JOEL LEVINE, State Bar No. 52565
JOEL LEVINE, A PROFESSIONAL CORPORATION
695 Town Center Drive, Suite 875
Costa Mesa, California 92626
Telephone: 714 662 4462
Facsimile: 949 481 1014
Email: jlesquire@cox.net
Attorney for Defendant
BEATA PRIORE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, vs. BEATA PRIORE Defendant.	CASE NO. SA-CR-08-180-DOC NOTICE OF MOTION & MOTION IN LIMINE RE: EXPERT TESTIMONY; MEMORANDUM OF POINTS AND AUTHORITIES; EXHIBITS Date: November 27, 2012 Time: 8:30 a.m. Place: Courtroom of Judge Carter

Please take notice and notice is hereby given, that at the time and place referred to above (the day of the commencement of trial), Defendants will move to limit expert testimony, in both the number of experts to be called by the Prosecution, and the scope of any such expert testimony. This Motion is based upon the files and records of this case, the attached Memorandum of Points and Authorities, the exhibits attached thereto and any further arguments to be offered at the hearing of said

Dated: November 5, 2012

Respectfully submitted,

JOEL LEVINE, Esq.
A Professional Corporation

By s/ _____
JOEL LEVINE, Esq.
Attorneys for Defendant
BEATA PRIORE

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Defendants are charged in a six count investment fraud Indictment with conspiracy, wire fraud and aiding and abetting. The indictment results from a sting undercover operation conducted by the FBI acting for an investment company named New Mar Mesa. The FBI contacted the Defendants in an effort to "invest" in a high return investment. The Defendant each spoke with or met the undercover officer and discussed numerous investments, one of which, TSI Consulting, is the basis for the charges in this case.

The gist of the charges is that the defendants allegedly misrepresented the potential success and rate of return of the TSI investment to the undercover agent, and thereby committed the acts charged as crimes in the Indictment. We note, parenthetically, that no investment was ever made by the undercover FBI firm, that no actual loss was experienced, and that the Defendants never profited from these transactions.

Trial is set to commence on November 27, 2012. The Prosecution will seek to call two expert witnesses, Sean M. O'Malley and James E. Byrne. The reports of these two witnesses are attached to this Motion as Exhibits A and B, respectively. As more fully set forth below, Defendants seek rulings from the Court:

1. Limiting the number of expert witnesses to be called, assuming any of those designated are even relevant and need to be testifying at all. The proposed expert testimony in exhibits A and B appear to be duplicitous and cumulative.

2. Limiting the scope of any such testimony by excluding expert testimony on legality of conduct, or the state of mind of any of the Defendants.

II. GENERAL ARGUMENTS REGARDING EXPERT TESTIMONY

Rule 702 of the Federal Rules of Evidence governs the admissibility of expert testimony. It states as follows:

> "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case."

In Daubert v. Merrell Dow Pharmacuticals, Inc., 113 S.Ct. 2786 (1993), the United States Supreme Court provided the following guidelines under Rule 702 for the admissibility of expert opinions based upon "scientific, technical or specialized knowledge":

1. Can the theory or technique be tested;
2. Has the theory or technique been tested;
3. Has the theory or technique been subjected to peer review and publication;
4. What is the actual or potential rate of error of the theory or technique;
5. Is the theory or technique generally accepted by the pertinent scientific community.

If proposed expert testimony fails any of these guidelines, the testimony can be excluded on the ground that it will not assist the trier of fact to understand or determine the facts. The expert testimony in the instant case meets none of these

criteria. There exists no tests of these hypotheses, no peer review, no evaluation of the rate of error, and the only potential "scientific" community which would accept these evaluations is that of prosecutorial law enforcement.

The Supreme Court has held that the trial court's decisions on admissibility of expert testimony are reviewed under an abuse of discretion standard. Daubert does not alter the discretionary standard governing the trial court's evidentiary rulings. General Electric v. Joiner, 118 S.Ct 512 (1997).

III. EXPERT TESTIMONY IN THE INSTANT CASE SHOULD EITHER BE EXCLUDED, OR LIMITED IN THE NUMBER OF SUCH WITNESSES, AND THE ISSUES TO BE TESTIFIED TO

The easiest place to start is whether expert witnesses are needed at all. The two experts designated opine in their reports, regarding fraudulent high yield investment programs, that such programs are fraudulent and secretive in nature, where the alleged "victim" is kept in the dark regarding many features of the investment program such as the identity of those in charge and the business purposes. In the case at bar, the Defendants revealed the names of those involved in the TSI program, offered to arrange meetings between the undercover operative and TSI individuals, and even suggested a review by attorneys for the undercover operative. This suggests the normal secretive nature of investments addressed by the experts in not present here. The evidence in this case will certainly show that the undercover federal agent was told of high rates of return on the investment he was being presented with, but many of the features of the opinions focus on facts of other cases the government has recently filed, which differ from this case. As the Court exercises its gatekeeping function under Daubert, these differences should be relevant, especially because experts tend to influence juries by the sheer weight of their backgrounds and credentials.

The trier of fact in the instant case does not need this type of assistance. Furthermore, the potential prejudice from the aura of expert testimony would be difficult to overcome. If misrepresentations of fact were made, a lay juror should have little difficulty recognizing that and applying that to the required elements of the crimes charged herein. An expert is not needed to assist a trier of fact well qualified to understand simple concepts such as misrepresentations, assuming such were made here. Moreover, should the experts conclusions' rely on facts concerning this particular investment program, or other investment programs, these extraneous facts, which are hearsay, may violate the right to confrontation described in the Sixth Amendment, as those rights have been interpreted by the United States Supreme Court in Crawford v. Washington, 541 U.S. 36 (2004).

As the Court evaluates these issues, we also note that the undercover agent may also be asked to testify, in part, as an expert witness, although such testimony may also be subject to appropriate objections.

Special precautions should be taken to minimize potential prejudice when a government agent testifies as both a fact and expert witness. United States v. Farmer, 543 F.3d 363, 370 (7th Cir. 2008). *See also* United States v. Freeman, 498 F.3d 893, 903-4 (9th Cir. 2007) (noting concern that a case agent who testifies as an expert receives "unmerited credibility" for lay testimony, but holding that the use of case agents as both lay and expert witnesses not so inherently suspect that it should be categorically prohibited provided that the district court engages in vigilant gatekeeping and makes the dual roles of the witness clear to the jury.

The Court should either exclude the testimony of the experts, or at least minimize the number of any such witnesses, whether they be those designated, or the undercover fact witness also testifying as an expert.

IV. TESTIMONY ON LEGAL CONCLUSIONS AND MENTAL STATE

Each of the reports refers to the conduct in this case as either illegitimate, illegal, fraudulent, etc. These, we contend are legal opinions and must not be permitted to come from experts. The Court is the source of legal definitions, given to the jury in instructions. A witness' legal conclusions, whether or not the witness qualifies to testify as an expert, may not be admitted. Christiansen v. City of Tulsa, 332 F.3d 1270 (10th Cir. 2003); Densberger v. United Technologies Corp, 283 F.3d 110 (2nd Cir. 2002); Mukhtar v. California State University Hayward, 299 F.3d 1053 (9th Cir. 2002).

In addition, while Rule 704 of the Federal Rules of Evidence does permit an expert witness to testify on ultimate issues, it does not extend to permitting testimony offering an opinion or inference as to whether the defendant did or did not have the mental state of mind constituting an element of the charged offense. *See also* United States v. Booth, 309 F.3d 566 (9th Cir. 2002); United States v. Langford, 802 F.2d 1176 (9th Cir. 1986). As the Court can see from Exhibits A and B, each of the experts have opinions on the intent of the Defendants to defraud, which the Court undoubtedly knows is an element of these charges and usually the most debated at trials such as this one. The expert opinions on this subject must therefore be excluded.

V. CONCLUSION

It appears as though the prosecution seeks a successful trial result for itself here by overloading its presentation with expert testimony. As this Court knows from its own experience, most trials of fraud charges involve a showing of the representations made by those charged, coupled with proof of their falsity. Here, we suggest the falsity part of the proof exists only through the testimony of experts. If the prosecution can otherwise prove the falsity, then the expert testimony is also cumulative.

We are asking the gatekeeper, this Court, to keep the gate completely closed, or only opened slightly. We are also asking that any expert testimony permitted exclude any reference to legal conclusions or mental state as those are completely forbidden.

Dated: November 5, 2012

Respectfully submitted,

JOEL LEVINE, Esq.
A Professional Corporation

By s/ _____
JOEL LEVINE, Esq.
Attorneys for Defendant
BEATA PRIORE

Report of Sean O'Malley

United States of America v. Moses Onciu, Beata Gizella Priore, & Irene Pemkova

Case 8:08-CR-00180-DOC (Central District of California)

Introduction and Background

I am the Deputy Chief Investigator for Enforcement at the Federal Reserve Bank of New York (the "New York Fed"). I have been working as an investigator at the New York Fed for over 11 years. Prior to my employment at the New York Fed, I worked at Kroll Associates, a leading international investigation firm headquartered in New York, from November 1991 through February 1999. I served in a variety of investigative positions, lastly as a Managing Director in the Financial Investigation Services Group. Prior to working at Kroll Associates, I was a Senior Auditor/Investigator at the New York State Deputy Attorney General's Office for Medicaid Fraud from July 1984 to November 1991. I am also a Certified Public Accountant licensed in New York State, as well as a Certified Fraud Examiner.

My training and experience as an investigator of financial crimes has exposed me to various types of financial frauds. As part of my duties at the New York Fed, I have been involved in identifying and investigating fraudulent investment scams. These investigations cover a wide variety of fraudulent activity, ranging from money laundering and other complex financial crimes, to terrorism, major fraud cases, and advance fee scams. I also oversee and supervise the administration of the New York Fed's Frauds and Scams website, which educates the public with respect to known "Federal Reserve" scams and other fraudulent financial schemes. I coordinate with other law enforcement and government agencies that inform us of various financial frauds and scams. The New York Fed's website broadcasts law enforcement warnings relating to such frauds and scams in an effort to prevent and deter financial crime.

During the last 11 years at the New York Fed, I have found that the Federal Reserve System (the "Fed") has often been a target of individuals who want to use the name of this prestigious institution in attempts to provide legitimacy to their financial investment frauds. As part of my duties, I have investigated schemes in which unscrupulous people attempted to get individuals to invest in "secret" and/or "high yield" investment programs supposedly run by the Fed, the United Nations, the World Bank, or other prominent international banking institutions. These programs are usually part of an advanced fee scheme in which the perpetrator will attempt to obtain a fee from the victim in order to provide access to this "secret" program. Sometimes that fee is represented as a tax.

Another variation of this scheme is to solicit "certificates of deposits" from potential investors as seed capital required in order for the investors to obtain access to the "secret" loans or "private placements" or "high yield investment programs" that do not exist. Other common scheme variations include the creation of false Federal Reserve Notes or Federal Reserve Bonds in an attempt to use these fictitious documents as collateral on a bank loan, or in an attempt to obtain an advanced fee from individuals who intend to cash in the fictitious documents for U.S. currency.

Fraudsters tend to target institutions that have global recognition, like the New York Fed, the Board of Governors of the Federal Reserve System in Washington, DC, and the Treasury Department. With advanced computer graphic programs it is relatively easy for fraudsters to dress up documents with fake logos, stamps, and other features in order to add a veneer of authenticity to their scam. I have encountered many similar scams involving fabricated investment documents using the name and logo of the Federal Reserve, and the New York Fed, on a regular basis.

The Federal Reserve Board and the New York Fed have provided multiple notices to the public about various schemes to defraud. They include:

- Circular No. 10858, issued on July 19, 1996, containing an Investment Scheme Advisory Alert, which can be found at the following link: http://www.newyorkfed.org/banking/circulars/10858.html#Investment_Scheme_Advisory

- Federal Reserve Supervision and Regulation (SR) letter 02-13, regarding "'Prime Bank' and Other Financial Instrument Fraud Schemes," which can be found at http://fedweb.frb.gov/fedweb/bsr/srltrs/SR0213.htm

  With SR Letter 02-13 issued in May 2002, the Federal Reserve once again highlighted the dangers associated with investment schemes that promise very high rates of interest that are, among other things, supposedly generated through secret trading programs involving financial instruments.

  That 2002 SR letter lists the following general characteristics or "red flags" of illicit financial instrument investment scams:

  - Promises of extremely high, unrealistic rates of return with little or no risk.
  - Participation in an investment program often referred to as a "roll program (or programme)," "high yield investment program," or "bank debenture trading program."
  - High rates of return generated by repeatedly trading (or buying and selling) financial instruments (often over a 40-week period).
  - Legitimate financial instruments, such as letters of credit, guarantees, and medium term notes, are bought and sold or traded in manners that are not realistic -- for example, standby letters of credit are bought and sold.

- Transactions are overly complex and nonsensical.
- High degree of secrecy -- for example, the trading of financial instruments takes place on a secret market, your banker or investment adviser will not know about the investment opportunity because only a few special people around the world are aware of it or participate in the secret trading, or the investor is being allowed to participate in a secret trading program and, if he or she reveals any information about the program, the investor's participation will be terminated.
- The investor's funds are absolutely safe and cannot be lost -- for example, a bank has issued a guarantee or an attorney is holding the funds in a special escrow fund.
- Involvement of a well known governmental authority, such as the Federal Reserve, World Bank, or IMF.
- Investor's funds will be used for "humanitarian" projects.

- SR 03-14, dated July 16, 2003, regarding "Fraudulent Federal Reserve Note Schemes," which can be found at: http://fedweb.frb.gov/fedweb/bsr/srltrs/SR0314.htm

  SR letter 03-14 notes that the Federal Reserve has issued various advisories relating to bogus investment schemes involving phony "prime bank" notes, letters of credit, guarantees, and other financial instruments. This SR letter also warns about the use of altered Federal Reserve Notes to look like large denomination, often in the hundreds of millions of dollars, Federal Reserve Notes or Bonds.

- In July 2005, the Federal Reserve Bank of New York posted to the Frauds and Scams section of its website a warning on "Private Placement Programs/High Yield Investment Programs," which can be found at: http://www.newyorkfed.org/banking/frscams.html

  That 2005 warning listed the general characteristics or "red flags" of scams involving Private Placement Programs / High Yield Investment Programs, including:

  - These programs purport to be highly secretive and very lucrative programs which invest in various financial instruments, such as medium term notes, standby letters of credit and "prime bank" guarantees.
  - Scam artists claim that proceeds from the programs are slated for investment, often abroad. Fictitious letters are often used to convince targets that the programs are legitimate.
  - Targets are told that in order to participate they must provide the scam artist with verification of large (usually multi-million dollar) deposits in a personal bank account, and to provide an enlarged color copy of the signature page of the target's passport.
  - Scam artists give "guarantees" that the money will remain in the target's account, under her sole control, throughout the term of the program.
  - Personal information is often requested such as the target's signature and other key personal information, including a passport number, a personal bank account number,

routing number and SWIFT code. The purpose of obtaining this information is to allow the scam artist to impersonate the target and take the money from the designated account.

- The fraudulent "programs" are presented as legitimate investment vehicles being offered by "invitation only" by one of the Federal Reserve entities.
- The warning explained that employees of the Federal Reserve Bank of New York and the Federal Reserve System do not offer investments to the general public. Furthermore, the Federal Reserve does not use any agents that are authorized to deal with the general public.

Review of Documents

On or about May 27, 2009, I spoke with AUSA Lawrence E. Kole, from the U.S. Attorney's office in the Central District of California, about my involvement in testifying as an expert in investment scams. He asked if I would be willing to review documents related to a High Yield investment program, which may have been linked to the Federal Reserve. I agreed to offer my assistance.

I forwarded AUSA Kole my C.V. along with links to the NY Fed's website regarding federal funds rates and investment frauds.

AUSA Kole forwarded me 13 items via Federal Express with a letter dated July 24, 2009. USA Kole followed that up with second batch of documents containing transcripts of various conversations that was sent on August 9, 2009 via Federal Express.

Based on my review and analysis of the above referenced items, I have found many of the documents and/or recorded statements of the defendants to be consistent with other documents used by those who have operated scams against the public.

I have listed below a sample of several separate references to the defendants' offers to provide investments that were either inconsistent with legitimate financial transactions and/or consistent with known fraudulent activity. I base my opinion on the following conclusions drawn from my own personal knowledge from working at the Federal Reserve Bank of New York, working with the Securities and Exchange Commission, and working with the United Nations.

Descriptions of the investment programs offered by the defendants are consistent with the following red flags for fraudulent investment programs that the Federal Reserve warned about in SR letter # 02-13:

- Promises of extremely high, unrealistic rates of return with little or no risk.
- High rates of return are generated by repeatedly trading (or buying and selling) financial instruments (often over a 40-week period).

- Legitimate financial instruments, such as letters of credit, guarantees, and medium term notes, are bought and sold or traded in manners that are not realistic -- for example, standby letters of credit are bought and sold.
- High degree of secrecy -- for example, the trading of financial instruments takes place on a secret market, your banker or investment adviser will not know about the investment opportunity because only a few special people around the world are aware of it or participate in the secret trading, or the investor is being allowed to participate in a secret trading program and, if he or she reveals any information about the program, the investor's participation will be terminated.
- The investor's funds are absolutely safe and cannot be lost -- for example, a bank has issued a guarantee or an attorney is holding the funds in a special escrow fund.
- Involvement of a well known governmental authority, such as the Federal Reserve, World Bank, or IMF.
- Investor's funds will be used for "humanitarian" projects.

Investment offered by Moses Onciu

- Pages 00266-276 contain an e-mail description of the investment program sent by Moses Onciu on January 19, 2007, which offered a program for small investors with at least $500,000 to invest including the following features:

    - Page 00267-268 shows a schedule of how much an investment of $500,000 would return if 12 trades were consummated a week. The schedule indicates that over 5 weeks, there would be total earnings of more than $3.8 million, and over $623,000 would be in a cash certificate of deposit. The same schedule indicates that over 13 months there would be total Earnings of more than $20 million, and over $3.3 million in a cash certificate of deposit.

    - Pages 00269-270 provided the following details of to the investment program, as per this e-mail:

        - Amount needed: minimum of $500,000 USD for "entery" (sic)

        - 100% of Client funds are guaranteed by a 1 year "Banker's Acceptance Money Market Certificate" from either Royal Bank of Scotland or Credit Suisse.

        - The "Project Funding Group (Trading Group) GUARANTEES a monthly interest payment to Client of 2% of the total value of his invested funds, exclusive of trade profits."

        - The Project Funding Group (Trading Group) would split all profits on a 50/50 basis, but would guarantee the Client minimum trade profits of at least 12.5% per week, which equaled a monthly interest rate of 50% of client funds.

- As stipulated in the contract, the "Client instructs his banker to transfer the investment (loaned) funds into the account designated by the Project Funding Group in return for a 1-year Banker's Acceptance Money Market Certificate....."
- It is the best program Mr. Onciu "had ever been offered for the "small" client" and arranged in a way to provide "absolute assurance and security for the Client's investment funds....which guarantees return of 100% of his investment funds at the end of the year, PLUS the 2% guaranteed monthly interest payments, PLUS a guarantee of AT LEAST 12.5% weekly profits from the managed program"

- Pages 00366 – 00369 contain an e-mail description of the investment program sent by Moses Onciu on February 20, 2007. There is an offer for a program for investors with $1,000,000 to invest, which includes the following features:
  - The weekly profit is 25%
  - The program runs for 40 weeks.
  - After profits are split and fees are paid, the net proceeds equate to 305% or more than $3 million for every million dollars invested within 45 days from date of submission.
  - Safety of Principal – the "original deposit funds remain in Client's account in his present bank" and "are never at risk."

Investment offered by Beata Gizella Priore

- On page 00256 of the e-mail description of the investment program sent by Beata G. Priore on December 18, 2006, offers "....the guarantee for 100% plus 5.5% interest is made available to him and will be active upon reception of the clients transfer." Other significant details of this investment program included in the e-mail are:
  - Amount needed: minimum of $1 million
  - Funds have to be transferred
  - Length of investment 30 days and up
  - Profit normally after 4 weeks and can be extended
  - The payout is principal times 7.5, so $1 million becomes $7.5 million ($6.5 million profit).
- On the Transcript dated November 30, 2006 at 9:53:03, Dr. Priore called Thomas Moore to discuss the $1 million investment to be placed with TSI, the trading group in Germany. She said that the contract required a 20% commission on the profits, of which 5% was to go to

her company, the Max Foundation. Dr. Priore explained that TSI is a company that trades money, and its attorney "is the judge for the European Union Council." She said that the trader himself who set up the $1 million program "usually does things in billions of dollars. But, every time he does, uh, a large program, he attaches small ones." And she went on to say that it was "just humanitarian on, on his part, so that the people with the small amounts of money will be able to take care of their communities." The invested funds had to be sent "into the judge's escrow account" and if Mr. Moore could not "wait the 30, 45 day period, you will be given back your money within two days as soon as you ask for it with five-and-a-half percent interest." The program was "secure" and "understandable" as Mr. Moore would not be putting the money into "their escrow account, uh for trade", but as a loan so that they would be paying him back interest. Since TSI bundled the smaller investments into a $100 million investment, the returns were 6.5 to 1 (prior to paying the 20% commission). When asked by Mr. Moore if that was 6.5% per annum, Dr. Priore said no, for $1 million he would receive $6.5 million back within 30 to 45 days, perhaps up to 60 days if it takes longer to "reach the bundle." Dr. Priore said that the program was based on currency trading in Euros, and when asked if it was a "guaranteed minimum return" she responded "That's it. That's it." Later in the conversation, Dr. Priore said that "Well, it's pretty much risk free." And if they stopped the trading program, "Then everybody gets their money back with five-and-a-half percent." Dr. Priore also said that TSI owned "three quarters of a large Double-A bank." Later in the conversation, Dr. Priore told Mr. Moore that he would "have to keep this a secret" – it was "highly confidential."

Investment offered by Irene Pemkova

- On the Transcript dated February 27, 2006 at 9:23:31, Dr. Pimkova (Pemkova) stated that the "investment opportunity" was created by "one of the top European foundations" and would provide a profit of at least 6 – 12 percent per trade. She went on to state that investments totaling at least $10 million, but under $100 million, would trade twice per week during the first month of the investment, daily during the second month, and two times per day on the third month. She stated that the investment would generate at least 48 percent return in the first month, and her associate, Mr. Elder, stated on that same call that there would be no risk to Mr. Moore's funds. She stated that "you can basically withdraw your funds anytime you want" and added that "I have already one client in and he got paid on, uh, Friday, first time."

- On the Transcript dated August 24, 2006 at 10:40:23, Dr. Pimkova (Pemkova) stated that she had a $1 million investment opportunity that became available, and that "within, seven to ten banking days, you will get approximately 40 to 50 percent per week." She described the investment as having two options, one of which was to stay in the program for "40 weeks," but "your original principal, of course, stay in the bank for a year." She then linked this investment opportunity to "your own humanitarian program," which would allow you to reenter the program, or you could contribute to "their humanitarian project…" When

describing the trading program, she stated that although she shouldn't tell Mr. Moore, the trading is "under the direct, let's say, guidance of the Fed and CIA." And that these smaller amounts can be grouped into larger amounts "to the 100 million, uh, trading program and MTNs." Finally she goes on to say that "they were able to establish credit line based on 502 money" which she explained to be "historical funds which were paid by U.S. or Federal Reserve as a, uh, interest rate for Treasuries and other stuff" which was linked to an "Oriental family."

- On the Transcript dated November 29, 2006 at 9:40:31, Dr. Pimkova (Pemkova) stated that she had good news about a foundation in which she knew the president very well and he was going to let her open the program to Mr. Moore. When Mr. Moore asked her if the return was 300% per month, she responded, "Something like this" and then said that she was not allowed to say the return. She said that she had clients who invested in the foundation before and "it is definitely working program." She said that Moore would have to move his money to Germany, but the "bank is guaranteeing security of your funds."

- On the Transcript dated November 29, 2006 at 14:11:57, Mr. Moore asked Dr. Pimkova (Pemkova) what David and Goliath International Ministries was, and she told him that it was the foundation that was under the CIA umbrella (the Central Intelligence Agency). She went on to say that "Dr. Onciu is a former high-placed officer" who is running humanitarian projects, later stating that his group was to "help fund the humanitarian projects which the CIA is running." She said that she knew Dr. Onciu personally and he's basically running several major humanitarian projects.

Analysis of Documents

To conduct my analysis, I reviewed the documents provided to me by AUSA Kole using my experience in understanding fraudulent schemes. I attempted to determine if these documents appeared to be consistent with legitimate financial transactions or contained classic indications of fraudulent activity.

My review of the documents found multiple indications of activity that was either inconsistent with normal business practices, consistent with known fraudulent activity, or outright fabrication. These instances are described below.

- I have found that fraudsters claiming special expertise in high yield private placement investment programs request investments of huge amounts of money, usually at least a million dollars, often claiming to bundle smaller investments into hundreds of millions or billions of dollars to qualify for the "special trading programs." All three defendants' actions are consistent with such a scam.

- It is my opinion that Mr. Onciu's offer in January 2007 to turn a $500,000 investment from Mr. Moore into more than $3.8 million over 5 weeks, and into more than $20 million over 13 months without any risk to his original principal is a classic sign of a fraudulent investment scam and is consistent with the Red Flags noted in Federal Reserve SR Letter 02-13 and the July 2005 warning from the Federal Reserve Bank of New York on "Private Placement Programs/High Yield Investment Programs."

- It is my opinion that Mr. Onciu's offer in February 2007 to invest $1,000,000 from Mr. Moore in a program with a weekly profit of 25%, which would run for 40 weeks without any risk to the original deposit is a classic sign of a fraudulent investment scam and is consistent with the Red Flags noted in Federal Reserve SR Letter 02-13 and the July 2005 warning from the Federal Reserve Bank of New York on "Private Placement Programs/High Yield Investment Programs."

- It is my opinion that Beata G. Priore's offer in November and December 2006 to invest $1,000,000 from Mr. Moore in a program which would generate a profit of 650% within 60 days without any risk to the original deposit is a classic sign of a fraudulent investment scam and is consistent with the Red Flags noted in Federal Reserve SR Letter 02-13 and the July 2005 warning from the Federal Reserve Bank of New York on "Private Placement Programs/High Yield Investment Programs."

- It is my opinion that Irene Pemkova's offer in February 2006 to invest $10,000,000 from Mr. Moore in a program which would generate a profit of 48% the first month, without risk to the original deposit is a classic sign of a fraudulent investment scam and is consistent with the Red Flags noted in Federal Reserve SR Letter 02-13 and the July 2005 warning from the Federal Reserve Bank of New York on "Private Placement Programs/High Yield Investment Programs."

- It is my opinion that Irene Pemkova's offer in August 2006 to invest $1,000,000 from Mr. Moore in a 40 week program which would generate a profit of 40-50% per week within 10 banking days, and was linked to humanitarian programs, and was under the guidance of the Fed and CIA, is a classic sign of a fraudulent investment scam and is consistent with the Red Flags noted in Federal Reserve SR Letter 02-13 and the July 2005 warning from the Federal Reserve Bank of New York on "Private Placement Programs/High Yield Investment Programs."

- It is my opinion that Irene Pemkova's offer in November and December 2006 to invest $1,000,000 from Mr. Moore in a program which would generate a profit of hundreds of percent in a program run by Dr. Onciu, who was purported to help fund the humanitarian projects which the CIA was running is a classic sign of a fraudulent investment scam and is consistent with the Red Flags noted in Federal Reserve SR Letter 02-13 and the July

2005 warning from the Federal Reserve Bank of New York on "Private Placement Programs/High Yield Investment Programs."

The three defendants' assertion that astronomical profits from these high yield, no risk contracts are used to help fund humanitarian projects is consistent with warnings by the Federal Reserve and is common in many investment scams. I also note that fraudsters often reference Trusts or Foundations as the investment vehicle to be used in investment scams promoting funding for humanitarian purposes.

Conclusion

The defendants' offers of high yield investments without risk to the investor's original principal are consistent with the actions of fraudsters.

It is my opinion that the documents described above reflect a clear evidence of multiple schemes to defraud, which solicited funds ranging from $500,000 to $10,000,000 (USD).

I have had no connection with the investigation of funds, bank account, or the claimants in this case, other than my meetings and conversations with the government prosecutor concerning my expected testimony. I will receive no additional compensation for my work on this case beyond my regular salary from the Federal Reserve Bank of New York.

Respectfully submitted,

Sean O'Malley

Deputy Chief Investigator - Enforcement

Federal Reserve Bank of New York

[redacted]

Dated: September 3, 2010

New York, New York

Testimony of Professor James E. Byrne
U.S. v. Onciu

8 September 2010

Professor Byrne. Professor James E. Byrne is a full time faculty member at George Mason University School of Law where he has taught courses including contracts, sales, commercial paper, international commercial transactions, and international commercial fraud since 1982. He is also the Director of the Institute of International Banking Law & Practice, a non profit educational organization. He is admitted to practice before the Florida and Maryland Bars. He has spoken and written extensively in peer-reviewed publications about commercial practices and commercial fraud including international banking operations, financial instruments, Ponzi schemes, and high yield or prime bank fraudulent schemes. His credentials including his publications are included in his resume which follows.

Previous Testimony and Compensation. Professor Byrne has given testimony as an expert in approximately 40 cases during the past 25 years of which the following occurred in the past four years: U.S. v. Brown (S.D.N.Y. 2006); Smith v. Hanks (D. Ala. 2006); Total Energy Asia Ltd. v. Standard Chartered Bank (Hong Kong 2006); Nakorn Thai Strip Mills v. Siam City Bank and Bank of New York (Thailand 2007); InterState Net Bank v. Electronic Data Systems Corp. (D. N.J. 2007); PRB LLC v. West Anclote Property, Inc. (2007) (arbitration); California v. Heath (2007); U.S. v. Thornburg (N.D. Okla. 2009); Fox v. Bank Mandiri (Bankruptcy S.D. N.Y.), GECC v. Deutsche Bank N.A. (arbitration); CNA v. Certain Underwriters at Lloyd's London (Cook County, Ill. 2010); and Midcontinent Express Pipeline, LLC. v. MAN Industries (India) Ltd. (Harris County, Texas 2010). He is being compensated for his work in US v. Onciu at the rate of $350 per hour.

Materials Examined. He has examined the materials that are listed in letters dated 7 August 2009 and 3 September 2010 from Lawrence E. Kole to Professor James E. Byrne.

Opinion. Professor Byrne will testify that it is his professional opinion that the materials that he has examined in connection with this case do not reflect legitimate transactions, are not legitimate, and are instances of Prime Bank or High Yield fraudulent schemes.

Legitimate Instruments. He will testify about legitimate financial transactions and instruments in the U.S., Canada, and Europe, how they work, the earnings or returns that can be earned from them, and the risks that they entail. This testimony will include trading in currency (foreign exchange transactions), medium term notes, banker's acceptances, trading and discounting financial instruments, lending, collateralization, and guarantees. He will also explain how financial instruments are delivered, and the nature of the SWIFT network.

Prime Bank or High Yield Fraudulent Schemes. He will testify about Prime Bank or High Yield fraudulent schemes, explaining their characteristics including promised disproportionate returns given the representations that the transactions are risk free or

safe, the representation of "trading", the misuse of legitimate instruments and commercial terms and the names of legitimate institutions to give them credibility, the abuse of the notion of secrecy and confidentiality, and the representation that the schemes further humanitarian or charitable projects. He will also testify that it is not uncommon for victims of High Yield or Prime Bank fraudulent schemes to seek to recoup their losses by promoting the schemes to others.

Explanation of the Basis for His Opinions. He will also explain how the materials that he has examined have led to his conclusion that the schemes that they reflect are not legitimate and constitute an instance of Prime Bank or High Yield fraudulent schemes.

Aspects of the materials that he has examined that indicate that the schemes described in them are not legitimate include mis-references or references in an incorrect context to various aspects of commerce, finance, or investments. Some of these only occur in the manner indicated in the context of Prime Bank or High Yield fraudulent schemes. These matters include guaranteed principal with disproportionately high returns, the use of a victim's funds to induce an investment without the funds themselves being at risk, guaranteed returns of hundreds of percent in periods from weeks to three months, the lack of risk, vague "trading", unusually large amounts of money, references to major banks, the International Chamber of Commerce and its rules, blocked funds, loans in which repayment was not expected, "pinging" accounts, irrevocable payment orders, recitals that the funds are "good, clean and cleared" and "of Non-Criminal Origin", proof of SWIFT, and proofs of funds.