

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SAMUELS JEWELERS, INC.,¹

Debtor.

Chapter 11

Case No. 18-11818 (KJC)

PHASE I REPORT OF JOHN J. CARNEY, EXAMINER

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¹ The last four digits of the Debtor's federal tax identification number are 6316. The Debtor's mailing address is 2914 Montopolis Drive, Suite 200, Austin, Texas 78741.

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I. EXECUTIVE SUMMARY

On January 29, 2018, Punjab National Bank (“PNB”) lodged a complaint with Indian authorities against Mehul Choksi and several entities he controlled, alleging what has been described as the largest bank fraud in Indian history. As charged in India, Choksi and his co-conspirators, including Nihal Modi and Sunil Varma, at one time Chief Executive Officer and Chief Financial Officer, respectively, of Samuels Jewelers, Inc. (“Samuels” or the “Debtor”), are alleged to have fraudulently borrowed approximately \$2 billion from banks over a period of years using Letters of Undertaking (LOUs) and Foreign Letters of Credit (“FLCs”). The alleged fraud consisted of obtaining bank loans by manufacturing sham transactions to “import” jewelry into India using a web of secretly controlled shell entities.

On October 9, 2018, the Bankruptcy Court appointed the Examiner to determine, in summary, whether: (1) the Debtor and its officers and directors were involved in any fraud involving Choksi or entities under his control; (2) the extent, if any, to which Choksi or any entity or individual under his control has or had the ability to direct or influence the Debtor; and (3) potential claims and causes of action, if any, arising out of the foregoing. The Examiner’s investigation was limited in scope and budget to a 120-day phase one examination, with the ability to recommend further investigative steps as warranted.

Based on the investigation to date, the Examiner concludes that there is substantial evidence to establish the knowledge of and involvement by the Debtor and certain current and former senior officers and directors in fraudulent conduct in the U.S. that is consistent with aiding in the fraud alleged by the Indian authorities. There are numerous potential claims and causes of action arising from the actions and omissions of the Debtor and its former and current directors and officers concealing the true nature of more than \$100 million in transactions during the period 2015 to 2018. Evidence gathered in the investigation confirms that Choksi and

entities and individuals under his control influenced the Debtor prior to the chapter 11 proceeding. While there is also evidence that Choksi was being contemporaneously informed about the Examiner's post-petition investigation by Samuels' employees, the Examiner is unaware of specific instances in which Choksi exercised influence over Samuels after the Debtor entered chapter 11.

The Examiner has divided his findings into three categories.

- (1) Evidence that that Samuels and certain current and former directors and officers participated in an inventory fraud scheme designed at least in part to fraudulently induce Wells Fargo Bank, N.A. and GB Finance Company to unknowingly finance tens of millions of dollars in related party jewelry purchases from Choksi's companies in India and elsewhere outside the U.S.;
- (2) Evidence that Samuels was used to circulate money derived from the alleged LOU and FLC Indian bank fraud, and that certain funds received by Samuels are traceable to repayment of allegedly fraudulent LOUs and FLCs. Many of these funds were paid pursuant to a fraudulent "royalty agreement" between the Debtor and an apparent Choksi-controlled entity. However, the limited scope and budget of this phase one investigation did not allow for a determination of whether the Debtor's current directors were knowledgeable of the alleged LOU/FLC scheme; and
- (3) Evidence that Choksi and his conspirators misled the Debtor's customers through intentionally disguising his ownership and control over Samuels' jewelry grading company, while simultaneously representing to customers that the grading company was independent.

Evidence of a U.S. Based Bank Fraud

During the period under investigation, Choksi and an international web of co-conspirators used Samuels and a series of Puppet Vendors² to create the false appearance that Samuels was purchasing and/or selling jewelry to and from unrelated third-parties. In fact, Samuels and related entities were secretly selling inventory and laundering money among themselves at the direction of Choksi and individuals under his control. These disguised transactions accounted for approximately \$121 million worth of reported purchases and sales. At least one primary goal of the deception was an apparent scheme to fraudulently induce Samuels' primary lenders, Wells Fargo and Gordon Brothers, to authorize tens of millions of dollars of credit line advances which were ultimately funneled outside the U.S. to Choksi-controlled entities in India, Dubai and Hong Kong.

Among the Puppet Vendors employed by Choksi was Exclusive Design Direct, Inc. ("EDD"). EDD, reflected in the Debtor's records as one of its largest independent inventory suppliers, was in reality a one-person front company run out of a psychologist's office in Sterling Heights, Michigan. No inventory was shipped from this vendor and Choksi and his co-conspirators issued tens of millions of dollars in invoices on EDD's behalf and caused tens of millions of dollars to be transferred from Samuels' bank accounts to EDD. The psychologist, who controlled the EDD bank account, was promised a 1% fee for laundering the money. Nearly 100 percent of these laundered funds have been traced back to Choksi controlled entities. Choksi and his co-conspirators, including certain directors and officers of Samuels, were aware and in some cases facilitated the invoicing and shipping of merchandise from EDD to Samuels.

Two other third-party jewelry suppliers to the Debtor, Shanyao Gong Si, Ltd. and

² "Puppet Vendors" refers to vendors that were purported to be independent but that were in fact controlled by Choksi and his co-conspirators.

Taipingyang Trading, Ltd., were also Puppet Vendors. These entities were Hong Kong companies established by Choksi to appear as if they were unaffiliated third parties, but were staffed by Gitanjali employees and run out of the offices of a Gitanjali affiliate. Corporate records secured during the investigation, including contemporaneous emails, document numerous conspiratorial acts by certain officers and directors of the Debtor to use fake email addresses to conceal the true connection between the vendors and Choksi's companies.

Evidence obtained during the investigation indicates that, having arranged for these Puppet Vendors to provide a false paper and monetary trail away from himself, Choksi and his co-conspirators used U.S. affiliates of Samuels as shipping hubs for inventory purchases from Gitanjali affiliates. These affiliates included Diamlink Inc., Jewel Evolution Inc., Jewelry Marketing Company Inc., and Voyager Brands Inc. Notably, these shipments were accompanied by false paperwork designed to complete the appearance that the shipments were from the Puppet Vendors.

Connection to the PNB Bank Fraud Scheme In India

Investigating the truth of allegations of bank fraud in India was beyond the scope of the Examiner's charge. Nonetheless, the investigation has revealed credible evidence consistent both with the occurrence of the fraud alleged and with the Debtor's involvement and assistance with this fraud. Specifically, evidence available to the Examiner has permitted a forensic tracing of the: (i) proceeds of the alleged Indian fraud to the Debtor through seemingly fraudulent transactions involving the Debtor; and (ii) money from the Debtor used to repay allegedly fraudulent LOUs and FLCs also through seemingly fraudulent means.

Among the fraudulent practices engaged in by the Debtor was a sham royalty agreement for use of the Samuels trademarks and designs, pursuant to which the Debtor received tens of

millions of dollars in payments. This royalty agreement was fraudulent for several reasons including: that the counterparty to the agreement paid only a small fraction of the payments due under the agreement, the remainder of which were paid by other Choksi-controlled entities; that payments under the agreement appear to have been made at the direction of Samuels employees rather than at the times or based on the triggers specified in the agreement; and there is no evidence of the use of the Samuels trademarks and designs by the entity paying for the royalty, nor of a single sale of merchandise relating to any such use, despite the provision requiring such documentation in the agreement. The Examiner was able to trace millions of dollars received pursuant to this agreement to allegedly fraudulent LOU and FLC proceeds derived from overseas banks. Once these allegedly fraudulent proceeds were received by Samuels, Samuels immediately transferred the majority of the funds to the Puppet Vendors so they could be ultimately transferred back to Choksi controlled entities outside the U.S.

As for the repayment of allegedly fraudulent LOUs and FLCs, the Examiner was able to trace millions of dollars procured from the U.S. lenders that the Debtor transferred via Puppet Vendors to Choksi controlled entities and ultimately to repayment of FLCs in India.

Independent Gemological Laboratories

During his investigation, the Examiner learned of allegations that the Debtor's purportedly independent jewelry grading laboratory was in fact an entity secretly controlled by Choksi. The Examiner has determined that, disguised through a BVI entity, Choksi owned 99.99% of Independent Gemological Laboratories, the diamond grading company that Samuels advertised to its customers as providing them with "independent" verification of merchandise's quality and value. Choksi's associate and co-conspirator owned the remaining .01%. The Examiner has confirmed through interviews that each of the Directors, other than the

independent director, was aware of this misrepresentation to consumers.

Involvement of the Debtor's Officers and Directors

The Directors represented to the Court, the United States Trustee's Office and the creditors that they were unaware of any fraudulent activity. Among the most compelling evidence contradicting this representation is a four-page email drafted by one of the directors and CEO, Mr. Wadia, sent to Sunil Varma on May 10, 2017. This email, captioned "Serious Issues at Samuels" and accompanied by more than 15 attachments, lays out what Wadia describes as "serious and egregious issues." Among other things, Mr. Wadia stated that he had observed in 2017:

- Transactions with "shell entities owned and controlled by" or on behalf of the Choksi group that were "circular transactions that are being cooked up to inflate our sales numbers and thereby mislead the company's lenders (Wells Fargo & [Gordon] Brothers) and future prospective lenders (like US Capital Funds) into giving us an enhanced loan facility;"
- "Royalty payments" of \$5.4 million from a "paper company" in the Middle East that were in fact "fraudulent;" and
- Potential "consumer fraud on a massive scale" because related company IGL was not an independent certification company and could be "passing off lab-created diamonds as natural stones."

Notably, although the email indicates that Mr. Wadia will refuse to participate in any such transactions in the future and demands that the issues be corrected or he "will have to take

corrective action and report these violations,” the Examiner’s Phase I examination has not revealed any material change in the Debtor’s or Mr. Wadia’s actions from May 2017 through the discovery of the fraud. In fact, the Debtor transferred more than \$29 million from Samuels to these Puppet Vendors after that time. Mr. Wadia explained to the Examiner that he stayed silent because, among other reasons, Choksi threatened him and Mr. Wadia could not prove the allegations.

As detailed below, the Examiner also found contemporaneous evidence of varying levels of knowledge and involvement in misconduct of other officers and directors.

II. KEY ENTITIES, INDIVIDUALS AND TERMS

A. Entities

Parent Company

Gitanjali Gems Limited: Gitanjali is one of the largest branded jewelry retailers in the world. It is headquartered in Mumbai India, listed on the Bombay Stock Exchange, and is the ultimate parent company of the Debtor. Mehul Choksi, accused by the Indian government of orchestrating a multi-billion dollar fraud upon Indian banks, is the Chairman and Managing Director.

Debtor

- **Samuels Jewelers, Inc. (“Samuels” or the “Debtor”):** Debtor in the chapter 11 Bankruptcy proceeding. The Debtor is Delaware corporation wholly owned by Gitanjali.

Entities Connected to Gitanjali, Choksi and/or the Alleged Fraud in India

- **4’C’s Diamond Distributors:** A wholly owned subsidiary of Gitanjali Gems Limited located in Hong Kong.
- **Aston Luxury Group (NY):** Entity controlled by Mehul Choksi. Aston Luxury Group was a rebranding of Diamlink, Inc.
- **Aston Luxury Group (Hong Kong):** Holding Company with subsidiaries in Asia and Italy, owned by Gitanjali Gems Ltd. and controlled by Mehul Choksi.
- **Belgdiam LLC:** A company managed by Rohan Choksi, Mehul Choksi’s son,

operating as a diamond business. At a point, Belgdiam was run out of Samuels' offices in Austin. Some employees considered Belgdiam not affiliated with Gitanjali because it was owned by Rohan Choksi.

- **Crown Aim Ltd:** A wholly owned subsidiary of Gitanjali Gems Ltd. located in Hong Kong.
- **Diamlink, Inc. and Diamlink Jewelry, Inc.:** Founded in New York in 1984 and is a known Gitanjali related entity. The company was placed into involuntary bankruptcy in 2015 and shut down operations shortly thereafter. When it was operational, Diamlink engaged in the wholesale distribution of jewelry and precious stones.
- **Gili India Ltd:** Gili, a wholly-owned subsidiary of Gitanjali, manufactures jewelry for men and women. It was founded in 1994 and is based in Mumbai, India.
- **Independent Gemological Laboratories (IGL):** IGL is diamond and jewelry grading company owned by Mr. Choksi's British Virgin Island company and Chirag Patwa.
- **Jewel Evolution Inc.:** Jewel Evolution sold lab grown diamonds. Originally known as JewelSouk USA, Inc., the name changed to Jewel Evolution. Surya Vempati, Farhad Wadia and Ashok Tailor were the signatories on the account.
- **Jewelry Marketing Company:** Jewelry company based in New York owned by Gitanjali.
- **Keyline Solutions:** Keyline is an Indian entity that performed back office work for Samuels. The company is run by Chirag Patwa, former President of Merchandising at Samuels. Processes such as merchandise sourcing, processing purchase orders, report generation, and other back-office functions were done with Keyline's assistance.
- **Phantom Luxury Group:** U.S.-based Gitanjali affiliate.
- **Saumil Diam LLC:** Jewelry company based out of New York owned and controlled by Mitesh Kothari.
- **Tristar Worldwide LLC:** Jewelry company based in New York and controlled by Choksi.
- **Voyager Brands Inc.:** After Diamlink shut down operations, Choksi formed Voyager in Austin, Texas located in an adjacent building behind Samuel's headquarters. Voyager is a large facility with fewer than five employees. Voyager is not listed as a part of Gitanjali's corporate structure; however, interviews with the Debtor's employees and others have confirmed that Voyager

is a Choksi company. The company sold wholesale jewelry and at times made shipments to the Debtor.

Puppet Vendors

India's Central Bureau of Investigation (CBI), its criminal investigative agency, and the Enforcement Directorate ("ED Complaint"), a regulatory agency focused on financial crimes, have alleged that Choksi or his associates formed several entities so as to conceal their relationship with Choksi or Gitanjali, allegations that have been corroborated by documents independently identified during the Examiner's investigation. These entities were used to circulate money and inventory to known Gitanjali-related entities, including to and from the Debtor. Many of these entities have minimal or no other legitimate operations, and many of them were cited in the ED Complaint as entities that received fraudulent funds through LOUs and FLCs.³ Puppet Vendors include:

- **Cole & Associates (Michigan)**
- **Exclusive Designs Direct, Inc. ("EDD") (Michigan)**
- **Shanyao Gong Si, Limited (Hong Kong)**
- **Taipingyang Trading Limited (Hong Kong)**
- **Chuangzuo Shang Wu Limited (Hong Kong)**
- **Al-Arbaa Jewels FZE (UAE)⁴**
- **Asian Diamonds and Jewelry FZE (UAE)⁵**
- **Eternity Jewels FZE⁶**

Other Relevant Entities

- **Brinks Global Services USA, Inc.:** Company that provided shipping services to the Debtor.
- **Central Bureau of Investigation ("CBI"):** India's primary investigative law enforcement agency. The CBI filed charges against Choksi, his entities, and associates regarding the alleged fraud committed upon PNB and other Indian

³ *Directorate of Enforcement v. Mehul Choksi et. al*, Case No. 09 of 2018, ECIR/MBZO – I/04/2018, ¶ 8.3 (June 28, 2018) (the "ED Complaint"), annexed to the Decl. of Sean A. O'Neal as Exhibit B (ECF No. 143).

⁴ Based on allegations by Indian authorities in the ED Complaint.

⁵ Based on allegations by Indian authorities in the ED Complaint.

⁶ Based on allegations by Indian authorities in the ED Complaint.

banks.

- **Enforcement Directorate (“ED”)**: India’s financial investigation agency charged with enforcing the Prevention of Money Laundering Act. Similar to the CBI, the ED filed a complaint alleging that Choksi, his entities, and associates obtained LOUs and FLCs and defrauded Indian banks.
- **GB Finance Company (“Gordon Brothers”)**: Lender to Samuels.
- **Malca-Amit USA, LLC and Malca-Amit CHB, Inc.**: Companies that provided shipping services to the Debtor.
- **Marks Paneth LLP**: Auditors and tax preparers for Samuels and certain other related entities.
- **Ministry of Corporate Affairs (the “Ministry”)**: Indian government agency concerned with the administration of the Companies Act of 2013, the Companies Act 1956, the Limited Liability Partnership Act, 2008 and other regulations governing the corporate sector in India.
- **National Company Law Tribunal (“NCLT”)**: A quasi-judicial body charged with adjudicating civil disputes between Indian companies.
- **Punjab National Bank (“PNB”)**: Bank in India that issued Letters of Undertaking and Foreign Letters of Credit to Choksi and his entities.
- **Reserve Bank of India (“RBI”)**: India’s national bank.
- **Wells Fargo Bank N.A. (“Wells Fargo”)**: Lender to Samuels.

B. Individuals

- **Mehul Choksi**: Thirty percent owner and Former Chairman of Samuels and the parent Gitanjali group of companies. Choksi was charged by Indian authorities for his role in the alleged multi-billion-dollar fraud on PNB bank. Choksi is currently a fugitive and believed to be in Antigua.
- **Rohan Choksi**: Son of Mehul Choksi, who ran Belgdian as his own business and was also involved in the operations of Samuels. In an organizational chart of Samuels, Rohan Choksi was listed directly under Mehul Choksi as “ownership / management.”⁷
- **Randy Cole**: Owner of Cole & Associates, a Michigan company used to conceal sales to Samuels by Gitanjali related entities and to circumvent Samuels’ bank line restrictions. Cole is also the former owner of EDD.

⁷ Organizational Chart of Samuels Jewelers, Inc. (SAMUELS-EXAMINER0499514).

- **Robert Herman:** Former CFO of Samuels for nineteen years.
- **Mitesh Kothari:** Owner of Saumil Diam LLC, a New York-based diamond and jewelry business.
- **John Maakaron:** Mr. Maakaron is a Limited Licensed Psychologist in Michigan. Mr. Maakaron operated Exclusive Design Direct, Inc.
- **Jonathan Mitchell:** A close associate of Nehal Modi who operated Diamlink and worked for Aston Luxury Group and other Gitanjali related entities in New York.
- **Nehal Modi:** Mr. Modi is Choksi's nephew and former CEO of Samuels. He is also CEO of wholly owned subsidiary Gitanjali USA. It is alleged that Modi also ran the operations of numerous Choksi companies out of New York including Diamlink Inc., Diamlink Jewelry Inc., Jewelry Marketing Company Inc., Tristar Worldwide LLC, and Phantom Luxury Group. Mr. Modi was charged by Indian authorities for his role in the alleged multi-billion-dollar fraud on PNB bank.
- **Rajesh Motwani:** Rajesh Motwani is the current CFO of Samuels and a director and worked at Diamlink from 2000-2009. In 2009, Motwani moved to Austin to work at the Debtor but quit and moved back to Queens in approximately 2012. In 2017, he started consulting for Samuels remotely. When the news of the fraud in India came to light, in February 2018, Mr. Motwani became the interim CFO. Mr. Motwani stated he served on Samuels' board from 2006 – 2012, and he appears on documents as a board member as late as 2015.
- **Chirag Patwa:** Former Samuels' President of Merchandising and CEO of Keyline Solutions. Mr. Patwa has been described as a trusted associate of Choksi and is a .01% owner of IGL.
- **Surya Prakash Rao Vempati (Prakash Rao):** A former Diamlink employee, Mr. Rao also maintained the books and records for EDD and IGL and was an authorized signatory on bank accounts for numerous Gitanjali companies located in New York.
- **Bhavesh Shah:** Chief Merchandising Officer of Samuels, Mr. Shah is responsible for inventory purchases. Before joining Samuels, Shah worked at Diamlink in New York. Mr. Shah became a director of Samuels in February 2018.
- **Ashok Tailor:** VP of Internal Audit and Accounts Payable Manager of the Debtor and former employee of Diamlink.
- **Mayank Upadhyay:** A former employee of Diamlink and Voyager that handled shipping, invoicing and inventory processes for numerous Choksi controlled entities.
- **Sunil Varma:** Former Head of International Business of all Gitanjali group companies in India and President and CFO of Samuels before Rajesh Motwani. Mr. Varma was charged by Indian authorities for his role in the alleged multi-billion-

dollar fraud of PNB bank. Mr. Varma, a chartered accountant and CPA, is alleged to have created fictitious companies around the world to launder money.

- **Farhad Wadia:** Wadia joined Samuels in or about 2014 as an executive consultant at the request of Choksi. He joined as a consultant, and in December 2015, Choksi promoted him to replace the outgoing CEO, Ajay Rai. Wadia sat in the Voyager Brands space for several weeks when he first arrived in Austin. Mr. Wadia temporarily had a minor ownership interest in Voyager. Wadia was also an authorized signer on the Jewel Evolution bank account. Mr. Wadia became a director in February 2018.

C. Terms

- **Core Banking Solution (“CBS”):** The CBS helps automate front-end and back-end processes of banks to achieve centralized and smooth processing. LOU and FLC transactions are recorded on the CBS.
- **Letter of Undertaking (“LOU”) and Foreign Letter of Credit (“FLC”):** Financial instruments unique to India that allow Indian companies to borrow funds from an Indian bank to facilitate imports with international customers and vendors.
- **Importer:** Entity that obtains short-term credit from Indian banks.
- **Exporter:** Beneficiary of LOU/FLC funds and entity that ships goods to overseas importer.
- **Nostro Account:** An account that a bank holds in a foreign currency in another bank.
- **Swift System:** Network that enables financial institutions worldwide to send and receive information about financial transactions.

III. BACKGROUND

A. The Alleged Fraud in India

The Debtor’s ultimate parent company, Gitanjali Gems Ltd., and its principal Mehul Choksi, have been charged by Indian authorities with orchestrating a multi-billion-dollar fraud against PNB and other banks. The CBI and the ED have charged in separate complaints that Choksi, together with his nephew Nirav Modi, obtained more than \$2 billion from PNB through fraudulently issued Letters of Undertaking (“LOU”) and Foreign Letters of Credit (“FLC”). LOUs and FLCs are financial instruments that allow Indian companies to borrow funds from

Indian banks to facilitate imports with international customers and vendors.⁸ They operate like a working capital arrangement. The alleged fraud scheme involved the conspirators obtaining LOUs and FLCs to fund Choksi's entities, using the funds from new LOUs and FLCs to repay old ones as they became due, and moving inventory and/or money among a network of related shell entities to simulate real import/export transactions.⁹ Although complex and layered, the scheme alleged by the Indian authorities is a typical bank fraud and money laundering operation.

Because the Examiner's charge is focused on investigating the extent of involvement, if any, by the Debtor and its officers and directors in any fraud by Choksi and his entities, the key allegations charged by Indian authorities are summarized below. The Examiner did not investigate the truth of the allegations relating to Gitanjali Gems Ltd. and its overseas operations and its affiliates, except to the extent reasonably necessary to satisfy his investigative directive.

1. An Explanation of LOUs and FLCs

The LOUs at issue in the Indian bank fraud are guarantees by an Indian bank to pay the face amount of the letter to a vendor. LOUs allow an importer to avoid incurring the expense an importer would otherwise incur by borrowing Indian currency and then converting it to a foreign currency to pay foreign suppliers. Instead, the importer obtains short-term credit from its bank in India. The issuing bank, in turn, enters into the foreign currency transaction: it requests a foreign branch or another Indian bank to transmit funds into the issuing bank's own account (referred to as its nostro account) at the foreign branch of a third bank to pay the supplier in its local foreign currency.

The charged fraud in India involves misrepresentations made to PNB in obtaining the LOUs, misuse of the issued LOUs, and misreporting the LOUs in the bank's recording system.

⁸ ED Complaint ¶ 3.1.2.

⁹ ED Complaint ¶ 3.1.8; 3.1.13; 11.7.

Apparently because of this fraud, the Reserve Bank of India (“RBI”), India’s national bank, in March 2018, issued a Directive ordering the immediate discontinuance of LOUs.¹⁰

Choksi and his co-conspirators are also alleged to have used FLCs to perpetuate their fraud. Similar to LOUs, FLCs are issued by Indian domestic banks on behalf of an importer for the benefit of overseas suppliers. The importer applies for an FLC with its domestic bank, which it issues and submits to the exporter’s bank. The exporter then supplies the goods and raises a Bill of Lading, invoices, and packing lists which the exporter presents to its bank. The exporter’s bank submits the documents to the FLC issuing bank in India (importer’s bank). Once the importer verifies the documentation, the bank pays the exporter, and when the FLC matures, the importer repays its bank.¹¹

2. The Alleged Fraudulent Financing Scheme in India

PNB is a publicly-owned Indian bank, which is majority owned by the central government of India, and PNB employees are legally considered public servants.¹² Certain PNB employees are alleged to have conspired with Choksi and his associates to issue LOUs and FLCs fraudulently for the benefit of other companies that were secretly controlled or owned by Choksi.¹³

Specifically, Mr. Choksi, his co-conspirators and their PNB accomplices are charged with fraudulently obtaining and issuing LOUs on behalf of the Choksi companies, Gitanjali Gems Ltd., Nakshatra Brands Ltd., and Gili India Ltd. (the “Choksi Defendant Entities”) from 2015 to 2017. According to the ED Complaint, 376 LOUs were fraudulently issued to the

¹⁰ Reserve Bank of India, Discontinuance of Letters of Undertaking (LoUs) and Letters of Comfort (LoCs) for Trade Credits dated March 13, 2018, RBI/2017-18/139 (available at <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI139F15274F2540046CE9C14E9DFEAA60941.PDF>).

¹¹ ED Complaint ¶ 3.1.1.

¹² Punjab National Bank, *Heritage: Saga of Excellence in Banking*, <https://www.pnbindia.in/heritage.html?page=heritage.html>.

¹³ Charge Sheet in Case Ref: RC.1€2018-CBI/BS&FC/MUMBAI before The Court of Honorable Special Judge for CBI Cases, Court No. 51, Mumbai ¶ 1-10 (May 4, 2018) (“CBI Charge Sheet”).

Choksi Defendant Entities, approximating \$909 million.¹⁴ An additional 437 FLCs were issued for \$263 million from 2014 to 2017, but their value was then fraudulently enhanced by PNB insiders to over \$2 billion.¹⁵

The Choksi Defendant Entities, with the PNB employee-conspirators, are alleged to have caused the bank to issue LOUs and FLCs without providing the documents typically required to obtain LOUs and FLCs.¹⁶ For LOUs, the ED complaint alleges that the Choksi Entities used some of the newly issued LOUs to repay the obligations due for past LOUs instead of using the funding to pay for imports.¹⁷ At times, these repayments occurred the same day or the day after the LOU beneficiary received the money.¹⁸ The beneficiaries of many of these LOUs appear to be Choksi-controlled entities that transacted with the Debtor, specifically Asian Diamonds and Jewelry FZE, and Shanyao Gong.¹⁹ Although a portion of the funds are alleged to have gone immediately to repay older LOUs, other amounts were transferred to Choksi controlled entities, presumably to fund Choksi's businesses.

As for FLCs, the Indian authorities allege that the values of the FLCs were fraudulently inflated after they were initially issued by the bank.²⁰ The overseas banks that received the inflated FLC funding ultimately transferred the money to Choksi controlled entities such as Shanyao Gong, Crown Aim Ltd., and 4C's Diamond Distributors.²¹ For example, the CBI alleges that an FLC issued for \$1 million on January 25, 2017 was fraudulently enhanced in value to \$9.87 million approximately one month later.²² The beneficiary for that particular FLC

¹⁴ ED Complaint ¶ 3.1.7.

¹⁵ *Id.* at ¶ 3.1.9.

¹⁶ *Id.* at ¶ 3.1.2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at ¶¶ 3.1.7; 3.1.10.

²⁰ *Id.* at ¶ 3.1.9.

²¹ *Id.*

²² CBI Charge Sheet ¶ 23.

was Crown Aim Ltd.

The ED alleged that Choksi's pattern was to obtain financing to meet two goals: (1) to transfer money through his network of entities and fund his businesses and (2) to cover the liabilities generated by obtaining these LOUs and FLCs. As the LOUs issued in 2017 came due in January 2018, new officials at PNB refused to conspire with Choksi and his associates.²³ As such, the resulting defaults exposed the fraud.

B. The Commencement of the Chapter 11 Case

Choksi was first implicated in the alleged fraud against PNB on January 31, 2018 in a First Information Report ("FIR") filed by the CBI alleging Nirav Modi, Choksi's nephew, had committed a massive bank fraud through Firestar International Ltd. and its subsidiaries.²⁴ On February 13, 2018, PNB lodged a complaint with the CBI against Choksi, the Choksi Entities, and his co-conspirators alleging the fraud against PNB described above.²⁵ The CBI subsequently issued a FIR, dated February 15, 2018, identifying criminal statutes Choksi and his co-conspirators violated and basic facts supporting PNB's allegations.²⁶ This FIR alleges Choksi and his co-conspirators' actions "put [PNB] to a wrongful loss of an aggregate amount of Rs. 4886.72 Crores."²⁷ Subsequently, the CBI and ED filed separate complaints and charges against Choksi, his entities, and persons associated with him. On February 23, 2018, India's Ministry of Corporate Affairs commenced civil proceedings²⁸ before India's National Company Law Tribunal ("NCLT"), a quasi-judicial body charged with adjudicating civil disputes between

²³ ED Complaint ¶¶ 3.1.12; 3.1.18.

²⁴ First Information Report, Book No. 971, Serial No. 10 (January 31, 2018) available at http://cbi.gov.in/firs/2018/2018_pdf/2018_bsnfc_mumbai_firs/RC0772018E0001.pdf.

²⁵ Central Bureau of Investigation, <http://cbi.gov.in/> (last visited January 23, 2019).

²⁶ First Information Report, RC 02/2018/CBI/BS&FC/Mum, available at http://cbi.gov.in/firs/2018/2018_pdf/2018_bsnfc_mumbai_firs/RC0772018E0002.pdf.

²⁷ *Id.*

²⁸ *Union of India, Ministry of Corporate Affairs v. Gitanjali Gems Ltd., et al.*, C.P. No. 277/2018, Petition dated February 23, 2018.

Indian companies.²⁹ The NCLT issued an order freezing Choksi's and his affiliates' assets in India and authorizing the seizure of those assets.³⁰ Choksi fled to Antigua and sought citizenship. According to news reports, as of January 21, 2019, Choksi was granted Antiguan citizenship and surrendered his Indian passport, presumably to avoid extradition to India.³¹ None of the current U.S. directors and officers are named in the alleged fraud, although the Debtor was named along with its former officers Nehal Modi and Sunil Varma.

Following the commencement of the NCLT proceedings in February 2018, businesses and factories owned and operated by Choksi and his affiliates ceased operations because their assets were seized, and several employees were incarcerated. Choksi was a director, board member, and owner of a 30% share of the ultimate owner of the Debtor from 2006 to February 2018 when he resigned following the allegations in India.³² Several of these businesses produced jewelry sold by the Debtor and funded the Debtor's operations.³³ According to the Debtor, increasing competition, the accumulation of old inventory and the NCLT's order naming Gitanjali Gems Ltd. and Mehul Choksi, which resulted in the loss of a major supplier of their product, caused the Debtor to seek relief under chapter 11.³⁴

On August 7, 2018 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code ("Chapter 11 Case"). The Debtor has operated its business and managing its property as debtor in possession under section 1107 of the Bankruptcy Code.

²⁹ See Section 408 of the Indian Companies Act of 2013.

³⁰ *Union of India, Ministry of Corporate Affairs v. Gitanjali Gems Ltd., et al.*, C.P. No. 277/2018, Order dated February 23, 2018.

³¹ Neeraj Chauhan, "Mehul Choksi got citizenship last year, India Made no objection: Antigua" *The Times of India* (Aug. 4, 2018) available at <https://timesofindia.indiatimes.com/india/antigua-claims-sebi-cbi-did-not-object-to-choksis-citizenship-application/articleshow/65264744.cms>.

³² See Declaration of Robert Duffy, in Support of First Day Pleadings at 11 (ECF 11) ("First Day Declaration").

³³ *Id.* at 12.

³⁴ See *Id.* at 11.

C. The Examiner's Appointment

Approximately one week after the Petition Date, on August 16, 2018, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Official Committee of Unsecured Creditors (the "Committee"). As described above, Choksi served as the Debtor's director from 2006 until his resignation in 2018 and was the chairman and a director of Gitanjali Gems, Ltd., the 100% owner of the Debtor. He and former officers of the Debtor were implicated in the massive Indian bank fraud. On August 27, 2018, PNB and the U.S. Trustee each moved to appoint an examiner to investigate and report on the conduct of the Debtor and its management pursuant to section 1104 of the Bankruptcy Code.³⁵ The Debtor's board of directors objected to the appointment of an Examiner, stating that it had no knowledge of any fraud at the Debtor.³⁶

On October 3, 2018, the Court entered an Order Directing the Appointment of an Examiner under section 1104(c) of the Bankruptcy Code ("Examiner Order") to do the following:

conduct a thorough and independent investigation into (1) whether and to what extent, if any, Mehul Choksi ("Choksi"), or any entity Choksi directly or indirectly controls, has the ability to direct and/or influence the conduct, decisions or actions taken by the Debtor in this case; (2) whether the Debtor, or any current or past officer, director or representative of the Debtor, participated in any alleged fraud involving Choksi and entities, directly or indirectly controlled by him (the "Fraud"); and (3) potential causes of action the Debtor's estate may have in connection with such activities, including any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity related to actions of Choksi, Gitanjali Gems, Ltd. and/or any of their affiliates (items (1) through (3))

³⁵ Punjab National Bank's Motion for Entry of an Order Directing the Appointment of an Examiner Pursuant to 11 U.S.C. § 104(c) (ECF No. 142); United States Trustee's Motion for an Order Directing the Appointment of an Examiner (ECF No. 149)..

³⁶ See Response of the Board of Directors of Samuels Jewelers, Inc. to Punjab National Bank's and the United States Trustee's Motions or Entry of an Order Directing the Appointment of an Examiner Pursuant to 11 U.S.C. § 1104(c) (ECF No. 179) ("As set forth herein, the Board has been fully transparent, pro-active, ethical and meticulous in the fulfillment of its fiduciary duties as it relates to all of the Debtor's affairs including, but not limited to, the investigation of Choksi. To suggest the Board was or may be complicit in any purported fraud is a blatant and reckless misrepresentation. See PNB Motion at ¶ 28.").

collectively are referred to as the "Investigation"); *provided, however*, that the Investigation shall be solely on behalf of and for the benefit of the Debtor and its estate and shall not include (1) the investigation of any claims or causes of action undertaken for the purpose of primarily benefitting any particular creditor, party in-interest or third party; or (2) any assessment or evaluation of the strengths and/or weaknesses of, or a valuation of, any potential claim(s) or cause(s) of action the Debtor's estate may have resulting from the Investigation.³⁷

Two days later, the U.S. Trustee filed an application appointing John J. Carney, Esq. who previously has served as Securities Fraud chief, assistant United States attorney; U.S. Securities and Exchange Commission senior counsel; certified public accountant at a "Big Four" accounting firm; and as Examiner in the case *In re Firestar Diamond Inc. et. al.*, 18-10509 (S.D.N.Y.).³⁸ On October 9, 2018, the Court approved the appointment of Mr. Carney.³⁹ The Examiner Order directed the Examiner to prepare and file a written report (the "Report") of his Investigation within 120 days from the date of his appointment by the U.S. Trustee, unless such time shall be extended by order of the Court upon the request of any party-in-interest for cause.⁴⁰

D. The Examiner's Work Plan

On October 23, 2018, the Examiner filed a preliminary work plan and budget (the "Work Plan") as directed by the Court, outlining his proposal for conducting the Investigation and issuing his Report.⁴¹ To fulfill his charge, the Examiner described his intention to divide the investigation into the following categories: (a) conduct initial interviews to understand the Debtor's operations and the Debtor's respective roles in the diamond/jewelry industry; (b) interview key witnesses in the U.S., and if necessary in India, who are or were employed in functions relevant to the Investigation, i.e. sales, finance and accounting, operations, and

³⁷ Order Directing the Appointment of an Examiner Pursuant to 11 U.S.C. §1104(c) (ECF No. 294) ("Examiner order")

³⁸ Application of the U.S. Trustee for Order Approving Appointment of Examiner (ECF No. 307).

³⁹ Order Approving Appointment of Examiner (ECF No. 324).

⁴⁰ Examiner Order at 3.

⁴¹ Motion of John J. Carney as Examiner for Approval of Preliminary Work Plan and Budget (ECF No. 370).

contracting; (c) identify and review documents and communications relevant to the subject matter of the investigation; (d) conduct a forensic financial analysis of the Debtor's books and records, bank records, vendor records, and any and all relevant information of other entities consistent with the Investigation, and trace the movement of monies obtained under the alleged fraud against PNB to the Debtor, and related entities and individuals; and (e) engage with the Indian Ministry of Corporate Affairs (and other agencies within the Government of India if needed) for information and documents relevant to the Investigation.⁴²

Crucial to the scope of the Examiner's Investigation was the need to balance the breadth of the alleged Indian bank fraud with the scope of the Chapter 11 Case, to operate within the timeframe established by the Court to conduct the investigation and to minimize costs to the estate. The allegations involve a sophisticated multi-billion-dollar international fraud over a multi-year period across countries including the U.S., India, Hong Kong, and the United Arab Emirates. The Examiner's role in investigating this complex international fraud is limited to the extent relevant to the administration of the Debtor's estate, which is located entirely within the U.S.

With these considerations in mind, in the Work Plan, the Examiner requested that the relevant parties agree voluntarily and quickly to produce relevant documents and communications and witnesses to participate in informal interviews with the Examiner and his professionals.

As of the date of the appointment of the Examiner, the final order approving the Debtor's financing had been entered together with an approved budget.⁴³ The Debtor's budget and general

⁴² *Id.*

⁴³ Order Authorizing the Debtor to Obtain Prepetition Financing, Authorizing the Debtor to Use Cash Collateral, Granting Liens and Providing Superpriority Administrative Expense Status, Granting Adequate Protection to the Prepetition Lenders, Modifying Automatic Stay, and Granting Related Relief (ECF No. 252).

operations were insufficient to support a full-scale examiner investigation. The Debtor and U.S. Banks would not agree to the budget proposed by the Examiner. In order to address the Debtor's budgetary constraints, the Examiner presented the Court with two alternative work plans. The first option consisted of performing the full Investigation and preparing a comprehensive report. The second option, and the one approved by the Court,⁴⁴ is a two-phased examination process. The first phase addresses the Investigation provided in the Examiner Order but in a targeted approach, culminating in a statement of findings and conclusions and recommendations. At a hearing following the filing of the Examiner's Report, the Court will then address the need for and scope of a broader investigation, or Phase two. The budgetary issues can be addressed in connection with the second phase, if any.

E. The Examiner's Legal and Forensic Team

Because of the financially complex and highly specialized nature of the appointment, the Examiner engaged Baker & Hostetler LLP ("BH"), led by Jorian Rose, Esq. to serve as counsel. Landis Rath & Cobb LLP was retained as Delaware counsel to the Examiner. The Examiner also retained global consulting firm Alvarez & Marsal Disputes and Investigations, LLC ("A&M") led by retired FBI special agent William B. Waldie, CPA, CFE to assist with fraud investigation and analysis.⁴⁵

F. The Examiner's Investigation

To fulfill his charge, and within the limits of the Phase I work plan, the Examiner and his professionals have conducted a forensic investigation into the Debtor's financial and business operations from January 1, 2015 through the date of his appointment (the "Investigative

⁴⁴ Order Approving Preliminary Work Plan and Budget of John J. Carney, Examiner (ECF No. 440).

⁴⁵ The Court entered orders approving Baker & Hostetler LLP's retention on November 19, 2018 (ECF No. 442), Landis Rath & Cobb LLP's retention on November 19, 2018 (ECF No. 441) and Alvarez and Marsal Dispute and Investigations, LLC's retention on November 19, 2018 (ECF No. 443).

Period”). The Examiner conducted numerous interviews of the Debtor’s employees and other parties in interest, sought cooperation from parties in interest to share documents and information voluntarily, and served 32 document and deposition subpoenas.

Upon appointment, the Examiner conducted initial meetings and telephone conferences with the Debtor’s counsel, the Chief Restructuring Officer, Wells Fargo Bank, N.A. (“Wells Fargo”), GB Finance Company (“Gordon Brothers”), and PNB regarding the known facts and evidence supporting the fraud scheme alleged by the Indian authorities. Following these sessions, the Examiner and his professionals made multiple visits to the Debtor’s facilities at 2914 Montopolis Drive in Austin, Texas to examine the Debtor’s books and records, interview the Debtor’s employees and other witnesses, and to otherwise investigate the Debtor’s operations.

The Examiner’s access to evidence was limited in three notable respects. First, the Debtors did not have access to documents from any of the foreign Gitanjali entities or other foreign entities of interest; many of the decisions regarding inventory shipments are in communications between and among various entities abroad. Second, certain domestic servers containing communications and financial data of the Debtor were housed in an affiliate entity of the Debtor, Voyager Brands, Inc. (“Voyager”). As discussed below, Voyager has stated that these servers were damaged or are otherwise inaccessible and the Examiner has not received a satisfactory response as to the server’s location and condition. Third, the Examiner had limited access to shipping or billing records from non-Debtor affiliates relating to transactions with the Debtor. Notwithstanding these limitations, the Examiner’s team was able compile significant evidence—with assistance from the Debtor, Wells Fargo, Gordon Brothers and PNB—consisting of email communications, financial information, text messages, voicemails, and other business documents.

Generally, the parties in interest in the Chapter 11 Case readily cooperated with the Examiner's informal requests for documents and information. For example, the Debtor provided the Examiner with access to all documents belonging to the Debtor and its employees, officers, and directors. Likewise, PNB provided the Examiner documents and information relevant to the Debtor's connections to India. Moreover, PNB instructed its forensic accountants, BDO India to assist the Examiner's forensic team with its investigation.

To address the possibility that parties would withhold their cooperation, on November 11, 2018, the Examiner filed a motion for pre-authorization to conduct examinations under Rule 2004 of the Federal Rules of Bankruptcy Procedure,⁴⁶ which the Court granted on November 19, 2018.⁴⁷

Since his appointment, the Examiner has conducted approximately forty-one interviews and meetings with Debtor and non-debtor parties, many of which were multiple interviews. The Examiner interviewed, among others, the following parties:⁴⁸

1. Howard Hoff, CPA, Partner, Marks Paneth, Auditor of Samuels Jewelers
2. Farhad Wadia, CEO and Director, Samuels Jewelers
3. Bhavesh Shah, Chief Merchandising Officer and Director, Samuels Jewelers
4. Rajesh Motwani, Acting CFO and Director, Samuels Jewelers
5. Sterling Pope, Chief Operating Officer, Samuels Jewelers
6. John Hayes, Accounting, Samuels Jewelers
7. Christopher Rhodaback, Operations Director, Samuels Jewelers
8. Elizabeth Cael, Sr. Director of Merchandising, Samuels Jewelers
9. Daniel Ramirez, Director Loss Prevention, Samuels Jewelers

⁴⁶ Motion of John J. Carney, as Examiner, for Entry of an Order Pursuant to Bankruptcy Rule 2004 and Local Rule 2004-1 Authorizing the Examiner to Issue Subpoenas for the Production of Documents and Authorizing the Examination of Persons and Entities (ECF No. 393).

⁴⁷ Order Granting Motion of John J. Carney, as Examiner, for Entry of an Order Pursuant to Bankruptcy Rule 2004 and Local Rule 2004-1 Authorizing the Examiner to Issue Subpoenas for the Production of Documents and Authorizing the Examination of Persons and Entities (ECF No. 444).

⁴⁸ In addition, the Examiner consulted with the Indian Ministry of Corporate Affairs (through U.S. counsel, White & Case LLP, Gitanjali, through counsel for the Resolution Professionals, and BDO India, Forensic Consultant for PNB. PNB, through its U.S. counsel, Cleary Gottlieb Steen & Hamilton LLP, worked cooperatively with BDO India LLP to satisfy the Examiner's request for an in-person meeting. As the Examiner did not have access to financial records of the global entities charged in the fraud, PNB and BDO India's analyses were instrumental in linking transfers in India with transfers in the U.S.

10. Amelia Reed, Director Human Resources, Samuels Jewelers
11. Dewey Jackson, Accounting Manager, Samuels Jewelers
12. Pong Luangaphay, Assistant Controller, Samuels Jewelers
13. Ashok Tailor, VP Internal Audit and Accounts Payable Manager, Samuels Jewelers
14. Curtis Lowrey, Founder IGL
15. John Maakaron, President, EDD
16. Randy Cole, Owner of Cole & Associates and former owner of EDD
17. Prakash Rao, former Diamlink accountant
18. Angie Gonzalez, Distribution Center Manager, Samuels Jewelers
19. Judy Yeh, Loose Diamond and Diamond Room Manager, Samuels Jewelers
20. Luisana Lumbreras, former Director of Finance, Samuels Jewelers
21. Robert Herman, former CFO, Samuels Jewelers
22. Bill McGovern, et al., Partner, Kobre & Kim counsel for Mehul Choksi
23. Shreyansh Shah, former CEO, Voyager Brands
24. Matthew Kahn, Independent Director, Samuels Jewelers
25. Sonia Anandraj, Director, Wells Fargo Bank
26. Jennifer Ann Cann, Managing Director, Wells Fargo Bank
27. Lisa Galeota, Managing Director, GB Finance Company
28. Eddy Friedfeld, former CRO at Diamlink
29. Jonathan Mitchell, former President, Aston Luxury Group
30. Mitesh Kothari, owner, Saumil Diam LLC

The Examiner sought additional documents and information during and after the interviews as he deemed necessary to the Investigation. All document demands were made through Rule 2004 subpoenas, and the vast majority of the parties complied.⁴⁹

In total, in response to the thirty-two document and deposition subpoenas he served, the Examiner received more than 250,000 documents consisting of millions of pages. Most of these documents were hosted on a document management system, across which the Examiner's professionals conducted searches of key terms most likely to be relevant to the Investigation. The documents, including with text messages and images, exceeded 239 gigabytes of data.

The Examiner also negotiated stipulated protective orders to govern the use of

⁴⁹ Mitesh Kothari was interviewed by the Examiner but did not provide any documents. Mayank Upadiyay neither appeared for an interview nor provided any documents. Mr. Upadiyay's wife accepted service of the Examiner's Rule 2004 subpoena on his behalf. Ms. Uadiyay informed the Examiner that he was out of the country until further notice. The Examiner asked for documentation and was provided with a travel itinerary to Canada dated November 20, 2018. The Examiner attempted to reach Mr. Upadiyay at the cell phone number provided by his wife but received no response.

confidential materials produced to him by the Debtor;⁵⁰ the Debtor's lenders, Wells Fargo and Gordon Brothers;⁵¹ and PNB (collectively, the Protective Orders"). As required by the Protective Orders, several days before the submission of this Report the Examiner provided a list of documents on which the Examiner intended to rely. The producing parties were given an opportunity to object to the Examiner's reliance on a designated document and the Examiner to contest the designation or to move to seal the Report. The Examiner believes he has resolved all such objections.⁵²

While the Examiner interviewed the current directors⁵³, based on his findings, he believed the depositions of three of the directors, Mr. Wadia, Mr. Shah and Mr. Motwani were appropriate to provide them an opportunity to respond to various facts that he had uncovered. He noticed the three depositions on January 23, 2019, which was significant given the Examiner's report was required to be filed on February 6, 2018.

Three business days prior to the depositions, the directors each hired counsel who requested an adjournment of the date. Given the Report filing date, the Examiner was required to reach out to all parties to obtain an extension until February 20, 2018. The Examiner's counsel also agreed with the directors' counsel to schedule the depositions on February 12 and 13, 2018 in New York. Approximately one week prior to the depositions, counsel for the directors informed the Examiner that the documents requiring review were too extensive and they could consider attending the February 12 and 13 depositions only if the Examiner would

⁵⁰ Stipulation and Order Governing Examiner Discovery (ECF No. 551).

⁵¹ Stipulation and Order Governing Examiner Discovery (ECF No. 523); Stipulation and Order Governing Examiner Discovery (ECF No. 550).

⁵² The Examiner has prepared a compendium of relevant documents, certain of which were given confidentiality designations under the Protective Orders. The Examiner has made the compendium available to the parties in interest, the Court, and the United States Trustee.

⁵³ Two months after Mr. Wadia's interview Mr. Wadia's counsel provided a letter to the Examiner after the interviews took place informing the Examiner that Mr. Wadia was under the influence of medication. There was no outward appearance that Mr. Wadia was impaired in any way.

provide all of the documents that he would potentially show their clients. They requested another extension through either the end of February or early March. After discussing with various parties in interest, the Examiner determined a second extension was not appropriate and did not believe a contested discovery dispute was in the best interest of the estate given its financial *extemis* and the contemplation of a subsequent phase to his Investigation.

The Examiner's forensic investigation was conducted in conjunction with A&M. Among other forensic procedures, A&M analyzed relevant documents including, but not limited to, all available bank statements, the Debtor's sales and purchase records, the Debtor's tax returns, the Debtor's loan documents, key employee payrolls records, and the Debtor's financial statement support. In addition, A&M reviewed certain suspect inventory transactions, evaluated audit workpapers relating to the Debtor, reviewed emails and text messages, assisted in interviewing individuals, analyzed cross-border financial transactions with links to the Debtor or its employees, and conducted global intelligence research of certain entities and individuals alleged to have been involved in the fraud. A&M also coordinated site visits to certain entities in Hong Kong that the Examiner determined to be affiliated with Choksi.

IV. THE DEBTOR AND THE CHOKSI WEB OF ENTITIES

The Debtor is a wholly-owned subsidiary of Gitanjali Gems Ltd., which is owned and operated by Mehul Choksi. Its stated business is the sale of finished jewelry to retail customers through a chain of more than 120 stores located throughout the U.S. and headquartered in Austin, Texas.

A. Choksi and Debtor's Origins

Choksi's company, Gitanjali Gems Ltd., founded in 1966 and incorporated in 1986,

claimed to be one of leading players in the Indian jewelry industry.⁵⁴ A well-known designer, Choksi's merchandise is worn by prominent Indian celebrities, including Priyanka Chopra, former Miss World Aishwarya Rai, and Katrina Kaif.

The company converted to a limited corporation in 1994 and was listed on the Bombay Stock Exchange and the National Stock Exchange.⁵⁵ Gitanjali was engaged in the trading, manufacturing, import and export of diamond cutting and polishing, diamond studded jewelry and plain gold jewelry and was the first to do so in Surat, Gujarat.⁵⁶ According to public filings, Gitanjali's business model was broken into three segments: diamonds, jewelry, and retail.

1. Gitanjali's Diamond Segment:⁵⁷

Gitanjali procured rough diamonds from various major reputed diamond suppliers across the globe. These rough diamonds were processed and polished in Gitanjali's factories located in Surat, Mumbai, and Hyderabad. Aside from domestic sales, Gitanjali exported diamonds to the U.S., Hong Kong, Japan, China, Middle East and Thailand. Gitanjali's end-to-end diamond processing chain activities included marking, cleaving, sawing, cutting and polishing.

2. Gitanjali's Jewelry and Retail Segments:⁵⁸

Gitanjali also manufactured gold and diamond finished jewelry in its domestic factories. This process included all aspects of the manufacturing process from molding the jewelry through setting stones into the final product. Gitanjali created its own finished products because it was an outsourcing partner for leading international jewelry brands, then the company transitioned to its own branded jewelry distribution and retailing. The branded jewelry that the company manufactured included diamond studs and other precious metal jewelry. As of 2017, there were over 200,000 active SKUs. Most of the branded jewelry that was produced in-house was used in

⁵⁴ Annual Report of Gitanjali Gems, Ltd. 2015 – 2016, at 2.

⁵⁵ ECONOMIC TIMES, <https://economictimes.indiatimes.com/gitanjali-gems-ltd/infocompanyhistory/companyid-17840.cms>.

⁵⁶ *Id.* at 6.

⁵⁷ *Id.*

⁵⁸ *Id.*

the company's own distribution and retailing network, including in its U.S. Samuels stores. The "Gili" brand of jewelry, introduced in 1994, was among the first branded jewelry lines introduced in India.

B. Samuels Jewelers, Inc.

Samuels was originally founded in 1891 and underwent changes in ownership and name over time.⁵⁹ The original company was purchased by Barry's Jewelers, founded in 1956, which after two bankruptcy filings, changed its name to Samuels Jewelers in or around 1998.⁶⁰ In 2003, Samuels filed for bankruptcy to restructure its debt load, and in 2006, Gitanjali Gems Ltd., which was conducting a series of acquisitions in Hong Kong, India, and Dubai, acquired 100% of the company.⁶¹

In 2007, Gitanjali Gems Ltd. acquired Rogers Ltd., an American jewelry chain, and merged it with Samuels in 2010. Over the course of eight years, Samuels had grown to more than 120 stores in 23 states in the US.⁶² Its product consists of finished jewelry generally comprised of diamonds and other gemstones.

As noted above, the company currently has four directors, three who joined the board on February 28, 2018 after the announcement of the Gitanjali fraud charges, and an independent post-petition director. Director Farhad Wadia has been the company's CEO since 2010, director Bhavesh Shah has been the company's chief merchandising officer since 2010, and director Rajesh Motwani served as secretary of Samuels from 2006 to 2013 and interim CFO since February 2018. Director Matthew Kahn joined as independent director in October 2018 after meeting with the other three directors by invitation from the Chief Restructuring Officer in

⁵⁹ First Day Declaration, at 1.

⁶⁰ *Id.* at 1-2.

⁶¹ *Id.* at 2; Annual Report of Gitanjali Gems, Ltd. 2015 – 2016, at 16.

⁶² First Day Declaration at 2.

September 2018.

C. Samuels' Operations

From January 2015 through the date of this Report, Samuels operated specialty retail jewelry stores located in regional shopping malls, strip malls and stand-alone stores and sold fine jewelry items in a wide range of styles and prices.⁶³ The Gitanjali group of companies operated under a vertically integrated supply chain. According to Samuels' employees, Mr. Choksi believed strongly in this vertical integration strategy in which he controlled the majority of Samuels' supply chain.⁶⁴

Samuels obtained inventory from both its affiliates and independent third parties. The majority of its inventory was supplied by Gitanjali affiliates and other Choksi-controlled entities. The remaining inventory was supplied by well-known third-party vendors such as Kiran Jewels, Inc. and the like.

Samuels' prescribed inventory order process was as follows: when a store needed inventory, a Samuels' employee was to place a purchase order through Keyline Solutions, Inc. ("Keyline"), a back-office provider managed by Chirag Patwa (CEO of Keyline and former Samuels' President of merchandising). The back-office would issue purchase orders identifying the inventory, amount, cost and supplier. On receipt of the purchase order, the supplier was to ship the product to Samuels' onsite Distribution Center ("DC"), where Samuels employees would reconcile the purchase orders generated by Keyline with the invoices provided by the supplier. The employees were then to cross-reference the merchandise with the related packing lists and performed quality control procedures.

Bhavesh Shah, the Samuels' employee in charge of supply chain management,

⁶³ Samuels Jewelers, Inc. Audited Financial Statements for the years-ended March 31, 2015 to 2017 (SAMUELS-EXAMINER0000065-132)

⁶⁴ Interview of Farhad Wadia, November 14, 2018.

supervised this process and was the main point of contact between Samuels and its vendors. Although each store sets its prices, Gitanjali had a designated gross margin and controlled the wholesale price for which it sold items to Samuels. This caused some discontent among the retail branches and Samuels' merchandising employees because purchasing from the parent at a high price required the stores to sell at higher prices to their ultimate customers or caused certain inventory to sit stagnant.

In addition to finished jewelry, Samuels regularly received shipments of loose diamonds. Judy Yeh, the loose diamond manager, explained that part of Samuels' operations consisted of purchasing certified loose diamonds individually and uncertified diamonds in bulk parcels.⁶⁵ Orders were generally placed through the back office to Gitanjali companies. For certified stones, the stones would arrive at Samuels after being reviewed at Independent Gemological Laboratories ("IGL") in New York. During the Investigative Period, IGL was the sole diamond and jewelry grading company used by Samuels, with the exception of certain specialty diamonds that would sometimes be graded by other laboratories.⁶⁶ The uncertified stones that arrive at Samuels in bulk would usually be smaller diamonds that would be used to adorn a larger setting. Like finished jewelry, all loose diamond shipments arrived at the DC. The packing lists were then cross-referenced with the actual inventory received and a quality control process was performed. As a result of this process, according to Ms. Yeh, Samuels would not receive a package that did not match the packing list.⁶⁷

A. Choksi's Web of Related Entities

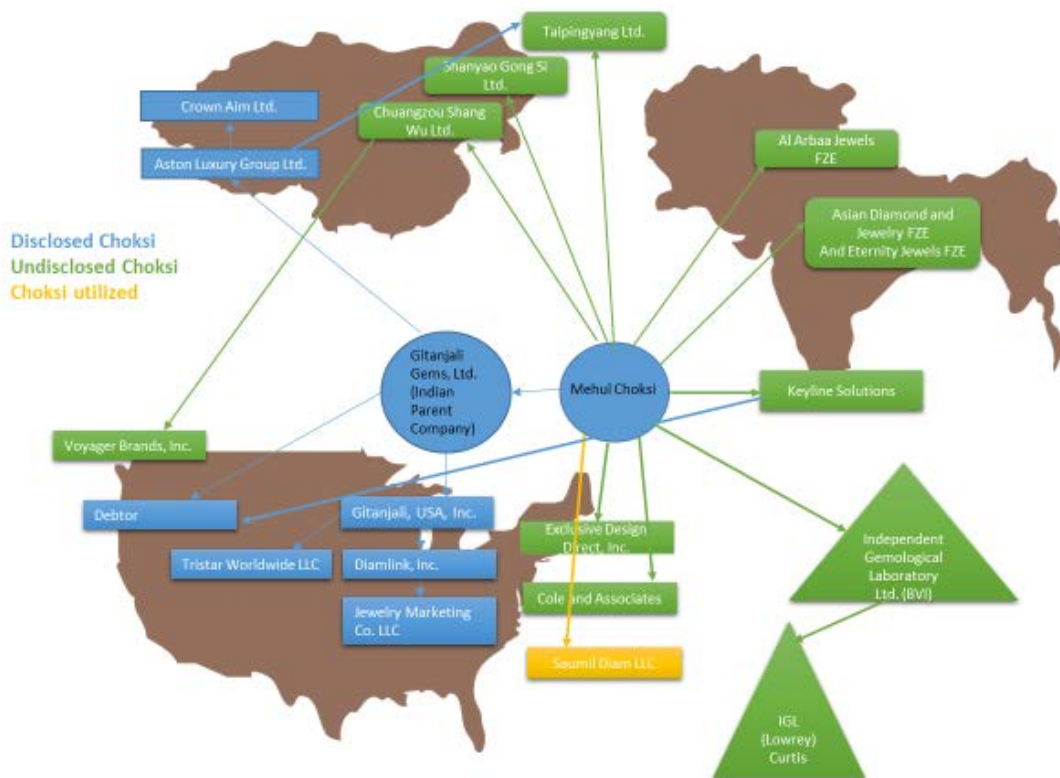
Gitanjali's subsidiaries and affiliates, including the Debtor, are ultimately controlled by Choksi. In addition to Gitanjali Gems, Ltd., which was publicly traded in India and accordingly

⁶⁵ Interview of Judy Yeh, November 13, 2018.

⁶⁶ Interview of Elizabeth Cael, February 11, 2019.

⁶⁷ Interview of Judy Yeh, November 13, 2018.

subject to oversight and reporting obligations, Choksi controls numerous entities around the world that are not identified as part of the corporate structure of the Gitanjali group of companies. Among these are entities owned by Choksi, either individually or through holding companies, and entities nominally owned by Choksi's family members or associates. The chart below illustrates certain relevant Choksi controlled entities, including Gitanjali entities that are indicated in blue.



Gitanjali entities and the other Choksi-controlled entities identified by the Examiner appear to share employees, including executives and directors, who may work interchangeably for various entities depending on the transaction.

In addition, Choksi-controlled entities, whether or not identified within the Gitanjali corporate structure, share resources, including offices and support resources. As discussed

below, inventory and cash appear to be circulated among the entities based on the needs and direction of Choksi and his associates, but recorded on the books of the various entities as though these were arms-length transactions with independent third parties.

Particularly relevant here are the Gitanjali entities in the U.S. in addition to the Debtor. The evidence reviewed by the Examiner suggests that these entities were used by Mr. Choksi, his affiliates and the Debtor as conduits to commit fraud. The Debtor and its affiliates created the false appearance of arms-length transactions using various Choksi owned entities in New York and Austin such as Diamlink, Inc. (“Diamlink”), Jewelry Marketing Company Inc. (“JMC”), Tristar Worldwide LLC, and Phantom Luxury Group. In a 2016 Gitanjali Gems Ltd. annual report, Nehal Modi was listed as a director for the following U.S.-based entities: Gitanjali USA, Inc., JMC, Diamlink, Samuels, Tri-Star Worldwide LLC, GGL Diamond LLC, Diamlink Jewelry Inc. and LJOW Holdings LLC.⁶⁸ All of these entities were listed as subsidiaries to Gitanjali Gems, Ltd.⁶⁹

Diamlink was a New York-based company owned by Gitanjali USA, Inc., a wholly owned subsidiary of Gitanjali Gems Ltd., that operated as a wholesale polished jewelry company. Diamlink was initially run by Jon Mitchell.⁷⁰ Prakash Rao was employed by Diamlink and maintained the books and records for other U.S.-based Gitanjali entities as well.⁷¹ Mayank Upadhyay was also employed by Diamlink in New York and Austin and worked for the other New York entities.

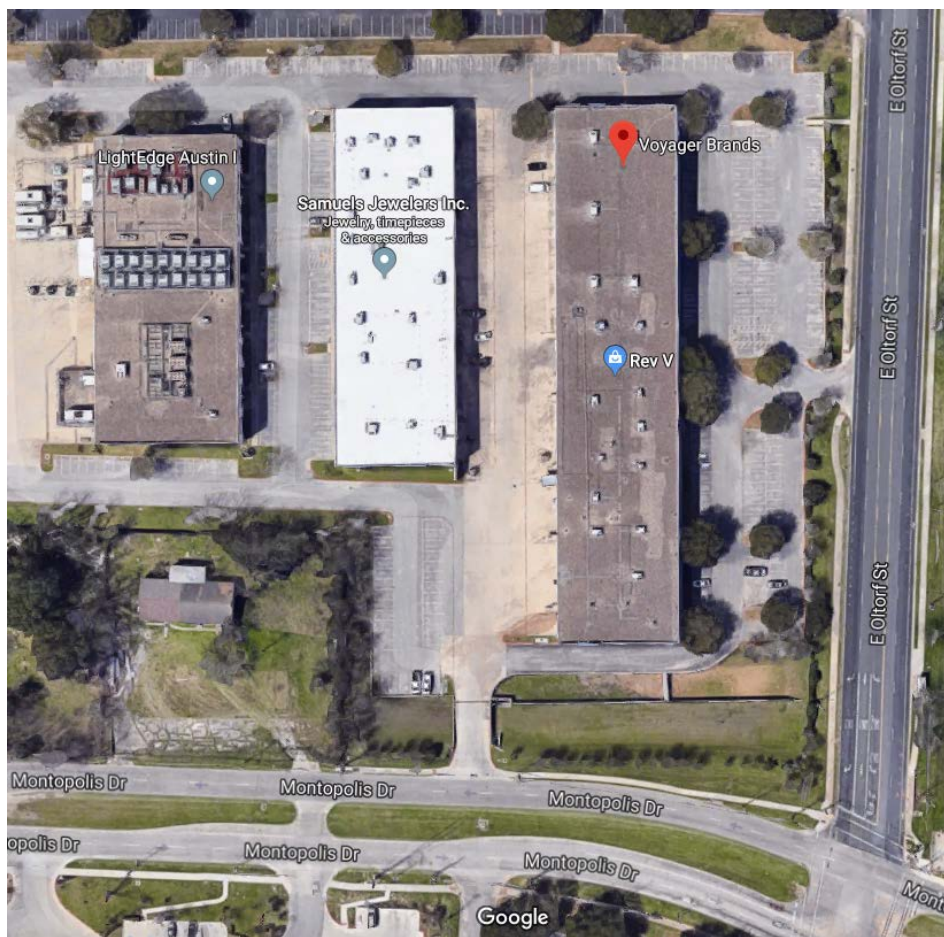
⁶⁸ Annual Report of Gitanjali Gems, Ltd. 2014 – 2015, at 8.

⁶⁹ *Id.* at 28.

⁷⁰ Gitanjali USA Presentation to Forevermark Team, USA dated September 17th, 2015 (SAMUELS-EXAMINER0191957).

⁷¹ Mr. Rao was interviewed two times by the Examiner and appeared forthright and credible.

In 2015, Diamlink's operations in New York were shut down and moved to Austin, Texas. Eventually, the majority of the company's operations were moved to Voyager Brands, Inc., which was incorporated on January 13, 2015.⁷² The majority of Voyager's employees were simultaneously employed by Samuels or had been employed by Diamlink previously. Voyager Brands operated in a building across the parking lot from Samuels in Austin, as shown below:



The Debtor listed Voyager in its chapter 11 petition as a third-party vendor. Subsequently, counsel belatedly disclosed that the Debtor “suspects” that Voyager is “associated

⁷² Voyager Brands, Inc. d.b.a Viola Italia tax Return for the fiscal year 2016.

with, or controlled by, Mehul Choksi.”⁷³ Indeed, Voyager is ultimately owned by a Choksi-controlled entity called Chuangzou Shang Wu, Ltd.⁷⁴ Notably, Farhad Wadia, CEO of the Debtor, at one point had minimal ownership interest in Voyager, and worked at Voyager’s facility. Although Diamlink moved to Austin, certain of its employees, including Prakash Rao, remained in New York operating Diamlink and other wholly owned Gitanjali companies such as JMC and Tristar Worldwide LLC.⁷⁵ Additionally, Bhavesh Shah and Rajesh Motwani sat part-time in the New York offices. In addition, Aston Luxury Group, a Gitanjali subsidiary, was based in New York and was a jewelry wholesale company that supplied product to independent retailers.⁷⁶

As discussed below, Voyager and Diamlink were key hubs in Austin and New York for tens of millions of dollars worth of transactions in which money and inventory was funneled among related Choksi entities under the guise of independent third-party transactions. Voyager and Diamlink were particularly critical to transactions related to EDD, the puppet vendor that was the Debtor’s second largest purported third party vendor.

B. The Credit Agreement and Term Loan Agreement

The Credit Agreement with Wells Fargo and Term Loan with Gordon Brothers have certain payment restrictions and lender protections when Samuels purchases inventory from a Gitanjali-affiliate or “Group Company.” There are two sections that are directed at these

⁷³ Response of the Board of Directors of Samuels Jewelers, Inc. to Punjab National Bank’s and the United States Trustee’s Motions for the Entry of an Order Directing the Appointment of an Examiner Pursuant to 11 U.S.C. Section 1104(c) (ECF179, Exhibit B).

⁷⁴ Chuangzou Shang Wu Ltd. Group Structure PowerPoint (SAMUELS-EXAMINER0081580); Voyager Brands, Inc. d.b.a Viola Italia Tax Return for the fiscal year 2016.

⁷⁵ Gitanjali USA Presentation to Forevermark Team, USA dated September 17th, 2015 (SAMUELS-EXAMINER0191957).

⁷⁶ Gitanjali USA Presentation to Forevermark Team, USA dated September 17th, 2015 (SAMUELS-EXAMINER0191957).

intercompany transactions. Section 5.4(h) prohibits *any* payments to Gitanjali affiliates while Samuels' borrowing availability was low and when the intercompany balance was in Samuels' favor (or while Samuels was a net creditor of the Gitanjali affiliates). In addition, section 5.6 required written notice to lenders when Samuels was purchasing inventory from an affiliate or Choksi controlled entity as well as the requirement that all of those transactions be performed in good faith and at arms'-length.

While the provision changed from time-to-time but not materially for the purposes of the Investigation, section 5.4(h) prohibited the Debtor from making cash payments depending on the Debtor's borrowing base availability and whether Samuels owed the Gitanjali affiliates money on an intercompany basis or vice versa. The Third Amendment to the Credit Agreement and First Amendment to the Term Loan Agreement, each dated May 19, 2014, amended the restriction as follows:

Investments by the Borrower in the Gitanjali Entities in the form of a debit account, trade balance or a loan (such Investments, collectively, the "Gitanjali Loan") and otherwise permitted by Section 5.6; **so long as** (i) at any time that the Gitanjali Loan outstanding is greater than \$5,000,000, Excess Borrowing Availability shall be greater than \$10,000,000 at all times, (ii) Investments under this clause (h) shall not exceed \$10,000,000 in the aggregate at any time, and (iii) **at any time that the Gitanjali Loan outstanding is equal to or less than \$5,000,000 but greater than \$0 and the Excess Borrowing Availability is equal to or less than \$10,000,000, the Borrower shall be prohibited from cash payments to any Gitanjali Entity, returns of Inventory, transfers or other contribution of assets to any Gitanjali Entity.** Notwithstanding anything to the contrary contained herein, the Gitanjali Loan (A) shall not be deemed a Restricted Payment, (B) may be calculated by giving effect to any offset rights, counterclaims or chargebacks asserted by the Gitanjali Entities against any Credit Party (other than the Gitanjali Ventures Subordinated Debt) and (C) shall be calculated to include any amounts due or committed to Credit Parties but unpaid by any Gitanjali Entity as of any date of determination.

(emphasis added).⁷⁷ According to the former CFO of Samuels, Robert Herman, as of 2015, this provision permitted payments to Gitanjali affiliates so long as “excess availability was at least \$10,000,000 and . . . inter-company balance was positive”⁷⁸ Mr. Herman also told the Examiner that, given the Debtor’s financial condition, this provision effectively prohibited Samuels from paying Gitanjali.⁷⁹

⁷⁷ Third Amendment to the Credit Agreement, § 3(b) (amendment section 5.4(h)); First Amendment to Term Loan Agreement, § 3(b) (amending 5.4(h)).

⁷⁸ Email from Robert Herman to Farhad Wadia, Elizabeth Cael, Snagda Talera, and Chirag Patwa dated October 29, 2015 (SAMUELS-EXAMINER0326238).

⁷⁹ Interview of Robert Herman, January 25, 2019.

From: Robert Herman <robert.herman@smjw.com>
Sent: Thursday, October 29, 2015 9:01 AM
To: Farhad K Wadia; Elizabeth Cael; Snagda Talera
Cc: ChiraG PATWA Gitanjali
Subject: RE: Revv

I'm not sure how to say this. We are not allowed by our lender to send goods, money or any other type of asset to Group Companies. I am not saying this to be difficult. This is not Samuels not wanting to help. I have personally spent many hours working on Voyager. Any transfer of goods, no matter how small, is a violation of our bank agreement.

Wholesale sales of goods to a Group Company is not in the ordinary course of business for Samuels. We can sell these goods to Voyager all day long. Just please understand that if our lender wanted to take a hard line they could possibly call our loan for this.

If we want to take the risk I will approve the sale of the goods to Voyager today.

We do have a very easy solution to this entire problem but we have chosen not to take it.

If 1) our excess availability was at least \$10,000,000 and 2) our inter-company balance was positive we would not have any of these restrictions.

Robert Herman

CFO
 Samuels Jewelers, Inc.
 2914 Montopolis Drive
 Austin, TX 78741
 (512) 369-1492 Work
 (512) 585-7875 Cell
 (512) 369-1510 Facsimile
 Robert.Herman@smjw.com

From: Farhad K Wadia [mailto:farhadw@gmail.com]
Sent: Wednesday, October 28, 2015 9:58 PM
To: Robert Herman; Elizabeth Cael; Snagda Talera
Cc: ChiraG PATWA Gitanjali
Subject: RE: Revv

Hi Robert,

Lets try and figure out some solution to this ... as otherwise we will loose a good customer . Jon is working on getting the banks to allow us to supply these orders till that happens can you ship directly to the customers and we will try and get them to pay you'll directly OR we pay you'll immediately for the pieces .

We really need to keep the supply on as otherwise the Customera will Blacklist us and these are huge accounts .

Chirag please advise us a solution here .

Thanks,

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SAMUELS-EXAMINER0326238
 SAMUELS-EXAMINER0326238

Mr. Herman also informed the Examiner that the spirit of the agreement, originally negotiated with General Electric Capital Corp., was the Gitanjali loan had to be \$0 *and* borrowing base availability had to be greater than \$10 million in order to allow Samuels to pay

Gitanjali for inventory.⁸⁰ In order to avoid a breach of this provision, Mr. Herman told the Examiner he created and maintained a list of affiliated entities called – “Group Companies” and “Non-Group Companies.”⁸¹ This list was intended to ensure that Samuels did not pay a Group Company in contravention of the Credit Agreement or Term Loan Agreement. Without this history, the Examiner’s reading of the Credit Agreement and Term Loan Agreement provision seem to prohibit such payments only if *either* availability was less than \$10 million *or* there is a positive amount owing to Samuels by the Gitanjali affiliates. Nonetheless, other restrictions in the Credit Agreement and Term Loan Agreement render this question important for context but not material to the Examiner’s findings and conclusions.

In addition to the restrictions for cash payments in section 5.4(h), section 5.6(b) of the Credit Agreement and Term Loan Agreement required inventory purchases from Affiliates, among other things, to be disclosed in writing to the lenders and performed in good faith, at arms’-length and not for the purposes of evading any provision in the loan documents. Section 5.6 provides:

No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, enter into any transaction with any Affiliate of a Borrower or of any such Subsidiary, except:

(a) as expressly permitted by this Agreement;

(b) in the Ordinary Course of Business and pursuant to the reasonable requirements of the business of such Credit Party or such Subsidiary upon fair and reasonable terms no less favorable to such Credit Party or such Subsidiary or such Affiliate, with respect to any such transaction taken as a whole, than would be obtained in a comparable arm's length transaction with a Person not an Affiliate of a Borrower or such Subsidiary and which are disclosed in writing to Agent (without limiting the foregoing, the parties hereto acknowledge that any purchase of Inventory by a Credit Party from an Affiliate of a Borrower is expressly subject to the foregoing restrictions); and (emphasis added).

⁸⁰ Interview of Robert Herman, January 25, 2019.

⁸¹ *Id.*

Separately, “Ordinary Course of Business” is defined as “any transaction involving any Person, the ordinary course of such Person's business, as conducted by any such Person in accordance with past practice and undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in any Loan Document.”⁸² **Affiliate** was defined broadly as:

with respect to **any Person**, each officer, director, general partner or joint-venturer of such Person and any other Person **that directly or indirectly controls, is controlled by, or is under common control with, such Person**; provided, however, that no Secured Party shall be an Affiliate of any Credit Party or of any Subsidiary of any Credit Party solely by reason of the provisions of the Loan Documents. For purposes of this definition, **“control” means** the possession of either (a) the power to vote, or the beneficial ownership of, five percent (5%) or more of the voting Stock of such Person (either directly or through the ownership of Stock Equivalents) or (b) **the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.**

(emphasis added).⁸³ In sum, whether or not Samuels was permitted to pay an affiliate company for inventory, whether directly or indirectly through an intermediary, was a threshold issue. But to the extent such transactions would be permitted, they would be required to be (i) on written notice to the lenders, and (ii) in good faith and on arms'-length terms not for the purpose of evading the loan covenants.

V. INVESTIGATIVE FINDINGS REGARDING DEBTOR'S BUSINESS PRACTICES

The Examiner's investigation disclosed transactions and business practices by the Debtor that bear hallmarks of fraud. The evidence of fraud falls into three categories. First, the

⁸² Credit Agreement, §10.1; Term Loan Agreement, § 10.1.

⁸³ *Id.*

Examiner identified purchases and sales of inventory with entities that were purportedly third party vendors, but were in fact Choksi-controlled affiliates. The transactions appear to have been designed specifically so as to create the appearance of an arm's length transaction when in fact money and inventory were merely circulating among affiliated entities, whether to funnel cash to or create the appearance of revenue to the Debtor or one of Choksi's other companies, to allow the Debtor to increase its borrowing ability under its loan agreement or some other purpose.

Second, the Examiner identified evidence that the Debtor was used to circulate money in connection with the LOU and FLC bank fraud alleged in India. The Examiner, with the assistance of BDO India was able to trace LOU and FLC funds that flowed through the Debtor as well as Samuels' funds that were used to repay the alleged fraudulently-obtained FLCs. The Examiner also identified more than \$20 million in "royalty payments" purportedly made pursuant to a sham royalty agreement ostensibly for licensing the use of Samuels' trademarks and designs and of its various brands with what appears to be a Choksi-controlled entity. The Examiner was able to confirm that these payments were, at least partially, proceeds of fraudulently obtained LOUs. These transactions bear indicia of fraud including that the majority of the payments were made by Choksi-controlled entities who were not parties to the agreement, and that the payments were not accompanied (as specified in the agreements) by any documentation suggesting any actual use of the brand or any sales that could have resulted from such use.

Third, the Examiner learned that the Debtor misled consumers by claiming its jewelry was reviewed and certified by an independent gemological grading company. In fact, the grading company used by the Debtor, Independent Gemological Laboratories ("IGL") is owned by

Choksi through an entity registered in the British Virgin Islands.⁸⁴ This structure permitted the Debtor to conceal from consumers the fact that its jewelry products were not independently evaluated.

A. Suspect Inventory Transactions

1. Disguised transactions with Choksi Controlled Entities

Throughout the Investigative Period, the Examiner identified numerous entities that were represented by Samuels as independent third parties, or Non-Group Companies to its lender, when in reality, they were entities owned or controlled by Choksi, Gitanjali, or employees under Choksi's control. Choksi and his employees used these entities to circulate money and inventory among Samuels and related entities, in essence laundering the money. Among those entities were shell companies whose primary purpose appears to have been to mask the involvement of publicly disclosed Gitanjali entities in transactions ("Puppet Vendors"). The Examiner's team has identified numerous transactions where funds were paid from Samuels to a Puppet Vendor, and then almost immediately sent to a disclosed Gitanjali entity, often in India.

Based on the Examiner's investigation, such transactions account for approximately \$104 million in inventory purchases and payments of approximately \$94 million for these purchases. As discussed below, invoices were created and funds were transferred at the direction of Choksi, Sunil Varma, Vipul Chitalia, Bhavesh Shah, Chirag Patwa, or Nehal Modi, who directed both sides of transactions between Samuels and Puppet Vendors. Below is are charts showing the volume of Samuels suspect purchases from and payments to Puppet Vendors:⁸⁵

⁸⁴ Interview of Curtis Lowrey, January 9, 2019.

⁸⁵ Samuels Jewelers, Inc. Purchase Journal / AP History and Samuels Jewelers, Inc. Chase (1628) bank statements. Amounts are presented on a calendar-year basis. Differences between Purchase Journal and cash remittance amounts

Purchases from Puppet Vendors and Undisclosed Choksi Entities (January 2015 to August 2018)

Entity	2015	2016	2017	2018	Total
Taipingyang Trading Ltd.	\$ 5,025,400	\$ 35,725,747	\$ 17,594,177	\$ (888,136)	\$ 57,457,188
Exclusive Design Direct Inc.	1,047,718	14,833,354	15,863,109	1,807,593	33,551,774
Chuangzuo Shang Wu Limited	4,819,564				4,819,564
Shanyao Gong Si Limited	3,449,306				3,449,306
Cole and Associates	1,440,539				1,440,539
Saumil Diam LLC	1,326,421				1,326,421
Eternity Jewels FZE	1,322,938				1,322,938
Asian Diamond and Jewelry FZE	979,134		56,937		1,036,071
Total:	\$ 19,411,020	\$ 50,559,101	\$ 33,514,223	\$ 919,457	\$104,403,801

Disbursements to Puppet Vendors and Undisclosed Choksi Entities (January 2015 to August 2018)

Entity	2015	2016	2017	2018	Total
Taipingyang Trading Ltd.	\$ 3,345,747	\$ 21,114,184	\$ 24,526,366	\$ 400,000	\$ 49,386,298
Exclusive Design Direct Inc.	774,283	12,888,781	10,100,386	695,000	24,458,450
Cole and Associates	5,995,957				5,995,957
Chuangzuo Shang Wu Limited	4,374,560	357,977	87,027		4,819,564
Saumil Diam LLC	2,027,684	2,000,000			4,027,684
Shanyao Gong Si Limited	3,456,524				3,456,524
Eternity Jewels FZE	1,398,888				1,398,888
Asian Diamond and Jewelry FZE	1,069,602		56,937		1,126,539
Total:	\$ 22,443,244	\$ 36,360,942	\$ 34,770,717	\$ 1,095,000	\$ 94,669,903

a) Exclusive Design Direct, Inc.

One of the Debtor's largest purported vendors during the Investigative Period was EDD. From 2015 – 2018, the Debtor reported purchasing more than \$33 million of inventory from EDD and transferred more than \$24 million to EDD.⁸⁶ The Examiner has determined EDD was purely a front company controlled by the Debtor and other Choksi related entities.

According to the articles of incorporation dated June 17, 2013, the incorporator of EDD was Randy Cole.⁸⁷ According to Mr. Cole, EDD was originally a consulting business that assisted jewelry companies in sales to the cruise line industry. Mr. Cole stated that Nehal Modi

are primarily due to outstanding balances at Samuels' petition date and discounts/credits applied, and timing differences between Purchases and cash remittances recorded during the Investigative Period.

⁸⁶ *Id.* On the date of the petition, the Debtor's records showed an accounts payable balance of approximately \$9 million.

⁸⁷ Exclusive Design Direct, Inc. Articles of Incorporation, dated June 17, 2013.

and Jewelry Marketing Company Inc. were clients of EDD.⁸⁸ In 2014, Randy Cole was contacted by Anthony Aubrey who stated that John Maakaron, a psychologist located in Michigan, was interested in buying EDD. Since EDD was no longer active, Mr. Cole agreed to sell Mr. Maakaron EDD for a minimal amount.⁸⁹

On November 6, 2014, EDD filed a certificate with the Michigan Department of Licensing and Regulatory Affairs listing “EDD Collect” as an assumed name. Mr. Maakaron signed the certificate as the President of EDD.⁹⁰ The address listed for EDD is the same address as Mr. Maakaron’s psychology practice. When interviewed, Mr. Maakaron falsely stated EDD had been a debt collection company and was in existence for 20 years. According to Mr. Maakaron, Anthony Aubrey was his brother-in-law and set up the “deal” to buy EDD. According to statements made to the Examiner, Mr. Aubrey is a friend of Nehal Modi. Below are photographs of EDD’s location:

⁸⁸ Interview of Randall Cole, January 31, 2019.

⁸⁹ The amount stated in interviews differ but was between \$200 and \$1,000.

⁹⁰ Michigan Department of Licensing and Regulatory Affairs, Certificate of Assumed Name dated November 5, 2014.



Mr. Maakaron stated that EDD's business was explained to him by Prakash Rao, who at that time was an employee of Choksi entity Diamlink. Mr. Maakaron told the Examiner that he was told he would be "brokering jewelry." Mr. Maakaron stated that EDD never received, shipped, or handled any jewelry and anything related to the invoicing and shipment of

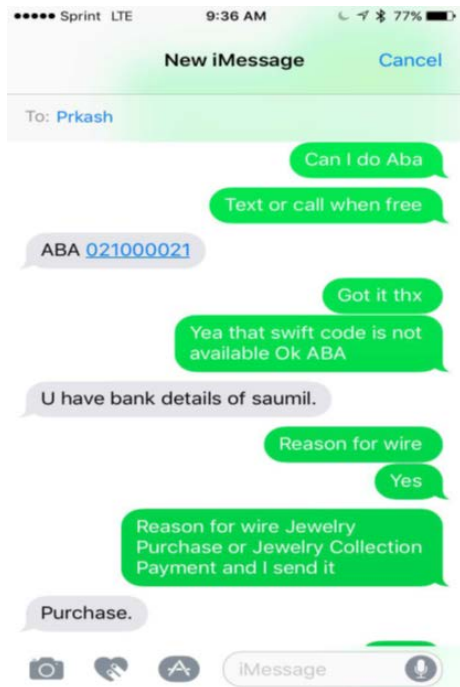
merchandise was done in New York by Mr. Rao. According to Mr. Maakaron, Mr. Rao was responsible for the books and records of EDD for which Mr. Rao stated he was paid approximately \$2,500 a year.⁹¹ At Mr. Rao's request, Mr. Maakaron would provide remote access to EDD's online banking system.⁹² In return for Mr. Maakaron's administrative assistance, EDD paid rent for his psychology practice as well as compensation for his services, according to Mr. Maakaron.⁹³

Below are three examples demonstrating the Choksi controlled entities' control over EDD through Mr. Rao, who also maintained the books and records of other Choksi entities. First, Mr. Rao told Mr. Maakaron to send funds to Diamlink, a known Gitanjali U.S. affiliate. Mr. Maakaron asked for clarification of the entity's name, and whether the wire was for a purchase or collection payment so that he could state the reason for the wire. Mr. Rao responded: "purchase."

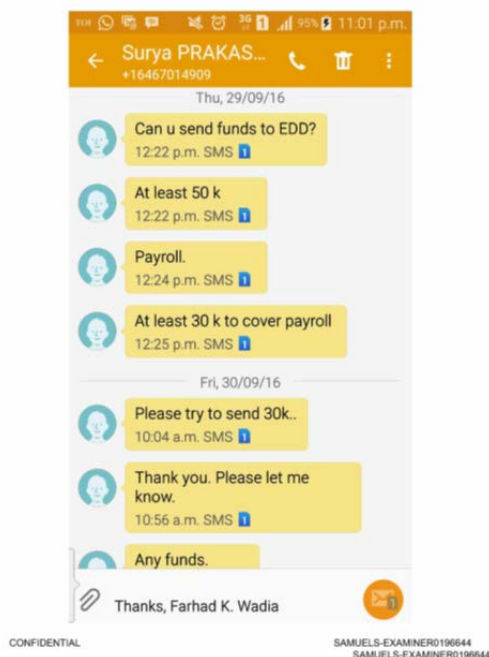
⁹¹ Interview of Prakash Rao, December 21, 2018.

⁹² Production of John Maakaron dated January 9, 2019.

⁹³ The Examiner's team has traced at least \$78,000 in payments from EDD to Mr. Maakaron and his company.



Second, on September 29, 2016, Mr. Rao sent a text message to Farhad Wadia asking him to send “funds to EDD”: specifically, “at least \$30K to cover payroll.”⁹⁴



⁹⁴ Text message exchange between Prakash Rao and Farhad Wadia dated September 29, 2016 (SAMUELS-EXAMINER0196644).

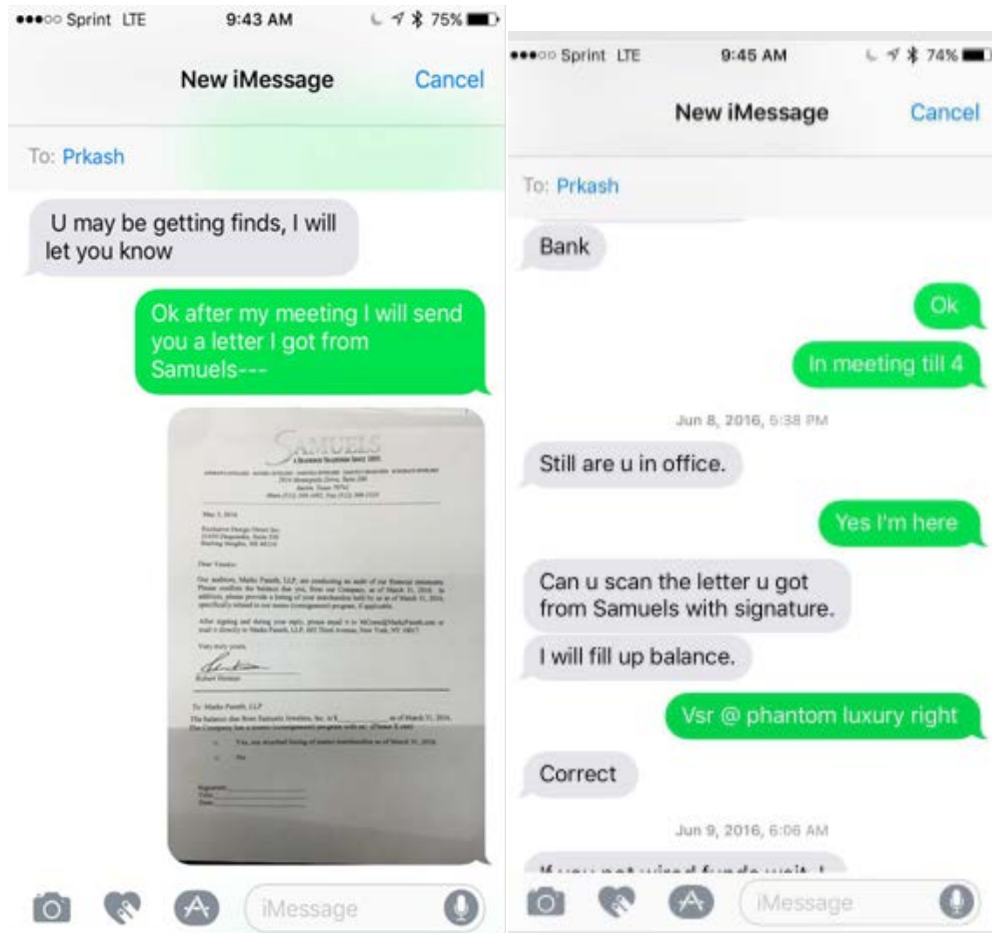
The next day, Mr. Rao asked Mr. Maakaron if any funds had been received by EDD. Mr. Maakaron responded that \$150,000 had been received, and Mr. Rao directed him to transfer \$145,000 to Diamlink. Bank records confirm this transaction occurred substantially as outlined in the texts. EDD's account shows a \$150,000 transfer from the Debtors' Chase bank account on September 30, 2016, and a wire of \$143,5000 to Diamlink's Wells Fargo account on October 3, 2016.⁹⁵ Diamlink's bank statement reflects the deposit.

Mr. Rao confirmed the transaction in an interview and explained his understanding was that Samuels had paid EDD pursuant to an account payable for merchandise, and the "payroll" expenses being covered by Mr. Wadia's payment were for Diamlink.

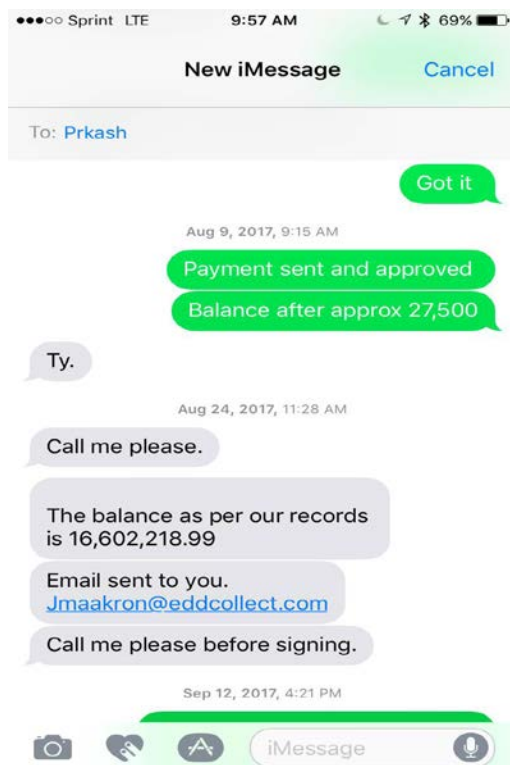
Third, when Mr. Maakaron received requests from Samuels seeking to confirm EDD's outstanding accounts receivable with Samuels for audit purposes, Mr. Maakaron did not have the information. In 2016, Mr. Maakaron sent Mr. Rao a picture of the audit letter he received from Marks Paneth, Samuels' accountants. Two weeks later, Mr. Rao asked Mr. Maakaron to scan him a copy of the letter with Mr. Maakaron's signature so he could "fill up balance."⁹⁶

⁹⁵ Exclusive Design Direct, Inc. September 2016 bank statement for Huntington National Bank account ending (2426); Diamlink, Inc. October 2016 Bank Statement for Wells Fargo account ending (0248).

⁹⁶ Production of John Maakaron dated January 9, 2019.



The following year, Mr. Maakaron again had to ask Mr. Rao at Diamlink to provide EDD's account receivable information.



After Mr. Maakaron received the necessary information from Mr. Rao, he would sign the audit confirmation letters and send them to Samuels' auditor representing EDD as a third-party.⁹⁷

According to Mr. Rao, Samuels employee Bhavesh Shah was aware that inventory ordered by Samuels from EDD was in fact shipped from Diamlink to Samuels, but invoiced before shipment as if it were supplied by EDD. Mr. Shah, who had worked at Diamlink, would direct this invoicing and shipping process. Mr. Shah also told numerous Samuels and Diamlink employees that only certain emails should be used when dealing on behalf of EDD. This was intended to give the appearance that EDD was a third party or a vendor not affiliated with Choksi.⁹⁸ When asked about EDD, Mr. Shah denied any knowledge that EDD was controlled by

⁹⁷ Audit Confirmation Letter, signed by John Maakaron dated June 8, 2016 (SAMUELS-EXAMINER0219181).

⁹⁸ Interview of Prakash Rao, December 21, 2018. *See also* Email from Bhavesh Shah to Ashok Tailor, Pradeep Bhagat, Farhad Wadia, Prakash Rao, Mayank Upadhyay and others dated January 10, 2017 (SAMUELS-

Mr. Choksi. Mr. Shah insisted that EDD was a third-party vendor and his contact was an individual named Corey.⁹⁹ Mr. Rao stated Mr. Shah knew that Corey was in fact Mr. Rao, an employee of Choksi's entities.

Mr. Maakaron used the email address jmaakron@eddcollect.com to communicate with Samuels or their accountants. Mr. Rao admitted in an interview with the Examiner that he would use the email corey@eddcollect.com and pose as an individual named Corey if he needed to communicate with Samuels as a representative of EDD. In one instance, an email was sent from corey@eddcollect.com to Samuels' employees Maria Tolentino, Bhavesh Shah and Angie Gonzalez and it was signed by Mr. Rao using his true name, Prakash.¹⁰⁰

Mr. Rao stated that EDD would "purchase" inventory from Gitanjali companies or Puppet Vendors, such as Shanyao Gong, Taipingyang, Diamlink, Voyager or other Gitanjali affiliates. This inventory would then be sold to Samuels through EDD to give the appearance the product came from a third-party vendor in Michigan. However, the inventory purchased by EDD never actually went to EDD but was transferred between Gitanjali affiliates. When Samuels purchased inventory from EDD, the Gitanjali affiliate would ship the inventory from its office in the name of EDD. When Samuels paid EDD for the inventory, EDD sent the funds to Diamlink, JMC or other Choksi controlled entities. According to Mr. Rao, he coordinated these transactions at the direction of Choksi and his conspirators, including Vipul Chitalia, Sunil Varma, and Raj Motwani.¹⁰¹ According to Mr. Rao, once the funds were received by Diamlink, JMC or other related entities, they were sent to Gitanjali India or other Gitanjali related entities.

EXAMINER0083504)..

⁹⁹ Interview of Bhavesh Shah, December 19, 2018.

¹⁰⁰ Email from Corey@eddcollect.com to Maria Tolentino, Bhavesh Shah and Angie Gonzalez dated January 31, 2017 (SAMUELS-EXAMINER0349203).

¹⁰¹ Interview of Prakash Rao, December 21, 2018,

The Examiner was able to verify this statement with bank records.

These transactions with EDD appear to be an attempt by Samuels to hide the true nature of more than \$24 million in payments Samuels made to EDD over an approximately three and a half -year period. Generally, when funds were received by EDD amounts would then be wired to another Gitanjali controlled entity, such as Diamlink or Jewelry Marketing Company, Inc., within one or two days. An analysis of EDD's bank account shows wire transfer deposits of approximately \$30,077,011 between January 2015 and August 2018, \$24,458,450 of which came from Samuels.¹⁰² There were wire transfer disbursements of approximately \$29,954,269 to various Gitanjali subsidiaries and related entities, including approximately \$7,919,187 to Diamlink, Inc., \$4,656,661 to Diamlink Jewelry, Inc, and \$1,839,430 to Jewelry Marketing Company, Inc.¹⁰³ Below are charts showing the volume of wire transfers to and from EDD:¹⁰⁴

¹⁰² Exclusive Design Direct Inc.'s Huntington National Bank' statements and wire transfer activity for account ending (2426).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

Wire Transfers into Exclusive Design Direct, Inc.'s HNB (2426) Account (Deposits)

Entity	2015	2016	2017	2018	Total
Samuels Jewelers Inc.	\$ 774,283	\$ 12,888,781	\$ 10,100,386	\$ 695,000	\$ 24,458,450
Beautiful Diamonds & Jewellery Inc.	1,055,425	1,477,610			2,533,035
Infinite Diamonds & Jewellery Inc.	753,800	249,760			1,003,560
Shree Swami Corp.	109,930	400,440			510,370
Gold and Diamond Center Inc.	248,930	202,250			451,180
Goodmark Jewelry Corp.	406,490				406,490
New York Diamonds & Jewelry Inc.	276,790				276,790
Shree Swami Corp. DBA Star Jewelry	155,640				155,640
Saumil Diam LLC	154,906				154,906
Tri-Star Worldwide LLC	71,000				71,000
Jewelry Marketing Company Inc.			51,590		51,590
Diamlink Inc.			4,000		4,000
Total:	\$ 4,007,194	\$ 15,218,841	\$ 10,155,976	\$ 695,000	\$ 30,077,011

Wire Transfers from Exclusive Design Direct, Inc.'s HNB (2426) Account (Disbursements)

Entity	2015	2016	2017	2018	Total
Tri-Star Worldwide LLC	\$ 296,650	\$ 6,802,069	\$ 1,956,394		\$ 9,055,113
Diamlink Inc.	96,000	2,203,519	5,545,669	74,000	7,919,187
Saumil Diam LLC	2,878,568	2,322,841		24,750	5,226,159
Diamlink Jewelry Inc.		3,715,287	941,375		4,656,662
Jewelry Marketing Company Inc.			1,248,230	591,200	1,839,430
Phantom Luxury Group LLC	223,900	116,916			340,816
Abbey USA LLC			224,358		224,358
Samuels Jewelers Inc.			200,000		200,000
Jewelry Marketing Company LLC	178,025				178,025
Jewelry Marketing Company	151,520				151,520
Cappuccino Collection	139,200				139,200
Voyager Brands Inc.	15,000				15,000
J.R.A.M. Investments LLC				8,800	8,800
Total:	\$ 3,978,863	\$ 15,160,631	\$ 10,116,025	\$ 698,750	\$ 29,954,269

b) Cole & Associates, Inc.

Cole & Associates is another Puppet Vendor, whose transactions with the Debtor were similar to those of EDD.¹⁰⁵ Mr. Cole, the owner of Cole & Associates, previously incorporated EDD. Mr. Cole stated that at the time EDD engaged in a legitimate business brokering jewelry deals between Mr. Modi, Mr. Mitchell and the cruise line industry.

Mr. Cole stated that Mr. Modi or one of his associates subsequently proposed a business arrangement to Mr. Cole in which merchandise would be sold to Samuels under the name of

¹⁰⁵ Interview of Randall Cole, January 31, 2019.

Cole & Associates. Having previously brokered jewelry transactions between Choksi controlled entities and third-parties, Mr. Cole agreed to the arrangement.

Other Choksi controlled entities in New York and their employees handled the shipping and invoicing of merchandise to Samuels. Cole & Associates received payments for the shipments to Samuels and then sent the funds to Diamlink, JMC or other New York based entities at the direction of Mr. Rao. Mr. Rao instructed Mr. Cole where to wire funds and what invoice number to reference. Cole & Associates received approximately 1% commissions for each transaction, which he split with Mr. Mitchell. Bank records confirm that both Mr. Cole and Mr. Mitchell received payments labeled as commissions, with funds at least partially supplied by Samuels. Although Cole & Associates was a front company for Choksi and his companies, Cole & Associates signed audit confirmation letters representing it was a third-party vendor that were sent to Samuels' auditor, Marks Paneth.¹⁰⁶

Mr. Cole stated he never received, shipped or saw merchandise and never saw any invoices related to Cole & Associates sales or purchases. He did recall receiving two or three packages from overseas or New York in Michigan to give the appearance that merchandise was moving among third-parties. However, the packages did not contain merchandise, or any jewelry for that matter, and were either empty or contained a brochure. Mr. Cole recalled one instance in which he received a package from Mr. Modi that only contained a paper brochure. Mr. Cole was instructed by Mr. Modi to ship the package back to New York. Mr. Cole was concerned the package could not pass as jewelry because it was so light so he placed "junk" jewelry in the box before shipping the package to make it seem that there was real merchandise

¹⁰⁶ Audit Confirmation Letter to Samuels Jewelers, Inc., signed by Randall Cole dated May 22, 2015 (SAMUELS-EXAMINER0212079).

in the shipment.¹⁰⁷ Mr. Cole believes that the value of this package was recorded as approximately \$7 million in EDD's books and records. The Examiner team confirmed a Brinks shipment on January 12, 2015 from Cole & Associates in Michigan to JMC/Diamlink in New York for a stated liability value of approximately \$7 million.¹⁰⁸

At one point, Mr. Cole was asked by Mr. Modi to sign a letter that showed a sale to Cole & Associates from an overseas entity. Mr. Cole does not recall the text of the letter, only that it had Mr. Modi's name on it and related in some way to overseas debt. Mr. Modi explained he needed Mr. Cole to sign the letter because they needed to show a sale to Cole & Associates or the bank would shut down financing. On another occasion, Mr. Cole recalled Mr. Modi stating that Modi was being pressured by the "back office" in India to show more sales.

The following summary table illustrates the total wire transfers received and disbursed from the Cole & Associates HNB account (1249) for 2014 and 2015:¹⁰⁹

¹⁰⁷ Interview of Randall Cole, January 30, 2019.

¹⁰⁸ Brinks shipping log, produced by The Brink's Company on January 23, 2019.

¹⁰⁹ Cole & Associate's Huntington National Bank (1249) Bank Statements and Wire Transfer Activity.

Wire Transfers into Cole & Associate's HNB (1249) Account (Deposits)

Entity	2014	2015	Total
Samuels Jewelers Inc.	\$ 3,701,568	\$ 5,995,957	\$ 9,697,524
Tri-Star Worldwide LLC	1,512,018		1,512,018
Phantom Luxury Group LLC	492,140	-	492,140
Saunil Diam LLC		235,000	235,000
Total:	\$ 5,705,725	\$ 6,230,957	\$ 11,936,682

Wire Transfers from Cole & Associate's HNB (1249) Account (Disbursements)

Entity	2014	2015	Total
Diamlink Inc.	\$ 4,944,595	\$ 927,614	\$ 5,872,209
Tri-Star Worldwide LLC		3,353,436	3,353,436
Phantom Luxury Group LLC	555,456	911,542	1,466,998
Jewelry Marketing Company LLC		971,178	971,178
Exclusive Design Direct, Inc.	144,994		144,994
Total:	\$ 5,645,045	\$ 6,163,770	\$ 11,808,815

Most of the funds received by Cole & Associates were disbursed the same or next day to companies in New York controlled by either Choksi or Mr. Modi. As shown in the chart above, Cole & Associates received approximately \$11,936,682 and disbursed approximately \$11,808,815 in 2014 and 2015 from Choksi controlled companies. This includes deposits of approximately \$9,697,524 in 2014 and 2015 from Samuels' Chase account. The deposits from Samuels were transferred almost immediately to other Choksi controlled entities.

The Examiner identified evidence that Samuels and Choksi co-conspirators were creating the Cole and Associates invoices. For example, in a January 29, 2015 email, Bhavesh Shah sent two excel files containing packing lists to Vishal Suvarna, an employee working at Samuels' back office company Keyline.¹¹⁰ Mr. Suvarna then sent Mr. Shah invoices on Cole & Associates

¹¹⁰ Excel spreadsheet titled "Packing List No 1711-03 (SAMUELS-EXAMINER0569846); Excel spreadsheet titled "Packing list Products in NY.xls" (SAMUELS-EXAMINER0569847).

letterhead that had been created using the contents of the packing lists.¹¹¹ When there were discrepancies in the Cole & Associates invoices, Samuels employees asked employees at Keyline to correct the invoice. On January 27, 2015 Angie Gonzalez emailed Bhavesh Shah requesting an invoice adjustment for a Cole & Associates invoice.¹¹² Mr. Shah sent the request to Vishal Suvarna at Keyline Solution copying Jon Mitchell and Mr. Upadhyay. The request is not sent to the alleged seller Cole & Associates to correct the discrepancy.

At some point Mr. Cole became aware that his conduct might be in violation of various anti-money laundering statutes and determined that what he was doing for Mr. Modi and Mr. Mitchell was wrong. He expressed his frustration and concern to Mr. Rao and Mr. Mitchell and told them that he would no longer be involved in the transactions.

Mr. Cole stated he now realizes that he was helping Mr. Modi conceal the true nature of the transactions and that he was being used by him as a “ghost.” Mr. Cole further described himself as a “pawn” who got caught in the middle and expressed concern regarding how he was used. Mr. Cole never had any contact with Samuels in connection with the alleged Cole & Associates sales and all sales were handled through Mr. Rao. Mr. Cole believes that Mr. Modi could not ship merchandise from overseas or from the New York related entities directly to Samuels because there were bank restrictions and Samuels was a related company.

Mr. Cole has not spoken with Nehal Modi in approximately 18 months; however, he has spoken with Mr. Mitchell about the Examiner’s investigation. Mr. Cole expressed concern about the investigation to Mr. Mitchell and asked what he should do if questioned about the

¹¹¹ Email from Vishal Suvarna to Bhavesh Shah and Andand Bohra dated January 30, 2015 (SAMUELS-EXAMINER0569700).

¹¹² Email exchange among Angie Gonzalez, Ajay Rai, Elizabeth Cael, Vishal Suvarna, Mayank Upadhyay, Bhavesh Shah and Jon Mitchell dated January 31, 2015 (SAMUELS-EXAMINER0256178).

commissions paid to Cole & Associates. According to Mr. Cole, Mr. Mitchell instructed him to provide a false explanation to the Examiner, specifically that the payments were for website consulting. Mr. Cole told Mr. Mitchell he would be open and honest with the Examiner. Mr. Cole stated that “the truth is the truth” and unfortunately the truth does not look good and he feels stupid.

Mr. Mitchell was interviewed on February 5, 2019 about his role with Cole & Associates. Mr. Mitchell denied wrongdoing and stated, among other things, that the payments he received were in exchange for work performed. Documents and other evidence contradict this representation by Mr. Mitchell.

c) **Taipingyang Trading, Ltd**

Taipingyang Trading, Ltd. is another shell company whose primary if not only purpose appears to have been to create the appearance of third-party transactions for the movement of funds and inventory among Gitanjali entities. From 2015 to 2018, Samuels reported over \$57 million of jewelry purchases from Taipingyang, located in Hong Kong. During the same time period, Samuels transferred more than \$49 million to Taipingyang. Aston Luxury Group Ltd. (“Aston Luxury”), an active Hong-Kong domiciled entity, was the sole shareholder of Taipingyang from July 2014 to March 2015. The two directors of Aston Luxury are Mehul Choksi and Nareshkumar-Bhikurao Jadav. On March 30, 2015, Aston Luxury transferred its shares to Unique Century Investments Ltd., a BVI-domiciled entity. Apurva Prakash Shah was the signatory for Unique Century Investments Limited.

The Examiner’s investigators visited Taipingyang’s purported office and Crown Aim Ltd., another known Choksi entity, was listed as the tenant. Additionally, Examiner’s

investigators observed mail addressed to Crown Aim Ltd., Shanyao Gong Si and Taipingyang at the address. The letters were addressed to Suite 505B and were observed near the main entrance to the office suite, but not inside the suite itself. The mail for Shanyao Gong Si was addressed to the attention of Deepak Krishnarao Kulkarni who was implicated in the PNB Scheme. Deepak Kulkarni is the husband of former Taipingyang director Meher Deepak Kulkarni.¹¹³

Taipingyang was reflected in Samuels' books as a third-party, unaffiliated vendor in May 2015 at the direction of Samuels' director, Bhavesh Shah who provided Meher Kulkarni as a contact person.¹¹⁴ Meher Kulkarni, the wife of Deepak Kulkarni, was a director of Taipingyang from December 2017 to August 2018, and is also an employee of Crown Aim, Ltd., a known Gitanjali affiliate. Taipingyang was also referred to as a "group contractor," "contractor" and "vendor" by Samuels, each of these designations indicating (falsely) that they are not controlled by Choksi or Gitanjali.¹¹⁵ Samuels' auditor Marks Paneth requested, and Taipingyang provided, accounts payable confirmations as a third-party vendor in connection with an audit of Samuels.¹¹⁶

An example of a transaction demonstrating a deliberate effort to mask the transfer of money from Samuels to Gitanjali by creating the appearance of a third-party transaction is described below. On December 26, 2016, Vipul Chitalia, a Gitanjali employee, emailed Samuels' CEO, Farhad Wadia and CFO, Robert Herman, a letter from Taipingyang. The letter

¹¹³ ED Complaint pg. 9.

¹¹⁴ Email from Bhavesh Shah to Cody Cox, Robert Herman, Jason Pardue, Chirag Patwa and Ajay Rai dated May 15, 2015 (SAMUELS-EXAMINER0270080).

¹¹⁵ See e.g. Email exchange among from Farhad Wadia, Robert Hermand and Manan Shah dated January 6, 2016 (SAMUELS-EXAMINER0078154). Internal email between Farhad Wadia, Robert Herman and Manan Shah (Gitanjali) listing Taipingyang on a list of group contractors; Email exchange among Luisana Lumbreras and Robert Herman dated April 26, 2016 (SAMUELS-EXAMINER0221485).

¹¹⁶ Email from Taipingyang Trading to Sunil Varma, J. Raymond and Hank Novak dated August 2, 2017 (SAMUELS-EXAMINER258822); Audit Confirmation Letter from Taipingyang Trading Ltd. to Samuels Jewelers, Inc. dated August 2, 2017 (SAMUELS-EXAMINER0258823).

explained that Taipingyang owed Gitanjali Gems \$2 million, but because banks were closed in Hong Kong that day, asked that Samuels pay Gitanjali the money on Taipingyang's behalf.¹¹⁷ Both Messrs. Herman and Wadia replied that due to the bank line restrictions, Samuels could not pay any Gitanjali group entities.

The response was that instead of sending the payment to Gitanjali, Samuels should send the money to another account. The Examiner has confirmed that the account belonged to Saumil Diam. Samuels was directed to send the money to "Mr. Kepal," who the Examiner has identified as a Saumil Diam employee, and was provided a contact number for the account holder to confirm the wire information. The contact number belonged to Mitesh Kothari who was the owner of Saumil Diam. On December 27, 2016, Samuels wired \$2 million against the outstanding accounts payable to Taipingyang.¹¹⁸ However, the money was not sent to a Taipingyang bank account, but rather a bank account in the name of Saumil Diam, as shown below:

¹¹⁷ Email chain among Robert Herman, Luisana Lumbreras, Farhad Wadia, Vipul Chitalia and others dated December 26, 2016 (SAMUELS-EXAMINER0069988); Letter from Taipingyang Ltd. to Samuels Jewelers, Inc. dated December 26, 2016 (SAMUELS-EXAMINER0121618).

¹¹⁸ Samuels Jewelers, Inc. JP Morgan Chase (1628) bank statement and Samuels AP Trade File.

Template Name SAUMIL DIAM LLC		
PAYMENT INFORMATION		
Account Number 708131628	Payment Method Wire	
Account Name SAMUEL JEWELERS INC. OPERATING	Branch Location JPMorgan Chase Bank, N.A. (TX)	Beneficiary Bank Country UNITED STATES - US
Bank Name JPMORGAN CHASE BANK, N.A.	Bank Id 111000614	Payment Amount USD 2,000,000.00
Value Date: 12/27/2016		
Status: Completed		
ROUTING INFORMATION		
BENEFICIARY		
Beneficiary ID Type Account Number	Address Line 1 15 WEST 47 STREET 1707	
Account Number 483043682659	City, State/Province, Zip/Postal Code NEW YORK, NY 10036	
Beneficiary Name SAUMIL DIAM LLC	Country UNITED STATES - US	

The same day that Saumil Diam received the \$2 million from Samuels, Saumil Diam sent two wires totaling \$1.99 million to a Punjab National Bank account in the name of Gitanjali Exports Corporation.¹¹⁹ Mr. Kothari stated that when Saumil Diam received funds from Gitanjali affiliates Gitanjali employee Vipul Chitalia would direct him regarding how to direct those funds, which was generally to Gitanjali overseas entities. As discussed below, Saumil Diam was alleged to have been involved with more than \$180 million in fraudulently obtained LOUs and FLCs.¹²⁰

Notably, senior Gitanjali employees often expressed urgency to Samuels to pay other Choksi-controlled entities. For example, on January 14, 2016, Mr. Wadia requested that Mr.

¹¹⁹ Saumil Diam LLC December 2016 Wells Fargo account statement for account ending (2659).

¹²⁰ ED Complaint ¶ 17.11.

Herman pay \$1 million to “contractors.” Mr. Herman stated, “taking our excess this low is dangerous [sic] and there will probably be negative repercussions with our lender.” Chirag Patwa then responded “Please pay Belgm Diamonds or Tai Ping Yong” [sic].¹²¹

On September 15, 2015, Mr. Patwa emailed Mr. Herman and stated he needed a minimum of \$500,000 in payments that week. Mr. Herman responded that Samuels could not make payments, but Mr. Patwa responded: “Please do something, you are the man please find a way.” Mr. Herman then replied “You are killing me. We didn’t have enough sales to pay our bills...I can send \$250. Who?”¹²² Samuels ultimately paid Chuangzuo Shang Wu Limited¹²³, an undisclosed Choksi entity, \$250,000 on September 17, 2015.

At times, the entities were seemingly interchangeable when payments were requested from India. In a November 3, 2015 email, Mr. Herman informed Mr. Patwa that Samuels dipped to an availability of \$5 million as a result of payments to contractors when the bank requested an \$8 million availability.¹²⁴ Mr. Herman stated that he would be advancing \$500,000 that day for contractors and asked Mr. Patwa who to send it to. Mr. Patwa replied, “I have send you the list of two names pick which ever is open and send in that.”¹²⁵

¹²¹ Email exchange among Chirag Patwa, Robert Herman and Farhad Wadia dated January 14, 2016 (SAMUELS-EXAMINER0142760).

¹²² Email exchange among Chirag Patwa, John Hayes, Jason Pardue and Robert Herman dated September 15, 2015 (SAMUELS-EXAMINER0208209).

¹²³ The Examiner believes Chuangzuo Shang Wu Ltd. was being operated alongside Shanyao Gong and Taipingyang in Hong Kong. Chuangzuo Shang Wu Ltd. was set up as vendor alongside Shanyao Gong. Mr. Steve Kong was listed as the point of contact, however the majority of the communications came from Meher Kulkarni. For example, on July 30, 2015, Ms. Kulkarni forwarded an email to Bhavesh Shah from Gitanjali employees containing a packing list for a shipment from Crown Aim Limited to Samuels. Ms. Kulkarni stated “Please find documents attached for Shipment made to Samuels from CSWL.” Ms. Kulkarni signed it Chuangzuo Shang Wu Ltd. *See* Email from Meher Kulkarni to Bhavesh Shah dated July 30, 2015 (SAMUELS-EXAMINER0552046). A day later, a Gitanjali employee told Mr. Shah that “Meher understood, now onward she will not send intimation mails to SJ team for jewelry shipments.” *Id.*

¹²⁴ Email exchange among Chirag Patwa, Rohan Choksi, Sunil Varma and Robert Herman dated November 3, 2015 (SAMUELS-EXAMINER0600872).

¹²⁵ *Id.*

d) Shanyao Gong Si, Ltd.

Shanyao Gong Si, Ltd. was another Puppet Vendor located in Hong Kong, from which Samuels purchased more than \$3.4 million in merchandise in 2015. From December 2016 to March 2017, Samuels entered into \$11.6 million in wholesale sales with Shanyao Gong.

Samuels director Bhavesh Shah appeared to be the contact person between Samuels and Shanyao Gong regarding vendor set up, invoicing and shipping, banking information, and auditing requirements. On January 15, 2015, Mr. Shah instructed employees at Samuels to set up a vendor number in Samuels' system for Shanyao Gong as a "Non-Group," or unrelated, company.¹²⁶ Later in January 2015, Mr. Shah provided a Hong Kong address and the name Deepak Kulkarni as contact information for Shanyao Gong.¹²⁷ At one point, Deepak Kulkarni was also a director of Crown Aim Limited.¹²⁸ Meher Kulkarni, Kalpen Doshi and Himmat Dhariwal were also used as contacts by Samuels employees to discuss transactions with Shanyao Gong. These individuals also appeared to be performing work for other Puppet Vendors such as Taipingyang and Chuangzou Shang Wu, Ltd. According to the ED complaint, Mr. Dhariwal ran the companies Crown Aim Ltd., Shanyao Gong and Taipingyang.¹²⁹ Meher Kulkarni was listed as the person in charge at Taipingyang and was a director at Crown Aim Ltd.¹³⁰

The Examiner's team has reviewed numerous emails in which Samuels employee Bhavesh Shah instructed individuals who were purported Shanyao Gong employees. Mr. Shah

¹²⁶ Email exchange among Chirag Patwa, Tina Miura, Bhavesh Shah and Robert Herman dated January 15, 2015 (SAMUELS-EXAMINER0571130).

¹²⁷ Email from Bhavesh Shah to Angela Nadar and Vishal Suvarna dated January 29, 2015 (SAMUELS-EXAMINER0256357); The ED Complaint also listed Deepak Kulkarni as the individual running Shanyao Gong. See ED complaint ¶12.37.

¹²⁸ ED Complaint ¶4.1.5.

¹²⁹ Id. at ¶12.37

¹³⁰ Id. at ¶4.1.5; 12.37.

told the Examiner in interviews that he thought Shanyao Gong was a “Non-Group” company based on conversations with possibly Sunil Varma. Mr. Shah stated that in relation to a wholesale sale to Shanyao Gong, he thought the buyer was in South America. However, Mr. Shah’s statement is contradicted by documentary evidence.

For example, on April 27, 2015, Mr. Shah provided detailed instructions governing sales and shipments from Shanyao Gong to Samuels that appear designed to mask the relationship between Shanyao Gong and Gitanjali. This email, sent to Meher Kulkarni at her Crown Aim, Ltd. email, directed her to, among other things, open a separate email account in the name of Shanyao Gong, sign the email in her husband’s name “Deepak” since he was the named contact, and omit any trail connecting the transaction with Gitanjali. A screenshot of the email is below:¹³¹

¹³¹ Email from Bhavesh Shah to Meher Kulkarni dated April 27, 2015 (SAMUELS-EXAMINER0232290).

From: Meher Kulkarni <meherk222@gmail.com>
Sent: Monday, April 27, 2015 10:23 PM
To: Bhavesh Shah
Subject: GGL BOND PEXP. ON 25/4/15

Noted Bhaveshbhai.

From: Bhavesh Shah [mailto:bhavesh.shah@smjw.com]
Sent: Monday, April 27, 2015 10:41 PM
To: Meher Kulkarni
Cc: ajit@gitanjaligroup.com; Vinay GGL; suhag801@gmail.com; elsy@gitanjaligroup.com; himanshu GGL
Subject: RE: GGL BOND PEXP. ON 25/4/15

Hi Meher,

Please make sure you go over all below details when you send out email.

1. Since shipment are going from Shanyao Gong Si Ltd. I suggest to open one Gmail account and email should go from that Email account. Deepak Kulkarni is the contact person so at the end it should say Deepak.
2. **No trail email should be included in the email when you sent to Samuels.**
3. Following people email should go to at SJ – Bhavesh- judy- elizabeth - Manish – Angie
angie.gonzalez@smjw.com ; Hope - hope.rodriquez@smjw.com ; Evelyn- evelyn.santiago@smjw.com ;
4. Document – copy of tracking details along with Invoice in pdf; invoice in excel along with packing details must be there.

Now if you ship diamond to NY and bill to Samuels then points 1 to 4 needs to be followed. Only person you need to add in the email is Mayank .

Please conform.

Thank You

Bhavesh Shah

Sr. Director of Sourcing

Samuels Jewelers/Rogers Jewelers

Two weeks after Mr. Shah sent this email, Ms. Kulkarni made another shipment on behalf of Shanyao Gong to Samuels. Ms. Kulkarni's email included a string of emails showing Gitanjali employees coordinating the transaction between Shanyao Gong and Samuels.¹³² The email was sent to Gitanjali, Diamlink and Samuels employees. Mr. Shah responded:

¹³² Email from Bhavesh Shah to Meher Kulkarni dated May 11, 2015 (SAMUELS-EXAMINER244175).

From: Bhavesh Shah [mailto:bhavesh.shah@smjw.com]
Sent: Monday, May 11, 2015 6:13 PM
To: Meher Kulkarni
Cc: elsy@gitanjaligroup.com; Steve ; ajit@gitanjaligroup.com; suhag801@gmail.com; Vinay GGL
Subject: RE: EXPORT TO SHANYAO GONG SI LTD DT 08.05.15
Importance: High

Hi Meher,

I don't understand what's the problem !!!

I had sent out attached email and I also have conformation from you ... then again why this email ???

Please let me know what's the problem to follow direction which has been given ?

Please explain.

Thank You

Bhavesh Shah

Sr. Director of Sourcing

Samuels Jewelers/Rogers Jewelers

Attached to this email scolding Ms. Kulkarni for not following directions was Mr. Shah's April 27 email laying out the steps she was supposed to have taken to hide Gitanjali's involvement.¹³³ These emails indicate that Mr. Shah was not only aware that Shanyao Gong was a Choksi controlled entity, but that he played an active role in trying to hide that fact.

2. Suspect Wholesale Transactions

The Examiner identified at least four wholesale transactions with overseas Choksi controlled entities during the Investigative Period, totaling approximately \$17.6 million. In addition to appearing inconsistent with Samuels' normal course of business as a jewelry retailer, these transactions appear to constitute examples of money and goods being circulated among Choksi entities under the guise of third party transactions. The below table identifies the transactions, which were with Shanyao Gong and another apparent Choksi entity, Al Arbaa

¹³³ *Id.*; Attachment email from Bhavesh Shah to Meher Kulkarni dated April 27, 2015 (SAMUELS-EXAMINER0244178).

Jewels FZE:

Samuels Jewelers, Inc. Wholesale Sales

Sale #	Date	Buyer / Customer	Wholesale Sale Price
1	3/31/2016	Al Arbaa Jewels FZE	6,003,891.56
2	12/30/2016	Shanyao Gong Si Limited	2,293,436.30
3	3/7/2017	Shanyao Gong Si Limited	2,155,923.12
4	3/31/2017	Shanyao Gong Si Limited	7,121,396.43
			<u>\$ 17,574,647.41</u>

a) Shanyao Gong Si, Ltd.

Samuels entered into three wholesale transactions with Puppet Vendor Shanyao Gong, again representing these as arm's length, third-party transactions. Samuels sold inventory to Shanyao Gong for a total of \$11,570,755.85, and as a result of those sales, reported a profit on the sale of \$3,936,401.65.¹³⁴

Sale Date	Invoice #	Sale Price	Samuels Cost	Profit on Sale	Mark Up at Cost
12/30/2016	1477	\$ 2,293,436.30	\$ 1,146,718.15	\$ 1,146,718.15	100.0%
3/7/2017	1481	1,241,021.13	867,846.95	373,174.18	43.0%
3/7/2017	1482-A	552,716.11	386,514.76	166,201.35	43.0%
3/7/2017	1482-B	211,992.28	148,246.35	63,745.93	43.0%
3/7/2017	1482-C	150,193.60	105,030.49	45,163.11	43.0%
3/31/2017	1488-1485	4,303,788.77	3,009,642.50	1,294,146.27	43.0%
3/31/2017	1487-1484	2,817,607.66	1,970,355.01	847,252.65	43.0%
		<u>\$ 11,570,755.85</u>	<u>\$ 7,634,354.21</u>	<u>\$ 3,936,401.65</u>	

Both sides of the three Shanyao Gong transactions were coordinated by Samuels CFO

¹³⁴ The Examiner team identified working invoices and pricing worksheets for the March 7, 2017 wholesale sale with a total sale amount of \$2,155,923.12 and a total cost of \$1,507,638.55 (SAMUELS-EXAMINER0259937). Samuels' general ledger detail provided by the Debtor also has a wholesale sale amount of \$2,155,923.12 but has a lower cost of sales amount recorded of \$1,016,093.30. For the purposes of the Report, the Examiner took a conservative approach and used the higher cost of sales amount identified in the working invoices and pricing worksheets in presenting the profit from the sale.

Sunil Varma. Mr. Varma told Farhad Wadia that these sales were “arranged by the group” and were an advantage of Gitanjali’s global presence and network.¹³⁵ In a December 12, 2016 email, Varma explained to Farhad Wadia, Robert Herman and David Pillow that “we have identified a group of buyers in China/Hong Kong” willing to buy inventory that was marked as ineligible¹³⁶ for Samuels’ borrowing base at “substantial margins.”¹³⁷ These buyers were in fact Shanyao Gong. Below is an excerpt of Mr. Varma’s email:

From: Sunil Varma [<mailto:svarma.gitanjali@live.com>]
Sent: Monday, December 12, 2016 8:12 AM
To: David Pillow; Robert Herman; Farhad Wadia (External)
Subject: Fw: Bulk Inventory Sale

Farhad, David, Robert,

The enclosed file contains two sheets. The first sheet contains the list of inventory value USD 1,415,379.38. I believe this is entirely ineligible inventory for your borrowing base at Samuels.

We have identified group of buyers in China/Hong Kong who would be willing to buy these goods at a substantial good margins for Samuels. These would also be a good deal for Samuels to move its old merchandise. However, these goods first need to be inspected, QC checked, re-polished and repaired, if required. Therefore, I would request you to ship the goods to following address:

Shan Yao Gong Si Ltd.
 Unit K3, 4th fl., Kaiser Estate phase 2,
 51 Ma Yue Street,
 Hung Hom, Kowloon,
 Hong Kong.

Samuels need to ship the goods at cost +50% mark up (i.e. 33.33% gross margin). Hence the selling invoice value by Samuels should be USD 2,123,069.07. The payment terms shall be 120 days.

Robert please request for consent from Wells Fargo Bank for shipment of the goods. Let me know as soon as you have consent from Wells Fargo Bank.

Thanks,

Sunil Varma

Gitanjali Gems Limited
 B-6, 1F, B wing, Laxmi Tower
 Bandra Kurla Complex, Bandra (E)
 Mumbai - 400051
 Maharashtra, India

¹³⁵ Interview of Farhad Wadia, December 19, 2018; *see also* email from Sunil Varma to Wells Fargo stating “[t]he advantage of having Gitanjali as our parent is that they have always so many options to move inventory from repurposing, selling in wholesale, retail in other regions (sic).” SAMUELS-EXAMINER0071039.

¹³⁶ This inventory was internally classified as “Damaged RTV & Melt slots”. It suggests scrap jewelry that was damaged or unsellable jewelry that had to be melted down and refinished.

¹³⁷ Email exchange among Robert Herman, Sunil Varma, David Pillow, Sterling Pope, Farhad Wadia and Angie Gonzalez dated December 20, 2016 (SAMUELS-EXAMINER0361502).

At this time, Mr. Varma was a Gitanjali employee, not a Samuels employee. Mr. Varma dictated the terms of the December 2016 sale as a 50% markup of the inventory at a total sale of \$2,123,069.07.¹³⁸ The records indicate that the inventory was ultimately sold for \$2,293,436.30 yielding a 100% increase on the mark-up on the cost of the scrap inventory.¹³⁹ Samuels represented Shanyao Gong as a third-party purchaser when it requested permission from Wells Fargo and Gordon Brothers to sell the inventory.¹⁴⁰

There was an additional wholesale sale of scrap inventory to Shanyao Gong at the beginning of March 2017. Mr. Varma provided Wells Fargo with the details of the sale when Samuels sought permission from Wells Fargo to sell the inventory.¹⁴¹ In Wells Fargo's email approving the sale, Wells Fargo required the income from the sale to be segregated to a blocked account and used to pay down the outstanding revolver.¹⁴² There was a 43% markup on the cost of the inventory for a total sale price of \$2,155,923.12.¹⁴³

The last wholesale sale to Shanyao Gong occurred on March 31, 2017 for a total sale price of \$7,121,396.43. Mr. Wadia initially sought approval of the sale from Wells Fargo told the bank that the cost of the inventory was \$9,329,301 and Samuels wanted to sell the inventory at a 30% mark up. The final markup was 43% on the cost of the inventory and Samuels made

¹³⁸ *Id.*

¹³⁹ Excel spreadsheet titled "INV 1477 to Shan Yao Gang Si Ltd as 12-30-16.xlsx (SAMUELS-EXAMINER0072279).

¹⁴⁰ See Email from Robert Herman to Sonia Anandraj dated December 22, 2016 (SAMUELS-EXAMINER0058136); Email from Caitlin Sanders to Robert Herman dated December 30, 2016 (SAMUELS-EXAMINER0070328).

¹⁴¹ Email from Sunil Varma to Sonia Anandraj dated February 21, 2016 (SAMUELS-EXAMINER71039).

¹⁴² Excel spreadsheet titled "Ineligible Slots RT to HK INV 1481_1482 as 3-6-17.xlsx. (SAMUELS_EXAMINER0054119).

¹⁴³ The Examiner team identified working invoices and pricing worksheets with a total sale amount of \$2,155,923.12 and a total cost of \$1,507,638.55 (SAMUELS-EXAMINER0259937). Samuels' general ledger detail provided by the Debtor also has a wholesale sale amount of \$2,155,923.12 but has a lower cost of sales amount recorded of \$1,016,093.30. For the purposes of the Report, the Examiner took a conservative approach and used the higher cost of sales amount identified in the working invoices and pricing worksheets in presenting the profit from the sale.

\$2,141,398.93 in apparent profit.

According to Samuels employees, there was skepticism as to who would buy scrap product at such a large markup.¹⁴⁴ Farhad Wadia raised concerns about these sales directly to Sunil Varma and Mehul Choksi. In a May 2017 email, Mr. Wadia stated that a 43% markup on scrap inventory “is absolutely ludicrous. You expect me to believe that some company in Hong Kong will pay us an enormous markup to buy damaged and scrap inventory?”¹⁴⁵ Mr. Wadia alleged that Wells Fargo questioned him and the finance team “aggressively” about the third wholesale sale and they too had concerns over the markup. According to Mr. Wadia, Mr. Varma and Mr. Choksi denied all allegations. When asked about the markups, Bhavesh Shah stated that the purchasers could melt the purchased product and it was possible to be turned in to jewelry that could be sold at a good margin.¹⁴⁶ The 2015 emails from Mr. Shah directing inventory sales from Shanyao Gong to Samuels directly contradict his statements.

Shanyao Gong paid Samuels for the wholesale transactions through ten wire transfers between February 23, 2017 and May 24, 2017. Similar to the other suspect transactions identified by the Examiner’s team, the proceeds of these wholesale transactions were used to promptly to pay other Choksi controlled entities. An example is shown below:¹⁴⁷

¹⁴⁴ Interview of Judy Yeh, December 18, 2018; Interview of Angie Gonzalez, December 18, 2018.

¹⁴⁵ Email from Farhad Wadia to Sunil Varma dated May 10, 2017 with attachments (SAMUELS-EXAMINER0196638).

¹⁴⁶ Interview of Bhavesh Shah, December 19, 2018.

¹⁴⁷ Samuels Jewelers, Inc. Wells Fargo (7041) and Samuels Jewelers, Inc. (1628) Chase Bank Statements.

Shanyao Gong Wholesale Sale (March 2017) Payments Received by Samuels

Corresponding Vendor Payment	Date	Bank Name	Account #	Shanyao Gong Si Ltd. Payment Amount (Account)	Transacting Entity
L	4/7/2017	Wells Fargo	7041	\$ 1,464,987.00	Shanyao Gong Si Ltd.
M	5/16/2017	Wells Fargo	7041	\$ 999,987.00	Shanyao Gong Si Ltd.
N	5/17/2017	Wells Fargo	7041	\$ 632,987.00	Shanyao Gong Si Ltd.
O	5/18/2017	Wells Fargo	7041	\$ 899,987.00	Shanyao Gong Si Ltd.
P	5/19/2017	Wells Fargo	7041	\$ 1,590,987.00	Shanyao Gong Si Ltd.
Q	5/22/2017	Wells Fargo	7041	\$ 999,987.00	Shanyao Gong Si Ltd.
R	5/23/2017	Wells Fargo	7041	\$ 1,499,987.00	Shanyao Gong Si Ltd.
S	5/24/2017	Wells Fargo	7041	\$ 1,188,306.55	Shanyao Gong Si Ltd.
				\$ 9,277,215.55	

Corresponding Vendor Payments (Per Examiner Analysis)

Corresponding Vendor Payment	Date	Bank Name	Account #	Vendor Payment Amount (Account Debit)	Transacting Entity
L	4/11/2017	Chase	1628	\$ 252,470.31	Belgdiam LLC
M	5/16/2017	Chase	1628	\$ 100,000.00	Belgdiam LLC
M	5/16/2017	Chase	1628	\$ 500,386.34	Exclusive Design Direct
M	5/16/2017	Chase	1628	\$ 255,649.30	Taipingyang Trading Ltd.
M	5/16/2017	Chase	1628	\$ 56,937.00	Asian Diamond and Jewellery FZE
M	5/16/2017	Chase	1628	\$ 87,027.36	Chuangzuo Shang Wu Limited
N	5/17/2017	Chase	1628	\$ 632,987.00	Taipingyang Trading Ltd.
O	5/18/2017	Chase	1628	\$ 899,987.00	Taipingyang Trading Ltd.
P	5/19/2017	Chase	1628	\$ 500,000.00	Exclusive Design Direct
P	5/19/2017	Chase	1628	\$ 990,987.00	Taipingyang Trading Ltd.
P	5/19/2017	Chase	1628	\$ 100,000.00	Belgdiam LLC
Q	5/22/2017	Chase	1628	\$ 500,000.00	Exclusive Design Direct
Q	5/22/2017	Chase	1628	\$ 500,000.00	Taipingyang Trading Ltd.
R	5/23/2017	Chase	1628	\$ 1,500,000.00	Taipingyang Trading Ltd.
S	5/24/2017	Chase	1628	\$ 938,332.55	Taipingyang Trading Ltd.
S	5/24/2017	Chase	1628	\$ 250,000.00	Belgdiam LLC
				\$ 8,064,763.86	

b) Al Arbaa Jewels FZE

On March 31, 2016, Samuels executed a purported wholesale transaction with suspect entity Al Arbaa. Mr. Wadia stated in an interview with the Examiner that the transaction consisted of the sale of “slow moving” inventory that had been shipped to Samuels by Leading Italian Jewelers, a Choksi entity. Wadia stated that Choksi had “dumped” the merchandise on Samuels and it was not selling because of the style of the jewelry. Mr. Wadia stated that Sunil Varma approached him and told him that Al Arbaa was willing to buy the merchandise.

The merchandise was in Samuels’ inventory at a total cost of \$4,803,113.25. Samuels sold the merchandise to Al Arbaa for \$6,003,891.56, a 25% markup at cost. Pursuant to the

terms of Samuels' credit agreement with Wells Fargo, Samuels had to obtain the lenders' consent to sell any inventory out of the ordinary course of business.¹⁴⁸ Samuels accordingly obtained consent from the lenders and signed a "Limited Consent re: Disposition of Inventory" on March 31, 2016.¹⁴⁹ The consent required payment by Al Arbaa no later than 105 days after the consent was signed. Samuels agreed that any account receivables from the sale were to be excluded from the borrowing base.

Email exchanges between Sunil Varma, Farhad Wadia and Chirag Patwa indicate that Mr. Patwa and Mr. Varma were in exclusive control of the terms of the "sale" on both sides of the transaction. Mr. Patwa emailed Mr. Wadia to make sure Samuels billed to "a separate adres [sic] in Dubai and shipping will be somewhere in hk. So Invoice you prepare should have the details."¹⁵⁰ Mr. Varma replied "[t]he goods have to be billed and shipped to same address" and provided Al Arbaa's contact information. Mr. Patwa also arranged to have a purchase order created for Al Arbaa and instructed Samuels' back office to "create a style master for Al Arbaa and Value Cost +30%."¹⁵¹ Mr. Patwa further instructed that Al Arbaa was the customer, Samuels was the seller, the shipping address was to Al Arbaa and the terms of repayment.¹⁵²

Al Arbaa paid Samuels in ten wire payments for the wholesale sale from May 2016 through October 2016, the majority of which were made in apparent response to queries made to Mr. Varma. On July 6, 2016, Mr. Herman emailed Mr. Varma and asked that he reach out to his "contacts at Al Arbaa" to let them know that the payment for the sale must be made in full by

¹⁴⁸ Section 5.2 of Credit Agreement.

¹⁴⁹ Letter Agreement between Wells Fargo Bank, N.A. and Samuels Jewelers, Inc. (SAMUELS-EXAMINER0014056).

¹⁵⁰ Email from Farhad Wadia to Chirag Patwa, Anand Bohra, Devendra Samdani and Bhavesh Shah dated March 28, 2016 (SAMUELS-EXAMINER0445825).

¹⁵¹ *Id.*

¹⁵² *Id.*

July 15.¹⁵³ On July 19, 2016, Mr. Varma emailed Mr. Wadia with a wire transfer confirmation from Al Arbaa's bank account to Samuels, stating: "Al-Arba made last payment of \$1.5 million your sales invoice of March 2016. You would receive the payment on 21st July."¹⁵⁴ There are several other examples of Mr. Varma's insight into Al Arbaa's payments and financial accounts.¹⁵⁵ For example, on November 9, 2016, Mr. Herman told Mr. Varma that Al Arbaa still owed \$42,891.56 for the purchase. Mr. Varma replied with a screenshot of Al Arbaa's wire confirmation to Samuels and stated the funds should be in Samuels' account. Again, the payments from Al Arbaa were used to pay other Choksi controlled entities almost immediately.¹⁵⁶

¹⁵³ Email from Robert Herman to Sunil Varma and Luisana Lumbreras dated July 6, 2016 (SAMUELS-EXAMINER0147201).

¹⁵⁴ Email from Sunil Varma to Farhad Wadia dated July 19, 2016 (SAMUELS-EXAMINER0085693).

¹⁵⁵ Email from Sunil Varma to Robert Herman dated November 9, 2016 (SAMUELS-EXAMINER0071489).

¹⁵⁶ Samuels Jewelers, Inc. Wells Fargo (7041) and Samuels Jewelers, Inc. (1628) Chase Bank Statements.

Al Arbaa Wholesale Sale Payments Received by Samuels

Corresponding Vendor Payment	Date	Bank Name	Account #	Al Arbaa Payment Amount (Account Credit)	Transacting Entity
A	5/17/2016	Wells Fargo	7041	\$ 495,000.00	Al Arbaa Jewels FZE
B	5/26/2016	Wells Fargo	7041	\$ 495,000.00	Al Arbaa Jewels FZE
C	6/1/2016	Wells Fargo	7041	\$ 499,000.00	Al Arbaa Jewels FZE
D	6/7/2016	Wells Fargo	7041	\$ 495,000.00	Al Arbaa Jewels FZE
E	6/15/2016	Wells Fargo	7041	\$ 499,000.00	Al Arbaa Jewels FZE
F	6/27/2016	Wells Fargo	7041	\$ 490,000.00	Al Arbaa Jewels FZE
G	7/6/2016	Wells Fargo	7041	\$ 490,000.00	Al Arbaa Jewels FZE
H	7/12/2016	Wells Fargo	7041	\$ 998,000.00	Al Arbaa Jewels FZE
I	7/21/2016	Wells Fargo	7041	\$ 1,500,000.00	Al Arbaa Jewels FZE
J	10/31/2016	Wells Fargo	7041	\$ 42,891.56	Al Arbaa Jewels FZE
				\$ 6,003,891.56	

Corresponding Vendor Payments (Per Examiner Analysis)

Corresponding Vendor Payment	Date	Bank Name	Account #	Vendor Payment Amount (Account Debit)	Transacting Entity
A	5/19/2016	Chase	1628	\$ 500,000.00	Taipingyang Trading Ltd.
B	5/26/2016	Chase	1628	\$ 495,000.00	Taipingyang Trading Ltd.
C	6/2/2016	Chase	1628	\$ 499,000.00	Taipingyang Trading Ltd.
D	6/7/2016	Chase	1628	\$ 495,000.00	Taipingyang Trading Ltd.
E	6/15/2016	Chase	1628	\$ 499,000.00	Exclusive Design Direct
F	6/27/2016	Chase	1628	\$ 490,000.00	Exclusive Design Direct
G	7/6/2016	Chase	1628	\$ 490,000.00	Exclusive Design Direct
H	7/12/2016	Chase	1628	\$ 998,000.00	Exclusive Design Direct
I	7/21/2016	Chase	1628	\$ 300,000.00	Belgdiam LLC
I	7/21/2016	Chase	1628	\$ 798,218.73	Taipingyang Trading Ltd.
I	7/21/2016	Chase	1628	\$ 901,781.27	Exclusive Design Direct
J	11/9/2016	Chase	1628	\$ 45,381.56	Taipingyang Trading Ltd.
				\$ 6,511,381.56	

As a result of the sale, the inventory included in Samuels' borrowing base was depleted and Samuels was required to replenish this inventory. To make up for the loss in inventory, Samuels purchased merchandise from EDD prior to the Al Arbaa sale. On March 23, 2016, Farhad Wadia emailed Chirag Patwa, copying Bhavesh Shah and Rohan Choksi, stating "As per Robert and my conversation with Bhavesh on the incoming EDD inventory for Samuels...we need to get in totally 4.8 Million worth of Jewelry to do the Al Arbaa Transaction. Please advise when we will get the Balance 2.3 odd million \$ worth of Jewelry."¹⁵⁷ Mr. Wadia told the

¹⁵⁷ Email from Farhad Wadia to Chirag Patwa, Bhavesh Shah and Rohan Choksi dated March 23, 2016 (SAMUELS-EXAMINER0077536).

Examiner that Bhavesh Shah would typically arrange for inventory from EDD.¹⁵⁸ According to the Debtor's records, Samuels' received over \$5 million of merchandise from EDD during the period from March 24 to March 28, 2016 to replenish its inventory.¹⁵⁹

c) **Impact of Wholesale Transactions**

The wholesale transactions resulted in Samuels reporting \$17,574,647.41 in sales of slow moving and ineligible of which \$5,137,179.96 was in profit. Furthermore, the wholesale transactions made the difference between a fiscal year ending in a net loss and the fiscal year ending in a net income of \$1,034,009 in 2016 and \$605,677 in 2017.

By representing related Choksi-controlled entities as third parties, Samuels was able to circulate money as desired to other related entities, which at a minimum was a violation of the credit agreements. The circuitous flow of funds between Choksi-controlled entities is consistent with the allegations of the fraud in India and inflated purchases and sales, turnover, and profitability of these Choksi-controlled entities.

¹⁵⁸ Interview of Farhad Wadia, December 19, 2018.

¹⁵⁹ SAMUELS-EXAMINER0267135.

Al Arbaa Jewels FZE Wholesale Sale Details							
Sale #	Sale Date	Invoice #	Sale Price	Samuels Cost	Profit on Sale	Mark Up at Cost	Sale Description
1	3/31/2016	1684635/15396906	6,003,891.56	4,803,113.25	1,200,778.31	25.0%	Leading Italian Jewelers Inventory
			<u>\$ 6,003,891.56</u>	<u>\$ 4,803,113.25</u>	<u>\$ 1,200,778.31</u>		
Shanvao Gong Si Limited Wholesale Sales Details							
Sale #	Sale Date	Invoice #	Sale Price	Samuels Cost	Profit on Sale	Mark Up at Cost	Sale Description
2	12/30/2016	1477	2,293,436.30	1,146,718.15	1,146,718.15	100.0%	Melt (Ineligible)
3	3/7/2017	1481	1,241,021.13	867,846.95	373,174.18	43.0%	Scrap / QC Rejects (Ineligible)
3	3/7/2017	1482-A	552,716.11	386,514.76	166,201.35	43.0%	Scrap / QC Rejects (Ineligible)
3	3/7/2017	1482-B	211,992.28	148,246.35	63,745.93	43.0%	Scrap / QC Rejects (Ineligible)
3	3/7/2017	1482-C	150,193.60	105,030.49	45,163.11	43.0%	Scrap / QC Rejects (Ineligible)
4	3/31/2017	1488-1485	4,303,788.77	3,009,642.50	1,294,146.27	43.0%	Royal India Jewelry
4	3/31/2017	1487-1484	2,817,607.66	1,970,355.01	847,252.65	43.0%	Royal India Jewelry
			<u>\$ 11,570,755.85</u>	<u>\$ 7,634,354.21</u>	<u>\$ 3,936,401.65</u>		
Total Wholesale Sales Amount:			<u>\$ 17,574,647.41</u>				
Total Wholesale Cost of Sales Amount:			\$ 12,437,467.46				
Total Wholesale Sales Gross Profit:			<u>\$ 5,137,179.96</u>				

B. Debtor's Involvement in Alleged LOU and FLC Fraud

The circumstances of the Indian bank fraud are outside the scope of the Examiner's Phase I investigation and the Examiner does not have visibility into the initial beneficiaries of the specific alleged LOUs or FLCs or access to their bank records. However, PNB's financial advisor, BDO India, has provided evidence obtained through its investigation that has permitted the Examiner to complete the link between certain transfers to or from the debtor and certain of the alleged LOUs and FLCs. Based on the pattern of the Debtor's transactions, additional investigation is warranted.

With the assistance of BDO India, the Examiner has identified transfers received by the Debtor that can be traced to the LOUs alleged to be fraudulent in the Indian bank fraud, as well as transfers from the Debtor that were used to repay FLCs also alleged to be fraudulent. The ED Complaint in India alleges that the Debtor received certain "funds generated from the scam" in

the form of payments pursuant to a royalty agreement between Samuels and Al Arbaa.¹⁶⁰ The Examiner has confirmed that the Debtor received payments pursuant to such a royalty agreement, and that certain of those payments can be traced to the alleged LOU/FLC fraud, as described below.

Separately, also with the aid of BDO India, the Examiner's team has traced funds originating from Samuels, diverted to Puppet Vendors and Choksi-controlled entities, and ultimately used to repay FLCs that are alleged as fraudulent by the Indian authorities.

1. Receipt of LOU and FLC Funds

a) Suspect Royalty Agreement

Effective December 1, 2014, Samuels entered into a licensing agreement (the "Royalty Agreement") for a term of three years with Al Arbaa, described above as a Choksi entity with a principal place of business in the United Arab Emirates.¹⁶¹ Based on the Examiner's investigation, it appears that Nehal Modi, then Samuels' CEO, was responsible for entering into the Royalty Agreement.¹⁶² In a January 2015 email, Modi informed Robert Herman and Howard Hoff, Samuel's accountant, that Al Arbaa "will be paying royalties of \$6.2mm to Samuels for the sale of Samuels brands in Asia, Middle East, and Australia."¹⁶³ Under the Royalty Agreement, Samuels agreed to license certain trademarks and designs to Al Arbaa to be sold in the Middle East, China, Australia, and South Africa in return for royalty payments.

¹⁶⁰ ED Complaint ¶10.3.5.

¹⁶¹ Royalty Agreement between Samuels Jewelers, Inc. and Al Arbaa Jewels FZE signed (SAMUELS-EXAMINER0013964).

¹⁶² Interview of Robert Herman, January 25, 2019.

¹⁶³ Email from Nehal Modi to Robert Herman and Howard Hoff dated January 19, 2015 (SAMUELS-EXAMINER0509380).

The terms of the Royalty Agreement provided that Al Arbaa would pay 7% of their net sales to Samuels with a guaranteed minimum net sale of \$97 million per year.¹⁶⁴ There was also an additional guaranteed minimum royalty payment to Samuels of \$6.8 million and a requirement that Al Arbaa spend no less than the greater of \$500,000 and 3% of net sales on advertising for the merchandise. Additionally, Al Arbaa was required to provide quarterly reports detailing the Gitanjali products it sold. Each quarterly report was to be accompanied by one quarter of the guaranteed minimum royalty payment and any excess payment based on Al Arbaa's sales for that quarter. There was a 10% interest rate on any late payments. Robert Herman signed the agreement on behalf of Samuels, and Kinchit Zaveri¹⁶⁵ signed on behalf of Al Arbaa.

During an interview, Mr. Herman stated that he had asked Nehal Modi for additional information regarding Al Arbaa's net sales and reporting.¹⁶⁶ Modi told Mr. Herman that the royalty income was to Samuels' benefit and not to ask further questions.

In total, Samuels received \$20.4 million from 2015 through 2017 pursuant to the Royalty Agreement. Due to the additional income recognized from the agreement, the company posted a net income during each of the three years of the agreement term. Without that income, it otherwise would have shown multi-million dollar losses each year. The charts below compare Samuels' net income with and without the royalty payments.¹⁶⁷

¹⁶⁴ Royalty Agreement between Samuels Jewelers, Inc. and Al Arbaa Jewels FZE signed (SAMUELS-EXAMINER0013964).

¹⁶⁵ The Examiner's team identified a public LinkedIn profile page of an individual by the name of Kinchit Zaveri. His LinkedIn profile states that has been an employee for "Gitanjale venture" in Dubai since February 2011. "Gitanjale venture" most likely refers to Gitanjali Ventures DMCC, a Choksi related company located in Dubai.

¹⁶⁶ Interview of Robert Herman, January 25, 2019.

¹⁶⁷ Income Statement amounts are from Samuels Jewelers, Inc. Financial Statements (Together with Independent Auditors' Report) for Years Ended March 31, 2015 to March 31, 2017 (SAMUELS-EXAMINER0000065-0000132).

Samuels Jewelers, Inc. - Comparative Income Statements (FY 2015 - 2017)

	Fiscal Year Ended March 31		
	2015	2016	2017
NET SALES	\$ 114,909,571	\$ 115,223,763	\$ 119,430,512
COSTS AND EXPENSES	\$ 119,449,215	\$ 118,570,114	\$ 122,653,240
OPERATING LOSS FROM OPERATIONS	\$ (4,539,644)	\$ (3,346,351)	\$ (3,222,728)
OTHER INCOME (EXPENSE)			
Royalty Income	6,800,000	6,800,000	6,800,000
Interest Expense	(1,960,469)	(2,419,640)	(2,971,595)
OTHER INCOME (EXPENSE), NET	\$ 4,839,531	\$ 4,380,360	\$ 3,828,405
NET INCOME (LOSS)	\$ 299,887	\$ 1,034,009	\$ 605,677

Samuels Jewelers, Inc. - Comparative Income Statements (FY 2015 - 2017) Without Royalty Income

	Fiscal Year Ended March 31		
	2015	2016	2017
NET SALES	\$ 114,909,571	\$ 115,223,763	\$ 119,430,512
COSTS AND EXPENSES	\$ 119,449,215	\$ 118,570,114	\$ 122,653,240
OPERATING LOSS FROM OPERATIONS	\$ (4,539,644)	\$ (3,346,351)	\$ (3,222,728)
OTHER INCOME (EXPENSE)			
Royalty Income	-	-	-
Interest Expense	(1,960,469)	(2,419,640)	(2,971,595)
OTHER INCOME (EXPENSE), NET	\$ (1,960,469)	\$ (2,419,640)	\$ (2,971,595)
NET INCOME (LOSS)	\$ (6,500,113)	\$ (5,765,991)	\$ (6,194,323)

From 2015 to 2017, Samuels received 28 wire payments pursuant to the royalty agreement, but only 15.4% of them were from Al Arbaa, the nominal party to the Agreement. Non-parties Eternity Jewels FZE, Asian Diamond and Jewelry FZE and Crown Aim Limited paid the remaining 84.6% of the royalty payments. These other entities were identified by the Indian government as companies owned or controlled by Choksi through his Gitanjali

employees.¹⁶⁸ Below is a table summarizing the royalty payments received by entity:¹⁶⁹

Entity	#	2015	#	2016	#	2017	#	Total
Al Arbaa Jewels FZE	4	\$ 1,450,000	2	\$ 1,700,000			6	\$ 3,150,000
Asian Diamond and Jewellery FZE	4	3,400,000	4	3,402,490	12	8,500,000	20	15,302,490
Eternity Jewels FZE	1	250,000					1	250,000
Crown Aim Limited			1	1,699,970			1	1,699,970
Total:	9	\$ 5,100,000	7	\$ 6,802,460	12	\$ 8,500,000	28	\$ 20,402,460

Payments from Al Arbaa were consistently late and only arrived after prompting from a Samuels employee. There was no formality or regularity to these payments. For example, on August 19, 2016, Robert Herman emailed Sunil Varma stating the Al Arbaa payment was late and asked Mr. Varma “If you could help us get this in it would be huge.”¹⁷⁰ On January 1, 2017, Luisana Lumbreras, then Samuels’ Director of Finance, emailed Mr. Wadia stating that Samuels had not received the Al Arbaa payment that was due. Mr. Wadia forwarded the email to Mr. Varma and Mr. Varma replied “I have already checked. The payment will be made by 15th February 2017.”¹⁷¹ Additionally no quarterly reports were ever provided by Al Arbaa.

When Samuels received royalty payments, they generally were sent immediately to another Puppet Vendor or Choksi-controlled shell, usually Taipingyang or EDD. For example, the analysis below demonstrates that in 2017, \$6.8 million was deposited into Samuels account as a “royalty” payment and, in every instance, either the same day or the next day, a payment or payments totaling the amount received would be paid to a Puppet Vendor.¹⁷²

¹⁶⁸ ED Complaint ¶¶ 12.3.4; 4.3.1; 4.3.2; 10.3.1

¹⁶⁹ Samuels Jewelers, Inc. Wells Fargo (7041) Bank Statements.

¹⁷⁰ Email from Robert Herman to Sunil Varma and Luisana Lumbreras dated August 19, 2016 (SAMUELS-EXAMINER0147842).

¹⁷¹ Email exchange among Sunil Varma, Farhad Wadia, and Luisana Lumbreras dated February 1, 2017 (SAMUELS-EXAMINER0072341).

¹⁷² Samuels Jewelers, Inc. Wells Fargo (7041) and Samuels Jewelers, Inc. (1628) Chase Bank Statements.

Al Arbaa Royalty Agreement (2017) Payments Received by Samuels

Corresponding Vendor Payment	Date	Bank Name	Account #	Royalty Payment Amount (Account Credit)	Transacting Entity
A	5/10/2017	Wells Fargo	7041	\$ 715,000.00	Asian Diamond and Jewellery FZE
B	5/11/2017	Wells Fargo	7041	\$ 985,000.00	Asian Diamond and Jewellery FZE
C	7/25/2017	Wells Fargo	7041	\$ 800,000.00	Asian Diamond and Jewellery FZE
D	7/26/2017	Wells Fargo	7041	\$ 1,200,000.00	Asian Diamond and Jewellery FZE
E	7/27/2017	Wells Fargo	7041	\$ 1,300,000.00	Asian Diamond and Jewellery FZE
F	8/1/2017	Wells Fargo	7041	\$ 475,000.00	Asian Diamond and Jewellery FZE
G	8/2/2017	Wells Fargo	7041	\$ 425,000.00	Asian Diamond and Jewellery FZE
H	8/3/2017	Wells Fargo	7041	\$ 490,000.00	Asian Diamond and Jewellery FZE
I	8/7/2017	Wells Fargo	7041	\$ 410,000.00	Asian Diamond and Jewellery FZE
				<u>\$ 6,800,000.00</u>	

Corresponding Vendor Payments (Per Examiner Analysis)

Corresponding Vendor Payment	Date	Bank Name	Account #	Vendor Payment Amount (Account Debit)	Transacting Entity
A	5/10/2017	Chase	1628	\$ 715,000.00	Exclusive Design Direct
B	5/11/2017	Chase	1628	\$ 435,000.00	Exclusive Design Direct
B	5/11/2017	Chase	1628	\$ 300,000.00	Taipingyang Trading Ltd.
B	5/11/2017	Chase	1628	\$ 250,000.00	Belgdiam LLC
C	7/25/2017	Chase	1628	\$ 800,000.00	Taipingyang Trading Ltd.
D	7/26/2017	Chase	1628	\$ 400,000.00	Exclusive Design Direct
D	7/26/2017	Chase	1628	\$ 800,000.00	Taipingyang Trading Ltd.
E	7/28/2017	Chase	1628	\$ 300,000.00	Exclusive Design Direct
E	7/28/2017	Chase	1628	\$ 1,000,000.00	Taipingyang Trading Ltd.
F	8/1/2017	Chase	1628	\$ 475,000.00	Exclusive Design Direct
G	8/3/2017	Chase	1628	\$ 425,000.00	Exclusive Design Direct
H	8/4/2017	Chase	1628	\$ 490,000.00	Exclusive Design Direct
I	8/8/2017	Chase	1628	\$ 410,000.00	Exclusive Design Direct
				<u>\$ 6,800,000.00</u>	

The bank records demonstrate that the money Samuels received under the Royalty Agreement was used to circulate funds to entities owned or controlled by Choksi, an arrangement corroborated by contemporaneous evidence. For example, on July 24, 2015, Samuels' employees engaged in an email conversation suggesting that royalty payments were to be used to pay other Choksi related entities. Chirag Patwa emailed Robert Herman stating "We have some outstanding payment to Komal Gems who is based out of Dubai, and there has been some AL Arba [sic] Payment due. Is there a way we can carve out the Payables to Komal Gems

to Al Arbaa.” Robert Herman responded “[w]e do not have any payables to Al Arbaa. Our only interaction with them is the royalty fee they pay us. We do have \$1.1 million of open payables to Komal Gems and have not made payments to them in the last year. Mr. Patwa instead asked “can [w]e offset Komal Payables with Al Arbaa Receivables fees?” and Mr. Herman replied “[w]e need to have funds come in for us to record the revenue.”¹⁷³

b) Receipt of LOU Funds:

With the help of BDO India, the Examiner traced the source of certain funds received by the Debtor to a fraudulently-obtained LOU alleged in the ED complaint. The recipient of the LOU was Asian Diamonds and Jewelry FZE, from which the funds were transferred through Samuels, and back through additional Choksi controlled entities.

On October 20, 2015, Chirag Patwa emailed Robert Herman stating that he will “start seeing the royalty payments . . . in 10 days to 2 weeks max.”¹⁷⁴ Based on SWIFT messaging data, BDO India identified that PNB issued a fraudulently-obtained LOU on October 27, 2015 in the amount of \$1,475,071.20 for the benefit of Asian Diamond.¹⁷⁵ It appears that the LOU was not registered in PNB’s Core Banking Solution, nor was the LOU issued against any collateral.¹⁷⁶ Subsequently, on October 28, 2015, according to BDO India, Asian Diamond received the \$1,475,071.20 LOU described above, and the next day, Samuels received a \$700,000 royalty payment from Asian Diamonds.¹⁷⁷ What follows is an excerpt of Samuels’ Wells Fargo (7041) account depicting the October 29, 2015 \$700,000 royalty payment from

¹⁷³ Email exchange between Robert Herman to Chirag Patwa dated July 24, 2015 (SAMUELS-EXAMINER0268178).

¹⁷⁴ Email from Chirag Patwa to Robert Herman dated October 20, 2015 (SAMUELS-EXAMINER0601117).

¹⁷⁵ BDO India - Asian Diamond LOU Detail (February 19, 2019).

¹⁷⁶ *Id.*

¹⁷⁷ Samuels Jewelers, Inc. October 2015 Wells Fargo bank statements for account ending (7041).

Asian Diamond to Samuels:¹⁷⁸

Account number: 4125227041 ■ October 24, 2015 - November 20, 2015 ■ Page 6 of 30			
WELLS FARGO			
Electronic deposits/bank credits (continued)			
Effective date	Posted date	Amount	Transaction detail
	10/29	60.00	Post Verify Deposit
	10/29	60.00	Post Verify Deposit
	10/29	50.00	Post Verify Deposit
	10/29	36.00	Post Verify Deposit
	10/29	30.00	Post Verify Deposit
	10/29	25.00	Post Verify Deposit
	10/29	20.92	Post Verify Deposit
	10/29	20.00	Post Verify Deposit
	10/29	20.00	Post Verify Deposit
	10/29	700,000.00	WT Fed#05123 Abu Dhabi Commerci /Org=Asian Diamond and Jewellery Fze Srf# 2015102900167915 Tm#151029047655 Rfb# 5000000022367379

\$700,000 royalty payment received by Samuels from Asian Diamond and Jewellery FZE on 10/29/2015.

On the same day Samuels received the \$700,000 royalty payment, Samuels drew \$830,000 from its Wells Fargo credit line and made \$703,000 in purported vendor payments to Taipingyang Trading Limited and Chuangzuo Shang Wu Ltd. Below are excerpts of Samuels' Chase account showing these payments:¹⁷⁹

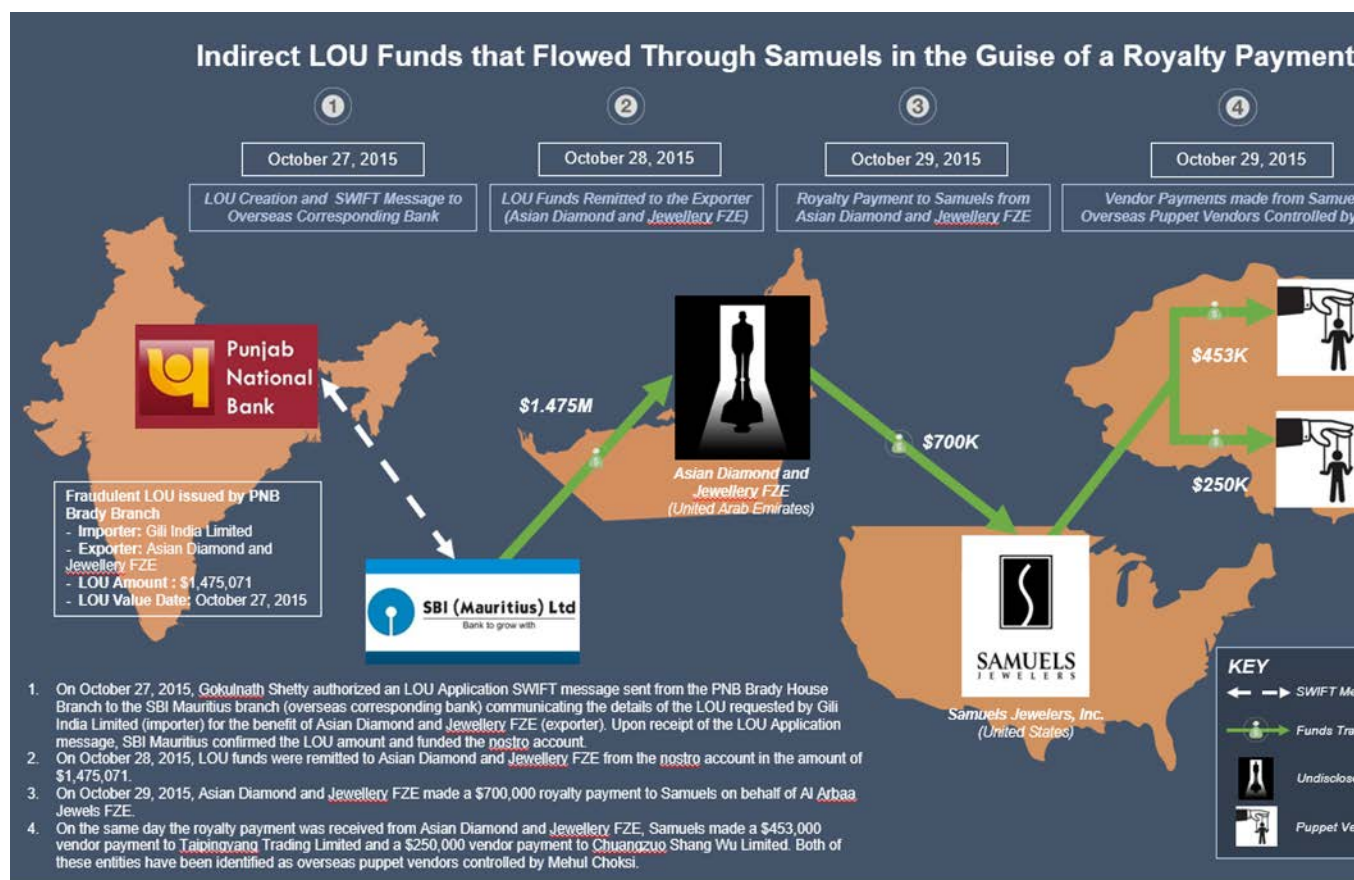
10/28	1027B1Q8383C011133 Tm: 3296909300Ff Fedwire Credit Via: Deutsche Bank Trust Company America/02 Gecc/Cfs - Agented Deals Fairfield CT 06828 US Ref: Chase Nyc/Ctr/Bnf=Samuels Jewelers Inc Austin TX 78741-6412/Ac-0 Rfb=Cfk1722 Bbi=/Acc/Ref:Samu Els Jewelers/Time/15:26 lma: 1028B1Q8383C019095 Tm: 4802309301Ff	On October 29, 2015, Samuels drew \$830,000 from its bank line into its Chase (1628) disbursement account.
10/29	Fedwire Credit Via: Deutsche Bank Trust Company America/021001033 B/O: Gecc/Cfs - Agented Deals Fairfield CT 06828 US Ref: Chase Nyc/Ctr/Bnf=Samuels Jewelers Inc Austin TX 78741-6412/Ac-0000000 07081 Rfb=Cfk1722 Bbi=/Acc/Ref:Samu Els Jewelers/Time/14:50 lmad: 1029B1Q8383C017573 Tm: 4771009302Ff	830,000.00

¹⁷⁸ Samuels Jewelers, Inc. October 2015 Wells Fargo bank statement for account ending (7041).

¹⁷⁹ Samuels Jewelers, Inc. October 2015 JP Morgan Chase bank statements for account ending (1628).

	Imad: 1028B1Qgc02C003444 Trn: 5152800301Jo	
10/28	Fedwire Debit Via: Prov Fsb Rside/322270518 A/C: Temeka Adv Corona, CA 92883 US Imad: 1028B1Qgc08C021767 Trn: 51525	On October 29, 2015, Samuels made a \$453,000 vendor payment to Taipingyang Trading Limited and a \$250,000 vendor payment to Chuangzuo Shang Wu Limited (\$703,000 total).
10/28	Orig CO Name: Phoenix Group Orig ID: 1300032409 Desc: E Entry Descr: Payment Sec: CCD Trace#: 041000121980808 E ID: 20152049 Ind Name: Samuelsje980118 Or Trn: 3001980808Tc	
10/29	Chips Debit Via: Wells Fargo Bank, N.A./0509 A/C: Uco Bank Kowloon, Hong Kong Ben: Taipingyang Trading Ltd. Hunghom, Kowloon, Hong Kong Hk Ssn: 0433409 Trn: 5706300302Jo	453,000.00
10/29	Chips Debit Via: Hsbc Bank USA, N.A./0108 A/C: Hongkong And Shanghai Banking Corp. Hong Ben: Chuangzuo Shang Wu Limited Tsim Sha Tsui, Kowloon Hk Ssn: 0433396 Trn: 5705900302Jo	250,000.00

The diagram below depicts the movement of money from the LOU in the guise of a royalty payment through the purported Samuels vendor payments:



2. Repayment of LOUs and FLCs with Debtor Funds

a) The Debtor's Use of Saumil Diam LLC to Transfer Money Linked to LOUs and FLCs

Saumil Diam LLC is a New York based company that Choksi appears to have conspired with to launder funds. Although Saumil Diam was only a small vendor of Samuels, it received more than \$180 million originating from other Choksi controlled entities. It is alleged by Indian authorities to be implicated in the alleged fraud in India, and as discussed below, the Examiner has traced alleged LOU funds from Samuels through Saumil Diam to another Choksi entity.¹⁸⁰

Saumil Diam is a diamond and jewelry business owned by Mitesh Kothari. Saumil Diam only has one employee, identified as Kepal by Mr. Kothari and a limited online presence with no company website. According to its owner, Saumil Diam has over \$100 million a year in sales.¹⁸¹

According to the Debtor's books and records, Samuels reported \$1,326,421 in purchases from Saumil Diam in 2015 and paid Saumil Diam more than \$4 million during the Investigative Period. Although Saumil Diam was a third party entity, it appears to have assisted Choksi and his co-conspirators in transferring hundreds of millions of dollars among the web of Choksi companies. The Examiner has identified Debtor documents that suggest employees at the Debtor were creating Saumil Diam invoices and controlling the purchase and sales process. For example, on February 2, 2015, Mr. Shah emailed Vishal Suvarna, a Gitanjali employee, to revise a Saumil Diam invoice so Samuels could ship merchandise.¹⁸² The, subject line of the email, on which neither Mr. Kothari or his employee were copied, was "Products in NY," and attached an invoice from Saumil Diam. Similarly, in a June 30, 2015 email, Diamink employee Mayank Upadhyay emailed Samuels employee Bhavesh Shah and attached a list of merchandise shipped from Samuels from Saumil Diam. Mr. Upadhyay asked Mr. Shah to "please give me price for SJ

¹⁸⁰ ED Complaint ¶17.11.

¹⁸¹ Interview of Mitesh Kothari, February 6, 2019.

¹⁸² Email from Bhavesh Shah to Vishal Suvarna dated January 30, 2015 (SAMUELS-EXAMINER0255993).

in order to make PO and Invoice,”¹⁸³ indicating Diamlink and/or Samuels had control over both entities’ records. Saumil Diam’s business arrangement with EDD was described by one Diamlink employee as similar to that between EDD and Samuels, which is corroborated by other evidence. For example, the Examiner identified text messages between Mr. Maakaron and Mr. Rao where Mr. Rao directed EDD’s Mr. Maakaron to send funds to Saumil Diam.¹⁸⁴ In one text message, Mr. Rao asked Mr. Maakaron “Did you receive funds from [Saumil Diam’s] Kothari.”¹⁸⁵ Mr. Maakaron replied “Just received funds from Kothari and funds sent out to Saumiel its completed. He messaged me.” Mr. Kothari could not provide any further details regarding these text messages. In fact, Mr. Kothari was unable to answer the majority of questions the Examiner’s team asked about Saumil Diam’s relationship with Samuels. Most of his answers were “I have to check,” including questions about the format of invoices and whether Saumil Diam packaged and shipped all its own product or outsourced this process.

Relevant to the allegations of fraud in India, Saumil Diam’s bank records indicate that more than \$180 million that was disbursed to New York entity Saumil Diam was almost immediately transferred to Gitanjali owned or controlled entities. The incoming and outgoing funds at Saumil Diam’s account are shown below:¹⁸⁶

¹⁸³ Email from Bhavesh Shah to Mayank Upadhyay dated June 30, 2015 (SAMUELS-EXAMINER0236426).

¹⁸⁴ Production of John Maakaron dated January 9, 2019.

¹⁸⁵ *Id.*

¹⁸⁶ Saumil Diam LLC Bank of America (2659) Bank Statements.

Incoming Wire Transfers to Saumil Diam LLC BOA (2659) Account (Deposits)

Entity	2015	2016	2017	Total
4C'S DIAMONDS DISTRIBUTORS	\$	42,855,348.02	\$ 98,405,311.99	\$ 141,260,660.01
TAIPINGYANG TRADING LIMITED		18,508,727.00	22,833,519.00	41,342,246.00
KOMAL GEMS			13,617,685.52	13,617,685.52
SINO TRADERS LIMITED			7,490,962.64	7,490,962.64
SAUMIL DIAM LLC			2,270,068.78	2,270,068.78
SAMUELS JEWELERS INC		2,000,000.00		2,000,000.00
PACIFIC DIAMONDS FZE			1,764,976.26	1,764,976.26
CROWN AIM LIMITED			1,478,268.00	1,478,268.00
INFORMATION NOT AVAILABLE			1,004,658.11	1,004,658.11
GITANJALI GEMS LTD			964,975.17	964,975.17
MITESH KOTHARI	100,000.00			100,000.00
Total:	\$ 100,000.00	\$ 63,364,075.02	\$ 149,830,425.47	\$ 213,294,500.49

Outgoing Wire Transfers from Saumil Diam LLC BOA (2659) Account (Disbursements)

Entity	2016	2017	Total
GITANJALI GEMS LTD	\$ 38,796,615	\$ 77,678,543	\$ 116,475,158
GITANJALI EXPORTS CORPORATION LTD	10,248,627	21,243,214	31,491,841
LAXMI DIAMOND	300,000	15,254,081	15,554,081
GILI INDIA LIMITED	3,860,113	5,376,116	9,236,229
FIRESTAR INTERNATIONAL PVT LTD		9,224,643	9,224,643
ASMI JEWELLERY INDIA LTD		7,035,238	7,035,238
GITANJALI VENTURES DMCC	6,798,265		6,798,265
NAKSHATRA BRANDS LTD		5,778,401	5,778,401
GITANJALI BRANDS LIMITED		4,535,200	4,535,200
SAUMIL DIAM LLC	60,000	2,740,270	2,800,270
GITANJALI EXPORTS CORPORATION	1,803,306	996,447	2,799,753
MONELLE DESIGNS LLC	1,050,000		1,050,000
SINO HITECH INDUSTRIES LTD		500,060	500,060
INFINITE DIAMONDS AND JEWELLERY INC	200,000	172,500	372,500
TANJALI GEMS LIMITED	350,000		350,000
PHANTOM LUXURY GROUP	250,000		250,000
Total:	\$ 63,716,925	\$ 150,534,713	\$ 214,251,638

b) Repayment of FLC #1: Samuels to Saumil Diam to Taipingyang:

Between November 30 and December 1, 2016, Samuels drew \$3,250,000 from its Wells Fargo bank line into its Chase (1628) disbursement account. The Examiner identified two corresponding vendor payments, totaling \$2,000,000, made to Taipingyang Trading Limited's ("Taipingyang") account: (1) a \$1,600,000 wire transfer on November 30, 2016 and (2) a \$400,000 wire transfer on December 1, 2016. The wire confirmations were sent by to Robert

Herman, Farhad Wadia, Chirag Patwa, Vipul Chitalia, and Luisana Lumbreras.¹⁸⁷ Below are the excerpts from Samuels' Chase account showing the Wells Fargo bank line draw and related wire transfers to Taipingyang:¹⁸⁸

DEPOSITS AND ADDITIONS		
DATE	DESCRIPTION	AMOUNT
11/28	Fedwire Credit Via: Wells Fargo Bank/12100 Austin TX 78741 US Ref: Chase Nyc/Ctr/Bnf 78741-6412/Ac-0000000 07081 Rfb=945768 Bbi=/Time/15:12 Imad: 11281B7032R01352	\$180,000.00
11/29	Fedwire Credit Via: Wells Fargo Bank/12100 Austin TX 78741 US Ref: Chase Nyc/Ctr/Bnf 78741-6412/Ac-0000000 07081 Rfb=9469211 Bbi=/Time/14:44 Imad: 11291B7032R013656 Trn: 4479809334FI	680,000.00
11/30	Fedwire Credit Via: Wells Fargo Bank/121000248 B/O: Samuels Jewelers, Inc. Austin TX 78741 US Ref: Chase Nyc/Ctr/Bnf=Samuels Jewelers Inc Austin TX 78741-6412/Ac-0000000 07081 Rfb=9469211 Obi=Ref:Samuels J Ewelers Bbi=/Time/14:37 Imad: 11301B7033R017402 Trn: 5508509335FI	2,500,000.00
12/01	Fedwire Credit Via: Wells Fargo Bank/121000248 B/O: Samuels Jewelers, Inc. Austin TX 78741 US Ref: Chase Nyc/Ctr/Bnf=Samuels Jewelers Inc Austin TX 78741-6412/Ac-0000000 07081 Rfb=9482384 Obi=Ref:Samuels J Ewelers Bbi=/Time/13:49 Imad: 12011B7033R014262 Trn: 5074809336FI	750,000.00

Between November 30 and December 1, 2016, Samuels' drew \$3,250,000 from its Wells Fargo bank line into its Chase (1628) disbursement account.

ELECTRONIC WITHDRAWALS		
DATE	DESCRIPTION	
11/28	JPMorgan Access Transfer To Account000000708131636	
11/29	JPMorgan Access Transfer To Account000000708131651	
11/29	JPMorgan Access Transfer To Account000000708131636	
11/30	JPMorgan Access Transfer To Account000000708131636	38,582.84
11/30	JPMorgan Access Transfer To Account000000708131651	311,969.67
11/30	Fedwire Debit Via: Wells Fargo NA/121000248 A/C: Samuels Jewelers Inc. Austin, TX US Ref:/Time/16:08 Imad: 1130B1Qgo01C018575 Trn: 5963400335Jo	30,000.00
11/30	Chips Debit Via: Wells Fargo Bank, N.A./0509 A/C: Uoo Bank Kowloon, Hong Kong Ben: Taipingyang Trading Ltd. Hunghom, Kowloon, Hong Kong Hk Ssn: 0546885 Trn: 5963300335Jo	1,600,000.00
12/01	JPMorgan Access Transfer To Account000000708131677	53,375.39
12/01	Chips Debit Via: Wells Fargo Bank, N.A./0509 A/C: Uoo Bank Kowloon, Hong Kong Ben: Taipingyang Trading Ltd. Hunghom, Kowloon, Hong Kong Hk Ssn: 0452488 Trn: 6258100336Jo	400,000.00

Between November 30 and December 1, 2016, Samuels wired \$2,000,000 to Taipingyang as vendor payments for merchandise supplied.

The \$2,000,000 in payments from Samuels to Taipingyang was recorded against 9

¹⁸⁷ Email from John Hayes to Chirag Patwa, Farhad Wadia, Robert Herman and Luisana Lumbreras dated December 1, 2016 (SAMUELS-EXAMINER0070931); Email from John Hayes to Chirag Patwa, Farhad Wadia, Robert Herman and Luisana Lumbreras dated November 30, 2016 (SAMUELS-EXAMINER0086260).

¹⁸⁸ Samuels Jewelers, Inc. November 2016 and December 2016 JP Morgan Chase account statements for account ending (1628).

invoices from Taipingyang dated July 14 to July 21, 2016.¹⁸⁹ An excerpt of the Debtor's purchase journal follows:

Vendor #	Vendor Name	Invoice #	Net Amount	Invoice Date	Date to Paid	Actual Paid Date	Check #
29382	TAIPINGYANG TRADING LTD	TEXP/2016179	21,545.02	7/14/2016	10/12/2016	11/30/2016	24488
29382	TAIPINGYANG TRADING LTD	TEXP/2016180	39,510.91	7/14/2016	10/12/2016	11/30/2016	24488
29382	TAIPINGYANG TRADING LTD	TEXP/2016178	120,781.43	7/14/2016	10/12/2016	11/30/2016	24488
29382	TAIPINGYANG TRADING LTD	TEXP/2016181	88,099.07	7/15/2016	10/13/2016	11/30/2016	24488
29382	TAIPINGYANG TRADING LTD	TEXP/2016183	28,234.86	7/19/2016	10/17/2016	11/30/2016	24488
29382	TAIPINGYANG TRADING LTD	TEXP/2016182	167,969.12	7/19/2016	10/17/2016	11/30/2016	24488
29382	TAIPINGYANG TRADING LTD	TEXP/2016195	350,403.05	7/19/2016	10/17/2016	12/1/2016	24489
29382	TAIPINGYANG TRADING LTD	TEXP/2016195	398,165.12	7/19/2016	10/16/2016	11/30/2016	24488
29382	TAIPINGYANG TRADING LTD	TEXP/2016184	735,694.47	7/19/2016	10/17/2016	11/30/2016	24488
29382	TAIPINGYANG TRADING LTD	TEXP/2016186	49,596.95	7/21/2016	10/18/2016	12/1/2016	24489
			\$ 2,000,000.00				

On the same day as the \$2,000,000 transfer to Taipingyang, the Examiner identified a \$1,599,987 wire transfer from Taipingyang to Saumil Diam LLC's Bank of America (2659) account. The transfer from Taipingyang to Saumil Diam is below:¹⁹⁰

Bank of America Merrill Lynch SAUMIL DIAM LLC Account # 4830 4368 2659 December 1, 2016 to December 31, 2016		Your checking account		
Deposits and other credits		\$1,599,987 wire transfer from Taipingyang to Saumil Diam LLC on 12/1/2016 for what appears to be payment against multiple invoices.		
Date	Transaction description	Customer reference	Bank reference	Amount
12/01/16	WIRE TYPE:WIRE IN DATE: 161201 TIME:0607 ET TRN:2016120100174189 SEQ:161201059358000A/219140 ORIG:TAIPINGYANG TRADING LIMIT ID:01290212000053 SND BK:WELLS FARGO NY INTL ID:0509 PMT DET:01290RT T161692 R/FB/INV:2842, 2843, 2852, 2853 /REC/ONE B		903712010174189	1,599,987.00

On the same day, Saumil Diam LLC, remitted \$2,052,652 to Gitanjali Gems Ltd.'s account at PNB. In an interview with the Examiner, Mitesh Kothari, the owner of Saumil Diam admitted that Vipul Chitalia, the Gitanjali Group CFO, would typically instruct Kothari to make payments to Gitanjali's accounts.¹⁹¹

¹⁸⁹ Samuels Jewelers, Inc. Purchase Journal.

¹⁹⁰ Saumil Diam, LLC December 2016 Bank of America account statement for account ending (2659).

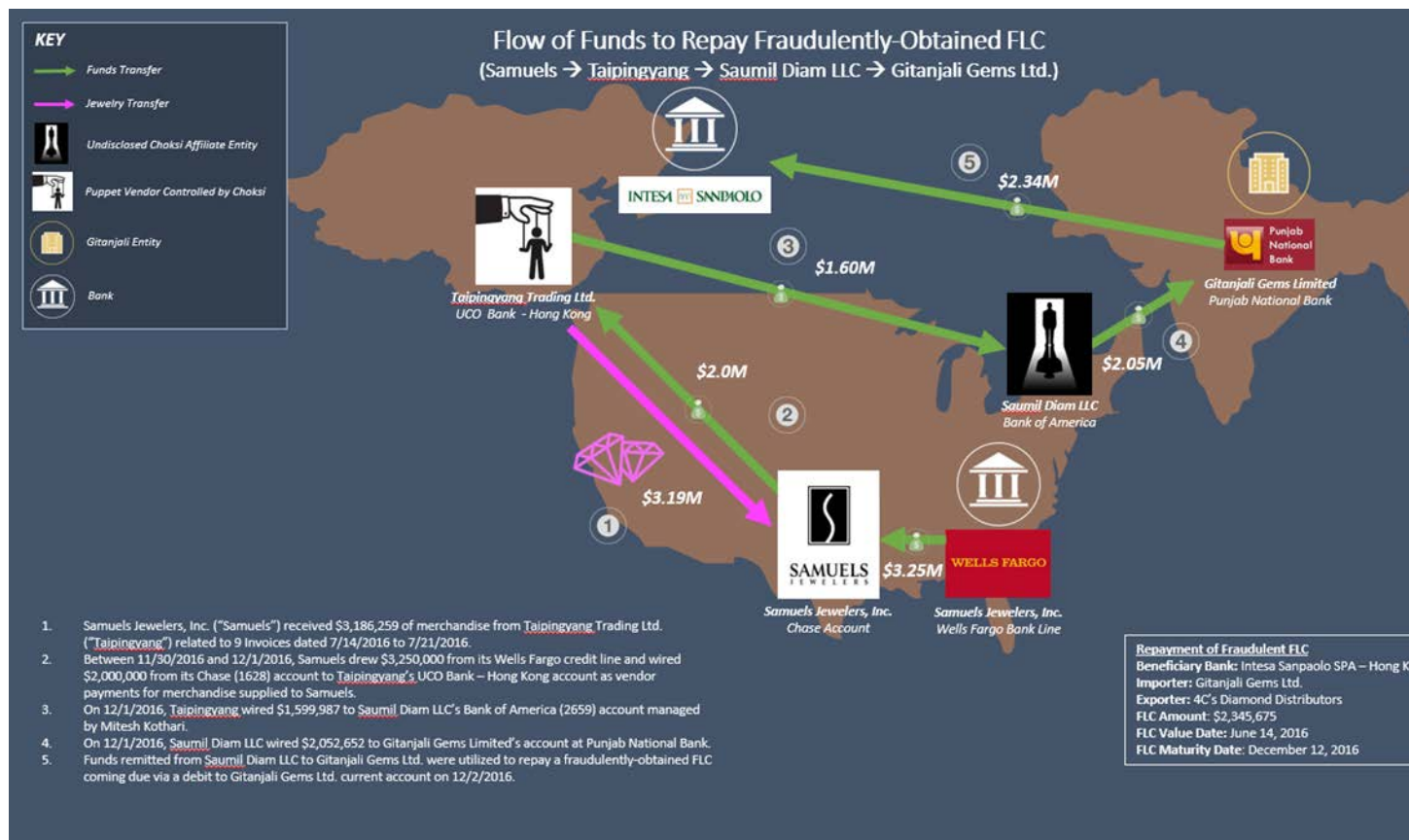
¹⁹¹ Interview of Mitesh Kothari, February 5, 2019.

Withdrawals and other debits			
Date	Transaction description	Custom	
12/01/16	WIRE TYPE:INTL OUT DATE:161201 TIME:1204 ET TRN:2016120100300382 SERVICE REF:443269 BNF:GILI INDIA LIMITED ID:3731008702687064 BNF BK: PUNJAB NATIONAL BANK ID:PUNBINBBDIB PMT DET:16C1B0 213ADC1827		
12/01/16	WIRE TYPE:INTL OUT DATE:161201 TIME:1212 ET TRN:2016120100303437 SERVICE REF:018860 BNF:GITANJALI GEMS LIMITED ID:3731002101571566 BNF BK:PUNJAB NATIONAL BANK ID:PUNBINBBDIB PMT DET:16C1B09435AB0E13	903712010303437	-2,052,652.16

On the same day Saumil Diam LLC received the wire transfer from Taipingyang, \$2,052,652.16 was wired from Saumil Diam LLC to Gitanjali Gems Limited's account at Punjab National Bank.

Due to Saumil Diam's low opening account balance on December 1, 2016 (\$286,979.75), the \$2,052,652 wire from Saumil Diam to Gitanjali Gems Ltd. can be directly attributed to the money Taipingyang remitted to Saumil Diam that day.

As noted above, although the Examiner was not provided access to Gitanjali's bank account statements, BDO India traced the money Saumil Diam transferred to Gitanjali Gems Ltd. at PNB to a \$2.3 million payment from Gitanjali Gems, Ltd. to repay an allegedly fraudulently-obtained FLC. Gitanjali made this transfer to Intesa Sanpaolo SPA – Hong Kong One day after receiving the money from Saumil Diam. Intesa Sanpaolo was the bank to which the FLC was presented and that originally made payment against the FLC to its beneficiary 4C's Diamond Distributors, a Hong Kong Choksi-controlled entity. The diagram below depicts the movement of money from Samuels to the repayment of the alleged fraudulently-issued FLC:



c) Repayment of FLC #2: Payment from Samuels to EDD Used to Pay off FLC

The Examiner was able to trace funds originating from Samuels that were ultimately used to pay off an FLC alleged by the Indian government to be fraudulently-obtained by Gitanjali. On July 7, 2016,¹⁹² Samuels received merchandise purportedly from EDD with a corresponding invoice numbered 201606/2402.¹⁹³ The Examiner's team traced this EDD invoice to Samuels' purchase journal, but shipping records¹⁹⁴ revealed no shipments were ever made from EDD.¹⁹⁵ Mr. Rao confirmed that shipments in the name of EDD would in fact come from Choksi entities

¹⁹² Samuels Receiver Confirmation Report dated July 8, 2016 and Invoices from EDD dated June 22, 2016 (SAMUELS-EXAMINER0539944).

¹⁹³ Excel spreadsheet titled "EDD INVOICE 2016062402.xls" (SAMUELS-EXAMINER0371666).

¹⁹⁴ Counsel for Malca Amit confirmed that shipments never went to or came from EDD in Michigan.

¹⁹⁵ See Malca Amit Shipping Log "Samuel Jewelers and Others 2015 thru 2018 MAUSA."

in New York or Austin.¹⁹⁶

On September 9, 2016, Samuels drew \$428,000 from its Wells Fargo bank line and wired \$375,000 to EDD's bank account as a vendor payment towards the EDD Invoice #201606/2402 mentioned above.¹⁹⁷ The same day EDD wired \$373,450 to Diamlink's Wells Fargo Account, which was managed by Mr. Rao.¹⁹⁸ Diamlink's account balance before this wire was \$12,706.86. Diamlink Jewelry then transferred \$364,000 to Tristar Worldwide LLC on September 12, 2016.¹⁹⁹ Mr. Rao also managed Tristar's account. That same day, Tristar wired \$364,000 to Gitanjali Gems Ltd.'s account at PNB.²⁰⁰ With the assistance of BDO India, the Examiner understands that the funds were then used to repay an FLC fraudulently-obtained from PNB and coming due on September 15, 2016. The flow of funds is depicted below along with supporting detail:

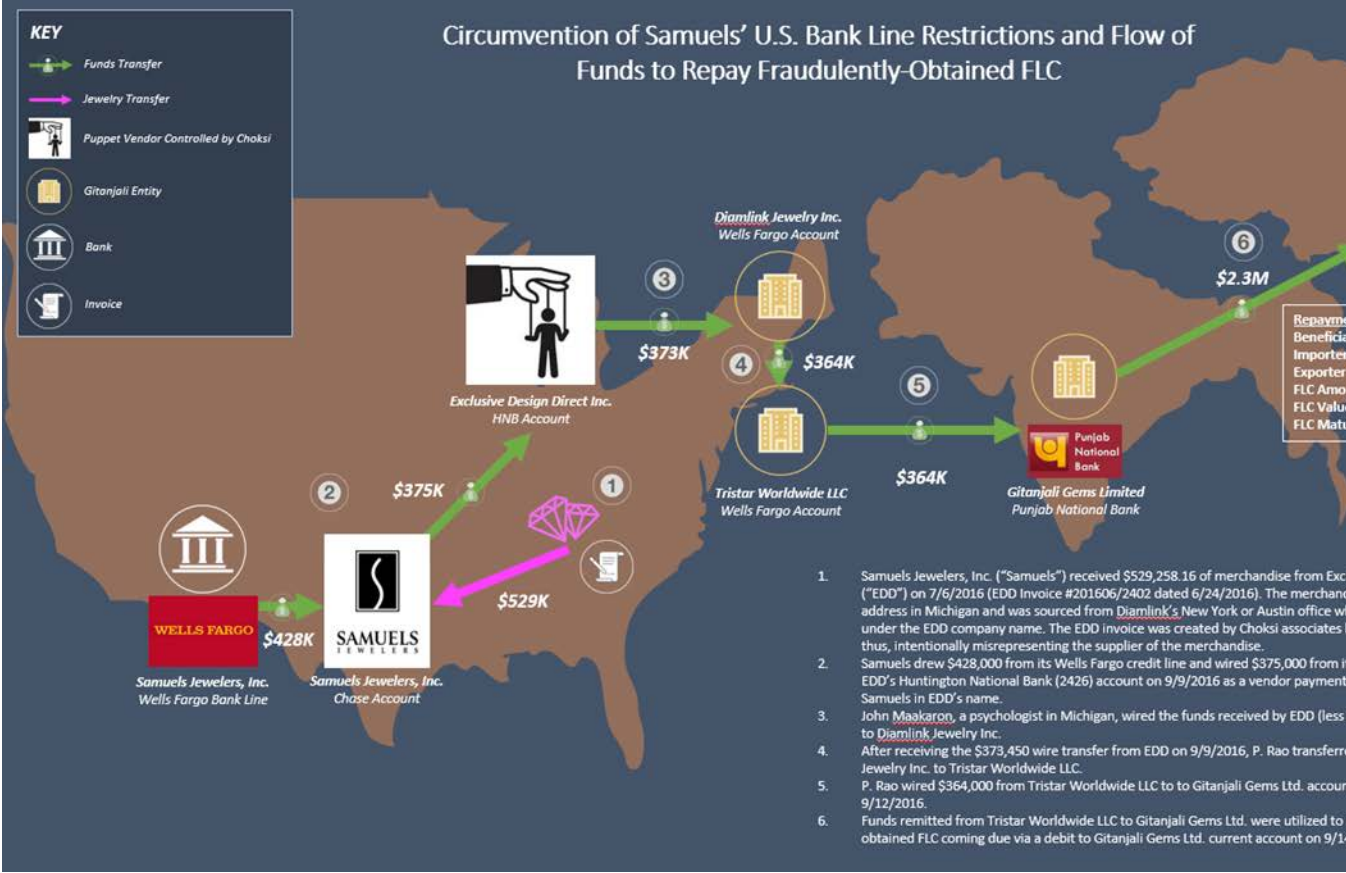
¹⁹⁶ Shipments from Choksi related entities such as Diamlink and Voyager were often frequent and varied in size. Because bulk inventory is not easily traceable it is extremely difficult to determine where the merchandise originated.

¹⁹⁷ Samuels Jewelers, Inc. Check Register dated September 9, 2016 (SAMUELS-EXAMINER0156910).

¹⁹⁸ Exclusive Design Direct, Inc., September 2016 Huntington National Bank account statement for account ending (2426).

¹⁹⁹ Diamlink, Inc. September 2016 Wells Fargo account statement for account ending (2991).

²⁰⁰ Tristar Worldwide LLC September 2016 Wells Fargo account statement for account ending (3092).



CHASE

September 01, 2016 through September 30, 2016
Account Number: 000000708131628

DEPOSITS AND ADDITIONS (continued)

DATE	DESCRIPTION	AMOUNT
09/08	Fedwire Credit Via: Wells Fargo Bank/121000248 B/C: Samuels Jewelers, Inc. Austin TX 78741 US Ref: Chase Nyc/Ctr/Bnl=Samuels Jewelers Inc Austin TX 78741-6412/Ac-0000000 07081 Rfb=9188123 Obi=Ref:Samuels J Ewelers Bbi=/Time/14:19 Imad: 090811B7033R011495 Trn: 4035509252FI	185,000.00
09/09	Fedwire Credit Via: Wells Fargo Bank/121000248 B/C: Samuels Jewelers, Inc. Austin TX 78741 US Ref: Chase Nyc/Ctr/Bnl=Samuels Jewelers Inc Austin TX 78741-6412/Ac-0000000 07081 Rfb=9192363 Obi=Ref:Samuels J Ewelers Bbi=/Time/14:37 Imad: 090911B7031R012467 Trn: 4215209253FI	428,000.00

On September 9, 2016, Samuels' drew \$428,000 from its Wells Fargo bank line into its Chase (1628) disbursement account.

DATE	DESCRIPTION	AMOUNT
09/07	Fedwire Debit Via: Wells Fargo NA/121000248 A/C: Clear Wa Inc. US Ref: Samuels Jewelers National Conf./Time/15:49 Imad: 0907B1Qgc080026723 Trn: 4537100251Jo	
09/07	Fedwire Debit Via: Prov Fsb Fside/322270518 A/C: Temeka Advertising, Inc. Corona, CA 92683 US Imad: 0907B1Qgc080030390 Trn: 4487700251Jo	43,312.35
09/08	JPMorgan Access Transfer To Account00000070813167	44,858.17
09/09	Fedwire Debit Via: Hunt Col044000024 A/C: Aba/072403473 Columbus OH 43215- Ben: Exclusive Design Direct Sterling Heights, MI 48310 US Imad: 0909B1Qgc080015048 Trn: 3927800253Jo	375,000.00

Samuels wired \$375,000 to EDD as a vendor payment for merchandise supplied.

THE HUNTINGTON NATIONAL BANK
PO BOX 1558 EA1W37
COLUMBUS OH 43216-1558



EXCLUSIVE DESIGN DIRECT, INC
38150 DEQUINDRE RD STE 530
STERLING HTS MI 48310-7142

Have a Question or Concern?

Stop by your nearest
Huntington office or
contact us at:

1-800-480-2001

www.huntington.com/
businessresources

Huntington FastTrack Business Checking

Account: 01382262426

Statement Activity From:
09/01/16 to 09/30/16

Days in Statement Period 30

Average Ledger Balance* 68,424.37
Average Collected Balance* 68,424.37

* The above balances correspond to the
service charge cycle for this account.

Beginning Balance	\$24,806.10
Credits (+)	1,435,000.00
Wire Transfer Credits	1,435,000.00
Debits (-)	1,293,198.43
Regular Checks Paid	3,230.00
Electronic Withdrawals	7,800.00
Wire Transfer Debits	1,282,050.00
Other Debits	118.43
Total Service Charges (-)	126.00
Ending Balance	\$166,481.67

Other Credits (+)

Account: 01382262426

Date	Amount	Description
09/01	350,000.00	INCOMING FEDWIRE TRANSFER
09/02	110,000.00	INCOMING FEDWIRE TRANSFER
09/09	375,000.00	INCOMING FEDWIRE TRANSFER
09/16	200,000.00	INCOMING FEDWIRE TRANSFER
09/21	250,000.00	INCOMING FEDWIRE TRANSFER
09/30	150,000.00	INCOMING FEDWIRE TRANSFER

Wire transfer from Samuels to
EDD as a vendor payment for
merchandise supplied.

Other Debits (-)

Account: 01382262426

Date	Amount	Description
09/09	373,450.00	OUTGOING FEDWIRE TRANSFER - MANUAL
09/16	5,118.00	IRS USATAXPYMT 090816 200666092798858
09/16	2,682.00	IRS USATAXPYMT 090816 200666004402816

Wire transfer from EDD to Diamlink
Jewelry Inc. at the direction of
Prakash Rao.

9/9	WT Fed#01417 Huntington National / Org=Exclusive Design Direct, Inc Sr# 2016090900004142 Trn#160909139780 Rfb# 350515 10000088	373,450.00	
9/9	Wire Trans Svc Charge - Sequence: 160909139780 Sr# 2016090900004142 Trn#160909139780 Rfb# 350515 10000088	15.00	388,141.86
9/12	Online Transfer to Voyager Brands Inc Business Checking xxxxxx4095 Ref #lbenb2Hsl8 on 09/12/16	1,200.00	
9/12	Online Transfer to Abbey USA, LLC Business Checking xxxxxx2174 Ref #lbe5Ss46Y6 on 09/12/16	7,000.00	
9/12	Online Transfer to Tri Star Worldwide LLC Business Checking xxxxxx3092 Ref #lbedw4Hz on 09/12/16	364,000.00	13,941.86
9/13	Online Transfer to Tri Star Worldwide LLC Business Checking xxxxxx3092 Ref #lbe8Plw6D on 09/13/16	12,000.00	1,941.86
9/14	Online Transfer to Voyager Brands Inc Business xxxxxx4095 Ref #lber74Pzhl on 09/14/16		941.86
9/15	Online Transfer From Voyager Brands Inc Business xxxxxx4095 Ref #lber753J8N on 09/15/16		1,941.86
9/19	8736 Check		982.47
Ending balance on 9/30			982.47
Totals		5634,050.00	3936,197.08

\$373,450 wire transfer from EDD received
by Diamlink Jewelry Inc. on 9/9/2016 and
\$364,000 transferred to Tristar Worldwide
LLC (3092) account on 9/12/2016.

C. Disguised Affiliation with Independent Gemological Laboratories

Samuels advertised in certain cases to its customers that “each” of its diamonds was “carefully evaluated by an independent grading expert” and that loose diamonds were accompanied by an “independently guaranteed grading report.”



About our Dazzling Diamond Program

We're proud to bring you our extensive selection of loose diamonds at an exceptional value. Our Vow to Wow Diamond Collection allows you to choose the cut, clarity, color and carat weight that's right for you. Each diamond is carefully evaluated by an independent grading expert.

Detailed Independent Grading Report

Your diamond will come with an IGL independent laboratory grading report with the 4 Cs of your diamond. The accuracy of your appraisal information is guaranteed by aGQA.

https://www.samuelsjewelers.com/vow_to_wow 201

Specifically, Samuels provided customers with “an IGL independent laboratory grading report with the 4 Cs [color, clarity, cut and carat weight] of your diamond.”

IGL, or Independent Gemological Laboratories, is a diamond grading company. On IGL’s website, it explains the significance of independent diamond grading to purchasers of diamonds:

²⁰¹ http://www.samuelsjewelers.com/vow_to_wow, accessed January 10, 2019.

WHY IS DIAMOND GRADING IMPORTANT?

IT IS ESSENTIAL FOR EACH DIAMOND PROPRIETOR TO KNOW THE CREDENTIALS OF THEIR DIAMOND IN ORDER TO OBTAIN CONFIDENCE AND ASSURANCE OF THE INTEGRITY OF WHAT THEY HAVE ACQUIRED. AN IGL DIAMOND OR GEMSTONE CERTIFICATE IS A STATEMENT ISSUED BY ONE OF OUR INDEPENDENT GEMOLOGICAL LABORATORIES DOCUMENTING THE CHARACTERISTICS OF THE STONE AS DETERMINED BY OUR EXPERIENCED DIAMOND GRADERS AT THE TIME OF EVALUATION.

Although Samuels portrayed IGL as “independent,” IGL is related to Samuels as another disguised Choksi controlled company. IGL was founded by Curtis Lowrey in 1999 with two other partners. According to Mr. Lowrey, he met with Mehul Choksi in India around 2009 after Choksi expressed interest in creating a relationship with IGL. In 2010, Mr. Lowrey approached Choksi to see if he would be interested in purchasing part of the business from Mr. Lowrey’s partners. Choksi declined and instead purchased the entire company. Mr. Lowrey was paid approximately \$30,000 and Choksi agreed to assume all IGL debt in connection with the sale. Mr. Lowrey entered into a contract with IGL to continue to run IGL’s business. The contract was signed by Chirag Patwa on behalf of IGL. Mr. Patwa was a senior Gitanjali employee, and was known to be close to Choksi.

Choksi purchased IGL through a British Virgin Island company named Independent Gemological Laboratory Limited. Upon assuming ownership, Choksi made attempts to mask his ownership of IGL including purchasing the company through a BVI company. In IGL’s 2010 tax returns, the BVI entity lists a BVI address as well as a New York City address which also happened to be Diamlink’s address at the time. The two listed directors of the BVI entity were Tehmasp Printer and Anjani Gandhi (this is likely a typo as both Anjani and Anjana have the same listed address in Fort Wayne, Indiana). Mr. Lowrey stated that Printer was a friend of Choksi’s and a partner in IGL, India. Samuels’ bankruptcy disclosures and payroll records

identified Anjana “Angie” Gandhi, Mehul Choksi’s sister, as a former employee of Samuels that received \$100,949 in salary and severance payments from July 2017 to April 2018.²⁰² Because of certain legal requirements in BVI, Chirag Patwa was listed as a .01% owner of IGL. The BVI entity was listed as a 99.99% owner of IGL. Patwa has been described to the Examiner’s team as Choksi’s “right hand man.”²⁰³

Mr. Lowrey acknowledged that at least certain IGL customers would not want to do business with IGL if they knew it was owned by Choksi because of the “appearance” of non-independence. Choksi and Modi told Mr. Lowrey it was better not to disclose Choksi’s affiliation so there would be no issues with customers, and Mr. Lowrey complied with this direction. Mr. Lowrey stated that Farhad Wadia, Bhavesh Shah and Rajesh Motwani all know that IGL was controlled by Choksi.

Samuels accounted for approximately 10% of IGL’s business and received a discount and priority service from IGL. Samuels’ CEO Mr. Wadia expressed concern in 2017 that IGL might be enabling Samuels to sell lab grown diamonds as natural diamonds by providing false certifications, committing “consumer fraud at a mass scale.”²⁰⁴

Mr. Wadia was also concerned that IGL was giving better grades to diamonds than warranted, and he received complaints from retailers including Sears. While the accuracy of IGL’s grading statements is beyond the scope of this investigation, the Examiner identified one instance of IGL certifying a lab-grown diamond that had been labeled by Samuels as natural, and informed Samuels management. Mr. Lowrey stated that he was told by Choksi to inform upper

²⁰² Debtor’s schedule of Payments or Transfers Made Within 1 Year Preceding Commencement of This Case to Creditors Who Are or Were Insiders (ECF No. 310).

²⁰³ Interview of Curtis Lowrey, January 9, 2019.

²⁰⁴ Email from Farhad Wadia to Sunil Varma dated May 10, 2017 (SAMUELS-EXAMINER0196638).

management or Choksi directly if there was an issue related to lab-grown diamonds.

The Examiner's investigation indicates that Samuels' statements to consumers that IGL was an independent diamond grading company, and that its reports should be relied upon as such were misleading and recommends further investigation into the accuracy of the grading reports.

VI. MANAGEMENT'S KNOWLEDGE AND INVOLVEMENT

A. Farhad Wadia

Farhad Wadia became Samuels' chief executive officer in December 2015. Prior to becoming CEO, Mr. Wadia worked as an executive consultant for Samuels from 2014 to 2015. During that same time, Mr. Wadia also sat in the Diamlink offices in New York and the Voyager Brands office in Austin and worked with Gitanjali's jewelry wholesale business. Prior to working with Samuels and the Gitanjali group of companies, Mr. Wadia worked in the media industry in India.²⁰⁵

In the initial interview of Mr. Wadia conducted by the Examiner, Mr. Wadia stated he had no knowledge of any fraud committed at Samuels. Mr. Wadia stated that he first learned about the allegations of fraud from newspaper articles, and when he learned of the alleged fraud, he emailed his concerns to Wells Fargo and Gordon Brothers.²⁰⁶ He stated that he now believes in hindsight that the royalty agreement was fraudulent in nature. In a subsequent interview, approximately one month later, faced with additional information discovered by the Examiner, Mr. Wadia stated that he suspected fraudulent activity but did not have sufficient evidence to take further action at the time.

²⁰⁵ Interview of Farhad Wadia, November 14, 2018.

²⁰⁶ *Id.*

The evidence gathered by the Examiner refutes Mr. Wadia's claim of his lack of knowledge of wrongdoing. Critically, Mr. Wadia drafted at least two extensive emails detailing his contemporaneous knowledge of the fraud from at least as early as January 2017.

On January 1, 2017, Mr. Wadia wrote an unsent email outlining much of the fraudulent activity at Samuels.²⁰⁷ The first issue raised by Mr. Wadia concerned the use of proceeds from the royalty payment from Al Arbaa. Mr. Wadia wrote that he repeatedly asked Sunil Varma why these funds could not be used to pay down Samuels' line of credit instead of immediately paying Taipingyang and EDD. Mr. Wadia then stated that he researched these three entities and concluded that they are shell companies controlled by Varma personally or on behalf of the Group. Mr. Wadia stated that it was "ludicrous" for a company to receive royalty fees from a company not selling any product. Mr. Wadia wrote, if his conclusions were true, these transactions would be in violation of the bank agreement and would constitute accounting fraud because they caused false earnings to be reported and lowered the company's losses. Mr. Wadia was concerned about civil and criminal liability for both himself and Robert Herman. Mr. Wadia concluded, "[w]e will have to inform the bank immediately of this as failing to do so will result in me being Liable personally."²⁰⁸

Mr. Wadia also raised concerns about the loose diamond grading done by IGL. Additionally, Mr. Wadia raised a concern that Gitanjali factories were supplying lab created diamonds "under the guise of being natural stones." Mr. Wadia stated if this were true, "it will be Consumer fraud at a mass scale."²⁰⁹ Mr. Wadia stated he has received repeated complaints

²⁰⁷ Draft email from Farhad Wadia dated January 1, 2017 (SAMUELS-EXAMINER0121957).

²⁰⁸ *Id.*

²⁰⁹ *Id.*

regarding the grading of loose diamonds which “border on being fraudulent.”²¹⁰ Mr. Wadia stated he also found out that IGL was owned by Choksi which “is a huge conflict of interest issue.” The last issue raised in Mr. Wadia’s draft email was a request made by a Gitanjali employee, Abhishek Gupta, to lower the accumulated losses in Samuels financials in order to secure funding. Mr. Wadia stated he refused to do this because it was fraudulent and illegal.²¹¹

While Mr. Wadia denies having sent this email, it is evidence of specific and real concerns on his part as early as January 2017, together with evidence supporting those concerns, one year prior to the Indian government’s detection of the alleged fraud. Mr. Wadia appears to have continued to gather evidence of his suspicions because he sent a similar email four months later.

On May 10, 2017, Mr. Wadia sent an email with numerous attachments to Sunil Varma with the subject “Serious Issues at Samuels.”²¹² Mr. Wadia asked that Mr. Varma show this email to Mehul Choksi but did not want to send it via email because Mr. Choksi’s secretary had access to his email. Mr. Wadia wrote in the email that he had intended to send the email at the beginning of April 2017, but because of bank restrictions, he did not want to jeopardize the company further.²¹³ Mr. Wadia stated to the Examiner that the irregularities he noticed came to his attention as he got more involved in Samuels’ finances after Robert Herman resigned in January 2017.

The five-page email expands the concerns Mr. Wadia initially raised in January 2017. Mr. Wadia stated that he believed Tapingyang, Shanyao Gong, Al Arbba, Asian Diamond &

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² Email from Farhad Wadia to Sunil Varma dated May 10, 2017 (SAMUELS-EXAMINER0196638).

²¹³ Wells Fargo did in fact raise concerns regarding certain bank restrictions, inventory levels and the total loan amount. *See* email from Farhad Wadia to Sunil Varma dated March 29, 2017 (SAMUELS-EXAMINER0473008).

Jewelry and EDD were shell companies owned and controlled by the Gitanjali Group and that transactions with these entities were fraudulent. Mr. Wadia also stated that he found out that EDD was controlled by a Gitanjali employee, Surya Prakash Vempati (Prakash Rao), out of New York. Mr. Wadia attached text messages to the email from Prakash requesting transfers to EDD at times when he ran short of cash for payroll.²¹⁴ Mr. Wadia also attached an excel spreadsheet showing what he called “circular transactions” between the shell companies.²¹⁵

Mr. Wadia again stated that it was not credible that a middle eastern company would pay for a royalty and not use the name and repeated that the “scrap” sale to Shanyao Gong in 2016 was “ludicrous” because of the enormous markup for damaged and scrap inventory. Mr. Wadia said his “final straw” was the March 2017 wholesale sale to Shanyao Gong for \$4.8 million. According to Mr. Wadia, the banks had concerns as well and the Gordon Brothers appraiser was skeptical regarding the markup on the inventory.

Mr. Wadia concluded that these “circular transactions [] are being cooked up to inflate our sales numbers and thereby mislead the company’s lenders . . . and future prospective lenders . . . into giving us an enhanced loan facility.” Mr. Wadia also determined that these transactions were in violation of the loan agreements. Mr. Wadia stated he refused to engage in any further “sham transactions” and that these transactions possibly constituted accounting fraud, money laundering and violations of U.S. financial laws.²¹⁶

Mr. Wadia also raised concerns that Samuels was fraudulently marketing lab grown diamonds as natural diamonds. Mr. Wadia alleged that 85% of the sample diamonds provided to

²¹⁴ Email from Farhad Wadia to Sunil Varma dated May 10, 2017 (SAMUELS-EXAMINER0196638).

²¹⁵ *Id.*

²¹⁶ Email from Farhad Wadia to Sunil Varma dated March 29, 2017 (SAMUELS-EXAMINER0473008).

Sears were lab-created. Mr. Wadia also had concerns that IGL grading was fraudulent because they provided the certificates for the Sears sample diamonds and that using IGL was a conflict of interest because of Choksi's ownership of IGL.

Mr. Wadia also alleged that the Gitanjali group treasury and finance consultant, Abhishek Gupta asked Robert Herman to show only a \$3-4 million loss at Samuels instead of an \$8 million loss. Mr. Wadia guessed this was to secure a new loan to open new stores. Mr. Wadia also raised issues regarding the inflation of inventory values at Samuels. Mr. Wadia alleged that the "Viola / REVV / Royal India Inventory" was highly inflated by intermediary shell companies such as Taipingyang and EDD, before selling the inventory to Samuels. Mr. Wadia alleged that this was all organized by Chirag Patwa at Keyline Solutions, which was also owned by Mehul Choksi. Mr. Wadia alleged that the Elizabeth Cael and David Pillow, both former head of merchandising, complained that this inventory was overpriced and not sellable. Mr. Wadia alleged Ms. Cael was "asked to leave" because of her complaints and Mr. Pillow quit. Ms. Cael confirmed to the Examiner that at times she thought the inventory was overpriced, and at times not sellable.²¹⁷ Ms. Cael raised concerns to Mr. Shah and Mr. Patwa but was told that this was the price Samuels had to deal with. Ms. Cael said she was told by Mr. Wadia that she was "being replaced" but that it was not a result of her performance.²¹⁸

Mr. Wadia claimed in interviews with the Examiner that after he sent the May 2017 email, he had a two-hour phone conversation with Choksi regarding his allegations and he also separately spoke with Mr. Varma.²¹⁹ Mr. Wadia stated that both Varma and Choksi denied all the allegations. According to Mr. Wadia, Varma was angry and asked if Mr. Wadia had any

²¹⁷ Id.

²¹⁸ Interview of Elizabeth Cael, February X, 2019.

²¹⁹ Interview of Farhad Wadia, December 19, 2018.

proof to back up his allegations. Mr. Wadia stated he failed to report his suspicions to the banks because he feared they would shut down the business and he could be personally sued. Mr. Wadia also claimed he was afraid Choksi would harm him after Choksi told him “don’t make accusations you can’t back or I will fix you.”

The Examiner’s team reviewed payroll records and determined that in June 2017, the month following the detailed email from Mr. Wadia in May that raised serious concerns, Mr. Wadia received in excess of a 70% pay increase from \$5,769 bi-weekly to \$10,000 bi-weekly. Mr. Herman informed the Examiner during an interview that raises at Samuels were generally not given.²²⁰

Notably, Mr. Wadia demonstrated his understanding that the Puppet Vendors were controlled by Choksi in an email chain from January 2, 2018. Mr. Wadia emailed Choksi, copying Mr. Motwani, Mr. Varma, and Mr. Shah. Mr. Wadia, provided an analysis including the Debtor’s sales for November and December of 2017, broken out by supplier. The source of inventory was divided into either “Group,” or related party, or “Non-Group” or unrelated party, and Mr. Wadia stated in his email that the original analysis had to be corrected because “the report ...has some errors as some Group Supply is [incorrectly identified as] NON-Group like EDD, Chuang etc.”²²¹ Mr. Wadia corrected the information for Mr. Choksi in a subsequent email, removing EDD, Taipinyang, Shanyao Gong, from the unrelated party category and put them into the related parties category as affiliated with the Debtor and Choksi’s jewelry empire.²²²

²²⁰ Interview of Robert Herman, January 25, 2019.

²²¹ Email from Farhad Wadia to Mehul Choksi, Sunil Varma, Bhavesh Shah and Rajesh Motwani, dated January 2, 2018 (SAMUELS-EXAMINER0078483).

²²² Attachment to SAMUELS-EXAMINER0078483 containing Excel spreadsheet titled “Sales from November 26,

After each of the January and May emails, Mr. Wadia continued to approve transactions to EDD, Taipingyang, Shanyao Gong, Al Arbaa and others. He approved more than \$29 million in transactions from May 2017 until the fraud was uncovered in February 2018.

Despite Mr. Wadia's knowledge of Choksi's control over EDD, Taipingyang and Shanyao Gong, he signed affirmative representation letters to the banks stating, among other things, that Samuels was not buying any inventory from the Group Companies. Despite Mr. Wadia's allegations of fraud and money laundering in January and May of 2017, Mr. Wadia signed a representation letter to Marks Paneth on behalf of Samuels falsely confirming that he had no knowledge of fraud or suspicions of fraud at Samuels as of August 29, 2017.²²³

On July 10, 2018, after certain allegations related to Al Arbaa came to light shortly before the petition date, Mr. Wadia emailed representatives at Wells Fargo and Gordon Brothers regarding "disturbing news reports" referencing Samuels. Mr. Wadia stated that after reviewing the allegations, the only conclusion "with the benefit of hindsight" was that Choksi used the Royalty Agreement "as part of his money laundering scheme." Mr. Wadia continued, "this is extremely concerning to all of us as we had no clue about all of this."²²⁴ As to the allegations against the other Puppet Vendors, Mr. Wadia stated "these companies to us were 3rd party vendors who supplied goods to us for which they were paid under the normal payment process." He continued: "All of these issues are a huge concern for the directors as ALL THE VENDORS / COMPANIES mentioned in the articles were doing business with Samuels for years and there

2017 thru December 26, 2017" (SAMUELS-EXAMINER0078485).

²²³ Representation Letter from Samuels Jewelers, Inc. to Marks Paneth, LLP dated August 29, 2017 (SAMUELS-EXAMINER0139155).

²²⁴ Email from Farhad Wadia to Jennifer Cann, Sonia Anandraj, Lisa Galeota and Larry Klaff dated July 10, 2018 (SAMUELS-EXAMINER0035957).

was no reason for any of us to doubt any of this.” He concluded, by asking the banks if Samuels should restate its financials. When confronted with his May 2017 email, Mr. Wadia acknowledged that the representations he made to the banks in his July 2018 email were not truthful.²²⁵

In addition, in this chapter 11 case, Mr. Wadia made inconsistent statements in Samuels’ Section 341 meeting of creditors. In this meeting, Mr. Wadia was asked about the royalty income because of the allegations that these payments were fraudulent.²²⁶ Mr. Wadia stated that his only knowledge was that Al Arbaa made a deal with ownership to pay a royalty fee to use the Samuels brand name, that he learned of Al Arbaa’s fraudulent nature through news reports, and he had a conversation with Mr. Varma seemingly towards the end of 2017 or the beginning of 2018 asking him why this agreement would not be renewed since it was so helpful to Samuels’ finances.

October 22, 2018 Section 341 Meeting (Recording Start Time: 18:10)

Ms. Leamy: Page 6, item 19, Part A, says the debtor has listed royalty income as \$6.8 million. Debtor understands certain parties have alleged payment was fraudulent. Can you tell me more about the royalty income?

Mr. Wadia: Sure. Okay so when I, long before, I think a year before I came to, even became a part of the factory or joined Samuels. I believe there was, was a royalty agreement with a company in the Middle East called Al Arbaa. Where Samuels, [...], Rogers, Andrews, all our brand names and the brand names of the jewelry products that we sell were licensed as intellectual property for usage in all markets besides the U.S. Through this entity called Al Arbaa. This was a deal done, like I said, prior to my entry into Samuels or Gitanjali and it was something that I inherited. If my memory serves me right, in ’16 and ’17 I think we got this

²²⁵ Interview of Farhad Wadia, December 19, 2018. This email was also used as an exhibit in the Response filed by the Board of Directors to PNB’s Motion to Appoint an Examiner. Therein, the Board of Directors stated the Board had been “fully transparent and pro-active” promptly disclosed reports of fraud as soon as the board learned of them. *See* Response of the Board of Directors of Samuels Jewelers, Inc. to Punjab National Bank’s and the United States Trustee’s Motions for Entry of an Order Directing the Appointment of an Examiner Pursuant to 11 U.S.C. § 1104(c) (ECF No. 179).

²²⁶ October 22, 2018 Section 341 Meeting.

payment from Al Arbaa. The, you know you we had no contact that is, me personally, and the finance team had no contact with this entity, this was something that was handled centrally by the ownership at the group level that is by the chairman of the group Mr. Choksi and the, the gentleman called Mr. Sunil Varma who came here as a co-president in I think 2017. '16 or '17. And he, he was Mr. Choksi's CFO in India, and he was sent here when our CFO here Mr. Robert Herman resigned, and because he got a job in New York. And that's my knowledge of this deal, and then I think sometime this year, I don't know when, but I read in the press, in the Indian press, a report that this was a fraudulent entity, and I brought that to notice of our counsel as well as of our lenders. But we have no other information on this. Purely press reports that I read in India.

Ms. Leamy: Alright, and then, it said the payment, or the income was from April 1, 2016 and March 31, 2017. There were no royalty payments after that time?

Mr. Wadia: To the best of my knowledge, no.

Ms. Leamy: Do you know why they stopped at that time?

Mr. Wadia: So this was actually a conversation I did have with our co-president Mr. Sunil Varma when he was here and I asked him, I said why isn't this being renewed. You know what I mean, this is great easy income. You know which helps us how do you say, "balance our books", and why couldn't we you know, try and get these guys to renew the deal? And he said the group was trying and that was the last I heard of it.

Mr. Wadia's "section 341 testimony" in this case was consistent with his correspondence with the U.S. Banks, but not consistent with his knowledge as evidenced in the 2017 emails. As his January 2017 and May 2017 emails made clear, Mr. Wadia did not first learn of the fraudulent nature of these entities from news reports after the fraud was discovered.

With respect to Jewel Evolution, Mr. Wadia is a signatory on its bank account.²²⁷ With respect to Voyager, it is physically next door to the Debtor (as shown above) and Mr. Wadia admitted to the Examiner his knowledge of its affiliation with the Debtor. Mr. Wadia was a de minimis owner of Voyager when the company was created and was the CEO of Voyager when he first moved to the U.S. With respect to EDD and Taipinyang, Mr. Wadia's January 2017

²²⁷ Jewel Evolution, Inc., Addendum to Certificate of Authority for account ending (4370), Wells Fargo Bank, N.A. dated April 11, 2018.

email indicates his knowledge of their affiliation to Choksi at least as early as eighteen months prior, and that he had done research to determine their connection to Mr. Choksi.

Finally, the Examiner notes that Mr. Wadia signed the Chapter 11 petition in this case. Puppet Vendors EDD, Taipingyang and Shanyao Gong, along with Choksi-controlled entity Voyager, were included in the petition as unrelated entities, contrary to the requirements on the face of the petition and identified among the 20 largest creditors who were not insiders. Mr. Wadia knew at the time he signed the petition of the true relationship among these entities, was particularly significant given the stark contrast between the size of the creditor pools. The first five Puppet Vendors account for debt in excess of \$23 million, while the remaining creditors' debt on the top 20 aggregates to less than \$5 million. Following statements in court from PNB that alerted Debtor's counsel, the Court and the U.S. Trustee to the issue, Debtor's counsel filed a letter stating that EDD and Taipingyang "were vendors that Gitanjali required the Debtor to use prior to the Petition Date" and that "the Debtor suspects that" Jewel Evolution and Voyager "are associated with, or controlled by, Mehul Choksi." Again, even this belated disclosure understates Mr. Wadia's knowledge.

The Examiner timely noticed Mr. Wadia for a deposition and provided a three-week extension for him to appear, but counsel for Mr. Wadia refused to produce him for testimony.

B. Bhavesh Shah

Bhavesh Shah has been at Samuels since 2010 and is currently its Chief Merchandising Officer.²²⁸ Starting in approximately 2013, Mr. Shah worked out of Diamlink's offices in New

²²⁸ Mr. Shah's wife, Hema Shah was also employed by Samuels and reported directly to Mr. Shah. Ms. Shah was paid a significant yearly salary. From the Examiner's discussions with Samuels' employees in the same department she allegedly worked in, and from his review of a limited database of emails and documents, he could not determine what, if any, work Ms. Shah performed for the Debtor for this salary.

York, but he stated he did not do any work for Diamlink. In February 2018, Mr. Shah became a director of Samuels.

Mr. Shah was responsible for the inventory purchases made by the Debtor, including the fraudulent purchases described above. Documentary evidence, including emails from Mr. Shah directing the creation of false email addresses and fictitious employees, as well as Mr. Shah's statements to the Examiner, evidence both Mr. Shah's knowledge that the Puppet Vendors were controlled by Choksi and his co-conspirators, and Mr. Shah's intent to keep that fact hidden.

As described above, in April 2015 Mr. Shah provided a detailed protocol for documenting shipments from Shanyao Gong to Samuels ("if you ship diamond to NY and bill to Samuels") so as to mask Shanyao Gong's affiliation with Gitanjali. Mr. Shah instructed an employee of Gitanjali subsidiary Crown Aim to open a new Gmail account in the name of Shanyao Gong, sign the email in the name of a different person, and in bold, **"No trail email should be included in the email when you sent to Samuels."** When the employee failed to heed his instructions and created an email trail showing Gitanjali, Diamlink and Samuels employees all involved in the transaction, Shah's email response was furious: "I don't understand what the problem !!!" Re-attaching the email, he pointed out: "I had sent out attached email and I also have confirmation from you... then again why this email ??? **Please let me know what's the problem to follow direction which has been given ? Please explain**"²²⁹

²²⁹ Email from Bhavesh Shah to Meher Kulkarni dated April 27, 2015 (SAMUELS-EXAMINER0232290).

Similarly, in a January 10, 2017 email, Mr. Shah cautioned Ashok Tailor, Farhad Wadia and others not to use Samuels' email system when discussing EDD sham transactions.²³⁰ Numerous other email correspondence illustrate Shah's insight and control over the invoicing and pricing of merchandise sold to Samuels under the EDD name as well as his awareness that EDD was a front company controlled by Choksi.²³¹ For example, Mr. Shah and Mr. Wadia are included on an email dated January 5, 2017 where employees of Diamlink, Voyager and Keyline discuss the creation of invoices to be sent from EDD to Samuels. In a follow up email, the Voyager employee explained that he needed the invoice to be corrected before he (the employee at Voyager) was able to pack the inventory.²³² This email demonstrates that the inventory represented externally as coming from EDD in Michigan was in fact being packed and shipped from Voyager's location across the street.

According to a spreadsheet titled "Sunil's vendor list," Mr. Shah was listed as the manager or contact person for the suspect vendors identified by the Examiner, including EDD, Taipingyang and Shanyao Gong.²³³ Judy Yeh was the contact for legitimate third-party vendors.

Contrary to the documentary evidence, in interviews with the Examiner Mr. Shah claimed that he believed Taipingyang, Jewel Evolution, Voyager, EDD and Shanyao Gong were Non-Group Companies, meaning they were not affiliated with Gitanjali. He also told the Examiner that entities referred to internally at Samuels as "group introduced contractors" operated as sub-contractors to Gitanjali factories and were independent of Choksi and

²³⁰ Email from Bhavesh Shah to Ashok Tailor, Pradeep Bhagat, Farhad Wadia, Prakash Rao, Mayank Upadhyay and others dated January 10, 2017 (SAMUELS-EXAMINER0083504).

²³¹ Email chain between Bhavesh Shah, Mayank Upadhyay and Prakash Rao, dated December 21, 2015 and attached excel file titled "Exclusive Design INV 201512_171-Canada Diamond.xlsx (SAMUELS-EXAMINER0220963; SAMUELS-EXAMINER0220966).

²³² Email from Ashok Tailor to Sameer (Diamlink), dated January 5, 2017 (SAMUELS-EXAMINER0125897).

²³³ Excel spreadsheet titled "Sunils Vendor List.xls" (SAMUELS-EXAMINER0131222).

Gitanjali.²³⁴ In fact, Samuels used the category of “group introduced contractors” to refer to EDD and the other Puppet Vendors whose transactions with the Debtor were supervised by Mr. Shah.

When Mr. Shah was specifically asked by the Examiner about EDD, he stated that EDD was not owned or controlled by Choksi, was based out of Michigan and was a third party that supplied inventory to Samuels.²³⁵ Mr. Shah stated that he would contact a “Cory” at EDD and if he did not answer he would contact Mr. Rao. Notably, Mr. Shah was copied on the email from corey@eddcollct.com in which the email was signed by Mr. Rao, in his true name, “Prakash.”²³⁶

During multiple interviews Mr. Shah gave inconsistent answers. In his initial interview, Mr. Shah stated that he did not know Voyager was owned or controlled by Mr. Choksi, however in a second interview, Mr. Shah stated he previously worked for Voyager handling product development, where he generally reported to Mr. Choksi.²³⁷

The Examiner timely noticed Mr. Shah for a deposition and provided a three-week extension for him to appear, but counsel for Mr. Shah refused to produce him for testimony.

C. Rajesh Motwani

Rajesh Motwani has been a long-time employee of Choksi controlled entities. Mr. Motwani worked at Diamlink from 2000 to 2009 and again from 2009 to 2012. According to Mr. Motwani’s counsel, he was also a director of the Debtor from approximately 2006 through

²³⁴ Interview of Bhavesh Shah, November 14, 2018 and December 19, 2018.

²³⁵ Interview of Bhavesh Shah, December 19, 2018.

²³⁶ Email from corey@eddcollct.com to Maria Tolentino, Bhavesh Shah and Angie Gonzalez, dated January 31, 2017 (SAMUELS-EXAMINER0349203).

²³⁷ Interview of Bhavesh Shah, December 19, 2018.

approximately 2012. However, the record was not clear because (i) based on the available corporate documents from the Debtor, Mr. Motwani signed a unanimous written consent in 2013; and (ii) the Examiner's team found at least one state filing listing him as a director in 2015. While it is not clear when Mr. Motwani resigned from the Debtor's board, Mr. Motwani joined the Debtor as the interim CFO in February 2018 and he rejoined the Debtor's Board at that time. Mr. Motwani also served as a consultant for Samuels from late 2017 to February 2018.

Since Mr. Motwani did not have a Samuels email address until 2018, after the fraud was discovered in India, the Examiner did not have an ample record to determine Mr. Motwani's level of knowledge and involvement in any alleged fraud. However, Prakash Rao, many of whose statements the Examiner has been able to corroborate, informed the Examiner that from some point in 2017 through February 2018, Mr. Motwani directed the movement of funds to EDD from Samuels with the knowledge that the money would be diverted to Choksi controlled entities and that those transactions were structured to circumvent the U.S. lender's intercompany transfer restrictions.²³⁸

The Examiner timely noticed Mr. Motwani for a deposition and provided a three-week extension for him to appear, but counsel for Mr. Motwani refused to produce him for testimony.

D. Sunil Varma

Sunil Varma is the former CFO of Samuels. When Robert Herman resigned in 2017, Mr. Varma was brought in as the CFO. Prior to and during Mr. Varma's role as CFO, Mr. Varma was the CFO of Gitanjali Gems, Ltd., Samuels' parent company, and the business head of the

²³⁸ Interview of Prakash Rao, Feb 14, 2019.

Gitanjali Group of Companies. Mr. Varma left Samuels shortly after the news of the alleged fraud was publicized in India.

The ED Complaint alleged that Sunil Varma created fictitious companies “for rotating, layering and diverting the proceeds of crime” and was directly involved in the Indian fraud.²³⁹ While the Examiner cannot confirm whether or not Mr. Varma was involved in the larger international fraud as alleged in the ED Complaint, evidence suggests Mr. Varma participated in the various apparently fraudulent transactions at Samuels.

The Examiner has reviewed email correspondence and other evidence showing Mr. Varma directing payments to Puppet Vendors, including Al Arbbaa, for which he was the point of contact. In addition, Mr. Varma coordinated both sides of the three suspect wholesale transactions detailed above between the Debtor and Shanyao Gong. In a December 12, 2016 email, Varma described Shanyao Gong, which Varma knew to be a Puppet Vendor, as a group of buyers in China/Hong Kong” willing to buy inventory that was marked as ineligible²⁴⁰ for Samuels’ borrowing base at “substantial margins.”²⁴¹ During this period before 2017, Mr. Varma was employed by Gitanjali, rather than Samuels, and is described as having directed Samuels’ transactions with Puppet Vendors with other Gitanjali employees.

Mr. Varma was also the point of contact between the Debtor and Al Arbbaa, the counterparty to the suspect royalty agreement. Mr. Varma provided information, payments, and audit letters to Samuels on behalf of Al Arbbaa²⁴² including information linked to Al Arbbaa’s

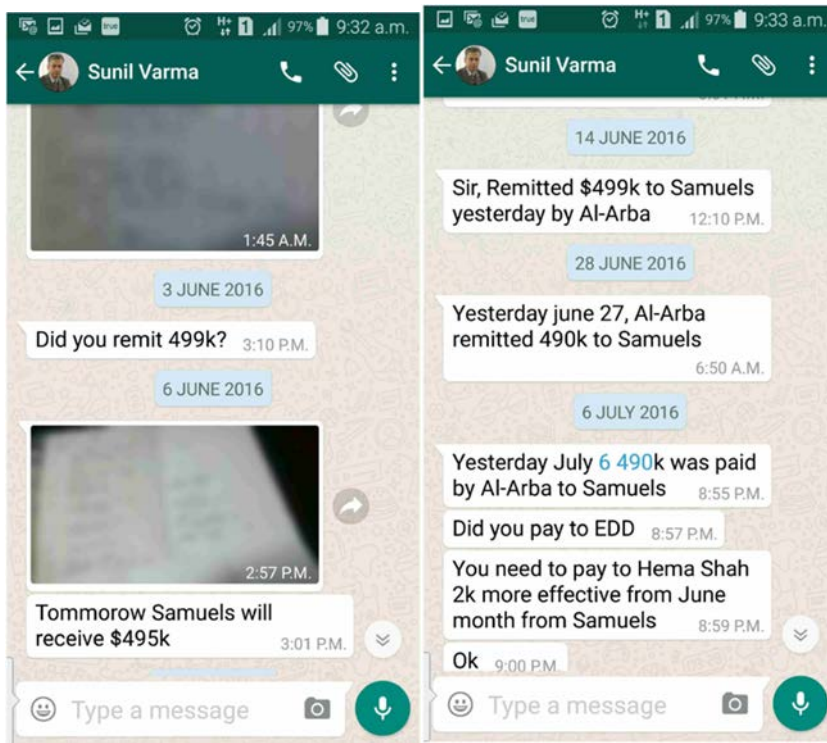
²³⁹ ED Complaint

²⁴⁰ This inventory was internally classified as “Damaged RTV & Melt slots.” It suggests scrap jewelry that was damaged or unsellable jewelry that had to be melted down and refinished.

²⁴¹ Email exchange among Robert Herman, Sunil Varma, David Pillow, Sterling Pope, Farhad Wadia and Angie Gonzalez dated December 20, 2016 (SAMUELS-EXAMINER0361502).

²⁴² Email from Farhad Wadia to Sunil Varma, dated January 1, 2017 (SAMUELS-EXAMINER0072341); Email

bank account. Similarly, in a series of text messages to Mr. Wadia in June 2016, Mr. Varma informed Mr. Wadia of numerous payments from Al Arbaa to Samuels. Mr. Varma then request that this money be sent to EDD. The text messages are below²⁴³:



Finally, records reflect Mr. Varma's receipt of the May 2017 email from Mr. Wadia laying out many of the elements of the fraud, with five pages of detail and supporting evidence. Even if Mr. Varma had lacked knowledge of the fraud before receiving that email, there is no evidence suggesting Mr. Varma took any action to investigate or address Mr. Wadia's allegations.

E. Mehul Choksi

Included in the Examiner's charge was to ascertain whether Choksi had the ability to

from Sunil Varma to Luisana Lumbreras and John Hayes dated March 6, 2017 (SAMUELS-EXAMINER0071049); Email from Robert Herman to Sunil Varma dated November 9, 2016 (SAMUELS-EXAMINER0071489).

²⁴³ Text messages from Sunil Varma to Farhad Wadia dated June 1 to 3, 2016 (SAMUELS-EXAMINER0196646); Text messages from Sunil Varma to Farhad Wadia dated June 14 to July 6, 2016 (SAMUELS-EXAMINER0196648).

direct and/or influence the conduct, decisions, or actions of the Debtor.²⁴⁴ Documentary and witness evidence suggests that Choksi was a key participant in the fraudulent circumstances described above and continued to be in contact with Samuels' employees during the Examiner's investigation. His involvement was not limited to the Debtor but extended to oversight of Shadow Entities, Gitanjali affiliates, and their employees. Choksi's family members and close associates even managed several of these entities and participated in not only the alleged fraud, but also in what appear to be spoliation of evidence and obstruction of the Examiner's Investigation.

1. Choksi's Potential Influence Over the Debtor

a) Business Operations and Personnel

After graduating in 1977 from H.R. College of Commerce and spending his entire career in the jewelry industry, Choksi founded Gitanjali Gems Ltd. In 2006, Choksi and Gitanjali acquired the Debtor "to strengthen [Gitanjali's] foothold in the world's biggest diamond jewellery [sic] market."²⁴⁵ Through interviews with the Debtor's employees and associates of Choksi as well as a review of communications, it appears that Choksi maintained influence and control over the Debtor's operations before the Petition Date.²⁴⁶ With respect to post-Petition control, it appears that Choksi continued to have the ability to exert such influence and control, but the Examiner has not found specific instances of Choksi exercising control. Choksi demanded loyalty and expected employees to do his bidding. Furthermore, based on the Examiner's interview with Robert Herman, Choksi terminated Samuels' employees who challenged his directives.²⁴⁷ As detailed above, Mr. Wadia described a pre-petition encounter he had with Choksi during which Choksi yelled "I will fix you" in response to allegations of

²⁴⁴ Examiner Order at 2.

²⁴⁵ Gitanjali Gems Limited Annual Report 2014 – 2015.

²⁴⁶ Interviews of Farhad Wadia, December 19, 2018; Interview of Robert Herman, January 25, 2019, Bhavesh Shah, December 19, 2018, Shreyansh Shah, November 12, 2018.

²⁴⁷ *Id.*

wrongdoing.²⁴⁸ Generally, to ensure compliance with his instructions, Choksi placed close associates in key positions at Samuels. His son, Rohan held a leadership role, and his nephew Nehal Modi was briefly the CEO. As of 2015, Choksi had asked Farhad Wadia to move to the U.S. from India to be Debtor's CEO.

In additional to personnel matters, evidence suggests that Choksi, through Gitanjali, dictated the products that the Debtor sold in its retail stores. Samuels employees told the Examiner that at Choksi's direction, Samuels would receive finished jewelry with instructions to sell them in its stores.²⁴⁹ At times, this product would arrive without notice, and at other times, it would arrive in lieu of requested pieces of jewelry. Regardless, although it appeared certain stores were not profitable, Choksi would unrelentingly require them to sell the product of his choosing.

b) Meeting in New York City After Fraud Allegations Went Public

Choksi's influence over the Debtor's operations was evident through a meeting he held in a New York City hotel approximately one month after the news of the alleged fraud in India surfaced. After the fraud became public, Choksi flew to New York, and held this meeting with Raj Motwani, Nehal Modi, Prakash Rao, and Mayank Upadhyay.²⁵⁰ He inquired about the financial condition of the undisclosed and disclosed Gitanjali affiliates, all of which conducted business with the Debtor.

2. Spoliation and Obstruction Post-Petition

Two of the entities discussed during the New York City meeting were Diamlink and Voyager.²⁵¹ Diamlink ceased its apparent wholesale operations in or around 2015. At approximately the same time, Voyager Brands was formed in Texas next door to the Debtor and

²⁴⁸ Interview of Robert Herman, January 25, 2019.

²⁴⁹ Interview of Bhavesh Shah, December 19, 2018; Interview of Farhad Wadia, December 19, 2018; Interview of Elizabeth Cael, February 11, 2019.

²⁵⁰ Interview of Prakash Rao, December 21, 2018.

²⁵¹ *Id.*

commenced wholesale operations. Voyager was not listed as a Group Company even though interviews confirm that three officers and directors, Voyager's employees, and the assistant controller of Samuels, Ashok Tailor, knew of its affiliation with the Debtor and Gitanjali.

One of the issues the Examiner and his team faced during the Investigation was the lack of a complete record. While securing documents, the Examiner learned that Voyager hosted computer servers containing data relevant to the Debtor and the Examiner's Investigation. On October 2, 2018, counsel for PNB sent a letter to Voyager Brands notifying the company to preserve documents relevant to "Voyager's relationship with Choksi" and those "concerning fraud" committed by the Debtor and "funds originating from PNB."²⁵² Unfortunately, however, the Examiner was unable to obtain these records.

Former Voyager employees (including the former CEO, Shreyansh Shah) and PNB told the Examiner's team that these servers were likely destroyed intentionally by Choksi's co-conspirators. The Examiner's team met with the former CEO, Shah, who stated that sometime after the Petition Date, Nehal Modi called him at Voyager, and while on speakerphone and in front of Ashok Tailor, Modi asked Shah to destroy the servers because they "contain evidence of money laundering."²⁵³ Shah did not comply. And when the Examiner initially asked Tailor about this conversation, he denied the events. However, Tailor later recanted his denial and confirmed the story, except he denied that Modi mentioned "money laundering."²⁵⁴ It is important to note that Tailor is a self-described friend of Choksi who worked at Diamlink, Voyager, and Samuels at Choksi's behest. Modi, of course, being Choksi's nephew, is presumed to have sought spoliation at Choksi's request.

²⁵² Letter from Cleary Gottlieb Stein & Hamilton LLP to Voyager Brands, Inc. dated October 2, 2018.

²⁵³ Interview with Shreyansh Shah, November 12, 2018.

²⁵⁴ Interview of Ashok Tailor, December 18, 2018.

Regardless of the servers' condition, the Examiner subpoenaed them and their contents. The current CEO of Voyager, Attorney Christopher Gilbert, through counsel, submitted Voyager's Responses and Objections stating that the servers are "inaccessible."²⁵⁵ The Examiner thereafter made several overtures to Voyager's counsel to ascertain the meaning of "inaccessible." Voyager's local Delaware counsel consulted with Gilbert and confirmed that hard drives had been forcibly removed from the servers, and the act of removal physically damaged the servers. Voyager's counsel informed the Examiner that the company had retained an IT vendor who could not access the servers because they are password protected. To the Examiner's knowledge, Gilbert continues to possess the allegedly damaged servers and has confirmed Voyager's obligation to preserve them.

a) Possible Obstruction of or Interference with the Examiner's Investigation

In November 2018, the Examiner's team made a trip to the Debtor's offices to meet with the executives and other employees. During this multi-day visit, the Examiner's team interviewed several individuals at Samuels and at other locations throughout the local area. On one of those days, the Examiner's team received an email from a confidential witness ("CW")²⁵⁶ in which he referenced an upcoming interview that the Examiner had scheduled for later that day with a Samuels employee. The CW informed the Examiner's team that Choksi was receiving information about the Investigation from someone inside the Debtor. Choksi knew the names of the Examiner's team members, the interview schedule, and topics of discussion. Although the Examiner was unable to determine who provided Choksi this sensitive information, it is clear that Choksi maintains the ability to influence and control the Debtor through certain of its

²⁵⁵ Voyager Brands Responses and Objections to the Examiner's Rule 2004 Subpoena.

²⁵⁶ The CW is not and was never a Samuels employee; however, he is an acquaintance of Choksi.

employees.²⁵⁷

VII. THE ESTATE'S POTENTIAL CAUSES OF ACTION

A. The Examiner's Charge under the Examiner Order

In the Examiner Order, the Court directed the Examiner to investigate “potential causes of action the Debtor’s estate may have in connection with [the Fraud], including any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity related to actions of Choksi, Gitanjali Gems, Ltd. and/or any of their affiliates.” The Court further instructed the Examiner not to make “any assessment or evaluation of the strengths and/or weaknesses of, or a valuation of, any potential claim(s) or cause(s) of action the Debtor’s estate may have resulting from the Investigation.”

The following summarizes the Examiner’s analysis of the estate’s potential causes of action within the parameters established by the Court.

B. Qualifications and Assumptions Applicable to the Examiner’s Analysis

The Examiner takes no position on the merits of the potential causes of action identified below. The determination of those causes of action will be left for the trier of fact to whom such causes are presented. Importantly, the Examiner’s analysis neither precludes the existence of valid defenses, which may defeat or significantly reduce any liability, nor predicts how a court or a jury may ultimately decide any contested legal, factual, or credibility issues. Moreover, the Examiner made various assumptions in conducting his analysis, which are set forth below.

²⁵⁷ On January 24, 2019, through counsel, Mehul Choksi submitted a letter to the Examiner in an attempt to provide “critical context for the allegations against [him]. . . .” The letter describes, as an explanation of Choksi’s innocence, his background, alleged corruption at the Indian Central Bureau of Investigation, the differences in this investigation from the Nirav Modi Firestar investigation, and the unreliability of allegations by PNB. The Examiner reviewed and considered the letter against evidence unearthed during his Investigation.

1. Choice of Law

The Chapter 11 Case was commenced in the Bankruptcy Court for the District of Delaware. In the Third Circuit, bankruptcy courts apply the choice of law rules of the forum state.²⁵⁸ The Examiner has therefore assumed that Delaware's choice of law rules apply.

a) Claims Concerning the Debtor's Internal Corporate Affairs

The Debtor was incorporated in Delaware. Under Delaware choice of law rules, the law of the state of incorporation governs claims involving a corporation's internal affairs.²⁵⁹ Claims for breach of fiduciary duty,²⁶⁰ aiding and abetting breach of fiduciary duty²⁶¹ and corporate waste²⁶² concern the internal affairs of a corporation. Therefore, the Examiner has analyzed such claims under Delaware law.

b) Fraudulent Transfer Claims

Under the Bankruptcy Code, the estate may bring claims to avoid and recover fraudulent transfers under federal and applicable state law.²⁶³ To determine the applicable state law, the Examiner must again apply Delaware's choice of law rules. Under those rules, if the laws of two jurisdictions would produce the same result, courts caution against conducting a choice of law analysis in the first instance.²⁶⁴ If there is a conflict, Delaware courts follow the conflict of laws principles set forth in the Restatement, and apply the "most significant relationship test" for

²⁵⁸ See *PHP Liquidating, LLC v. Robbins (In re PHP Healthcare Corp.)*, 128 F. App'x 839, 843 (3d Cir. 2005); *Burtch v. Dent (In re Circle Y of Yoakum)*, 354 B.R. 349, 359 (Bankr. D. Del. 2006).

²⁵⁹ See *VantagePoint Venture Partners 1996 v. Examen, Inc.*, 871 A.2d 1108, 1115 (Del. 2005).

²⁶⁰ See *Miller v. McDonald (In re World Health Alternatives, Inc.)*, 385 B.R. 576, 589 (Bankr. D. Del. 2008) (citing *Coleman v. Taub*, 638 F.2d 628, 629 n.1 (3d Cir. 1981)).

²⁶¹ See *Lipscomb v. Clairvest Equity Partners Ltd. P'ship (In re LMI Legacy Holdings, Inc.)*, Nos. 13-12098 (CSS), 15-51069 (CSS), 2017 Bankr. LEXIS 1150, at *24-25 (Bankr. D. Del. Apr. 27, 2017).

²⁶² See *Official Comm. of Unsecured Creditors of Fedders N. Am., Inc. v. Goldman Sachs Credit Partners L.P. (In re Fedders N. Am., Inc.)*, 405 B.R. 527, 549 (Bankr. D. Del. 2009).

²⁶³ See 11 U.S.C. §§ 544, 548.

²⁶⁴ See *Deuley v. DynCorp International, Inc.*, 8 A.3d 1156, 1161 (Del. 2010) (declining to apply choice of law analysis where the result would be the same under Delaware and Dubai law).

fraudulent transfer claims.²⁶⁵ Under the Restatement, courts apply the law of the state with the most significant relationship to the occurrence and the parties by considering several factors, including the place where the injury occurred, the place where the conduct causing the injury occurred, the place of business of the parties, and the place where the relationship, if any, between the parties is centered.²⁶⁶

The Debtor is incorporated in Delaware, its headquarters are in Texas, and it operates 120 stores in 23 states.²⁶⁷ The Examiner is unaware of whether there would be a conflict of law regarding the fraudulent transfer laws of any of these jurisdictions.²⁶⁸ To the extent there would be a conflict, the most significant relationship test would apply. Applying that test here, the injury would be the removal of assets from the Debtor's estate that but for the transfers would have been available for distribution to creditors. As discussed above, the Fraud involved numerous transfers between the Debtor and various Choksi controlled entities; many of those transfers originated from the Debtor's bank accounts in Texas. In addition, the Debtor's officers and employees initiated those transfers primarily from Texas, albeit at the direction of Choksi or Gitanjali. Because the Debtor's headquarters are in Texas, and the conduct giving rise to the challenged transfers appears to have occurred mostly in Texas, the Examiner has assumed that in the event of a conflict of law, Texas law would apply. For the purposes of this report, the Examiner has therefore assumed that Texas law governs the estate's fraudulent transfer claims.

²⁶⁵ See, e.g., *Emerald Capital Advisors Corp. v. Bayerische Motoren Werke Aktiengesellschaft (In re Fah Liquidating Corp.)*, 572 B.R. 117, 129 (Bankr. D. Del. 2017) (citing *Mervyn's, LLC v. Lubert-Adler Grp. IV, LLC (In re Mervyn's Holdings, LLC)*, 426 B.R. 488, 496 n.6 (Bankr. D. Del. 2010); *VTB Bank v. Navitron Projects Corp.*, No. 8514-VCN, 2014 Del. Ch. LEXIS 61, at *34, n.90 (Ch. Apr. 28, 2014).

²⁶⁶ See Restatement (Second) of Conflict of Laws § 145 (1971).

²⁶⁷ Declaration of Robert J. Duffy in Support of First Day Pleadings (ECF No. 11).

²⁶⁸ The Examiner has not conducted a comprehensive analysis of the fraudulent transfer laws of these jurisdictions, but notes that at least one court has observed that the Delaware Uniform Fraudulent Transfer Act and the Texas Uniform Fraudulent Transfer Act appear similar in many respects. See *Tow v. Amegy Bank N.A.*, 498 B.R. 757, 771-72 (Bank. S.D. Tex. 2013); see also *Mervyn's Holdings*, 426 B.R. at 496 n.6 (finding that the result would be the same under Delaware, California, or Minnesota because all three states adopted the same relevant portions of the Uniform Fraudulent Transfer Act).

c) Tort Claims

With respect to potential tort claims, Delaware's choice of law rules instruct courts to apply the "most significant relationship test" of the Restatement, the same test for fraudulent transfer claims.²⁶⁹ Although the Examiner is unaware of a conflict of law between the tort law of any of the available jurisdictions, the Examiner has assumed that in the event of a conflict, Texas law would apply to the estate's tort claims because Texas has the most significant relationship to the events and parties after consideration of the Restatement factors. For the purposes of this report, the Examiner has therefore assumed that Texas law governs the estate's tort claims.

C. Theories of Potential Liability

1. Breach of Fiduciary Duty

Based on the findings set forth above, the Examiner concludes there is sufficient evidence to support claims by the estate that the Debtor's officers and directors breached their duties of care and loyalty.

To prevail on a claim for breach of fiduciary duty under Delaware law, a plaintiff must allege and prove that (1) a fiduciary duty existed; and (2) the defendant breached his or her fiduciary duty.²⁷⁰

a) Existence of a Fiduciary Duty – Standards of Conduct

Directors and officers of a Delaware corporation owe fiduciary duties to the corporation and its shareholders.²⁷¹ In exercising their authority, corporate directors and officers "are charged

²⁶⁹ See *Tumlinson v. Advanced Micro Devices, Inc.*, 106 A.3d 983, 987 (Del. 2013); *Travelers Indemn. Co. v. Lake*, 594 A.2d 38, 47 (Del. 1991).

²⁷⁰ *Stewart v. Wilmington Trust SP Servs.*, 112 A.3d 271, 297 (Del. Ch. 2015); *Heller v. Kiernan*, 2002 WL 385545, at *3 (Del. Ch. Feb. 27, 2002) *aff'd* 806 A.2d 164 (Del. 2002).

²⁷¹ *Guth v. Loft*, 5 A.2d 503, 510 (Del. 1939); see *Cede & Co. v. Technicolor*, 634 A.2d 345, 360 (Del. 1993) ("the fundamental principle of Delaware law [is] that the business and affairs of a corporation are managed by or under the direction of its board of directors."); see *Gantler v. Stephens*, 965 A.2d 695, 708-09, n.36 (Del. 2009) (holding that corporate officers owe identical fiduciary duties to those owed by directors).

with an unyielding fiduciary duty to protect the interests of the corporation and to act in the best interests of its shareholders.”²⁷² These standards of conduct are commonly known as the duties of care and loyalty.²⁷³

The “fiduciary duty of due care requires that directors of a Delaware corporation use that amount of care which ordinarily careful and prudent [persons] would use in similar circumstances, and—consider all material information reasonably available in making business decisions.”²⁷⁴ By contrast, “the duty of loyalty mandates that the best interest of the company and its shareholders takes precedence over any interest possessed by a director, officer, or controlling shareholder which is not shared by the other stakeholders.”²⁷⁵ The duty of loyalty requires the corporate officer or director to “affirmatively [] protect the interests of the corporation committed to his charge” and “to refrain from doing anything that would work injury to the corporation, or to deprive it of profit or advantage which his skill and ability might properly bring to it, or to enable it to make in the reasonable and lawful exercise of its powers.”²⁷⁶

The obligation to act in good faith requires “true faithfulness and devotion to the interests of the corporation and its shareholders.”²⁷⁷ It does not establish an independent fiduciary duty on

²⁷² Directors and officers do not owe fiduciary duties to creditors, regardless of whether the corporation is insolvent or close to insolvency. However, creditors of an insolvent corporation have standing to assert derivative claims against directors and officers for breaches of fiduciary duties. *See N. Am. Catholic Educ. Programming Found., Inc. v. Gheewalla*, 930 A.2d 92, 99-101 (Del. 2007) (finding that when a corporation is solvent, the directors’ fiduciary duties to the corporation “may be enforced by its shareholders, who have standing to bring derivative actions on behalf of the corporation because they are the ultimate beneficiaries of the corporation’s growth and increased value. When a corporation is insolvent, however, its creditors take the place of the shareholders as the residual beneficiaries of any increase in value.”).

²⁷³ *See Cede*, 634 A.2d at 360, 367 (citing cases).

²⁷⁴ *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 749 (Del. Ch. 2005) (citations and internal quotations omitted) *aff’d sub nom. Brehm v. Eisner (In re Walt Disney Derivative Litig.)*, 906 A.2d 27 (Del. 2006).

²⁷⁵ *See Cede*, 634 A.2d at 361.

²⁷⁶ *Disney*, 907 A.2d at 750-751 (quoting *Guth*, 5 A.2d at 510).

²⁷⁷ *Disney*, 906 A.2d at 67.

an equal footing to the duties of care and loyalty. However, a director's or officer's failure to act in good faith may result in liability because the requirement to act in good faith is a "subsidiary element" of the duty of loyalty.²⁷⁸

b) Establishing Breach of the Underlying Duty – Standards of Review

Delaware courts apply three standards of review for evaluating director and officer decision-making: the business judgment rule, enhanced scrutiny, and entire fairness.²⁷⁹

The applicable standard depends on several initial considerations: "whether the board members (i) were disinterested and independent (the business judgment rule), (ii) faced potential conflicts of interest because of the decisional dynamics present in particular recurring and recognizable situations (enhanced scrutiny), or (iii) confronted actual conflicts of interest such that the directors making the decision did not comprise a disinterested and independent board majority (entire fairness)."²⁸⁰ Importantly, the standard of review may change depending on whether the directors or officers took steps to address the potential or actual conflict, such as by creating an independent committee, conditioning the transaction on approval by disinterested stockholders, or both.²⁸¹

The business judgment rule is the presumption that in making a business decision the corporate officers and directors "acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company."²⁸² It is the default standard of review.

²⁷⁸ *Stone v. Ritter*, 911 A.2d 362, 369-370 (Del. 2006) (quoting *Guttman v. Huang*, 823 A.2d 492, 506 n.34 (Del. Ch. 2003)).

²⁷⁹ *Reis v. Hazelett Strip-Casting Corp.*, 28 A.3d 442, 457 (Del. Ch. 2011).

²⁸⁰ *See In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 36 (Del. Ch. 2013).

²⁸¹ *Chen v. Howard-Anderson*, 87 A.3d 648, 666-67 (Del. Ch. 2014).

²⁸² *Id.*

Absent evidence of “fraud, bad faith, or self-dealing in the usual sense of personal profit or betterment’ on the part of the directors . . . the board’s decision will be upheld unless it cannot be ‘attributed to any rational business purpose.’”²⁸³

Enhanced scrutiny is Delaware’s intermediate standard of review and applies to “specific, recurring, and readily identifiable situations involving potential conflicts of interest.”²⁸⁴ It requires that fiduciaries “bear the burden of persuasion to show that their motivations were proper and not selfish” and that “their actions were reasonable in relation to their legitimate objective.”²⁸⁵

Entire fairness is the most onerous standard of review and applies when an actual conflict of interest exists.²⁸⁶ A plaintiff must first rebut the presumption that the business judgment rule applies, then the burden shifts to the director or officer to show that the challenged act or transaction was entirely fair to the corporation and its shareholders.²⁸⁷ An honest belief by the directors or officers that the transaction was entirely fair is insufficient to establish entire fairness.²⁸⁸ Rather, the defendant must establish that the transaction itself is objectively fair, independent of the board’s beliefs.²⁸⁹

2. Aiding and Abetting Breach of Fiduciary Duty

To establish a claim for aiding and abetting breach of a fiduciary duty under Delaware law, a plaintiff must demonstrate: “(1) the existence of a fiduciary relationship; (2) a breach of a

²⁸³ *Disney*, 907 A.2d at 747 (Del. Ch. 2005) (internal citations and quotations omitted).

²⁸⁴ *Trados Inc. S’holder Litig.*, 73 A.3d at 43.

²⁸⁵ *Mercier v. Inter-Tel (Del.) Inc.*, 929 A.2d 786, 810 (Del. Ch. 2007).

²⁸⁶ *Weinberger v. UOP, Inc.*, 457 A.2d 701, 710 (Del. 1983) (In situations where there are divided loyalties, the entire fairness standard applies: “[t]he requirement of fairness is unflinching in its demand that where one stands on both sides of a transaction, he has the burden of establishing its entire fairness, sufficient to pass the test of careful scrutiny by the courts.”).

²⁸⁷ *Disney*, 906 A.2d at 52.

²⁸⁸ *Gesoff v. IIC Indus.*, 902 A.2d 1130, 1145 (Del. Ch. 2006).

²⁸⁹ *Cede*, 634 A.2d at 361.

fiduciary duty; (3) knowing participation in the breach by a defendant who is not a fiduciary; and (4) damages proximately caused by the breach.”²⁹⁰ Knowing participation requires that the nonfiduciary “act with the knowledge that the conduct advocated or assisted constitutes such a breach.”²⁹¹ Moreover, “the knowledge of an agent acquired while acting within the scope of his or her authority is imputed to the principal.”²⁹²

The Examiner has also found sufficient evidence to support claims by the estate for aiding and abetting breaches of fiduciary duties. Based on his Investigation, the Examiner believes that at times when Varma, Modi, Wadia, Shah and Motwani were not occupying fiduciary positions, they assisted Choksi and other officers and directors in breaching their fiduciary duties to the Debtor and were likely aware that such assistance constituted breaches of such duties.

3. Corporate Waste

In Delaware, directors and officers may be found liable for corporate waste, “only when they authorize an exchange that is so one sided that no business person of ordinary, sound judgment could conclude that the corporation has received adequate consideration.”²⁹³ A corporate waste claim must fail if the corporation received any benefit from the challenged transaction or if there is a good faith judgment that the transaction is worthwhile under the

²⁹⁰ See *Official Comm. of Unsecured Creditors v. Nat’l Amusements Inc. (In re Midway Games Inc.)*, 428 B.R. 303, 320-21 (Bankr. D. Del. 2010) (citing *In re Transkaryotic Therapies, Inc.*, 954 A.2d 346, 370 (Del. Ch. 2008)).

²⁹¹ *Malpiede v. Townson*, 780 A.2d 1075, 1096 (Del. 2001).

²⁹² *Metro. Life Ins. Co. v. Tremont Grp. Holdings, Inc.*, No. 7092 (VCP), 2012 WL 6632681, at *19 (Del. Ch. Dec. 20, 2012).

²⁹³ *Official Comm. of Unsecured Creditors of Teu Holdings v. Kemeny (In re Teu Holdings, Inc.)*, 287 B.R. 26, 34 (Bankr. D. Del. 2002) (quoting *Glazer v. Zapata Corp.*, 658 A.2d 176, 183 (Del. Ch. 1993); see *Grobaw v. Perot*, 539 A.2d 180, 189 (Del. 1988).

circumstances.²⁹⁴

The Examiner has found evidence to support the conclusion that each of the Debtor's current and former officers and directors, other than the Independent Director, have committed corporate waste through their involvement in the transactions with Choksi controlled entities (i) that had no legitimate business purpose (i.e. the purchase and sales transactions structured to circulate money in furtherance of the Fraud) and (ii) those involving the purchase of inventory for which the Debtor had no use.

4. Avoidance and Recovery of Fraudulent Transfers **a) The Bankruptcy Code**

The Bankruptcy Code authorizes the estate's representative to avoid any transfer by a debtor of an interest in property made with the intent to defraud the debtor's present or future creditors and within two years of the petition date.²⁹⁵ The definition of "transfer" is broad, and includes "each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with-- (i) property; or (ii) an interest in property."²⁹⁶

To prove that a transfer was intentionally fraudulent under the Bankruptcy Code, the plaintiff must show that the transfer was made "with actual intent to hinder, delay, or defraud."²⁹⁷ Because direct evidence of fraudulent intent is often unavailable, courts generally rely on circumstantial evidence to infer fraudulent intent.²⁹⁸ When examining the circumstances of a transaction, courts typically look to "badges of fraud," which include: (i) the relationship between the debtor and the transferee; (ii) consideration for the conveyance; (iii) insolvency or

²⁹⁴ See *Teu Holdings, Inc.*, 287 B.R. at 26 (citing *Brehm v. Eisner*, 746 A.2d 244, 263 (Del. 2000)).

²⁹⁵ See 11 U.S.C. § 548(a)(1); *In re Fedders N. Am., Inc.*, 405 B.R. at 544.

²⁹⁶ 11 U.S.C. § 101(54).

²⁹⁷ 11 U.S.C. § 548(a)(1)(A).

²⁹⁸ See *In re Fedders N. Am., Inc.*, 405 B.R. at 545 (citing *Liquidation Tr. of Hechinger Inv. Co. of Del., Inc. v. Fleet Retail Fin. Grp. (In re Hechinger Inv. Co. of Del., Inc.)*, 327 B.R. 537, 550-51 (D. Del. 2005)).

indebtedness of the debtor; (iv) how much of the debtor's estate was transferred; (v) reservation of benefits, control or dominion by the debtor; and (vi) secrecy or concealment of the transaction.²⁹⁹

To prove that a transfer was constructively fraudulent under the Bankruptcy Code, the plaintiff must show (i) the debtor received less than reasonably equivalent value in exchange for the transfer, and (ii) the debtor: (a) was insolvent on the date of the transfer or became insolvent as a result of the transfer; (b) was left with unreasonably small capital; (c) intended to incur, or believed the debtor would incur, debts beyond its ability to pay as debts matured; or (d) made such transfer to an insider under an employment contract.³⁰⁰

To establish whether a debtor was insolvent at the time of a transfer requires extensive analysis of documents, interviews or depositions of various witnesses, and the retention of qualified experts who require sufficient time to develop their opinions.³⁰¹ Because the Examiner had approximately 120 days to conduct the Investigation and prepare this Report, he did not have sufficient time to analyze and conclude whether the Debtor was insolvent on the dates when certain transfers were made.

Further, the term "reasonably equivalent value" is not defined by the Bankruptcy Code. To determine whether "reasonably equivalent value was exchanged, courts first evaluate whether any value was received by the debtor for the transaction.³⁰² If value was received, the court must compare what was received with what was given, but that comparison does not require a dollar-

²⁹⁹ *Id.*

³⁰⁰ 11 U.S.C. § 548(a)(1)(B).

³⁰¹ See, e.g., *Whyte v. C/R Energy Coinvestment II, L.P. (In re SemCrude, L.P.)*, Nos. 08-11525 (BLS), 10-50840, 10-51808, 2013 Bankr. LEXIS 2351, at *17-39 (Bankr. D. Del. June 10, 2013) (weighing the parties' expert opinions and valuation methodologies to determine the debtor's solvency at the time the debtor made various transfers).

³⁰² *Burtch v. Opus, LLC (In re Opus E., LLC)*, 528 B.R. 30, 83 (Bankr. D. Del. 2015).

for-dollar exchange.³⁰³

Following the successful avoidance of a fraudulent transfer, the estate may recover its value from the initial or any subsequent transferee of such transfer.³⁰⁴

Here, the Examiner has found ample evidence to support claims for the avoidance and recovery of intentionally and constructively fraudulent transfers under the Bankruptcy Code. As explained above, the Debtor made numerous payments to the Choksi controlled entities for the purchase of inventory at inflated prices that it did not need for its operations. The Debtor also engaged in numerous purchase and sales transactions with Choksi controlled entities for no legitimate business purpose. The Debtor hid the true identity of the Puppet Vendors and other Choksi controlled entities to avoid detection by its lenders in furtherance of the Fraud. Based on the Examiner's investigation, it is highly likely that Choksi directed these transactions be made and that certain of Debtor's officers and directors were aware of, or suspected, the true purpose of such transactions.

b) Texas Uniform Fraudulent Transfer Act

Section 544 of the Bankruptcy Code authorizes the estate's representative to step into the shoes of a hypothetical creditor to bring fraudulent transfer claims under applicable state law, here the Texas Uniform Fraudulent Transfer Act.³⁰⁵ Importantly, the estate's representative may not bring such claims, unless "an actual, unsecured creditor can, on the date of the bankruptcy, reach property that the debtor has transferred to a third party."³⁰⁶ For that reason, the

³⁰³ *Id.*

³⁰⁴ *See* 11 U.S.C. § 550(a).

³⁰⁵ *See* 11 U.S.C. § 544(b)(1); *In re Zedda*, 103 F.3d 1195, 1201 (5th Cir. 1997).

³⁰⁶ *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 260 (5th Cir. 2010); *see also Sherman v. FSC Realty LLC (In re Brentwood-Lexford Partners, LLC)*, 292 B.R. 255, 262 (Bankr. N.D. Tex. 2003).

representative is subject to any defenses that could be asserted against the unsecured creditor.³⁰⁷

Like the Bankruptcy Code, Texas law provides for both intentionally and constructively fraudulent transfer claims.³⁰⁸ Specifically, Texas law provides for the avoidance of transfers made “[w]ith actual intent to hinder delay or defraud any creditor of the debtor” or “[w]ithout receiving reasonably equivalent value in exchange for the transfer” at a time when the debtor was or was about to become insolvent.³⁰⁹ Under Texas law, a debtor may be deemed insolvent if its liabilities exceed its assets, or the debtor is generally not paying its debts as they become due.³¹⁰ Moreover, intent to defraud can be established through badges of fraud, which are codified under the Act.³¹¹ And the value of any avoidable transfer may be recovered from the initial or any subsequent transferee of such transfer.³¹²

For the same reasons the Examiner has concluded the estate has claims for the avoidance and recovery of intentionally and constructively fraudulent transfers under the Bankruptcy Code, the Examiner concludes the estate has claims for the avoidance and recovery of intentionally and constructively fraudulent transfers under Texas law.

5. Equitable Subordination of Creditor Claims

The Bankruptcy Code provides that a court may “under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or

³⁰⁷ *Smith v. Am. Founders Fin., Corp.*, 365 B.R. 647, 659 (S.D. Tex. 2007).

³⁰⁸ *See* Tex. Bus. & Com. Code Ann. §§ 24.005(a), 24.006.

³⁰⁹ *Id.*

³¹⁰ Tex. Bus. & Com. Code Ann. § 24.003(a) (“A debtor is insolvent if the sum of the debtor’s debts is greater than all of the debtor’s assets at a fair valuation”), 24.003(b) (“A debtor who is generally not paying the debtor’s debts as they become due is presumed to be insolvent.”).

³¹¹ *See* Tex. Bus. & Com. Code Ann. § 24.005(b).

³¹² *See* Tex. Bus. & Com. Code Ann. § 24.009(b).

part of another allowed claim.”³¹³ The purpose behind equitable subordination is not to challenge the existence or validity of an underlying debt,³¹⁴ but “to undo or offset any inequality in the claim position of a creditor that will produce injustice or unfairness to other creditors in terms of the bankruptcy results.”³¹⁵ To prove a claim for equitable subordination, the proponent must show: (1) the claimant engaged in some type of inequitable conduct; (2) the misconduct resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant; and (3) equitable subordination would not be inconsistent with the provisions of the Bankruptcy Code.³¹⁶

Courts have recognized that fraud, illegality, breach of fiduciary duty, and the use of the debtor as a mere instrumentality or alter ego qualify as inequitable conduct that warrants equitable subordination.³¹⁷ The inequitable conduct need not be related to the assertion of the claim at issue.³¹⁸ The claimant’s conduct is subject to different levels of scrutiny depending on whether it is an insider or fiduciary of the Debtor. When the claimant is not an insider or fiduciary, the party seeking to subordinate the claim must show egregious conduct.³¹⁹ On the other hand, when the claimant is an insider or fiduciary, once the proponent has shown evidence of unfair conduct, the burden shifts to the insider or fiduciary to demonstrate the fairness of its conduct.³²⁰

The Examiner concludes that the following creditors who filed claims or were listed in

³¹³ 11 U.S.C. § 510(c).

³¹⁴ *In re Insilco Techs., Inc.*, 480 F.3d 212, 218 (3d Cir. 2007).

³¹⁵ *Citicorp Venture Capital, Ltd.*, 323 F.3d 228, 233 (3d Cir. 2003) (internal citations omitted).

³¹⁶ *See Shubert v. Lucent Techs. Inc (In re Winstar Communs., Inc.)*, 554 F.3d 382, 411 (3d Cir. 2009) (citing *Benjamin v. Diamond (In re Mobile Steel Co.)*, 563 F.2d 692, 699-700 (5th Cir. 1977)).

³¹⁷ *Cohen v. KB Mezzanine Fund II, L.P. (In re SubMicron Sys. Corp.)*, 291 B.R. 314, 327 (D. Del. 2003) *aff’d* 432 F.3d 448 (3d Cir. 2006).

³¹⁸ *Id.* at 412.

³¹⁹ *Fedders N. Am., Inc.*, 405 B.R. at 554.

³²⁰ *See Winstar Communs.*, 554 F.3d at 412; *see also In re Mid-American Waste Sys.*, 284 B.R. 53, 69 (Bankr. D. Del. 2002).

the Debtor's schedules may have claims subject to equitable subordination for their involvement in the Fraud: (i) EDD; (ii) Belgdian LLC; (iii) 4C's; (iv) Crown Aim Limited; (v) Gili India Limited; (v) IGL; (vi) Keyline Solutions PVR, Ltd.; (vii) Voyager Brands, Inc. and (viii) Jewel Evolution, Inc.

6. Tort Claims

Based on the conduct described earlier in this Report, the Examiner believes that the estate may also have claims for negligence and fraud against the Debtor's officers and directors.

a) Negligence

The elements of a negligence claim under Texas law are: (1) a legal duty on the part of the defendant; (2) breach of that duty; and (3) damages proximately resulting from that breach."³²¹ Texas law requires gross negligence to impose officer and director liability.³²² Gross negligence is a heightened form of negligence which requires proof of "an extreme degree of risk, considering the probability and magnitude of potential harm to others" and a "conscious indifference to the rights, safety or welfare of others" by the negligent actor.³²³

b) Fraud

Under Texas law, common law fraud includes both actual and constructive fraud.³²⁴

To prevail on a claim for actual fraud the plaintiff must prove the following elements: "(1) that a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of its truth and as a positive assertion; (4) the speaker made the representation with

³²¹ *Sport Supply Group, Inc. v. Columbia Cas. Co.*, 335 F.3d 453, 466 (5th Cir.2003) (citing *Van horn v. Chambers*, 970 S.W.2d 542, 544 (Tex. 1998)).

³²² See *Janvey v. Hamric*, No. 13-cv-0775 (DCG), 2015 WL 11120301, at *5 (N.D. Tex. Nov. 5, 2015); *Resolution Trust Corp. v. Acton*, 844 F.Supp. 307, 313 (N.D. Tex. 1994) (applying Texas law).

³²³ See *Mobil Oil Corp. v. Ellender*, 968 S.W.2d 917, 921 (Tex. 1998); see also *Burk Royalty Co. v. Walls*, 616 S.W.2d 911, 920 (Tex. 1981) (describing gross negligence as an "entire want of care").

³²⁴ *Saden v. Smith*, 415 S.W.3d 450, 470 (Tex. App. 2013).

the intent that the other party should act upon it; (5) the party acted in reliance on the representation, and (6) the party thereby suffered injury.”³²⁵ Silence may be equivalent to a false representation when the particular circumstances require disclosure or where there is a duty to disclose, but the party deliberately remains silent.³²⁶ Relevant here, a fiduciary’s concealment of material information can form the basis for an actual fraud claim.³²⁷

By contrast, constructive fraud is “the breach of some legal or equitable duty which, irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive others, to violate confidence, or to injure public interests.”³²⁸ To support a claim for constructive fraud, the plaintiff must show the existence of a fiduciary relationship between the parties.³²⁹ Importantly, the actor’s mental state is irrelevant.³³⁰

VIII. RECOMMENDATIONS

Pursuant to the court’s Order Approving the Preliminary Work Plan and Budget of John J. Carney, Examiner, the Examiner “shall prepare and file a concise statement of his findings and conclusions . . . and a *recommendation regarding further investigation*”³³¹ Although there is substantial evidence to find the Debtor’s knowledge of and involvement in fraudulent conduct, there remain outstanding investigative steps which, if given an expanded budget and scope, the Examiner

³²⁵ *Lane v. Halliburton*, 529 F.3d 548, 564 (5th Cir. 2008) (quoting *In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 758 (Tex. 2001)).

³²⁶ See *Bradford v. Vento*, 48 S.W.3d 749, 755 (Tex. 2001); see also *Highland Crusader Offshore Partners, L.P. v. LifeCare Holdings, Inc.*, No. 3:08-CV-0102-B, 2008 WL 3925272, at *11-12 (N.D. Tex. Aug. 27, 2008) (discussing Texas law).

³²⁷ See *N. Tex. Opportunity Fund L.P. v. Hammerman & Gainer Int’l, Inc.*, 107 F. Supp. 3d 620, 632-34 (N.D. Tex. 2015) (applying Texas law).

³²⁸ *Saden*, 415 S.W.3d at 470 (quoting *Archer v. Griffith*, 390 S.W.2d 735, 740 (Tex.1964)).

³²⁹ See *Texas Integrated Conveyor Sys., Inc. v. Innovative Conveyor Concepts, Inc.*, 300 S.W.3d 348, 366 (Tex. App. 2009); *Am. Med. Int’l, Inc. v. Giurintano*, 821 S.W.2d 331, 339 (Tex. App. 1991).

³³⁰ See *Texas Integrated Conveyor Sys., Inc.*, 300 S.W.3d at 366.

³³¹ Order Approving the Preliminary Work Plan and Budget of John J. Carney, Examiner (ECF No. 440) (emphasis added).

would have taken. Below is a listing of said action items:

- A. Expanded Review of LOU/FLC Transactions:** From the charges filed in India, it is apparent that there are several FLCs and LOUs with potential ties to the Debtor beyond the five that the Examiner was able to trace. With time, budget, and the ability to coordinate with foreign banks, the Examiner would have sought to link these LOUs and FLCs to transfers involving the Debtor.
- B. Additional Forensic Tracing:** During the Investigation, it became evident that the Debtor's directors and officers, Choksi, and his co-conspirators possessed significant ties to India and other countries. It is therefore reasonable to assume that an international forensic tracing analysis would identify assets and accounts related to proceeds of fraudulent activity.
- C. Overvalued Inventory:** The Examiner learned that certain jewelry lines presented in Samuel's borrowing base might have been overvalued. With additional time and resources, the Examiner would have performed a deeper analysis into the Debtor's pricing and collateral practices.
- D. Round-Tripping:** Gitanjali is alleged to have fraudulently-obtained LOUs and FLCs by manufacturing false international trade transactions. Presumably, these sham transactions involved the same merchandise being repeatedly exported and imported. It would therefore be important to investigate whether the Debtor engaged in said round-tripping transactions.
- E. CVD Analysis:** The Examiner learned in his Investigation that CVD, or lab-created, diamonds were at times substituted for naturally-sourced diamonds. As such, the Examiner recommends analyzing loose diamond and finished diamond jewelry sales to identify whether Samuels and Gitanjali concealed the true nature of certain diamonds when selling them to the public and when making representations to lenders.

F. Interview/Depose Nehal Modi: Nehal Modi played an integral part in the management and operations of the Debtor. His familial connection to Choksi as well as several witness statements gleaned during the Examiner's investigation indicate that Modi might possess important information regarding fraudulent transfers related to the Debtor. The Examiner called Modi multiple times and attempted to serve him with a subpoena. Modi ignored the phone calls and voicemails, and evaded service of process.

G. Director Testimony: As noted above, the Examiner attempted to depose Mr. Wadia, Mr. Shah, and Mr. Motwani, but their counsel refused to produce them on the mutually-scheduled dates. Securing their testimony could reveal additional relevant facts and possibly the discovery of recoverable assets.

H. Liability: A thorough review of the professionals retained by the Debtor pre-petition should be undertaken to identify which, if any, have liability exposure.

I. Other Vendors: There appear to be additional Puppet Vendors whose connection to fraudulent activity, due to time and budget restrictions, the Examiner was not able to investigate. Additional transfers and accounts might be identified through an investigation of these entities.