

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**UNITED STATES OF AMERICA,** )

**Plaintiff,** )

**v.** )

**Case No. 15-CR-00115-CVE**

**MICHAEL CHASE MORRIS,** )

**Defendant.** )

**UNITED STATES RESPONSE TO DEFENDANTS OBJECTIONS TO  
PRESENTENCE INVESTIGATION REPORT**

Comes now the United States of America, by and through Charles M.

McLoughlin, Assistant United States Attorney, hereby submits its Response to the Defendant’s Objections to the Presentence Investigation Report (“PSR”) and states the following:

**Enhancement for Sophisticated Means Is Properly Applied**

**Factual Background**

Within six months of release from federal prison for revocation of a bank fraud related supervised release sentence Morris set up a string of undercapitalized convenience stores in April 2012. Morris’ criminal past made it impossible for him to legitimately borrow funds from a bank, so he chose, without permission, to instead use his brothers identity to establish approximately 65-70 bank accounts through numerous local Tulsa-area banks including AVB Bank (Arkansas Valley Bank), Banc First, Armstrong Bank,

Bank of America and Banks of the Ozarks. Morris then kited checks between the various banks, timing deposits to avoid detection. In effect, Morris obtained a \$117, 946 “loan” from Banc First without their knowledge due to his manipulation of the account balances in the various bank accounts. Smaller check kite schemes were executed at Navy Credit Union (loss of \$61, 337.10) and Spirit Bank (loss of \$ 50,416.25). Timing the movement of deposits between the numerous accounts requires a great deal of planning and coordination on the part of Morris and his employees.

It is anticipated that Federal Bureau of Investigation Forensic Accountant Janetta Maxwell, who has analyzed the Bank records relating to the check kite, will testify during the sentencing hearing as to the “sophisticated means” utilized by Morris to avoid detection of his scheme for almost one year.

**LAWS REGARDING THE USE OF**  
**“SOPHISTICATED MEANS” TO COMMIT FRAUD**

U.S.S.G. § 2B1.1(b)(10)(C) provides that “[i]f the defendant involves sophisticated means, increase by 2 levels.

if the resulting offense is less than a level 12, increase to a level 12.” § 18 U.S.C. Application Note 8 provides, “[f]or the purpose of subsection (b) (2), ‘sophisticated means’ means especially complex or especially intricate conduct pertaining to the execution or concealment of an offense. Conduct such as hiding assets or transactions or both, through the use of fictitious entities, corporate shells, or offshore financial accounts ordinarily indicates sophisticated means.” U.S.S.G. § 2B1.1 cmt. n.8(B).

“The possession of false document-making implements may constitute sophisticated means, as may creation of numerous false documents, even if the documents were easily generated and contained only simple

falsehoods.” *Guidelines Handbook*, § 27, at 390. The Tenth Circuit first addressed the enhancement for sophisticated means in the commission of tax evasion in *United States v. Rice*, 52 F.3d 843 (10<sup>th</sup> Cir. 1995). In *United States v. Rice*, the defendant received a “tax refund based on excessive withholding that was never in fact withheld.” 52 F.3d at 845. The district court applied the sophisticated-means enhancement, “in part because [the defendant] contested the IRS’ ability to require him to produce documents during the civil phase of his case.” 52 F.3d at 849. The Tenth Circuit held that the defendant’s tax evasion scheme was not sophisticated, because it was “the functional equivalent of claiming more in itemized deductions than actually paid.” 52 F.3d at 849. In so holding, the Tenth Circuit noted that, if the defendant’s scheme was sophisticated, then “every fraudulent tax return will fall within the enhancement’s rubric.” *United States v. Rice*, 52 F.3d at 849. In *United States v. Guidry*, 199 F.3d 1150 (10<sup>th</sup> Cir. 1999), the Tenth Circuit found that the district court’s application of the sophisticated-means enhancement was appropriate, even though the defendant did not use a sham corporation or offshore bank accounts. *See* 199 F.3d at 1158. The defendant in *United States v. Guidry* made her embezzlement particularly difficult to detect by using checks that were made payable to a bank, not herself, which are harder to trace, by only depositing a small fraction of her embezzled funds in a bank, which made her embezzlement difficult for the IRS to investigate, and by never withdrawing more than \$10,000.00 in one day, which demonstrated that she knew that depositing any more would require the bank to notify the IRS of the deposit, and thus further demonstrated that she understood how to use sophisticated means to conceal her embezzlement. *See* 199 F.3d at 1158. The Tenth Circuit held that using multiple storage units to hold items purchased with embezzled funds had a similar effect, and that her case was not simply one of disclosing one’s income. *See United States v. Guidry*, 199 F.3d at 1158 (citing *United States v. Rice*, 52 F.3d at 849; *United States v. Stokes*, 998 F.3d 279, 282 (5<sup>th</sup> Cir. 1993)).

The Tenth Circuit has upheld the application of a sophisticated-means enhancement to a defendant who conducted seminars on avoiding tax liability and “assisted in the preparation of tax returns that were false and fraudulent as to a material matter.” *United States v. Ambort*, 405 F.3d 1109, 1113 (10<sup>th</sup> Cir. 2005). In *United States v. Ambort*, the Tenth Circuit found that there was ample evidence in the record to support a sophisticated-means enhancement, because the defendant’s program was designed to provide a basis that someone could later articulate as to why they were entitled to the tax status they advanced and included discussions about what information should not be included in tax forms to avoid traceability. *See* 405 F.3d at 1120.

In *Untied States v. Snow*, The Tenth Circuit held that a district court properly applied an enhancement for the use of sophisticated means under U.S.S.G. § 2b1.1, where the defendant “did not undertake to execute or conceal merely a single fraudulent transaction using false documentation but orchestrated a vast and complex fraud scheme in which he participated in over forty fraudulent mortgage-related transactions to defraud at least twelve different financial institutions.” 663 F.3d at 1163. The Tenth Circuit determined that the defendant’s fraudulent scheme was complex, because of the lengths which the defendant took to execute the fraud, and also because the defendant successfully deceived numerous financial institutions and title companies, indicating that necessarily used sophisticated means to “fool trained and experienced bank and closing personnel.” 663 F.3d at 1163. That the defendant provided, and directed others to provide, fraudulent documentation and information sufficient to deceive the personnel reviewing it, procured and instructed others to procure cashiers’ checks to disguise the true source of his income, and circulated and instructed others to circulate funds through different bank accounts to avoid detections indicated that he used sophisticated means. *See* 663 F.3d at 1163. With these facts, the Tenth Circuit determined that the district court properly applied a sophisticated means enhancement to defendant’s sentence under U.S.S.G. § 2B1.1. Similarly, in *United States v. Tilga*, 824 F.Supp.2d 1295 (D.N.M. 2011)(Browning, J.), the Court found that an enhancement for the defendant’s use of sophisticated means was warranted where the defendant used offshore accounts and shell companies to evade taxes by hiding the amount of money she earned. *See* 824 F.Supp.2d at 1330-34. The Court explained that the application notes to the sentencing guidelines regarding the use of sophisticated means recognizes that the enhancement applies because of the inherent complexity of the entities “in an especially complex or novel manner.” 824 F.Supp.2d at 1330.31. Moreover, the Court explained that the case law addressing the use of sophisticated means does not require that a defendant create the sophisticated means, but rather, “[t]here is nothing in the comments or the case law to suggest that a person must create the sophisticated means to qualify for the enhancement.” 824 F.Supp.2d at 1332.

Additionally, the United States Court of Appeals for the Sixth Circuit has upheld the imposition of a sophisticated-means enhancement where the defendant created and used fictitious trusts to hide assets from the Internal Revenue Service, even though the defendant was not a sophisticated businessman and no offshore trusts were involved. *See United States v. Schwartz*, 408 Fed.Appx. 868, 870 (6<sup>th</sup> Cir. 2010)(unpublished). The United States Court of Appeals for the Seventh Circuit, in *United States v. Minneman*, 143 F.3d 274 (7<sup>th</sup> Cir. 1998), held that the use of multiple

corporate names and the placement of funds in a trust account both constitute complex efforts to hide income. *See* 143 F.3d at 283.

“The sophisticated means enhancement applies if the overall scheme was sophisticated even if the individual acts were not.” *United States v. Jones*, 530 F.3d 1292, 1306 (10<sup>th</sup> Cir. 2008). “The Guidelines does not require every step of the defendant’s scheme to be particularly sophisticated; rather, as made clear by the Guideline’s commentary, the enhancement applies when the execution or concealment of a scheme, viewed as a whole, is especially complex or especially intricate.” *United States v. Weiss*, 630 F.3d 1263, 1259 (10<sup>th</sup> Cir. 2010). *See also, United States v. Ratliff*, 376 Fed. Appx. 830, 840 (10<sup>th</sup> Cir. 2010)(unpublished) (sophisticated means found where defendant enlisted no accomplices, forged a bill of sale to indicate she owned the company for which she worked, opened a bank account in the name of the company, and fraudulently deposited some company checks into that account).

### **ARGUMENT**

Morris’ checking kiting bank fraud scheme is akin to the situation pointed out in United States v. Snow, where Snow “orchestrated a vast and complex fraud scheme in which he participated in over forty fraudulent mortgage – related transactions to defraud at least twelve different financial institutions.” 663 F3d. 1163. In the case of Morris, it was the depositing of the hundreds of insufficient funds checks into over 65 separate bank accounts so precisely timed so as to avoid detection. 663 F3d. at 1163. As with Snow, the scheme was complex due to the lengths Morris went to execute the fraud which allowed Morris to successfully deceive numerous financial institutions.

The means of executing the scheme were sophisticated since they fooled experienced bank personnel for almost a year. 663 F3d. at 1163.

Even though the individual deposit of each check in the check kiting bank fraud scheme may not be seen as sophisticated by itself, “The Sophisticated Means Enhancement applies if the overall scheme was sophisticated even if the individual act were not ” *Unites States v. Jones*, 530 F3d. 1292 at 1306 (10<sup>th</sup> Cir. 2008). Morris’ overall scheme to defraud was sophisticated, while the individual acts may not have been when viewed in isolation. *United States v. Weiss*, 630 F3d. 1263 at 1279 (10<sup>th</sup> Cir. 2010).

#### CONCLUSION

The US Probation Office properly applied the two level increase to Morris’ offense level. The manner, in which Morris executed his scheme to defraud numerous banks, when viewed as whole, involved “sophisticated means”. The depositing of hundreds of checks drawn on sixty-five (65) separate bank accounts, each precisely timed to avoid over-drafting any of the bank accounts, was an act of supreme discipline, coordination, and planning. Coordinating those deposits with Morris’ employees and himself was also sophisticated.

Viewing the total scheme to defraud, not the isolated depositing of checks in the kiting scheme, it was definitely conducted in a sophisticated manner by an individual who has honed his bank fraud skills for almost thirty years.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of June, 2016, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrant:

Martin G. Hart, Defense Counsel  
Attorney for defendant Michael Morris

/s/ Charles M. McLoughlin  
Charles M. McLoughlin  
Assistant United States Attorney