and Financial Crimes, U.S. Department of the Treasury).

⁹¹ *Id.*

Third, in testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs on September 17, 2015, Mr. Szubin again assured lawmakers that “no Iranian banks can access the U.S. financial system, not to open an account, not to purchase a security, and not even to execute a dollarized transaction where a split-second’s worth of business is done in a New York clearing bank.”⁹²

Fourth, on September 16, 2015, Mr. Szubin gave a public address to the Washington Institute for Near East Policy where he discussed the sanctions that would remain after Implementation Day.⁹³ There, Mr. Szubin stated:

Iran will not be able to open bank accounts with U.S. banks, nor will Iran be able to access the U.S. banking sector, even for that momentary transaction to, what we call, dollarize a foreign payment. ... That is not in the cards. That is not part of the relief offered under the JCPOA.⁹⁴

Both Secretary Lew and Mr. Szubin testified that Iran would not have access to the U.S. financial system. This public testimony mirrored what OFAC and State Department officials told foreign financial institutions and other investors around the world, as detailed in the following section.

D. OFAC Repeatedly Warned Other Foreign Financial Institutions that the U.S. Financial System Remained Off Limits to Iran at “Roadshows”

Soon after the P5+1 reached an understanding on the JCPOA’s terms on July 14, 2015, Treasury and State Department officials began meeting with foreign financial institutions and investors and other business development organizations concerning the details of the sanctions relief in the JCPOA.⁹⁵ These “roadshows,” as they became commonly known, provided OFAC officials opportunities to provide information to foreign financial institutions concerning the details of the sanctions relief under the JCPOA.⁹⁶ OFAC officials repeatedly advised that the U.S. financial system remained off limits for foreign financial institutions conducting business on

⁹² *Nomination of Adam J. Szubin, of the District Of Columbia, to be Under Secretary for Terrorism and Financial Crimes, Department Of The Treasury*, 114th Cong. (Sept. 17, 2015) (oral testimony of Adam Szubin, Acting Under Secretary of Treasury for Terrorism and Financial Crimes, U.S. Department of the Treasury).

⁹³ *Beyond the Vote: Implications for the Sanctions Regime on Iran*, Sep. 16, 2015, <https://www.washingtoninstitute.org/uploads/Documents/other/SzubinTranscript20150916-v2.pdf>.

⁹⁴ *Id.*

⁹⁵ PSI000516 (A Treasury Department official noted: “The most important meeting we’ve had thus far was a roundtable with over 20 representatives from at least 10 major financial institutions. We also met with UK regulators as well as industry groups.”).

⁹⁶ Briefing with U.S. Dep’t of Treasury (May 5, 2016); Briefing with U.S. State Dep’t (May 5, 2016).

behalf of Iran.⁹⁷ However, as explained below, those same officials also disclaimed jurisdiction over bulk purchases of U.S. dollars held abroad and downplayed the likelihood of any future penalties or fines.

Both Treasury and State Department officials viewed these roadshows as an effective way to convey the JCPOA's relief and invested in sending officials around the world.⁹⁸ From August 6, 2015, to July 12, 2016, Treasury and State Department officials organized and participated in over 200 roadshows in various cities across the world including but not limited to Seoul, Geneva, London, Tokyo, Berlin, Dubai, Muscat, Rome, Paris, Helsinki, Stockholm, Mumbai, New Delhi, and Brussels.⁹⁹

The intended audience for these meetings was typically foreign financial institutions. And one of the most asked questions at these meetings concerned details about access to the U.S. dollar. Treasury Department meeting notes document that foreign financial institutions frequently asked about dollar clearing through the U.S. financial system.¹⁰⁰ Dollar clearing is the “process of transmitting, reconciling, and in some cases, confirming transactions” by using the U.S. dollar.¹⁰¹ To address the dollar clearing issue, an OFAC official “laid down two bright line rules, explaining that for non-US persons the only restrictions are: (1) don’t deal with US person[s] or [the US] financial system, [and] (2) don’t do business with someone on the SDN list.”¹⁰²

U.S. government officials repeated this particular advice—to **not** use the U.S. financial system for transactions involving Iran—multiple times to bankers and business development leaders in countries including Switzerland, England, and Germany.¹⁰³ For example, meeting notes taken during a March 2016 roadshow in Switzerland state that John Smith, then the Treasury Department’s OFAC Director, reiterated the “*Rules of the Road for non-U.S. entities:*”

⁹⁷ Interview with John Smith, U.S. Dep’t of Treasury, Office of Foreign Assets Control, Acting Director (Oct. 17, 2017) (*hereinafter* Smith Interview (Oct. 17, 2017)); Briefing with U.S. Dep’t of Treasury (May 5, 2016).

⁹⁸ Briefing with U.S. Dep’t of Treasury (May 5, 2016); Briefing with U.S. State Dep’t (May 5, 2016).

⁹⁹ U.S. Dep’t of Treasury Production to the Subcommittee (July 15, 2016).

¹⁰⁰ PSI000515.

¹⁰¹ Alexandra Merle Huet, *Overview of the U.S. Payments, Clearing and Settlement Landscape*, Fed. Reserve Bank of New York, (May 11, 2015), <https://www.newyorkfed.org/medialibrary/media/banking/international/03.Overview-US-PCS-landscape-Merle.pdf>.

¹⁰² PSI000516; *Specially Designated Nationals (SDNs) and the SDN List*, U.S. Dep’t of Treasury (May 15, 2018), https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_lists.aspx (“OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called ‘Specially Designated Nationals’ or ‘SDNs.’”).

¹⁰³ PSI000560; PSI000516; PSI000515.

- *Rules of the Road for non-U.S. entities.* Acting OFAC Director Smith provided two general rules of the road with respect to the remaining U.S. sanctions on Iran: (1) don't involve the U.S. financial system or U.S. persons, and (2) don't do business with SDNs.

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However, at the same time, the Treasury Department was quick to note that Iranian access to the U.S. dollar was not completely prohibited. For example, according to a Treasury Department summary of the meeting, at one roadshow meeting in Hong Kong, “bankers also asked about the ability to provide bulk U.S. dollar bank notes to Iran and how that would be viewed by OFAC.”¹⁰⁵ OFAC officials “indicated that the sale of U.S. dollar bank notes is authorized, but cautioned that offering U.S. dollar bank notes to Iran may involve an indirect service to an Iranian person which could violate the Iran Transactions and Sanctions Regulations.”¹⁰⁶

In addition to disclaiming jurisdiction over U.S. dollars held abroad by non-U.S. persons, OFAC officials also downplayed the likelihood of any future penalties or fines. OFAC roadshow notes document how U.S. government officials signaled to foreign entities that OFAC would rarely bring legal action or level fines for arranging financial transactions with Iranian individuals or entities. For example, a State Department email explained “the most important” roadshow was in London with “over 20 representatives from at least 10 major financial institutions” and U.K. regulators. At that roadshow, according to meeting notes, Mr. Smith told the audience:

[A] really good way of reassuring people about OFAC enforcement, first by clarifying the egregious nature of the behavior that led to the big fines on European banks and, more importantly, by informing them that 95% of the time OFAC sees an apparent violation it results in a simple warning letter or no enforcement action.¹⁰⁷

In an interview with the Subcommittee, Mr. Smith further explained that the Treasury Department only has the resources to focus on egregious violations.¹⁰⁸

Despite “encouraging words” from OFAC and the State Department, many international banks feared transacting with Iran due to “remaining uncertainties”

¹⁰⁴ PSI000560.

¹⁰⁵ PSI000411.

¹⁰⁶ *Id.*

¹⁰⁷ PSI000516.

¹⁰⁸ Smith Interview (Oct. 17, 2017).

and “significant operating risks,” according to a public report.¹⁰⁹ In fact, prior to an “intense” Germany roadshow, at least some attendees had the perception that “State and Treasury were delivering different messages on sanctions relief.”¹¹⁰ U.K. regulators also later expressed that banks were frustrated about “hearing different things from different parties” and, that at least some banks felt “political pressure” to “get back in” business with Iran.¹¹¹

OFAC even conducted proactive outreach to foreign financial institutions that never sought compliance advice from the Treasury Department. This outreach provided information on the JCPOA-related sanctions relief and compliance with remaining sanctions. In one instance, a compliance officer for a foreign financial institution called and asked an OFAC official why he received an email regarding Iran when the financial institution “had ‘no business with Iran.’”¹¹² The OFAC official explained that OFAC proactively contacted the financial institution because while “banks set their own policies based on their individual risk appetite, [OFAC] wanted to make sure that [the] head office understood the Iran sanctions relief, and [that OFAC was] available to answer any questions they might have.”¹¹³ The OFAC official continued:

I asked him to make sure that head office understands that with the lifting of the Iran secondary sanctions, non-U.S. persons are permitted to do business with Iran keeping in mind that sanctions remain on transacting with SDNs, and that Head Office’s transactions with Iran should not be routed through the U.S.¹¹⁴

After the roadshows, OFAC fielded and responded to follow-up inquiries regarding dollar clearing. For example, one OFAC compliance official received a follow-up question after an OFAC roadshow asking specifically about dollar clearing using the U.S. financial system.¹¹⁵ The OFAC compliance official wrote in an email:

Please note, however, that the U.S. primary embargo remains in place, and it remains prohibited for non-U.S. persons to send Iran-related transactions to or through the United States financial system that are prohibited pursuant to the Iranian Transactions Sanctions Regulations,

¹⁰⁹ David Brunnstrom, *Kerry Seeks to Soothe European Bank Nerves Over Iran Trade*, Reuters (May 12, 2016), <https://www.reuters.com/article/us-iran-banks-kerry/kerry-seeks-to-soothe-european-bank-nerves-over-iran-trade-idUSKCN0Y300J>.

¹¹⁰ PSI000515.

¹¹¹ PSI000513.

¹¹² PSI000419.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *See* PSI000423.

or to involve a U.S. person in the transaction, unless the transaction is exempt from regulation or authorized by OFAC.¹¹⁶

The OFAC compliance official continued, “Transactions in [euros], [British Pounds], and other currencies that do not clear through the U.S. financial system are generally not problematic unless they involve the foreign branch of a U.S. financial institution (e.g. Citibank London, JPM Chase Paris, etc.).”¹¹⁷ Again, even after roadshows, OFAC guidance indicated that the U.S. financial system remained off limits.

While roadshows provided OFAC officials opportunities to alleviate concern about financial penalties or fines, those same officials also repeatedly reiterated that the U.S. financial system remained off limits—even for foreign financial institutions conducting business on behalf of Iran.¹¹⁸ This public guidance, however, is in contrast to the actions taken behind the scenes by Treasury and State Department officials to grant Bank Muscat access to the U.S. financial system on behalf of Iran.

E. U.S. and Iranian Officials Discussed the Iranian Assets at Bank Muscat

The \$5.7 billion worth of Iranian assets held at Bank Muscat remained effectively trapped after Implementation Day. The Iranian government viewed the Bank Muscat conversion issue as a major obstacle and as a failure by the United States to adhere to the terms of the JCPOA.¹¹⁹ According to one high level Iranian negotiator, Iran “expected and understood” that the relief provided by the JCPOA would secure Iran’s “right of conversion without any qualifications and conditions.”¹²⁰ The failed currency conversion was a serious stumbling block just days after the JCPOA’s Implementation Day.

On January 24, 2016, a lead Iranian negotiator wrote to several State Department and OFAC officials expressing the need to complete the Bank Muscat conversion.¹²¹ He stated, “Please note that our inability to convert and use our bank deposits is causing challenges, particularly after the [Implementation Day] when we have expected free access and use of our funds abroad.”¹²² The Iranian negotiator continued, “Every body [sic] here is surprised and confused about the underlying

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*; Smith Interview (Oct. 17, 2017).

¹¹⁹ Briefing with the U.S. Dep’t of Treasury (Sept. 13, 2017).

¹²⁰ CDP-2017-00018-00021.

¹²¹ PSI BM – 000310; Memorandum from The Law Library of Congress, Global Legal Research Center to the Chairman of the Permanent Subcommittee on Investigations (Mar. 12, 2018) (on file with the Subcommittee).

¹²² PSI BM – 000310.

reasons so much that my boss intended to raise the issue with Dr. Zarif.”¹²³ Dr. Zarif is the Iranian Minister of Foreign Affairs.¹²⁴ He ended his email by offering to elevate the situation: “If you think it helps for [Dr.] Zarif to talk to Secretary Kerry, please advise.”¹²⁵ OFAC OFFICIAL 1 replied that OFAC was “aware of the urgency of the situation and are discussing it.”¹²⁶

In a separate internal Treasury Department email chain discussing possible solutions to this issue, OFAC OFFICIAL 2 requested research to help describe “the JCPOA relief we’ve committed to.”¹²⁷ OFAC OFFICIAL 1 provided OFAC OFFICIAL 2 and other Treasury Department officials with excerpts of “language from the JCPOA with respect to our commitments” that she thought would be applicable to the Bank Muscat conversion issue.¹²⁸ She highlighted the JCPOA’s preamble: “The E3/EU+3 will refrain from imposing discriminatory regulatory and procedural requirements in lieu of the sanctions and restrictive measures covered by this JCPOA.”¹²⁹ OFAC OFFICIAL 1 also cited other sections of the JCPOA’s main text and Annex II regarding financial and banking measure relief.¹³⁰ She also included the preamble’s section viii that states the parties “refrain from any action inconsistent with the letter, spirit and intent of this JCPOA that would undermine its successful implementation.”¹³¹ Finally, OFAC OFFICIAL 1 cited the JCPOA’s Annex II provisions concerning “Financial and Banking Measures:”

7.2. Financial and banking measures [fn] (See Sections 4.1.1 to 4.1.7)

Engage in activities, including financial and banking transactions, with the Government of Iran, the Central Bank of Iran, Iranian financial institutions and other Iranian persons specified in Attachment 3 to this Annex, including the provision of loans, transfers, accounts (including the opening and maintenance of correspondent and payable through accounts at non-U.S. financial institutions), investments, securities, guarantees, foreign exchange (including Rial related transactions), letters of credit and commodity futures or options, the provision of specialised financial messaging services and facilitation of direct or indirect access thereto, the purchase or acquisition by the Government of Iran of U.S. bank notes, and the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt. [fn]

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After receiving OFAC OFFICIAL 1’s email detailing the relevant JCPOA language, OFAC OFFICIAL 2, apparently not fully comprehending the nature and scope of the JCPOA’s financial relief, replied:

¹²³ *Id.*

¹²⁴ Islamic Republic of Iran, *About Us*, Ministry of Foreign Affairs (2018), <http://en.mfa.ir/#/about>.

¹²⁵ PSI BM – 000310.

¹²⁶ *Id.*

¹²⁷ PSI BM – 000319.

¹²⁸ PSI BM – 000317.

¹²⁹ *Id.*

¹³⁰ PSI BM – 000317-000318.

¹³¹ PSI BM – 000318.

¹³² *Id.*

FW: Request for Clarification

From: OFAC OFFICIAL 2 [REDACTED]
To: [REDACTED] <[REDACTED]@treasury.gov>, [REDACTED]
<[REDACTED]@treasury.gov>
Date: Mon, 25 Jan 2016 11:12:44 -0500

Yikes. It looks like we committed to a whole lot beyond just allowing the immobilized funds to settle out.

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Two days later, with the Bank Muscat issue still unresolved, a State Department official received a proposal to host an Omani delegation in Washington, D.C., who “very urgently want to speak to officials on the U.S. side about how to release they [sic] money they hold to the Iranians.”¹³⁴ The State Department official ended the email by stating he expected “the delegation to be reasonably high-level.”¹³⁵ OFAC OFFICIAL 1 summarized the current state of the currency conversion in an email excerpted below:

CLOSE HOLD. Based on what we have heard from the Iranians, the issue relates to the GOI funds that are held at Bank Muscat in Oman and that the Iranians are trying to buy Euros with (this week). We are well aware of the issue, met with Adam, Danny, and Jennifer last week and we've been working on the issue through the weekend. Adam has engaged with JIL as well who provided guidance and OFAC Compliance is taking the lead on resolving this. The issue is that in order to get Euros with Rials, they need to do a conversion into USD which will likely transit the US financial system.

The Iranians have been emailing me daily on this issue and are stating they would raise with Zarif to raise with Kerry. We hope to resolve the issue shortly and hopefully the trip to DC will not be necessary.

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In early February 2016, a lead Iranian negotiator again wrote OFAC OFFICIAL 1 stating that “every body [sic] concerned at the CBI [Central Bank of Iran] is getting already frustrated about the time it has taken to convert one currency to another currency other than the US\$.”¹³⁷ The Iranian negotiator reiterated that two weeks had elapsed since he first raised the issue with OFAC.¹³⁸ State and Treasury Department officials, however, assured Bank Muscat and the Iranian government that the U.S. government was working on finding a solution to the currency conversion problem.¹³⁹

¹³³ PSI_BM_000317.

¹³⁴ PSI_BM_000669.

¹³⁵ *Id.*

¹³⁶ PSI_BM_000668.

¹³⁷ PSI_BM_000631.

¹³⁸ *Id.*

¹³⁹ PSI000456 (As OFAC OFFICIAL 1 wrote to an Iranian negotiator, “While our priority has been to address the Bank Muscat issue in the short term, we are exploring how to address this issue in the future.”); PSI000422 (The Iranian negotiator also later wrote to OFAC, “I also understand that a

F. Treasury Department Officials Drafted a Specific License Authorizing the Use of the U.S. Financial System

As the Iranian assets remained at Bank Muscat, State Department, Treasury Department, and other U.S. government officials devised a solution that would allow the currency conversion using the U.S. financial system. OFAC officials began drafting a specific license authorizing the conversion of the funds using the U.S. financial system.¹⁴⁰

As OFAC drafted the specific license, there was an internal discussion at OFAC concerning how to describe the assets held by Bank Muscat. For example, one OFAC official inquired if the funds that “hit the U.S. institutions” were to be classified as Bank Muscat’s funds “rather than any Iranian person’s funds.”¹⁴¹ However, Treasury and State Department officials in several emails referenced the funds as “Iranian assets.”¹⁴² OFAC OFFICIAL 1, for example, wrote that she suspected the “GOI [government of Iran] will be moving all their money out of BM [Bank Muscat] pretty quickly anyway.”¹⁴³

While OFAC worked to complete the specific license, Iran continued to pressure the United States concerning its funds at Bank Muscat. For example, Foreign Minister Zarif sent a letter to Secretary Kerry expressing dissatisfaction with the delays with Bank Muscat.¹⁴⁴ Secretary Kerry and Foreign Minister Zarif were even scheduled to meet to address the Bank Muscat issue, among other topics.¹⁴⁵ To prepare Secretary Kerry, on February 10, 2016, OFAC OFFICIAL 1 drafted the below talking points, in pertinent part:

team from Oman is visiting you next week to finalize resolution of the long outstanding ‘conversion’ issue.”).

¹⁴⁰ As background, the Treasury Department can issue both specific and general licenses. A general license typically “authorizes a particular type of transaction for a class of persons without the need to apply for a license.” A specific license, on the other hand, is “a written document issued by OFAC to a particular person or entity, authorizing a particular transaction in response to a written license application.” *Resource Center: Basic Information on OFAC and Sanctions*, U.S. Dep’t of Treasury (Oct. 31, 2017), https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#basic.

¹⁴¹ PSI_BM_000521.

¹⁴² *Id.* (“The CBI [Central Bank of Iran] has requested to convert a portion of its funds at Bank Muscat to euro (EUR).”); PSI_BM_000560 (“I suspect the GOI [Government of Iran] will be moving all their money out of BM pretty quickly anyway.”); CDP-2017-00018-00021 (“OFAC informed Bank Muscat and the Central Bank of Oman today that they have a license to convert Iranian assets in its accounts to Euros through the US financial system. Hope this helps.”).

¹⁴³ PSI_BM_000560.

¹⁴⁴ PSI_BM_000584.

¹⁴⁵ PSI_BM_000583.

- **Bank Muscat Issue**

OFAC is in the final phases of discussions with Bank Muscat to issue a license that will allow Bank Muscat to proceed with the transactions requested by the Central Bank of Iran. OFAC has been on the phone with Bank Muscat yesterday and today and is waiting to hear back from Bank Muscat on a final request from Bank Muscat before issuing the license. In addition, OFAC's Acting Director is meeting next Tuesday with the Executive President of the Central Bank of Oman and the Chief Executive of Bank Muscat.

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Susan Rice, National Security Adviser, then forwarded the information directly to Secretary Kerry.¹⁴⁷

On February 23, 2016, the Central Bank of Iran requested Bank Muscat move “significant” amounts of money in two separate payment requests to two different foreign financial institutions.¹⁴⁸ Bank Muscat would not comply with the Central Bank of Iran’s request until it had the specific license.¹⁴⁹ That same day, the Senior State Department Official stressed that Treasury Department officials should “not hold back” the license as leverage on other issues as there would be other opportunities in the future.¹⁵⁰

In addition to the specific license, both State and Treasury Department officials had ongoing discussions about potentially issuing a general license. Discussions contemplated authorizing a general license for the “conversion of two non-USD currencies through the limited use of the USD as an intermediate currency.”¹⁵¹ Indeed, an Iranian official requested a general license to avoid having to go through this “painstaking process every time [Iran] need[s] to convert our assets into a currency other than U.S. dollar.”¹⁵²

OFAC officials also worked on crafting a general license during the same time as the specific license. Mr. Smith indicated in an email to the State Department that a general license would prevent giving one bank and country an unfair advantage.¹⁵³ Mr. Smith even contemplated withholding the specific license until OFAC issued the general license, but leaned towards “issuing the specific license ... and resolving that urgent issue.”¹⁵⁴ In March 2016, after certain U.S.

¹⁴⁶ *Id.*

¹⁴⁷ CDP-2017-00018-000115]; U.S. State Dep’t email to the Subcommittee (Mar. 27, 2018) (on file with the Subcommittee) (State confirmed the receiving email account was “issued to Senator Kerry while he was Secretary”); *Biography: Ambassador Susan Rice*, White House (2016), <https://obamawhitehouse.archives.gov/blog/author/ambassador-susan-rice>.

¹⁴⁸ PSI BM – 000389.

¹⁴⁹ *Id.*

¹⁵⁰ CDP-2017-00018-000122.

¹⁵¹ PSI_BM_000477.

¹⁵² CDP-2017-00018-00021.

¹⁵³ PSI_BM_000715.

¹⁵⁴ *Id.*

correspondent banks were reluctant to complete the currency conversion, as discussed in more detail later, OFAC OFFICIAL 2 expressed concerns about the potential effectiveness of a general license.¹⁵⁵ OFAC OFFICIAL 1 stated that OFAC was trying to determine whether “the [General License] in its current iteration [was] viable in that we want to make sure that the [General License] is effective and used.”¹⁵⁶ One month later, in April 2016, OFAC indicated it was not issuing a general license.¹⁵⁷

G. The Treasury Department Issued a Specific License to Convert “Iranian Assets” through the “U.S. Financial System”

After Bank Muscat and an Iranian official expressed concern that Bank Muscat could not convert the Iranian assets without using the U.S. financial system, Treasury Department officials took measures to authorize such a conversion. Despite recognizing that “such transactions are prohibited by U.S. sanctions that are still in place, and which [the U.S. government was] clear [it] would not be removing as part of the JCPOA,” on February 24, 2016, the Treasury Department, in coordination with the State Department and the National Security Council (“NSC”), issued specific license No. IA-2016-325832-1 to Bank Muscat.¹⁵⁸

On February 23, 2016, OFAC and State Department officials discussed over email the specific license from the Treasury Department to Bank Muscat to authorize the transaction using the U.S. financial system. One Senior State Department Official wrote, “I’d heard yesterday that license approval of the FOREX [or foreign exchange] arrangement for Bank Muscat is imminent. [An Iranian official] reports Bank Muscat continues to block the conversion because it says that the arrangement has not been approved.”¹⁵⁹ Mr. Smith responded that after discussions with the National Security Council, the specific license would be issued the next day.¹⁶⁰

The specific license explicitly permitted not only Bank Muscat, but its foreign exchange counterparties and “any United States depository institution or United States registered broker or dealer in securities involved as a correspondent bank” to engage in the conversion of the funds at issue.¹⁶¹ Under “Section 1—Authorization,” the specific license permitted those entities:

¹⁵⁵ PSI_BM_000623.

¹⁵⁶ PSI_BM_000621.

¹⁵⁷ CDP-2017-00018-00002 (OFAC later informed Oman “that they have no such plans to issue any general license” that would allow all banks to perform the type of transaction authorized by Bank Muscat’s specific license).

¹⁵⁸ CDP-2017-00018-00015; PSI000478.

¹⁵⁹ CDP-2017-00018-00045.

¹⁶⁰ *Id.*

¹⁶¹ PSI000479.

[T]o engage in any transactions necessary to allow the conversion of funds held at Bank Muscat in a non-U.S. dollar (USD) currency into a different non-USD currency where such foreign exchange conversion provides an indirect benefit to persons subject to the jurisdiction of the Government of Iran, including persons whose property and interests in property are blocked solely pursuant to Executive Order 13599...¹⁶²

The specific license detailed precisely how the currency conversion would occur:

- (1) Bank Muscat sells a non-USD currency and buys USD from a non-U.S. foreign exchange counterparty in the interbank market in its own name;
- (2) the non-U.S. foreign exchange counterparty delivers the USD to a Bank Muscat account maintained at a United States depository institution or United States registered broker or dealer in securities;
- (3) Bank Muscat sells the USD and buys a different non-USD currency from a non-U.S. foreign exchange counterparty in the interbank market in its own name; and
- (4) that non-U.S. foreign exchange counterparty delivers the different non-USD funds into a foreign currency account Bank Muscat maintains on the books of a non-U.S., non-Iranian financial institution located in a jurisdiction in which the funds can be used in the local payment system, as described in the Application.¹⁶³

The specific license was intended to alleviate the significant pressure Iranian officials raised with both State and Treasury Department officials. And at least two Treasury Department OFAC compliance officers expressed relief once it was issued, stating:

¹⁶² *Id.*

¹⁶³ *Id.*

RE: Call with OFAC Acting Director John Smith

From: "[REDACTED]@treasury.gov">
To: "[REDACTED]@treasury.gov">
Date: Wed, 24 Feb 2016 17:25:36 -0500

I think we earned the right to never discuss this matter ever again.

From: [REDACTED]
Sent: Wednesday, February 24, 2016 5:25 PM
To: [REDACTED]
Subject: RE: Call with OFAC Acting Director John Smith

SERIOUSLY!!!! ☺!!!!

From: [REDACTED]
Sent: Wednesday, February 24, 2016 5:24 PM
To: [REDACTED]
Subject: RE: Call with OFAC Acting Director John Smith

Woo hoooo! Thank you!!

From: [REDACTED]
Sent: Wednesday, February 24, 2016 5:24 PM
To: [REDACTED]; Smith, John
Cc: OFAC OFFICIAL 1; [REDACTED]
Subject: RE: Call with OFAC Acting Director John Smith

Also, for everyone's records, here is the signed Bank Muscat license. I'll forward the attachment to OCC separately.

[REDACTED]

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Immediately after it was finalized, the Treasury Department delivered the specific license to Bank Muscat and communicated the decision to the other relevant domestic and foreign parties.¹⁶⁵ The next day, February 25, 2016, a Treasury Department official emailed the license to a Bank Muscat executive, indicating that the bank should “provide a copy of the license to the U.S. correspondents” that Bank Muscat would involve in the proposed transaction.¹⁶⁶ The official continued:

OFAC believes that – by disclosing the [Central Bank of Iran’s] indirect¹⁶⁷ interest in the licensed transactions to Bank Muscat’s own U.S. correspondents, providing them a copy of the license, and fulfilling the remaining conditions of the license – Bank Muscat provides a

¹⁶⁴ PSI-000015.

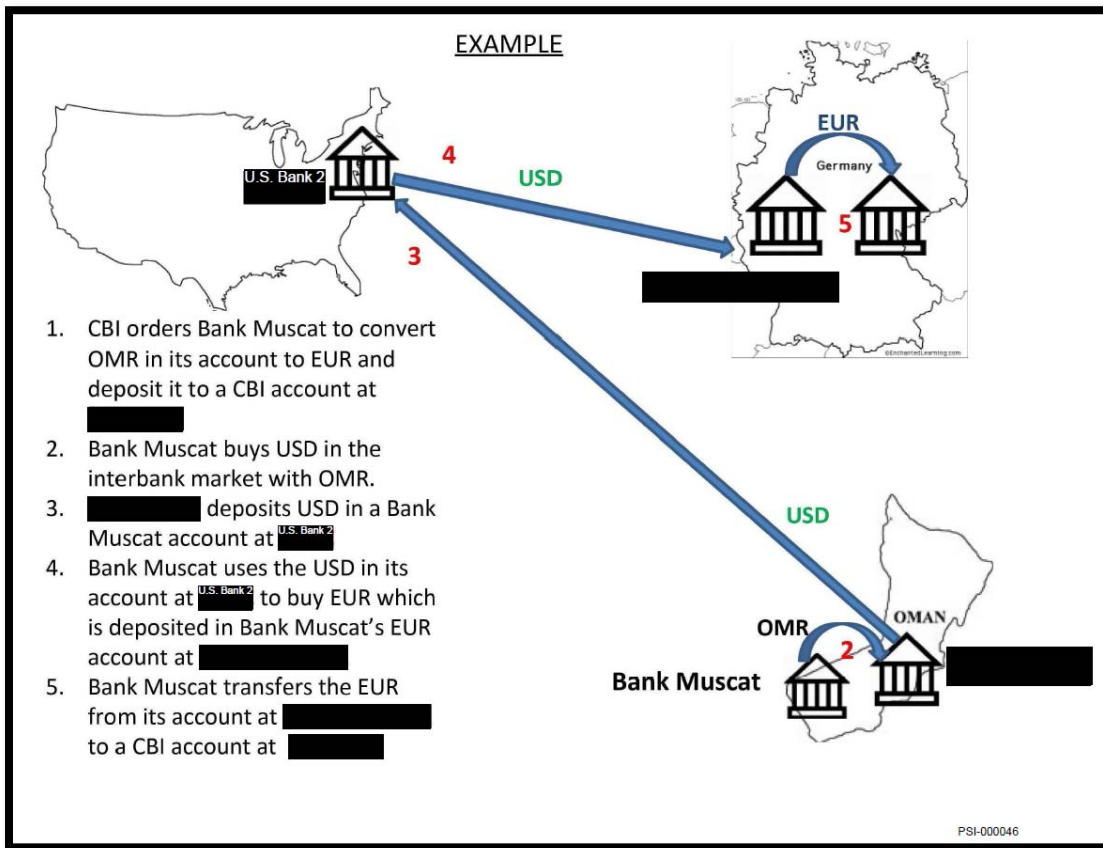
¹⁶⁵ PSI-000047.

¹⁶⁶ PSI-000050-000051.

¹⁶⁷ PSI_BM_000603 (On February 15, 2016, Mr. Szubin made a deliberate point to suggest adding the word “indirect” despite other Treasury Department officials recognizing the Government of Iran and the Central Bank of Iran requested the conversion.”).

sufficient degree of transparency to allow these U.S. financial institutions to comply with the sanctions laws and regulations administered by OFAC.¹⁶⁸

That same day, a Senior State Department Official wrote a two-sentence email to his Iranian counterpart, stating, “OFAC informed Bank Muscat and the Central Bank of Oman today that they have a license to convert Iranian assets in its accounts to Euros through the US financial system. Hope this helps.”¹⁶⁹ And a chart the Treasury Department produced to the Subcommittee, shown below, details a proposed funds flow and the use of U.S. financial system.



The specific license would have little effect, however, unless a U.S. correspondent bank was willing to facilitate the conversion.

¹⁶⁸ PSI-000048.

¹⁶⁹ CDP-2017-00018-00021.

1. A Senior State Department Official Recognized the Specific License Authorized a Transaction Otherwise “Prohibited by U.S. Sanctions”

Notwithstanding the specific license, Iran’s financial negotiator continued to express concerns about Iran’s ability to convert its funds held outside Iran. An Iranian official requested OFAC issue a general license rather than a specific license in the future so that it “relives [sic] us from going through this painstaking process every time we need to convert” assets into a different currency.¹⁷⁰ In effect, a general license would be a blanket authorization for foreign financial institutions to conduct similar currency conversions that Bank Muscat was authorized to do.¹⁷¹ An Iranian official expressed frustration with his government’s inability to convert the funds, even after the specific license was issued:

I do understand that we both will face a number of challenges immediately after the implementation. However, the nature and extent of these challenges are going beyond any reasonable expectation as far as we are concerned and I do request you to address all these issues in [a] manner which resolves them fundamentally.¹⁷²

A Senior State Department Official responded to the Iranian official two days later on February 28, 2016, signifying how extraordinary the specific license was in light of the negotiated JCPOA relief. That Senior State Department Official explained to his Iranian counterpart that he and his colleagues were “pleased to be helpful where we can in facilitating Iran’s reconnection to the international financial system,” but that the U.S. government was not responsible for decisions “foreign financial institutions take in processing Iranian transactions.”¹⁷³ That Senior State Department Official then explained that such “transactions **are prohibited by U.S. sanctions** that are still in place, and which we were clear we would not be removing as part of the JCPOA. Nevertheless, as a gesture of support for Iran’s getting access, we helped on this as we will on other cases.”¹⁷⁴

The Iranian official, however, continued to press U.S. government officials that even with the specific license, Iran was having difficulty converting its funds. For example, he raised the broader issue of financial liquidity concerns and Iran’s general access to its funds held abroad. He wrote to the Senior State Department Official that he was not “... in a position, and don’t intend, to confirm or reject such claims but one thing is clear: OFAC is almost all the time invoked as the reason for other countries’ unwillingness to let us have unhindered access to our funds abroad.”¹⁷⁵ Nearly a month later, the Senior State Department Official again

¹⁷⁰ *Id.*

¹⁷¹ PSI_BM_000610.

¹⁷² CDP-2017-00018-00021.

¹⁷³ CDP-2017-00018-00015.

¹⁷⁴ *Id.* (emphasis added).

¹⁷⁵ CDP-2017-00018-00032.

reiterated in an email to his Iranian counterpart that the Bank Muscat specific license was not required by the JCPOA:

I am aware that the assets in Oman have unfortunately not yet been converted as CBI is seeking, but I hasten to assure you that it is not because of any fault of the U.S. government in not lifting sanctions. In fact, in addition to lifting every sanction we promised to do on Implementation Day, we have exceeded our JCPOA commitments by OFAC's issuing a license to enable Bank Muscat to work with any U.S. financial institution to facilitate the conversion of assets in the banks from rials to other non-dollar currencies. You may be aware that step has aroused enormous controversy in the U.S. political arena as a "concession" to Iran that is undeserved in the aftermath of the missile launches so publicly threatening to Israel, and continued arms shipments to Houthis in spite of UN Security Council resolutions. Nevertheless, as President Obama, Secretary Kerry and Secretary Lew have all mentioned publicly in the past week, the Obama administration is committed to working to enable Iran's realizing all of the benefits it should receive in exchange for its taking the historic measures it has in its nuclear program. That is a message that we have also been repeating in every major world financial capital with almost weekly trips of senior State and Treasury Department officials, many of which have recently been reported prominently in the press.

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In an interview with the Subcommittee, the Senior State Department Official noted his exchange was part of pressing the Iranians on multiple fronts.¹⁷⁷ He clarified that this exchange was for effect as a negotiator to ensure Iran appreciated the efforts being made to meet the expectations of the JCPOA.¹⁷⁸ He used the phrase "exceeded our JCPOA commitments" because there was nothing in the JCPOA that required the issuance of the specific license.¹⁷⁹ He also explained that this was "posturing" in the middle of a negotiation.¹⁸⁰ It was important, according to the Senior State Department Official, that the Iranians felt like they were getting the benefits under the terms of the deal and getting access to the restricted funds was important to the JCPOA. His email also acknowledged an awareness of non-nuclear related issues such as arms shipments to Houthis and missile launches.¹⁸¹

2. The Specific License Permitted Converting Future or "Fresh" Funds Using the U.S. Financial System

The specific license authorized not only the transactions necessary for the conversion of Iranian assets already deposited at Bank Muscat, but also for unlimited future Iranian deposits at Bank Muscat until the license expired. In effect, the specific license granted the Iranians an endless currency conversion pipeline using the U.S. financial system through Bank Muscat until the license expired. The Treasury Department authorized future conversions due to Bank Muscat's concerns. In an email from an OFAC Sanctions Compliance and

¹⁷⁶ CDP-2017-00018-00017 (emphasis added).

¹⁷⁷ Interview with the Senior State Department Official, U.S. State Dep't (May 7, 2018) (*hereinafter* State Department Interview (May 7, 2018)).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

Evaluation employee to Mr. Smith and other senior Treasury Department officials, Bank Muscat asked OFAC about possible future deposits or conversions:

Bank Muscat requested that its specific license not only authorize conversion of funds it holds for Iran currently at Bank Muscat, but also the conversion of funds related to trade transactions with Iran going forward. ... Bank Muscat is concerned that Iran will move its approximately \$5.7 billion worth of JPOA funds out of Bank Muscat and it will adversely affect the bank's balances if it cannot accept fresh funds from Iran to finance prospective trade.¹⁸²

To resolve this “fresh funds” issue, Mr. Smith, in a meeting with an Omani official, “noted that the way [OFAC] resolved the issue of fresh funds was to allow for their transfer under this license and explained that the license allows for both existing and fresh funds to flow through Bank Muscat.”¹⁸³ Bank Muscat viewed the addition of the provision allowing the conversion of “fresh funds” as a momentous step. As one Bank Muscat executive wrote, “When [Bank Muscat's] Legal team reviewed the specific license, they commented that this was a ‘gigantic’ breakthrough which has assured Iran of almost full global financial inclusion.”¹⁸⁴

Mr. Smith also noted that he understood “the Omanis were disappointed after their meeting at OFAC where they asked whether we could allow for Oman to be the only jurisdiction to control the flow of Iranian funds into the international financial system.”¹⁸⁵ Mr. Smith told the Omani Deputy Chief of Mission that while Bank Muscat was the only bank at that time allowed to conduct the currency conversion in this matter, there were efforts for a broader fix to resolve the currency conversion issue to “allow for banks worldwide to engage in similar transactions.”¹⁸⁶

3. Iranian Concern Continued Even After OFAC Issued the Specific License

By cable, Secretary Kerry asked the U.S. Embassy in Oman to deliver a message to the Omani Foreign Minister. The Secretary's message stated:

[T]he obstacle is our primary U.S. embargo, which continues to prohibit U.S. financial institutions from processing transactions involving Iran, necessitating a license from the Office of Foreign Assets Control (OFAC). I am pleased to report, though, that OFAC has now issued a specific

¹⁸² PSI_BM_000610.

¹⁸³ PSI-000047.

¹⁸⁴ CDP-2017-00018-00040.

¹⁸⁵ PSI-000047.

¹⁸⁶ *Id.*

license to Bank Muscat, which we believe will remove the obstacles that prevented these foreign exchange transactions from occurring.¹⁸⁷

While the specific license authorized the transaction, it would not “become active until it is shared with and accepted for use by” Bank Muscat’s correspondent bank.¹⁸⁸ And, as a Iranian negotiator recognized in an email to OFAC OFFICIAL 1, finding a willing U.S. financial institution remained problematic: “[The State Department] advised us on 26th Feb 2016 that ‘ ... OFAC informed Bank Muscat and the Central Bank of Oman today that they have a license to convert Iranian assets in its accounts to Euros through the US financial system. Hope this helps.’ Unfortunately it HAS NOT HELPED.”¹⁸⁹

OFAC OFFICIAL 1 replied that even though OFAC issued the specific license, it was OFAC’s understanding that Bank Muscat’s U.S. correspondent bank “needs time to do due diligence and get the requisite approvals from their management.” OFAC OFFICIAL 1 continued, “There is no further role for OFAC in the process at this point as this is an internal compliance matter on the part of the financial institutions involved.”¹⁹⁰ Bank Muscat needed at least one U.S. financial institution to complete the currency conversion or the specific license would have little effect.

H. Treasury Department Officials Encouraged Two U.S. Financial Institutions to Complete the Currency Conversion; the U.S. Financial Institutions Declined

In the weeks after the Treasury Department issued the specific license, OFAC officials encouraged at least two U.S. financial institutions to facilitate the conversion currency for Bank Muscat. Bank Muscat attempted to complete the currency conversion with two financial institutions that it maintained a correspondent banking¹⁹¹ relationship with: U.S. BANK 1 and U.S. BANK 2.¹⁹² Notwithstanding the Treasury Department’s involvement, both U.S. financial institutions declined to complete the currency conversion for reasons discussed below.

There was significant pressure on both the State and Treasury Department officials to ensure Bank Muscat converted the Iranian assets as the Central Bank of

¹⁸⁷ CDP-2017-00018-00012.

¹⁸⁸ CDP-2017-00018-00039 (emphasis in original).

¹⁸⁹ *Id.*

¹⁹⁰ PSI000459.

¹⁹¹ As background, correspondent banking is the provision of banking services by one bank to another bank. It enables banks to conduct business and provide services for their customers in jurisdictions where the banks have no physical presence. See Staff of S. Permanent Subcomm. on Investigations, 107th Cong., *Rep. On Correspondent Banking* (S. Prt. 107-1) (2001).

¹⁹² PSI000459.

Iran requested. High level Iranian officials made clear to U.S. officials that converting the Iranian assets worth billions of dollars was absolutely vital.¹⁹³ The Treasury Department even classified the conversion as a “Priority No. 1” issue that could have “broad impact across multiple activities and may delay the implementation of the JCPOA.”¹⁹⁴ In short, locating a willing U.S. financial institution to facilitate the dollar conversion was imperative.

Thus, Treasury Department officials engaged with two U.S. financial institutions to encourage them to facilitate the currency conversion. A Senior State Department Official was clear in an email to several OFAC officials that “... you all have been in touch with some banks to **encourage their participation** with Bank Muscat on that particular case.”¹⁹⁵ Additionally, just days after the specific license was issued, a Bank Muscat executive wrote in an email asking if OFAC would “reach out” to both U.S. financial institutions.¹⁹⁶ Over the next several weeks, OFAC then proceeded to arrange nearly a dozen phone calls with sanctions experts and business line executives at the two U.S. financial institutions.¹⁹⁷

OFAC officials initiated contact with a representative of U.S. BANK 1; however, that bank quickly determined that it would not facilitate the currency conversion because of legal risks associated with Iranian assets.¹⁹⁸ U.S. BANK 1, according to a Bank Muscat email, cited a previous court case in which assets worth \$1.75 billion were blocked or seized in a U.S. bank account in New York.¹⁹⁹ U.S. BANK 1 was concerned a lien related to a prior legal judgment would “attach” the funds once they arrived in the United States and the bank could be forced to hold those funds to satisfy the prior judgment. An OFAC email later confirmed that U.S. BANK 1 did not want to conduct the conversion because of “attachment issues”²⁰⁰—referring to the legal process of securing assets to satisfy an outstanding judgment.

A March 15, 2016, email between two U.S. BANK 1 employees further elaborated on both the legal risk and nature of OFAC’s outreach. U.S. BANK 1’s Director for Global Sanctions wrote to the Regional Head of Sanctions:

OFAC called us up last week and asked us to help Bank Muscat move up to several billion dollars in Iranian money through the U.S. financial system. After we explained the attachment risk, they reconsidered but

¹⁹³ See Section E.

¹⁹⁴ PSI_BM_000618.

¹⁹⁵ CDP-201700018-00029 (emphasis added).

¹⁹⁶ PSI-000050.

¹⁹⁷ See PSI-000286; PSI-000262; PSI-000274; PSI-000179; PSI-000255.

¹⁹⁸ PSI-000176. One Treasury official wrote to Bank Muscat, “Thanks for the note. We will schedule a call with U.S. BANK 1 and let you know once we have spoken with them.”

¹⁹⁹ CDP-2017-00018-00002.

²⁰⁰ PSI_BM_000721.

I mention this to show that U.S. policy is not necessarily that nothing be done vis-à-vis Iran.²⁰¹

That U.S. BANK 1 executive later told the Subcommittee that OFAC reached out to them and asked if they would process the transaction.²⁰² While the U.S. BANK 1 executive did not think that OFAC's contact was inappropriate, he elaborated that, to his knowledge, this was something that had never been done before.²⁰³ U.S. BANK 1, according to its executive, ultimately turned down OFAC because of reputational risk associated with conducting business with Iran and legal risk of litigants suing Iran for terrorism related incidents.²⁰⁴

After U.S. BANK 1 declined, the pressure increased to find a willing U.S. correspondent bank to facilitate the conversion. One State Department official wrote in an email asking if there was "anything new on Bank Muscat and their correspondent? Our friends are complaining."²⁰⁵ Finding another willing U.S. financial institution was complicated. As one OFAC official explained, OFAC could play no further role in the process as it was now an "internal compliance matter on the part of the financial institutions involved."²⁰⁶ Notwithstanding this position, a State Department official proposed having Secretary Kerry or Secretary Lew contact the remaining U.S. correspondent bank.²⁰⁷ On April 9, 2016, in an email shown below, a State Department Official wrote to two State Department officials suggesting that it would be "a good idea" to have Secretary Lew "engage" U.S. BANK 2.²⁰⁸ He also stated that if the Treasury Department did not comply with the request, he would suggest Secretary Kerry call.²⁰⁹

I agree it would be a good idea to have Lew engage Bank 2. If they refuse, we can suggest Kerry will call, which will drive them nuts. I'll ping Treasury and suggest as a first step.

The Senior State Department Official indicated later in the same email that Secretary Kerry was "more than eager to engage."²¹⁰ In an interview with the Subcommittee, the Senior State Department Official did not know if either Secretary Kerry or Secretary Lew called or engaged the U.S. financial institution directly. The Senior State Department Official did state that he believed "drive

²⁰¹ U.S. BANK 1 Email 2016.03.15.

²⁰² Interview with the Director for Global Sanctions Compliance, U.S. BANK 1 (May 4, 2018) (*hereinafter* U.S. BANK 1 Interview (May 4, 2018)).

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ PSI-000180.

²⁰⁶ PSI-000459.

²⁰⁷ CDP-2017-00018-000124-000125.

²⁰⁸ CDP-2017-00018-000124.

²⁰⁹ *Id.*

²¹⁰ *Id.*

them nuts” was written because the Treasury Department would view the State Department engaging with financial institutions as a bureaucratic overstep.²¹¹

OFAC OFFICIAL 1 then indicated that U.S. BANK 2 was the other U.S. correspondent bank available to facilitate the conversion.²¹² From February to April 2016, U.S. BANK 2’s compliance, business, and legal executives considered whether to convert the funds. Even though OFAC told U.S. BANK 2 executives it was “supportive of the activity/transactions,” U.S. BANK 2 eventually declined to conduct the currency conversion due to the compliance risk posed by the difficulty of consistently executing the proposed complex transactions.²¹³ U.S. BANK 2 was also cognizant of concerns with the optics of dealing with Iranian assets.²¹⁴

On February 25, 2016, an OFAC official contacted U.S. BANK 2’s Compliance Executive to let them know that “they are supportive of the activity/transactions under the license and that they will put Bank Muscat in touch with me to talk about the potential transactions.”²¹⁵ The Compliance Executive stated they told OFAC that U.S. BANK 2 “would be taking similar steps to what we did in the past” to review the license and the proposed transaction’s details.²¹⁶ In the course of a broader discussion about the proposed business, the Compliance Executive also noted that U.S. BANK 2 “may once again be the subject of press articles even though the activity is licensed for dealing with Iran, although here indirectly.”²¹⁷

The next day, on February 26, 2016, a Bank Muscat executive emailed the Compliance Executive to “discuss the specific license.”²¹⁸ Later, on March 1, 2016, Bank Muscat sent U.S. BANK 2 a detailed description of precisely how the proposed currency conversion would take place.²¹⁹ On March 18, 2016, U.S. BANK 2’s Compliance Executive wrote in an internal email, “Today, OFAC called me about the status and also to ask if we would support the [foreign exchange] transactions if they also additionally issued a General License to all entities to engage in the same activity.”²²⁰ The same executive indicated that:

These will be large sums of money and may involve both legacy Iranian funds and also new funds from proceeds of fresh oil sales. This will most likely end up in the press in the future so I want to make sure that

²¹¹ State Department Interview (May 7, 2018).

²¹² PSI_BM_000721.

²¹³ Interview with the U.S. BANK 2’s Compliance Executive (May 4, 2018) (hereinafter U.S. BANK 2 Interview (May 4, 2018)).

²¹⁴ BANK200000128; BANK200000214.

²¹⁵ BANK200000128.

²¹⁶ U.S. BANK 2 Interview (May 4, 2018); BANK200000128.

²¹⁷ *Id.*

²¹⁸ BANK200000176.

²¹⁹ BANK200000350.

²²⁰ BANK200000334.

Senior Business and Legal/Compliance don't have an issue at this stage."²²¹

Ten days later, on March 28, 2016, U.S. BANK 2's Compliance Executive indicated that while OFAC "confirmed that the flows appear to be consistent with the terms of the license" U.S. BANK 2 "does not have an appetite to engage in the activities at this time."²²² In an interview with the Subcommittee, U.S. BANK 2's Compliance Executive, explained that while OFAC authorized the transaction, U.S. BANK 2 declined to facilitate the deal for primarily because the transaction itself was complicated and created difficulty monitoring the flows of money.²²³ U.S. BANK 2's Compliance Executive also stated that doing business with Iran could present reputational risks as Iran is a comprehensively sanctioned country.²²⁴ In the end, according to an internal document, U.S. BANK 2 declined to handle [the currency conversion] based on [U.S. BANK 2's] uncertainty about how to manage and monitor the flow given the currency conversions."²²⁵

I. The Federal Reserve Bank Received Inquiries Concerning Bank Muscat's Currency Issue, but did not Facilitate the Conversion

After Bank Muscat's two U.S. correspondent banks refused to facilitate the currency conversion, both OFAC and Bank Muscat sought alternative solutions. One of those alternatives was to use the Federal Reserve Bank of New York (the "Federal Reserve Bank"), which is part of the Federal Reserve System, the central bank of the United States. The Federal Reserve System can provide certain financial services to the U.S. government, U.S. financial institutions, and foreign official institutions.²²⁶

A Senior State Department Official, in an email to Mr. Smith and other Treasury Department officials, expressed the importance of exploring alternatives after the U.S. correspondent banks refused. On April 11, 2016, that Senior State Department Official wrote that the Bank Muscat issue remains a top Iranian priority and asked "[s]ince no U.S. bank appears willing to avail itself of the OFAC license to facilitate the Bank Muscat transaction, is there any news on an alternate approach to help resolve the issue?"²²⁷ Mr. Smith replied that OFAC was still "actively engaged on alternatives for resolving the Bank Muscat issue, but we have not found a solution yet."²²⁸ A Bank Muscat executive then proposed using the

²²¹ *Id.*

²²² *Id.*

²²³ U.S. BANK 2 Interview (May 4, 2018).

²²⁴ *Id.*

²²⁵ BANK200000214.

²²⁶ *What is the Purpose of the Federal Reserve System?*, Board of Governors of the Federal Reserve System (Nov. 3, 2016), https://www.federalreserve.gov/faqs/about_12594.htm.

²²⁷ CDP-2017-00018-00036.

²²⁸ CDP-2017-00018-00035.

Federal Reserve Bank as a direct alternative to the U.S. correspondent banks that refused to complete the conversion, as shown in a State Department meeting note below:

- We had a call with OFAC on Wednesday April 6, where we discussed the position of the US correspondent banks. We put forward the idea of bank muscat opening an account with the Federal Reserve Bank of New York (Fed) for the same role which we had envisaged U.S. Bank 2 or U.S. Bank 1 to play. We have a further call with OFAC on Monday April 11, 2016 to discuss this matter and are hopeful that we will be allowed to transact with the NY Fed.

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The Federal Reserve Bank was an obvious partner in this currency conversion process as it previously facilitated another JCPOA-related transaction for the purchase of Iranian “heavy water.”²³⁰ In the JCPOA, the Iranian government committed to refrain from accumulating heavy water “beyond Iran’s needs” and “sell any remaining heavy water on the international market for 15 years.”²³¹

According to a news report detailing the heavy water purchase, the Treasury Department previously declined to publicly disclose the currency used in the purchase.²³² Treasury Department documents now show that the U.S. government authorized a U.S. dollar-originated purchase of Iran’s heavy water and relied on the Federal Reserve Bank to effectuate the purchase. On June 20, 2016, OFAC issued a “comfort letter” to the Federal Reserve Bank of New York concerning a series of transactions and conversions to facilitate the \$8.6 million purchase of 32 metric tons of heavy water “from Iran for import into the United States.”²³³ The comfort letter responded to the Treasury Department’s Bureau of the Fiscal Service’s plan to originate a transfer to the Federal Reserve Bank.²³⁴ The Federal Reserve Bank would then “enter into a foreign exchange” transaction with a counterparty to purchase the euro equivalent of the U.S. dollar amount.²³⁵

²²⁹ CDP-2017-00018-00003.

²³⁰ U.S. Gov’t Accountability Off., GAO-16-565, *Iran Nuclear Agreement: The International Atomic Energy Agency’s Authorities, Resources, and Challenges* 10-12 (July 14, 2016) (Heavy water can be used in some types of nuclear power reactors.).

²³¹ Paul Kerr, *Iran’s Nuclear Program: Status*, Cong. Research Service, at 26 (Apr. 27, 2017).

²³² Reuters Staff, *U.S. to Buy Heavy Water from Iran’s Nuclear Program*, Reuters (Apr. 22, 2016), <https://www.reuters.com/article/us-iran-nuclear-usa-idUSKCN0XJ25G> (“A U.S. Treasury Department official would not discuss details of the payment for the heavy water until after the purchase is complete, but said it would be completed under the same method. ‘Regardless of whether or not this is in U.S. dollars, this licensed transaction is limited in scope,’ the Treasury official said on condition of anonymity.”).

²³³ PSI000465.

²³⁴ PSI000466.

²³⁵ *Id.*

With respect to the Bank Muscat currency conversion, the Federal Reserve Bank received three separate inquiries from: (1) OFAC; (2) the Bank for International Settlements; and (3) the Central Bank of Germany. The Federal Reserve Bank examined and considered all three inquiries; however, it never reached a final determination on the legal characterization of any of the proposed transfers.²³⁶

First, in mid-April 2016, OFAC officials contacted the Federal Reserve Bank and requested assistance to complete an Omani currency conversion.²³⁷ The problem, as a Federal Reserve Bank official told the Subcommittee, was that the Omani rial is pegged to the U.S. dollar.²³⁸ This meant that any conversion of Omani rials to euros would necessarily include intermediary steps involving the U.S. dollar, which is commonly characterized as a “dollar leg.” OFAC “expressed frustration” with the dollar leg because there was no way to avoid using the U.S. financial system to complete the conversion to euros.²³⁹ However, according to Federal Reserve Bank officials, after initial conversations with OFAC, the issue faded without resolution.²⁴⁰ The Federal Reserve Bank did not receive any additional inquiries relating to the proposed currency transfer for several months.²⁴¹

Second, in December 2016, the Bank for International Settlements (“BIS”) contacted the Federal Reserve Bank regarding the conversion issue.²⁴² BIS is an international financial organization headquartered in Basel, Switzerland, whose mission is to act as “a bank for central banks.”²⁴³ In that role, BIS is able to act as “a prime counterparty for central banks in their financial transactions” or serve as “an agent or trustee in connection with international financial operations.”²⁴⁴

According to Federal Reserve Bank officials, BIS and the Omani government discussed a potential foreign exchange through Oman’s account held at the BIS. The Federal Reserve Bank, as a board member of BIS, had a standing objection since 2002 that prohibited BIS from conducting U.S. dollar transactions with Iranian entities. As a board member, the Federal Reserve Bank could object to transactions taking place in its “home currency”—*i.e.* the U.S. dollar.²⁴⁵ Thus, the

²³⁶ Interview with the Federal Reserve Bank (Feb. 13, 2018) (*hereinafter* Federal Reserve Bank Interview (Feb. 13, 2018)).

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Bank for International Settlements, *About the BIS – Overview*, <https://www.bis.org/about/index.htm>.

²⁴⁴ *Id.*

²⁴⁵ Federal Reserve Bank Interview (Feb. 13, 2018).

BIS legal team asked if the Federal Reserve Bank would object to the proposed transaction. Before the Federal Reserve Bank reached any formal decision on the matter BIS disengaged from the preliminary conversations and never proposed the transfer.²⁴⁶

Third, in April 2017, the Central Bank of Germany contacted the Federal Reserve Bank concerning the currency conversion issue.²⁴⁷ According to Federal Reserve Bank officials, a German commercial bank (“German Bank A”) approached the Central Bank of Germany about conducting a “series of small conversions” of Omani rials to euros.²⁴⁸ German Bank A would facilitate these conversions without using the U.S. dollar or U.S. financial system.²⁴⁹ Simply put, the proposed transaction was arranged as a loan. German Bank A would lend the Central Bank of Iran euros, but allow repayment of the euros with Omani rial through a German Bank A account held in Oman.²⁵⁰

The Central Bank of Germany contacted the Federal Reserve Bank because it was possible that proceeds from the conversions could end up in the Central Bank of Germany’s account at the Federal Reserve Bank.²⁵¹ The Central Bank of Germany told the Federal Reserve Bank officials that German Bank A obtained an OFAC comfort letter indicating U.S. approval of the proposed transaction because there would “no longer be any Iranian interest in the proceeds.”²⁵² Nevertheless, the Central Bank of Germany wanted to make sure that the Federal Reserve Bank shared the same opinion that any proceeds from the transfer would no longer be tainted by Iranian interest, which could trigger sanctions. Federal Reserve Bank then contacted OFAC to discuss the proposed structure and the comfort letter.²⁵³ But, again, the discussions concerning the proposed transfers dwindled and eventually ceased.²⁵⁴ The Federal Reserve Bank never reached a formal decision on the legal characterization of any of the proposed transfers.²⁵⁵

J. After Issuing the Specific License, Treasury and State Department Officials Again Denied that Iran was Granted Access to the U.S. Financial System Under the JCPOA

Prior to the implementation of the JCPOA, Treasury and State Department officials testified that under the JCPOA Iran would not have access to the U.S.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

financial system.²⁵⁶ After Implementation Day and the issuance of Bank Muscat’s specific license, Treasury Department officials again asserted that Iran was not granted access to the U.S. financial system under the terms of the JCPOA. Secretary Lew, Mr. Szubin, and Ambassador Thomas Shannon all testified on the details concerning sanctions relief afforded to Iran under the JCPOA.

To prepare Secretary Lew for his testimony, Treasury Department staff created a “Talking Points” document concerning the implementation of the JCPOA with details of the financial relief.²⁵⁷ That document suggested Secretary Lew could discuss the need for authorizing Iran to receive access to the dollar under the terms of the JCPOA, but only “if pressed.” Under the “*Release of Iran’s Previously Restricted Funds*” header, Secretary Lew’s background document included the following section, with several edits proposed by one OFAC official:

[IF PRESSED] Additional License to Allow Foreign Exchange Transactions

Post Implementaton Day, foreign financial institutions and central banks approached the Department of the Treasury requesting permission to allow foreign exchange transactions involving non-designated Iranian financial institutions and the Central Bank of Iran. An indirect part of such foreign exchange transactions needed to go through the U.S. financial system. We realized that, due to the centrality of the U.S. financial system, frequently foreign exchange transactions – the process of converting most non-U.S. Dollar (USD) currencies into a different non-USD currency - use USD as an intermediate currency. To better enable the implementation of the nuclear-related sanctions relief we committed to under the JCPOA. In order to fulfill our commitments under the JCPOA to lift secondary nuclear-related sanctions on banking and financial activities with Iran, and to allow for trade between Iran and non-U.S. persons, we are thinking through ways on how to allow for the conversion of two non-USD currencies to use through the use of the USD as an intermediate currency. We are not looking to expand the scope of the sanctions relief under the JCPOA but rather to enable the implementation of the sanctions relief we committed to under the JCPOA.

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The background document provided to Secretary Lew also included information regarding the specific license issued to Bank Muscat, along with the possibility of Treasury issuing a general license, as explained below:²⁵⁹

²⁵⁶ See Section C.

²⁵⁷ PSI_BM_000469.

²⁵⁸ PSI_BM_000482 (yellow emphasis in original).

²⁵⁹ PSI_BM_000479 (One OFAC official stated that naming the bank “seems to raise Trade Secrets act issues” if the information was for anything other than background for the Secretary).

Licensing Foreign Exchange Transactions Involving Non-designated Iranian Financial Institutions

OFAC has already issued one specific license to ~~Bank Museatone~~ financial institution to allow for the conversion of previously blocked Iranian funds and the fresh flow of additional funds, where one indirect portion of the foreign exchange transactions touches U.S. financial institutions. Treasury is reviewing and discussing a draft of a general license that will authorize U.S. depository institutions and U.S. registered brokers or dealers in securities to process certain transactions in connection with foreign exchange transactions by non-U.S., non-Iranian financial institutions to convert funds held in one non-USD currency to a different non-USD currency for the indirect benefit of non-designated Iranian financial institutions, including persons whose property and interests in property are blocked solely pursuant to Executive Order 13599. This general license will not authorize transactions involving any person on OFAC's SDN List or whose property and interests in property are blocked pursuant to any laws or regulations administered by OFAC other than the ITSR.

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The NSC weighed in on the nature of Secretary Lew's testimony concerning both the specific and general licenses. NSC officials expressed concern about linking either license to the JCPOA. On March 3, 2016, just days after the Treasury Department issued the specific license, a Treasury Department official wrote in an email that "NSC seemed to express some discomfort about linking the [foreign exchange] license to the JCPOA."²⁶¹ This prompted another Treasury Department official to reply:

[N]ot sure we want to link it with the JCPOA, since it is applicable to any transaction that falls within the authorization – and, since we are selling this as a "financial reality" more than a JCPOA necessity, can we really say it will be part of a snapback.²⁶²

OFAC OFFICIAL 1, however, disagreed and wrote, "For background, we need to link it to the JCPOA: We are only issuing [the general license] because of the JCPOA and it would be revoked in the event of a snapback."²⁶³ One OFAC official responded, "Thanks OFAC OFFICIAL 1. Apparently I have been asleep on this one—I didn't think it was because of the JCPOA, but brought to light because of it. Makes me dislike it even more."²⁶⁴

²⁶⁰ PSI_BM_000474 (yellow emphasis in original).

²⁶¹ PSI BM - 000441.

²⁶² PSI_BM_000478 ("Snapback" refers to a mechanism that may reinstate sanctions under certain conditions. For example, "If a party to the JCPOA notifies the Security Council of an issue it believes 'constitutes significant non-performance of commitments under the JCPOA,' the Security Council must vote on a draft resolution addressing whether it should continue to withhold the sanctions imposed on Iran through its earlier resolutions." Stephen Mulligan, *Withdrawal from International Agreements: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement*, Cong. Research Service, at 25 (Feb. 9, 2017)).

²⁶³ PSI_BM_000477.

²⁶⁴ *Id.*

Secretary Lew’s March 22, 2016 testimony to the House Financial Services Committee provided no details about the specific license to Bank Muscat, or the consideration of issuing a general license as outlined in the background document and talking points. This hearing took place nearly one month after the Treasury Department issued the specific license to Bank Muscat. During the hearing, Congressman Ed Royce stated:

In July, you testified to the Senate that Iranian banks will not be able to clear U.S. dollars through New York, or hold correspondent account relationships with U.S. financial institutions, or enter into financing agreements with U.S. banks. Iran, in other words, will continue to be denied access to the world’s largest financial and commercial market. And I have received reports from the Administration that it is now considering providing Iran with access to the U.S. financial systems. So are these reports which contradict your previous testimony correct, and is the Administration planning to ease restrictions on Iran’s access to U.S. banks?²⁶⁵

In response to Congressman Royce’s inquiry, Secretary Lew declared that the JCPOA caused Iran to “roll back its nuclear program” and that part of the JCPOA was for “Iran to have nuclear sanctions lifted.”²⁶⁶ The Secretary did not directly answer whether Iran would have access to the U.S. financial system. Congressman Royce then pressed the issue again and asked whether the U.S. would give Iran access to “the U.S. dollar or U.S. financial systems.”²⁶⁷ In his response, Secretary Lew did not rely on his “talking points” or reference the general or specific licenses. Instead, he stated that the United States continued “to look at how we comply with the [JCPOA] to make sure that Iran gets relief under the nuclear portions while we keep pressure on Iran on these other issues.”²⁶⁸

Later during the same hearing, Chairman Jeb Hensarling asked Secretary Lew: “Do you believe that these banks are going to be able to access—I didn’t get a clear answer from you—that they can have access and work with American financial institutions?”²⁶⁹ Secretary Lew responded:

I think that what I said in the earlier response is that we will comply with the [JCPOA] and lift the nuclear sanctions; we will keep other sanctions in place. Part of the agreement was to give Iran access to money that it has a right to. We will work on making that happen. It is not going to be our goal to block transactions that are legitimate under

²⁶⁵ *The Annual Testimony of the Secretary of the Treasury On The State Of The International Financial System, Hearing Before the H. Comm. On Financial Services, 114th Cong. (Mar. 22, 2016).*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

the JCPOA, but we will enforce on other areas like terrorism and the like.²⁷⁰

Two months later, Congressman Royce again questioned a Treasury Department official—this time it was Mr. Szubin.²⁷¹ Congressman Royce started by addressing Secretary Lew’s previous testimony:

I asked the Treasury Secretary—I think it was 2 months ago—if he stood by his testimony during the agreement’s consideration in which we were assured [Iran] would not have access [to the U.S. financial system]. Instead of shutting the door right there, Secretary Lew said his focus was on making sure Iran gets relief. And 2 months since, the President still has not responded to my letter on this question.²⁷²

Congressman Royce continued, “And the concern is that while Iran wouldn’t be allowed direct access to the dollar, you could structure a scheme offshore that would have similar impact.”²⁷³ Mr. Szubin interjected and replied,

I just wanted to clarify that Secretary Lew has made himself clear on the record in public, and of course, we look forward to responding to your letter to be clear in writing as well. But he has said exactly what I have said here today, and I know he was looking forward to me being here to be able to relay his views on this. ***Iran will not have access to our financial system.***²⁷⁴

Finally, on April 5, 2016, Ambassador Thomas Shannon, the Under Secretary of State for Political Affairs for the State Department, testified at the Senate Foreign Relations Committee.²⁷⁵ Senator Marco Rubio described a hypothetical scenario similar to the actual Bank Muscat currency conversion authorized by the specific license. Senator Rubio stated, “Now, I think the President and everyone’s been pretty clear what [Iran is] not allowed to do. They’re not allowed to go through a U.S. bank to turn the rial into a dollar and then the dollar into a Swiss franc. That’s pretty clear. I think that’s been outlined.”²⁷⁶ Senator Rubio then asked about a different hypothetical scenario concerning foreign transactions that would

²⁷⁰ *Id.*

²⁷¹ *Iran Nuclear Deal Oversight: Implementation and its Consequences (Part II), Hearing Before the H. Comm. on Foreign Affairs*, 114th Cong. (May 25, 2016).

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Iran Nuclear Deal Oversight: Implementation and its Consequences (Part II), Hearing Before the H. Comm. on Foreign Affairs*, 114th Cong. (May 25, 2016), (testimony of Adam Szubin, Acting Under Secretary of Treasury for Terrorism and Financial Crimes, U.S. Department of the Treasury) (emphasis added).

²⁷⁵ *Recent Iranian Actions and Implementation of the Nuclear Deal, Hearing Before the Sen. Foreign Relations Comm.*, 114th Cong. (Apr. 5, 2016).

²⁷⁶ *Id.*

not require the U.S. financial system at all. Amb. Shannon stated that he “was not sure” and that he:

[W]ould have to check, because if it doesn’t touch a U.S. bank, if it doesn’t touch the U.S. financial system -- because what our -- our sanctions legislation has gone [sic] and what -- what we have been able to accomplish in terms of -- of limiting Iran’s access to our larger financial system is we have not permitted U-turn authorization, and no, there is no exchange of dollars inside the U.S. financial system, and we have not allowed an access to our larger financial system.²⁷⁷

Months before Secretary Lew, Mr. Szubin, and Amb. Shannon testified in front of congressional committees, the Treasury Department, issued the specific license to Bank Muscat permitting the conversion of Iranian assets using the U.S. financial system.

Members of Congress also sent letters to the Treasury Department requesting information concerning Iranian access to the U.S. financial system. Senators Kirk and Rubio sent at least two letters to Secretary Lew in March and May 2016 asking for assurances that the United States was not working to enable Iranian access to the U.S. dollar. The Treasury Department’s two responses again reassured Congress that the U.S. government was not working to provide Iran access to the U.S. financial system.

First, on March 30, 2016, Senators Kirk and Rubio wrote a joint letter to Secretary Lew stating that they were “gravely alarmed by news reports suggesting the Administration is working to give Iran access to the U.S. financial system or to dollar transactions outside of the U.S. financial system.”²⁷⁸ The letter continued, “Senior officials in the Treasury Department have repeatedly assured Congress that the Administration will not allow Iran direct or indirect access to the U.S. financial system.”²⁷⁹ Senators Kirk and Rubio’s letter then requested assurances from the Treasury Department that the United States “will not work on behalf of Iran to enable Iranian access to U.S. dollars elsewhere in the international financial system.”²⁸⁰

The Treasury Department responded on May 11, 2016, stating, “As we have said consistently, we are not planning to reinstate the ‘U-turn’ authorization or to give Iran access to the U.S. financial system under the JCPOA.”²⁸¹ The Treasury letter further stated, “We also continue to vigorously enforce the many sanctions

²⁷⁷ *Id.*

²⁷⁸ Letter from Sens. Mark Kirk and Marco Rubio to U.S. Treasury Secretary Jacob Lew (Mar. 30, 2016).

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ Letter from Anne Wall, Assistant Secretary for Legislative Affairs, U.S. Treasury Dep’t to Sens. Mark Kirk and Marco Rubio (May 11, 2016).

that remain against Iran, including our primary sanctions that generally prohibit Iranian banks from clearing U.S. dollars through the U.S. financial system or holding correspondent account relationships with U.S. financial institutions.”²⁸²

Second, on May 19, 2016, Senators Kirk and Rubio sent a follow-up letter to Secretary Lew on the same issue. The Senators expressed disappointment that the Treasury Department did not provide a clear assurance that the United States was not working to directly or indirectly give Iran access to the U.S. dollar or financial system.²⁸³ The Treasury Department responded nearly three weeks later on June 7, 2016.²⁸⁴ The letter response, signed by Thomas Patrick Maloney, a Senior Advisor to the Office of Legislative Affairs opened with the following paragraph:

Thank you for your letter seeking assurances regarding Iranian access to U.S. dollars. To be clear, the U.S. Department of the Treasury is not working on behalf of Iran to enable Iranian access to U.S. dollars elsewhere in the international financial system, nor are we assisting Iran in gaining access to dollar payment systems outside the U.S. financial system. The administration has not been and is not planning to grant Iran access to the U.S. financial system.²⁸⁵

The Treasury Department sent this letter roughly three months after it issued the specific license authorizing the conversion of Iranian assets through the U.S. financial system.

Finally, in July 2016, 35 bipartisan Senators wrote a letter to President Obama to express concern that the Administration was “considering accommodation of certain dollar-based transactions for Iran following implementation of the [JCPOA], despite sanctions imposed on Iran because of illicit activity separate from its nuclear enrichment program.”²⁸⁶ The letter continued:

We welcome your Administration’s assurance that Iran will not gain direct access to the U.S. financial system. As Iran seeks greater access to the global financial system, we urge you to take all action necessary

²⁸² *Id.*

²⁸³ Letter from Sens. Mark Kirk and Marco Rubio to U.S. Treasury Secretary Jacob Lew (May 19, 2016).

²⁸⁴ Letter from Thomas Maloney, Senior Advisor, Office of Legislative Affairs, U.S. Treasury Dep’t to Sens. Mark Kirk and Marco Rubio (June 7, 2016).

²⁸⁵ *Id.*

²⁸⁶ Letter from Sens. Collins, Nelson, Ayotte, Menendez, Murkowski, Coons, Risch, Warren, Wicker, Peters, Hatch, Cardin, Rounds, Bennet, Kirk, Schumer, Moran, Booker, Rubio, Roberts, Crapo, Cruz, Inhofe, Isakson, Hoeven, Boozman, Vitter, Tillis, Grassley, Lankford, Toomey, Scott, Gardner, Perdue, and Fischer to President Obama (July 8, 2016), <https://www.collins.senate.gov/sites/default/files/Collins-Nelson%20Letter%20on%20Dollar%20Transactions%20for%20Iran.pdf>.

to preserve the strength of U.S. sanctions imposed for Iran’s illicit non-nuclear activities—including preventing any indirect access to the U.S. financial system or the illegal use of dollars in Iranian trade.²⁸⁷

The letter then urged the President to “ensure the maximum of existing sanctions on Iran, including the restriction on dollar-based transactions for Iran, until Iran changes its nefarious behavior. If Iran wants direct or indirect access to the U.S. financial system, Iran can cease money laundering, proliferating weapons, developing ballistic missile, and support terror.”²⁸⁸

K. Iranian Funds Remained at Bank Muscat into 2017

Without a willing U.S. correspondent bank, the Iranian funds held by Bank Muscat could not be converted using the U.S. financial system. The funds remained at Bank Muscat into 2017. A January 2017 State Department email indicated that Iran still “expressed concern” that the Iranian fund issue still had not been resolved.²⁸⁹ That same email indicated that the State Department “would work the issue expeditiously.”²⁹⁰ In a follow-up interview, the Senior State Department Official told the Subcommittee he believed that Bank Muscat and Iran converted the funds using European banks and in small increments.²⁹¹ Sandra Oudkirk, now a Deputy Assistant Secretary with the Department of State’s Bureau of Energy Resources, also told the Subcommittee in an October 2017 interview that she believed Bank Muscat eventually found a way to make small fund transfers without the use of the U.S. financial system.²⁹²

V. CLASSIFIED ANNEX

The State Department and the Treasury Department produced classified documents to the Subcommittee. This public, unclassified report does not discuss or cite those classified documents. This report has a classified annex that adds to the Subcommittee’s conclusions concerning the efforts by other U.S. agencies to address the conversion issue of the funds held at Bank Muscat.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ CDP-2017-00018-00052.

²⁹⁰ *Id.*

²⁹¹ State Department Interview (May 7, 2018).

²⁹² Oudkirk Interview (Oct. 17, 2017).