

**VAT FRAUD MUTATION, PART 3:
“PULL” MISSING TRADER FRAUD AND
DEUTSCHE BANK**

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CO2 MTIC fraud is an exceedingly fast moving, quickly mutating fraud. Litigation has moved rapidly from the UK to Germany. The litigation line stretches from *Dosanjh's* £39m (€41,039,261) fraud in the first three months of 2009 to *CITIBank's* £9,893,821 fraud in July 2009, and then jumps to Germany with *Deutsche Bank's* €20,000,000 fraud from September 2009 through February 2010. This cross-border fraud has met cross-border enforcement. HMRC directly participated in German enforcement by identifying fraud chains in the UK that completed German carousels and funneled CO2 permits back to Germany after passing through the UK.

The first part of this paper focused on *Dosanjh*. This case presented a very traditional MTIC fraud pattern. The fraud was designed and controlled by a mastermind who created redundant chains of missing traders, buffers, and payment platforms. *Dosanjh* assured that trades were consummated quickly, and that profits were quickly transferred off shore. Records of the Morgan Stanley trades indicate that *Dosanjh* directly (personally) engaged with “blue chip” buyers to assure payment. *Dosanjh's* demise fed a MTIC mutation.

The *CITIBank* case in the second part of this paper provides a glimpse at the mutation. The critical element is *control*. *Dosanjh's* “blue chip” buyers came to recognize that *Dosanjh's* *control* over his CO2 fraud chains presented a risk to his buyers. Not only did the chance of detection create a potential liability, but *Dosanjh's* control gave him leverage over profit margins (and the related performance bonuses of the individuals within the financial institutions he dealt with). *Dosanjh* sold to both *CITIBank* and *Deutsche Bank*.

Eighty days prior to *Dosanjh's* arrest in August 2009 supply chain transitions were taking place. By June/ July 2009 both *CITIBank* and *Deutsche Bank* were using SVS Securities to buy underpriced CO2 permits from UK fraud chains. *Dosanjh* was under surveillance. Regulators abruptly closed his Hong Kong payment platform (April 9, 2009). By May 2009 *Dosanjh* was effectively out of the CO2 business.

The third part of this paper completes this discussion. It looks at the *Deutsche Bank* case. The zero-rating of CO2 permits (August 1, 2009) by the UK blocked the fraud in the UK. In response *Deutsche Bank* reversed its plumbing. Instead of having permits flow out of the UK (producing extraordinary UK reclaims), permits now flowed into the UK from Germany (producing extraordinary German reclaims). The UK fraud moved to Germany.

The German CO2 landscape differed from that in the UK. Adapting to this difference solidified the MTIC mutation this paper examines. Two elements coalesce to solidify it: (a) there was neither a *Dosanjh* nor an SVS Securities in Germany ready to provide large volumes of underpriced CO2 to *Deutsche Bank*, and (b) the *Deutsche Bank* CO2 trading desk

realized that it did not need to have dedicated *suppliers* of CO2 if it establish control over underpriced CO2 *marketplace*. It could easily do this by setting a firm (below market) price for CO2 each morning, and making the price available to a limited number of preferred customers. In this way Deutsche Bank established economic control. An internal mastermind exercised it. The control is indirect. It is no less effective than the control Dosanjh had.

When the mutation represented by the *Deutsche Bank* case is complete a new kind of MTIC is born. Instead of a traditional fraud where an external mastermind controls the flow of underpriced CO2 permits (*Dosanjh*), we have a fraud where an internal mastermind pulls into itself underpriced CO2 permits (*Deutsche Bank*).

Instead of fraudulent permits being *pushed* upon unsuspecting (or careless) bank employees, in *Deutsche Bank* the fraudulent permits are *pulled* into the bank by employees who are well aware of what they are doing.

(3) *Deutsche Bank and the Internal Mastermind*

Deutsche Bank's global carbon trading team is located in the Deutsche Bank London offices. The *Deutsche Bank* case considered in this paper is a German (not a UK) case. An unusual aspect of this case and its factual development is that the CO2 MTIC fraud under review had strong roots in the UK and migrated to Germany when the UK decided to zero-rate CO2. As a result, it is entirely possible that a UK companion case to the German *Deutsche Bank* case could well develop in the near term (covering the period before August 1, 2009). If such a case develops it would most likely resemble the *CITIBank* case.

During 2009 the London-based global carbon team began received letters from HMRC about Deutsche Bank's potential involvement in UK-based CO2 MTIC. Officers made regular visits. Deep concerns were expressed about the bank's potential involvement in fraud.

Mr. Roderick G. Stone, the HMRC's National MTIC coordinator even made a personal visit on November 18, 2009, and a second one on December 17, 2009. Both visits were memorialized (along with other observations on CO2 MTIC fraud) in Mr. Stone's *Witness Statement* for a Frankfurt Regional court case where six men were sentenced for orchestrating CO2 MTIC fraud chains in Germany.¹ The German and UK arms of Deutsche

¹ Regional Court Frankfurt/Main 5/2 KLs; 7510 Js 258673/09 WI; 7 ER 515/09 (GSStA). The frauds involved in this case were associated with chains of CO2 permits that were sold on eventually to the Deutsche Bank. The conspiracy involved VAT evasion of €300 million, and extended from August 2009 through April 2010. The overlaps between this case and the current *Deutsche Bank* case are abundant. Much of the evidence and testimony are expected to be re-applied. The six individuals involved were:

- Claude Bauduin (3 years)
- Robert Peitzmeyer (4 years & 10 months)
- Wayne Stewart Brown (4 years)
- Björn Peitzmeyer (6 years)
- Irfan Musa Patel (7 years & 10 months)
- Franz Mir (4 years)

Bank were implicated. In some cases, the MTIC fraud chains of these individuals fed permits directly into Deutsche Bank, Frankfurt, which passed them along to the Deutsche Bank, London. It is apparent that the cases developed by Frankfurt Chief Prosecutor, Thomas Gonder, against Deutsche Bank and these individuals have benefited greatly from HMRC's cooperation.² The HMRC helped identify fraud chains in the UK that stretched into Germany, and placed Deutsche Bank (both the London and the Frankfurt entities) on clear and specific notice that they were engaged in MTIC fraud in the UK.

During his visits Mr. Stone expressed concern about changes in Deutsche Bank's UK filing position. Prior to January 1, 2009 Deutsche Bank had always been a net VAT payer. As of June 2009 it became a sizeable refund claimant. Why? HMRC wanted to know if this change had anything to do with the fraud on the BlueNext exchange in Paris, where Deutsche Bank was a member, or perhaps it had to do with the French decision of June 10th to exempt CO2 permits (without right of deduction).

Deutsche Bank's first large refund claim in the UK (June 30, 2009) was for £15,142,906. This was followed by a staggering £48,142,906 claim on September 30, 2009. The first refund was honored, but the second was withheld on Mr. Stone's instruction "... pending [the] outcome of HMRC's administrative investigation concerning MTIC fraud

² Nicholas Comfort, *Deutsche Bank Carries Blame in CO2 Fraud, Prosecutor Says*, BLOOMBERG LAW (December 12, 2011).

Deutsche Bank AG, Germany's largest bank, carries some blame for a fraud involving carbon-emissions certificate trades, according to prosecutor Thomas Gonder.

"Deutsche Bank is at least culpably involved," the senior prosecutor said today at the Frankfurt regional court. "The actions couldn't have been taken without the assistance of Deutsche Bank employees."

The bank isn't a defendant at the trial of six managers at emissions-trading companies in what prosecutors call an international scheme to evade value-added tax when trading the certificates with Deutsche Bank. The defendants couldn't have exported the certificates from Germany without Deutsche Bank, Gonder told reporters after his speech.

Karin Matussek, *Six Men Guilty of Tax Evasion in Deutsche Bank CO2 Trades*, BLOOMBERG LAW (December 12, 2011).

Six men were convicted of tax evasion by a German court today following a fraud linked to the sale of carbon-emission certificates to Deutsche Bank AG.

The Six helped to start a chain of trades with the sole purpose of evading value-added tax, Presiding Judge Martin Bach said at a hearing today as he sentenced them to as long as seven years and ten months in jail. Deutsche Bank, which bought the securities, should have known the trades were illegal, he said.

"These sales made no economic sense" and deprived the government of 300 million euros (\$394 million) of income, Bach said at the court in Frankfurt today. "The suspects knew or could have known they were part of a criminal scheme." ...

The men in court today worked at small trading companies that bought certificates from suppliers overseas and then resold them. Each sale generated VAT, which the buyer could reclaim from the tax authorities as a refund.

Deutsche Bank, which bought the allowances, set aside 310 million euros in October in case the government seeks the return of the money.

Germany became the center of that form of tax evasion in mid-2009 after France, the Netherlands and the UK changed their laws to block illicit trading, Bach said. Germany changed its rules in 2010 to end the practice, the judge said.

perpetrated using carbon credits and Deutsche Bank's culpability ... ”³ As of this writing, the UK investigation of this matter does not appear to have closed.

Mr. Stone had very pointed comments to make during his November 18th meeting. He reminded Deutsche Bank's global carbon trading team that they had already been *put on written notice* about involvement in CO2 MTIC fraud in the UK. They had also been told that they were known participants in several CO2 MTIC fraud chains. The *Dosanjh* case was specifically referenced and the purchase of 27,000 CO2 permits from KO Brokers on May 6, 2009 was discussed.

At the time of Mr. Stone's meetings Sandeep Dosanjh and his staff were in jail, although Sandeep's cousin Pardeep Dosanjh remained at large. It is not clear if Pardeep Dosanjh's status was brought up, nor is it clear if the September 8th purchase of 46,000 CO2 permits from KO Brokers' Danish registry was discussed. Mr. Stone did want to know why Deutsche Bank continued to trade in the CO2 market when it appeared to be riddled with fraud. Mr. Stone told the global trading group that by HMRC estimates "... 85% to 95% of the spot market in EU carbon trading was tainted by fraud ... ”⁴

Neither of Mr. Stone's visits deterred Deutsche Bank from participating in the CO2 market. Purchases of CO2 permits (both in London and in Frankfurt) continued, and even accelerated. Each of the national registries where Deutsche Bank had an account continued to be involved in the CO2 trade.⁵ In terms of the UK, the concerns expressed by Mr. Stone may have been brushed aside by the London-based global carbon trading team, because the UK had gone to a zero-rate for CO2 in August. There was no possibility of UK CO2 MTIC frauds any more. Mr. Stone stated as much, but he underscored that there were wider EU concern at stake. In the November 18th meeting he stated:

I also informed them that I was not conducting a criminal investigation, but rather an MTIC fraud administrative investigation to establish the trading chains and to ascertain culpability. ... and that, following the zero-rating of carbon trading for VAT purposes in the UK, carbon credit fraud may still be a

³ Witness Statement of Roderick G. Stone, in as reported in *Head Office Raided in Tax Probe: Deutsche Bank CEO Under Investigation*, SPIEGELONLINE (December 12, 2012) available at: <http://www.spiegel.de/international/business/deutsche-bank-co-ceo-juergen-fitschen-under-investigation-in-tax-probe-a-872563.html>; Stefan Kaiser & Christian Teevs, *Dirty Trade in CO2 Certificates: Crack in German Banking Scandal lead to London* SPIEGELONLINE (December 13, 2012) available at: http://translate.googleusercontent.com/translate_c?depth=1&hl=en&pr...verstrickt-ist-a-872812.html&usq=ALkJrhgXGbP7KC9h3yo8MSo3FKrIn8WStQ

⁴ *Id.*, Witness Statement of Roderick G. Stone at ¶55.

⁵ Deutsche Bank had eleven accounts. Deutsche Bank AG, London had seven accounts: two on the UK registry (1) Deutsche Bank AG, London Branch; and (2) Deutsche Bank AG, London as Custodian for Various Clients. It had two accounts at the German registry: (3) Deutsche Bank AG, London (1974) Personenkonto, and (4) Deutsche Bank AG, London as Custodian for Various Clients (DE). Three more (London) accounts were registered in three other EU countries: (5) Deutsche Bank AG, London Emissions (on the Dutch registry); (6) Deutsche Bank AG, London (ES) (on the Spanish Registry); and (7) HURST Deutsche Bank AG, London Branch (on the French registry). Deutsche Bank AG, Frankfurt had four accounts, all in the German registry: (8) Deutsche Bank AG (1973) Personenkonto; (9) Deutsche Bank AG, Emissionaccount; (10) Deutsche Bank AG Personenkonto 2; and (11) Deutsche Bank AG wg. F+O.

problem in other EU Member States where no action had been taken to combat the issue.⁶

If *nothing Mr. Stone said* on these days slowed Deutsche Bank's active involvement in the CO2 market, it was eventually *something the Frankfurt Chief Prosecutor did* that was successful. Five months later, on April 28, 2010, Chief Prosecutor Thomas Gonder raided the Deutsche Bank's Frankfurt headquarters. The raid extended to 230 other offices and homes. It was focused on finding evidence of CO2 MTIC fraud. 150 suspects were targeted at 50 companies in Germany.⁷ Simultaneous raids took place in other EU member states. All together more than 1,000 enforcement officers were involved.⁸ Almost immediately the Deutsche Bank ceased trading in CO2.

A student of the EU-ETS would know exactly what Mr. Stone, and Mr. Gonder are concerned about in the Deutsche Bank fact pattern. There are two major concerns:

(1) *Deutsche Bank, London* – Deutsche Bank London's July 2009 trading activity is a mirror image of the July 2009 trading activity that forms the basis of the *CITIBank* case. Huge numbers of permits were collected (through SVS Securities PLC and other UK sources) by Deutsche Bank, London. The permits were immediately exported to the BlueNext (generating UK reclaims for Deutsche Bank, London). This activity (which is suggestive of MTIC fraud) stopped almost completely on August 1, 2009, the day the UK adopted the zero-rate. [See figure 8, below.]

(2) *Deutsche Bank, Frankfurt* – After the UK's zero-rate went into effect there were massive *in-flows* of CO2 permits from Deutsche Bank, Frankfurt into Deutsche Bank, London. These transactions did just the opposite of what the Deutsche Bank London transactions accomplished (above). These trades from Germany generated huge VAT reclaims for Deutsche Bank, Frankfurt. These transactions/reclaims stopped immediately after the German raids of April 28, 2010. [See figure 9, below.] Of course the infrastructure to funnel CO2 permits into Deutsche Bank, Frankfurt needed to be assembled (in Germany) – SVS Securities PLC's function needed to be

⁶ *Id.*, Witness Statement of Roderick G. Stone at ¶57.

⁷ For example, one of those pursued was Samir Azizi. His extradition from the US to Germany was finalized when he boarded a plane on April 14, 2015. Aziz is alleged to have stolen €61 million, and was quoted in his extradition hearing:

On the day of the search, on April 28, 2010, I happened to be abroad, really by chance. When I heard that there were raids everywhere in Germany, I did not dare to come back to Germany any more.

Formal Request for Extradition of Samir Azizi, date of birth 8 June, 1989, from the United States of America to the Federal Republic of Germany (May 6, 2014) Case ref. 113 Js 280/10. See also: Richard T. Ainsworth, VAT Fraud and Terrorist Funding: The Azizi Extradition, Part 1 and Part II, 79 TAX NOTES INT'L 517 (August 10, 2015) & 79 TAX NOTES INT'L 747 (August 31, 2015).

⁸ Officers were from the Tax Fraud Investigation Office, the Federal Criminal Police Office, and other domestic and foreign police officers. See: Max Schneider & Stephan Ernst, *Suspected Large Scale German Tax Evasion – Authorities Raid Deutsche Bank and 50 Other Firms*, BILD.COM (April 28, 2010) available at: <http://www.bild.de/news/bild-english/authorities-raid-deutsche-bank-50-other-firms-12363260.bild.html>; Randall Jackson, *German Authorities Investigating VAT Fraud Involving Carbon Permits*, TAX NOTES INT'L (April 29, 2010); Doc 2010-9418 .

replicated in Germany. Some of the efforts to do this were carried out by the six individuals who were convicted of participating in MTIC fraud in Germany in December 2011.⁹ Mr. Stone prepared his *Witness Statement* in support of these convictions.

One further note on what a student of the EU-ETS can find in the data. The EU-ETS clearly shows that the same UK company, SVS Securities, PLC, is not only:

- (a) the conduit for CO2 permit UK *inflows* in scenario (1), but it is
- (b) the conduit for CO2 permit UK *outflows* in scenario (2).

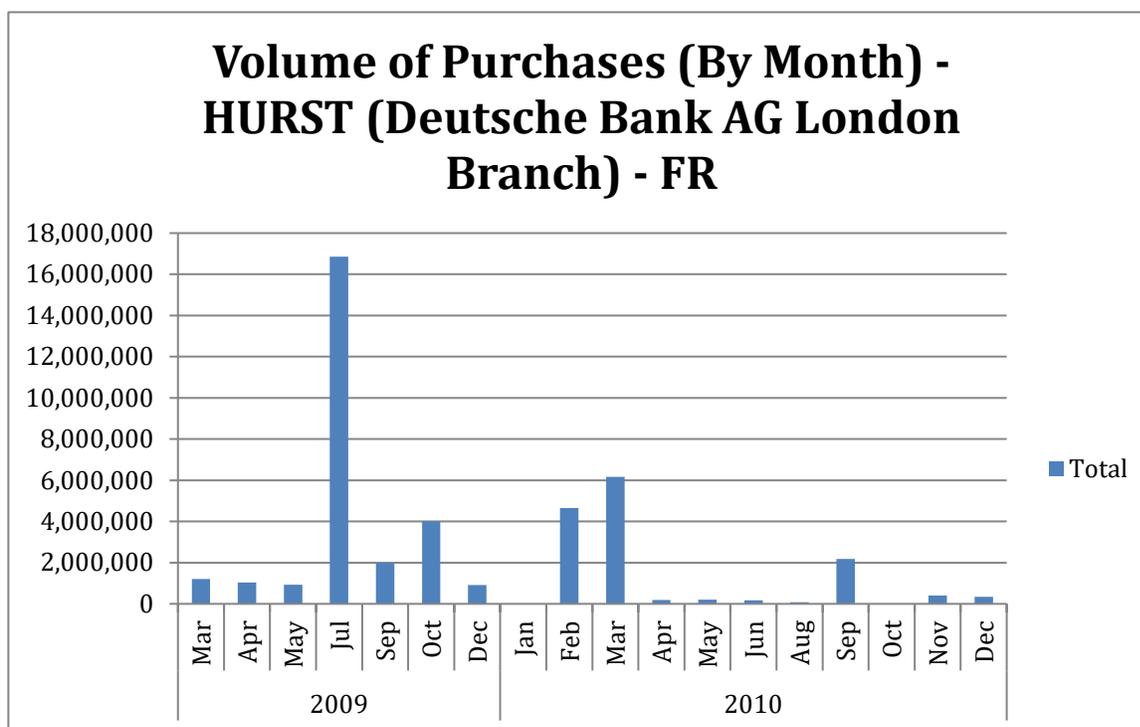
In other words up until August 1, 2009 CO2 permits came *into* Deutsche Bank, London largely through SVS Securities PLC, but after this date CO2 permits left Deutsche Bank London through sales to SVS Securities PLC. The details of the Deutsche Bank/SVS Securities PLC relationship are set out in the following sections.

Deutsche Bank, London. Figure 8 shows the purchases of CO2 permits by the Deutsche Bank London's French registry account. The account is named "HURST, Deutsche Bank, London Branch" in the registry. Almost all of the "purchases" recorded in this account were internal transfers of CO2 permits from other registry accounts of Deutsche Bank, London. The vast majority of these CO2 permits originally came to Deutsche Bank, London through SVS Securities PLC.

All of the sales in July 2009 by HURST were made to the BlueNext (a French entity). As a result, Deutsche Bank, London qualified for sizeable VAT reclaims. This pattern appears to be the factual twin of *CITIBank*. It should be recalled that SVS Securities PLC was the single largest source of CO2 permits for *CITIBank* in July 2009.

Figure 8:

⁹ Regional Court Frankfurt/Main 5/2 KLs; 7510 Js 258673/09 WI; 7 ER 515/09 (GStA).

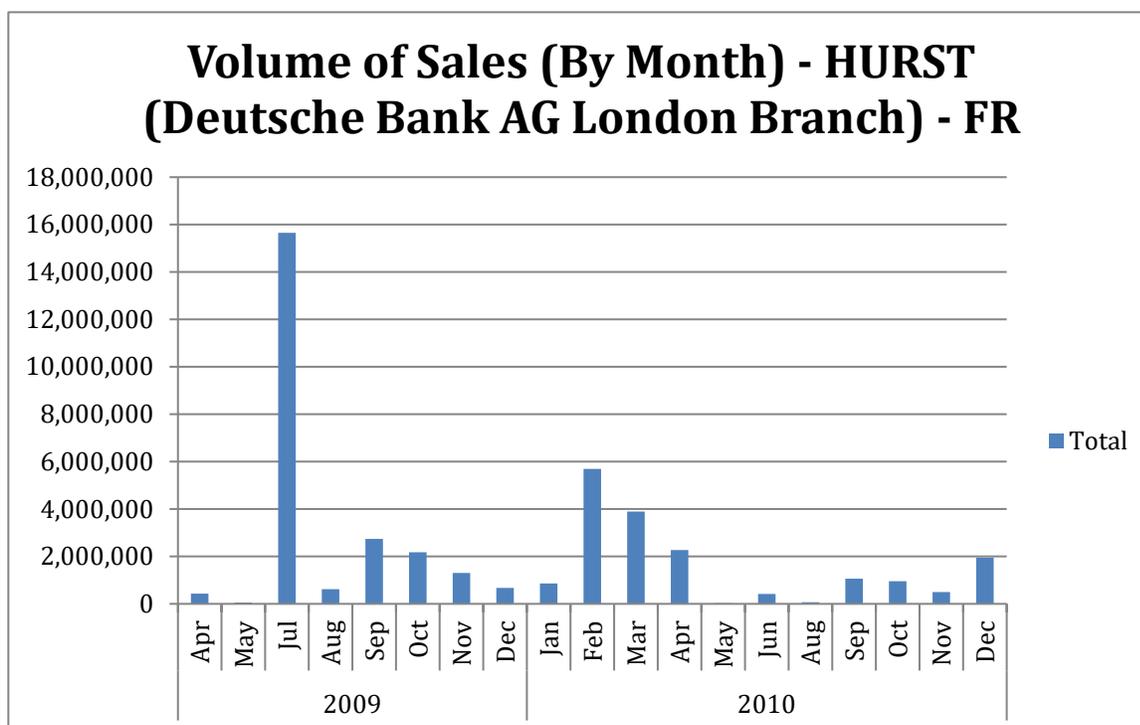


A companion “sales” chart for HURST Deutsche Bank London Branch is produced at Figure 9. It is a near mirror image of the “purchases” chart in Figure 8 (above). These charts taken together visually confirm that CO2 permits were rapidly churned through Deutsche Bank London.¹⁰ Nothing that is purchased is held very long; everything that is bought is resold within minutes.¹¹

Figure 9:

¹⁰ It is possible to go into the EU-ETS and manually trace specific permits from SVS Securities PLC through to Deutsche Bank, London, and then on to the BlueNext. This exercise is tedious, and only confirms the accuracy of the visual.

¹¹ The EU-ETS has the detailed purchase and sale data to support this statement. Tens and hundreds of thousands of CO2 permits were sold with not more than an hour between buy and sell times.



Imagine what could be accomplished in terms of MTIC enforcement if these kinds of charts were available to the tax administration in real time? Imagine if every invoice price and VAT amount was fed into the EU-ETS data-base along with the identity of the parties and the volumes of sales? Imagine the analysis that could be performed with an artificial intelligence (AI) engine sorting through this data in real-time, pointing out fraud possibilities, performing risk analysis assessments? What would happen if the fraudsters knew that this analysis was being done, and that enforcement was swift and effective?

This is what happens in the Brazilian state of Ceará. In Ceará an AI engine installed by an MIT start-up (Smart Cloud Inc.) performs real-time analytics on all business transactions over a data-base far more comprehensive than the EU-ETS.¹²

These charts indicate that HURST sold 15,653,000 CO2 permits to the BlueNext in July 2009. Each permit generated a VAT reclaim. The euro value of these transactions was roughly €23,368,310,¹³ and had a potential VAT reclaim of approximately €4,673,663.¹⁴ This estimate represents nearly the entire reclaim of £48,142,906 that Mr. Stone withheld from Deutsche Bank, London at the time of his November 18th visit.

All of the CO2 that HURST sold to the BlueNext was transferred to it from the Deutsche Bank, AG, London Branch registry in the UK. Furthermore, nearly the entire

¹² Richard T. Ainsworth, Phishing and VAT Fraud in CO2 Permits: The Digital Invoice Customs Exchange Solution, 77 TAX NOTES INTERNATIONAL 357 (January 26, 2015).

¹³ Using the same price per permit of 14.27 as above, see: note **Error! Bookmark not defined.**

¹⁴ UK VAT rate is 20%.

amount came from a single external source, SVS Securities PLC. This chain of CO2 permits was identified by Mr. Stone in his discussions with Deutsche Bank, and was further reported in the press.¹⁵ Mr. Stone indicted to Deutsche Bank’s global trading group that, “... all trades with SVS Securities PLC were suspect.”¹⁶ This comment (directed at Deutsche Bank in November 2009) is a precursor of the *CITIBank* case.

In July 2009 SVS Securities purchased 42,214,000 permits. It sold 70.65% of them to two parties: 23,546,627 (55.78%) were sold to Deutsche Bank, London, and 6,277,923 (14.78%) were sold to CITIBank (Citigroup Global Markets Limited - CGML).¹⁷ The onward sales of these permits by CITIBank (to the BlueNext and BNP Paribas) generated UK refund claims. It is the denial of these claims that form the basis of the *CITIBank* case.

During the 28 months from January 3, 2008 through April 30 2012 the BlueNext purchased 39,383,000 CO2 permits from the HURST account of Deutsche Bank, London.¹⁸ More than a third of these purchases (39.74%) occurred during the single month of July

¹⁵ Stefab Kaiser & Christian Teevs, Dirty Trade in CO2 certificates: Track in German banking scandal leads to London, SPIEGELONLINE – Economy (December 13, 2012) available at (in German): <http://www.spiegel.de/wirtschaft/unternehmen/wie-die-deutsche-bank-in-den-steuerbetrug-verstrickt-ist-a-872812.html>

¹⁶ *Witness Statement* of Roderick G. Stone at ¶57.

¹⁷ The EU-ETS provides this data. SVS’s purchase and sales graphs are mirror images of each other. Only the “purchase” graphs are reproduced at Figure 10. The volume of CO2 “purchased” (and sold) by SVS in July 2009 (42,214,001) was 100 times greater than the purchases/sales in May 2009 (409,000). The EU-ETS also shows that this activity came crashing back to earth in August 2009 (235,500) after the UK zero-rated CO2.

In July 2009 SVS sold to seventeen parties. While the leading buyers were Deutsche Bank AG, London Branch (23,546,627 units, or 55.78% of all purchases), and Citigroup Global Markets Ltd. (6,277,923 units, or 14.87% of all purchases), the remaining buyers are:

Buyer	Units purchased	%
J. P. Morgan Securities Plc	1,911,000	4.52%
BP Gas Marketing Ltd.	1,757,000	4.16%
Royal Bank of Scotland	1,715,000	4.06%
Merrill Lynch Commodities (Europe) Limited	1,458,499	3.45%
Barclays Bank plc (Barclays Capital B)	1,374,000	3.25%
Gazprom Marketing & Trading Powernext	698,552	1.66%
nn ISK Management Ventures	670,000	1.59%
AH Marketing and Distribution	500,000	1.18%
Inline Trading Ltd.	382,000	0.907%
Pan Energy Markets	108,000	0.256%
Mercuria Energy Trading SA	100,000	0.237%
Microdyne Ltd.	64,000	0.152%
AKTEC Ltd	15,188	0.0359%
Traksafe Ltd	10,000	0.0237%
Eucalyptus Worldwide Trading	8,000	0.019%

¹⁸ No other Deutsche Bank account at any other registry is listed in the EU-ETS selling into the BlueNext. All CO2 permits were funneled by Deutsche Bank, London through the HURST account on the French registry into the BlueNext Détention account (also on the French registry).

2009.¹⁹ This was a red flag for Mr. Stone and resulted in his denial of Deutsche Bank's £48,142,906 claim on its September 30, 2009 return.

*SVS Securities – a missing trader?*²⁰ Determining the role of SVS Securities in the alleged UK CO2 MTIC fraud chains up to July 2009 is critical. Publicly available details remain ambiguous. This will hopefully not remain the case forever. It is critically important to understand how the *Deutsche Bank* mutation of MTIC fraud has managed to penetrate possibly two major financial institutions.

SVS clearly caught the attention of the HMRC. In 2009 it was involved in a range of suspect Deutsche Bank transactions. It also plays a central role in the current *CITIBank* case. In the Statement of the Case (SOC) that HMRC filed in the *CITIBank* case three pages are devoted to SVS Securities. HMRC alleges that SVS exercised "... minimal due diligence, [had an] exponential increase in turnover in a short period, [and indicated that] most of its deals traced back to fraud ..."²¹

What little we know about SVS Securities PLC includes the fact that SVS traded out of two registries – UK and Danish. We also know that SVS began trading on the Danish registry in October 2009. The first records of SVS on the EU-ETS are trades on the UK

¹⁹ The BlueNext was very concerned about Deutsche Bank's July 2009 volumes. Mr. Stone requested documentation of the BlueNext-Deutsche Bank correspondence. In response Deutsche Bank produced a series of e-mail communications with the BlueNext exchange. Mr. Stone summarized those exchanges as follows:

The first e-mail from BlueNext dated July 23, 2009 raises concerns about the volume of trading undertaken by Deutsche Bank between 2nd July 2009 and 20th July 2009. In an e-mail to BlueNext from Deutsche Bank dated 29th July 2009, Deutsche Bank AG said that in the 13 days prior to the 23rd July 2009, 80% of the volume sold is attributed to an aggregating broker who had recently entered the EUA (also known as carbon credit) spot (also known as counter) market. I know this broker to be Tradition Financial Services who were known as TFS Green and who were paid a commission by SVS Securities PLC in respect of sales to Deutsche Bank AG and others. On 12th August 2009, BlueNext emailed Deutsche Bank AG raising concerns about the volume of trading between 22nd July and 27th July 2009 and asked for the name of the aggregating broker. On 19th August 2009, Deutsche Bank AG e-mailed the details of their transactions and counterparties during the relevant period.

Witness Statement of Roderick G. Stone at ¶60.

²⁰ SVS Securities PLC is a large, legitimate commodity trading firm. It has a trading floor with over 100 traders. It is difficult from the outside to square commercial appearances with the semi-public assertions of HMRC and Deutsche Bank with respect to the MTIC fraud in the CO2 trade during 2009-10. Like the *Deutsche Bank* case itself there could well be an important distinction that needs to be drawn between employees (or a group of employees) within SVS and the trading institution itself. There is no public account making this distinction, and we are left with a very uncomfortable analysis of another major financial institution. Bloomberg indicates:

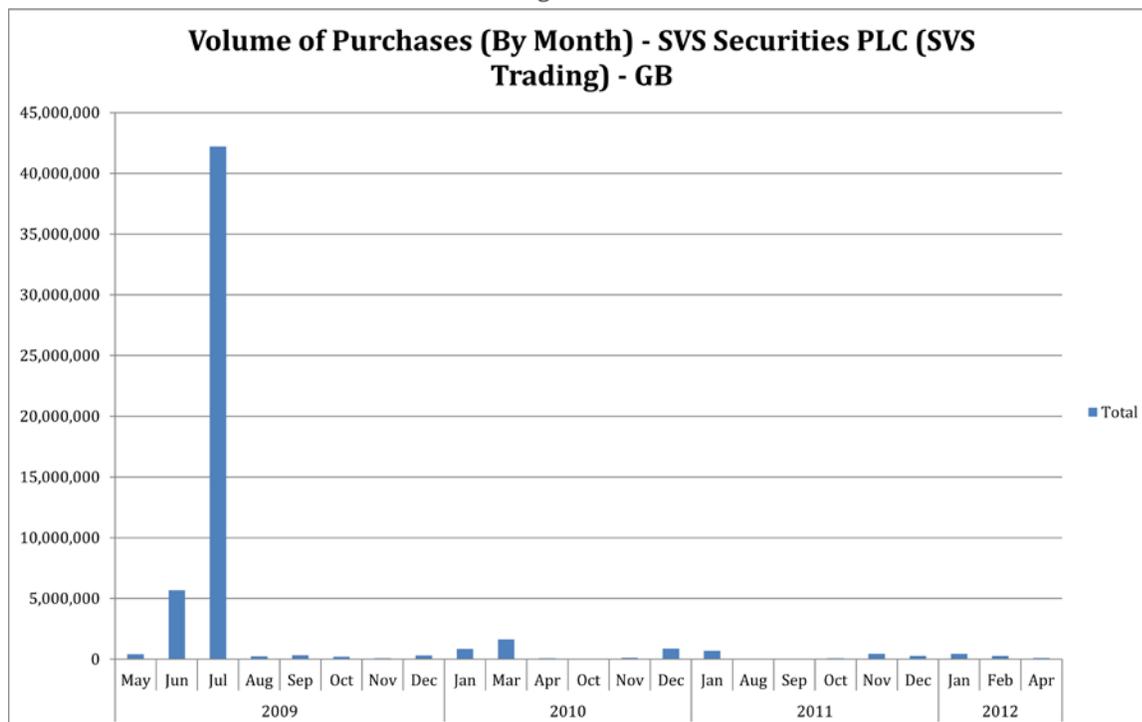
SVS Securities PLC operates as a stockbroker and financial advisor for private and corporate clients in the United Kingdom. The company specializes in stock and CFD trading, corporate finance and broking, emissions and online trading, and investments advisory services; and offers trading in various markets, including FTSE 100, FTSE 350, FTSE Small Cap, FTSE AIM, and PLUS Markets in the United Kingdom. It provides advisory services in the areas of public and private company flotations, mergers and acquisitions, venture capital, and pre-IPO financing. The company was incorporated in 2002 and is based in London, United Kingdom.

See: <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=39855497>

²¹ *CITIBank NA v. HMRC* [2014] UKFTT 1063 (TC) at ¶66.

registry in May 2009.²² All of the problematical trades with Deutsche Bank and with CITIBank in July 2009 are out of the UK registry. Figure 10 below shows search results (from January 3, 2008 through April 30, 2012) for SVS's purchases on the UK registry. The spike in July is very noticeable. July 2009 is when SVS was feeding CO2 permits through to Deutsche Bank and CITIBank.

Figure 10:



There are at least three interpretations of this graph (and the mirror-imaged companion graph of SVS sales for the same period – which is not reproduced here).

First, Deutsche Bank's opinion (as expressed to Mr. Stone at the November 18th and December 17th 2009 meetings) is that SVS purchased (zero-rated) CO2 permits from outside the UK, and then sold them on to the Deutsche Bank and others. SVS was making honest purchases, and made clean sales. Its profit (according to Deutsche Bank) was made on the cash flow produced by the VAT collected on the re-sales.²³

²² It is more than curious that SVS began trading CO2 in May of 2009, precisely when Dosanjh was being pressured by HMRC, but a full two months before the arrest of Dosanjh and all of his staff.

²³ Witness Statement of Roderick G. Stone at ¶85. After his Deutsche Bank interview Mr. Stone recorded his observations as follows:

I understand this [explanation by Deutsche Bank] to mean that Deutsche Bank AG were satisfied that SVS Securities PLC had clients in Eastern Europe who, in an economic recession, were dumping surplus EUAs or selling futures or options and that SVS Securities PLC were buying all their carbon credits zero rated for VAT purposes from non UK suppliers and selling them in the United Kingdom to Deutsche Bank AG and others standard rated for

A second interpretation was provided to Mr. Stone when he visited Kulvir Virk the Director of SVS on July 2, 2009. The stated position of SVS differed from the interpretation of SVS's role that Deutsche Bank articulated. SVS, he was told, did not purchase CO2 permits at all. It was instead an undisclosed agent acting on behalf of buyers and sellers for a 7% commission on each trade. VAT was charged on the agency service, but not on the CO2 itself. This is indeed how SVS reported to HMRC.²⁴ SVS indicated to Mr. Stone that it paid a further commission to an "aggregator" Tradition Financial Services (TFS Green). TFS Green actually found the CO2 permits that were sold to the Deutsche Bank (according to SVS). SVS indicated that it told Deutsche Bank about this arrangement.²⁵

Which statement of facts is correct? Is there a third interpretation?

If Deutsche Bank's position is accurate then SVS is a *missing trader*. SVS buys and sells CO2, collects VAT on resale (some considerable amount of it being paid by Deutsche Bank), but (according to SVS and the HMRC) SVS does not report the transaction or remit the VAT.

Deutsche Bank then, (by its own analysis) may be dealing directly with a missing trader, if (as Deutsche suggests) SVS actually did take an ownership position in the CO2 permits. Admittedly, SVS would not be a typical missing trader. SVS is not a small, obscure enterprise working out of a single office that quickly closes up and disappears when the authorities come by. Instead SVS is a significant/ legitimate business. If this is the case, then SVS is a new kind of missing trader, *a missing trader in broad daylight*.

The third interpretation is to believe the EU-ETS. If so, then the truth of the matter is "between" the two earlier stories. The EU-ETS indicates that SVS purchased CO2 permits in exceptionally large quantities in July 2009. It indicates that it sold these permits on to Deutsche Bank, CITIBank, and others. (This differs from SVS's statement to Mr. Stone.)

However, unlike Deutsche Bank's assertion, the EU-ETS indicates that SVS purchased predominantly from domestic, not foreign suppliers (15 out of its 21 July suppliers

VAT purposes. This provided SVS Securities PLC with a cash flow benefit. This of course was not the case. At this time SVS Securities PLC were only buying and selling carbon credits in the UK.

²⁴ Witness Statement of Roderick G. Stone at ¶86. SVS explained:

... that they were acting as a market intermediary between the UK seller and UK buyer and took no proprietary position in emissions trading i.e. they did not take ownership of the carbon credits. Deutsche Bank knew that SVS Securities PLC were receiving commission only and were acting as an *undisclosed agent* and not as principal i.e. they were acting on behalf of the seller and buyer for which they received commission. The annual accounts submitted by SVS Securities PLC to Companies House reflect the fact that they regarded themselves as only receive commission and they informed Deutsche Bank that they earn 7% commission on each trade.

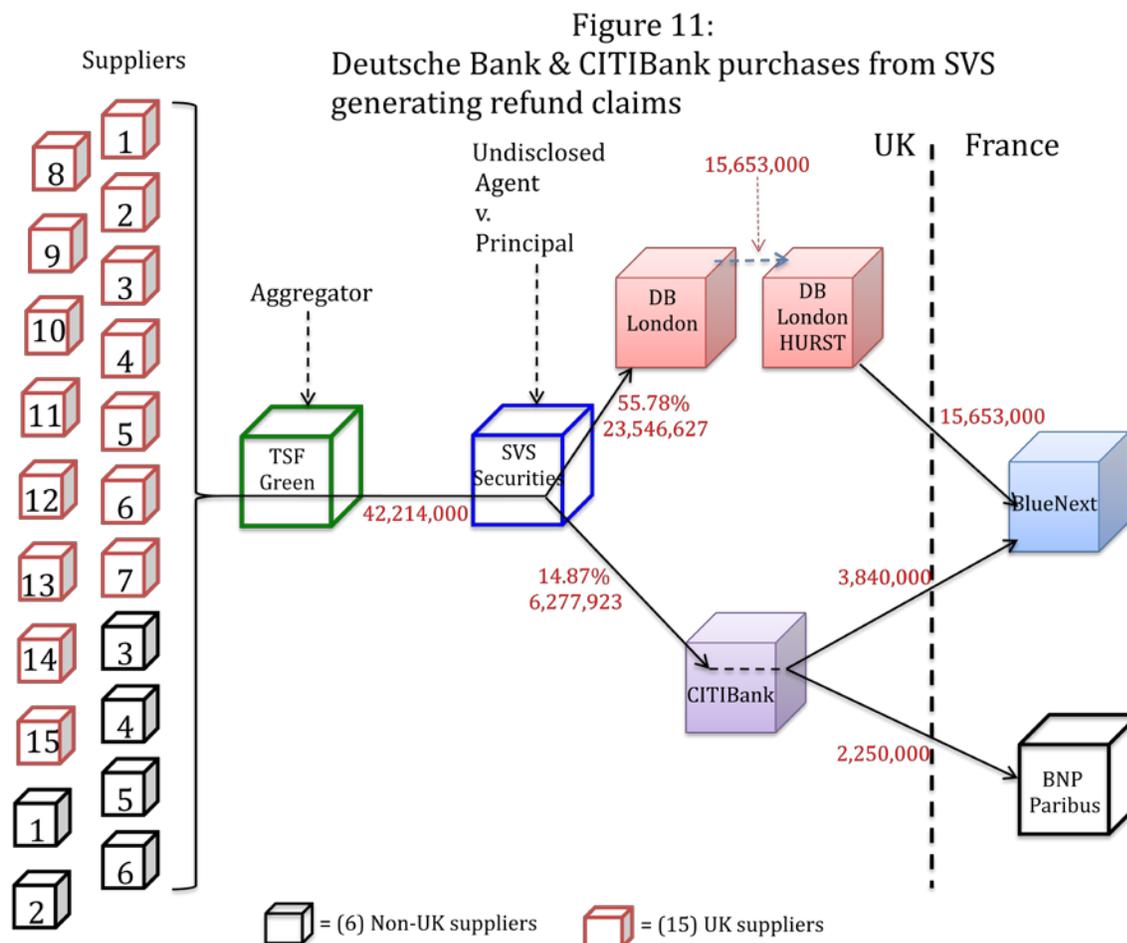
²⁵ Witness Statement of Roderick G. Stone at ¶¶73, 82 & 60.

were domestic).²⁶ (As a result SVS would be paying VAT on CO2 purchases, not receiving the permits VAT-free, subject to a later reverse charge.)

After July 2009 SVS *may have* changed how it dealt with CO2 permits. This is not visible in the raw EU-ETS data. Prior to August 1, 2009 it may have bought CO2 permits in its own name, but after that date it may have acted only as an agent. Nevertheless, this is not what Mr. Stone was told when he visited on July 2, 2009, and so the role of SVS remains a mystery. We simply do not know the full set of facts. We will have to wait for court decision in Germany and the UK to know the whole truth. The diagram below (Figure 11) summarizes the current state of our knowledge about the SVS permit flows to CITIBank and Deutsche Bank in July 2009.

²⁶ There is a three-way conflict interpreting the source of the CO2 permits purchased by SVS in July 2009. (1) Deutsche contends that *all* of the SVS permits were from non-UK suppliers. (2) Mr. Stone contends that SVS was “only buying ... carbon credits in the UK.” (3) The EU-ETS lists all of 21 of the entities from which SVS purchased CO2 permits in July 2009. Each purchase was from an entity that was registered on both UK and non-UK exchanges, and each transaction engaged the permits on the supplier’s non-UK registry. However, 15 out of the 21 entities were *established* in the UK. Thus, a question arises: Are the CO2 permits from a non-UK registry of a UK *established* entity deemed to be supplied from that foreign jurisdiction, or from the UK? The answer seems to be clear. The UK establishment determines the source of the permit, not the national registry where the permit is lodged.

CO2 permits are classified as services. They are deemed supplied at the place (in the member State or non-EU country) where the customer has established his business or, if the services are provided to the customer’s fixed establishment, at the place (in the Member State or non-EU country) where a fixed establishment is located. A physical presence of the customer in another Member State is only a “fixed establishment” if it is characterized by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs. Given that the CO2 permits involved in these transactions are more akin to an investment security, not a true service which is intended to be “used” by the buyer, it is unlikely that the non-UK registries of 15 of the 21 SVS suppliers is sufficient to characterize these supplies as supplies from “non-UK suppliers” as determined by Deutsche Bank. For the remaining 6 enterprises *established* outside the UK, the Deutsche Bank may be correct.



Deutsche Bank, Frankfurt. Mr. Stone’s *Witness Statement* describes what happened at Deutsche Bank when the UK zero-rated CO2 permits. From his vantage point, Mr. Stone had been watching huge volumes of CO2 pass through SVS, then on to Deutsche Bank, London. He saw the permits finally exported to the BlueNext in France. He was very aware and considerably concerned that these flows resulted in large UK refund claims. Mr. Stone (most likely) suspected a UK fraud. He (probably) believed that CITIBank and Deutsche Bank were continuing to conduct activities with SVS as they had with Dosaanjh in the past.

Then, suddenly, everything changed. Huge volumes of CO2 were still flowing through Deutsche Bank, London and SVS Securities, but now (after August 1, 2009) the flows were moving in the other direction – CO2 was coming into the UK through Deutsche Bank London, not flowing out.

Mr. Stone’s *Witness Statement* was prepared for the trial of six fraudsters²⁷ who controlled German companies that fed CO2 permits into Deutsche Bank AG, Frankfurt.

²⁷ Regional Court Frankfurt/Main 5/2 KLs; 7510 Js 258673/09 WI; 7 ER 515/09 (GStA).

- Claude Bauduin (4 years) – controlled BAUDUIN HANDELSGESELLSCHAFT GmbH.
- Robert Peitzmeyer (4 years, 10 months) – NEW ENERGY MARKETS, GmbH

Frankfurt sold on to London, and London sold to SVS. What had been (potentially) a *UK MTIC fraud* before August 1, 2009, was now a *German MTIC fraud* after August 1, 2009. Many of the players repeated. The transaction flows were just reversed. Mr. Stone told this to the German court in his *Witness Statement*:

I have examined the trading of carbon credits conducted by Deutsche Bank AG, [London]. Consequently I can say that the majority of trading in carbon credits took place after the 23rd June 2009. The majority of the carbon credits they purchased were purchased from SVS Securities PLC. *However after the United Kingdom zero-rated carbon credits the trading pattern changed and Deutsche Bank AG started to sell carbon credits to SVS Securities PLC.*²⁸

We can independently confirm the accuracy of this statement. We have a very clear account from a confessed German fraudster. The confession is found in Samir Azizi's sworn testimony presented at his US extradition hearing. Azizi traces CO2 movements from German missing traders, through German buffers, then into Deutsche Bank, SVS Securities and finally through a last set of UK buffers. Azizi states:

[The] paths of the emission allowances [is]: Missing trader in Germany – buffer Germany – Lösungen 360 – Deutsche Bank Germany – Deutsche Bank England – SVS Securities Ltd. England (UK) – Gluke Ltd. England (UK) – missing trader Germany –²⁹

In Azizi's telling this trade appears to be linear, starting in Germany and ending in the UK. Azizi should know this chain well. He established two of German buffers (Hanna GmbH and iTrading GmbH) and three of the missing traders (I.I. First EuroTrading GmbH; SabsEuro Trading GmbH; Amaan Enterprise GmbH). Azizi's chain sold into Lösungen 360, the "final buffer" that sold to Deutsche Bank AG, Frankfurt for export to Deutsche Bank AG, London. Azizi knows and swears to every detail.

Aside from Deutsche Bank, the only German link in Azizi's chain that was not set up and controlled by him was Lösungen 360. Lösungen 360 is a German clone for SVS Securities PLC, but in the German market. The fraudster Irfan Musa Patel controlled Lösungen 360. He was convicted and sentenced to a 7 year, 10 month prison term in the case where Mr. Stone's *Witness Statement* was read.

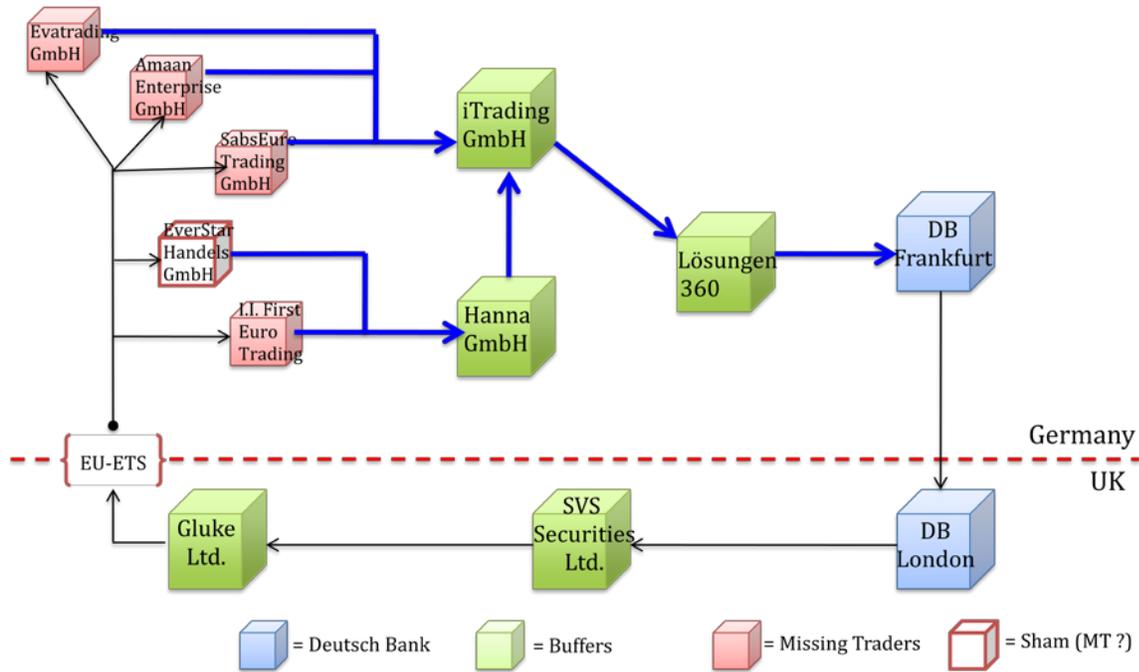
The value of the EU-ETS is not only that it confirms Azizi's story; it completes the story. The EU-ETS shows that Gluke Ltd. in the UK re-exported the CO2 permits in a complete circle *back to Azizi's missing traders* (see Figure 12 below). This is a CO2 carousel. Azizi ever recognized that some permits traveled through his carousel eighteen times.

-
- Wayne Stewart Brown (4 years) – CARBONEX UG
 - Björn Peitzmeyer (6 years) – controlled NEW ENERGY MARKETS TRADING AND BROKERAGE AG; NEW ENERGY MARKETS GmbH
 - Irfan Musa Patel (7 years, 10 months) – controlled LÖSUNGEN 360.
 - Franz Mir (4 years) – controlled Vector Energie GmbH .

²⁸ Witness Statement of Roderick G. Stone at ¶79 (emphasis added).

²⁹ *In the Matter of: the Extradition of Samir Azizi, Formal Request for Extradition*, 5:14-xr-90282-PSG (official English translation) at 56 of 113.

Figure 12:
Samir Azizi's iTrading CO2 MTIC carousel



The volume and immediacy of the Deutsche Bank, Frankfurt-to-Deutsche Bank, London trade is stunning. The EU-ETS shows both trading volumes and purchase details. Considering just the period between August 1, 2009 and April 30, 2009 Deutsche Bank AG purchased 151,591,161 CO2 permits through its primary trading account (1973- Deutsche Bank AG Personenkoto – DE).

Deutsche Bank has 35 suppliers in all, but 85% of the CO2 permits are purchased from just six of them. Five of the six are “final buffers” in known or suspected German fraud chains. Per the EU-ETS the six major suppliers, representing 71.77% of Deutsche Bank, Frankfurt’s purchases are set out below. Only BECOMAC GmbH has, perhaps surprisingly, not been accused in any of the current fraud cases despite the fact that the EU-ETS logs show that BECOMAC traded in exactly the same fraud chains discussed in the current criminal cases.

Seller	Volume	%
Lösungen 360 GmbH ³⁰	52,323,771	34.52
Vektor Energie GmbH ³¹	24,385,000	16.09
Dr. Plathner (in the insolvency of New Energy)	23,332,500	15.39

³⁰ Lösungen 360 GmbH is the entity run by convicted fraudster Irfan Musa Patel. He was sentenced to 7 years, 10 months.

³¹ Vektor Energie GmbH is the entity run by convicted fraudster Franz Mir. He was sentenced to 4 years.

Markets GmbH ³²		
BECOMAC GmbH	13,440,300	8.87
Garant Bank GmbH ³³	11,158,831	7.36
Roter Stern GmbH ³⁴	8,740,420	5.77
Total	133,380,822	85.02

Graphically, the purchase and sale of CO2 permits by Deutsche Bank AG, Frankfurt in its primary trading account (1973 Deutsche Bank AG, Personenkonto) are represented in Figures 13 and 14 below. Once again, the purchase and sale patterns are nearly identical indicating that the CO2 permits from the fraud chains that Deutsche Bank was dealing with flowed rapidly through the Frankfurt bank.

The graphs also show the abrupt termination of CO2 purchases and sales after the April 28, 2010 raid at the Frankfurt headquarters of Deutsche Bank. Unfortunately for Mr. Stone, these graphs also show the utter ineffectiveness of Mr. Stone's visits to the global carbon trading team in the Deutsche Bank's London offices on November 18 and December 17, 2009. Trading does not diminish after his warnings.

³² New Energy Markets GmbH is the entity run by convicted fraudster Björn Peitzmeyer and his son Robert Peitzmeyer. Björn was sentenced to 6 years, and Robert to 4 years, 10 months.

³³ Ermittlungskommission ODIN, Steurfahndungsbericht, re: Deutsche Bank AG (Frankfurt February 11, 2015) at 19-20 (Volume 1 of 2) (in German).

³⁴ Roter Stern GmbH is the entity controlled by Faisal Zahoor Ahmad who is "... suspected of having evaded value added tax in the amount of 58 million EUR between August 2009 and February 2010. Acting as a member of a gang committing value added tax fraud in connection with emission allowance trading throughout Europe, his task was to act as a so-called 'buffer.'" Mr. Ahmad is now in German custody with a trial date scheduled for early 2016. INTERNATIONAL ARREST WARRANT, Wanted Person Ahmad, Faisal Zahoor, available at:

http://www.bka.de/nr_198448/DE/Fahndungen/Personen/BekanntesTatverdaechtige/Ahmad/ahmadEnglish.html

Figure 13:

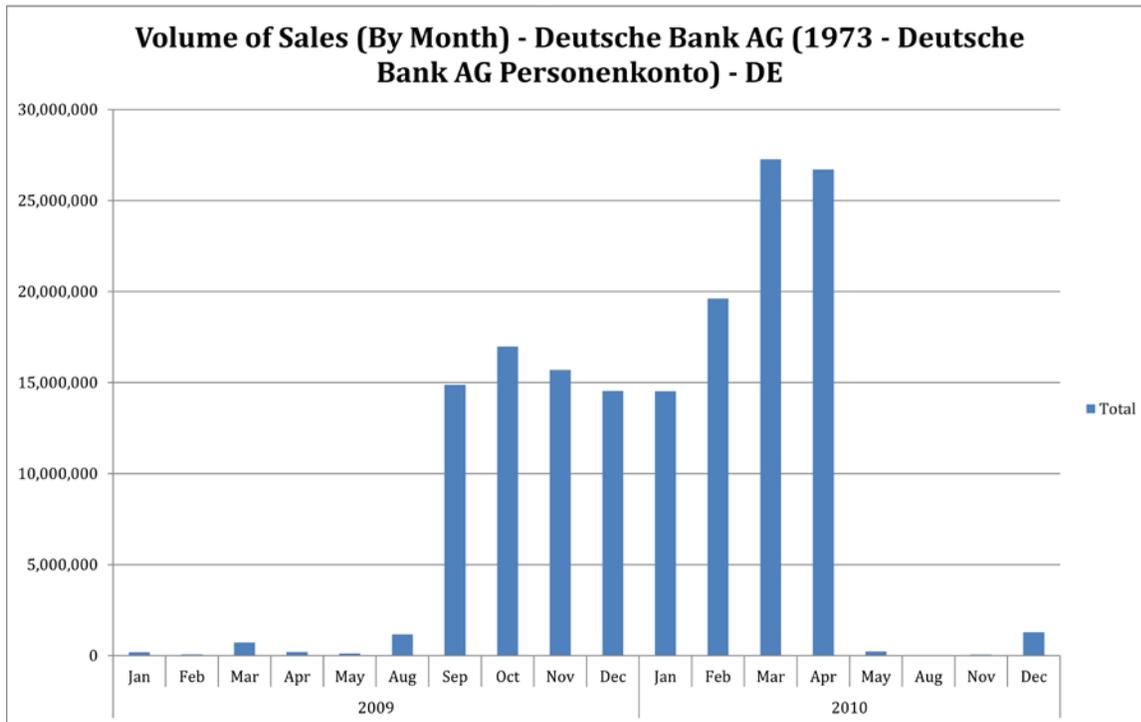
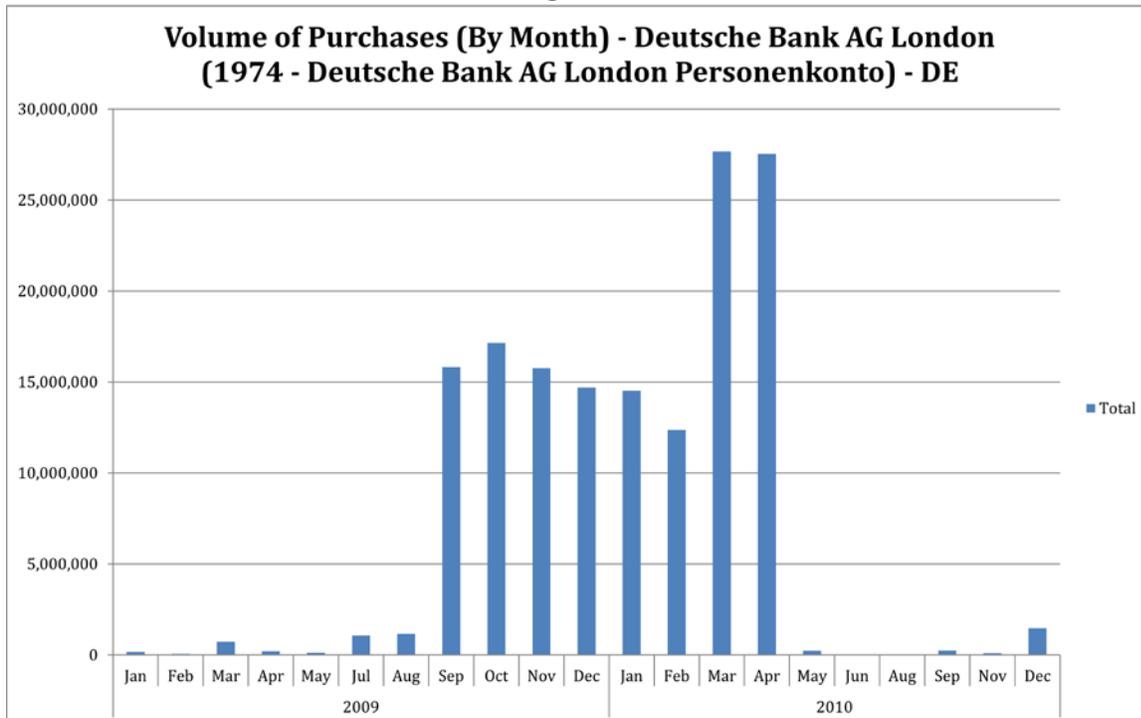


Figure 14



The EU-ETS tells us more. If we move from Deutsche Bank, Frankfurt to Deutsche Bank, London, and consider the London purchases during this same time frame (August 1, 2009 through April 30, 2010) through the 1974 – Deutsche Bank AG London Personenkonto account, we see that 142,246,074 CO2 permits (or 96.5% of all permits purchased during this period) came from Deutsche Bank AG, Frankfurt through the 1973 – Deutsche Bank AG Personenkonto account. There is very little leakage. London buys almost exclusively from Frankfurt. It does very little else. All of the permits bought (most from proven fraudsters) are re-sold internally to the London Branch of Deutsche Bank.

These Deutsche Bank – Frankfurt/Deutsche Bank – London transactions are the critical point in *pull-type MTIC fraud*. The mastermind must control this juncture. If the word is out that there is a cash-ready purchaser of under-priced CO2 permits (who can easily export the permits and claim a refund), then all that is needed to complete the fraud is for individuals with below market permits to show up at the door. The mastermind simply needs to buy without scrutinizing the permits, and sell quickly across the border.

In the indictment there is an employee of Deutsche Bank who sits at this cross-border juncture. He “... manages the trades between the trade departments of the Frankfurt and London offices ...”³⁵ If the mastermind controls these trades, his reach throughout the rest of the chain is controlled by the economics of this artificial market. By creating a sub-market for underpriced permits, Deutsche Bank controlled permit suppliers. The indictment indicates that “... an account/client manager (Dominic HOFFMAN) was the Relationship-Manager in Global Banking and managed the accounts of trade partners of Deutsche Bank involved in CO2 Emission Trade. He allowed suspicious trade patterns concerning VAT fraud and did not perform the necessary screening when admitting new clients.”³⁶

The mastermind in a *pull-type MTIC fraud* does not need to set up clean, linear fraud chains like those Dosanjh established. The structure, design, and efficiency of the chains do not matter. All that matters is that the permits show up at the door, and the efficient consummation of the cross-border sale. The mastermind is the gatekeeper. He controls the economic forces at play in his market by “setting” the price for the permits. The mastermind does not “take” prices offered; he “sets” the price he will take. (In the *Deutsche Bank* case that price is almost always set at 3% below that day’s BlueNext spot price.)

In traditional *push-type MTIC fraud* the mastermind controls the commodity (the cell phones, or computer chips). In *pull-type MTIC fraud* the mastermind controls the price, and

³⁵ The Press Release referenced above suggests that the individual whose job it was to control the trade at this juncture is most likely the 36 year-old employee (Unknown) of the trade department (European Branch Sales Desk [BSD / EBSD]). He is accused of being the person that managed the trades between the trade departments of the Frankfurt and London offices. In his role he coordinated and managed the trades. He also temporarily managed the accounts of a client involved in the CO2 fraud.

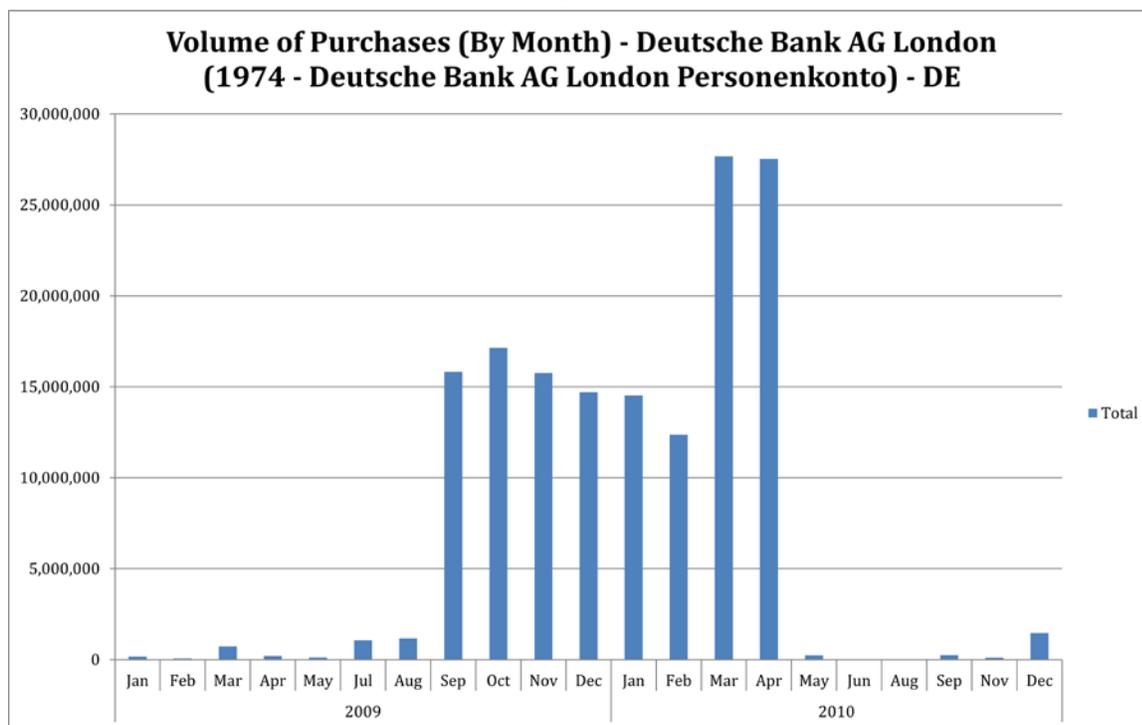
³⁶ The Press Release referenced above suggests that the individual whose job it was to control suppliers is most likely the account/client manager (Dominic HOFFMAN) who was the Relationship-Manager in Global Banking and managed the accounts of trade partners of Deutsche Bank involved in CO2 Emission Trade. He allowed suspicious trade patterns concerning VAT fraud and did not perform the necessary screening when admitting new clients.

the border-crossing. There is no concern about supplies *pull-type MTIC*. In CO2 MTIC the permit is only “computer code” stored on a government server.

It is inevitable. To exercise control in a *pull-type MTIC fraud*, the mastermind must be *within the bank*. In a *pull-type MTIC fraud* all the levers of control are internal.

This is why the London purchase and German sales graphs look the same for the two-year span from 2009 through 2010. Deutsche Bank AG, London (through its 1973 – Deutsche Bank AG Personenkonto account) did very little more than purchase the CO2 permits that the Deutsche Bank AG, Frankfurt acquired from fraud chains in Germany after the UK went to a zero-rate on CO2. Compare the Frankfurt purchases and sales charts (figures 14 & 15, above) with the London purchase chart (figure 15, below). They look the same, because this is all one fabric woven by the mastermind.

Figure 15



Before leaving the EU-ETS data-base one final comment is appropriate. Consider figure 15. What stands out? On the front end, we see that CO2 trade gets started in a serious way right after the UK’s zero-rating of permits on August 1. On the back end, we see that CO2 trade comes to an abrupt end when the Deutsche Bank head offices in Frankfurt are raided on April 28, 2010.

So, why is the *Deutsche Bank* case alleging fraud only from September 2009 through February 2010, and not from September 2009 through April 2010?

What happened to the months of March and April 2010? If the EU-ETS is to be believed the fraud flows appear to have doubled in these months (over the February figures). The indictment then, appears to be inconsistent with the facts. The indictment and the itemized VAT losses attributed to each of the eight individuals ends in February 2010. Why? Was there no fraud, or attempted fraud in March and April? The same employees were still at their desks at the bank. It was not until July 15, 2011 that Reinhard Engen UHL retired from Deutsche Bank, so all of the indicted employees were at their desks throughout the fraud period. The CO2 transactions continued as normal with the same missing trader chains through the end of April 2010.³⁷

³⁷ For example, we know that in March 2010 Deutsche Bank AG (Deutsche Bank AG Personenkonto) sold 99.50% of all the CO2 permits it purchased to Deutsche Bank AG London (Deutsche Bank AG London Personenkonto), both on the German exchange. We also know that the March permits were purchased from the same fraud chains that were itemize earlier. Only the ranking of the suppliers change:

	Name (March 2010 suppliers)	amount	%
1	BECOMAC GmbH	6,467,000	23.72%
2	Lösungen 360 GmbH	5,864,000	21.51%
3	Garant Bank GmbH	5,593,000	20.52%
4	Vektor Energie GmbH i.I. vert durch den IV Arno Wolf	2,825,000	10.36%
5	Dr. Plathner als Insolvenzverw. Der New Energy Markets GmbH i.I.	2,681,000	9.83%
6	Roter Stern GmbH	1,700,000	6.24%
7	AEM Alternative Energy Markets GmbH	1,630,000	5.98%
8	Nexis Solar Technologies GmbH	492,450	1.81%
9	Deutsche Bank AG	10,420	0.04%
	TOTAL	27,262,970	100%

The same results are apparent if we look at the EU-ETS for the month of April 2010. The only exception of note is that in April 99.44% of all the CO2 purchased are sold through to Deutsche Bank AG London (Deutsche Bank AG London Personenkonto).

	Name (April 2010 suppliers)	amount	%
1	BECOMAC GmbH	6,973,300	25.92%
2	Lösungen 360 GmbH	6,104,000	22.69%
3	AEM Alternative Energy Markets GmbH	5,372,000	19.97%
4	Dr. Plathner als Insolvenzverw. Der New Energy Markets GmbH i.I.	3,147,000	11.70%
5	Advantage Aktiengesellschaft	2,150,000	7.99%
6	Garant Bank GmbH	1,798,000	6.68%
7	Vektor Energie GmbH i.I. vert durch den IV Arno Wolf	1,226,000	4.56%
8	Cesarion Metallguss GmbH	80,000	0.30%
9	Infraserv GmbH und Co. Wiesbaden KG	50,000	0.19%
	TOTAL	26,900,300	100%

The other item of note in the March and April 2010 figures is that BECOMAC has moved from fifth place to first place in both months. BECOMAC has the distinction of appearing to be final buffer in the *Deutsche Bank* case, but not being indicted by the prosecutor in any forum. The EU-ETS can be used to chart out the BECOMAC transactions in CO2 permits, and from those records it appears (to this author) that BECOMAC was a very active participant in the German CO2 market. It was buying and selling to a large number of the known (and convicted) fraudsters. One strongly suspects that is (or there should be) a second shoe to fall here. This market was known to be 85% to 95% tainted. It is difficult to believe that BECOMAC was not “in the thick of it.”

In Deutsche Bank's 2013 annual registration statement³⁸ there are suggestions that the February 2010 cut-off may have to do with the filing of corrected VAT returns for March and April 2010. With this tax return filing the registration statement of Deutsche Bank seems to take the position that if there is *no actual financial loss* to the German Treasury then there can be *no criminal VAT fraud*. Deutsche Bank also seems to say that the Frankfurt Prosecutor is in agreement with this analysis. The relevant section of the registration is:

The Frankfurt am Main Office of Public Prosecution (the "OPP") is investigating alleged value-added tax (VAT) fraud in connection with the trading of CO2 emission rights by certain trading firms, some of which also engaged in trading activity with Deutsche Bank. The OPP alleges that certain employees of Deutsche Bank knew that their counterparties were part of a fraudulent scheme to avoid VAT on transactions in CO2 emission rights, and it searched Deutsche Bank's head office and London branch in April 2010 and issued various requests for documents. In December 2012, the OPP widened the scope of its investigation and again searched Deutsche Bank's head office. It alleges that certain employees deleted e-mails of suspects shortly before the 2010 search and failed to issue a suspicious activity report under the Anti-Money Laundering Act, which according to the OPP, was required. It also alleges that Deutsche Bank filed an incorrect VAT return for 2009, which was signed by two members of the Management Board, and *incorrect monthly returns for September 2009 to February 2010*. Deutsche Bank is cooperating with the OPP.

Press reports indicate that the above referenced "correction" (made in the summer of 2011) involved about €150 million and that "... the institute waived an (additional) claim of €160 million in VAT refund (at the end of 2011)."³⁹ Do these payments make the criminal fraud go away?

This line of argument by the Frankfurt Prosecutor seems to suggest that there is no fraud anywhere along a MTIC chain, if the "final distributor" (Deutsche Bank in this case) does not actually secure a refund. This argument is inconsistent with the earlier conviction of six individuals that set up fraud chains to funnel CO2 permits into Deutsche Bank.⁴⁰ These individuals were accused of closely connected frauds that spanned the full period from September 2009 through April 2010.

Why is this, if these frauds involved the same sales of CO2 permits to Deutsche Bank that are the basis of the *Deutsche Bank* case? The Prosecutor's position is also inconsistent with the fact that this is a *pull-type* MTIC fraud where the mastermind has actual control of the cross-border trade and economic control of the fraud chains that funnel permits into it. The *Deutsche Bank* case would be much clearer if the Prosecutor would identify, or allege

³⁸ Deutsche Bank Aktiengesellschaft: Registration document pursuant to Art 5(3) of the Directive 2003/71/EC and Sec. 12(1) 3 German Securities Prospectus Act (*Wertpapierprospektgesetz*) May 27, 2013 at 17-18 (emphasis added).

³⁹ *German Bank CEO Fitschen complains by Phone* (*Steuerrazzia: Deutsche-Bank-Chef Fitschen beschwert sich telefonisch*) ZEIT ONLINE (December 16, 2012) available at: <http://www.zeit.de/wirtschaft/unternehmen/2012-12/deutsche-bank-fitschen-bouffier-hessen-anruf>

⁴⁰ Regional Court Frankfurt/Main 5/2 KLs; 7510 Js 258673/09 WI; 7 ER 515/09 (GStA).

the identity of the internal mastermind. Who is it that organized this crime from within Deutsche Bank?

CONCLUSION

Dosanjh was the first CO2 MTIC case. His fraud was carried out in a traditional *push-type* MTIC fraud manner. *Dosanjh* acquired permits without VAT from foreign suppliers through his own missing traders, sold the permits through a set of buffers he created, and then *pushed* (offered) the permits to “blue chip” traders who were some of the largest investment banks and energy companies in the EU. These firms accepted the business.

After May 2009 *Dosanjh*'s fraud was largely shut down, although sporadic trades were made through KO Brokers as late as September 9, 2009. *Dosanjh*'s buyers appear to have been smitten. They soon found a replacement source for CO2 in SVS Securities PLC, which entered the CO2 trade the same month (May 2009) that *Dosanjh* left the field.

By July 2009 SVS's top eight buyers were the former clients of *Dosanjh*.⁴¹ As expected, HMRC followed *Dosanjh*'s demise with an investigation into SVS, the new supplier of CO2 permits to *Dosanjh*'s old client base.

But was there more? Was there an effort at the CO2 trading desks of *Dosanjh*'s clients to take *Dosanjh*'s fraud technique to the next level? Was there an effort in these firms to *internally replicate* *Dosanjh*'s schemes when KO Brokers dropped out of the market? In other words, was there an effort to change a *push fraud* (where *Dosanjh* pushed the permits he acquired to his buyers at a discount funded by his fraud) to a *pull fraud* (where a discounted price was demanded by an internal mastermind as a requirement to enter the market) a *pull fraud*?

Deutsche Bank and CITIBank seem to have done this. We have evidence that Deutsche Bank's global carbon trading team pushed the envelope the furthest. It was able to sustain a *pull-type MTIC fraud* from August 2009 through the end of April 2010.

Is *this* the nexus of events that produced the MTIC mutation this paper examines? Did *Dosanjh*'s demise precipitate this change? Did *Dosanjh* inspire the mutation of traditional *push-type MTIC fraud* into *pull-type MTIC fraud*?

The appearance of *pull-type MTIC frauds* has a profound effect on enforcement. Instead of locating masterminds on the periphery where they control (direct, design, and actively manipulate) events, like a puppet-master pulling strings; we now have a mastermind at the center that controls events by manipulating the economics of the marketplace. We will not find command-and-control phone calls, text messages, or Skype conversations where the

⁴¹ In sequence they were: Deutsche Bank AG, London Branch, Citigroup Global Markets Limited, J. P. Morgan Securities Plc, BP Gas Marketing Ltd., Royal Bank of Scotland, Merrill Lynch Commodities (Europe) Limited, Barclays Bank plc (Barclays Capital B), and Gazprom Marketing & Trading Powernext. Only the Swiss company, Climatefx SA, did not purchase from SVS Securities PLC

mastermind directs the flow and process of the fraud. Instead, the critical evidence of the mastermind's operational control will be found in market-manipulating announcements. A firm that announces that it stands ready to buy X number of permits at a price that is Y% *below* the current BlueNext spot price will *pull in* mostly fraudulent certificates.

Who would sell a \$1.00 fungible commodity for \$0.97? Only a fraudster who was the final buffer in a chain that started with a missing trader, or a fraudster who had stolen the permits in a phishing attack on a national registry would do this.⁴² Would it matter who that fraudster was, or how he came to be in possession of a below-market CO2 permits? Not at all. If the plan is to sell a fungible commodity back into the anonymous BlueNext market for a profit there would be no concern. All you would want is your "share" of the profits.

Having the mastermind at the center (at the critical cross-boarder point that produces the refund claim) presents the government with an inherently more difficult case to prove than the traditional *push-type MTIC case*. How do you find this person? Where does the ultimate blame reside? Does it stay with the people at the CO2 trading desk, or does it flow up the chain of command to the investment banking institution itself? Can this *knowledge of fraud* be attributed from the employees to the firm?

Issues of attribution are the most striking differences between the *CITIBank* and the *Deutsche Bank* cases. HMRC's greatest difficulty in *CITIBank* is the attribution of knowledge. Are individuals to blame (if so whom), or is the institution to blame (if so, how)? Where is the controlling mind? It seems that HMRC does not know, or does not think it needs to tell the court in the *CITIBank* case (at this time).⁴³

⁴² See the discussion of the stolen Czech CO2 permits in: Richard T. Ainsworth, *Phishing and VAT Fraud in CO2 Permits: The Digital Invoice Customs Exchange Solution*, 77 TAX NOTES INTERNATIONAL 357 (January 26, 2015).

⁴³ *CITIBank v. HMRC* [2014] UKFTT 1063 (28 November 2014) at ¶¶77-80.

... the SOC does not make clear on what basis the appellant, a corporation, is said to have actual or constructive knowledge of connection to fraud. In its SOC, HMRC does not aver that any particular individual employed by, or an agent of, the appellant had the requisite state of knowledge and that that knowledge should be imputed to the appellant. ...

At the hearing I understood that HMRC's position is that at the moment they cannot be sure which individuals at Citibank knew what. ...the SOC, which does not address the issue of how a company, a legal construct, can possess actual or constructive knowledge. ...

Where the corporate entity is owned and controlled by the same person, it may be obvious that an allegation that that entity 'knew' something is an allegation that the controlling director knew that thing. It is not so clear where the corporate entity is not the alter ego of a single person, but on the contrary a subsidiary of an ultimate holding company which is likely to have a great many shareholders; and moreover where the corporate entity has a great many employees, and where the allegation of 'knowledge' appears to be connected with the knowledge and/or activities of a small number of employees who were not directors. HMRC should apply to amend their SOC to state their case on why they think the knowledge of named or unknown individuals employed by the appellant should be vicariously attributed to the corporate appellant.

If HMRC do not apply to amend the SOC, then they should not ask the Tribunal to attribute knowledge (actual or constructive) by named or unknown individuals to the appellant. It seems to me that that would prevent HMRC making out its case, ...

The Chief Prosecutor in *Deutsche Bank* has no such difficulty. He not only alleges that eight specific individuals committed VAT fraud in a conspiracy to defraud the government, but he itemizes the amounts⁴⁴ and specifies the “final buffers” that each dealt with when they *pulled* CO2 permits into the Frankfurt bank.⁴⁵ The Chief Prosecutor’s *Press Release* makes it clear that this gang defeated Deutsche Bank’s internal control mechanisms, and allowed the fraud to proceed. The Prosecutor seems to say that bad employees abused a good bank.

If there is an external mastermind in the *Deutsche Bank* case he/she is not designated as such in the indictment. More than likely though, the *Deutsche Bank* mastermind is not external, he/ she will instead be found inside the bank. The best guess from the information made public is that the mastermind is the indicted 64-year old former employee (Reinhard Engen UHL). He was the Global Head of Capital Market Sales and in this capacity he was responsible for the trades/business with CO2 emission rights.

If there can be an attribution of knowledge back to Deutsche Bank (as an institution) in this case, then this indictment does not provide it. Unlike the *CITIBank* case the *Deutsche Bank* case does not seem to be headed in that direction at all.

This paper recommends a policy change. It recommends a sophisticated, technology-intensive set of digital controls over the market. This paper has continually gone back and forth between legal analysis and the EU-ETS data-base. In the European CO2 market a comprehensive data-base (which is missing only the price and the VAT amount on each transaction) is available for anyone to trace the trades.

If this data was enhanced (as it is in Ceará, Brazil) and if artificial intelligence (AI) were employed to perform real-time risk analysis, MTIC fraud would be greatly reduced. Proposals for change through technology have been set out in two prior articles. The first article approaches the issue from a theoretical/ technical perspective. The solution is called the Digital Invoice Customs Exchange (DICE).⁴⁶ This is the approach that has been adopted in Ceará.

In the second article⁴⁷ the author contacted the technology team in Brazil and was able to report the following assessment by the CEO of the implementation firm, Kim Mayyasi of Smart Cloud, that, “... implementing a real-time transaction database of all

⁴⁴ The indictment alleges a conspiracy where each person engaged in a particular set of fraudulent transactions is liable for the whole amount of the fraud. These amounts range from €220.450.297,39 (Steffen Rapp) to €139.849.078,24 (Andreas Löschinger).

⁴⁵ The final buffers were primarily Lösugen 360; New Energy Markets GmbH; Vektor Energie GmbH; Roter Stern GmbH; and Garant Bank GmbH. There was also minor involvement with Becomac, GmbH; Nexis Solar Technologies GmbH; Alternative Energy Markets GmbH; and Advantag GmbH. See: Ermittlungskommission ODIN, Steurfahndungsbericht, re: Deutsche Bank AG (Frankfurt February 11, 2015) at 526-28 (Volume 2 of 2) (in German).

⁴⁶ Richard T. Ainsworth & Goran Todorov, *Stopping VAT Fraud wit DICE – Digital Invoice Customs Exchange*, 72 TAX NOTES INTERNATIONAL 637 (November 18, 2013).

⁴⁷ Richard T. Ainsworth, *Phishing and VAT Fraud in CO2 Permits: The Digital Invoice Customs Exchange Solution*, 77 TAX NOTES INTERNATIONAL 357 (January 26, 2015).

power sales in the EU with advanced reasoning for back room analytics could implement the DICE proposal to eliminate MTIC from the EU power markets, and it could do so for the EU CO2 market right now. This is a typical challenge that our technology was designed to handle.”⁴⁸

⁴⁸ Personal communication (December 11, 2014) with Kim Mayyasi at kmayyasi@smartcloudinc.com. Transcript of this communication is on file with the author. The discussion with Mr. Miyyasi was more wide ranging than CO2 fraud. We were additional concerned with the appearance of MTIC in the EU power grid (notably the gas and electric exchanges). The Smart Cloud AI solution would work equally well in this market according to Mr. Miyyasi. It should be noted that Dosanjh was headed into these markets in 2010 precisely because they offered the same type of technology-intensive MTIC fraud as was available in the CO2 markets. y