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January 31, 2013

The Honorable Doug Gansler
Attorney General, Maryland
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202

Dear Attorney General Gansler,

We ask that the Attorney General consider instituting a civil proceeding seeking forfeiture of the charter of HSBC USA Inc. (HSBC) based on HSBC's criminal activities that generate significant income, including aiding and abetting of trafficking in illegal drugs, as provided in § 1-405 in the Maryland Statute on Corporations and Associations. Maryland law further provides forfeiture of charters to stop future illegal conduct of the same nature; the voluminous records of federal investigators evidence HSBC's illegal conduct even in the face of sanctions.

On December 11, 2012, the U.S. Department of Justice announced that HSBC "agreed to forfeit \$1.256 billion and enter into a deferred prosecution agreement with the Justice Department for HSBC's violations of the Bank Secrecy Act (BSA), the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA)." The government further noted that "HSBC has waived federal indictment, agreed to the filing of the information, and has accepted responsibility for its criminal conduct and that of its employees."¹

The Justice Department found, and HSBC admitted to, violations of the BSA and federal anti-money laundering regulations. "As a result of these concurrent [anti-money laundering] failures, at least \$881 million in drug trafficking proceeds, including proceeds of drug trafficking by the Sinaloa Cartel in Mexico and the Norte del Valle Cartel in

¹ Department of Justice press release, available at: <http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html>

Colombia, were laundered through HSBC Bank USA without being detected,” according to a Statement of Facts agreed to by the Department Of Justice and HSBC.²

The precise profit that HSBC acquired through the illegal activity is not stated in the Department of Justice documents. Unsurprisingly, HSBC does not specify revenue from money laundering in its disclosures to shareholders. But HSBC admitted to failing to monitor more than \$200 trillion in wire transfers from medium and high risk countries and agreed to forfeit \$1.256 billion and to pay \$665 million in civil penalties, leaving no doubt that the money laundering activity constituted a significant source of income.³

According to HSBC’s filings with the Securities and Exchange Commission, “HSBC USA Inc. (‘HSBC USA’) is a corporation organized under the laws of the State of Maryland. . . . HSBC USA’s principal business is to act as a holding company for its subsidiaries.”⁴

As provided in § 1-405 in the Maryland Statute on Corporations and Associations, the Attorney General of Maryland “may institute a civil proceeding in the courts to forfeit the charter of any Maryland corporation and to revoke the authority of any foreign corporation to do business in this State,” where a corporation is engaged in “organized crime,” defined to include a conspiracy “to engage in criminal activity as a significant source of income” for the corporation, or where the corporation’s activities serve to “aid, or abet the violation of criminal laws relating to . . . illegal drug distribution.”

The Statement of Facts agreed to by the U.S. Department of Justice and HSBC demonstrates that HSBC’s criminal behavior aided and abetted illegal drug distribution that served as a “significant source of income” for the Maryland-chartered institution.

Maryland law further provides that the “Attorney General may institute a civil proceeding in the courts to forfeit the charter” if “[f]or the prevention of future illegal conduct of the same character, the public interest requires the operation of the business to be enjoined.”⁵ The federal sanctions against HSBC do not relieve your office from this duty to the public interest.

As a result of federal investigations, HSBC has pledged to institute a number of changes, including the replacement of senior officers and improved compliance procedures. However, these pledges follow previous promises by HSBC following earlier breaches identified by the U.S. Comptroller of the Currency (OCC). This pattern of willful violation of

² Department of Justice, Statement of Facts, available at:<http://www.justice.gov/opa/documents/hsbc/dpa-attachment-a.pdf>

³ See p. 4 of Statement of Facts, :<http://www.justice.gov/opa/documents/hsbc/dpa-attachment-a.pdf>

⁴ From HSBC 10-k, 2012, : <http://sec.gov/Archives/edgar/data/83246/000119312512079733/d268432d10k.htm>

⁵ See Ann. Code 1957, art. 23, § 84A; 1975, ch. 311, § 2., available at:
<http://statutes.laws.com/maryland/corporations-and-associations/title-1/subtitle-4/1-405>

anti-money laundering law precipitated a U.S. Senate Permanent Subcommittee on Investigation's probe, described in a 400 page report. "At HSBC, during the five-year period from 2005 to 2010, OCC AML examiners conducted nearly four dozen AML examinations, identified at least 83 AML Matters Requiring Attention, and recommended two cease and desist orders to strengthen [HSBC'S] AML program. . . . In 2009, after learning that two law enforcement agencies were investigating possible money laundering through [HSBC] accounts, the OCC legal and enforcement divisions directed OCC AML examiners to hastily intensify and expand an ongoing AML examination to consider [HSBC's] AML program as a whole. In September 2010, the expanded OCC examination culminated in a blistering Supervisory Letter identifying numerous serious AML problems at the bank. Many of these AML problems had been identified in prior examinations but were tied to specific [HSBC] business units, rather than to the bank more generally, and were not resolved by bank commitments to remedy the identified problems."⁶

In congressional testimony on July 17, 2012, Comptroller Curry observed, "The number of [matters requiring attention] cited over the preceding years reflected a pattern where the Bank reacted when problems were identified by the OCC, but failed to fulfill its fundamental responsibility of maintaining a program that effectively deterred money laundering and self-identifying and correcting deficiencies in its [Bank Secrecy Act/Anti-Money Laundering] program."⁷ HSBC's latest pledges may be insufficient to honor the provisions of the Maryland statute regarding criminal activity. HSBC's pattern of illegal conduct argues that the Maryland Attorney General should take the necessary step to prevent "future illegal conduct of the same character."

Your office has previously drawn on its statutory authority to seek to revoke the charter of a Maryland corporation. In *State Of Maryland vs Cutting Edge Enterprises Inc.*, you "filed a petition under Maryland law seeking to forfeit Cutting Edge's corporate charter based on its misuse and abuse," according to your office.⁸ The Attorney General found that Cutting Edge engaged in a series of transactions with the objective of avoiding payments to the State of at least \$65.9 million and circumventing restrictions aimed largely at preventing smoking.

⁶ "HSBC Case History," U.S. Permanent Subcommittee on Investigations, staff report, at p. 288, available through US Senate Permanent Subcommittee on Investigations Hearing report, available at: <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/us-vulnerabilities-to-money-laundering-drugs-and-terrorist-financing-hsbc-case-history>

⁷ Testimony of Comptroller Thomas Curry, available through US Vulnerabilities to Money Laundering, US Senate Permanent Subcommittee on Investigations, July 17, 2012, available at: <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/us-vulnerabilities-to-money-laundering-drugs-and-terrorist-financing-hsbc-case-history>

⁸ "Attorney General Gansler Leads National Litigation Effort Against Tobacco Company," April 11, 2007, Press Release, available at: <http://www.oag.state.md.us/Press/2007/041107.htm>

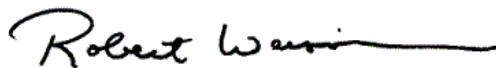
As Senator Levin, chair of the U.S. Permanent Subcommittee on Investigations, stated when commenting on the findings of a year-long probe of HSBC's money laundering: "If an international bank won't police its own affiliates to stop illicit money, the regulatory agencies should consider whether to revoke the charter of the U.S. bank being used to aid and abet that illicit money."⁹

In a similar situation last year, the state of New York's Department of Financial Services "determined that grounds existed for revocation of [Standard Chartered Bank's] license to operate in the State of New York and that interim measures must be taken to protect the public interest."¹⁰ Standard Chartered was accused of laundering some \$250 billion in transactions involving Iran. The New York agency ultimately elected not to revoke the license.

HSBC is a large corporation but should enjoy no special privilege because of its size. As the Department of Justice's stated in its Dec. 11 press release, "No corporate entity should ever think itself too large to escape the consequences of assisting international drug cartels. In particular, banks have a special responsibility to use appropriate due diligence in monitoring the cash transactions flowing through their financial system and identifying the sources of that money in order not to assist in criminal activity. By allowing such illicit transactions to occur, HSBC failed in its global responsibility to us all."

A Maryland corporate charter should signal integrity, and we ask the Attorney General to uphold this standard. Your attention to this is appreciated.

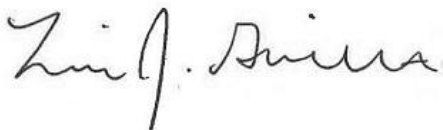
Sincerely,



Robert Weissman, President



Bartlett Naylor, Financial Policy Advocate



Lisa Gilbert, Director of Public Citizen's Congress Watch

⁹ Levin Statement on HSBC Settlement, Dec. 11, 2012, available at: <http://www.hsgac.senate.gov/subcommittees/investigations/media/levin-statement-on-hsbc-settlement>

¹⁰ "In the Matter of Standard Chartered Bank," NY Statement Department of Financial Services, August 6, 2012, available at : <http://www.dfs.ny.gov/banking/ea120806.pdf>