



**OFFICE OF INSPECTOR GENERAL  
EXPORT-IMPORT BANK  
of the UNITED STATES**

# **Report on Jabiru Satellite Ltd.**

**December 22, 2015**

**OIG-INS-16-01**

*The Export-Import Bank of the United States (“Ex-Im Bank”) is the official export-credit agency of the United States. Ex-Im Bank is an independent, self-sustaining executive agency and a wholly-owned US government corporation. Ex-Im Bank’s mission is to support jobs in the United States by facilitating the export of US goods and services. Ex-Im Bank provides competitive export financing and ensures a level playing field for US exports in the global marketplace.*

*The Office of Inspector General, an independent office within Ex-Im Bank, was statutorily created in 2002 and organized in 2007. The mission of the Ex-Im Bank Office of Inspector General is to conduct and supervise audits, investigations, inspections, and evaluations related to agency programs and operations; provide leadership and coordination as well as recommend policies that will promote economy, efficiency, and effectiveness in such programs and operations; and prevent and detect fraud, waste, abuse, and mismanagement.*

*This inspection was conducted in accordance with the 2012 Quality Standards for Inspection and Evaluation as defined by the Council of Inspectors General on Integrity and Efficiency. This report does not constitute a Government audit and therefore, it was not conducted following the Generally Accepted Government Auditing Standards (“GAGAS”).*



To: David Sena, Senior Vice President & Chief Financial Officer  
Claudia Slacik, Senior Vice President & Chief Banking Officer

From: Mark Thorum  
Assistant Inspector General, Inspections & Evaluations

Subject: Report on Jabiru Satellite Ltd.  
AP086539XX

Date: December 22, 2015

Attached please find the final inspection report on Jabiru Satellite Ltd. (AP086539XX). The report outlines four recommendations for corrective action. On December 21, 2015, Ex-Im Bank provided its management response to a draft of this report, agreeing with the four recommendations. The response identified the Bank's actions to address the recommendations. OIG considers the Bank's actions sufficient to resolve the reported recommendations, which will remain open until OIG determines that the agreed upon corrective actions are successfully implemented. Please note that this report contains business confidential information and is not for external distribution. A redacted version of this report will be posted on the OIG web site shortly.

cc: Charles J. Hall, EVP & CRO  
Michael McCarthy, Deputy Inspector General  
Angela Freyre, SVP & General Counsel  
Michael Whalen, VP Structured & Project Finance Division  
Walter Keating, VP Asset Management Division  
Inci Tonguch-Murray, Deputy CFO  
Jennifer Fain, Deputy AIGIE  
Parisa Salehi, Counsel, OIG  
Lawrence Wielinski, Inspector  
Daniel Wong, Inspector

Attachment: Inspection Report on Jabiru Satellite Ltd., OIG-INS-16-01, December 2015

# EXECUTIVE SUMMARY

Inspection Report on Jabiru Satellite Ltd.  
OIG-INS-16-01, December 2015

## Why We Did This Inspection

Satellite financing has become one of Ex-Im Bank's fastest growing sectors in its credit portfolio with a total authorized amount of \$4.9 billion as of September 2015. We initiated an inspection of the defaulted NewSat/JSL satellite financing to review the events and causal factors that led to the default. Although our findings and recommendations primarily relate to the NewSat/JSL transaction, the goal is to help identify potential systemic improvements in the Bank's policies and procedures for satellite financing.

## What We Recommend

1. Ex-Im Bank should revise its credit policies for satellite financings to better protect its interests against the risk of non-completion during the time before a project becomes operational.
2. Ex-Im Bank should complete a review of its policies and strategies in the satellite sector.
3. Ex-Im Bank should revise its policies for monitoring transactions during the time between approval and operating status to provide additional monitoring comparable to post-operative procedures.
4. Ex-Im Bank should revise its policies to require a follow up analysis of the transaction risk rating and participant creditworthiness prior to financial closing when circumstances indicate a possible material change since the Board approval of the transaction.

## What We Found

The Jabiru-1 Satellite Project involved the construction and launch of a satellite with projected costs of approximately \$620 million. Ex-Im Bank provided a \$300.5 million direct loan commitment, of which \$139.1 million was disbursed before funding was halted.

The Project posed numerous challenges to Ex-Im Bank and other lenders from the outset, including an inexperienced and financially weak corporate sponsor ("NewSat"), cost overruns, and significant corporate governance issues at both the Project and at NewSat. These factors would eventually lead to defaults under the Project's credit agreements with the Lenders and its underlying satellite construction contract with Lockheed Martin ("LM"). In April 2015, the Lenders and the Administrators engaged in insolvency and bankruptcy proceedings in Australia and the United States in an attempt to restructure the Project and continue the satellite construction, but these efforts were unsuccessful. NewSat is in liquidation and LM owns the unfinished satellite. The \$139.1 million owed to Ex-Im Bank by NewSat and the Project is in default. At the time of this report, Ex-Im Bank has recouped \$4.3 million from the sale of NewSat's assets and additional substantial recoveries appear unlikely.

Our inspection generated several findings:

- 1) Although Ex-Im Bank identified and mitigated many of the project specific risks of the transaction, the Bank did not sufficiently address the risk of the inexperienced and financially weak Sponsor-Guarantor, NewSat. OIG found that NewSat lacked sufficient financial resources, management depth, technical expertise, and independent board member oversight to properly manage such a large project.
- 2) The transaction structure did not adequately protect Ex-Im Bank against the risk of the Borrower's default under the satellite construction contract, as it did not provide senior lenders with a secured interest in the underlying Project assets during construction.
- 3) Ex-Im Bank's policies and practices for monitoring transactions during the time between Board approval and operative status are less developed than post-operative monitoring procedures. We found delays in addressing corporate governance issues and downgrading the risk rating.
- 4) NewSat's financial condition was deteriorating prior to closing, but Ex-Im Bank did not identify these issues, and NewSat did not make timely disclosures of these issues as required by the Finance Documents.

For additional information, contact the Office of Inspector General at (202) 565-3908 or visit <http://exim.gov/about/oig>

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	4
TABLE OF CONTENTS .....	5
LIST OF FIGURES AND TABLES.....	6
ABBREVIATIONS AND GLOSSARY .....	7
I. INTRODUCTION .....	10
II. INSPECTION SCOPE AND POINTS OF INQUIRY.....	17
III. PRINCIPAL FINDINGS AND RECOMMENDATIONS.....	18
IV. CONCLUSION .....	35
APPENDIX A: MANAGEMENT RESPONSE AND OIG EVALUATION .....	38
APPENDIX B: INSPECTION METHODOLOGY .....	44
APPENDIX C: JSL TRANSACTION TIMELINE .....	46
APPENDIX D: EX-IM BANK’S SATELLITE PORTFOLIO .....	52
APPENDIX E: SOURCES AND USES OF FUNDS .....	54
ACKNOWLEDGEMENTS.....	56

## LIST OF FIGURES AND TABLES

FIGURE 1: TRANSACTION STRUCTURE AND PARTICIPANTS .....	11
TABLE 1: EX-IM BANK DISBURSEMENTS .....	13
TABLE 2: WORKING GROUP FINDINGS AND RECOMMENDATIONS .....	17
TABLE 3: SUMMARY OF MANAGEMENT’S COMMENTS ON THE RECOMMENDATIONS .....	43
TABLE 4: OIG INTERVIEWS DURING FIELDWORK PHASE .....	45
TABLE 5: SATELLITE PORTFOLIO (FY 2010 – 2015).....	52
TABLE 6: SOURCES OF FUNDS.....	54
TABLE 7: USES OF FUNDS.....	55

## ABBREVIATIONS AND GLOSSARY

Term	Description
Administrator	PPB Pty Ltd trading as PPB Advisory
AMD	Asset Management Division, Ex-Im Bank
ASIC	Australian Securities & Investments Commission. Australia’s corporate, markets, and financial services regulator.
Bank or Ex-Im Bank	Export-Import Bank of the United States
BCL	Budget Cost Level (“BCL”) is a risk rating system of Ex-Im Bank that rates a transaction on a sliding scale of one (low risk) to 11 (high risk). The BCL rating determines loss reserves that will be allocated by the Bank for the transaction.
Board	The Board of Directors, Ex-Im Bank, responsible for approving all project financing transactions over \$10 million.
Board Memo/ Memorandum	A memorandum submitted to the Ex-Im Bank Board as part of the process for approving a transaction for Bank support.
Borrower	Jabiru Satellite Ltd. (“JSL”) or “Project”
COFACE	Compagnie Française d'Assurance pour le Commerce Extérieur, the ECA for France and global provider of private credit insurance.
Commercial Lenders	Societe Generale, Credit Suisse and Standard Chartered Bank
Credit Agreement	The \$300.5 million Credit Agreement among JSL, the Borrower, NewSat, the Sponsor-Guarantor, Citibank, N.A., Ex-Im Bank Facility Agent and Ex-Im Bank dated July 4, 2013.
CRTI	Character, Reputational and Transaction Integrity. CRTI due diligence is a process initiated by Ex-Im Bank to vet transaction participants, which consists of analyses of companies and individuals to identify potential fraud, corruption and integrity risks associated with parties to a transaction.
CTA/ Amended and Restated CTA	Common Terms Agreement. An agreement between the Lenders and the Borrower, setting forth the terms and conditions of the credit that are common to all of the senior secured lenders. The original signing of the CTA occurred on July 4, 2013. The CTA was subsequently Amended and Restated on February 12, 2014.
DSCR	Debt Service Coverage Ratio. DSCR is the ratio of cash available for debt service divided by debt service (principal and interest).
ECA	Export Credit Agency
Financial Close Date	Per the CTA, the “Financial Close Date” for the transaction is defined as “the date on which each of the conditions precedent referred to in Clause 3.1 (Initial Conditions Precedent) and Clause 3.2 (Further Conditions Precedent) have been satisfied or waived in accordance with the terms of this Agreement.”

Term	Description
FSS	Fixed Service Satellite
Jabiru-1	The satellite being financed by a direct loan from Ex-Im Bank.
JSL	Jabiru Satellite Limited. JSL is the Borrower of the Ex-Im Bank direct loan.
ICRAS	Interagency Country Risk Assessment System. The ICRAS process involves the periodic assessment of the credit risk associated with US credit assistance to foreign countries utilizing a confidential interagency process.
Intercreditor Agent	Deutsche Bank Trust Company Americas
KYC	Know Your Customer (“KYC”) practices are a set of requirements utilized by Ex-Bank lenders in conjunction with transaction due diligence in the assessment of integrity, corruption and bribery risk.
Ka-band	This term refers to “K-above band.” It is the band directly above the K-band of the microwave band of the electromagnetic spectrum. Ka-band is becoming more popular due to the rapid exhaustion of existing Ku-band satellites.
Ku-band	This term refers to “K-under band.” It is the band directly below the K-band of the microwave band of the electromagnetic spectrum. Ku-band is primarily used for satellite communications, particularly for editing and broadcasting satellite television.
LLCR	Loan Life Coverage Ratio. As defined in the CTA, it means, as of any date on or after the Starting Point of Credit for any period from such date through the end of the Repayment Period, the ratio of (a) the Net Present Value of the “Cash Flow Available for Debt Service” as set forth in the “Rollup” tab of the Agreed Financial Model for such period to (b) the sum of the aggregate principal amounts outstanding under all Secured Facilities plus all other Permitted Indebtedness (other than the Mezzanine Loans and the Cash Collateralized L/C Obligations) having a maturity date of one (1) year or more from such date, in each case as of such date.
LM	Lockheed Martin Corporation, the primary US exporter and manufacturer of Jabiru-1.
Loan Manual	Ex-Im Bank’s Loan, Guarantee and Insurance Manual, which sets forth the policies and procedures for due diligence, structuring and monitoring of Bank transactions.
Monitoring Manual	Ex-Im Bank’s Asset Management Division Operating Manual
MEASAT	MEASAT Satellite Systems Sdn, Bhd., the satellite operator.
NewSat	NewSat Limited, the Sponsor-Guarantor.

Term	Description
Off-taker	Party who is buying the product or service that the project produces.
OIG	Office of Inspector General, Ex-Im Bank
Orbital Slot	A high Earth orbit that allows satellites to match the rotation of the Earth and thus appear to stay in place over the same location on Earth.
Receiver	McGrathNicol Partnership
S-band	Part of the microwave band used by weather radar, surface ship radar and some communication satellites.
Security Trustee	Citicorp International Limited
SFD	Structured and Project Finance Division, Ex-Im Bank
Sponsor-Guarantor	NewSat Limited. (“NewSat”)
Teleport	A center that links satellites to ground-based communications.

## REPORT ON JABIRU SATELLITE LTD.

### I. INTRODUCTION

#### Ex-Im Bank's Satellite Portfolio

Satellite financing has become one of Ex-Im Bank's fastest growing sectors in its credit portfolio with a total authorized amount of \$4.9 billion as of September 30, 2015.<sup>1</sup> The satellite portfolio consists of a mixture of corporate, structured, project and sovereign financings, including both direct loans and guarantees. Further details on the Ex-Im Bank's satellite credit portfolio are provided in Appendix D of this report.

### II. JABIRU SATELLITE LTD.

#### Project Description

The Jabiru-1 Satellite Project (the "Project" or "Jabiru-1") involved the construction of a mixed Ku/Ka/S-band satellite by Lockheed Martin Corporation ("LM") plus ground equipment, launch and launch insurance.<sup>2</sup> The satellite was to provide Ka-band wholesale capacity to customers (e.g., service providers, resellers and telecoms) in various regions of the Middle East, South Asia and Northeast Africa. Jabiru-1's Ku- and S-band payload, to be owned and operated by MEASAT through contract with Jabiru Satellite Ltd. ("JSL" or "Borrower"), would have provided coverage in Southeast Asia.

The launch of the satellite would have transformed NewSat Ltd. ("NewSat" or "Sponsor-Guarantor") of Melbourne, Australia from a satellite communications company that delivered internet, voice, data and video to customers via third party satellites using its network of ground based teleports into a satellite owner. Jabiru-1 would have been Australia's first privately owned commercial satellite. This transaction also represented Ex-Im Bank's first satellite project financing in Australia and first satellite transaction with LM as the primary US exporter.

#### Project Structure

NewSat established JSL as a wholly-owned special purpose subsidiary to own, build, launch and manage Jabiru-1. LM served as the satellite designer and manufacturer with Arianespace as the provider of launch services. International Space Brokers, a subsidiary of Aon Risk Solutions, was engaged to provide launch insurance. MEASAT, a Malaysian

---

<sup>1</sup> For more information, see <http://www.satellitetoday.com/regional/2014/02/21/ex-im-bank-to-continue-support-to-us-satellite-communications-industry/>.

<sup>2</sup> On December 8, 2011, NewSat and LM entered into a fixed price contract for the design, manufacture, testing and on-ground delivery of a commercial satellite, Jabiru-1, and related launch mission operations. On May 25, 2012, the original satellite construction contract was amended and restated to among other things assign the contract to JSL with NewSat as Guarantor and address "key bankability concerns" of the Lenders and their advisors. The contract was amended a total of seven times with the first amendment occurring on July 17, 2012, exercising option 3 of the contract to include an S-band communications subsystem.

communications satellite operator, was engaged to operate Jabiru-1 in an orbital position owned by MEASAT.

(b) (4)

**Figure 1: Transaction Structure and Participants**

(b) (4), (b) (5)

---

<sup>3</sup>(b) (4)

## Financial Arrangements

The total project cost for Jabiru-1 at the Financial Close Date on February 13, 2014,<sup>4</sup> was estimated at \$619.9 million,<sup>5</sup> financed by a \$300.5 million long-term direct loan from Ex-Im Bank, (b) (4) in commercial bank loans covered by a COFACE guarantee,<sup>6</sup> a (b) (4) stand by facility from Standard Chartered Bank (“SCB”), and \$204.8 million of equity investment by NewSat as Sponsor-Guarantor, including (b) (4) in mezzanine financing advanced by Ever Tycoon Limited to NewSat.<sup>7</sup> The reported value of the teleports and orbital slots, considered by Ex-Im Bank as supplemental equity on top of the \$204.8 million, was (b) (4).<sup>8</sup> A breakdown of the transaction’s sources and uses of funds is shown in Appendix E.

On June 14, 2012, Ex-Im Bank’s Board approved a direct loan of \$281.0 million to JSL. After the Board’s initial approval, the authorized amount for the direct loan was increased to \$300.5 million through two amendments. The first amendment, which occurred in January 2013, increased the Bank’s authorized amount for the direct loan by \$9.6 million.<sup>9</sup> This was due to the Sponsor-Guarantor’s inability to raise the required equity and an increase in the Project’s cost. As a result, JSL required additional export credit agency (“ECA”) debt financing and changes in the capital structure of the Project to accommodate additional

---

<sup>4</sup> Per the Common Terms Agreement (“CTA”), the “Financial Close Date” for the transaction is defined as “the date on which each of the conditions precedent referred to in Clause 3.1 (Initial Conditions Precedent) and Clause 3.2 (Further Conditions Precedent) have been satisfied or waived in accordance with the terms of this Agreement.” P. 18 of the CTA dated July 4, 2013, and the Amended and Restated CTA dated February 12, 2014.

<sup>5</sup> (b) (4)

<sup>6</sup> The COFACE guarantee covered a direct loan financed equally by three commercial banks, Societe Generale, Credit Suisse and SCB.

<sup>7</sup> (b) (4)

<sup>8</sup> (b) (4)

<sup>9</sup> Ex-Im Bank Board Memorandum and two amendments dated June 6, 2012, January 10, 2013 and February 12, 2014, respectively. Ex-Im Bank’s Board approved the first amendment on January 17, 2013. Board approval was required as the modifications to the loan approval in the aggregate (increase in the loan amount, change in the initial debt/equity ratio from 60/40 to 64/36, and payment of a portion of the exposure fee as Annual Exposure Premium) were deemed material. Under the Bank’s policy for Individual Delegated Authority, Board approval was not required for the second amendment as the increase in the authorized loan amount was less than or equal to \$10 million.

senior and mezzanine lenders. At this time, the debt guaranteed by COFACE was increased by (b) (4) and additional funding of (b) (4)

from SCB was secured. The second amendment in February 2014 increased Ex-Im Bank’s authorized amount by \$9.9 million to accommodate changes in individual Project cost items. At this time, the debt guaranteed by COFACE was reduced from (b) (4) due to a decrease in the amount of French exports.

Financial Close Date for the Ex-Im Bank credit facility occurred on February 13, 2014,<sup>10</sup> at which time the direct loan became operative. The first draw under the facility occurred on February 21, 2014. The Bank disbursed a total of \$139.1 million under its \$300.5 million credit facility (see Table 1 below).

Table 1: Ex-Im Bank Disbursements (Confidential and Proprietary Information)			
Request Date	Paid Date	Amount	Description
Feb 13, 2014	Feb 21, 2014	\$41,145,800.00	Direct to JSL for LM milestone payments
Feb 28, 2014	Apr 4, 2014	\$85,295,212.00	LOC payment to LM for milestone payments
Feb 28, 2014	Apr 16, 2014	\$12,670,986.95	Direct to JSL for LM services and various advisory fees for financial, legal, and technical advisors
<b>Total</b>		<b>\$139,111,998.95</b>	

Source: AP086539 FMS Record of Disbursements, Retrieved by Ex-Im Bank Staff on August 4, 2015

### Construction of Satellite

Construction of Jabiru-1 began in January 2012 at LM’s Newtown, Pennsylvania facility. Later in July 2012, LM slowed down the pace of the construction due to the inability of NewSat to meet the original deadline of July 5, 2013, for financial closing. Testing and pre-shipment review of the satellite by LM were scheduled for March 24, 2016, with the satellite available for shipment to the launch site at Centre Spatial Guyanais near Kourou, French New Guinea by March 25, 2016. The window for launch of Jabiru-1 by Arianespace was scheduled for May 2016.

### Transaction History: Post Closing

Since Ex-Im Bank’s Board approval in July 2012, the Project experienced difficulties associated with the Borrower’s and Sponsor-Guarantor’s inability to comply with the requirements outlined in the Finance Documents. Ex-Im Bank staff attributed the delays to lack of experience and poor project management at NewSat.<sup>11</sup> In addition, various technical defaults such as failure to deliver financial statements had occurred, which the Lenders agreed to waive pursuant to Waivers 1 and 2 dated February 12, 2014, and April 3, 2014, respectively.

<sup>10</sup> *Supra* note 4.

<sup>11</sup> Ex-Im Bank Board Memorandum dated June 23, 2015, p. 4.

In July 2014, the Lenders stopped disbursements to JSL, primarily due to allegations of misconduct by certain NewSat officers and directors (discussed in more detail below). During this time period, a team consisting of staff from the Structured and Project Finance Division (“SFD”), Asset Management Division (“AMD”) and Office of General Counsel (“OGC”) oversaw the monitoring and restructuring of the transaction. Throughout the restructuring process, the Bank considered various options, including a “walk away” strategy, “asset sale” strategy, and “going concern” strategy.<sup>12</sup>

On July 15, 2014, JSL defaulted on a \$1.1 million interest payment to Ex-Im Bank due to the suspension of disbursements, including disbursements to cover interest during construction. In August 2014, NewSat and the Lenders negotiated Waiver 3 to provide a mechanism for the resumption of funding, which included requirements for the Sponsor-Guarantor to raise an additional \$40 million equity/mezzanine debt and to hire three new independent board directors and a Chief Financial Officer (“CFO”). The Sponsor-Guarantor failed to comply fully with the conditions set out in the waiver. For example, NewSat raised only \$10 million in additional funds. In addition, the allegations of misconduct were confirmed. As a result, the Lenders declined to resume funding of the Project.

In December 2014, the Lenders began negotiations on Waiver 4 with three newly-appointed independent board directors and the key Project participants. The waiver supported a recapitalization plan that would have led to resumption of funding by the Lenders. The waiver would also have granted the Lenders step-in rights if conditions of funding were not timely met. However, this plan was complicated by the refusal by LM and Arianespace to commit to a schedule to complete construction and move the launch window.

In March 2015, COFACE refused to approve Waiver 4 and asserted that it was in a “stop loss” position and would not approve any resumption of funding with respect to the Project. COFACE’s decision to discontinue its guarantee of the direct loan resulted in a gap in debt funding of approximately (b) (4).<sup>13</sup> The Lenders subsequently decided to take enforcement actions to preserve the remaining value of the satellite construction and launch contracts as well as the remaining teleports business.

On April 16, 2015, the Lenders started insolvency proceedings against the Project and NewSat in Australia, initiating the appointment of an Administrator to manage the companies during the bankruptcy proceedings and a Receiver to oversee asset

---

<sup>12</sup> Summary of Ex-Im Bank Options, SPI, March 2, 2015. “Walk away” strategy was defined as “Ex-Im recognizes current exposure as a loss and walks away from the project.” “Asset sale” strategy was defined as “Ex-Im continues to invest, but requires sale of the underlying asset to offset losses.” “Going concern” strategy was defined as “Jabiru-1 is operated and marketed as planned.” On March 25, 2015, the JSL transaction was officially transferred from the Bank’s SFD to AMD (See Finding 2A of this report for discussion on the transfer). On April 2, 2015, JSL’s BCL risk rating was downgraded by AMD from (b) (4)

<sup>13</sup> (b) (5), (b) (4)

recoveries.<sup>14, 15</sup> Acting on behalf of NewSat and the Project, the Administrator then filed for protection under the US Bankruptcy Code and received a temporary restraining order to stay the termination of the Project contracts. This gave Ex-Im Bank, the Receiver and a newly hired financial advisor time to develop a viable funding plan to renegotiate the Project's defaulted agreements with LM for satellite construction and with Arianespace for launch services. However, the Lenders and the Project were unable to secure additional funding or successfully renegotiate terms within the time provided by the bankruptcy proceedings, and the contracts were terminated. Pursuant to the terms of the contract between the Project and LM, LM retained ownership of the unfinished satellite.

As of June 23, 2015, Ex-Im Bank's total debt outstanding for the Jabiru-1 Project was \$139.1 million and (b) (4) for the COFACE lenders.<sup>16</sup> As of the date of this report, the Bank has recovered \$4.3 million from the sale of NewSat's teleports business and expects additional recoveries from the launch insurance deposit.<sup>17</sup>

### **Factors Contributing to the Default by JSL**

The following is a brief summary of the contributing factors that led the Lenders to stop disbursements, resulting in the subsequent default by JSL in payments to LM and bankruptcy proceedings.

#### ***Inability to Raise Equity***

NewSat was unable to raise the \$40 million in equity required by Waiver 3 dated August 21, 2014. At the time of the waiver's conditional approval, NewSat's stock had dropped 44 percent from the price at financial closing and 67 percent from the price near initial Board approval. The proposed Waiver 4 also required the Sponsor-Guarantor to raise \$80 million in equity. This may not have been a viable solution given NewSat's prior inability meet the equity requirements in Waiver 3 and to raise additional equity as required at initial Board approval (see earlier discussion). The Sponsor-Guarantor was only able to raise \$204.8 million of \$237.1 million in equity required at initial Board Approval as a condition precedent to the first disbursement from Ex-Im Bank.

#### ***Decrease in Existing Teleports Revenues***

---

<sup>14</sup> Under Australian insolvency laws, the appointment of an Administrator is required. The Administrator is responsible for managing the company in the interim. The appointment of a Receiver was at the discretion of the Lenders. The Receiver is responsible for asset recovery owed to secured creditors.

<sup>15</sup> Concurrently, the Administrator on behalf of NewSat and six affiliated debtors filed for protection under Chapter 15 of the US Bankruptcy Code with the US Bankruptcy Court, District of Delaware ("Bankruptcy Court"). The six affiliated debtors were JSL, NewSat Networks Pty Ltd, NewSat Services Pty Ltd, NewSat Space Resources Pty Ltd, Jabiru Satellite Holdings Pty Ltd, and NSN Holdings Pty Ltd.

<sup>16</sup> (b) (4), (b) (5)

<sup>17</sup> (b) (5), (b) (4)

On February 21, 2014, the date of Ex-Im Bank's first disbursement to JSL, NewSat announced a sharp decline in operating profit for the first half of fiscal year ("FY") 2014 (from July 1 to December 31, 2013) due to lower revenues from existing teleport customers. This was a contributing factor that triggered the requirement by the Lenders for the Sponsor-Guarantor to raise additional equity for JSL.<sup>18</sup> For further details, see Findings 1A and 2B of this report, respectively.

### **Corporate Governance Issues**

In 2014, independent board directors at NewSat ordered an internal corporate governance review (known as "the Rudd Report") of NewSat. The Rudd Report highlighted areas of concern regarding corporate governance at NewSat. Furthermore, three non-executive board directors subsequently resigned.

The findings were disclosed to the Bank in June 2014. The Lenders stopped further disbursements to JSL and informed NewSat of their decision. The Lenders hired a forensic auditor, Ferrier Hodgson ("FH"), to conduct a review of NewSat. FH confirmed the allegations of corporate governance issues identified in the Rudd Report, specifically highlighting the following key areas of concern:

- Use of non-independent board directors – Adrian Ballintine, Chief Executive Officer ("CEO") of NewSat, had de facto control over the NewSat board. Certain board members were likely not independent under Australian law. In addition, NewSat's board, through its CFO, authorized questionable payments to the CEO.
- Inappropriate related party transactions – NewSat was involved in numerous related party transactions, many of which were not properly disclosed or approved by shareholders. For example, certain payments to Cresta Motor Yachts, a company controlled by NewSat's CEO, made in 2011 and 2012 were not disclosed in NewSat's financial statements until September 30, 2014.
- Usage of funds for personal expenses by the CEO – NewSat's CEO used company proceeds to fund his own personal expenses, including the expenses of his company Cresta Motor Yachts.

### **Ex-Im Bank's Lessons Learned Review**

Concurrent with OIG's inspection, an interdivisional working group ("Working Group") was tasked to review the \$300.5 million direct loan to JSL and identify lessons learned from the default.<sup>19</sup> The Working Group consisted of Bank management and staff independent of the JSL transaction from the Credit Policy Division, SFD, AMD and OGC. Oversight of the review was provided by the Office of Credit Risk Management.

---

<sup>18</sup> (b) (4), (b) (5)

<sup>19</sup> Ex-Im Bank's Lessons Learned Memorandum dated November 16, 2015.

According to a draft provided to OIG near the completion of our inspection work, the Working Group’s primary findings confirmed that there were weaknesses in the transaction structure and key risks that were not adequately disclosed to the Board. The group has proposed a number of corrective actions to the Bank’s Enterprise Risk Committee in response to the lessons learned review.

(b) (4), (b) (5)

## II. INSPECTION SCOPE AND POINTS OF INQUIRY

### Inspection Scope

The objective of the Office of Inspector General’s (“OIG”) inspection was to assess the level of due diligence, policy compliance, risk assessment and mitigation, and monitoring performed by Ex-Im Bank.

A combination of quantitative and qualitative techniques was employed by the OIG’s Office of Inspection and Evaluation (“OIE”) as part of its review. A more detailed discussion of the inspection methodology is provided in Appendix B of this report.

### Points of Inquiry

The following Points of Inquiry directed our focus and helped guide our inspection:

**POINT OF INQUIRY 1:** Did Ex-Im Bank conduct sufficient due diligence of all aspects of the project financing and parties in accordance with Bank policies and

procedures? Did the Bank structure the transaction adequately to protect its interests?

***POINT OF INQUIRY 2:*** Did Ex-Im Bank provide effective oversight and monitoring during the pre- and post-closing phases of the transaction in consideration of the Projects heightened risks?

The OIG conducted this inspection during FY 2015 in accordance with the 2012 Quality Standards for Inspection and Evaluation as defined by the Council of Inspectors General on Integrity and Efficiency.<sup>20</sup> Those standards require that we plan and perform the inspection to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our inspection objective and points of inquiry. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

### III. PRINCIPAL FINDINGS AND RECOMMENDATIONS

In writing this report, OIG recognizes that our findings and recommendations primarily relate to the Jabiru-1 financing, and may not necessarily be generalized to the broader universe of Ex-Im Bank transactions. Our approach is to review transactions from a lessons learned perspective and to help identify potential systemic improvements in the Bank's policies and procedures. The report is guided by the two Points of Inquiry listed above. For each point, OIG provides applicable criteria based on Ex-Im Bank's policies and procedures, market best practices, peer entities, as well as rating agency criteria. The report continues with OIG's findings and recommendations to management.

**Point of Inquiry 1: Did Ex-Im Bank conduct sufficient due diligence in accordance with Bank policies, procedures and industry best practices? Did the Bank structure the transaction to adequately protect its interests?**

#### Applicable Standards

OIG reviewed various Applicable Standards and focused on the following:

1. Ex-Im Bank's policies on analyzing project risk factors as outlined in Chapter 14: Project Finance of Ex-Im Bank's Loan, Guarantee and Insurance Manual ("Loan Manual"), updated January 2013;
2. Ex-Im Bank's Satellite and Terrestrial Telecommunications Financing Presentation and Executive Summary, July 2011;

---

<sup>20</sup> For more information, see <https://www.ignet.gov/sites/default/files/files/committees/inspect-eval/iestds12r.pdf>.

3. OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables, Executive Office of the President, Office of Management and Budget, November 2000 and January 2013 (Revised);
4. Rating criteria for project finance used by the principal credit rating agencies: Standard & Poor's, Moody's and Fitch Ratings;
5. Satellite industry reports from commercial banks, rating agencies and industry advisors;
6. Current market practices including terms and conditions and contractual provisions of other satellite transaction financings; and
7. Ex-Im Bank's policies and procedures on Character, Reputational and Transaction Integrity ("CRTI") due diligence outlined in Chapter 8: Other Guidance and Chapter 24: Credit Review and Compliance of the Loan Manual, January 2010 and January 2013, respectively.

### ***Analysis of Project Risk Factors***

A project finance transaction can be broadly-defined as a non-recourse financing of a single asset or portfolio of assets where the lenders rely on those assets to generate the requisite cash flow to repay the loan, as defined by the contractual relationships within each project. As such, recourse to the project's sponsor/guarantor is generally limited as defined in the collection of contracts and agreements among the various parties.

Reflecting the non-recourse nature of the financing, Ex-Im Bank's policies require a comprehensive analysis of all aspects of the project financing, including the various parties involved. Among the risk factors that are commonly addressed are the project's plan of operations, construction risk, projected cash flow coverage of debt service, currency exposure, transaction and legal structure, sponsor qualifications, contractual agreements and relationships, risk sharing, off-take contracts and market demand. In addition, Section 14.5.1 Risk Factors of the Loan Manual requires a review "of each sponsor and major project participant (off-takers, EPC contractor, O&M etc.) in terms of their creditworthiness and their ability to comply with and manage the project which includes an analysis of past similar project experience. If project parties are not credit worthy, a stand-by letter of credit or parent guaranty may be required."

Further, the Bank's Loan Manual requires a detailed analysis of the financial model, including a review of assumptions and sensitivities (base case, upside, and downside) for a transaction.

### ***Transaction Structuring***

With respect to structuring of a transaction, Ex-Im Bank is to play an active role in the structuring and executing of the financing. Section 14.4.3 of the Bank's Loan Manual states, "Project Finance transactions require the credit office to be highly proactive in the structure of the financing terms, intercreditor relationships and the security package ... involves negotiations with the sponsors, lenders, and local governments, if necessary. Issues continue to be developed, project economics are analyzed, intercreditor issues are resolved, and documents are negotiated requiring continued analysis and due diligence."

## ***Management and Operation of Federal Credit Programs***

OMB Circular No. A-129 “prescribes policies and procedures for justifying, designing, and managing federal credit programs.”<sup>21</sup> It includes policies for credit extension covering applicant screening, creditworthiness assessment, loan documentation, and collateral requirements. Specifically, the Circular suggests that the risk of default can be reduced by having well-managed collateral requirements as part of an agency’s credit extension policies.

### ***Key Risks and Mitigating Factors for Satellites***

In July 2011, a cross-discipline team of Ex-Im Bank staff presented the results of their review of satellite and terrestrial telecommunication transactions to the Bank’s Credit Policy Committee. The purpose of the review was to broadly identify, characterize and distinguish key risks and mitigating factors in the sector given the increase in demand for financing. The review highlighted the risky nature of satellite project financing and identified the financing structure of a satellite transaction as a key factor for consideration, specifically:

“... deals that require a high degree of structuring (e.g. covenants, restrictions, etc.) and that are associated with relatively weaker borrowers and/or smaller market players can be very risky; project finance deals (with absolutely no recourse to a corporate balance sheet) can be prohibitively risky....

Ex-Im Bank has financed only one telecommunications deal on a project finance basis and it resulted in a claim and debt write-off.”<sup>22</sup>

In addition, the presentation covered other factors identified by Bank staff in their review of satellite transaction case studies. Risks and mitigants identified by staff included the use of launch and in-orbit insurance given the “one in ten chance of launch failure,” the mitigation of market risk by a borrower’s ability to grow its market share, and the importance of having an amortization schedule in response to uncertain revenues from satellite deals.

### ***Rating Agency Guidance and Industry Reports***

Additional guidance on project analysis can be found in the rating criteria used by the principal credit rating agencies: Standard & Poor’s, Moody’s and Fitch Ratings. The agencies review a range of issues that may impact a project’s ability to make timely payment of principal and interest as well as the lender’s ability to recover past due amounts. Key rating drivers include completion risk, operation and revenue risk, debt

<sup>21</sup> For more information, see [https://www.whitehouse.gov/sites/default/files/omb/assets/fedreg/amend\\_a129.pdf](https://www.whitehouse.gov/sites/default/files/omb/assets/fedreg/amend_a129.pdf) and [https://www.whitehouse.gov/omb/circulars\\_a129\\_rev2013](https://www.whitehouse.gov/omb/circulars_a129_rev2013).

<sup>22</sup> Ex-Im Bank’s Satellite and Terrestrial Telecommunications Financing Presentation and Executive Summary, July 11, 2011. Although the document does not provide specific credit policy or underwriting criteria, it does provide guidance on key risks and mitigating factors for satellite transactions.

structure, debt service and counterparty risk, legal structure and country risks.<sup>23</sup> In addition, the quality of the sponsor and involved parties is an important consideration when assessing the overall credit worthiness of a project. In this regard, rating agencies assess many factors including the sponsor's prior track record, its ability to provide financial support and level of commitment to the project.

OIG also reviewed various industry reports prepared by commercial banks, rating agencies and industry advisors to better understand the dynamics and risks specific to the satellite industry. Additional risks highlighted for satellite companies included government sequestration and troop withdrawal, oversupply of satellites from regional operators, uncertainty in bandwidth demand due to improving technology, and volatility of contracted bandwidth from year to year.<sup>24</sup> Factors that determine the relative competitive position within the telecommunications industry include diversity of product offerings, customer quality and customer concentration.<sup>25</sup>

### ***Current Market Practices for Satellite Financings***

As part of our inspection work, OIG reviewed the credit documentation of satellite financings in Ex-Im Bank's portfolio. In addition, OIG interviewed legal counsel to the Lenders and other Project consultants and reviewed publicly available information<sup>26</sup> to determine current market practices related to satellite construction requirements and the contractual terms with respect to transfer of title and risk of loss. Our inspection work disclosed that for satellite transactions, the title and risk of loss for key project assets (i.e., the satellite) typically transfer from the satellite manufacturer to the purchaser upon completion of satellite construction, prior to launch or after in-orbit testing and delivery.<sup>27</sup>

---

<sup>23</sup> For examples of rating agency guidance on project finance, see S&P's Project Finance Framework Methodology at <https://www.globalcreditportal.com/ratingsdirect/renderArticle.do?articleId=1359492&SctArtId=263469> and FitchRatings' Rating Criteria for Infrastructure and Project Finance at <https://www.fitchratings.com/jsp/general/login/LoginController.faces>.

<sup>24</sup> For more information, see Global Fixed Satellite Services, J.P. Morgan Global Equity Research, January 6, 2014, available by subscription at <https://www.jpmorgan.com/pages/about/investment-banking/cazenove>.

<sup>25</sup> For more information, see Key Credit Factors for the Telecommunications and Cable Industry, S&P Rating Services, June 22, 2014, available by subscription at [https://www.spratings.com/en\\_US/home](https://www.spratings.com/en_US/home).

<sup>26</sup> OIG reviewed publically available satellite construction contracts, industry journals, and references contained in company filings with the US Securities and Exchange Commission.

<sup>27</sup> Although project financings vary in structure, lenders typically require the project company ("Borrower") to provide a security interest in all of the Borrower's assets to secure the repayment of debt. These assets include the project company's rights under the project documents, rights to the project site and all equipment, insurance proceeds, permits, etc. In addition, lenders typically require the project company to pledge its equity interests in the project under a pledge agreement. This provision provides further protection to lenders in the event of default as it allows lenders to take control of the project and or sell the project as a going concern. For additional information, see <https://www.lexisnexis.com/.../bankingandfinance/.../Security> and <http://www.ebrd.com/downloads/legal/secured/roever7m.pdf>.

With respect to the construction of Jabiru-1, the transfer of title to the satellite from LM to JSL was to occur upon completion of the pre-shipment review and transfer of loss occurs at launch.<sup>28, 29</sup> When OIG staff queried the Lenders' legal counsel on this point, they cited several reasons for this practice. First, as the satellite is constructed at the manufacturer's facility, the manufacturer is responsible for maintaining certain levels of insurance coverage (e.g., ground/property and commercial general liability) during the performance of the contract. Second, the value of a satellite under construction is limited due to the level of customization and the fact that satellites are typically completed by the same manufacturer due to the unique technical constraints with respect to the design.

The OIG reviewed fifteen satellite transactions approved by the Bank, with a total value of approximately \$4.9 billion, and compared them to the NewSat transaction. The majority were structured as a corporate finance transaction where the ultimate source of repayment was the Borrower. Two of the transactions were loan guarantees with Sovereign Borrowers. Typically, most satellite transactions are with larger satellite companies that have other collateral to pledge or can borrow directly through the strength of their balance sheet.

### ***CRTI Due Diligence***

Transaction participants are also subject to Ex-Im Bank's Character Reputational and Transaction Integrity ("CRTI") due diligence process.<sup>30</sup> Pursuant to these guidelines, all parties to the transaction are to be vetted, including the foreign buyer, borrower, project sponsors, off-takers, end-users, guarantors and principal owners of each of these entities. The Bank adopts a risk-based approach to due diligence, recognizing that the level of due diligence should be scaled to the nature, complexity and perceived risk level. A key concern is the potential for fraud and corruption as they may result in significant monetary loss to the transaction participants and undermine the Bank's institutional integrity and reputation. The Bank's policies and procedures related to

---

<sup>28</sup> The pre-shipment review is conducted by LM prior to shipment of the satellite to the launch location. (b) (4), (b) (5)

<sup>29</sup> Prior to launch, LM was required to maintain ground insurance, which provides coverage for risk of loss or damage to the satellite during construction. (b) (4), (b) (5)

<sup>30</sup> On March 1, 2015, Ex-Im Bank issued revised "CRTI Transaction and Enhanced Due Diligence Guidance" to Bank staff.

fraud and corruption prevention are outlined in several core documents including “Transaction Due Diligence Best Practices.”<sup>31</sup>

**Finding 1A: Although Ex-Im Bank identified and mitigated many of the project specific risks of the transaction, the Bank did not sufficiently address the risk of the inexperienced and financially weak Sponsor-Guarantor, NewSat.**

In completing its due diligence, Ex-Im Bank and its advisors properly identified the risks inherent in project financing, as well as risks unique to the satellite industry, such as risk of launch failure, regulatory, markets, and technology risks. However, OIG’s review of the Board Memorandum, amendments, transcripts and transaction documents indicated that Ex-Im Bank staff did not identify the inexperienced and financially weak Sponsor-Guarantor, NewSat, as a significant risk to the Project during its due diligence process.

***Inexperienced and Financially Weak Sponsor-Guarantor***

At the time of formal approval by Ex-Im Bank’s Board in July 2012, NewSat was a satellite services and ground teleport company—a satellite bandwidth resale business with total revenues and EBITDA<sup>32</sup> of approximately \$28.6 million and \$1.8 million, respectively.<sup>33</sup> The Sponsor-Guarantor’s teleport business was primarily reliant on the mining boom in Australia and US military involvement in Afghanistan, both of which utilized the teleports to relay satellite signals to ground personnel in remote regions. As described earlier in this report, NewSat’s reliance on non-diversified customers proved problematic. The construction and launch of the Jabiru-1 satellite would have transformed NewSat into a first-time satellite owner and direct seller of satellite bandwidth, substantially expanding its current business model and revenue base.

Jabiru-1’s projected cost of approximately \$620 million heavily outweighed the <sup>(b) (4)</sup> valuation of NewSat’s existing teleport business assets and its financial capacity to support the Borrower.<sup>34</sup> Equally important, OIG’s interviews of former NewSat staff and board members revealed that the Sponsor-Guarantor lacked sufficient management depth, technical expertise, and independent board member oversight to properly manage a large scale project financing.<sup>35</sup> Further interviews with Bank staff and external parties confirmed this finding and attributed the 21-month delay in financial closing to NewSat’s inability to manage contractual negotiations, conduct financial analysis, and raise sufficient equity to fund the Project. Moreover, the Bank, in its Board

---

<sup>31</sup> Ex-Im Bank’s Transaction Due Diligence Best Practices, dated January 10, 2008.

<sup>32</sup> Earnings Before Interest, Tax, Depreciation and Amortization.

<sup>33</sup> Ex-Bank Board Memorandum dated June 6, 2012, p. 22.

<sup>34</sup> *Supra* note 8.

<sup>35</sup> OIG’s interview of a former NewSat board member confirmed the company lacked sufficient management resources.

Memorandum dated June 23, 2015, stated, “from the outset, NewSat experienced ongoing difficulty in complying with covenants and conditions precedent in the credit agreement (resulting in various technical defaults, which the Lenders agreed to waive ...) mostly due to lack of experience and poor project management.”<sup>36</sup>

The Sponsor-Guarantor’s weak financial condition and inability to support the Project became even more apparent in February 2014 when NewSat advised the Lenders that its teleport business would experience a cash shortfall and required additional equity to account for a shortage in working capital due to a decline in teleport revenues. The decline in revenues was attributed to a loss of contracts, primarily with key customer (b) (4), a US-based satellite service provider to government related markets in the Middle East and Afghanistan (see Finding 2B for further discussion). In its April 2012 report, the Lenders’ Market Advisor, Euroconsult, highlighted the uncertainty of the military communications market in the region as a key risk because of the expected withdrawal of US troops in Afghanistan by the end of 2014.<sup>37</sup> This was confirmed by (b) (4) CEO who acknowledged the risk associated with troop withdrawals in the region.<sup>38</sup>

Ex-Im Bank’s Loan Manual and project finance best practices highlight the need for a financially solvent sponsor(s) with sufficient resources to meet ongoing sponsor funding requirements including operation of a project financing. JSL’s financial statement auditor recognized the importance of the Sponsor-Guarantor to the Project, stating “the ability of [JSL] to pay its debts as and when they fall due is dependent upon the ongoing support of [JSL’s] parent entity [NewSat].”<sup>39</sup>

Neither the Board Memorandum, transcripts nor the attendant documents articulate the implications to the risk profile of the transaction resulting from an inexperienced and financially weak Sponsor-Guarantor. The discussions focused largely on the technical strength of the contractors (e.g., LM, Arianespace and MEASAT) and other credit enhancements (see Finding 1B for a discussion on structural enhancements), with no in-depth discussion or analysis of NewSat with respect to experience and financial strength. Given the information available in the Market Advisor’s April 2012 report, such as that referenced above, the Bank should have paid closer attention to the likelihood of the Sponsor-Guarantor achieving its forecasted teleport and orbital slots revenues, and the viability of the Borrower’s off-take contracts that were dependent on the launch of the satellite.

Although the base financial model was adjusted to reflect some of the concerns outlined in the Euroconsult’s market analysis regarding the off-take contracts, the information

---

<sup>36</sup> Ex-Im Bank Board Memorandum dated June 23, 2015, p. 4.

<sup>37</sup> Commercial Due Diligence Assessment of the NewSat Jabiru 1 Satellite Project, Euroconsult, April 12, 2012 (“Market Advisor’s Report”), pp. 6, 22, 30 and 72.

<sup>38</sup> *Ibid.*, p. 89.

<sup>39</sup> Jabiru Satellite Limited Financial Report for the Year Ended 30 June 2013, Ernst & Young.

disclosed in the report (e.g., comments on the off-takers) should have been considered a red flag. For example, the report states that “Jabiru faces a significant risk in terms of customer concentration with the business plan strongly depending on the ability of a few relatively small and second tier companies, some with limited financial resources, to fulfill their contract and payment obligations. Full or even partial default of a few or even one of the expected early customers could thus severely compromise the company’s business.”<sup>40</sup> Ex-Im Bank would have benefited from scenario analysis with respect to the Sponsor-Guarantor’s existing teleport revenues given the Bank’s own acknowledgement of the high-risk nature of satellite project finance (i.e., “... relatively weaker borrowers and/or smaller market players can be very risky”). This is of particular importance given the reliance on “a substantial equity contribution from NewSat made prior to closing ... [and reliance] on Borrower cash flows supported by other NewSat cash flows for repayment of debt.”<sup>41</sup>

### **RECOMMENDATION 1A**

In the *Report on Minera y Metalurica del Boleo S.A.* (OIG-INS-13-01), OIG recommended that Ex-Im Bank conduct a comprehensive review of its credit analysis and approval procedures with a view to improving its transaction risk assessment and risk rating processes for transactions with a higher risk profile, to include a full risk assessment of all project parties. This recommendation is being implemented. In addition, OIG recommends:

- Ex-Im Bank should revise its credit policies for satellite financings to better protect its interests against the risk of non-completion during the time before a project becomes operational. In revising its policies, the Bank should consider placing more emphasis on the financial resources of the project sponsor and/or requiring appropriate mitigants to protect the Bank’s interests in the event of project non-completion. Appropriate mitigants could include a perfected security interest in project assets during construction, recourse to a creditworthy sponsor/guarantor, or the use of a credit enhancement such as a standby letter of credit.

### **Management Response:**

Please see Appendix A, Management Response and OIG Evaluation.

---

<sup>40</sup> Market Advisor’s Report, p. 73.

<sup>41</sup> Ex-Im Bank Board Memorandum dated June 6, 2012, p. 46.

**Finding 1B: The NewSat transaction structure did not adequately protect the Bank against the risk of the Borrower’s default under the satellite construction contract as it did not provide senior lenders with a secured interest in the underlying project assets during construction.**

Although Ex-Im Bank’s Board Memorandum stated that the JSL transaction was structured within the framework of a “standard and customary project finance transaction with a comprehensive security package,”<sup>42</sup> in following current market practices the transaction’s structure did not provide a security interest in the satellite for the Lenders during construction. The transaction structure proved ineffective as a result of NewSat’s payment defaults to the satellite manufacturer, LM. In hindsight, the risk posed by a potential Borrower default under the satellite construction contract should have been further assessed and mitigated given the inexperienced and financially weak Sponsor-Guarantor.

***Structural Enhancements Proved Ineffective***

The initial Board approval of the JSL transaction included several structural enhancements, including an “equity in first” requirement by the Sponsor-Guarantor, pre-paid exposure fee and cash sweeps.<sup>43</sup> However, these features were weakened over time by Board amendments prior to the Financial Close Date on February 13, 2014.<sup>44</sup> NewSat was only able to raise a portion of the total equity required by financial close to fund the Project. To address this shortfall, the Bank increased its loan commitment and lowered the equity requirement. The Bank also revised the payment of the exposure fee to allow a portion of the fee to be paid as an Annual Exposure Premium (“AEP”) and modified the Project’s cash sweep features to accelerate the payment of debt during operations.

The revisions to the transaction structure, which resulted in a change in the debt to equity ratio from 60/40 to 64/36,<sup>45</sup> and partial payment of the exposure fee as an AEP, effectively increased the Bank’s risk exposure to the Project during the construction

---

<sup>42</sup> Ex-Im Bank Board Memorandum dated June 6, 2012, p. 2.

<sup>43</sup> Pursuant to the “equity in first” requirement, the Sponsor-Guarantor must fund its equity commitment as a condition precedent to usage under the Ex-Im Bank facility. The “cash sweep” mechanism is a provision in the credit documentation that requires excess funds at the Project to be applied to outstanding Project debt. Finally, Ex-Im Bank modified the upfront payment of the exposure fee to allow a portion of the fee to be paid as an Annual Exposure Premium thus allowing the Borrower additional time to pay the fee.

<sup>44</sup> *Supra* note 4.

<sup>45</sup> The amended 64/36 debt to equity ratio includes NewSat’s (b) (4) assessed value for its existing teleports and orbital slots as equity. Exclusion of the Sponsor-Guarantor’s existing teleport assets as a source of equity would change the ratio to 68/32.

phase.<sup>46</sup> Although the enhanced cash sweep features would essentially allow the Bank to catch up through quicker repayments and maintain a similar weighted average life of the loan, this feature was contingent on the Project reaching the operation phase.

### **Satellite Construction Contract**

On December 8, 2011, NewSat and LM entered into a contract for the design and construction of the Jabiru-1 satellite. The contract was subsequently amended seven times. Amendments to the contract included, for example, adjustments to certain contractual terms (e.g., commercial and pricing) as required by the Lenders.

As discussed above, satellite financings are unique with respect to the transfer of title and risk of loss. Although Ex-Im Bank had a “first-ranking perfected security interest in all present and after-acquired assets” of JSL and each NewSat company,<sup>47</sup> the Bank did not have a secured interest in the Jabiru-1 satellite during construction. This was due to the fact that transfer of title of the satellite from LM to JLS would not occur until completion of the pre-shipment review of the satellite. As per market practice for satellite transactions, the title and risk of loss for a satellite typically transfer from the manufacturer to the purchaser directly prior to launch or after in-orbit testing/delivery. Neither the Board Memorandum nor the attendant documents articulate the implications to the risk profile of the transaction resulting from the Bank’s inability to perfect its security interest in the satellite during construction.

The lack of a security interest in the satellite assets under construction proved problematic for Ex-Im Bank when JSL defaulted on its payments to LM. The satellite manufacturer exercised its remedies by terminating the defaulted construction contract with NewSat and retained the unfinished satellite.<sup>48, 49</sup>

## **RECOMMENDATION 1B**

Recognizing both the inherent risk of the satellite sector and its strategic importance to the US economy, OIG recommends:

- Ex-Im Bank should complete a review of its financing policies and strategies in the satellite sector, including a risk review of its current exposure to the satellite industry, assessment of the implications of the JSL default, and dialogue with key

<sup>46</sup> For project finance, the construction period represents a high period of risk because most of a project’s capital expenditures are paid or incurred during this phase.

<sup>47</sup> Ex-Im Bank Board Memorandum dated June 6, 2012, p. 47.

<sup>48</sup> On December 16, 2014, LM issued a Notice of Default to NewSat for nonpayment of \$21 million due from JSL. For further discussion, see the “Transaction History: Post Closing” section of this report.

<sup>49</sup> (b) (4), (b) (5)

satellite manufacturers to revisit current market practices regarding the lender's inability to establish a security interest in a satellite while it is under construction.

**Management Response:**

Please see Appendix A, Management Response and OIG Evaluation.

**Point of Inquiry 2: Did Ex-Im Bank provide effective oversight and monitoring during the pre- and post-closing phases of the transaction in consideration of the Project's heightened risk profile?**

**Applicable Standards**

OIG reviewed various Applicable Standards and focused on the following:

1. Ex-Im Bank's pre-closing guidelines for project finance as outlined in Chapter 14: Project Finance of the Bank's Loan, Guarantee and Insurance Manual, updated January 2013 ("Loan Manual");
2. Ex-Im Bank's post-closing (asset monitoring and restructuring) guidelines as outlined in Chapter 22, Post-Operative Monitoring of the Loan Manual;
3. Asset Management Division Operating Manual, March 2009 ("Monitoring Manual");
4. Asset Monitoring System, Report Optimization Project Operating Manual ("AMS Operating Manual"), May 19, 2010, Revised September 30, 2013;
5. Ex-Im Bank's Satellite and Terrestrial Telecommunications Financing Presentation and Executive Summary, July 11, 2011;
6. OMB Circular A-123 Revised, Management's Responsibility for Internal Control (Effective FY 2006)(Revised December 21, 2004) and GAO/AMD-00-21.3.1, November 1999, Standards for Internal Controls in the Federal Government;
7. Ex-Im Bank Project Criteria and Application Information Requirements from Appendix 14-F of the Loan Manual; and
8. Transaction Finance Documents including the Ex-Im Bank Credit Agreement available to Jabiru-1 project, as amended and restated, and the Common Terms Agreement as amended and restated ("CTA").

***Ex-Im Bank: Pre and Post Closing Monitoring Procedures***

For project finance transactions, Ex-Im Bank's Structured and Project Finance Division ("SFD") is responsible for conducting due diligence, structuring the transaction, and overseeing the closing process. The Bank's Loan Manual defines this process as the

“Phase 2 evaluation.” Phase 2 begins with the completion of due diligence and ends with the financial closing and signing of all project financing agreements.<sup>50</sup>

SFD transfers the credit to AMD for monitoring when the following conditions have been met after financial closing:

- Credit is operative,
- Monitoring package has been prepared,
- Pre-closing issues have been resolved, and
- Transaction is disbursing cleanly without any waivers or pending amendments.

After financial closing, SFD ensures all pre-closing issues have been resolved and the transaction is disbursing cleanly without the need for waivers or amendments. In the event that the transaction has not been transferred to AMD, SFD would be responsible for the ongoing monitoring including the annual risk rating assessment.

According to the Bank’s Monitoring Manual, the Asset Management Division (“AMD”) is responsible for post-operative management of all transactions. AMD’s responsibilities include monitoring, structuring, and managing loans as specified in Chapter 22 of the Bank’s Loan Manual. Within AMD, the Project and Corporate Portfolio Management Group (“PCPM”) is responsible for Project Finance transaction monitoring. PCPM manages the transaction through ongoing assessments of the operating environment and financial condition of the borrower and guarantors. PCPM responsibilities include a number of activities, such as:

- Monitoring construction progress and operation results,
- Reviewing credit waivers and amendments,
- Reviewing the value of collateral,
- Risk rating transactions to measure the Bank’s risk exposure for loss reserves,
- Restructuring defaulted transactions to ensure the highest possible recovery, and
- Supporting transactions by providing feedback to the Bank’s division responsible for origination of the loan.

The Special Assets Control Group (“SACG”) within AMD is responsible for the restructuring of operative credits for all non-aircraft transactions. SACG works with PCPM when transactions are identified as impaired, through credits in payment default or assets that are rated a ‘9’ or above on the Bank’s ‘12’ point risk rating scale.

---

<sup>50</sup> According to the Loan Manual, “project finance transactions differ from other programs in that financing documentation is in negotiation prior to Board authorization and up until financial close.”

### ***Federal Agency Regulations for Internal Control***

As prescribed in OMB Circular A-123 Revised, Management’s Responsibility for Internal Control, Ex-Im Bank “management is responsible for establishing and maintaining internal control to achieve the objectives of effective and efficient operations, reliable financial reporting, and compliance with applicable laws and regulations.”<sup>51</sup> GAO’s Standards for Internal Control in the Federal Government states further “that internal control activities are the actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system.”<sup>52</sup>

### ***Ex-Im Bank Restructuring Guidelines***

The Monitoring Manual covers different scenarios, including a “restructuring or workout” and “recovery.” The Manual defines “restructuring or workout” as those situations where AMD has a reasonable belief that the full net present value can be achieved (i.e., full recovery of the Bank’s investment). Options covered in a “restructuring or workout” of a transaction include amortization rescheduling, cash sweeps, additional collateral, and additions of offshore accounts to change the timing of repayment or serve as additional sources of funds for repayment.<sup>53</sup>

In contrast, a “recovery” is defined as situations where only a portion of cash net present value can be salvaged. Recovery options listed in the Monitoring Manual include debt for equity shares, discounted settlements, collection actions, Ex-Im Bank debt sales, recoveries litigation, and representation in court-supervised restructuring or liquidation.

### ***Ex-Im Bank Disclosure Requirements***

Ex-Im Bank relies upon transaction participants to provide legitimate information, certifications, financial statements, and export documents and to comply with all applicable laws—both domestic and foreign. The Bank also encourages transaction participants to emphasize their commitment to legal compliance to their employees, agents, vendors and contractors. These requirements are typically addressed in the application process and attendant documentation.

### ***Transaction Finance Documents***

The Finance Documents contain numerous contractual provisions that protect the financial interests of both the Obligor and Lenders. Usage of the Ex-Im Bank credit facility is predicated on the satisfaction of specific conditions precedent at financial closing and at each subsequent utilization. With respect to the NewSat financing,

---

<sup>51</sup> For more information, see [http://www.whitehouse.gov/omb/circulars\\_a123\\_rev](http://www.whitehouse.gov/omb/circulars_a123_rev).

<sup>52</sup> For more information, see <http://www.gao.gov/assets/80/76455.pdf>.

<sup>53</sup> According to the Bank’s Monitoring Manual, “a workout is by nature a cooperative venture between the creditors, on the one hand, and the obligor, on the other hand. Still, it is to be expected that all sides in a workout will seek maximum advantage. Consequently, all decisions and actions should be based on ensuring the highest reasonably possible recovery of capital to the Bank, on a risk-adjusted basis.”

conditions precedent are provided in both the Amended and Restated Credit Agreement and the Amended and Restated Common Terms Agreement (“CTA”). Conditions Precedent typically include representations and warranties made by the Obligor(s) including the borrower, sponsor/guarantor and related parties. Additional undertakings require the Obligors to provide prompt notice of a default and material adverse effect.

**Finding 2A: Ex-Im Bank’s policies and practices for monitoring transactions during the time between Board approval and operative status are less developed than post-operative monitoring procedures.**

***Transition of Monitoring Responsibility from SFD to AMD Can be Improved***

During the inspection, OIG observed that Ex-Im Bank’s policies and procedures for the oversight of project finance transactions that remain with the originating division for an extended period can be improved. For example, unlike AMD’s Operating Manual that prescribes detailed policies and procedures for post-operative monitoring, structuring and managing of transactions, guidance in Chapter 14 of the Bank’s Loan Manual’s is limited to the following provision:

“Should monitoring remain with the originating division, written notice will be given to the relevant AMD Monitoring Group. The originating division will then be responsible for conducting risk rating re-assessments should events or conditions occur that affect the overall rating of the credit. If a rating changes, the originating division must notify the relevant AMD Monitoring Group of the change.”

Absent well developed policies and procedures for the oversight of transactions that remain with the originating division for an extended period, Ex-Im Bank cannot ensure consistency in the managing and monitoring of such transactions.

With respect to the Jabiru-1 transaction, SFD maintained monitoring responsibility for the transaction from financial closing on February 13, 2014, to formal AMD transfer on March 25, 2015. This was due to the fact that JSL could not comply with the technical covenants and required waivers of certain provisions in the loan documentation before the Lenders could process disbursements. As a result, the credit was not formally transferred to AMD until NewSat was near bankruptcy. As SFD and AMD jointly share responsibility for providing transaction oversight, earlier involvement of AMD staff prior to formal transfer would facilitate a more seamless transition.<sup>54</sup> This is particularly important in those situations where the transaction is not proceeding smoothly and may need to be restructured prior to the transfer to AMD.

---

<sup>54</sup> Generally, the transfer of a transaction from the originating division to AMD should take place when the transaction is declared operative and financing can be utilized (i.e., no pre-closing issues, transaction is disbursing cleanly without waivers or pending amendments).

With the advent of the Rudd Report and related stop in disbursements to JSL in July 2014, SFD and AMD worked jointly to address the subsequent waivers. The earlier inclusion of AMD was done to make sure that the division was aware of the issues with respect to the JSL transaction. By doing so, this helped to facilitate the transfer of the credit from SFD to AMD in March 2015 and with the restructuring of the JSL transaction.

### ***Lack of Timeliness in Addressing Corporate Governance Issues***

When the Rudd allegations were disclosed to the Lenders in June 2014, the Lenders agreed to stop disbursements to JSL and hired a forensic auditor, Ferrier Hodgson (“FH”), to conduct a review of NewSat. FH confirmed the allegations of corporate governance issues identified in the earlier reports. The investigation highlighted and confirmed the following key areas of concern: use of non-independent board directors, inappropriate related party transactions, and usage of funds for personal expenses by the CEO. For example, related party transactions between NewSat and Cresta Motor Yachts for over \$300,000 in “executive marketing and business development” related to Jabiru-1.<sup>55</sup> NewSat CEO Adrian Ballintine is the majority owner and president of the advisory board of Cresta. The company is operated by Adrian Ballintine’s son, Tim Ballintine.

The FH investigation of NewSat, a requirement of Waiver 3, took over four months to complete. Interviewed participants cite non-cooperation of NewSat, and in particular, CEO Adrian Ballintine, as the primary reason for the delayed timeframe. The timing of the investigation and Lender deliberations was an important factor as the Lenders had previously halted disbursements to the Borrower pending completion of the investigation.

With no access to the credit facility and no financial support from its parent, NewSat, the Borrower failed to make interim payments to LM under the satellite construction contract, as described more fully in the “Transaction History: Post Closing” section of this report. LM issued a Notice of Default to NewSat for nonpayment by JSL and ceased working on the satellite.

During interviews with transaction parties, certain participants believed that Ex-Im Bank should have insisted on quicker implementation of corporate governance controls at the Sponsor-Guarantor and the removal of its CEO. This may have resulted in a more timely resolution of the governance issues, restored Lender confidence and avoided the Borrower’s default under its construction contract with LM.

Subsequent interviews with Ex-Im Bank staff cited the Bank’s concern with Lender liability issues.<sup>56</sup> Others noted that the frequent turnover of SFD management at the Bank affected the timeliness of executive actions. OIG learned that during the period

---

<sup>55</sup> NewSat Ltd. Annual Report 2014, for the period ending June 30, 2013, p. 83.

<sup>56</sup> Lender liability issues may arise when a lender tries to exercise control or influence over a borrower’s operations and/or assets during a period of restructuring or insolvency.

from June to December 2014, the Bank's SFD experienced a change in management on four occasions.

### ***Ex-Im Bank Belatedly Downgraded the Project Risk Rating***

Ex-Im Bank did not place the JSL transaction on the Bank's official "Watch List" until LM issued a Notice of Default on December 16, 2014. On April 2, 2015, Ex-Im Bank staff downgraded the project's BCL risk rating from (b) (4) and moved the transaction from the "Watch List" to the "Impaired Credit List". The Bank did not re-rate the transaction's risk rating until AMD had official monitoring responsibility. As Ex-Im Bank allocates loss reserves based on BCL risk ratings, an inaccurate rating understates the Bank's underlying portfolio risk.

For transactions that reside in AMD at the onset of credit monitoring, monitoring documentations (re-rating, disbursements, and trip reports) are stored in the Bank's Asset Monitoring System ("AMS"). In the case of the JSL transaction, although the Bank provided sufficient documentation in a timely manner to the OIG for review, it was observed that monitoring documentation was not stored in a systematic manner due to the dual credit management responsibilities from SFD and AMD. This was in part due to the lack of clear monitoring guidelines for SFD in such situations.

## **RECOMMENDATION 2A**

To enhance certain oversight policies and procedures of the originating divisions, OIG recommends:

- Ex-Im Bank should revise its policies for monitoring transactions during the time between approval and operating status to provide additional monitoring comparable to post-operative procedures. In revising its policies, the Bank should consider additional requirements for monitoring within originating divisions, formal policies and practices on resource sharing and coordination between originating divisions and AMD, quarterly reviews of transactions currently housed in the originating divisions, and early involvement of AMD staff or transfer to AMD if restructuring is necessary prior to operative status.

### **Management Response:**

Please see Appendix A, Management Response and OIG Evaluation.

**Finding 2B: NewSat's financial condition was deteriorating prior to closing, but Ex-Im Bank did not identify these issues, and NewSat did not make timely disclosures of these issues as required by the finance documents.**

### ***Evidence that NewSat Did Not Make Timely Disclosure of a Material Decline in Revenues and Issued Inaccurate Representations to Ex-Im Bank***

During the inspection, OIG found evidence that the Sponsor-Guarantor did not make timely disclosure of a material decline in teleport revenues and issued inaccurate

representations to the Bank. Pursuant to the terms and conditions of the Finance Documents, the Borrower and NewSat were obligated to make certain representations and warranties at the Financial Close Date on February 13, 2014.<sup>57</sup> Specifically, NewSat was required to represent that no material adverse changes had occurred since the most recent audited financial statements.

On February 21, 2014, one week after representing at financial closing that no material adverse changes had occurred and also the day JSL received its first disbursement of approximately \$41.1 million from Ex-Im Bank, NewSat announced a sharp decline in operating profit for the first half of FY 2014 (from July 1 to December 31, 2013) and a negative EBITDA.<sup>58</sup> In addition, the Sponsor-Guarantor announced it would experience a cash shortfall of approximately \$6 million beginning in April 2014 and requested to use \$10 million of the Borrower's equity and debt reserves to cover its immediate operational needs. The Bank denied the Sponsor-Guarantor's request, requiring NewSat to raise additional equity. The Lenders then engaged their financial advisor, West End, to complete a thorough analysis of NewSat's teleport business.

West End confirmed the Sponsor-Guarantor's liquidity shortfall, citing the loss of key US military contracts by its largest customer, (b) (4).<sup>59</sup> Former NewSat staff disclosed in interviews with the OIG that (b) (4) represented roughly half of NewSat's business. Importantly, West End's report revealed that NewSat's decline in revenues and financial deterioration began back in September 2013 and its liquidity position (Bank Balance minus Trade Payables minus Tax Liability) had been negative since December 2013.

In interviews with former NewSat staff, OIG asked why management failed to report the earnings shortfall until after the financial closing. NewSat staff responded that it could not have alerted the Bank of its liquidity problems ahead of financial closing because the information did not flow to the appropriate decision maker in time due to a manual accounting system and an inadequate level of staffing to review the financials ahead of time.

### ***Ex-Im Bank Did Not Conduct a Follow Up Analysis and Valuation of the Sponsor-Guarantor's Teleport Business Prior to Financial Closing***

Although financial closing took place 20 months after the initial Board approval, Ex-Im Bank did not conduct a follow up analysis and valuation of the Sponsor's teleport business prior to financial closing. As noted above, during the 20-month period

---

<sup>57</sup> *Supra* note 4.

<sup>58</sup> Compared to the first half of FY 2013, the Sponsor-Guarantor's existing teleport revenues decreased from \$20.4 million to \$16.6 million, down 19 percent, and EBITDA decreased from \$2.2 million to a negative \$0.9 million, down 142 percent.

<sup>59</sup> (b) (4), (b) (5)

between approval and closing, the transaction required restructuring due to the Borrower's inability to meet certain conditions precedent. The Bank's current policies and procedures do not require additional analysis prior to closing, even if an extended period of time has elapsed between the analysis supporting approval of the transaction. However, in this case, an updated analysis could have detected the deterioration in the financial condition of NewSat prior to the financial closing.

## **RECOMMENDATION 2B**

To ensure up-to-date information on transaction and participant risks is obtained and that the analysis supporting the approval of a transaction is still appropriate, particularly when there has been a significant time lag between Board approval and financial closing, OIG recommends:

- Ex-Im Bank should revise its policies to require a follow up analysis of the transaction risk rating and participant creditworthiness prior to financial closing when circumstances indicate a possible material change since the Board approval of the transaction, such as: (i) indications of deterioration of the financial condition of key participants and (ii) the obligor(s) failure to meet certain conditions precedent.

## **REFERRAL**

Regarding evidence that the Sponsor-Guarantor, NewSat, did not make timely disclosures and made inaccurate representations to Ex-Im Bank, OIG is referring its findings and supporting documentation to the Bank's Office of General Counsel, the OIG Office of Investigations, and the Australian Securities and Investments Commission ("ASIC") for their consideration of civil or criminal remedies.

## **IV. CONCLUSION**

The Jabiru-1 Project involved the construction of a Ku/Ka/S-band satellite plus ground equipment, launch and launch insurance. Ex-Im Bank provided a \$300.5 million long-term direct loan for the construction of the satellite, ground equipment and launch insurance. LM was contracted to build the satellite. From the outset, the Sponsor-Guarantor, NewSat, experienced ongoing difficulty in complying with covenants and conditions precedent in the credit agreement. In July 2014, the Lenders stopped funding to the Project due to allegations of misconduct by certain NewSat officers and directors. In April 2015, the Lenders initiated insolvency and bankruptcy proceedings in an attempt to preserve the remaining value of the collateral. However, these restructuring efforts were unsuccessful and the partially completed satellite became the property of LM. The project defaulted on the \$139.1 million disbursed by Ex-Im Bank, and substantial recovery appears unlikely.

OIG's inspection produced several key findings related to the points of inquiry:

**Point of Inquiry 1:** Did Ex-Im Bank conduct sufficient due diligence in accordance with Bank policies, procedures and industry best practices? Did the Bank structure the transaction to adequately protect its interests?

**Finding 1A:** Although Ex-Im Bank identified and mitigated many of the project specific risks of the transaction, the Bank did not sufficiently address the risk of the inexperienced and financially weak Sponsor-Guarantor, NewSat.

**Recommendation 1A:** In the *Report on Minera y Metalurica del Boleo S.A.* (OIG-INS-13-01), OIG recommended that Ex-Im Bank conduct a comprehensive review of its credit analysis and approval procedures with a view to improving its transaction risk assessment and risk rating processes for transactions with a higher risk profile, to include a full risk assessment of all project parties. This recommendation is being implemented. In addition, OIG recommends:

- Ex-Im Bank should revise its credit policies for satellite financings to better protect its interests against the risk of non-completion during the time before a project becomes operational. In revising its policies, the Bank should consider placing more emphasis on the financial resources of the project sponsor and/or requiring appropriate mitigants to protect the Bank's interests in the event of project non-completion. Appropriate mitigants could include a perfected security interest in project assets during construction, recourse to a creditworthy sponsor/guarantor, or the use of a credit enhancement such as a standby letter of credit.

**Finding 1B:** The NewSat transaction structure did not adequately protect the Bank against the risk of the Borrower's default under the satellite construction contract as it did not provide senior lenders with a secured interest in the underlying project assets during construction.

**Recommendation 1B:** Recognizing both the inherent risk of the satellite sector and its strategic importance to the to the US economy, OIG recommends:

- Ex-Im Bank should complete a review of its financing policies and strategies in the satellite sector, including a risk review of its current exposure to the satellite industry, assessment of the implications of the JSL default, and dialogue with key satellite manufacturers to revisit current market practices regarding the lender's inability to establish a security interest in a satellite while it is under construction.

**Management Response:**

Please see Appendix A, Management Response and OIG Evaluation.

**Point of Inquiry 2:** Did Ex-Im Bank provide effective oversight and monitoring during the pre- and post-closing phases of the transaction in consideration of the project's heightened risk profile?

**Finding 2A:** Ex-Im Bank's policies and practices for monitoring transactions during the time between Board approval and operative status are less developed than post-operative monitoring procedures.

**Recommendation 2A:** To enhance certain oversight policies and procedures of the originating divisions, OIG recommends:

- Ex-Im Bank should revise its policies for monitoring transactions during the time between approval and operating status to provide additional monitoring comparable to post-operative procedures. In revising its policies, the Bank should

consider additional requirements for monitoring within originating divisions, formal policies and practices on resource sharing and coordination between originating divisions and AMD, quarterly reviews of transactions currently housed in the originating divisions, and early involvement of AMD staff or transfer to AMD if restructuring is necessary prior to operative status.

**Finding 2B:** NewSat’s financial condition was deteriorating prior to closing, but Ex-Im Bank did not identify these issues, and NewSat did not make timely disclosures of these issues as required by the Finance Documents.

**Recommendation 2B:** To ensure up-to-date information on transaction and participant risks is obtained and that the analysis supporting the approval of a transaction is still appropriate, particularly when there has been a significant lag time between Board approval and financial closing, OIG recommends:

- Ex-Im Bank should revise its policies to require a follow up analysis of the transaction risk rating and participant creditworthiness prior to financial closing when circumstances indicate a possible material change since the Board approval of the transaction such as: (i) indications of deterioration of the financial condition of key participants; and (ii) the obligor(s) failure to meet certain conditions precedent.

**Management Response:**

Please see Appendix A, Management Response and OIG Evaluation.

## APPENDIX A: MANAGEMENT RESPONSE AND OIG EVALUATION



EXPORT-IMPORT BANK  
OF THE UNITED STATES

December 21, 2015

Michael McCarthy  
Deputy Inspector General  
Office of the Inspector General  
Export-Import Bank of the United States  
811 Vermont Avenue NW  
Washington, DC 20571

Dear Deputy Inspector General McCarthy,

Thank you for providing the Export-Import Bank of the United States (“Ex-Im Bank” or “the Bank”) Management with the Office of the Inspector General’s (OIG) “Report on Jabiru Satellite Ltd.” (December 2015) (“NewSat”). Management continues to support the OIG’s work which complements the Bank’s efforts to continually improve its processes. Ex-Im Bank is proud of the strong and cooperative relationship it has with the OIG.

The Bank is committed to full cooperation with the OIG and will work with staff on implementing all four recommendations that resulted from this inspection. Additionally, the Bank appreciates that the OIG commends the Bank’s rigorous recovery efforts. The Bank continues to explore recovery actions on this transaction. The Bank strives to continuously improve its processes and is pleased that the OIG inspection cited the Bank’s internal team which reviewed this transaction and developed lessons learned.

Recommendation 1A: Ex-Im Bank should revise its credit policies for satellite financings to better protect its interests against the risk of non-completion during the time before a project becomes operational. In revising its policies, the Bank should consider placing more emphasis on the financial resources of the project sponsor and/or requiring appropriate mitigants to protect the Bank’s interests in the event of project non-completion. Appropriate mitigants could include a perfected security interest in project assets during construction, recourse to a creditworthy sponsor/guarantor, or the use of a credit enhancement such as a standby letter of credit.

Management Response: The Bank agrees with this recommendation and will work with staff to review and revise its current credit policies for satellite financings. Staff will be directed to revise these policies with a focus on ensuring that better protections are placed against the risk of non-completion during the time before a project becomes operational.

1

811 VERMONT AVENUE, N.W. WASHINGTON, D.C. 20571

Recommendation 1B: Ex-Im Bank should complete a review of its financing policies and strategies in the satellite sector, including a risk review of its current exposure to the satellite industry, assessment of the implications of the JSL default, and dialogue with key satellite manufacturers to revisit current market practices regarding the lender's inability to establish a security interest in a satellite while it is under construction.

Management Response: The Bank agrees with this recommendation and will direct staff to review current financing policies and strategies in the satellite sector. This review will include a risk review of current exposure to the satellite industry and will take into account the implications of the JSL default. Additionally, staff will revisit with key satellite manufactures the current market practice regarding the lender's inability to establish a security interest in a satellite while it is under construction. Further, where the Bank cannot obtain a security interest during the construction phase, staff will seek other mitigants during that phase.

Recommendation 2A: Ex-Im Bank should revise its policies for monitoring transactions during the time between approval and operating status to provide additional monitoring comparable to post-operative procedures. In revising its policies, the Bank should consider additional requirements for monitoring within originating divisions, formal policies and practices on resource sharing and coordination between originating divisions and AMD, quarterly reviews of transactions currently housed in the originating divisions, and early involvement of AMD staff or transfer to AMD if restructuring is necessary prior to operative status.

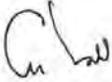
Management Response: The Bank agrees with this recommendation and will direct staff to review and revise policies for monitoring transactions during the time between approval and operating status to provide additional monitoring comparable to post-operative procedures. Further, the Bank has established a cross-divisional deal team process, whereby the Bank staff from all involved Bank divisions (Underwriting, Engineering, Policy, Legal, Credit Risk, Monitoring, and Operations) will coordinate throughout the life of the transaction - through underwriting, documentation, and monitoring.

Recommendation 2B: Ex-Im Bank should revise its policies to require a follow up analysis of the transaction risk rating and participant creditworthiness prior to financial closing when circumstances indicate a possible material change since the Board approval of the transaction, such as: (i) indications of deterioration of the financial condition of key participants and (ii) the obligor(s) failure to meet certain conditions precedent.

Management Response: The Bank agrees with this recommendation. As noted above, the Bank has established a cross-divisional deal team process which, among other functions, will also provide that a follow up analysis of the transaction risk rating and participant creditworthiness be conducted prior to financial closing when there is evidence of a possible material change since the Board approval.

We thank the OIG for your efforts to ensure the Bank's policies and procedures continue to improve, as well as the work you do with us to protect Ex-Im funds from fraud, waste, and abuse. We look forward to strengthening our working relationship and continuing to work closely with the Office of the Inspector General.

Sincerely,



Charles J. Hall  
Executive Vice President and Chief Risk Officer  
Export-Import Bank of the United States

## OIG Evaluation

On December 21, 2015, Ex-Im Bank provided its management response to a draft of this report, agreeing with the four recommendations. The response identified the Bank's actions to address the recommendations. OIG considers the Bank's actions sufficient to resolve the reported recommendations, which will remain open until OIG determines that the agreed upon corrective actions are completed and responsive to the reported recommendations. The Bank's management response to the reported recommendations and OIG's assessment of the response are as follows:

### RECOMMENDATION 1A

**Recommendation 1A:** Ex-Im Bank should revise its credit policies for satellite financings to better protect its interests against the risk of non-completion during the time before a project becomes operational. In revising its policies, the Bank should consider placing more emphasis on the financial resources of the project sponsor and/or requiring appropriate mitigants to protect the Bank's interests in the event of project non-completion. Appropriate mitigants could include a perfected security interest in project assets during construction, recourse to a creditworthy sponsor/guarantor, or the use of a credit enhancement such as a standby letter of credit.

**Management Response:** The Bank agrees with this recommendation and will work with staff to review and revise its current credit policies for satellite financings. Staff will be directed to revise these policies with a focus on ensuring that better protections are placed against the risk of non-completion during the time before a project becomes operational.

**Evaluation of Management's Response:** Management's actions are responsive; therefore, the recommendation is resolved and will be closed upon completion and verification that the actions have been implemented.

### RECOMMENDATION 1B

**Recommendation 1B:** Ex-Im Bank should complete a review of its financing policies and strategies in the satellite sector, including a risk review of its current exposure to the satellite industry, assessment of the implications of the JSL default, and dialogue with key satellite manufacturers to revisit current market practices regarding the lender's inability to establish a security interest in a satellite while it is under construction.

**Management Response:** The Bank agrees with this recommendation and will direct staff to review current financing policies and strategies in the satellite sector. This review will include a risk review of current exposure to the satellite industry and will take into account the implications of the JSL default. Additionally, staff will revisit with key satellite manufacturers the current market practice regarding the lender's inability to establish a security interest in a satellite while it is under construction. Further, where the Bank cannot obtain a security interest during the construction phase, staff will seek other mitigants during that phase.

**Evaluation of Management's Response:** Management's actions are responsive; therefore, the recommendation is resolved and will be closed upon completion and verification that the actions have been implemented.

**RECOMMENDATION 2A**

**Recommendation 2A:** Ex-Im Bank should revise its policies for monitoring transactions during the time between approval and operating status to provide additional monitoring comparable to post-operative procedures. In revising its policies, the Bank should consider additional requirements for monitoring within originating divisions, formal policies and practices on resource sharing and coordination between originating divisions and AMD, quarterly reviews of transactions currently housed in the originating divisions, and early involvement of AMD staff or transfer to AMD if restructuring is necessary prior to operative status.

**Management Response:** The Bank agrees with this recommendation and will direct staff to review and revise policies for monitoring transactions during the time between approval and operating status to provide additional monitoring comparable to post-operative procedures. Further, the Bank has established a cross-divisional deal team process, whereby the Bank staff from all involved Bank divisions (Underwriting, Engineering, Policy, Legal, Credit Risk, Monitoring, and Operations) will coordinate throughout the life of the transaction - through underwriting, documentation, and monitoring.

**Evaluation of Management's Response:** Management's actions are responsive; therefore, the recommendation is resolved and will be closed upon completion and verification that the actions have been implemented.

**RECOMMENDATION 2B**

**Recommendation 2B:** Ex-Im Bank should revise its policies to require a follow up analysis of the transaction risk rating and participant creditworthiness prior to financial closing when circumstances indicate a possible material change since the Board approval of the transaction such as: (i) indications of deterioration of the financial condition of key participants; and (ii) the obligor(s) failure to meet certain conditions precedent.

**Management Response:** The Bank agrees with this recommendation. As noted above, the Bank has established a cross-divisional deal team process which, among other functions, will also provide that a follow up analysis of the transaction risk rating and participant creditworthiness be conducted prior to financial closing when there is evidence of a possible material change since the Board approval.

**Evaluation of Management's Response:** Management's actions are responsive; therefore, the recommendation is resolved and will be closed upon completion and verification that the actions have been implemented.

<b>Table 3: Summary of Management’s Comments on the Recommendations</b>				
<b>Rec. No.</b>	<b>Corrective Action: Taken or Planned</b>	<b>Expected Completion Date<sup>60</sup></b>	<b>Resolved: Yes or No<sup>61</sup></b>	<b>Open or Closed<sup>62</sup></b>
1A.	The Bank will review and revise its current credit policies for satellite financings to ensure protections are in place with respect to non-completion risk prior to a project becoming operational.	6/30/2016	Yes	Open
1B.	The Bank will review its current financing policies and strategies for the satellite sector, to include a risk review of its current exposure and the implications of the JSL default, revisit with key satellite manufacturers the current market practice concerning the inability to establish a security interest in a satellite during construction, and seek other mitigants where a security interest cannot be obtained during the construction of a satellite.	9/30/2016	Yes	Open
2A.	The Bank will review and revise its monitoring policies for transactions during the time between approval and operating status to provide additional monitoring, with continued coordination of the Bank’s cross-divisional deal team throughout the life of the transaction.	6/30/2016	Yes	Open
2B.	The Bank’s cross-divisional deal team will provide follow up analysis of a transaction’s risk rating and participant creditworthiness prior to financial close when there is evidence of a possible material change since Board approval.	6/30/2016	Yes	Open

<sup>60</sup> Ex-Im Bank OIG has requested target completion dates for each of the outstanding recommendations. The Bank provided the target completion dates to a draft of this report.

<sup>61</sup> “Resolved” means that (1) Management concurs with the recommendation, and the planned, ongoing, and completed corrective action is consistent with the recommendation; or (2) Management does not concur with the recommendation, but alternate action meets the intent of the recommendation.

<sup>62</sup> Upon determination by the Ex-Im Bank OIG that the agreed-upon corrective action has been completed and is responsive to the recommendation, the recommendation can be closed.

## APPENDIX B: INSPECTION METHODOLOGY

As part of its review, the OIG’s Office of Inspection and Evaluation (“OIE”) employed a combination of quantitative and qualitative techniques. The OIE team utilized the following techniques during the research and fieldwork phases:

1. Reviewed the transaction’s financial and legal documents, internal Ex-Im Bank and external consultant reports and correspondence related to the transaction.
2. Interviewed Ex-Im Bank staff from Structured and Project Finance Division, the Asset Management Division, Engineering, the Office of General Counsel and Operations.
3. Interviewed external parties including representatives of the exporter, financiers, legal advisor, financial advisor, market advisor, technical advisor, NewSat administrator, NewSat receiver, financial advisor during bankruptcy, former NewSat staff, US government officials located in Australia, and Australian authorities.
4. Analyzed the transaction’s budget, disbursement requests, procurement records, invoices and payment history.
5. Reviewed public and open source documents, press releases and related-party analyses.
6. Conducted onsite interviews with external parties in September/October 2015 of the Jabiru-1 Project in Melbourne and Sydney, Australia.

To address transaction specific issues as described above under “Inspection Scope,” the following additional research and fieldwork was conducted:

1. Researched Satellite industry background and trends.
2. Reviewed other Ex-Im Bank Satellite transactions with respect to their security interests and collateral package.
3. Researched Project Finance best practices, especially regarding sponsor/guarantor strength.

For additional details on interviews conducted during the fieldwork phase of the inspection see Table 4 below.

<b>Table 4: OIG Interviews During Fieldwork Phase</b> (Confidential and Proprietary Information)	
<b>Entity</b>	<b>Timeline</b>
Ex-Im Bank Staff	Initial Interviews: August 2015
Other Lenders/Bank – COFACE	August 2015
Exporter – Lockheed Martin	September 2015
Legal Advisor – Allen & Overy	August 2015
Financial Advisor – West End Advisory	August 2015
Market Advisor – Euroconsult	August 2015
Technical Advisor – SPI Advisory	August 2015
Administrator – PPB Advisory	August 2015
Receiver – McGrathNicol	August 2015
Financial Advisor during Bankruptcy – Peter J. Solomon	September 2015
Sponsor-Guarantor – former NewSat Staff	August 2015
US Embassy in Australia	September 2015
Australian Authorities - ASIC	September 2015

## **APPENDIX C: JSL TRANSACTION TIMELINE**

(b) (4), (b) (5)

**APPENDIX D: EX-IM BANK’S SATELLITE PORTFOLIO**

<b>Table 5: Satellite Portfolio (FY 2010 – 2015)</b> (Confidential and Proprietary Information)			
<b>Deal No. and Borrower<sup>63</sup></b>	<b>Authorized Date</b>	<b>Authorized Amount</b>	<b>(b) (4), (b) (5)</b>
AP084578XX - Hispasat, S.A.	12/10/2009	\$160,560,390	
AP084271XX - Avanti Communications Group, Plc	12/18/2009	\$215,621,649	
	11/28/2012	\$6,657,868	
AP084968XX - Ses Satellite Leasing Ltd	11/18/2010	\$158,004,263	
AP085503XX - Hispasat Canarias, S.L.U.	12/9/2010	\$228,286,420	
AP085168XX - Inmarsat S.A.	12/16/2010	\$700,000,000	
AP085665XX - Azercosmos OJSCO	4/27/2011	\$116,615,338	
AP085499XX - Eutelsat Sa	11/3/2011	\$66,243,347	
AP084912XX - Ministry of Finance of Mexico	7/12/2012	\$921,830,504	
AP086539XX - Jabiru Satellite Ltd.	7/19/2012	\$281,110,000	
	1/17/2013	\$13,220,000	
	2/10/2014	\$9,869,000	
AP084837XX - Government of Vietnam	9/27/2012	\$118,081,740	
AP083531XP - Asia Broadcast Satellite 2 Ltd.	11/15/2012	\$179,609,546	
AP086918XX - Asia Broadcast Satellite Holdings Ltd.	11/15/2012	\$291,060,659	
AP087365XX - Hispasat Canarias, S.L.U.	1/17/2013	87,149,423	

<sup>63</sup> Ex-Im Bank “fully cancelled” two transactions, AP084837XX - Government of Vietnam and AP088429XX - Innova S.A. de R.L. de C.V.

**Table 5: Satellite Portfolio (FY 2010 – 2015)**

(Confidential and Proprietary Information)

Deal No. and Borrower <sup>63</sup>	Authorized Date	Authorized Amount	(b) (4), (b) (5)
AP086677XX - Asia Satellite Telecommunications Co Ltd.	5/30/2013	\$343,292,904	
	11/26/2013	\$2,231,470	
AP087586XX - Space Communication Ltd.	8/23/2013	\$105,436,551	
	11/1/2013	\$618,752	
AP086418XX - BulgariaSat Ad.	12/12/2013	\$150,542,286	
	5/13/2015	(b) (4), (b) (5)	
AP088429XX - Innova, S. De R.L. De C.V.	2/20/2014	\$79,583,800	
AP088567XX - Inmarsat Global Limited	7/14/2014	\$185,907,209	
AP088346XX - Viasat Technologies Limited	9/29/2014	\$524,929,198	
	<b>Total</b>	<b>\$4,950,920,031</b>	

Source: Ex-Im Bank ERS Report as of September 30, 2015, and Annual Reports for fiscal years 2010 – 2014

## **APPENDIX E: SOURCES AND USES OF FUNDS**

(b) (4), (b) (5)

(b) (4), (b) (5)

## **ACKNOWLEDGEMENTS**

This report was prepared by the Office of Inspections and Evaluations, Office of Inspector General for the Export-Import Bank of the United States. Several individuals contributed to this report including Lawrence Wielinski, Inspector, Daniel Wong, Inspector, Jennifer Fain, Deputy AIGIE, and Mark Thorum, AIGIE.



Office of Inspector General  
Export-Import Bank *of the* United  
States  
811 Vermont Avenue, NW  
Washington, DC 20571  
202-565-3908  
<http://www.exim.gov/about/oig>