

## ***DEBUNKING THE PORTFOLIO OF A FRAUDSTER***

Fraudsters who sell bogus investment instruments frequently tell their clients, or better stated, their potential victims, that their money will be pooled with other privileged individuals. This pooled money will be invested in secret programs that is usually reserved for top financiers on Wall Street, or other high ranking individuals at other global financial centers. Very convincingly they will describe investments in **notes, Prime Bank Notes** as they have been called, **bank guarantees, standby letters of credit, medium term notes (MTN's)** and **bank debentures**. All of these are dressed to fit into **high yield investment programs (HYIP)**. They will describe a secret secondary market, known only to a very select few. As a matter of fact, this secondary market is so secret that perhaps even your own banker will not know of it, or if he does, he cannot admit that he has knowledge of its existence.

There is usually a mystique enshrouding the investment. It will generate extremely high returns, perhaps, 150 to 200% per year and it will be "risk free". Although esoteric high-ranking individuals from all around the globe will be trading in these instruments offshore banks will make the actual trades. These trades will be made discretely and unannounced on a worldwide secret exchange. The United Nations will have endorsed these trades as will the International Chamber of Commerce, the World Bank, the Federal Reserve, the International Monetary Fund and even the FBI and the US Secret Service are involved with this clandestine operation.

Now let's briefly discuss each of these investment instruments.

### **Prime Bank Notes**

First, above all, the Securities and Exchange Commission (SEC) in a bulletin warned: **So-Called "Prime" Bank and Similar Financial Instruments** has alerted investors to the recent rise in possibly fraudulent schemes involving the issuance, trading or use of so-called "prime" bank "prime" European bank or "prime" world bank financial instruments. These instruments typically take the form of notes, debentures, letters of credit, and guarantees. Also typical in the offer of these instruments is the promise or guarantee of unrealistic rates of return, for example, a 150% annualized rate of "profits". Common targets of these schemes include both institutional and individual investors, who may also be induced to participate in possible "Ponzi" schemes involving the pooling of investors' funds to purchase "prime" bank financial instruments.

In an Interagency Advisory dated October 21, 1993, supervisory agencies were warned of the use of schemes involving "prime" bank financial instruments. It noted that individuals have been using the names of large, well-known domestic and foreign banks, the World Bank and central banks in connection with their "Prime

Bank” schemes. Furthermore, these named institutions had no knowledge about the unauthorized use of their names or the issuance or anything akin to “Prime Bank” type financial instruments. Moreover, the staffs of the federal supervisory agencies are unaware of the legitimate use of any financial instrument called a “Prime Bank” note, guarantee, letter of credit, debenture, or similar type of financial instrument.

It continued with: Financial institutions should watch for the attempted use of traditional types of financial instruments that are referred to in an unconventional manner, “such as a letter of credit referencing forms allegedly produced or approved by the International Chamber of Commerce.” It referred to “ICC 3034 and ICC 3039 letters of credit issued by a domestic or foreign bank. Both of these are bogus!

Although the term “prime bank” has no generally accepted meaning it is usually associated with banks of the highest financial standing, whose reputations and standards are regarded as sources of merit and establishes comfort levels to investors.

Fraudsters have added the adjective “top” to banks and have categorized them as top, 25, 50 and 100 Western banks. It has added credibility to a bogus scheme whose basis is fraudulent and criminal.

### **Bank Guarantees**

Foreign banks issue bank guarantees much like US banks issue standby letters of credit. There are many types of bank guarantees and basically they serve the same overall purpose as the standby letters of credit, namely **protection against nonperformance.** Following is a list of the most common:

- ◆ **TENDER GUARANTEE**
- ◆ **PERFORMANCE GUARANTEE**
- ◆ **MAINTENANCE GUARANTEE**
- ◆ **REPAYMENT GUARANTEE**
- ◆ **RETENTION GUARANTEE**
- ◆ **PAYMENT GUARANTEE OR PERSONAL GUARANTEE**

It is with the **Payment or Personal Guarantee**, however, that fraudsters usually set their traps.

Important: Proper bank guarantees are issued subject to the International Chamber of Commerce (ICC) Uniform Rules for Demand Guarantees, Publication No. 458 (1992).

Let’s assume that **Party A** (the applicant) agrees to pay **Party B** (the beneficiary) a certain amount by a certain date and has his bank issue a guarantee on his behalf.

First, the guarantee must come from a reputable bank. The guarantee is subject to the rules of the country in which it was issued, the jurisdiction or province where the issuing bank is located and of even more importance, the bank and the ICC Uniform Rules for Demand Guarantees, Publication No. 458.

Although an applicant can instruct a bank to execute a guarantee on his behalf, the ICC458, Article 7a clearly states, *“Where a guarantor has been given instructions for the issue of a guarantee but the instructions are such that, if they were to be carried out, the guarantor would by reason of law or regulation in the country of issue be unable to fulfill the terms of the guarantee, the instruction shall not be executed and the guarantor shall immediately inform the party who gave the guarantor his instructions by telecommunication...”*.

Further to this, Article 27 states, *“Unless otherwise provided in the guarantee or counter guarantee, its governing law shall be that of the place of business of the guarantor or instructing party (as the case may be), or, if the guarantor or instructing party has more than one place of business, that of the branch that issued the guarantee or counter guarantee”*.

Article 28 clearly warns, *“Unless otherwise provided in the guarantee or counter guarantee, any dispute between the guarantor and the beneficiary relating to the guarantee or between the instructing party and the guarantor relating to the counter guarantee shall be settled exclusively by the competent court of the country of the place of business of the guarantor or instructing party (as the case may be), or, if the guarantor or instructing party has more than one place of business, by the competent court of the country of the branch which issued the guarantee or counter guarantee”*.

Now, let's get back to the responsibility of Party **A** to Party **B**. **A** agrees to pay **B**, for example, \$100,000 by December 30, 2001. If **A** defaults and does not pay **B** then **B** would take the guarantee and the drafts attached to the bank for payment, as would be indicated in the text of the guarantee. Now if **A** would pay **B** sometime before December 30, 2001, the guarantee would no longer be valid since **A** fulfilled his obligation to **B** in accordance with the terms of the guarantee. And, it is in this instance that fraudsters dupe the uninformed into buying a guarantee that is no longer valid.

For example, **B** (the fraudster) approaches Mr. **X** and offers him a bank guarantee whose period of validity is December 30, 2001. **B** concocts a story that he does not want to wait until December 30 for his money and offers **X** the guarantee for \$50,000. **X** agrees since he would be paying \$50,000 for a guarantee whose value, he believes, is \$100,000. Unbeknown to **X**, **A** has already fulfilled his obligation to **B**, he will not be in default and therefore the guarantee cannot be presented to the bank on December 30. So, in this instance **X** has purchased a

guarantee that is not valid since the applicant **A** had already fulfilled his obligation to **B**, the beneficiary.

Another scheme fraudsters use is to transfer a bank guarantee to a third party when there is no provision in the guarantee for a transfer. In fact, there is no provision in the **ICC 458** for a transfer of a bank guarantee. The closest provision to a transfer is in Article 4 where it addresses the assignability of a guarantee: *“The Beneficiary’s right to make a demand under a Guarantee is not assignable unless expressly stated in the Guarantee or in an amendment thereto. This Article shall not, however, affect the Beneficiary’s right to assign any proceeds to which he may be, or may become, entitled under the Guarantee.”*

So, a fraudster who claims to have a bank guarantee, already in existence and **transferable** at a discount to a third party, whose identity he did not know prior to meeting him, must be telling an untruth, at best!

### **Standby Letters of Credit**

Standby letters of credit are bank instruments that are regulated by the *International Chamber of Commerce (ICC) Uniform Customs and Practice, Publication No. 500, the International Standby Practices ISP98, ICC Publication No. 590* and the *Uniform Commercial Code (UCC)*. The ICC 500 and the ICC 590 are sets of **rules** and the UCC is **law**.

Standby letters of credit are quite versatile. The ISP98 offers the following descriptive list, however, keep in mind that this is only a list of convenience and it could be expanded as needed depending on a specific function or application required.

- ◆ **Performance Standby**
- ◆ **Advance Payment Standby**
- ◆ **Bid Bond/Tender Bond Standby**
- ◆ **Counter Standby**
- ◆ **Financial Standby**
- ◆ **Direct Pay Standby**
- ◆ **Insurance Standby**
- ◆ **Commercial Standby**

Standby letters of credit are conditioned upon default or non-performance by the applicant, the party who had the credit issued by his bank to the beneficiary. These instruments, of themselves, are not negotiable nor is the obligation they represent readily transferable. The **ICC 500 Article 48 b**, states *“A credit can be transferred only if it is expressly designated as “transferable” by the issuing bank”* and, c, *“The Transferring bank shall be under no obligation to effect such transfer except to the extent and in the manner expressly consented to by such bank.”*

The **ISP98 Rule 6.02** states “a. A standby is not transferable unless it so states, b. A standby that states that it is transferable without further provision means that drawing rights: i. may be transferred in their entirety more than once, ii. may not be partially transferred, and iii. may not be transferred unless the issuer (including the confirmer) or another person specifically nominated in the standby agrees to and effects the transfer requested by the beneficiary.

As with the bank guarantee described above, fraudsters oftentimes will sell a standby letter of credit to an uninformed party for a small percentage of its face value. Never revealing that the credit is no longer valid since the applicant has already fulfilled his obligation to the beneficiary.

Another facet of a fraudster’s scheme is to offer investment opportunities through standby letters of credit and independent bank guarantees. Remember these instruments expire and of themselves are not negotiable, and, furthermore, the obligation that they represent is not readily transferable.

The fraudster will represent that these instruments are discounted, have coupons attached and pay interest. None of this is true! These instruments cannot be bought, sold or traded and there is absolutely no secondary market in which they can be traded. Any investment program that states it invests in discounted standby letters of credit or zero standby letters of credit is blatantly fraudulent.

### **Medium Term Notes (MTN’s)**

One must be careful to differentiate among **Prime Bank Notes (PBN’s)**, **Prime Bank Debentures (PBD’s)** and **Medium Term Notes (MTN’s)**. The two former do **not** exist but MTN’s do. One must be careful to discern the difference(s) since some times PBN’s and PBD’s are linked together and the fraudster will package them as MTN’s.

In an article entitled, “**Anatomy of the Medium Term Note Market**” published in the “Federal Reserve Bulletin”, Volume 7, Number 8, 1993 which appeared in a monthly publication of the Publications Committee of the Board of Governors of the Federal Reserve System, Washington, D.C. (you can log on to their website at [www.federalreserve.gov](http://www.federalreserve.gov), or phone at 202 452 3244), there is much discussion of MTN’s.

Following are some of the topics discussed:

- ◆ **Mechanics of the Market**
- ◆ **Discreet Funding with MTN’s**
- ◆ **Reverse Inquiry in the MTN Market**
- ◆ **Principal Transactions**

◆ **EURO-MTN's**

There is nothing in that bulletin that indicates the validity or credibility of the transactions that fraudsters promote in their **High Yield Investment Programs (HYIP)**. Again, the fact that MTN's exist does **not** under any circumstances suggest, imply nor prove that the HYIP programs that fraudsters promote utilizing MTN's exist.

Here are a few capsulized comments extracted from that bulletin that are for informational purposes only!

"...MTN's have emerged as a major source of funding for U.S. and foreign corporations, federal agencies, supra-natural institutions and foreign countries."

"Although MTN's are generally offered on an agency basis, most programs permit other means of distribution. For example, MTN programs usually allow the agents to acquire notes for their own account and for resale at par or at prevailing market prices."

"The MTN market also provides corporations with the ability to raise funds discreetly because the issuer, the investor, and the agent are the only market participants that have to know about a primary transaction."

"Another advantage of MTN's is that investors often play an active role in the issuance process through the phenomenon known as reverse inquiry." "... (here) the investor relays the inquiry to an issuer of the MTN's through the issuer's agent. If the issuer finds the terms of the reverse inquiry sufficiently attractive, it may agree to the transaction even if it was not posting rates at the maturity that the investor desires."

"...in the **distribution** process...a larger share of MTN's are sold on a **principal** basis, rather than on an agented basis. In a **principal** transaction, the MTN dealer purchases an MTN for its own account and later resells it to investors. In a "riskless principal" transaction, when the dealer buys the MTN, it has already lined up an investor that has agreed to the terms of the resale."

"MTN's have become a major source of financing in international financial markets, particularly in the Euro-market. Like Euro-bonds, Euro-MTN's are not subject to national regulations, such as registration requirements. Although Euro-MTN's and Euro-bonds can be sold through the world, the major underwriter and dealer are located in London, where most offerings are distributed."

*It is important to be repetitive here: the above excerpts are for informational purposes only and under no circumstances should one believe that HYIP programs that are promoted by fraudsters in the buying and selling of MTN's are real. They are not!*

## **Bank Debentures**

A bank debenture is an unsecured instrument of medium to short term. Frequently companies and banks issue debentures or bonds in order to raise capital. If the company is solid and investment rated its debentures will be traded on major markets and the financial media will report their issuance. The perceived value of the company will reflect the value of the debenture as well as the trading price. It is interesting to note that the financial strength of a company or its high credit rating will determine a relatively low return and concomitantly reflect a low risk. Conversely, a company with a low credit rating would issue its debentures with a higher rate of return and with a greater level of risk.

Banks are accustomed to raising capital by issuing debentures, hence, the phrase bank debenture. Rating agencies such as Standard & Poor's or Moody's predetermine the ratings assigned to the banks based on the medium and short term credit risks of the institution. Longer term returns on investment grade bank debts are compared to U.S. Treasury securities and are pegged at "one basis" point above them. There is virtually no secondary market for the resale of these securities since most of the investors hold the paper until it matures.

There is no "secret" to debentures. These are unsecured promises to pay the investor backed only by the credit rating of the bank or company issuing the paper. These debentures are like corporate bonds and are issued under a deed of trust or indenture. The issuer is obligated by written agreement (indenture) to pay the holder a specific sum at specified times, either semi annually or at maturity.

Banks and corporations do not issue their paper at discount nor do they pay exorbitant rates of return since these debentures are sold at full face value and pay only the interest indicated.

The extraordinary returns purported by fraudsters are nothing but scams in disguise of legitimate instruments such as bank debentures.

**Next on the menu of debunking the portfolios of fraudsters are the esoteric terms and documents that they require from potential victims.**

### **Blocked Funds Letters or Blocked Assets Agreements**

Intended victims are asked to transfer their money or their assets into a **Blocked Funds Letter** that will be issued by a bank of the fraudster. The letter will secure your funds or assets for the fraudster but not for you.

### **Buy Sell Agreements**

The usage of the phrase Buy Sell Agreement has become a gimmick of the fraudster. By taking the concept as it applies to mortgage loans, stockholders agreements and MTN's (see: page 4 above, "...in the **distribution** process..."), the fraudster influences and convinces the potential victim that there will be little or no risks in his investment since that which he is buying is already sold to another buyer in waiting.

### **High Yield Investment Programs (HYIP)**

High Yield Investment Programs or HYIP that purport that there is little or no risk in high yield programs that are coupled with the term "safe" investments are a hallmark of fraud. Although it is possible to realize speculative returns on non-investment rated instruments it is **not** possible to do so without risk, and a great risk at that.

If you see any of the following terms or phrases, STOP!

***International Chamber of Commerce (ICC) NCND: non-circumvention and non-disclosure issued by the ICC.***

For years the ICC has denied that they had ever issued such a document (ICC 460/434). It is only recently that the ICC has come out with "The Model Occasional Intermediary Contract".

***References to International Chamber of Commerce publications: ICC 400, ICC 500 and ICC 600.***

The ICC 500 has replaced the ICC 400 and there is no ICC 600. The NCND references do not appear in the ICC 400 or the 500.

### ***Interest Rates of 2% + Per Week***

Investments that would guarantee a yield of 2%+ per week with no risk are absolutely absurd. They play with the imagination of the uninitiated and prey on the greedy. If such opportunities existed many countries would invest in these programs just to deplete their national debt.

### ***Letters of Intent (LOI) and Letters of Commitment***

You are to provide a letter of intent just to show that you have the financial wherewithal and you will make those funds available to "them" for one of their trading programs. You can be assured that once you have submitted such a revealing document attesting to your financial wealth that it will be shown to

numerous individuals to get them to commit their funds to the fraudsters make-believe trading program.

Question: How many would let your next door neighbor know of your personal financial holdings, or even a relative, never, of course, a complete stranger?

### ***References to Under Penalty of Perjury***

Investment proposals that state the offer is being made under penalty of perjury is a figment of the imagination of the fraudster. Such statements must be made under oath to be applicable.

### ***Reserved Funds***

Here the fraudster insists that the funds remain in the investor's account and are solely under his signature control at all times and the investment trades take place in another bank.

Question: If the fraudster has such excellent credit why would he require your account especially since your funds will never be moved? This writer has never seen one of these schemes work – ever!

### ***Trust or Foundation***

The fraudster requests that you open an account with a Trust or Foundation. They will have access to your account even though your name appears on the account.

Question: Would you give a perfect stranger a large sum of money, in another country with access to your funds even though your name appears on the account?

### ***After thought:***

After having read the above alerts if when listening to the pitch of a fraudster we would separate it into two distinct parts; the first part would be meaningless entertainment and the second part reason and logic, we could then remind ourselves of a brief aphorism of Kahlil Gibran from his ***Sand and Foam***, "*Half of what I say is meaningless; but I say it so the other half may reach you*".