



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

MARJORIE LANDA
DEPUTY COMPTROLLER FOR
AUDIT

BUREAU OF AUDIT

February 28, 2017

BY ELECTRONIC MAIL

Cyrus Vance Jr.
District Attorney
Office of the New York County District Attorney
1 Hogan Place
New York, NY 10013

**Re: Final Letter Report on the New York County District Attorney's
Administration of the Deferred Prosecution and Non-Prosecution
Agreements (Audit Number FN16-081AL)**

Dear District Attorney Vance:

I am sending this final letter report to provide you with the results of the audit of the New York County District Attorney's ("DANY's") Administration of the Deferred Prosecution and Non-Prosecution Agreements. The objective of this audit was to determine whether DANY properly administered the receipt and distribution of proceeds received through deferred prosecution and non-prosecution agreements in accordance with the New York City Comptroller's Office Directive #11 "Cash Accountability and Control," and aspects of applicable federal and New York State ("State") rules and regulations.

Background

The New York County District Attorney is an independent elected official responsible for the investigation and prosecution of criminal conduct in New York County. In this capacity, DANY investigates and prosecutes a wide variety of illegal activities including white-collar crimes, international money laundering, securities fraud and terrorism. Each year, DANY files more than 100,000 cases, which are handled by a staff of more than 500 assistant district attorneys and 700 investigative analysts, paralegals, and specially trained support staff members.

DANY's operations are primarily funded by New York City (the "City") through budget appropriations. In addition, DANY receives money from a variety of other sources, the largest of which are State and federal asset forfeitures. Forfeited funds are paid to DANY pursuant to Deferred Prosecution Agreements ("DPAs") and Non-Prosecution Agreements ("NPAs"), as well as through

other procedural mechanisms.¹ DPAs and NPAs, while procedurally different, function in a similar fashion. Both involve voluntary pre-trial agreements between defendants (usually corporations) and a prosecutor that allow the defendants to avoid the consequences of a prosecution by paying fines and forfeitures and by agreeing to numerous other conditions, including cooperation with the government, institution of a compliance program and admissions of wrongdoing.

Both federal and State rules allow forfeited funds awarded to a law enforcement agency, such as DANY, to be expended for specified law enforcement purposes and to be distributed to other parties and government agencies for permissible uses. In connection with DPAs governed under State law, DANY is allowed to retain a percentage of the forfeited funds for its own use and is required to transfer the balance of the forfeited funds in equal amounts to the State and to New York County, within thirty days of receipt.²

The City requires agencies, including DANY, to deposit all of the funds they receive from sources other than their City budget allocations into bank accounts that are registered with the New York City Department of Finance (“DOF”). As of June 30, 2015, DANY maintained 24 agency bank accounts with a total of \$390 million in funds it received from sources other than its City budget allocations. Of this amount, approximately \$299 million was from DPAs.³

Audit Findings

The audit found that DANY generally administered the receipts and disbursements of the proceeds received through DPAs in accordance with Directive #11 and other applicable federal and State rules and regulations. Among other things:

- DANY implemented internal control procedures to ensure proper segregation of duties, adequate recordkeeping, and monthly bank reconciliations;
- DANY registered all its bank accounts with DOF and ensured all account balances were reported to the City as part of the year-end close out process; and
- DANY ensured that financial settlement amounts were properly and timely disbursed to the State and New York County in accordance with applicable law.

Other Matters

In addition to the above audit findings, we found that DANY did not make reasonable efforts to explore investment opportunities that would allow it to maximize the monetary benefit from at least \$123 million in DPA funds deposited in registered bank accounts for which there was no immediate plan for disbursement or use. As a result, DANY may have forgone potential investment returns that could have been earned had that money been put into conservative short-term investments, as allowed pursuant to Section 11 of the General Municipal Law.

¹ During the audit scope period, DANY received substantial amounts of forfeited funds through the Federal Equitable Sharing Program and as a result of one large settlement agreement with BNP Paribas Bank.

² Part H of Chapter 503 of the Laws of New York, 2009.

³ No NPAs were signed during our audit scope period.

As of June 30, 2015, DANY maintained approximately \$299 million derived from federal and State DPAs in three interest bearing checking accounts. Of the \$299 million deposited in these checking accounts, we found that there was no plan for any immediate expenditure or disbursement to third parties for \$123 million. Some of the \$123 million was received as early as March of 2009 and was still not expended as of June 2015. Furthermore, our review found that the minimal interest earned on the checking accounts ranged from 0.002 percent to 0.0104 percent per month for the period of Fiscal Year 2014 to 2015.

Section 11 of the General Municipal Law provides that “the governing board of any local government or, if the governing board so delegates, the chief fiscal officer or other officer having custody of the moneys may temporarily invest moneys not required for immediate expenditure, except moneys the investment of which is otherwise provided for by law” in several types of investment vehicles as specified in the law, including bank certificates of deposit and certain types of government-issued obligations, among others. However, DANY did not temporarily invest the funds as permitted by the General Municipal Law. Consequently, over \$100 million remained in interest bearing checking accounts earning only minimal interest. Those funds could have been invested to provide higher investment returns, which in turn provide additional funds to supplement DANY’s operations and benefit the City.

Agency Response

In its response, DANY stated that,

We are pleased with your positive findings and conclusions that this office has properly administered the receipt and disbursement of proceeds received through deferred prosecution and non-prosecution agreements (DPAs) in accordance with [sic] applicable city, state, and federal rules and guidelines. . . . Our office notes that the \$123 million referenced in the report as potentially eligible for investment represents proceeds governed by two different sets of rules and regulations. Specifically, \$82,668,506 is subject to Federal Equitable Sharing rules and oversight by the Department of Justice Asset Forfeiture and Money Laundering Section (AFMLS). The balance of \$40.4 million is governed by New York State statute Part H of Chapter 503 of the Laws of New York, 2009. With respect to the \$82.7 million, according to AFMLS guidelines DANY is prohibited from investing funds received through the Federal Equitable Sharing Program. . . . Given this guidance, DANY maintains that our use of the commercial banking accounts for the \$82.6 million in AFMLS funds is in accordance with AFMLS rules and DANY's utilization of investment vehicles as recommend [sic] in the Audit Report would not be complaint [sic] with the governing rules established by AFMLS.

As for the remaining \$40,448,793, the governing New York State statute does not provide guidance regarding the management of funds. Given the lack of guidance, DANY chose to apply two other sets of relevant guidelines to its management of funds originating from state DPA statute: AFMLS and New York City Department of Finance banking rules and procedures. Based on this guidance, DANY did not explore

investment opportunities for these funds.

Going forward, DANY will take the recommendations of the Audit Report into consideration and reassess how it manages its DPA funds. With respect to investment accounts, we will explore with your office and the New York City Department of Finance alternative investment vehicles that yield a higher rate of return for the \$40.5 million that is subject to the New York State DPA statute.

We are pleased that DANY has agreed to revisit its guidelines and consider exploring alternative secure investment vehicles with higher rates of returns.

Recommendations

We recommend that DANY should:

- 1) Develop an investment policy outlining procedures to invest funds not required for immediate expenditure in conservative investment vehicles as prescribed in Section 11 of the General Municipal Law to yield higher returns.

DANY Response: “With respect to investment accounts, we will explore with your office and the New York City Department of Finance alternative investment vehicles that yield a higher rate of return for the \$40.5 million that is subject to the New York State DPA statute. If a suitable investment vehicle is identified, DANY will also petition AFMLS for a waiver so that the \$82.6 million in Federal Equitable Sharing funds can also be deposited in that fund.”

Auditor Comment: We are pleased that DANY has agreed to take advantage of the provisions in the laws and seek higher rates of return on its DPAs funds.

- 2) Closely monitor its cash flow required for general operations and immediate disbursements in order to effectively invest the excess funds which are not required for immediate disbursement.

DANY Response: “[W]ith respect to carefully monitoring cash flow to allow for the investment of excess funds, DANY will implement a strategy for accomplishing this once appropriate investment vehicles are established.”

Scope and Methodology

We conducted this audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings

and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was from January 1, 2010 to June 30, 2015. To gain a general understanding of the laws and requirements pertaining to the DPAs governed under State and federal law, we met with DANY's Chief of the Investigation Division, Chief Financial and Administrative Officer, Fiscal Director, and Deputy Director of Budget and Compliance. To gain a better understanding of the regulations governing federal DPA financial settlements, we reviewed the guides for equitable sharing from the Department of Treasury (DOT) and Department of Justice (DOJ) and abstracted the guidelines to facilitate our analysis. We then obtained and reviewed all DPAs that were signed during the audit scope period. We also reviewed applicable State and local laws related to the disposition of monies recovered by county district attorneys before filing of an accusatory instrument.

To obtain an understanding of the accounting processes for the receipt and disbursement of DPA proceeds, we reviewed DANY's organizational chart, list of agency bank accounts, and policies and procedures relating to: 1) opening and closing of agency bank accounts; 2) recording of DPA proceeds; 3) approval process of the use of DPA proceeds; and 4) disbursement of DPA proceeds. We also reviewed and analyzed the general ledger transactions that were maintained in QuickBooks, an accounting software that DANY used to record ancillary fund transactions.

We flowcharted the internal control processes identified in the walk-throughs relating to the receipt and disbursement, assessed the control structure, and determined whether sufficient segregation of duties were implemented within DANY.

To determine whether DANY retained the correct portion of DPA proceeds for the four DPAs governed by the State law within our audit scope period, we recalculated the retention formula based on the total financial settlements received. To determine the accuracy of general ledger transactions extracted from QuickBooks, we traced the revenue and expenses from the general ledger to the State DPAs and correspondence from DOT or DOJ in relation to the amount that DANY should receive through the equitable sharing program.

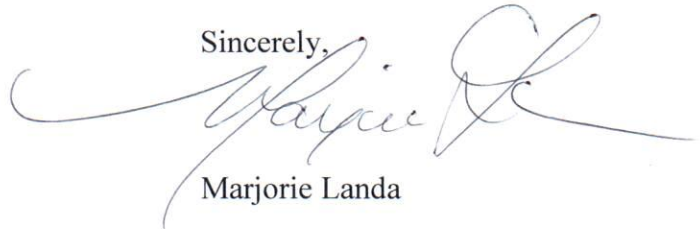
For personal service expenditures, we requested the detailed summary of payroll expenses and reconciled it to the general ledger to ensure consistency of financial information. We then traced the payroll information to the corresponding timesheets to ensure the payroll expenditures were adequately supported. To determine whether Other Than Personal Service (OTPS) expenditures were appropriate, we identified and reviewed OTPS expenditures recorded in the general ledger related to payments to third-party entities (such as vendors or another City agency) versus transfers or payments to other DANY bank accounts.

To determine whether the agency bank accounts were registered with the Department of Finance, we obtained and reviewed registration and closure forms for all bank accounts DANY administered. We also reviewed DANY's submission forms for active agency bank accounts reported to the Comptroller's Office Bureau of Accountancy as part of the year-end close out process.

Finally, we reviewed the bank statements holding DPA proceeds to identify the related interest income received in each period against the total cash in each account. We then reviewed the general ledger to identify transfers between federal and non-federal accounts to identify potential comingling of funds.

The matters covered in this report were discussed with officials at DANY during and at the conclusion of this audit. A preliminary draft letter report was sent to DANY and discussed at an exit conference held on January 9, 2017. On January 26, 2017, we submitted a draft letter report to DANY with a request for comment. We received a written response from DANY on February 8, 2017. In its response, DANY stated that, "Going forward, DANY will take the recommendations of the Audit Report into consideration and reassess how it manages its DPA funds." The full text of DANY's comments is included as an addendum to this report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marjorie Landa", written in black ink.

Marjorie Landa

c: Karen Sheehan, Chief Financial and Administrative Officer

**DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000**

ADDENDUM
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CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

February 8, 2017

BY HAND

Deputy Comptroller Marjorie Landa
New York City Comptroller
Bureau of Audit
1 Centre Street
New York, New York 10007

**Re: Draft Letter Report on the New York County District Attorney's Administration
of the Deferred Prosecution and Non-Prosecution Agreements (Audit Number
FN16-081AL)**

Dear Ms. Landa,

The following is the New York County District Attorney's response to the above captioned Audit Report dated January 26, 2017. The scope of the audit was to determine whether DANY properly administered funds received through deferred prosecution and non-prosecution agreements in accordance with New York City Comptroller Directive #11 "Cash Accountability and Control," and aspects of applicable federal and New York State rules and regulations. Your team reviewed all proceeds collected and disbursed in the period from January 1, 2010 through June 30, 2015. We are pleased with your positive findings and conclusions that this office has properly administered the receipt and disbursement of proceeds received through deferred prosecution and non-prosecution agreements (DPAs) in accordance with applicable city, state, and federal rules and guidelines. We look forward to continuing to work with the New York City Department of Finance and your office to insure proper financial stewardship of the funds collected, while maintaining the independence and discretion required of an effective prosecutor's office.

There was one observation in the Audit Report concerning the use of investment vehicles for the depository of DPA funds that our office would like to address. Specifically, the Audit Report states that:

"DANY did not make reasonable efforts to explore investment opportunities that would allow it to maximize the monetary benefit from at least \$123

million in DPA funds deposited in registered bank accounts for which there was no immediate plan for disbursement or use.”

Your report recommends that DANY:

“1) Develop an investment policy outlining procedures to invest funds not required for immediate expenditure in conservative investment vehicles as prescribed in Section 11 of the General Municipal Law to yield higher returns; and 2) Closely monitor its cash flow required for general operations and immediate disbursements in order to effectively invest the excess funds which are not required for immediate disbursement.”

Our office notes that the \$123 million referenced in the report as potentially eligible for investment represents proceeds governed by two different sets of rules and regulations. Specifically, \$82,668,506 is subject to Federal Equitable Sharing rules and oversight by the Department of Justice Asset Forfeiture and Money Laundering Section (AFMLS). The balance of \$40.4 million is governed by New York State statute Part H of Chapter 503 of the Laws of New York, 2009. With respect to the \$82.7 million, according to AFMLS guidelines DANY is prohibited from investing funds received through the Federal Equitable Sharing Program. AFMLS most recent guidance on this issue, published in the DOJ Equitable Sharing Wire Newsletter dated June 5, 2013 states:

“shared funds must only be deposited into an interest or non-interest bearing federally insured depository account. Other investment accounts that have a market risk including money market or uninsured accounts are unacceptable depositories for equitably shared funds.”

This information was shared with the audit team on October 5, 2016 and again at the audit exit conference on January 9, 2017. Given this guidance, DANY maintains that our use of the commercial banking accounts for the \$82.6 million in AFMLS funds is in accordance with AFMLS rules and DANY’s utilization of investment vehicles as recommend in the Audit Report would not be complaint with the governing rules established by AFMLS.

As for the remaining \$40,448,793, the governing New York State statute does not provide guidance regarding the management of funds. Given the lack of guidance, DANY chose to apply two other sets of relevant guidelines to its management of funds originating from state DPA statute: AFMLS and New York City Department of Finance banking rules and procedures. Based on this guidance, DANY did not explore investment opportunities for these funds.

Going forward, DANY will take the recommendations of the Audit Report into consideration and reassess how it manages its DPA funds. With respect to investment accounts, we will explore with your office and the New York City Department of Finance alternative investment vehicles that yield a higher rate of return for the \$40.5 million that is

subject to the New York State DPA statute. If a suitable investment vehicle is identified, DANY will also petition AFMLS for a waiver so that the \$82.6 million in Federal Equitable Sharing funds can also be deposited in that fund. Finally, with respect to carefully monitoring cash flow to allow for the investment of excess funds, DANY will implement a strategy for accomplishing this once appropriate investment vehicles are established.

We thank you and your audit staff for the time and effort put into understanding our processes. We look forward to working with you in the future.

Sincerely,

A handwritten signature in cursive script that reads "Karen Sheehan".

Karen Sheehan
Chief Financial and Administrative Officer

c: Cyrus R. Vance, Jr., New York County District Attorney