It's All about the Numbers: Involving Rating Agencies in the Fight against Terrorism

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Since the onset of the financial crisis in 2008, a debate has persisted between policymakers about how best to regulate large financial institutions. By and large, this debate has focused on how to stabilize the American financial industry and economy without sacrificing its dynamism.[1] One growing facet of this debate, however, has little to do with the domestic effects of banking regulation; rather, because "terrorist financing is hitting a new stage…[and because there are] major organizations around the world that want to access the [US] financial system," banking regulations have become a focal point in the fight against terrorism.[2]

Since 1985, the US government has attempted to regulate financial institutions to dissuade them from financing terrorism.[3] The most significant efforts came first in 1992, when Congress passed the Anti-Terrorism Act (ATA), permitting civilians (or their surviving families) injured by terrorists at home or abroad to sue terrorists, their organizations, and their financiers for civil damages.[4] Second, in 2001, President Bush created the Office of Foreign Assets Control (OFAC) to stop "the ability of terrorists to finance their operations" through regulatory efforts.[5] However, as discussed below, both measures have proven ineffective, which raises the question of how to dissuade banks effectively from participating in financing terrorism. This article argues for an alternative: involving rating agencies. Because rating agencies wield significant influence over banks, compelling them to consider a bank's OFAC violations and pending ATA lawsuits when rating

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a bank could be a powerful tool to stop banks from funding terrorism in the US and abroad.

The Failures of the ATA

In response to the 1985 Palestinian hijacking of the *Achille Lauro* cruise ship, in which a US citizen was murdered, Congress passed the ATA in 1992 as a private civil remedy provision for civilians injured by terrorists.[6] The ATA allows individual victims of terror or their families to seek triple damages from terrorists.[7]

The ATA was rarely used until after the attacks of September 11, 2001.[8] In 2002, the US Court of Appeals for the Seventh Circuit heard one of the first cases, and expanded the ATA to allow parents of an American killed in Israel by Hamas to sue two US-based charities that allegedly channeled money to Hamas.[9] In 2008, Judge Richard Posner also expressed an expansive interpretation of the ATA when he compared donations to Hamas to "giving a loaded gun to a child, (which also is not a violent act), [as both are] act[s] dangerous to human life."[10]

However, on April 24, 2018, in its decision in *Jesner v. Arab Bank,* the Supreme Court possibly limited the reach of the ATA. In *Jesner* the Supreme Court held that foreign corporations, including banks, could not be sued by non-US citizens in US courts under the Alien Tort Statute (ATS) for extraterritorial acts where the law of nations did not impose such liability.[11] Enacted in 1789, the ATS originally gave US courts jurisdiction over claims against foreign defendants accused of misconduct outside of US borders,[12] and allowed foreign individuals to seek remedies in US courts for human rights violations.[13] However, in 2013, the Supreme Court limited the reach of the ATS in its decision in *Kiobel v. Royal Dutch Petroleum*,[14] noting that the ATS can be used by foreign entities against foreign entities in US courts *only if* violations "touch and concern the territory of the US."[15] Although the Supreme Court has yet to decide the jurisdictional reach of the ATA, there are similarities between the ATS and the ATA, a point that has been used emphatically by defendants in the relevant cases, namely *Freeman v. HSBC* and *Linde v. Arab Bank*.[16]

In its decades-long history the ATA has never permitted a plaintiff to collect, and in any event, reinforces the need to pursue a different path other than lawsuits to combat terrorist financing.

In *Freeman*, 130 families of American victims of terrorism in Iraq between 2004 and 2011 filed suit against HSBC, Credit Suisse, and a number of other major banks. Commencing in 2014, the suit claims that more than 1,000 US servicemen were killed or injured by Iranian-designed and manufactured IEDs that could not have been made had the banks adhered to OFAC sanctions. The suit alleges conspiracy between the banks and Iran, transferring "billions of...dollars through the United States in a manner designed to circumvent US regulators' and law enforcement agencies' ability to monitor the transactions," and contends that this money went directly to terrorist organizations that maimed and killed US servicemen in Iraq.[17] Although this case is still pending, there is a chance that the Supreme Court may not hold the decision of *Jesner* applicable to *Freeman*, given that it concerns US citizens, and that the defendant banks actually conducted this illegality on US soil, which may be found to "touch and concern" US territory.[18]

Linde, which commenced in 2004, was the first ATA lawsuit involving American terror victims suing banks for their deaths and injuries. It sought to hold Arab Bank liable "for deaths and severe injuries resulting from acts of international terrorism that Palestinian terrorist groups perpetrated between 2000-2004." [19] After over ten years of litigation, a jury found Arab Bank liable, as it

> knowingly provided material support to Hamas by illegally maintaining accounts for: Hamas...that accepted multiple checks explicitly made out to ..."Hamas"...Arab Bank [also] knowingly provided material support to terrorist groups... that facilitated millions of dollars in direct transfers to the families of suicide bombers and other terrorist operatives... [and] knowingly provided material support to Hamas by maintaining accounts for eleven Hamas-controlled organizations.[20]

In 2015, the US Court of Appeals for the Second Circuit upheld the jury verdict, noting that the Bank's liability was established "[by] volumes of damning circumstantial evidence that defendant knew its customers were terrorists."[21] However, it reversed itself in 2018 when it decided that "material support" may not satisfy the ATA requirement of supporting international terrorism.[22] It then proposed a new trial altogether, but the parties settled, forgoing a new trial.[23] However, the Second Circuit's surprising and fickle change of course should be of concern to those worried about stopping banks from financing terrorism via the ATA, especially in a post-*Jesner* era.

While there are major differences between the facts in *Linde*, *Freeman*, and *Kiobel*, namely, that Arab Bank and HSBC violated OFAC regulations *while on* US soil, in contrast to *Jesner*, there is no telling how this limiting trend will now affect the enforcement of the ATA. While Congress passed the ATA "to impose liability 'at any point along the causal chain of terrorism,' including the flow of money,"[24] the ATA, which in its decades-long history has never permitted a plaintiff to collect,[25] may be further defanged by the outcome of *Jesner*, and in any event, reinforces the need to pursue a different path other than lawsuits to combat terrorist financing.

OFAC's Ineffectiveness

When the 9/11 terrorists spent nearly $500,000 to conduct their attack and used the anonymity of the financial system to move their money through ordinary transactions, regulators "realized that the financing of terrorism was something the government had to pay attention to."[26] Prior to 9/11, anti-money laundering regulations were "never designed to detect or disrupt transactions of the type that financed 9/11," just organized crime.[27] Therefore, in 2001, President Bush created OFAC to "stop[] the ability of terrorists to finance their operations" through regulatory efforts based on national security goals.[28]

In administering and enforcing economic sanctions, OFAC identifies persons for terrorist designation, assists banks in complying with sanctions, and assesses monetary penalties against those violating the prohibitions, either through lawsuits or settlements.[29] These regulations have expanded significantly over the years, as "nobody wants to be the examiner for the bank where the transactions that finance the next 9/11 goes through."[30] Nevertheless, banks "spend lots and lots of money to show progress that they're dealing with these issues, but they're not necessarily dealing with them smartly."[31] Financial institutions have already spent billions on compliance efforts, yet they still fall short of meeting regulators' expectations.[32]

When OFAC finds that a bank is violating sanctions, it decides between prosecution and settlement, although in practice it always settles, as evidenced by the fact that OFAC has never prosecuted in its 16-year history.[33] Part of such OFAC settlements include Justice Department deferred prosecution agreements, "which have corporate defendants pay fines, don't dispute they've done wrong, and promise to reform – all with the threat looming of a potential future criminal indictment should they not reform."[34] While offenders of OFAC's regulations abound, two banks in particular – Credit Suisse and HSBC – show just how ineffective OFAC has been at preventing banks from helping terrorists.[35]

In 2009, after funneling hundreds of millions of dollars to sanctioned entities,[36] Credit Suisse settled its OFAC violations for $536 million.[37] According to the Treasury Department, for more than two decades Credit Suisse had "deliberately removed material information…so that the wire transfers would pass undetected through [OFAC] filters," and had instructed "clients to falsify wire transfers so that such [payments] would also pass undetected."[38] Furthermore, Credit Suisse assured clients that they would "hand-check" communications to ensure that OFAC wouldn't catch wind of the illegal transfers. Credit Suisse even gave "clients…a pamphlet entitled, 'How to transfer USD payments,' which provided detailed payment instructions on how to avoid triggering U.S. OFAC filters."[39] DOJ's Assistant Attorney General Lanny A. Breuer of the Criminal Division articulated it bluntly: "In essence, Credit Suisse said to sanctioned entities, 'We've got a service, and that service is helping you evade U.S. banking regulations.'"[40]

However, instead of pursuing legal action, OFAC chose to settle, claiming that Credit Suisse (a) had cooperated with regulators to disclose "data, communications and documentation underlying the misconduct;" (b) had committed to conduct "an extensive internal investigation;" and (c) had "agreed to enhance its sanctions compliance programs to be fully transparent in its international payment operations,"[41] and (d) because OFAC could not pin violations on a specific individual, no such legal action could be commenced.[42]

In the nearly ten years since the settlement, it is unclear if anyone at OFAC has monitored Credit Suisse to ensure it is now compliant. However, in December 2016, the Financial Industry Regulatory Authority (FINRA) found Credit Suisse to again be in violation of sanctions, and fined it $16.5 million for failing "to properly implement its automated surveillance system to monitor for potentially suspicious money movements,"[43] something Credit Suisse had promised to do as part of the 2009 OFAC settlement.

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Additionally, even though Congress had passed new deterrents,[44] two years after the Credit Suisse settlement, a new offender arose on OFAC's radar: HSBC. HSBC's offenses seemed similar to and as egregious as those of Credit Suisse. The offenses stemmed from an April 2001 internal email from HSBC Europe to HSBC US that stated:

> [W]e have instructed Bank Melli to alter the format of [its] payments... to only put 'One of our clients' in field 52, thus removing the chance of them inputting an 'Iranian referenced' customer name, that...[is] a breach of OFAC regulations...The key is...that the outgoing payment instruction from HSBC will not quote 'Bank Melli' as sender – just HSBC."[45]

This email explicitly endorsed the evasion OFAC filters, and allowed close to $500 million in transfers to Iran[46] and other OFAC sanctioned entities.[47]

While OFAC was deciding what to do about HSBC's numerous violations, the US Senate published a report that was strongly critical of HSBC's evasion of OFAC filters. The report alleged that

> HSBC... [1] had not treated its Mexican affiliate as high risk, despite the country's money laundering and drug trafficking... [2] had transported $7 billion in US bank notes to [sanctioned entities]...[3] had circumvented US safeguards designed to block transactions involving terrorists, drug lords and rogue states, including allowing 25,000 transactions over seven years without disclosing their links; [4] providing US dollars and banking services to some banks in Saudi Arabia despite their links to terrorist financing; [and 5] in less than four years it had cleared $290 m[illion] in "obviously suspicious" US travellers' checks. [48]

Despite the Senate report and the ensuing negative publicity, OFAC decided to settle once again, forcing HSBC to pay $1.9 billion in fines.[49] "As big as the $1.9bn penalty looks, it could have been much worse,"[50] Robert Peston, a *BBC* business editor, commented. Peston further explained that OFAC had essentially put HSBC on probation for funneling billions of dollars to terrorists. This was clearly the preferable option for HSBC, because "if HSBC had been indicted for these offences, that would have meant that the US government and others could no longer have conducted business with it, which would have been humiliating and highly damaging."[51] OFAC explained that this option was also preferable to the US, since the bank "had taken on new senior management," and OFAC again had not "found one bank official or any collection of bank officials acting together that were doing this on purpose."[52] However, in 2016, the House of Representatives Committee on Financial Services found that OFAC decided to settle *not* because it thought the case would be difficult to win, but rather "because senior DOJ leaders were concerned that prosecuting the bank 'could result in a global financial disaster.'"[53]

While certainly the government ought to avoid causing a global financial disaster, banks as a result simply have not been held accountable for financially aiding terrorists. This inexcusable lack of government prosecution culminated in the ATA finally being used in civilian suits[54] against the biggest offenders in the industry, including HSBC and Credit Suisse. Gary Osen, one of the lawyers for the plaintiffs in the *Linde* and *HSBC* cases, explained this need to use the ATA: "The government settlements don't connect the dots between the evidence of widespread concealment of the defendants' dealings with [those terrorists] financed by those [ ] banks. [So our suits are] connecting the dots."[55]

A Viable Solution

In the 16 years since the establishment of OFAC, and in the 12 years since the first ATA lawsuit was filed, there has not been a significant drop, if any, in terrorists using banks to help finance their activities.[56] However, there is an alternative way to pressure banks into adhering to sanctions that lies in the greater domain of anti-money laundering, and not just in the domain of counterterrorism financing: involving rating agencies. The most effective measure has rating agencies take into account OFAC violations and pending ATA lawsuits when calculating a bank's rating.

Rating agencies are some of the most powerful players in finance, giving investors an idea of which investments are safest.[57] When a rating agency highlights a serious situation, it downgrades a bank's rating, and this downgrade has a "cooling effect" on investment. For this reason, large financial institutions, like banks, put high stock in their ratings. In the past, such as in the 2008 sub-prime mortgage crisis, rating agencies were "very lax" on financial institutions, leading to disaster:

> In the run-up to 2008, a staggering proportion of mortgage-based debts were rated AAA, when in fact they were junk. The same goes for groups such as Enron, Lehman Brothers and AIG. Days before they went bust, [the big three rating agencies] all still rated these failing companies as safe investments.[58]

The ratings agencies have been similarly unresponsive to the allegations of banks financially assisting terrorists: none of the banks looked at thus far[59] have been downgraded as a result of their OFAC offenses or on account of the ATA lawsuits pending against them,[60] which suggests the agencies do not think such violations and lawsuits affect a bank's viability.[61] This consistently lax attitude toward the violations inadvertently encourages banks to continue their activities that violate OFAC sanctions, knowing that its rating will not be affected.

Most banks care so much about their rating that they pay up to $2.5 million just to be rated.[62] "The lack of objective [] sources, as well as falling investment in research, is expected to ensure the agencies play a vital role in global financial markets" even though some bankers are "increasingly asking clients for the flexibility not to peg investments to credit ratings."[63] While this change of heart may come to fruition in a few years, for now investors still do care about a bank's rating, and, in turn, banks care about their rating. Consequently, rating agencies could effectively pressure banks into changing their behavior, and in turn, cut off terrorism's cash flow.

One way to ensure rating agencies take OFAC violations and pending ATA lawsuits into account when deciding a bank's rating is by properly regulating rating agencies' methodologies. Congress took a step in this direction when in 2006 it passed the Credit Rating Agency Reform Act, allowing the Securities and Exchange Commission (SEC) to regulate certain practices of rating agencies.[64] Then, in 2010, Congress passed the Dodd-Frank Act, creating the Office of Credit Ratings (OCR) within the SEC to "enhance the regulation, accountability, and transparency of ratings agencies."[65] The Dodd-Frank Act required OCR to monitor rating agencies to (a) ensure the protection of users of credit ratings; (b) promote accuracy in credit ratings; (c) ensure that credit ratings were not unduly influenced by conflicts of interest; and (d) guarantee that there was greater transparency and disclosure to investors.[66] Thus, presently, there is a legal framework for regulating rating agencies methodologies. Nevertheless, no regulation has targeted the rating agencies' methodologies specifically,[67] and so further regulations should encapsulate such guidance.

A rating agency's downgrade of a bank's rating for financing terrorism will effectively dissuade banks from violating sanctions, since banks care a great deal about their rating.

This new regulatory regime would include a mandate forcing rating agencies to factor OFAC violations and ATA lawsuits into their ratings of banks. When the DOJ commences an investigation into a bank for terrorism financing, or when they settle, a rating agency would be required by law to factor this new information into its rating, likely downgrading it. While proposing specific legislation is beyond the scope of this paper, the main point is that the government offices that already regulate rating agencies should compel them to define the effect of financing terror on a bank's viability. If rating agencies are compelled to take these illegal activities into account, it will provide a strong incentive for banks to stop funneling money to terrorists as their bottom line drops.

Such consideration would be consistent with each rating agency's pledge to rate the quality, or "creditworthiness," of investments.[68] An OFAC violation can significantly affect a bank's viability, and a bank's rating ought to reflect that. Although OFAC has yet to prosecute a bank, Congress can still increase the fines for those that violate OFAC sanctions at will, as it has done previously,[69] or compel OFAC to prosecute rather than settle with offending banks. Both of these possibilities significantly threaten the viability of banks, and aside from the moral obligation to obstruct terrorism, rating agencies have a professional obligation to rate these financial institutions fairly.

In addition, it is unclear how the Supreme Court will come out in a post-*Jesner* era regarding the use of the ATA in suits against banks for helping to finance terrorism. If the Court accepts an expansive interpretation of the ATA, it will most certainly affect a bank's viability, as banks will then be subject to countless other suits. Furthermore, banks will have to pay out treble damages under the ATA,[70] forcing a bank to likely settle many claims. Such hefty payments will certainly impact on a bank's "creditworthiness," and should certainly be reflected in its rating.

In the 16 years since 9/11, the threat of terrorism has not dropped; it has risen, and the War on Terror has yet to produce significant results. [71] Nonetheless, there are battles to be won on other fronts. Properly regulating ratings agencies so that they consider a bank's participation in terrorist acts is one such battle. A rating agency's downgrade of a bank's rating for financing terrorism will effectively dissuade banks from violating sanctions, since banks care a great deal about their rating. This is especially the preferable alternative, since in the close to two decades since the establishment of OFAC and the filing of civilian lawsuits under the ATA, banks seem to be less hindered by such lawsuits, or the increased fines by OFAC. While anti-money laundering and financial counterterrorism are not synonymous, counterterrorism battles can be fought – and won – using the weapons of anti-money laundering.

Notes

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2 Tracy Kitten, "Terrorist Financing a Growing Worry for US Banks," Bank Info Security, March 16, 2016, http://www.bankinfosecurity.com/interviews/terrorist-financing-growing-worry-for-us-banks-i-3125.
3 Paul Barrett, "The Big Bet to Hold Banks Liable for Terrorism," *Bloomberg Businessweek*, February 19, 2015, https://bloom.bg/2N3zD9v.
4 18 U.S.C. § 2333(a).
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6 Barrett, "The Big Bet to Hold Banks Liable for Terrorism."
7 18 USC. § 2333(a).
8 Barrett, "The Big Bet to Hold Banks Liable for Terrorism."
9 *Boim v. Holy Land Foundation*, 291 F.3d 1000 (2002).
10 *Boim v. Holy Land Foundation*, 549 F.3d 685, 690 (2008).
11 *Jesner v. Arab Bank, PLC*, Docket No. 16-499, http://www.scotusblog.com/case-files/cases/jesner-v-arab-bank-plc/.
12 Alison Frankel, "Human Rights Lawyers Look for Silver Lining in Kiobel Black Cloud," *Reuters*, April 17, 2013, https://reut.rs/2KJhHnM.
13 28 U.S.C. § 1350.
14 *Kiobel v. Royal Dutch Petroleum*, 133 S. Ct. 1659, 1669 (2013).
15 Ibid. Note, there is a Circuit split in the reach of the ATS. See *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 120 (2d Cir. 2010); *Flomo v. Firestone Nat. Rubber Co., LLC*, 643 F.3d 1013, 1021 (7th Cir. 2011); *Doe VIII v. Exxon Mobil Corp.*, No. 09-7125 (D.C. Cir. 2011).
16 "HSBC Case," Osen Law LLC, Practice Areas, Anti-Terrorism Act (ATA), http://www.osenlaw.com/case/hsbc-case.
17 Ibid.
18 *Freeman v. HSBC Holdings PLC*, 1:14-cv-06601, https://www.courtlistener.com/docket/4323872/freeman-v-hsbc-holdings-plc/.
19 "Arab Bank Case," Osen Law LLC, Practice Areas, Anti-Terrorism Act (ATA), http://www.osenlaw.com/case/arab-bank-case.
20 Ibid.
21 *Linde v. Arab Bank, PLC*, 04-cv-2799 and related cases, April 8, 2015, https://bit.ly/2zpRntp.
22 Eliot Kim, "Summary: Second Circuit Opinion in Linde v. Arab Bank," *Lawfare*, February 26, 2018, https://www.lawfareblog.com/summary-second-circuit-opinion-linde-v-arab-bank.
23 Ibid.
24 Ibid.

25 See Sean Savage, "Supreme Court Will Not Hear Case regarding American Victims of Palestinian Terror," *JNS*, April 2, 2018, https://www.jns.org/u-s-supreme-court-will-not-hear-case-on-american-victims-of-palestinian-terror/. Although the case is not indicative of banking institutions, the decision states "that the victims needed to show they were specifically targeted or that the attackers intended to harm U.S. interests," to use the ATA.

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32 Ibid.

33 DOT, OFAC, Resource Center, Financial Sanctions, Civil Penalties and Enforcement, "Additional Select Settlement Agreements," https://bit.ly/2J84HCw.

34 Barrett, "The Big Bet to Hold Banks Liable for Terrorism." In 2009, Credit Suisse paid $536 million in fines. In 2010, Royal Bank of Scotland paid $500 million, and Barclays paid $298 million. In 2012, Standard Chartered paid $667 million, and HSBC, $1.9 billion.

35 See note 33.

36 Claudio Gatti and John Eligon, "Iranian Dealings Lead to a Fine for Credit Suisse," *New York Times*, December 15, 2009, https://www.nytimes.com/2009/12/16/business/16bank.html.

37 Department of Justice, Office of Public Affairs, News, "Credit Suisse Agrees to Forfeit $536 Million in Connection with Violations of International Emergency Economic Powers Act and New York State Law," December. 16, 2009, https://www.justice.gov/opa/pr/credit-suisse-agrees-forfeit-536-million-connection-violations-international-emergency.

38 Ibid.

39 Ibid.

40 Ibid.

41 Ibid.

42 CBS News, "Why No Prosecution for HSBC Money Laundering?" *YouTube*, December 11, 2012, https://www.youtube.com/watch?v=4C05S0pVKQE.

43 "FINRA Fines Credit Suisse Securities (USA) LLC $16.5 Million for Significant Deficiencies in its Anti-Money Laundering Program," FINRA, December 5, 2016, https://bit.ly/2hRJ7rl.

44 Baker & Hostetler, "$1.1 Billion and Counting – The New Era of OFAC Enforcement," *Lexology.com*, March 4, 2014, https://bit.ly/2NBPg8W. In this context, "Congress [moved the] cap [from] $11,000 to $250,000 per violation or twice the value of the underlying transaction."

45 DOT, OFAC, Resource Center, Financial Sanctions, Civil Penalties and Enforcement, Documents, Settlement Agreement HSBC Holdings PLC, December 10, 2012, https://bit.ly/2KMXrld.

46 Bank Melli provides banking services in Iran and internationally. "Company Overview of Bank Melli Iran, Inc.," *Bloomberg*, https://bloom.bg/2N0BZFU.

47 HSBC Settlement, note 45. Other banks that also used evasive tactics include: (1) Barclays, which used "a method called 'cover payments' to 'circumvent US legislation [even though [m]oral risk exists if we carry on using cover payments, but that is what the industry does;'" and (2) Standard Chartered, which stated that while "continuing to do business covertly… exposed 'management…to…serious criminal liability.' The Standard Chartered executive in London allegedly responded: 'You f---ing Americans, who are you to tell us, the rest of the world, that we're not going to deal with the Iranians?'" See Barrett, "The Big Bet to Hold Banks Liable for Terrorism."

48 "US Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History," US Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, July 17, 2012, available at https://bit.ly/2N4AeYa.

49 HSBC Settlement, note 45.

50 Robert Peston, "HSBC to Pay $1.9bn in US Money Laundering Penalties," *BBC*, December 11, 2012, http://www.bbc.com/news/business-20673466.

51 Ibid.

52 CBS News, "Why No Prosecution for HSBC Money Laundering."

53 "Too Big to Jail: Inside the Obama Justice Department's Decision Not to Hold Wall Street Accountable," US House of Representatives, Committee on Financial Services, July 11, 2016, http://financialservices.house.gov/uploadedfiles/07072016_oi_tbtj_sr.pdf. See also Kevin McCoy, "Report: DOJ Overruled Recommendation to Prosecute HSBC," *USA Today*, July 11, 2016, https://usat.ly/2u9UvVp.

54 See note 16.

55 Barrett, "The Big Bet to Hold Banks Liable for Terrorism."

56 Ibid.

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59 Only S&P ratings of the banks mentioned in this article will be looked at here. Those ratings include Credit Suisse: A, positive; HSBC: AA-, negative;

Arab Bank: BB-, negative, https://www.standardandpoors.com/en_US/web/guest/home.

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61 See Reem Heakal, "What is a Corporate Credit Rating?" *Investopedia*, http://www.investopedia.com/articles/03/102203.asp.

62 Ibid. "In theory, this [payment] creates a conflict of interest, because it gives the agency an incentive to give the companies the rating they want...[but also] the agencies are only as effective as their clients are honest."

63 Shankar Ramakrishnan, "Influence of Ratings Agencies Hard to Dismiss," *Reuters*, July 2, 2012, https://reut.rs/2L5epaC.

64 Denise Finney, "A Brief History of Credit Ratings Agencies," *Investopedia*, June 4, 2018, http://www.investopedia.com/ask/answers/102814/who-regulates-credit-rating-agency.asp.

65 "About the Office of Credit Ratings," SEC, https://www.sec.gov/ocr/Article/ocr-about.html.

66 Ibid.

67 Ramakrishnan, "Influence of Ratings Agencies Hard to Dismiss."

68 Kingsley, "How Credit Ratings Agencies Rule the World."

69 See note 44.

70 18 U.S.C. § 2333(a).

71 Pamela Engel, "The Terrorist Threat is Worse Now than it was before 9/11," *Business Insider*, September 11, 2016, http://www.businessinsider.com/are-we-safer-now-than-on-911-2016-9.