

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

<p>DEBORAH D. PETERSON, Personal Representative of the Estate Of James C. Knipple (Dec.), et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>ISLAMIC REPUBLIC OF IRAN; BANK MARKAZI a/k/a CENTRAL BANK OF IRAN; BANCA UBAE SpA; CITIBANK, N.A., and CLEARSTREAM BANKING, S.A.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.: 10 CIV 4518 (BSJ) (GWG)</p> <p><b>FILED UNDER SEAL CONTAINS CONFIDENTIAL MATERIAL SUBJECT TO PROTECTIVE ORDER</b></p> <p><b>SUPPLEMENTAL DECLARATION OF LIVIU VOGEL IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT</b></p>
--	--

I, Liviu Vogel, an attorney duly admitted to practice law before this Court, declare under penalties of perjury:

1. I am a member of the firm of Salon Marrow Dyckman Newman & Broudy LLP, attorneys for Peterson Plaintiffs in the above-captioned action. I make this supplemental declaration in support of Plaintiffs' Motion for Partial Summary Judgment.<sup>1</sup>

THE ACT

2. On August 10, 2012, President Obama signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012, Public Law No. 112-158, 126 Stat. 1214 (the "Act"), Section 502 of which was in relevant part codified at 22 U.S.C. § 8772.

---

<sup>1</sup> Abbreviations used herein, unless otherwise defined, are the same as those used in the declaration of Liviu Vogel in Support of Plaintiffs' Motion for Partial Summary Judgment dated April 2, 2012.

3. Congress' goal in enacting the Act was, in part, to compel "Iran to abandon efforts to acquire a nuclear weapons capability and other threatening activities . . . through a comprehensive policy that includes economic sanctions . . . ."

4. The provisions of 22 U.S.C. § 8772 are applicable "notwithstanding any other provision of law, including any provision of law relating to sovereign immunity, and preempting any inconsistent provision of state law."

5. As set forth in 22 U.S.C. § 8772(b), the only financial assets to which § 8772 applies are the Blocked Assets at issue in this proceeding, which assets are identified in the restraining notices and levy secured by the Peterson Plaintiffs in this proceeding, as modified by this Court's Order dated June 27, 2008, and extended by this Court's Orders dated June 23, 2009, May 10, 2010 and June 11, 2010. *See* Exhibits A-H to Vogel Declaration made in support of Plaintiffs' Motion for Partial Summary Judgment, dated April 2, 2012 ("Vogel Decl."); Exhibits 5-6 to Vogel Reply Declaration made in Support of Plaintiffs' Motion for Partial Summary Judgment, dated August 3, 2012 ("Vogel Reply Decl.").

6. According to OFAC's responses to the Peterson Plaintiffs' subpoenas, before the Court issued the Restraints, Clearstream held the Blocked Assets in an omnibus custodial account that it maintained at Citibank in the United States, and the Blocked Assets are currently held in the United States. A true and correct copy of letters from OFAC responses dated June 11, 2008, June 12, 2008, and April 23, 2010, to the Peterson Plaintiffs' subpoenas are attached hereto as Exhibit 27, Exhibit 28, and Exhibit 29, respectively.

CLEARSTREAM IS A FOREIGN SECURITIES INTERMEDIARY

7. According to Section 1.1 of Clearstream's Customer Handbook Clearstream is a *société anonyme* (an entity with certain characteristics of a corporation) formed under Luxembourg law. A true and accurate copy of excerpts from Clearstream's Customer Handbook are attached hereto as **Exhibit 30**.

8. Mark Gem, a member of Clearstream's Executive Committee, confirmed Clearstream's status as a securities intermediary during the course of his June 27, 2008, testimony. Mr. Gem acknowledged that he heads "a number of departments, including the network management function, which is responsible for the subdeposit of the securities that Clearstream maintains on behalf of its customers in various countries, including the United States." Mr. Gem also noted that Clearstream is both a bank and a securities settlement system and that Clearstream acts as a depository for Eurobonds and as a custodian for its customers' accounts. *See* Vogel Reply Decl., Ex. 5 at 6:14-18, 7:14-8:7, and 14:15-20.

9. Consistent with Mr. Gem's testimony, Clearstream's website indicates that it continues to hold securities accounts for its customers as part of its normal business operations. A true and accurate copy of an overview of Clearstream's asset services and its June 2012 General Terms and Conditions, both retrieved from Clearstream's website, are attached hereto as **Exhibit 31** and **Exhibit 32**, respectively; *see also* Sections 7 and 8 of Exhibit 30.

10. Furthermore, Ali Asghar Massoumi, the Head of Markazi's Foreign Exchange Negotiable Securities Section, confirmed in his October 17, 2010, affidavit that



Clearstream maintained a “custody account” in which Markazi deposited the Blocked Assets. *See* Vogel Decl., Ex. K at ¶¶ 5, 15, 16, 17, 18 and 19.

11. The application that Markazi submitted to open its account at Clearstream also indicated that Clearstream would maintain a “securities account” for Markazi in tangible form and that Clearstream would report activity in that account using the ISIN (International Securities Identification Number) securities codification. The application further identified Markazi employees that Clearstream should contact in connection with securities transactions and securities borrowing and lending, and it incorporated Clearstream’s General Terms and Conditions, as amended from time to time. *See* Vogel Decl., Ex. L.

12. At the time the Court restrained the Blocked Assets, Clearstream held 19 of the 20 financial assets owned by Markazi in a custodial securities account maintained in the name of defendant UBAE. That account, which Clearstream opened at UBAE’s request on January 18, 2008, was governed by the same Clearstream terms as UBAE’s pre-existing proprietary Clearstream account, which UBAE opened using a securities account application similar to the one that Markazi utilized to open its securities account at Clearstream. Like Markazi’s application, the UBAE application incorporated Clearstream’s General Terms and Conditions. *See* Vogel Decl., Ex. J at ¶26 [Massoumi Aff.]; and Vogel Reply Decl., Ex. 11.

13. Before Markazi, Clearstream, and UBAE transferred 19 of the 20 financial assets underlying the Blocked Assets from Markazi’s proprietary account at Clearstream to UBAE’s new custodial account in February 2008, UBAE confirmed to Markazi in correspondence dated February 19 and 20, 2008, that Clearstream’s General Terms and

Conditions governed the new custodial account. *See* Vogel Decl. Ex J at ¶26, and Vogel Reply Decl., Ex. 16.

14. Pursuant to its General Terms and Conditions Clearstream undertakes obligations to enable its customers to exercise the rights that comprise the financial assets held in their Clearstream accounts. Clearstream's obligations as the custodian of the securities held by its customers under Articles 11, 18, 19, and 20 of its General Terms and Conditions, include the obligations to "deliver[] to the Customer or a third party an amount of securities of an issue equivalent to the amount credited to any securities account in the Customer's name" and to "collect securities (including, without limitation, stock dividends and securities issued upon the exercise of any option, right or warrant of a deposited security or attached thereto) or cash amounts distributable or payable in respect to the principal of, premium or interest on, or dividends or other amounts in respect of securities deposited by the customer with [Clearstream]". *See* Exhibit 32.

CLEARSTREAM IS DOING BUSINESS IN THE UNITED STATES

15. In order to further its activities as a global securities custodian, Clearstream maintains a representative office in New York City currently located at 55 Broad Street. *See* Vogel Reply Decl., Ex. 17. At the time the restraining notice and amended restraining notice were served on Clearstream, it maintained its representative office at 350 Madison Avenue, New York, New York. On June 16, 2008, William Cortellessa travelled to Clearstream's office at 350 Madison Avenue to serve the restraining notice. In the process of making said service, Mr. Cortellessa noticed that: (1) the office had a reception area, (2) there were six to eight employees sitting at desks at the center of the office, and (3) each employee had their own computer and telephone at



their desk. Moreover, Mr. Cortellessa observed that the desks were surrounded by several perimeter offices. A true and accurate copy of the Affidavit of William Cortellessa is attached hereto as **Exhibit 33**.

16. The U.S. Federal Reserve Board of Governors (“Board”) and the New York State Banking Department license Clearstream’s New York office to perform functions “relating to [Clearstream’s] business as a provider of clearing, settlement and custody services for institutional customers, including marketing and promotional activities, providing technical assistance to Clearstream’s customers in North and South America, answering customer inquiries, and engaging in research.” *See* Order of Approval attached as Exhibit 1 to Barrett Declaration (Vogel Reply Decl., Ex. 17).

17. Clearstream supplied descriptions of the responsibilities of its employees at its New York office. These included the job responsibilities of a Senior Expert-Sales and/or Senior Expert Customer Service Manager Head of Unit position at the representative office as of September 10, 2009, which involved: achieving business plans for the region; providing leadership and guidance to the other New York employees; participating in all customer facing activities in the region; increasing Clearstream’s market share; adhering to Clearstream’s best practice and customer care standards; and the authority to co-sign and approve checks on Clearstream’s behalf for the representative office. The responsibilities of a customer service employee at its representative office are to provide support services to Clearstream’s customers on all securities clearing, custody, billing, COL, Swift and claim issues including: advising customers on the day-to-day use of all of Clearstream’s products, services and documentation; providing support services for customers on all settlements, cash securities lending and borrowing; credit facilities

information and custody administration issues. The function of the Administrator at the representative office is to coordinate day-to-day internal company administrative requirements, including: ensuring that accounting entries from each office are coded correctly and allocated to the appropriate cost center; periodically reviewing existing and expiring New York vendor contracts and agreements; re-negotiating with vendors for lower prices; and ordering business cards and letterheads for all New York employees directly from Clearstream. *See* Vogel Reply Decl., Ex. 17.

18. Clearstream obtained Federal Employer I.D. Number 13-3221123, pursuant to which it employed at least thirteen employees in its New York office. *See* Vogel Reply Decl., Ex. 17 at ¶ 5 and Ex. 18.

19. As recently as 2009, and perhaps even more recently, Clearstream's website listed each person that it employed at its New York representative office and provided a telephone number, fax number, and email address for each listed employee. At some later point in time, Clearstream removed that information from its website, likely in an effort to conceal the scope of its New York operations. A true and accurate copy of Peterson Plaintiffs' previously submitted Letter Brief, dated August 14, 2009, which attached pages from Clearstream's website concerning, *inter alia*, Clearstream's "key functions," employees in its New York office and their contact information; its New York office contact information; as well as Clearstream contact information obtained from "Yellowpages.com," a public records search on Clearstream Banking via Lexis Nexis, and an excerpt from OFAC's June 12, 2008, disclosure pursuant to Peterson Plaintiffs' subpoena, all of which were obtained on or about August 14, 2009, is attached hereto as **Exhibit 34.**



20. Clearstream maintains a payroll account at Citibank in New York and another account, there, which it uses to pay its operating expenses associated with its New York office. *See* Vogel Reply Decl., Ex. 17 at ¶ 6.

21. In 2007, Clearstream made an application as a U.S.-based employer to the United States Department of Labor for permanent employment certification for one of its employees, Acelina Santa Rosa, pursuant to Section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A). By submitting the application on behalf of Ms. Santa Rosa, Clearstream effectively acknowledged that: (a) it maintains a permanent physical presence in the United States; and (b) it engaged in substantial efforts to recruit domestic employees to fill Ms. Santa Rosa's position in the New York office before making the application. Clearstream's application was initially denied and Clearstream then appealed it on two different occasions, which resulted in an order by the Associate Chief Administrative Law Judge for the U.S. Department of Labor, dated March 30, 2010, granting Clearstream's application. A true and accurate copy of the March 30, 2010, Order is attached hereto as **Exhibit 35**.

22. As of June 16, 2008, Clearstream's omnibus account at Citibank in New York contained approximately \$10 billion worth of the various bonds that Markazi then owned through Clearstream. *See* Vogel Reply Decl., Ex. 7 (showing the total positions in bonds affected by the Restraints that Clearstream held in the Citibank omnibus account); *id.*, Ex. 5 at 24:8-10.

23. Article 15 of the General Terms and Conditions provides that Clearstream can sub-custodize securities in the United States. *See* Exhibit 32.



24. A letter to UBAE from [REDACTED] at Clearstream, and [REDACTED] at Clearstream, confirms that Clearstream (and the other Defendants) knew that all of the bonds that once comprised the Blocked Assets *had to be maintained for safekeeping in the United States*. See Vogel Reply Decl., Ex. 14I (explaining that the bonds that once comprised the Blocked Assets “are all issued in dematerialized form in the United States of America and consequently the ultimate place of safekeeping, irrespective of the choice of principal and intermediate custodians, is necessarily the United States” and that “[i]t is a necessary consequence of this fact that the securities in questions [sic] cannot be held in safe custody without procuring services from US-based persons”). The same letter emphasized that “the identity of [the] sub-custodians” utilized by Clearstream “are available at all times on our website.” See *id.*

25. Clearstream’s website provides a non-exhaustive list of the specific securities custodized at Citibank, N.A. in New York City that Clearstream clients can purchase and sell. Clearstream’s securities database shows 137,123 securities that are sub-custodized at Citibank in the United States and in which Clearstream customers can invest. A true and accurate copy of the search results from Clearstream’s securities database is attached hereto as **Exhibit 36** showing a sample of the information available regarding the aforementioned securities sub-custodized at Citibank.

26. Clearstream’s sub-custodian for depositing securities in the United States is Citibank, N.A. (“Citibank”), located here in New York. A true and accurate copy of Citibank’s status as Clearstream’s sub-custodian for securities as it appears on Clearstream’s website is attached hereto as **Exhibit 37**.

27. In order to facilitate the sub-custody relationship, Clearstream maintains an “omnibus” account at Citibank, in which the transactions and assets of thousands of Clearstream account holders holding positions in securities are combined. *See* Vogel Reply Decl., Ex. 19 at ¶ 3 and Ex. 5 at 7:9-11, 23:22-23.

28. Clearstream maintains a cash correspondent bank for U.S. Dollar transactions at JP Morgan Chase Bank in New York City. A true and accurate copy of JP Morgan Chase Bank’s status as Clearstream’s cash correspondent bank as it appears on Clearstream’s website is attached hereto as **Exhibit 38**.

29. According to an OFAC disclosure, dated June 12, 2008, Clearstream also maintains a cash account associated with its omnibus account at Citibank in New York. *See* Exhibit 28.

**MARKAZI IS THE SOLE BENEFICIAL OWNER OF THE BLOCKED ASSETS AND NO OTHER PARTY HAS ANY PROTECTED INTEREST THEREIN UNDER THE FIFTH AMENDMENT.**

30. At the hearing on June 27, 2008, Clearstream recognized Markazi’s beneficial ownership of the one security remaining in Markazi’s account with Clearstream, and did not oppose its restraint. At that time, Clearstream also claimed it had no knowledge of the beneficial owner of the other 19 securities underlying the Blocked Assets, which had been transferred in February 2008 from Markazi’s account at Clearstream (No. 80726) to UBAE’s new custodial account at Clearstream (No. 13061) free of payment, despite conceding that Markazi could still be the beneficial owner, thereby justifying the Court’s continued restraint of those securities. *See* Vogel Reply Decl., Ex. 5 at 62:6-63:1.

31. In his testimony, Mr. Gem explained the difference between UBAE’s “proprietary” account (No. 14826) and its “custody” or “customer” account (No. 13061,

204328\_1



where 19 of the 20 securities were deposited when restrained by the Peterson Plaintiffs), by distinguishing the beneficial owner of securities in each type of account as follows:

A proprietary account by definition should include holdings which are beneficially owned by the customer itself, in this case by the Italian bank. Beneficial investments will be made by a bank, for example, as part of its treasury management strategy and in the course of execution of money market activity and that would characterize the activity that we would see on a proprietary account of a bank. If the bank is also an active dealer, then the trading operations of that bank, buying and selling of securities, would move through that proprietary account. A custody account or what we would call a customer account, 13061 was opened in January is different in the sense that it is designed to hold interest of third parties, that is to say, of the customers of our customer who are using that bank, our customer, as their custodian.

Mr. Gem clarified that UBAE possessed no beneficial ownership interest in the securities positions held in its custodial account at Clearstream (No. 13061). *See* Vogel Reply Decl., Ex. 5 at 70:18-71:8.

32. In correspondence exchanged between Clearstream and UBAE after the Blocked Assets were restrained, both parties admitted that Markazi was the beneficial owner of the securities held in both: (1) Markazi's account at Clearstream (No. 80726), and (2) UBAE's new custodial account at Clearstream (No. 13061). A letter from UBAE to Clearstream, dated October 26, 2009, states in relevant part as follows:

The securities that are now under OFAC's scrutiny were originally received on February 22 and 28, 2008, into UBAE's customer account free of payment as they were transferred from account number 80726, which was registered in your books in the name of the current beneficial owner of the assets. Those same securities were administered by Clearstream for the same beneficial owner in the period preceding above mentioned transfer of those assets to UBAE.

It is evident that Clearstream, as it was and it is obliged to under existing banking regulations, has always known the identity of the beneficial owner of assets.

[Emphasis original]. Vogel Reply Decl., Ex. H. In a letter to UBAE, dated November 11, 2009, Clearstream replied in part as follows:

Third, as to the beneficial owner of the securities held in your customer account with us and which you state are subject to OFAC “scrutiny,” we only learned through your letter of October 26, 2009 that the current beneficial owner is the same as the holder of account no. 80726 in our books. Indeed, we asked you for this information as early as our e-mail communication of June 16, 2008, to which you never responded.<sup>2</sup>

Vogel Reply Decl., Ex. I.

THE BLOCKED ASSETS ARE EQUAL IN VALUE TO FINANCIAL ASSETS OF MARKAZI  
HELD IN ACCOUNTS OPENED ABROAD AT CLEARSTREAM AND UBAE

33. Clearstream has acknowledged that, as of the time of the Peterson Plaintiffs’ initial restraint of the Blocked Assets, and at all times thereafter, Clearstream continued to hold a position in a bond bearing ISIN [REDACTED] with a quantity of 1,500,000,000 Japanese Yen in the account maintained on the direct behalf of, and in the name of, Markazi (No. 80726). *See* Vogel Reply Decl., Ex. 5 at 50:12-51:11 (wherein Mr. Gem makes reference to Exhibit J submitted to the Court by Clearstream at the June 27, 2008, hearing), a true and correct copy of which is attached hereto as **Exhibit 39**.

34. Clearstream has also acknowledged that financial assets equivalent in value to the 19 other securities restrained by the Peterson Plaintiffs’ levy and restraining notices as modified by the Court’s June 27, 2008 Order, were held abroad by Clearstream in UBAE’s new custodial account at Clearstream (No. 13061). These included two bonds that matured on June 16, 2008, bearing ISIN’s [REDACTED] and [REDACTED], reflected in Exhibit K produced by Clearstream at the hearing on June

---

<sup>2</sup> As an aside, Clearstream had full knowledge as early as March 3, 2008, that Markazi continued to be the beneficial owner of the bonds after they were transferred to UBAE’s customer account number 13061. *See*, Vogel Reply Decl., Ex. 13.



27, 2008, a true and correct copy of which is attached hereto as **Exhibit 40**, and the 17 bonds listed in an inventory produced by Clearstream at the court hearing on June 27, 2008 as Exhibit M, a true and correct copy of which is attached hereto as **Exhibit 41**; *see* Vogel Reply Decl., Ex. 5 at 51:12-56:13.

35. Financial assets of equivalent value to the 19 bonds held at Clearstream in UBAE's custodial account (No. 13061), were in turn credited by UBAE, acting as an intermediary bank, to a custody account it held in Rome, Italy in the name of Markazi (No. [REDACTED]). *See* Vogel Decl., Ex. K at ¶¶ 23-26; Vogel Reply Decl., Ex. 16 (2/19/08 ltr. from UBAE to Markazi confirming UBAE is to serve as "intermediary for your bonds related activities."). Markazi's officer, Ali Asghar Massoumi, confirmed this in his affidavit dated October 17, 2010, as follows:

In February 2008, in several tranches, Bank Markazi transferred the would-be Restrained Securities from its custody account 80726 with Clearstream to account 13061 UBAE had opened with Clearstream. UBAE in turn credited Bank Markazi's custody account [REDACTED] held with UBAE with the transferred bonds.

Vogel Decl., Ex. K at ¶ 26. Mr. Massoumi's affidavit does not set forth the exact value of each bond Markazi transferred to UBAE's custodial account (no. 13061), that he says was in turn credited to Markazi's account (no. [REDACTED]) at UBAE. However, the value of each of the transferred bonds was described by Mr. Gem in his testimony on June 27, 2008, by reference to a chart marked as Exhibit L at the hearing. *See* Vogel Reply Decl., Ex. 5 at 56:14-59:22, wherein Mr. Gem makes reference to Exhibit L submitted to the Court by Clearstream at the June 27, 2008 hearing, a true and correct copy of which is attached hereto as **Exhibit 42**. Because Exhibits H, I and L presented by Clearstream at the June 27, 2008 hearing were formatted in the same manner, the testimony that Mr.

Gem delivered concerning Exhibits H and I explains the content of Exhibit L. *See* Vogel Reply Decl., Ex. 5 at 42:2-50:7. A true and accurate copy of Exhibits H and I are attached hereto as **Exhibits 43 and 44**, respectively. A comparison of the ISIN identifier and the dollar value of each of the 19 bonds transferred to UBAE's new custodial account (No. 13061) reflected in Exhibit 43 with the ISIN identifier and dollar value of the bonds described in the Restraints (Vogel Decl., Exhibits A-H and Vogel Reply Decl., Exhibits 5-6) shows they are equivalent.

Dated: New York, New York  
September 14, 2012



---

Liviu Vogel  
Salon Marrow Dyckman Newman & Broudy LLP  
292 Madison Avenue  
New York, New York 10017  
Telephone: (212) 661-7100  
lvogel@salonmarrow.com