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DEPARTMENT OF THE TREASURY

Departmental Offices

Designation of Nauru and Ukraine as Primary Money Laundering Concerns

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Designation.

SUMMARY: This notice advises the public that the Department of the Treasury, on December 20, 2002, designated the countries of Nauru and Ukraine as primary money laundering concerns pursuant to section 5318A of title 31, United States Code, as added by section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

DATES: The designations made by this notice are effective December 20, 2002. Comments on certain aspects of this notice should be submitted by [INSERT DATE THAT IS 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. In making comments, please refer to the "Public Comments Requested" in the supplementary information portion of this preamble.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, D.C. area may be delayed. Comments submitted by electronic mail may be sent to regcomments@do.treas.gov with the caption in the body of the text, "ATTN: Section 311 – Designation of Jurisdictions." Comments also may be submitted by paper mail (preferably and original and three copies) to Department of the Treasury, 1500 Pennsylvania Avenue, NW. Washington, DC 20220 "ATTN: 311 – Designation of Jurisdictions." Comments should be sent by one method only. Comments may be inspected at the Department of the Treasury between 10 a.m. and 4

p.m., in Washington, D.C. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 622-0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Enforcement, Department of the Treasury, (202) 622-0400 ; Office of the Assistant General Counsel (Enforcement), (202) 622-1927; or the Office of the Assistant General Counsel (Banking and Finance), (202) 622-0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Designation of Nauru and Ukraine as Primary Money-Laundering Concerns

This document formally designates the countries of Nauru and Ukraine as primary money-laundering concerns under 31 U.S.C. 5318A, as added by section 311(a) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107-56) (the Act).

II. Imposition of Special Measures

The Department of the Treasury places these jurisdictions, and those with whom they have dealings, upon notice of its intent, after appropriate consultation, to follow this designation with the imposition of special measures authorized by section 5318A(a). With respect to Nauru, Treasury intends to impose the special measure described in section 5318A(b)(5), which will prohibit financial dealings by U.S. financial institutions with any Nauru licensed institution, unless otherwise excepted. Under the terms of section 5318A(a)(2)(C), this special measure can be imposed only by promulgation of a rule. Treasury intends to initiate a rulemaking shortly.

With respect to Ukraine, Treasury intends to impose one or more of the information-gathering and record-keeping requirements of the special measures described in section 5318A(b)(1) through (4). Those special measures can be imposed by an order, which is limited in duration to 120 days, and which may be extended indefinitely through

a rulemaking (see section 5318A(a)(2) and (3)). Treasury intends to issue an order while simultaneously initiating a rulemaking to impose special measures on Ukraine.

III. Public Comments Requested

The Department of the Treasury solicits comments from all interested persons concerning the appropriate special measures to impose on Ukraine. Specifically, Treasury solicits comments from the financial sector, including domestic financial institutions and domestic financial agencies, concerning its ability to comply with orders or regulations that impose actions under special measures one through four authorized by section 5318A(a). Treasury has also determined to propose imposition of special measure five upon Nauru, but solicits comments from any institution licensed by Nauru as to reasons the institution should be excepted from the prohibitions imposed under this measure. The prohibitions of special measure five would not apply to the Bank of Nauru.

IV. Background

On October 26, 2001, the President signed into law the USA PATRIOT Act. Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism.

BSA section 5318A, as added by section 311 of the Act, authorizes the Secretary of the Treasury (Secretary) to designate a foreign jurisdiction, institution, class of transactions or type of account as being of "primary money laundering concern," and to impose one or more of five "special measures" with respect to such a jurisdiction, institution, class of transactions, or type of account. The Secretary has delegated his authority under section 5318A to the Under Secretary of the Treasury (Enforcement).

Section 5318A specifies those factors that the Secretary must consider before designating a jurisdiction, institution, transaction, or account as of "primary money

laundering concern." The evaluation of these factors against the summary of the administrative record, as subsequently set forth in this designation, has resulted in the conclusion that both jurisdictions are of primary money laundering concern.[1]

Once the Secretary has considered the factors, consulted with the Secretary of State and the Attorney General (or their designees), and made a finding that a jurisdiction is a primary money laundering concern, the Secretary is authorized to impose one or more of the five "special measures" described in 5318A(b). These special measures can be imposed individually, jointly, or in combination with respect to a designated "primary money laundering concern." Four of the special measures impose information-gathering and record-keeping requirements upon those domestic financial institutions and agencies dealing either directly with the jurisdiction designated as one of primary money laundering concern, or dealing with those having direct dealings with the designated jurisdiction.[2] Those four measures require: (1) keeping records and filing reports on particular transactions, including the identities of the participants in the transactions and

[1] The following factors, in accordance with the requirements of section 5318A(c)(2)(A), are considered to be potentially relevant factors in evaluating the necessity of designating Nauru and Ukraine. Nauru and Ukraine meet the majority of these factors. First, whether organized criminal groups, international terrorists, or both, have transacted business within the designated jurisdiction. Second, with respect to its banking practices, Treasury must also evaluate (1) the extent to which the jurisdiction or financial institutions operating in the jurisdiction offer bank secrecy or special regulatory advantages to non-residents or nondomiciliaries of the jurisdiction; (2) the substance and quality of administration of the bank supervisory and counter-money laundering laws of the jurisdiction; (3) the relationship between the volume of financial transactions occurring in the jurisdiction and the size of the economy of the jurisdiction; and (4) the extent to which the jurisdiction is characterized as an offshore banking or secrecy haven by credible international organizations or multilateral expert groups. Third, with respect to its enforcement mechanisms, Treasury must evaluate whether the United States has a mutual legal assistance treaty with the jurisdiction, and determine the experience of United States law enforcement officials and regulatory officials in obtaining information about transactions originating in, or routed through to, such jurisdiction. Finally, Treasury must evaluate the extent to which the jurisdiction is characterized by high levels of official or institutional corruption.

[2] Treasury is currently examining the extent of the applicability of these requirements on those financial institutions enumerated under the USA PATRIOT Act.

the beneficial owners of the funds involved; (2) obtaining information on the beneficial ownership of any account opened or maintained in the United States by a foreign person or a foreign person's representative; (3) identifying and obtaining information about customers permitted to use, or whose transactions are routed through, a foreign bank's "payable-through" account; or (4) identifying and obtaining information about customers permitted to use, or whose transactions are routed through, a foreign bank's "correspondent" account.

Under the fifth special measure, a domestic financial institution or agency may be prohibited from opening or maintaining in the United States a correspondent account or a payable-through account for or on behalf of a foreign financial institution if the account involves the designee.

In selecting which special measures to impose, the Secretary must consider a number of factors.[3] In addition, imposition of special measures (1) through (4) requires consultation with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act), the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board, and any other agencies and interested parties as the Secretary may find appropriate. Imposition of special measure (5) requires consultation with the

[3] In determining generally what special measures to select and to impose, the Secretary, in consultation with the agencies and "interested parties" set forth immediately above, must consider the following factors: (1) whether similar action has been or is being taken by other nations or multilateral groups; (2) whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States; (3) the extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution or class of transactions; and (4) the effect of the action on United States national security and foreign policy.

Secretary of State, the Attorney General and the Chairman of the Board of the Federal Reserve System.

The Treasury intends, after consultation as provided above, to impose the fifth special measure with respect to Nauru, and actions under special measures one through four with respect to Ukraine. Section 5318A lists several factors that the Secretary must consider, in consultation with the Secretary of State and the Attorney General, before imposing these special measures. Pursuant to section 5318A, any of these first four special measures can be imposed by order, regulation or as otherwise permitted by law. Special measures imposed by an order can be effective for not more than 120 days, unless subsequently continued by a regulation promulgated before the end of the 120-day period.

The fifth special measure can only be imposed through the issuance of a regulation. The issuance of the fifth measure also requires consultation with the Chairman of the Federal Reserve.

A. Nauru:

At one point in time, the island of Nauru had one of the highest per capita incomes in the developing world due to the mining and export of phosphates, a funding source expected to be completely depleted within five to ten years. Most of the funds emanating from the phosphate mining, originally contained in the country's trust funds, have been depleted through waste, poor investments and fraud. In addition to these problems, the Nauru government itself has been characterized by extensive instability.

In an effort to raise funds, the island has resorted to several alternate endeavors, including the selling of offshore banking licenses. Nauru is notorious for permitting the establishment of offshore banks with no physical presence in Nauru or in any other country. These banks maintain no banking records that Nauru or any other jurisdiction

can review. The evidence indicates that the entities that obtain these offshore banking licenses are subject to cursory and wholly inadequate review by the country's officials and lack any credible on-going supervision. In addition, one of the common requirements imposed by Nauru on these offshore banks is they not engage in economic transactions involving either the currency of Nauru (currently the Australian dollar) or its citizens or residents. Consequently, these offshore banks have no apparent legitimate connection with the economy or business activity of Nauru. Indeed, only one bank appears to be physically located in Nauru, the "Bank of Nauru." It is a local community bank that also serves as the Central Bank.

Nauru's Banking Act also prohibits employees or officers of a financial institution from revealing to anyone, including government officials, any information relating to banking transactions in and out of Nauru. In addition, foreign authorities may only receive, with the prior approval of the Nauruan Minister of Finance, macro-level information, such as the total sums of moneys and types of currency transferred from a country into Nauru. Foreign authorities cannot receive information regarding individual transactions. Consequently, there is an extensive secrecy regime surrounding the Nauru banking system.

The Financial Crimes Enforcement Network has recently reported that 400 offshore banks have been granted licenses by Nauru.[4] It has been verified by on-site reports that a 1,000 square foot wooden structure is "home" to some 400 of these banks who have no physical or legal residence anywhere else in the world. The United States Government has been able to verify the names of 161 of the institutions licensed by Nauru, and they are presented as Appendix A to this designation. These are institutions for which the limited information available indicated that there is a strong likelihood as to their status as offshore shell banks that are not subject to effective banking supervision.

[4] FinCEN Advisory Issue 21 (July 2000).

Although the jurisdiction, and not the institutions themselves, are being designated, the list of institutions demonstrates the extensive opportunities for money-laundering activity on the island.

As a consequence of the current practices of Nauru, the Financial Action Task Force (FATF) placed Nauru on the "Non-Cooperative Country and Territory" (NCCT) list in June 2000 for maintaining an inadequate anti-money laundering (AML) regime according to international standards. According to the FATF, Nauru's anti-money laundering weaknesses included, but were not limited to, the following: money laundering was not a criminal offense; offshore banks licensed by Nauru were not required to maintain customer identification or transaction records; Nauruan financial institutions were under no obligation to report suspicious transactions; and Nauru maintained strong bank secrecy laws. On August 28, 2001, Nauru passed the Anti-Money Laundering Act of 2001 ("the AML Act"). On September 25, 2001, however, FATF indicated that the AML Act was not consistent with international standards because it did not apply to the numerous offshore banks licensed by Nauru. In response to FATF pressure, on December 6, 2001, Nauru passed amendments to its AML Act. Nonetheless, according to the FATF, the revised anti-money laundering law that now exists provides for a wholly inadequate anti-money laundering legislative and regulatory regime. In addition, Nauru has not yet addressed the remaining and most important deficiency of its AML legislation, that is, adequate procedures for licensing, regulating and supervising its offshore banks. Thus, despite repeated warnings by FATF of its concern with Nauru's practices, and the clear consequences of not amending its practices, Nauru has not shouldered its responsibility to establish a sufficient AML regime.

On the basis of FATF's determination, an evaluation of the factors set forth in section 5318A, and after consulting with the Secretary of State and the Attorney General, the Secretary has determined that reasonable grounds exist for concluding that Nauru is a "primary money laundering concern." Accordingly, Treasury is prepared to subsequently

impose by regulation special measure five against Nauru, which would prohibit any U.S. financial institution from opening or maintaining in the United States any correspondent account or a payable-through account for a foreign financial institution if the account involves Nauru or any institution licensed by Nauru. This prohibition would not, however, apply to the Bank of Nauru. Treasury has determined to except the Bank of Nauru, which as noted, serves as the Central Bank, from these prohibitions in order to ensure the people of Nauru can continue to meet their legitimate banking needs. Those U.S. financial institutions currently dealing with the Nauru licensed institutions (Appendix A) should begin considering their compliance obligations in anticipation of the imposition of this measure.

Treasury solicits submissions from any bank located in or licensed by Nauru that would establish its legitimacy for purposes of being granted an exception under any proposed regulation imposing special measure five with respect to Nauru.

B. Ukraine:

Ukraine suffers from widespread corruption.. On Transparency International's 2002 Corruption Perception Index, Ukraine ranked eighty-fifth out of the 102 listed countries.[5] Prosecutions of corruption are based upon the law "On Combating Corruption," that was passed in October 1995. This law is, however, rarely enforced, and on the rare occasions when it is enforced, it is normally aimed at lower or middle-level state employees. With respect to the economy, the Ukrainian system is primarily a cash-based system, with limited use of non-cash financial instruments. The banking system of Ukraine has only been in existence for approximately ten years and contains several deficiencies, including the lack of any record-keeping requirements for banks. While the

[5] Transparency International (TI) is an international non-governmental organization devoted to combating corruption. One of its services is to conduct surveys of businesses and analysts (both within and outside the country) in order to determine this annual ranking. Each year, a composite index is compiled and Ukraine has consistently been near the bottom of this ranking. TI's annual Corruption Perceptions Index ("CPI") is cited by the world's media as the leading index in the field. The CPI ranks countries by perceived levels of corruption among public officials.

current banking legislation prohibits the opening of anonymous accounts, there nonetheless remain within the system thousands of anonymous, coded, or numbered accounts containing a total of more than US $20,000,000. In addition, there is a thriving gray or black market system within Ukraine. With regard to recordkeeping requirements, the secrecy laws in the banking sector of Ukraine provide administrative authorities with limited access to customer account information. Furthermore, although banks in Ukraine are required to report both large-scale and dubious transactions, they are not subject to penalty or sanction for failing to make such reports, thus making the requirement wholly voluntary. In addition, non-bank financial institutions are under no obligation to identify beneficial owners when their clients appear to be acting on behalf of another party.

The FATF identified Ukraine in September 2001 as being non-cooperative in the fight against money laundering and placed Ukraine on the NCCT list. Ukraine was placed on the NCCT list because it lacked an effective anti-money laundering regime, including an efficient and mandatory system for reporting suspicious transactions to a financial intelligence unit, adequate customer identification provisions, and sufficient resources devoted to combating money laundering. Currently, Ukraine does not have a comprehensive anti-money laundering law that meets international standards. On the basis of Ukraine's lack of an adequate anti-money laundering regime, the FATF decided that counter-measures should take effect on December 15, 2002, unless Ukraine enacted comprehensive legislation that meets international standards.. On November 28, 2002, Ukraine's Supreme Council (Parliament) passed a Law on Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime, and the President of Ukraine signed the Law on December 7. Notwithstanding this new legislation, the system for reporting suspicious transactions remains so constrained as to be virtually ineffective. Additionally, the statute contains contradictory language regarding the ability of Ukraine's financial intelligence unit to share information with law enforcement. Thus, the unit's authority to fulfill this fundamental responsibility remains very much in

doubt. Having analyzed the legislation, FATF has determined it to be inadequate and has called on its members to apply counter-measures.

On the basis of FATF's determination, an evaluation of the factors set forth in Section 311 and the appropriate consultations, the Secretary has determined reasonable grounds exist for concluding that Ukraine is a "primary money laundering concern." Furthermore, unless Ukraine demonstrates that it has taken proactive steps to address the concerns giving rise to its designation, Treasury anticipates issuing a notice of proposed rule making, subsequent to this designation, concurrent with an order imposing actions under special measures one through four for a period of 120 days. While this order is in effect, the imposition of a final rule imposing these measures would be evaluated. There are two measures under consideration by Treasury. U.S. financial institutions would be required to identify and record the nominal or beneficial owners of accounts with any one of the following characteristics: (1) the accountholder has an address in Ukraine; (2) $50,000 or more is transferred from a U.S. account into an account in the Ukraine; or (3) $50,000 or more is transferred from an account in the Ukraine into a U.S. account. A broader requirement would require U.S. financial institutions to identify and record the beneficial owners involved in a financial transaction that is captured electronically and that is over $50,000.

V. Designation of Nauru and Ukraine as Primary Money Laundering Concerns

By virtue of the authority vested in me as Under Secretary of the Treasury, including section 5318A of title 31, United States Code, for the foregoing reasons I hereby designate the countries of Nauru and Ukraine as "primary money laundering concerns" for purposes of section 5318A of title 31, United States Code.

DATED: DECEMBER 20, 2002

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Jimmy Gurulé

Under Secretary of the Treasury

Appendix A

The following is a list of financial institutions believed to be licensed by Nauru. It is not intended to be an exhaustive list, and the requirement to terminate correspondent relationships will apply to all Nauru institutions, not just those on this list.

Certain Nauru institutions on this list are known to bear a name resembling that of an unrelated US regulated institution or of an international organization. In addition, there may be other entities unrelated to the Nauru institutions with similar or identical names. As such, financial institutions should not assume that any institution that they may encounter with a name similar or identical to any entity on this list, is in fact, related to any Nauru entity without additional inquiry.

NAURU-REGISTERED BANKS

Access Bank International Ltd
Adriatica Bank
Agro Trust Bank, Inc.
Ako Bank (A.K.A. Akobank/Ako-Bank/Akkobank) Corp.
Alliance Bank (possibly A.K.A. European Credit Alliance Bank, Inc.)
Amoko Bank Corporation
Apollo Bank, Inc.
Ardex International Bank
Atlantic Capital Trust PLC
Augusta Bank Corp.
Babylon Bank Corp.
Baltic Pacific Bank
Bank for International Settlements Corp. (A.K.A. Bis Corp.)
Bank of the Nations
Bank Thalia
Bartang Bank and Trust, Inc.
Benmore Union Bank
Business Mediterranean Bank
Capital Bank Inc.
Capital International Bank Ltd. Corp.
Caribbean Unified Bank
Carlton Bank Trust Inc.
Cassaf Bank Corp. (A.K.A. Casaf, Kasaf)
Central Pacific Bank
Central Pacific National Bank
Chierici Bank
City Trading Bank, Inc.
Cometa Bank (A.K.A. Kometa)
Commercial Intercontinental Bank, Inc.
Commex Bank

Communication Pacific Bank Corp.
Continental Assets, Ltd.
Cortex Bank of London
CP Bank
Creditbankinc (A.K.A. Credit Bank Inc.)
Crystal Merchant Bank
Diffusion (A.K.A. Diffusion Finance) Bank, Inc.
Dom Mitra Bank (A.K.A. Dom Mitra National)
Doris Bank
East and Central Asian Bankers Trust, Inc..
East Investment Bank Corp.
Eastock Bank (A.K.A. Eastok)
East-West International Bank S.A.
Ecumene Bank, Inc. (A.K.A. Ecumene Bank Ltd.)
Elmstone Bank, Inc..
Energy Capital Bank S.A.
Euro-American Bank
Euro-Atlantic Bank Corp. (A.K.A. Euro-Atlantik)
Euro Capital Bank Inc.
Euro-Central Investment Bank, Inc.
Euro-Nord Bank Corp.
European Credit Alliance Bank, Inc. (A.K.A. ECAB)(possibly A.K.A. Alliance Bank)
European Overseas Bank Incorporated
Exchange Bank and Trust
Export and Import Bank Corp. (A.K.A. EXIM)
Federal Commercial Bank
Fidelity International Bank, Inc.
Financial Continent Bank, Inc.
First American International Bank
First Capital Bank
First Credit and Trade Bank
First European Charter Bank, Inc.
First Fidelity Bank, Inc.
First Financial Security Bank, Inc.
First International Bank
First Investment Bank
First Republic Bank of Nauru
First Sky Bank Corp.
First Southern Banking Corp.
First Southern Bank of Nauru
First Trading Bank Corp. (A.K.A. First Trading Bank Inc.)
Founders Bank Ltd.
General Europe Bank Inc.
Global Heritage Bank
Global Market Development Bank
Global Specialty Bank

Greater International Bank of Nauru (A.K.A. Greater International Bank Corp.)
Guardian Bank Corp.
Guardian Banking Corp.
Hampshire Bank and Trust Inc. (A.K.A. H-Bank)
Harmony Investment Bank, Inc.
IMRI Credit Bank, Inc.
Info Assets Management Bank Corp.
Innovation Development Bank
Intercredit Bank (A.K.A. Interkredit Bank)
Inter Development Bank
International Bank for Economic Affairs Corp.
International Cassaf Bank
International Commercial Bank Corp. (A.K.A. International Commercial Banking Corp.)
(possibly A.K.A. International Commerce Bank Corp.)
International Exchange Bank
International Industrial and Investment Bank, Inc.
International Metal Trading Bank (A.K.A. IMTB)
International Overseas Bank, Inc. (A.K.A. Interoverseas Bank)
International Prime Bank Corp.
International Trade and Finance Bank Corp.
International Treasury Banking Corporation, Inc.
Intertrust Credit (A.K.A. Intertrust and Credit) Bank
Investment Bank of London Inc.
Jefferson Bank and Trust Inc.
Liberty International Bank and Trust.
Maritime Pacific Bank, Inc.
Mars Bank
MC Bank
Mediterranean International Bank Corp.
Merchant Deposit Bank Corp.
Meridian Merchants Bank, Inc.
MFC Bank Ltd.
Millenium Bank Corp.
National Commerce Bank Inc.
Nations Bank
Nations Trust Bank
Nistru Bank, Inc.
Nord-West Investment Bank, Inc.
Northern Security Bank
North-West Bank, Inc.
NR Bank
NTBank
Pam Bank
Panacea Bank and Trust
Panin Bank International
Pioneer (A.K.A. Pioner) Invest Bank

Prime International Bank
Private Finance Bank and Trust, Inc.
Ram Bank
Reconversion and Development Bank (A.K.A. RDB-Bank)
Republic and Commercial Bank, Inc.
Rockland Bank
Royal Meridian International Bank Inc.
Russian Clearing and Commercial Bank, Inc.
SCB Bank
Sinex Bank
South Pacific Commercial Bank
Sovereign Allied Bank
Sprint Bank, Inc.
Standard Capital Bank Corp.
Standard Hellier Bank Inc.
Standard Investments Bank, Inc.
Sterling International Bank, Inc.
Supreme Banking Corporation
Swiss American Bank
Swiss Trading Bank, Inc.
Swiss Union Bank Corp.
T-Bank, Inc.
TOCA Bank.
Tower Bank.
Tridal Investment Bank, Inc.
Trust Investment Bank, Inc.
Trust Merchant Bank, Inc.
Unibank International, Inc.
Union Credit Bank, Inc.
Union Lombard Bank and Trust Corp.
United Bank and Trust Company
United Bank of Industry and Trade (A.K.A. UBIT Bank)
United Industrial Bank, Inc. (A.K.A. Uninbank, A.K.A. Unin Bank)
United West Bank (A.K.A. Unwest Bank), Inc.
Universal Bank
Universal Baltic Bank Inc.
Universal European Bank, Inc. (A.K.A. Unieurobank)
Veksmarkbank
Westerhall Private Bank
Westock (A.K.A. Westok) Bank
White Knight Merchant Bank