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TAX HAVEN BANKS AND U.S. TAX COMPLIANCE: OBTAINING THE NAMES OF U.S. CLIENTS WITH SWISS ACCOUNTS

HEARING

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

OF THE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

MARCH 4, 2009

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Printed for the use of the
Committee on Homeland Security and Governmental Affairs

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CONTENTS

	Page
Opening statements:	
Senator Levin	1
Senator Collins	8
Senator McCaskill	20

WITNESSES

WEDNESDAY, MARCH 4, 2009

John A. DiCicco, Acting Assistant Attorney General, Tax Division, U.S. Department of Justice	10
Hon. Douglas Shulman, Commissioner, Internal Revenue Service, U.S. Department of the Treasury	13
Mark Branson, Chief Financial Officer, Global Wealth Management and Swiss Businesses, UBS, Zurich, Switzerland	27

ALPHABETICAL LIST OF WITNESSES

Branson, Mark:	
Testimony	27
Prepared statement	57
DiCicco, John A.:	
Testimony	10
Prepared statement	45
Shulman, Hon. Douglas:	
Testimony	13
Prepared statement	51

EXHIBITS

1.a. *Tax Haven Bank Secrecy Tricks,* chart prepared by the U.S. Senate Permanent Subcommittee on Investigations	61
b. Quotation from UBS Wealth Management & Business Banking internal report: "Review of US Resident Non-W9 Business, Legal and Compliance," page 9, December 10, 2004, chart prepared by the U.S. Senate Permanent Subcommittee on Investigations	62
c. Quotation from UBS Wealth Management & Business Banking internal report: "Review of US Resident Non-W9 Business, Legal and Compliance," page 3, December 10, 2004, chart prepared by the U.S. Senate Permanent Subcommittee on Investigations	63
d. Quotation from UBS document: "US International Training," in section subtitled: "Lessons Learned," page 5, September 26, 2006, chart prepared by the U.S. Senate Permanent Subcommittee on Investigations	64
e. Quotation from UBS Memorandum: "FPWM policy for dealing with US persons under the QI agreement," in section subtitled, "Purchase of alternative structures," page 2, July 4, 2000, chart prepared by the U.S. Senate Permanent Subcommittee on Investigations	65
f. Quotation from UBS email to third-party corporate formation agents: "Structures/Vehicles for U.S./Canadian Clients," August 17, 2004, chart prepared by the U.S. Senate Permanent Subcommittee on Investigations	66

Page

2. Letter to the Permanent Subcommittee on Investigations from His Excellency Urs Ziswiler, Swiss Ambassador to the United States of America, dated February 20, 2009, declining an invitation to participate in the Subcommittee's hearing 67
3. *DEFERRED PROSECUTION AGREEMENT, UNITED STATES OF AMERICA v. UBS AG,* United States District Court, Southern District of Florida, dated February 18, 2009 (including deferred indictment) 69
4. *COMPLAINT, SECURITIES AND EXCHANGE COMMISSION v. UBS AG,* United States District Court for the District of Columbia, dated February 18, 2009 112
5. *DECLARATION OF DANIEL REEVES* excerpted from *EX PARTE PETITION FOR LEAVE TO SERVE "JOHN DOE" SUMMONS,* United States District Court, Southern District of Florida, dated June 30, 2008 . 123
6. *DECLARATION OF BARRY B. SHOTT,* excerpted from *EX PARTE PETITION FOR LEAVE TO SERVE "JOHN DOE" SUMMONS,* United States District Court, Southern District of Florida, dated June 30, 2008 . 140
7. *PETITION TO ENFORCE JOHN DOE SUMMONS, UNITED STATES OF AMERICA v. UBS AG,* United States District Court, Southern District of Florida, dated February 19, 2009 145
8. *DECLARATION OF DANIEL REEVES,* excerpted from *PETITION TO ENFORCE JOHN DOE SUMMONS, UNITED STATES OF AMERICA v. UBS AG,* United States District Court, Southern District of Florida, dated February 19, 2009. [Exhibits to Declaration not attached. See post-hearing Exhibit No. 18, below.] 151
9. *DECLARATION OF BARRY B. SHOTT,* excerpted from *PETITION TO ENFORCE JOHN DOE SUMMONS, UNITED STATES OF AMERICA v. UBS AG,* United States District Court, Southern District of Florida, dated February 19, 2009. [Exhibits to Declaration not attached. See post-hearing Exhibit No. 19, below.] 175
10. *BACKGROUND INFORMATION FOR THE COURT'S CONSIDERATION PRIOR TO THE SCHEDULED STATUS CONFERENCE,* filed by UBS, and *RESPONSE TO BACKGROUND FILING BY RESPONDENT,* filed by the United States, *UNITED STATES OF AMERICA v. UBS AG,* United States District Court, Southern District of Florida, dated February 20, 2009 182
11. *EBK investigation of the cross-border business of UBS AG with its private clients in the USA, Summary Report,* prepared by the Swiss Financial Market Supervisory Authority (FINMA), February 18, 2009 198
12. *Review of US Resident Non-W9 Business, Legal and Compliance,* report prepared by UBS AG Wealth Management & Business Banking, Risk and Compliance, December 10, 2004 215
13. UBS document entitled, *US International Training,* September 26, 2006 *(protect the banking secrecy)* 227
14. *UBS CONTACT REPORT, November 29, 2004 (orange, green, blue, C, 1 nut, a swan)* 234
15. UBS AG Memorandum, dated July 4, 2000, regarding *IRS 2001, FPWM policy for dealing with US persons under the QI agreement* 235
16. UBS email to third-party corporate formation agents titled *Structures/vehicles for U.S./Canadian Clients,* dated August 17, 2004 237
17. *EX PARTE PETITION FOR LEAVE TO SERVICE "JOHN DOE" SUMMONS,* United States District Court, Southern District of Florida, dated June 30, 2008 238
18. *DECLARATION OF DANIEL REEVES, UNITED STATES OF AMERICA v. UBS AG,* United States District Court, Southern District of Florida, dated February 19, 2009 328
19. *DECLARATION OF BARRY B. SHOTT, UNITED STATES OF AMERICA v. UBS AG,* United States District Court, Southern District of Florida, dated February 19, 2009 633
20. *INDICTMENT, UNITED STATES OF AMERICA v. Raoul Weil,* United States District Court, Southern District of Florida, November 6, 2008 644

Page

21. *TAX CONVENTION WITH SWISS CONFEDERATION and Mutual Agreement of January 23, 2003, Regarding the Administration of Article 26 (Exchange of Information) of the Swiss-U.S. Income Tax Convention of October 2, 1996,* with Appendix of Hypotheticals 657
22. *Mutual Assistance in Criminal Matters,* agreement between Switzerland and the United States of America 712
23. Correspondence from O'Melveny & Myers LLP on behalf of their client UBS AG to the Permanent Subcommittee on Investigations, dated March 3, 2009, regarding number and types of accounts that UBS maintained for U.S. clients as part of the U.S. cross-border business 872
24. English translation and original of Swiss Federal Administrative Court press release, *Appellate Proceeding in the Matter of Administrative Assistance of the Confederate Tax Administration to the United States of America for Tax Fraud and Related Matters,* March 6, 2009 876
25. English translation and original of Swiss Federal Administrative Court Interlocutory Order, *Supervision of banks and stock exchanges, possibly international administrative assistance,* February 20, 2009 881
26. Documents associated with April 2, 2009, G-20 summit proceedings regarding tax havens:
    a. G-20 final communiqué, *London Summit—Leaders' Statement* 890
    b. Financial annex to G-20 communiqué, *Declaration On Strengthening the Financial System* 899
    c. OECD list of tax havens, *A Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard* 905
27. Swiss Government press release, *Switzerland to adopt OECD standard on administrative assistance in fiscal matters,* March 13, 2009 908
28. *Liechtenstein commits to the OECD standard in tax matters and seeks to conclude bilateral tax agreements with individual States,* Liechtenstein press release and accompanying *The Liechtenstein Declaration,* statement of H.S.H. Heriditary Prince Alois of Liechtenstein, Liechtenstein Prime Minister Otmar Hasler, and Liechtenstein Prime Minister elect Dr. Klaus Tschutscher, March 12, 2009 909
29. Response provided for the record by IRS Commissioner Douglas H. Shulman to a question posed at the hearing by Senator Claire McCaskill regarding the whistleblower award program 919
30. Responses to supplemental questions for the record submitted to The Honorable Douglas H. Shulman, Commissioner, Internal Revenue Service, U.S. Department of the Treasury 920
31. Responses to supplemental questions for the record submitted to John A. DiCiccio, Acting Assistant Attorney General, Tax Division, U.S. Department of Justice 936
32. Responses to supplemental questions for the record submitted to Mark Branson, Chief Financial Officer, Global Wealth Management & Swiss Bank, UBS 939

TAX HAVEN BANKS AND U.S. TAX COMPLIANCE: OBTAINING THE NAMES OF U.S. CLIENTS WITH SWISS ACCOUNTS

WEDNESDAY, MARCH 4, 2009

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:34 p.m., in Room SH–216, Hart Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin, McCaskill, and Coburn.

Staff Present: Elise J. Bean, Staff Director and Chief Counsel; Mary D. Robertson, Chief Clerk; Robert L. Roach, Counsel and Chief Investigator; Ross Kirschner, Counsel; Christopher J. Barkley, Staff Director to the Minority; Timothy R. Terry, Counsel to the Minority; and Clifford C. Stoddard, Jr., Counsel to the Minority; Adam Parks, Detailee (ICE); Rachel Siegel, Detailee (GAO); Marcelle John, Congressional Fellow; Kevin Wack, Congressional Fellow; Daniel Goshorn, Law Clerk; Ryan McElveen, Intern; Melissa Mann and Clark Porter (Senator McCaskill).

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Good afternoon, everybody.

Each year, the United States loses an estimated $100 billion from U.S. taxpayers using offshore tax schemes to dodge their U.S. tax obligations. Those offshore shenanigans cheat honest U.S. taxpayers who pay their fair share and rob the U.S. Treasury of funds needed for the operations of our government.

This Subcommittee has dedicated significant effort to combating offshore tax abuse. We have exposed some of the facilitators—the lawyers, accountants, broker-dealers, company formation agents, trust administrators, and others—that help clients dodge their U.S. tax obligations. We have exposed some of the schemes, such as mass marketed tax shelters peddled as investment strategies, networks of offshore trusts and corporations with hidden assets, phony offshore stock portfolios used to offset real income, and deceptive offshore transactions used to recast taxable income as allegedly tax-free payments.

Last July, we held hearings which focused on financial institutions which are located in offshore secrecy tax havens and use an array of abusive practices to help U.S. clients hide assets and in-

come from Uncle Sam. The hearings and a staff report presented case histories showing how two tax haven banks used a long list of secrecy tricks to make it nearly impossible for U.S. tax authorities to trace funds sent offshore. Those tricks, as indicated on this chart,[1] included using code names for clients to disguise their identities; directing personnel to use pay phones instead of business phones to make it harder to trace calls back to the bank; providing bankers with encrypted computers when traveling to keep client information out of the reach of tax authorities; funneling money through offshore corporations to conceal incriminating wire transfers and make audits difficult; opening accounts in the names of offshore shell companies to hide the real owners; and providing bankers with counter-surveillance training to detect and deflect inquiries from government officials.

This kind of conduct, which actively facilitates tax evasion, amounts to a declaration of war by offshore secrecy jurisdictions against honest, hardworking taxpayers. We are determined to fight back and end the abuses inflicted on us by those tax havens.

Our focus today is threefold. First, we want to understand the steps being taken by the U.S. Government to stop UBS, one of the banks we examined last July, from aiding and abetting tax evasion by U.S. persons. Specifically, we will examine the nature of our effort to obtain the names of U.S. clients whom the bank aided and abetted in the violation of U.S. tax law. Second, we want to show how our tax treaties are inadequate in the battle against tax cheats. Third, we want to get people to focus on how hard it is going to be to put an end to the offshore secrecy racket, and offer some ideas on what should be done to stop the abuses.

First, let's examine the UBS case. UBS is headquartered in Switzerland and is one of the largest banks in the world. During our July hearing, UBS admitted publicly for the first time that an estimated 19,000 U.S. clients had opened UBS accounts in Switzerland with nearly $18 billion in assets that were not disclosed to the U.S. Internal Revenue Service (IRS).

Since then, new evidence suggests that there may be far more than 19,000 U.S. clients with hidden accounts at that Swiss bank. A 2004 UBS internal report, which was introduced in court by the United States and we have marked as Exhibit 12,[2] analyzes the U.S. client accounts opened in Switzerland. It states:

"The number of account relationships in WM&BB in Switzerland with U.S. residents where the account holder has not provided a W–9 is approximately 52,000 (representing CHF 17 billion"—which means 17 billion Swiss francs—"in assets)."

"WM&BB" stands for the Wealth Management and Business Banking group at UBS in Switzerland. A "W–9" is the form that is supposed to be filed with the bank by an account holder who is a U.S. person. The reference to "account relationships" leaves it unclear whether UBS had 19,000 U.S. clients, as UBS estimated in July, many of whom may have had multiple accounts; or whether it had 52,000 U.S. clients; or some number in between. We hope to clear up that issue today.

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[1] See Exhibit No. 1.a., which appears in the Appendix on page 61.
[2] See Exhibits No. 1.c. and 12, which appear in the Appendix on pages 63 and 215.

UBS also admitted during our July hearing that, for years, its Swiss bankers had made a practice of traveling to the United States to search out new clients and service existing clients, even though its Swiss bankers were not licensed to provide banking or securities services while in the United States.

In our July hearing, we presented an analysis of U.S. customs records showing that, from 2001 to 2008, about 20 UBS bankers made more than 300 trips to the United States. It now looks like the Subcommittee's analysis was far too conservative. Listen to this UBS report of 2004:

"In the last year, we are advised that 32 different Client Advisers from BS NAM"—and that is a group within UBS which targets business in North America, and now to continue with the UBS report—"that 32 different Client Advisers have traveled to the United States on business. On average each Client Adviser visited the United States for 30 days per year, seeing 4 clients per day. This means that approximately 3,800 clients are visited in the US per year by Client Advisers based in Switzerland."

That is the UBS report which is part of that chart.[1]

That UBS Swiss bankers made 3,800 client visits in a single year in the United States is a stunning fact.

Another striking document involves UBS efforts to train UBS bankers who traveled to the United States. In the last hearing, we released an internal UBS training document used to instruct its bankers on how to detect and avoid surveillance by U.S. authorities. The new document filed in the court case, which we have marked as Exhibit 13,[2] is a 2006 internal UBS document entitled "U.S. International Training." And in a section called "Lessons Learned," it states:

"In case of an interrogation by any authority:

—protect the banking secrecy

—no client respective communication/wait for assistance of a UBS lawyer."

Well, "protect the banking secrecy" says it all.

These and other documents demonstrate the actions that UBS and its personnel took to help U.S. clients hide assets and income from Uncle Sam and preserve the secrecy needed to thwart U.S. tax enforcement.

UBS has acknowledged its past conduct, promised to close the offending accounts, and announced that it would no longer open Swiss accounts for U.S. clients without notifying the IRS. Those announcements by UBS, made at our July hearing, were unexpected, they were welcome, and they sent a shock wave through the offshore bank secrecy world because they represented the first time that a major bank in a tax haven jurisdiction stated publicly it would no longer help U.S. clients escape their tax obligations.

At the time UBS made these announcements, UBS was under pressure from the Justice Department. In April 2008, the Justice Department had indicted a former UBS private banker, Bradley Birkenfeld, for conspiracy to defraud the United States out of millions in taxes—specifically, $7.2 million in taxes owed by a U.S. cit-

[1] See Exhibits No. 1.b. and 12, which appear in the Appendix on pages 62 and 215.
[2] See Exhibits No. 1.d. and 13, which appear in the Appendix on pages 64 and 227.

izen on $200 million in assets hidden with UBS' help in Switzerland and elsewhere. In June 2008, Mr. Birkenfeld pled guilty, and it was clear from the pleadings that he was cooperating with U.S. prosecutors. That guilty plea also shook up the offshore secrecy world, since it represented the first time the United States had convicted a Swiss banker for helping a U.S. client cheat on his taxes.

Later in June, the United States opened up a second front in the UBS matter by initiating what is known as a John Doe summons proceeding in Federal court. In that civil proceeding, the United States asked a U.S. court for permission to serve a summons on UBS seeking the names and account information for all U.S. clients who had opened UBS accounts in Switzerland from 2002 to 2007, without notifying the IRS as required by our law so that the IRS could evaluate their tax liability. The summons is called a John Doe summons because it seeks information about persons for whom the United States does not have names. On July 1, 2008, the court issued an order allowing the IRS to serve the summons on UBS.

Two weeks ago, the Department of Justice confronted UBS itself by instituting criminal action charging the bank with defrauding the IRS. UBS decided not to dispute the facts, but to acknowledge that it had violated U.S. law and had defrauded the United States of America. It entered into a Deferred Prosecution Agreement with the United States which provides that if UBS takes certain steps, the prosecution will be dismissed.

What steps did the agreement require UBS to take? First, UBS agreed to close all of the Swiss accounts it had opened for U.S. clients without notifying the IRS and to put an end to that line of business. Second, UBS agreed to pay a fine of $780 million. That fine requires UBS to disgorge the profits obtained from opening Swiss accounts for U.S. clients from 2001 to 2008—that is, some $380 million. The remaining $400 million represents some of the back taxes, with interest, that UBS should have withheld from those accounts and paid to the IRS but did not.

Next, UBS agreed to immediately turn over the names of a tiny subset of its U.S. clients. The President of Switzerland has said publicly that UBS provided the United States with the names of 250 to 300 such clients.

Finally, the Deferred Prosecution Agreement addressed the John Doe summons proceeding. While the agreement explicitly acknowledged that UBS would contest in court U.S. efforts to obtain the names of all U.S. clients with Swiss accounts that were not disclosed to the IRS, the agreement also specified that if UBS loses that case on appeal, it either must turn over all of the requested client names to the IRS or face the possibility that the United States would resume the prosecution and use UBS' factual admissions in a criminal proceeding against the bank. A trial is now scheduled for July to determine whether UBS has to turn over the names.

The basic focus in that trial will be Swiss secrecy laws. Today, Switzerland is one of the most vocal supporters of bank secrecy in the world. The Swiss hold out bank secrecy as a national value, in the same way Americans prize freedom and democracy. The Swiss claim that bank secrecy is essential to protecting individual privacy

and is more important than any law in the United States requiring the payment of taxes. The Swiss explain that tax evasion is not a crime in their country; it is only a civil matter that can be remedied by the payment of back taxes and a fine. They say that only one narrow type of tax misconduct, which they call tax fraud and which requires deceptive conduct such as the filing of a false document, can justify disclosing client information from a Swiss bank.

Switzerland and the United States disagree on whether tax evasion should be a crime. That has been true for decades. But here, Swiss bankers aided and abetted violations of U.S. tax law by traveling to this country, with client code names, encrypted computers, counter-surveillance training, and all the rest of it, to enable U.S. residents to hide assets and money in Swiss accounts. The bankers then returned to Switzerland and treated their conduct as blameless since Swiss law says tax evasion is no crime. The Swiss bank before us deliberately entered the United States, actively sought U.S. clients, and secretly helped those U.S. clients defraud the United States of America. Bank secrecy under those conditions is not a value to be protected; it is part and parcel of a conspiracy to commit a crime under U.S. law.

UBS has specifically acknowledged wrongdoing and admitted in court that it "participated in a scheme to defraud the United States and its agency, the IRS."

I want to read that again, because I think those words are so compelling. UBS has specifically acknowledged wrongdoing and admitted in court that it "participated in a scheme to defraud the United States and its agency, the IRS." But the Swiss Government, instead of condemning UBS' misconduct, is trying to thwart our efforts to get the names of all of the bank's U.S. clients with hidden Swiss accounts. Switzerland characterizes our effort as a "unilateral measure" that is contrary to Swiss law. According to the press, the President of Switzerland insists that, in his country, "Bank secrecy remains intact."

I am not surprised the Swiss Government is opposing UBS' compliance with the John Doe summons and has directed the bank not to provide all the names, or that it refused to show up at this hearing. They make a living off secrecy. Bank secrecy is a cash cow in Switzerland.

The Swiss Government argues that, instead of the John Doe summons, the United States ought to be using the procedures set up under the U.S.-Swiss tax treaty. But that tax treaty, like other tax treaties and tax information exchange agreements that the United States has in place around the world, is not designed to handle inquiries for information on taxpayers whose names are unknown. As the IRS explained in a court pleading, the Swiss have consistently applied the tax treaty "to provide the [IRS] assistance only in response to specific requests that name a particular taxpayer."

When we don't have specific taxpayer names, our tax treaties have proven to be of little use. In the UBS case, for example, 7 months ago at the urging of the Swiss, the United States made a request under the treaty to get information about unnamed U.S. clients with UBS accounts in Switzerland. Out of the 52,000 UBS account relationships and estimated 19,000 U.S. clients, guess how

many U.S. clients the Swiss have determined can be provided to us under the tax treaty?

Twelve out of either 19,000 or 52,000, or the number that we will make clear today. Twelve U.S. clients out of a universe of tens of thousands.

To make matters worse, the Swiss Government notified the 12 that they could appeal the determination, and lengthy appeals are now underway in Swiss courts. The IRS stated in a court pleading that, 7 months after making its request, "the Swiss Government has not provided any records sought under the Treaty Request, and it is not clear when, if ever, it will."

So here is the bottom line about the failure of our tax treaty with Switzerland to get us needed information in order to go after U.S. tax cheats. UBS has accepted "responsibility for the violation of [U.S.] law." UBS has admitted that it referred U.S. clients who wanted to hide their assets to outside firms "with the understanding that these outside advisers would help such U.S. clients form offshore companies in order to enable such clients to evade" U.S. law. UBS also admitted that its bankers and managers took a range of other actions which "actively assist[ed] or otherwise facilitate[d]" U.S. taxpayers who were evading U.S. taxes, such as having their bankers travel to the United States to service those clients in ways that would conceal their account transactions. And, again, UBS specifically agreed in the court case that, acting through certain of its bankers and managers, it "participated in a scheme to defraud the United States and its agency, the IRS."

Despite those admitted facts, UBS refuses to turn over the vast majority of the names of the U.S. persons with whom they schemed to defraud the United States. UBS and Switzerland justify that refusal by invoking Swiss secrecy laws. They say the United States should use the tax treaty process instead, but that is not going to help because the Swiss have interpreted the treaty to deny information requests about potential tax cheats whose names are unknown. And why are those names unknown? Because of Swiss secrecy laws.

Too many countries are using our treaties as a shield to deny us tax information instead of using those treaties as a sword to expose tax cheats as was intended. The result is a cynical charade in which tax havens like Switzerland try to have it both ways—claiming to be a cooperative partner in the international fight against tax abuse, while providing a safe haven and promising ironclad secrecy laws for tax evaders.

We cannot rely on our tax treaties with secrecy tax havens to protect us from offshore tax abuse. We have to rely on our own laws instead, and we need to strengthen those laws if we want to put an end to offshore tax haven abuses against Uncle Sam and against honest, taxpaying Americans.

As a first step, Congress should enact the Stop Tax Haven Abuse Act, S. 506, which I and a number of my colleagues introduced earlier this week and which the Obama Administration endorsed yesterday through Treasury Secretary Geithner.

This bill offers powerful new tools to detect and stop offshore tax offenders, including by ending the Ugland House scam that allows phony offshore shell corporations operated from the United States

to dodge U.S. taxes, permitting the establishment of legal presumptions that can be used to combat offshore secrecy, authorizing special measures—these are all the things our bill would do—authorizing special measures against financial institutions or countries that impede U.S. tax enforcement, requiring third-party disclosures of offshore transactions, extending the deadline for assessing taxes in offshore cases from 3 to 6 years, and closing a raft of offshore tax loopholes.

Now, there are also actions that the Obama Administration can take to clamp down on offshore tax abuses, without waiting for legislation. The Administration could, for example, establish a special enforcement unit to handle the hundreds if not thousands of prosecutions likely to result from the UBS case alone and to initiate proceedings against other tax haven banks. That enforcement unit would send the message that the UBS tax scofflaws are not going to get off scot free, and no tax haven bank account is free from risk.

The Administration could also become an active participant in ongoing international efforts to penalize offshore jurisdictions that facilitate tax evasion. Efforts by the G20 group of nations to coordinate action against offshore tax havens are gaining steam in anticipation of the G20 meeting in April, but the United States has so far been largely silent. It is time for the United States to become a leader, not a follower, in international efforts to develop a list of uncooperative tax havens and to develop a toolbox of penalties to be imposed on those who impede tax enforcement.

Another step the Administration could take is to continue the efforts of the Bush Administration to strengthen the Qualified Intermediary Program that determines what information foreign banks give to the IRS. Right now, these QI Agreements between the IRS and foreign banks require the foreign banks to report to the IRS only those foreign accounts containing U.S. securities. At a minimum, QI Agreements should require foreign banks to report all foreign accounts with U.S. account holders, whether those accounts contain securities, cash, or other assets. In addition, QI Agreements should make it clear that foreign banks have to disclose to the IRS accounts held by a foreign entity, such as an offshore corporation, that is beneficially owned by a U.S. person.

A longer-range project is for the United States to strengthen its tax treaties and tax information exchange agreements. New provisions are needed to ensure that information can be obtained for unnamed U.S. taxpayers associated with entities suspected of tax misconduct, and to eliminate the tax fraud distinction which has become a barrier to effective tax information exchange.

Finally, the Administration should consider finalizing a regulation proposed by the Clinton Administration years ago. That regulation would allow the United States to engage in automatic information exchanges of account information with countries on a reciprocal basis for tax enforcement purposes. Right now, the only automatic tax information exchanges we engage in are with Canada. A lot more countries may be willing to participate. The resulting account data could produce new information identifying U.S. tax dodgers.

Offshore tax abuses are burning a $100 billion hole in the U.S. budget. While the Justice Department and the IRS are to be com-

mended for their creative and tenacious efforts in the UBS case, nobody should think for a moment that the offshore tax battle is over, even if the IRS wins that lawsuit. Despite UBS being caught red-handed and admitting wrongdoing, the Swiss Government is fighting the John Doe summons and defending Swiss secrecy. The president of the Swiss Bankers Association told the press, "The large majority of foreign investors with money placed in Switzerland evade taxes"—his words—but he showed no regret that the Swiss financial institutions are facilitating that tax evasion—quite the contrary since tax evasion is not a violation of law in Switzerland. And Switzerland is just one of 50 tax havens battling to keep offshore secrecy laws in place.

The rest of the world is getting fed up with offshore tax havens that turn a blind eye to tax evasion and allow their financial institutions, lawyers, accountants, and others to profit from tax dodging. Countries victimized by offshore tax abuses are losing billions of dollars per year. We cannot afford to ignore those offshore tax losses any longer. And it is way past due that we act to end the offshore tax-dodging drain on our treasury.

Let me now turn to my Ranking Member, Senator Coburn, for his opening statement. This is the first Subcommittee hearing in which he is participating in that new role. I welcome him. I look forward to working with him in the Subcommittee's ongoing efforts to combat offshore tax abuse and in so many other joint endeavors.

Senator Coburn.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Thank you, Mr. Chairman, and let me tell you how much I appreciate what you and your staff and the staff on PSI Subcommittee have done. We have before us significant problems. There is no question there has been fraud. There is no question there have been violations of U.S. law. But there is also no question that the origin of these problems is a very complex Tax Code in the United States, and it is up to us to simplify it, make it fair, make it more straightforward.

I will have a very limited statement and then put something into the record.

It is just simply a matter of fairness that if you owe taxes in the country, you ought to pay them, because if you do not, you are stealing money from somebody less fortunate. You are not just protecting your assets; you are actually taking assets from somebody who is much less fortunate than you are.

Today's hearing presents us with an opportunity today to get a little further along in terms of the facts of this case. I am reviewing Senator Levin's bill. I do have one central concern: That we not drive capital out of this country. But one of the things we want to do is have a Tax Code that rewards capital investment and capital formation in this country, and I will be working with Senator Levin in that regard.

I look forward to hearing our witnesses and questioning them, and I would yield back.

PREPARED OPENING STATEMENT OF SENATOR COBURN

Mr. Chairman, I want to thank you for continuing this important inquiry into how certain foreign banks and their American clients have flouted U.S. tax laws. I truly appreciate what you and the Subcommittee staff have accomplished.

We have before us significant problems. There is no question there has been fraud. There is no question there have been violations of U.S. law. But, let us be clear: there is also no question that the root of many of these problems is our country's very complex Tax Code. We need to simplify it, make it fair, make it straightforward.

Of course, I don't mean to minimize the effrontery of the individuals involved in these schemes. Though I am no fan of the U.S. tax code, fraud of any kind deeply offends me. As a fundamental matter of fairness, if you owe taxes to your government, you ought to pay them. When you fail to do so, you are literally *robbing* your honest neighbors. You are not merely "protecting your assets;" you are actually *stealing* the assets of the less fortunate. It is a shameful crime. But today I would like to make a larger point . . .

This country has the world's largest economy as well as the world's largest equity market. We are leaders in commodity and debt markets, as well. But our lead has definitely been shrinking as countries with more favorable tax rates and more sensible regulatory regimes attract capital that used to flow to our shores. The Cato Institute's Chris Edwards and Dan Mitchell recently described the myriad ways that U.S. tax policy puts this county's economy at a competitive disadvantage. For example, the U.S. boasts the following dubious distinctions:

- The 2nd-highest corporate tax rate in the world at 40 percent, which includes the 35 percent Federal rate plus the average state rate. By contrast, the average corporate rate in Asia is 29 percent, in Latin America 27 percent, and in Europe 24 percent.
- Complex and uncompetitive business taxation. The World Bank ranks the U.S. 76th on having a low burden of business taxes and tax compliance costs.
- The 8th-highest dividend tax rate in the OECD.
- The 3rd-highest estate or inheritance tax rate in the OECD.
- One of the highest tax rates in the world on corporate capital gains.
- Tax rates on individual income, capital gains, dividends, and estates that are scheduled to rise in 2011 when current tax cuts expire.
- State-level corporate tax rates that have not been cut in decades.

With such albatrosses around our neck, it is no wonder that America's share of global equities market capitalization has plummeted from one-half in 1997 to just one-third in 2007; that our share of world gross domestic product has also declined; that our leading role in initial public offerings has vanished; and that we are well below our potential when it comes to transactions in interest-rate products and foreign-exchange trading.

The world is, as they say, "flat," and global competition for capital has become more fierce than ever before. The United States, with its draconian tax code, is losing this competition to countries like Singapore, Luxembourg, Hong Kong, and especially the U.K. Nations such as these are making smarter tax and regulatory policies, and these decisions are paying great dividends in the form of increased jobs and investment. These countries understand that financial activity—especially those relating to derivatives and money management—crosses international borders with the greatest of ease, and they have rolled out the welcome mat.

Consider how the U.K., with just a 5 percent share of world gross domestic product, boasts a 40 percent share of daily foreign exchange trading and interest rate derivatives trading and is a leader in metals and oil trading. Even more impressive has been the Irish experience: Ireland reduced its capital gains tax rate from 40 percent to 20 percent in 1980 and later slashed its corporate tax rate to 12.5 percent—decisions that gave birth to the Celtic Tiger. Such smart tax policies transformed Ireland into an industrial and financial hub, and Irish incomes rose from 30 percent below the European average in the 1980s to 40 percent above the average in 2004.

Clearly, we need a tax code that rewards capital investment and capital formation in this country, but we do not yet have one. Instead, we have a tax code that stands athwart the salutary, twin trends of global capitalization and increasing international tax competition. We need a flatter, simpler, fairer tax code and not the sky-high rates and convoluted provisions that are making the U.S. a less hospitable investment environment.

I look forward to working with our witnesses and with Chairman Levin to create a more sensible tax and regulatory regime.

Senator LEVIN. Thank you so much, Senator Coburn.

And now let me welcome our first panel of witnesses for this afternoon's hearing: John DiCicco, Acting Assistant Attorney General for the Tax Division of the Department of Justice; and we are delighted that we have with us Doug Shulman, the Commissioner of the Internal Revenue Service. We know how busy your schedule is, Commissioner Shulman, we are delighted you were able to get here today.

Mr. DiCicco, I believe this is your first appearance before the Subcommittee. We welcome you. Commissioner Shulman, again, thank you for being here. You have testified before the Subcommittee in the past, so we welcome you back. And as you know, pursuant to Rule 6, all witnesses who testify before this Subcommittee are required to be sworn, and I would ask you now both to stand and raise your right hand.

Do you swear that the testimony you are about to give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. DICICCO. I do.

Mr. SHULMAN. I do.

Senator LEVIN. We will use a timing system today—a minute before the red light comes on, you will see the lights change from green to yellow, which will give you an opportunity to conclude your remarks. Your written testimony will be printed in the record in its entirety, and we would appreciate your using up to 10 minutes for your oral testimony.

Apparently, the order of our witnesses has been decided upon in advance with your mutual understanding, so, Mr. DiCicco, we will have you go first, followed by Commissioner Shulman.

TESTIMONY OF JOHN A. DiCICCO,[1] ACTING ASSISTANT ATTORNEY GENERAL, TAX DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. DICICCO. Chairman Levin, Acting Ranking Member Coburn, and Members of the Subcommittee, thank you for the opportunity to appear before you this afternoon to discuss the Department of Justice's efforts to combat the use of banks and offshore entities by U.S. taxpayers to evade income taxes.

The Department greatly appreciates the extraordinary commitment that the Chairman, Members of the Subcommittee, and staff have made to investigate the often arcane world of offshore tax evasion and avoidance. Your tireless work over the last several years has brought attention to serious misconduct that threatens to undermine the fundamental integrity of our tax system. Although we stand ready to enforce the tax laws whenever and wherever necessary, enforcement is only one element of successful tax administration. Thanks to your efforts, taxpayers have a greater understanding of their obligations and the consequences of noncompliance. You have also put tax professionals and financial advisers on notice that their efforts to design, market, and facilitate tax evasion schemes will not be tolerated.

[1] The prepared statement of Mr. DiCicco appears in the Appendix on page 45.

In conducting law enforcement investigations, the Department goes to great lengths to ensure that the government's inquiry is complete and that testimony and evidence are gathered and fully analyzed outside of the public arena. Our policy of not disclosing non-public information about ongoing matters protects the rights of individuals who may be assisting in the investigation, protects the rights of criminal defendants, as well as the integrity of the investigation itself. Our ability to comment is also circumscribed by Federal Rule of Criminal Procedure 6(e), which protects the disclosure of grand jury information. In a tax case, the tax privacy statute, Section 6103 of the Internal Revenue Code, further limits the government's disclosure of tax information. Although certain aspects of the UBS matter are public, both the civil and the criminal matters are ongoing, and certain documents relating to the criminal matter remain under court seal. Therefore, my remarks today will be strictly limited to positions the Department has taken on the public record.

As the Chairman has mentioned, on February 28, 2009, the district court in Florida accepted a Deferred Prosecution Agreement between the government and UBS. Under the terms of that agreement, UBS waived indictment and consented to the filing of a one-count criminal information charging UBS in a conspiracy to defraud the United States and the Internal Revenue Service, in violation of U.S. criminal law. As part of the Deferred Prosecution Agreement, UBS also agreed to pay $780 million in fines, penalties, interest, and restitution. If UBS carries out its obligations under the Deferred Prosecution Agreement, the government will recommend dismissal of the charge. The Deferred Prosecution Agreement is a product of UBS' willingness to cooperate thus far with our investigation. The Government of Switzerland has also endeavored to provide significant assistance and cooperation. We appreciate the Swiss Government's efforts and those of its finance and banking regulator who assisted in expediting the production of the records that we have secured and that we are in the process of securing.

Fundamental to the agreement is UBS' acceptance of responsibility for violating U.S. law. As set forth in detail in the Deferred Prosecution Agreement, UBS acknowledged that, beginning in 2002 and continuing through 2007, UBS private bankers and managers actively facilitated the creation of accounts in the names of offshore companies, allowing U.S. taxpayers to conceal their ownership or beneficial interest in those accounts in an effort to evade U.S. tax reporting and payment requirements and in violation of a qualified intermediary agreement UBS had entered into with the Internal Revenue Service. UBS also admitted that certain UBS executives and managers were aware of the misconduct, and UBS agreed that it failed to implement effective controls to detect and prevent the unlawful activity, that it failed to initiate an effective investigation into credible allegations of such unlawful activity, and that it failed to take effective action to stop such activities.

UBS bankers routinely traveled to the United States to market Swiss bank secrecy to U.S. clients interested in attempting to evade U.S. income taxes. An internal UBS memorandum filed with the court demonstrates that, in 2004 alone, UBS bankers traveled

to the United States where they held approximately 3,800 separate meetings with U.S. clients to discuss their clients' Swiss accounts.

UBS used a variety of strategies to conceal their cross-border activities. They instructed their bankers who traveled to the United States to falsely represent to Customs that they were traveling for pleasure. They also recommended that bankers rotate hotel accommodations in the United States to avoid detection. UBS bankers used counter-surveillance techniques, including encrypted spread sheets, designed to help prevent the detection of their marketing efforts, as well as the identities and undeclared assets of their U.S. clients.

U.S. clients in turn filed false tax returns with the Internal Revenue Service which omitted the existence of and the income earned on the UBS accounts. UBS bankers advised U.S. clients to misrepresent the receipt of funds in the United States from their UBS accounts as loans from UBS. U.S. clients were also advised to destroy all U.S.-based records of their offshore accounts.

With the assistance of UBS bankers and managers, the U.S. taxpayers have used Swiss bank secrecy laws and sham entities to conceal from the IRS approximately $20 billion in assets. For the period 2000 through 2007, UBS failed to withhold approximately $120 million in income taxes on income earned in those accounts.

As part of the Deferred Prosecution Agreement, UBS has agreed to provide the United States with voluminous and detailed records concerning accounts held directly or through beneficial arrangements by U.S. taxpayers. UBS has also undertaken a continuing obligation to cooperate with the criminal investigation and any resulting prosecutions. UBS has further agreed to search for and turn over any additional records found concerning such accounts. The specific criteria for account records disclosed and the number of such accounts as to which records have been disclosed to date are set forth in a document that the district court has ordered sealed.

UBS has also agreed to pay the United States $780 million and that it will terminate its U.S. cross-border business. And as mentioned in the prosecution agreement, while they will litigate in Federal court the government's motion to enforce the John Doe summons, in the event that they are ordered to comply with the summons and they refuse to do so, the United States can determine that a breach of the Deferred Prosecution Agreement has occurred and can take appropriate action.

UBS' failure to comply with the terms of the Deferred Prosecution Agreement may, in the sole discretion of the United States, be deemed a material breach, permitting the United States to proceed with the criminal prosecution of UBS. If UBS fully complies with the Deferred Prosecution Agreement, then the criminal information will be dismissed.

It is important that the Deferred Prosecution Agreement only applies and provides protection for the bank as to the specific conduct set forth in the Deferred Prosecution Agreement. It does not provide any protection for any conduct or as to any matter or proceeding outside the scope of the agreement.

It is also important to emphasize that under U.S. law, U.S. taxpayers are subject to taxation on their worldwide income. Although

a U.S. taxpayer is free to hold accounts offshore or in a foreign bank, a U.S. taxpayer must report information about those assets and must pay the tax on the income generated. Taxpayers who fail to make disclosure or to report their income are potentially subject to civil penalties and in appropriate circumstances criminal prosecution.

As noted in the Deferred Prosecution Agreement, in addition to addressing UBS' role in designing and facilitating this scheme, the Department is also assisting the Internal Revenue Service in determining the identities of the U.S. taxpayers involved. We are presently involved in a proceeding to enforce the John Doe summons pending in the Southern District of Florida, and we have a schedule there which would allow for a hearing on, I think, July 13 of this year.

In closing, I think it is important to remember that the vast majority of Americans voluntarily pay their taxes on time and in full. And at a time when millions of Americans are losing their jobs, their homes, and their health care, it is deeply troubling that thousands of the wealthiest among us have actively sought to evade their civic and legal duty to pay taxes. The Department of Justice is committed to doing all that it can to aid the Internal Revenue Service in locating those who would seek to hide behind secret accounts and to hold them accountable under the Federal tax laws. And we greatly appreciate your interest in our efforts.

Thank you for this opportunity to testify before the Subcommittee, and I am happy to take your questions, within the parameters that I have outlined.

Senator LEVIN. Thank you very much, Mr. DiCicco. Mr. Shulman.

TESTIMONY OF HON. DOUGLAS SHULMAN,[1] COMMISSIONER, INTERNAL REVENUE SERVICE, U.S. DEPARTMENT OF THE TREASURY

Mr. SHULMAN. Mr. Chairman, Ranking Member Coburn, and Senator McCaskill, I want to thank you for the opportunity to testify today on the Internal Revenue Service's ongoing efforts to detect and stop unlawful offshore tax avoidance.

Mr. Chairman, I am pleased to be here today to tell you about the unprecedented focus that the IRS has placed on detecting and bringing to justice those who unlawfully hide assets overseas to avoid paying tax. In today's economic environment, where the Federal Government is necessarily running deficits to restore economic growth, it is more important than ever that citizens feel confident that individuals and corporations are playing by the rules and paying the taxes that they owe.

When the American public is confronted with stories of financial institutions helping American citizens maintain secret overseas accounts involving sham trusts to improperly avoid U.S. tax, they should be outraged, as I am and I know you are. But they should also know that the U.S. Government is taking unprecedented measures, and there is much more in the works.

[1] The prepared statement of Mr. Shulman appears in the Appendix on page 51.

I can assure you that the President and the Treasury Secretary are committed to taking aggressive action on offshore tax abuse. Over the next several months, the Administration intends to propose a series of legislative and enforcement measures to reduce U.S. tax evasion and avoidance.

While I am proud of the progress we have made at the IRS since I have become Commissioner, we are only at the beginning. You can expect to see a multi-year effort to beef up our resources and the tools that we have to address international tax abuse.

In the wake of publicity around the recent case that my colleague Mr. DiCicco discussed, the press has been full of speculation from those who are advising U.S. taxpayers who have undeclared offshore accounts and income. My advice to those taxpayers who are hiding accounts still is very simple: The IRS has been steadily increasing pressure on offshore financial institutions that facilitate concealment of taxable income by U.S. citizens. That pressure will only increase under my watch. Those who are unlawfully hiding assets should come and get right with their government through our voluntary disclosure process.

Mr. Chairman, there is no silver bullet or one strategy that will alone solve the problems of offshore tax avoidance. Rather, an integrated approach is needed, made up of separate but complementary programs that will tighten the net around tax cheats.

My written testimony today explores elements of these strategies in more detail, but let me highlight a couple of them here today.

First, the IRS is devoting significant and ever increasing resources to international issues. I have both increased the number of audits and increased hiring in the area of offshore tax abuse, hiring international experts and investigators. Indeed, over the last 5 months, when we have essentially been in a hiring freeze because of the continuing resolution, I have shifted resources to make sure we can keep hiring people for international issues.

The President's 2010 budget will allow us to increase our resources in the international area as well by including funding for a robust portfolio of IRS international tax compliance initiatives.

The IRS is also looking closely at how to continue to improve our Qualified Intermediary Program, or QI program for short. Let me just say that the QI program gives us a very important line of sight into banks that service U.S. and foreign taxpayers, and that is a line of sight that we did not have before. But as I have said before, with any large and complex program, we have to strive to continuously improve the QI system and address weaknesses as they become apparent.

Accordingly, the IRS and the Treasury Department are considering enhancements to strengthen the QI program, including: First, expanding information reporting requirements to include more sources of income for U.S. persons with accounts at QI banks; second, strengthening documentation rules to look through trusts and private corporations to their beneficial owners and requiring withholding for accounts with documentation that is considered insufficient. Additionally, we have already proposed changes that would shore up the independent review by outside auditors of the QI program in substantial ways.

As you can see, the IRS and Treasury Department are considering a range of measures to ensure that the QI program is working as intended. However, there will always be instances where the IRS discovers a potential violation of the tax law after the fact. In these cases, there are administrative and legislative changes that would be helpful to the IRS as we investigate potential wrongdoing.

Secretary Geithner stated during his confirmation process that he will treat offshore tax abuse issues as a high priority and will examine a range of policy issues, including changing presumptions for transactions in tax secrecy jurisdictions and other ideas that are included in your legislation. That dialogue is underway at the Treasury Department.

Additionally, Mr. Chairman, I want to applaud the work of you, Senator Whitehouse, Senator McCaskill, Senator Nelson, as well as the work of your staff in producing the Stop Tax Haven Abuse Act. I look forward to working with you to put a halt to offshore tax haven and tax shelter abuses.

Mr. Chairman, these are important steps forward, but much more will come. The President's budget committed to identifying $210 billion in savings over the next decade from international enforcement and reforming deferral and other tax reform policies. The Administration will have more detailed and specific announcements in the near future.

Thank you for this opportunity to provide an update on our activities to combat illegal tax avoidance schemes relating to offshore accounts and transactions. Because this is a global problem, it will require closely coordinated strategy among nations dedicated to ending abusive practices that deprive our country of precious resources and erode confidence in the fairness of our tax administration system.

I want to compliment the work that you and this Subcommittee have done to bring to light offshore tax abuse. I have enjoyed working together on these issues, and I look forward to continuing to work together with this Subcommittee in the future. And I am happy to respond to questions.

Senator LEVIN. All right. Now, Dr. Coburn has a couple of amendments of his own on the floor, so he is going to need to leave when the votes have started. So I am going to yield to him to go first.

Senator COBURN. Thank you, Mr. Chairman. I appreciate that. I will go very quickly.

First, to Mr. DiCicco, if you can, what is your estimated timeline on the Deferred Prosecution Agreement? At what time will you all say they are not complying, we are going to drop this?

Mr. DICICCO. Well, at any time during the process, if we see a material breach and it is not corrected, I think we can take action at that time. Right now the Deferred Prosecution Agreement is to come to an end at the later of—I think it is 18 months or when the summons enforcement action is concluded.

Senator COBURN. Right.

Mr. DICICCO. But at any place along the line if there is a significant breach or material breach, then we have the option to conclude the agreement and to go back and institute——

Senator COBURN. So it would be safe to say 18 months from now, if we do not have the information, it is going to get dropped and the prosecution will commence?

Mr. DICICCO. Well, Senator, I would have to see how—

Senator COBURN. I am not going to hold you to it. I am just trying to get a timeline.

Mr. DICICCO. I would think, Senator, that the timeline for getting the John Doe summons matter resolved would probably be more than 18 months, more likely could be as long as a couple years because I suspect that appeals will be taken, and it takes time for that process.

Senator COBURN. Well, is there any provision agreement if UBS is obstructing through the courts?

Mr. DICICCO. Well, one of the conditions of the Deferred Prosecution Agreement and what we agreed to was that we would proceed—both parties agreed that we would proceed in the district court and have a court decide whether we would get that information or not. So as long as that is going forward——

Senator COBURN. So if, in fact, that is delayed, what we would extend to is outside the bounds of that 18 months.

Mr. DICICCO. That is right.

Senator COBURN. Can you tell me what are the circumstances for criminal prosecution of offshore accounts? You mentioned offshore accounts and that some of them are prosecuted on a criminal basis. What would make them a criminal—set them up for a criminal prosecution?

Mr. DICICCO. Well, there are a lot of factors that go into making that determination, including the intent, the amount involved, the circumstances surrounding how the account was opened, whether it was the result of criminal proceeds, drug trafficking, stolen money, or whether it was perhaps just a simple inherited account. I mean, all these factors would be weighed before a decision really can be made.

Senator COBURN. OK. Commissioner Shulman, in your statement you included individuals and corporations. Do we have evidence that there are corporations involved in this process or are you mostly talking about LLC's and other such personal investment vehicles?

Mr. SHULMAN. Just speaking as the Commissioner, I would defer any discussion about specifics to my colleague.

Senator COBURN. Well, it is very important because in your statement you implied individuals and corporations.

Mr. SHULMAN. Yes. Generally, since I became IRS Commissioner, I made international issues one of my top issues that we are going to pursue, dedicate resources to, focus on, both from a policy perspective and administrative perspective. The big issue we are focusing on today in the hearing is offshore accounts, wealthy individuals hiding money overseas.

We also have a lot of major initiatives around corporations using the vagaries of international commerce and international tax laws to avoid taxes in a civil matter. So that is what I was referring to.

Senator COBURN. But avoidance is very different from evasion.

Mr. SHULMAN. Absolutely.

Senator COBURN. OK. And so the implication is what we are talking about here was not meant to include corporate accounts in what we have seen thus far. Is that true?

Mr. DICICCO. Well, Senator, we have not gotten the information yet, and we have not been able to analyze it.

Senator COBURN. It is possible, but that is not what we have seen, that is not what we have heard about. Most of these, at least what we have been told, of somewhere between 19,000 and 52,000 accounts, are probably individual accounts.

Mr. DICICCO. I think that is correct, but I do not know the answer to that.

Senator COBURN. I am intrigued by your voluntary disclosure process. I think that is a message that needs to go out to this country. We are going to help you become more aggressive in going after this avoidance and evasion. But I would think that we would want to signal loud and clear, Mr. Chairman, that there is a way to avoid some of the pitfalls of pain if you are one of those who is illegally evading taxes in this country, and that is through your voluntary disclosure program.

Mr. SHULMAN. Absolutely. It is a longstanding program. People who come in voluntarily before we found them. So, if we found you already or we have an active, ongoing investigation, you are not eligible. But people who come in voluntarily, truly voluntarily, usually avoid criminal prosecution as long as they get right with taxes, interest, and the penalties that will apply. And I cannot say strongly enough, people who are out there, we are continuing to put pressure and dedicate resources. This Subcommittee and others are going to continue to focus on this, and the best thing people can do is come in through the voluntary disclosure process and avoid criminal prosecution in most cases.

Senator COBURN. We are going to find you, in other words.

How can you see, Commissioner, tax simplification aiding this? In other words, if we had a much simpler Tax Code, if we had a Tax Code, for example, that was based on a national sales tax, would we see this kind of movement to foreign tax shelters that we see today?

Mr. SHULMAN. Well, let me not speak to flat tax or any specific proposal.

Senator COBURN. Just a simplified, straightforward, easy—everybody can calculate it. You do not need a CPA to do your taxes. If we had that kind of tax program, what would be the benefit of some of these shelters?

Mr. SHULMAN. As Commissioner of the Internal Revenue Service, who has to implement a very complicated Tax Code, I am a big fan of simplification. There are a lot of U.S. citizens who get caught up in mistakes because they are confused. I think the folks we are talking about today, generally it is not mistakes. They are actively avoiding tax. I am a fan in general of simplification.

Senator COBURN. And you would agree that probably we would have less incentive to do this if we had a simple, more straightforward, fairer tax code?

Mr. SHULMAN. I am not sure about incentive, but certainly I think there would be a lot fewer mistakes in preparing taxes and

it would be easier for the American citizen. So I am a big fan of simplification.

Senator COBURN. All right. Let me go the other way. You do not think people would lessen their desire for tax shelters if we had a straightforward, simple, fair tax system?

Mr. SHULMAN. Well, certainly the complexity of the Tax Code and then you add to it the complexity of crossing the border and sovereign laws creates loopholes and opportunities for people who want to push the envelope. So I certainly think it would certainly help with tax enforcement.

Senator COBURN. Thank you, Mr. Chairman.

Senator LEVIN. Thank you very much.

Let me start, Mr. DiCicco, with you. In the Deferred Prosecution Agreement,[1] UBS acknowledged "participating in a scheme to defraud the United States of America." Among the facts that UBS acknowledged and accepted as part of the filing entitled "Acceptance of Responsibility for Violation of Law" is the following: "Private bankers and managers would actively assist or otherwise facilitate certain undeclared U.S. taxpayers who such private bankers and managers knew or should have known they were evading U.S. taxes by meeting with such clients in the United States and communicating with them via jurisdictional means on a regular and recurring basis with respect to their UBS undeclared accounts. This enabled the U.S. clients to conceal from the IRS the active trading of securities held in such accounts and/or the making of payments and/or asset transfers to and from such accounts. Certain UBS executives and managers who knew of the conduct described in this paragraph continued to operate and expand the U.S. cross-border business because of its profitability."

Now, what this paragraph shows, does it not, is that the evasion facilitated by UBS goes to all kinds of U.S. account holders? It does not make any difference whether they held cash, securities, or other assets in those accounts. The critical fact is that they did not report those accounts and income to the IRS, and UBS, by coming to this country and engaging in practices that helped the U.S. account holders to conceal those accounts and income, was part of the alleged conspiracy. Is that correct?

Mr. DICICCO. That is correct, Senator.

Senator LEVIN. Now, Commissioner, yesterday Secretary Geithner stated that he fully supports my bill, S. 506, a bill which has a number of cosponsors, which is called the "Stop Tax Haven Abuse Act." Is that good news in terms of enforcement for the IRS?

Mr. SHULMAN. Yes.

Senator LEVIN. When I say "good news," I mean the support of the Administration for our bill. Is that good news to the IRS?

Mr. SHULMAN. Yes.

Senator LEVIN. It is good news for American taxpayers, too, and we very much welcome that support. And I mentioned this to the President this morning, by the way. He also happened to be a cosponsor of this bill when he was a Senator. I did not draw any connection between the two.

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[1] See Exhibit No. 3, which appears in the Appendix on page 69.

Mr. DiCicco, do you think UBS is the only tax haven bank that is facilitating tax evasion by U.S. clients or are there more out there?

Mr. DICICCO. I do not think they are the only one.

Senator LEVIN. UBS has said in court, Mr. DiCicco, that it cannot provide the information sought in the John Doe summons because it is bound by Swiss secrecy laws not to disclose client-specific information outside of Switzerland. Can you explain how UBS can invoke Swiss secrecy laws to refuse compliance with U.S. requests for information about U.S. clients?

Mr. DICICCO. Senator, I have to be a little careful about what I say because the matter is pending, but what I will——

Senator LEVIN. All right. Then let me ask you the question this way: How big a barrier are secrecy laws to tax investigations by the United States?

Mr. DICICCO. I think they are a significant barrier, but what I would say about the UBS matter, the approach that we are taking is this is a dispute between the United States and UBS. We are not going head to head with the Swiss Government, but UBS which, as the Chairman has pointed out, came into this country, systemically violated its laws, subjected itself to the jurisdiction of U.S. courts, and we are using U.S. remedies to get the information that we believe we are entitled to.

Senator LEVIN. Now, that may not be the purpose of the case, to go head to head with the Swiss Government, but we are going head to head with tax secrecy jurisdictions. We are, and this bill, and I think this Congress, and now this Administration; we are going head to head with those tax havens that help American taxpayers who owe taxes avoid paying their fair share.

Is it your belief, Mr. DiCicco, that the UBS and the Swiss understood at the time the Deferred Prosecution Agreement was signed that the U.S. Government planned to seek enforcement of the summons?

Mr. DICICCO. No question about that, Senator. Discussions had taken place over a period of time which made it very clear that is what we would be doing, and in the Deferred Prosecution Agreement itself, it says very explicitly that we will bring an enforcement action. It does not say "we may," "we are thinking about it." It says very specifically "we will be," and that is what we did.

Senator LEVIN. All right. So it was not a surprise to them when you proceeded?

Mr. DICICCO. It should not have been.

Senator LEVIN. In the Deferred Prosecution Agreement, UBS acknowledged and accepted that some of its private bankers and managers "facilitated the creation of accounts in the names of offshore companies, allowing the U.S. taxpayers to evade reporting requirements and to trade in securities as well as other financial transactions."

Now, Exhibits 15 and 16[1] are UBS documents that were filed as part of the John Doe summons enforcement petition. Exhibit 15 is a memo to the Private Banking Business Committee from members of the Financial Planning and Wealth Management Department of

[1] See Exhibits No. 15 and 16, which appear in the Appendix on pages 235 and 237.

UBS recommending how UBS should handle U.S. client accounts under the Qualified Intermediary Program. One part of the memo says the following: "In the case where the U.S. person holds his U.S. investments directly, we have been advised by Baker & McKenzie"—the "we" here now being UBS; that is the "we"—"that we cannot recommend products (such as the use of offshore companies, annuity, or insurance products) to our clients as an 'alternative' to filing a Form W–9. This could be viewed as actively helping our clients to evade U.S. tax, which is a U.S. criminal offense. Further, such recommendations could infringe upon our Qualified Intermediary status if, on audit in 2003, it is determined that we have systematically helped U.S. persons to avoid the QI rules."

But then they say the following: "What we can do is to suggest that clients seek external professional advice and offer them a choice of approved service providers if they request it. With this approach it seems clear that we would not be able to share fees with, for example, an insurance provider."

Now, do you see much difference between recommending a strategy to get out of complying with reporting requirements and referring a client to someone who you know will make the same recommendation?

Mr. DICICCO. No, Senator. I do not see any difference.

Senator LEVIN. Thank you. Senator McCaskill, I will be back from voting, I hope in 10 minutes.

OPENING STATEMENT OF SENATOR McCASKILL

Senator MCCASKILL [presiding]. As a former prosecutor, I am familiar with Deferred Prosecution Agreements. Frankly, in my experience, in terms of most crime that is committed in our country, they are generally used to get the cooperation of a defendant in order to prosecute other defendants. I am not aware of anyone who has been arrested—for most crimes in this country, that get a Deferred Prosecution Agreement, and all they have to do is what at a minimum they would have had to do if they had been convicted.

I am curious if there is any part of this agreement that requires the cooperation of UBS to disclose anything that they know about other banking institutions that may be utilizing these kinds of tactics to help citizens avoid taxes?

Mr. DICICCO. No, Senator, there is nothing like that in the Deferred Prosecution Agreement between the United States and UBS.

Senator MCCASKILL. Was there ever any consideration made of actually putting somebody in jail?

Mr. DICICCO. Well, we have secured the conviction of one of the UBS people, Bradley Birkenfeld; he is awaiting sentencing. There is a criminal prosecution of Raoul Weil, who is absent from this country. I am not going to rule out one way or the other whether there will be prosecutions of others.

Senator MCCASKILL. And how far up in the UBS organization did knowledge of these tactics, how far up did it go?

Mr. DICICCO. Well, certainly the executives in UBS knew what was going on and failed to take action. Mr. Weil was highly placed in UBS' wealth management sector.

Senator MCCASKILL. And he is evading us now?

Mr. DICICCO. He is back in Switzerland. He has been declared a fugitive from justice.

Senator MCCASKILL. And is part of the negotiations with the Swiss Government concerning cooperation on getting the names of American citizens, does it also involve whether or not they are going to cooperate in letting us get to him?

Mr. DICICCO. We have not had discussions regarding that. If we have, I am not aware of that.

Senator MCCASKILL. And I am just curious, who within DOJ——

Mr. DICICCO. He was just advising me that the Swiss will not allow extradition of somebody for tax crimes.

Senator MCCASKILL. They will not allow someone——

Mr. DICICCO. They do not recognize extradition for that.

Senator MCCASKILL. So this bank, in order to avoid prosecution of anybody involved in this, all they have to do is send folks back to Switzerland? That is it? They are home free, scot-free?

Mr. DICICCO. Well, we have not made any agreements other than with the bank itself as to its criminal behavior. I do not know that the bank would have authority to keep somebody in this country or in Switzerland. We would have to use normal procedures that we would do in any circumstance where we had somebody that we wanted to extradite, and——

Senator MCCASKILL. Are there other groups of people that have been removed from the bank because of their conduct in this case?

Mr. DICICCO. I believe that some executives have been replaced, but I can get back to you on which ones to make sure.

Senator MCCASKILL. It always kind of strikes me as unfair that so many of the large white-collar cases involve a civil fine in lieu of prosecution or deferred prosecution and that there are not—I look at some of the cases, the minimum mandatories in the Federal system for a girlfriend of a guy who is moving drugs, and I think about her culpability, which, no question she is culpable. But there is just not a lot of deferred prosecution on those cases. And I am trying to get at the policy as to why this kind of massive thumbing the nose at our laws—we have got one person who is facing prosecution out of the whole shebang?

Mr. DICICCO. Well, there may or may not be others. I am not at liberty to disclose that.

Senator MCCASKILL. OK.

Mr. DICICCO. But we entered into a Deferred Prosecution Agreement with the bank, in exchange for which we got significant concessions on their part. We thought that it was in the government's best interest at the time we entered into it, and we have made it very clear that the bank was not off the hook for any other transgressions it might have engaged in, and that any individual is not off the hook for any criminal acts that they engaged in.

Senator MCCASKILL. How was the figure $780 million arrived at?

Mr. DICICCO. Senator, I really cannot go into the give and take of the negotiations, but in our judgment, that was a significant sum and that would be a real burden on the bank to have to make those payments.

Senator MCCASKILL. The reasoning behind my question is that I am trying to figure out if there was any attempt to match up that amount with the amount of profit that had been derived?

Mr. DICICCO. We did some of that. Some of that is regurgitation of profits. Some of it is also paying the withholding taxes that should have been withheld on the accounts of the individuals involved. So there was an effort to arrive at that.

Senator MCCASKILL. Mr. Shulman, how many other foreign entities or banks or financial institutions are you currently trying to work on with the same kind of problems that UBS had?

Mr. SHULMAN. Yes, I cannot disclose specifics, but we have a robust voluntary disclosure program. We have recently significantly expanded our whistleblower program, and so the one thing I would say in a public setting is that individuals who are hiding bank accounts should know that we are going to continue to come after them, and institutions that are facilitating that, we are not going to hesitate to go after.

Senator MCCASKILL. And what do whistleblowers get?

Mr. SHULMAN. Whistleblowers, there is a new whistleblower statute for the IRS. They can get a range of rewards based on their information and based on what we have at the time.

Senator MCCASKILL. Was there a whistleblower in this case?

Mr. SHULMAN. Before you came in—I am going to defer all case-specific things to Mr. DiCicco.

Mr. DICICCO. Mr. Birkenfeld did come in and give testimony. That is really all.

Senator MCCASKILL. OK. Well, I think it would be helpful if you could be more specific about what a whistleblower could get. This is a very public opportunity for whistleblowers to realize that there is, as we would say at home, "money in them thar hills."

Mr. SHULMAN. I do not want to recite the details wrong, and I am happy to get you, for the record, the details of our whistleblower program. People can get substantial monetary rewards for coming in and helping us with investigations and giving us information.[1]

Senator MCCASKILL. OK. I do not want to tie you down in terms of saying "robust," but could you give me some ballpark? I mean, I do not know what to compare this to. I do not know if UBS is the tip of the iceberg, or if UBS is a major part of the problem. Can you be any more specific than "robust"? Because "robust" is in the eye of the beholder.

Mr. SHULMAN. When I became Commissioner, we decided to focus on international activities for a couple of reasons: One, because it is a matter of fundamental fairness. The people who have enough money to go overseas and hide their assets should be paying taxes, and the average American—a teacher, a policeman, a fireman who is actually paying their taxes, is outraged at this, as are we.

We have been shifting resources to the area of international. This is just one segment of where we are focusing, people hiding assets offshore, using financial institutions to do so. As I mentioned to the Ranking Member, we are also very active in the international arena where people are pushing the envelope, transferring intangibles, setting up corporations that do not have substance beneath them.

[1] See Exhibit No. 29, which appears in the Appendix on page 919.

I would say that given the global economy, given that international commerce is increasing significantly, in the last 5 years there has been a 70-percent increase in foreign tax credits claimed by corporations in the United States and a 170-percent increase of foreign tax credits being claimed by individuals in the United States. So, not speaking to this case, we think this is a major issue that we are going to continue to focus on over the next several years. The President's budget has made it clear that this is something the whole Administration is committed to and is behind.

Senator MCCASKILL. Has there been any analysis done of how much of this money that is being hidden overseas is, in fact, a result of criminal activity?

Mr. SHULMAN. Not that I am aware of. I mean, estimating how much money that is overseas and not being paid to the government. As far as I am aware, there is no credible estimate out because it is kind of a chicken and egg. If it is over there and we have not found it, it is hard to estimate what is there. And all estimates that I have seen have not broken down criminal versus civil because, again, until we see the cases, it is hard to say.

Senator MCCASKILL. Well, I am trying to—there are lots of reasons people hide money, and one of the major reasons people hide money is because they got that money in a way they cannot explain to anyone.

Mr. SHULMAN. Yes.

Senator MCCASKILL. Obviously, tracking money laundering is a huge part of any large criminal investigation that I have ever been aware of that is trying to follow the money, the ill-gotten gains of that crime. Can you give the Subcommittee any information from the Department of Justice as to are you all merging your tracking assets of criminals with the work that you have done in this regard as it relates to monies held overseas?

Mr. DICICCO. Well, certainly during the course of our investigations, if we become aware of money overseas and the like, I mean, that is taken into account, and it is usually a factor that is used in the prosecution of tax evasion itself. Just regular prosecutions of money being overseas alone, there are not very many standalone investigations of that. But it is just part of the broader investigation that you have when you are trying to determine whether somebody violated tax laws.

Mr. SHULMAN. Senator, if I could add to that?

Senator MCCASKILL. Yes.

Mr. SHULMAN. At the IRS, our Criminal Investigation Unit actively coordinates with other Federal law enforcement agencies. We pitch in with our accounting forensic teams, etc., on money-laundering cases, and on terrorist financing. Often there is a tax crime involved. FinCEN information and SARs reports are available to our Criminal Investigation Unit. I would say over the last several years there has been an effort to coordinate these cases. I think one of our beliefs is, going forward, we are stepping up that coordination of Federal agencies for our purposes of finding criminal tax evasion and making sure we use all the information that is out there and make sure there are good cooperative relationships.

Senator MCCASKILL. I think that is really important because sometimes it is the folks that you catch in a criminal investigation

that are the most willing to give information concerning where they have placed their money. Usually somebody cornered is the most willing to give good information. So I hope that you are coordinating that.

Mr. Chairman, are you ready for the next panel, or do you have another round?

Senator LEVIN. I have another round.

Senator MCCASKILL. OK.

Senator LEVIN. Commissioner, let me ask you a question about some declarations which the IRS filed from Barry Shott, who is titled "the U.S. Competent Authority who oversees the international exchange of information between the U.S. and foreign countries pursuant to tax treaties." Exhibit 9[1] is one of those declarations, and this is what Mr. Shott said in that declaration: "The Swiss Treaty does not provide an alternative way to obtain the information sought in the John Doe summons at issue in this case."

Is that correct? Is that an accurate reading of what he said? Do you have it in front of you? It is Exhibit 9.

Mr. SHULMAN. Let me say, if Mr. Shott said it as head of the agency, I fully support it.

Senator LEVIN. In paragraph 16, he goes on to say the following: "The Swiss Treaty has been strictly applied by the Swiss Competent Authority to provide the IRS assistance only in response to specific requests that name a particular taxpayer. As a consequence, it had also been the IRS' experience that the Swiss Competent Authority would only provide the IRS with information for an examination or investigation that concerns a specifically identified taxpayer. The current IRS investigation is focused on learning the identities of U.S. taxpayers not known to the IRS."

So, unless the U.S. Government already knows the names of specific taxpayers, the Swiss treaty generally cannot be used to get information in Switzerland about a U.S. person. Is that correct?

Mr. SHULMAN. Yes, generally it is correct. As you stated earlier, most of these treaties were designed to get information from taxpayers who we can identify by name.

Senator LEVIN. All right. Now, in the UBS case, the government does not have the names, and that is what we are trying to find out. The Shott declaration states, however, that despite the treaty history requiring specific names, the Swiss urged the United States to make a treaty request in the UBS case, anyway. So on July 16, 2008, the United States did formally seek information; they made a Treaty Request—seeking information about U.S. clients with UBS accounts in Switzerland. And the declaration says that 6 months after that request, so as of January 21, 2009, "the Swiss Government had made final determinations to provide the requested records for only twelve accounts. The Swiss Government will not, however, provide records to the IRS about those twelve accounts until after the account holders have been given an opportunity to litigate in a Swiss court the Swiss Government's decision to turn their records over to the IRS."

Is that litigation going on now, do you know?

Mr. SHULMAN. I would defer to Mr. DiCicco.

[1] See Exhibit No. 9, which appears in the Appendix on page 175.

Mr. DICICCO. Senator, yes, it is. That is the summons enforcement action that is going forward in Florida.

Senator LEVIN. It says here that the 12 accounts I am talking about in the Swiss court, is that litigation, as far as you know, going on in the Swiss court now?

Mr. DICICCO. I believe so.

Senator LEVIN. Now, the declaration says the following: "In sum, the Swiss Government has not provided any records sought under the Treaty Request, and it is not clear when, if ever, it will."

Do you agree with that declaration, Commissioner Shulman?

Mr. SHULMAN. Again, I will support what Mr. Shott put in there, and I will also just say that is a big reason, based on what he said, that we are aggressively requesting the Justice Department to pursue the summons.

Senator LEVIN. Now, the Shott declaration raises a second problem as well. On page 5, in paragraph 15, it says that even if the United States had the name of specific taxpayers, "the Swiss Government will not exchange information about a taxpayer unless the taxpayer committed an affirmative act of deception (such as falsifying a document), above and beyond a mere failure to report the existence of an account, or income earned in that account. But for now," Mr. Shott writes, "the IRS is investigating U.S. taxpayers who failed to report the existence of Swiss bank accounts—or income earned on those accounts. Absent additional facts, those failures do not enable the IRS to obtain from the Swiss Government the information demanded in the John Doe summons issued to UBS."

So now let me summarize this. U.S. tax law requires U.S. taxpayers to disclose the existence of any foreign bank account in which they have an interest. If a U.S. taxpayer fails to do that, that taxpayer has violated U.S. tax law and is subject to penalty. The Swiss tax treaty says that it is not enough to require a Swiss bank to produce information about an individual even if we have the name of the individual. The individual has to do more than conceal the existence of a Swiss bank account from us. He would have to have committed an affirmative action of deception before the treaty kicks in, as the Swiss define "affirmative action of deception." And that is the tax fraud issue that we have heard so much about. Is that correct? Have I summarized the situation correctly?

Mr. SHULMAN. It sounds right.

Senator LEVIN. Do you know, Mr. DiCicco?

Mr. DICICCO. That is correct.

Senator LEVIN. That is correct. All right. So even if we had the names of 19,000 U.S. persons with Swiss bank accounts that were not disclosed to the IRS, we could not get their account information under the Swiss tax treaty unless we could show that they did more than simply conceal the account and fail to pay taxes owed to Uncle Sam. Is that right, Mr. DiCicco?

Mr. DICICCO. That is correct.

Senator LEVIN. That is a pretty high bar between the requirement for specific names and proof of affirmative deceptive acts, the way the Swiss define it. It is no wonder that the Swiss treaty does not produce much information of use to U.S. tax investigations.

Now, is the Swiss treaty unique in this regard, Mr. DiCicco, or is it the general rule that tax treaties and tax information exchange agreements that the United States has in place around the world, that we are required to provide the names of specific individuals before information will be supplied about those individuals?

Mr. DICICCO. I will have to defer a treaty question——

Senator LEVIN. All right. Do you know the answer to that question, Commissioner Shulman?

Mr. SHULMAN. Yes, if you do not mind, I will give kind of a general statement——

Senator LEVIN. Is that the general rule?

Mr. SHULMAN. Yes. Treaties—the model treaty has 30 articles, and it is everything from art to pension and annuities, a lot of issues around mutual tax treatment. There is one article, Article 26, which is enforcement related, and it is about exchange of information. Generally it can be helpful. Generally it needs to have a specific taxpayer.

Senator LEVIN. That we identify.

Mr. SHULMAN. That we identify, and in a lot of cases, sovereign law actually trumps the treaty. And so the issue you are pointing out, I think that is what you are pointing out.

I would not say that all treaties are ineffective because they are not just about tax, but in cases where sovereign law trumps it, they can be limited in our ability to go after taxpayers who we find and, therefore, we use tools like the John Doe summons and others.

Senator LEVIN. And would welcome the tools that we have in our bill?

Mr. SHULMAN. Absolutely.

Senator LEVIN. The G20 group of countries is planning a meeting in London on April 2, 2009, to address a host of financial regulatory issues, and one likely topic to be addressed is whether the international community should clamp down on tax havens with secrecy laws that facilitate tax evasion by persons from other countries. I believe the British Prime Minister spoke about the importance of that in his speech to the Congress this morning about taking a leadership role in getting the G20 group of countries to come together to take on these secrecy laws.

Can you tell us whether or not we will be—presumably, the President—taking a leadership role at the G20 meeting in this area that Prime Minister Brown described this morning?

Mr. SHULMAN. I cannot tell you specifically about G20 plans. I can tell you, as you know, this President is very focused on shutting down tax abuses and that these discussions are ongoing.

Senator LEVIN. All right. Can you give us the name of the Treasury official or officials, other than Mr. Geithner, who would be involved in the negotiations which would precede the G20? Is there one person yet identified?

Mr. SHULMAN. I cannot give you that name.

Senator LEVIN. OK. Thank you both. You have been very helpful.

We will now call as a witness Mark Branson, the Chief Financial Officer of UBS Global Wealth Management and Swiss Bank of Zurich, Switzerland.

Mr. Branson, we welcome you back to the Subcommittee. You testified before us last July. We thank you for traveling here today,

and pursuant to Rule VI, all witnesses, as you know, who testify before the Subcommittee are required to be sworn. At this time, I would ask you to please stand and raise your right hand.

Do you swear that the testimony you are about to give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BRANSON. I do.

Senator LEVIN. Thank you. We understand that you do have a prepared statement today, I believe, and you may proceed with that statement.

TESTIMONY OF MARK BRANSON,[1] CHIEF FINANCIAL OFFICER, GLOBAL WEALTH MANAGEMENT AND SWISS BUSINESSES, UBS, ZURICH, SWITZERLAND

Mr. BRANSON. Thank you, Chairman Levin, Senator McCaskill. My name is Mark Branson. I am the Chief Financial Officer of the Global Wealth Management and Swiss businesses of UBS. I am based in Zurich. I am responsible for the financial and risk control of that division.

When I testified before your Subcommittee last summer, I described our efforts to investigate and correct problems with the bank's provision of cross-border financial services to U.S. residents. At the hearing, we committed to cooperate with the U.S. Government's investigations, to exit the cross-border business for U.S. residents, and to take corrective measures to ensure that such problems cannot reoccur. I am pleased to say that we are making good on each of those commitments.

First, we recently entered agreements with the U.S. Justice Department and the Securities and Exchange Commission that resolve their investigations of our cross-border business. Through these agreements, UBS has delivered on its promise to cooperate with the various investigations of the bank, accept responsibility for its unlawful conduct, and remedy that misconduct.

As part of these settlements, we agreed to disgorge profits from the U.S. cross-border business. We also agreed to pay back taxes, interest, and substantial civil penalties. In addition, following an emergency order from the Swiss financial regulator, we disclosed on an expedited basis the name and account information of certain U.S. clients who appear to have engaged in "tax fraud or the like" within the meaning of the Double Taxation Treaty between the U.S. and Switzerland. Those clients misused the confidentiality protection of Swiss law.

Second, following my testimony before the Subcommittee last summer, we began the process of exiting the U.S. cross-border business. Since then, we have closed more than 14,000 individual relationships. Going forward, U.S. residents will only be permitted to maintain accounts that are fully disclosed to the IRS, with UBS affiliates that are SEC registered.

Our exit plan is also designed to encourage our cross-border U.S. clients to make voluntary disclosures to the IRS, where appropriate. Our communications to affected clients clearly encourage them to disclose their accounts to the IRS, if they have not already

[1] The prepared statement of Mr. Branson appears in the Appendix on page 57.

done so. We also guarantee our exiting U.S. clients that we will provide them with the documentation necessary to file amended U.S. tax returns.

As part of the recent settlements, the U.S. Government has authorized our exit plan, and we will now complete the exit in accordance with those agreements. Progress will be reviewed by an independent auditor who will periodically report to the U.S. Government.

Third, UBS will implement an enhanced control framework around our compliance with the Qualified Intermediary (QI) Agreement. This new framework will include the appointment of a senior executive to supervise QI compliance across UBS.

Through all these actions, UBS is making good on the commitments that I gave to the Subcommittee last summer.

Mr. Chairman, we deeply regret our breaches of U.S. law. I can honestly say that what took place in one small part of our business is not representative of the firm's culture nor the values of the 78,000 UBS employees around the world. Those employees, including over 25,000 employees here in the United States, and roughly the same number in Switzerland, have suffered as they have seen the reputation of their firm harmed. That is very painful to me, as is the fact that the bank's behavior has brought international criticism to the country of Switzerland.

Before I conclude, I would like to address the recent civil action filed by the IRS. That action asks a U.S. court to compel UBS to disclose the names and account information of thousands of U.S. clients who maintained cross-border accounts with UBS in Switzerland and did not provide the bank with a Form W–9. Because Swiss law prohibits UBS from producing responsive information located in Switzerland, UBS has sought to work cooperatively with the IRS to identify information responsive to the summons that is located in the United States. We undertook substantial efforts over many months to collect and produce such U.S.-based information. This was information that we could provide to the IRS without violating Swiss law, and this process is continuing. We took these steps in a good-faith effort to cooperate with the summons. But we believe that UBS has now complied with the summons to the fullest extent possible without subjecting its employees to criminal prosecution in Switzerland.

Mr. Chairman, the John Doe summons is fundamentally a dispute between the IRS and the Swiss Government. UBS believes this dispute should be resolved through diplomatic discussions between the two governments, and we will continue to support actively such discussions. But we respectfully submit that the IRS is attempting to resolve this diplomatic dispute in a courtroom, which is neither productive nor proper.

The QI Agreement that UBS entered with the IRS in 2001 expressly recognized that UBS would open and maintain accounts covered by Swiss financial privacy laws for U.S. clients who chose not to provide a Form W–9, as long as those accounts held no U.S. securities. The Swiss accounts that are potentially subject to the summons do not contain U.S. securities. UBS legitimately maintained those accounts consistent with the QI Agreement signed by

the IRS. The summons, therefore, seeks client information that the IRS itself agreed would be kept confidential.

In addition, Switzerland and the United States are signatories to treaties that specify the circumstances under which client names and account information located in Switzerland can be shared with U.S. authorities. We believe that the John Doe summons is inconsistent with those longstanding treaties.

When I was last before the Subcommittee, I promised that UBS would cooperate with the IRS, and I believe that we have. We made a good-faith effort to produce responsive information available in this country that could be disclosed without violation of Swiss law. The bank has now done all that it can do to cooperate with the John Doe summons. But UBS cannot disclose information to the IRS that would put its employees at serious risk of criminal prosecution under Swiss law.

Mr. Chairman, these are challenging times for my firm. But everyone at the bank is now dedicated to one goal: Fixing UBS, its finances, and the problems we have created here in the United States.

Thank you for this opportunity to address the Subcommittee again, and I am happy to answer your questions.

Senator LEVIN. Thank you very much, Mr. Branson.

First, there are different numbers that have been presented about how many Swiss accounts are held by U.S. clients. One number we had last time from you, I believe, was 19,000. Then there was a number in a document which has been made part of the record, which I believe was 52,000.

Yesterday, UBS provided the Subcommittee with its current best estimate that at the end of July 2008, there were about 46,000 U.S. client accounts in Switzerland for which no W–9 was filed. Is that correct?

Mr. BRANSON. I have that information with me that was provided to your staff over the last couple of days. We provided you with a total number of accounts as of September 30, 2008, of some 48,000 accounts.

Senator LEVIN. Forty-eight thousand.

Mr. BRANSON. That is 47,760——

Senator LEVIN. Let's call it 48,000. Apparently, 1,000 of those had W–9s, so that now it is roughly 47,000.

Mr. BRANSON. That is correct.

Senator LEVIN. Let's talk then about 47,000. Thirty thousand-plus of those accounts are accounts of U.S. clients who reside in the United States, and the remaining 17,000 accounts that you have not closed are held by U.S. clients who do not live in the United States. Is that correct?

Mr. BRANSON. I am not sure about those exact numbers, but these numbers, the 47,000, cover U.S. clients both resident in the United States and outside the United States.

Senator LEVIN. Well, our estimate is about 17,000 of those accounts, using your numbers or your figures, are held by clients that are American citizens who do not live in the United States. Is that consistent with what your document shows?

Mr. BRANSON. I am not familiar with that exactly.

Senator LEVIN. All right. We will assume it is accurate. It is your document we are working from, so let me ask you this question: Are you going to close the accounts of U.S. citizens or only U.S. residents?

Mr. BRANSON. What we have concluded since running through the exit program since the time we were here last is that our focus should not just be on U.S. residents with securities accounts, but it should include non-resident U.S. citizens with securities accounts.

Senator LEVIN. Well, you are not going to close 17,000 accounts apparently. You have acknowledged there are 47,000 accounts. You testified 30,000 of them you have exited. Are you going to exit out of the balance? And if not, why not?

Mr. BRANSON. So there is, I think, just over 14,000 that we have exited so far. The only category of these accounts that we will not exit are those held by non-residents and banking accounts only. And the vast majority of those will be located in Switzerland, provided to residents of Switzerland.

Senator LEVIN. All right. Are you going to be closing the accounts of U.S. citizens who are not residents of the United States?

Mr. BRANSON. With that one exception.

Senator LEVIN. And that exception is?

Mr. BRANSON. That exception is non-residents who have banking accounts only, no securities accounts. All securities accounts of residents and non-residents will be closed.

Senator LEVIN. All right. And so why are you not dealing also with bank accounts that do not have securities in them but only cash, or something other than securities?

Mr. BRANSON. The reason for that is there is only one place in the world where we provide banking-only services as a matter of course to our client base, and that is in Switzerland. There are obviously a very large number of U.S. expatriates, U.S. dual citizens, green card holders, U.S. persons resident in Switzerland. It would be simply impractical for us, as the largest bank in Switzerland, not to be able to offer very simple day-to-day banking services to that clientele.

Senator LEVIN. And are you going to notify the IRS?

Mr. BRANSON. There is no explicit mechanism in place for notification around those types of accounts right now.

Senator LEVIN. Why? Shouldn't they be notified? Those clients are supposed to notify the IRS, are they not, with a W–9?

Mr. BRANSON. The W–9 is a securities-based concept. The QI Agreement is a securities-based concept. So there is no explicit mechanism for banking-only clients.

Senator LEVIN. But they are supposed to notify—they are supposed to pay taxes on those revenues, are they not?

Mr. BRANSON. That is correct. That is correct.

Senator LEVIN. But you are not going to notify the IRS or require a W–9 for those non-residents that have cash in Switzerland. Is that correct?

Mr. BRANSON. What we will make sure—as we examine that population that will remain with UBS, we will make sure that we have the appropriate controls and will evaluate what those appropriate controls are.

Senator LEVIN. Well, that is something you will do. I want to know whether or not you will require that U.S. citizens who are not residents of the United States but are citizens that they take steps to notify the IRS of that revenue. Will you take those steps?

Mr. BRANSON. We will evaluate what the proper——

Senator LEVIN. You will evaluate. But is your intent to include that group? Is that your intent?

Mr. BRANSON. Our intent is to make sure we have got the right controls over that population to make sure that we——

Senator LEVIN. And you do not know whether that is a right control or not? You are not committing here today to make sure that you take the steps to make sure that those hidden accounts that are secret from the IRS are now disclosed to the IRS. You are not flat out committing to do that. You are just saying you will take whatever is the appropriate steps.

Mr. BRANSON. We will make sure that there are the appropriate controls around that.

Senator LEVIN. Does that mean that you will make sure that those citizens of the United States notify the IRS one way or another, or that you do, of that account? Is that what you are saying? Is that appropriate?

Mr. BRANSON. We are going to make sure that we evaluate what is the most appropriate way of putting controls around that limited remaining population.

Senator LEVIN. Controls so that there is no tax evasion?

Mr. BRANSON. All appropriate controls.

Senator LEVIN. Will you let this Subcommittee know what you decide is appropriate?

Mr. BRANSON. Yes, I am sure that we can report back.

Senator LEVIN. UBS has committed wrongdoing by its own acknowledgment by referring U.S. clients who wanted to hide their assets to outside firms, "with the understanding that these outside advisers would help such U.S. clients form offshore companies in order to enable such clients to evade" U.S. law.

So when UBS managers referred U.S. clients to those advisers to create those shell corporations and to form those offshore companies, your folks knew that those advisers were going to help those clients do what your lawyers said you could not do directly. Is that correct?

Mr. BRANSON. There are many references in the statement of facts connected with the Deferred Prosecution Agreement of the kind of misconduct that we have admitted as part of that process, which includes, as you have identified, the use of sham offshore structures. I think that the behavior you are referencing is consistent with what we see in that statement of facts.

Senator LEVIN. Well, it is not just consistent. I want you to say that is, in fact, what you have acknowledged, because it is.

Mr. BRANSON. We have acknowledged——

Senator LEVIN. It is not just that it is consistent with what you have acknowledged. It is what you have acknowledged. Is that not true?

Mr. BRANSON. We have acknowledged that there are clients who used inappropriately offshore structures which the——

Senator LEVIN. And that your private bankers and managers knew or should have known that the purpose of that referral to the outside advisers was to create the sham corporations. Is that correct? You have acknowledged that in that proceeding?

Mr. BRANSON. We have acknowledged in the statement of facts inappropriate use of offshore structures and inappropriate behavior of UBS employees in connection with the creation of those structures, yes.

Senator LEVIN. I know it is inappropriate, but I am being very precise here. It is not just inappropriate behavior, but that they knew or should have known that, in fact, the people to whom they were referring your clients were going to create those corporations. Is that true, that you have acknowledged that?

Mr. BRANSON. We have acknowledged that such referrals did take place, that such inappropriate structures were set up, and that UBS employees knew about that. That is all set out in the admission in the statement of facts.

Senator LEVIN. And that the UBS employees knew that was the purpose of the referal? I just want to know whether you are willing to acknowledge what you have already acknowledged. It is very simple. Have you acknowledged that?

Mr. BRANSON. What is in the statement, set out in the statement of facts is the complete record of what we have admitted connected to the behavior around the offshore structures, and the exact formulation of that is not something I have in hand, but certainly the inappropriate use of offshore structures, referrals, and the involvement of UBS advisers and management in that is a topic that is covered within there. It is acknowledged within there. It is part of the misconduct that we have admitted.

Senator LEVIN. I am going to read something to you and just ask you whether or not you still acknowledge it, whether you are backing away from this statement in any way: "Notwithstanding the warnings, certain managers in the U.S. cross-border business thereafter authorized"—I am reading from paragraph 11—"UBS private bankers to refer those U.S. clients who did not wish to comply with the new requirements of the QI Agreement to certain outside lawyers and consultants, and did so"—and here are the key words—"with the understanding that those outside advisers would help such U.S. clients form offshore companies in order to enable such clients to evade the U.S. securities investment restrictions in the QI Agreement."

Is that an accurate reading of that acknowledgment? And do you still acknowledge it?

Mr. BRANSON. Absolutely. That is from the statement of facts. That is our acknowledgment of what went on within UBS.

Senator LEVIN. OK. Why would it take me four questions to get you to just say "yes, we have acknowledged that," instead of wrapping it around generalities, like "we have acknowledged inappropriate conduct"? I mean, I was giving you specific words from an acknowledgment, and it took me 3 minutes to get from you a very simple statement, "Yes, we acknowledged it, and it is an accurate acknowledgment." And that is something which is very troubling to me, that it should take that long to get you to say something that you have already acknowledged. But it is a very important ac-

knowledgment because it means your folks knew that they were participating in this violation of U.S. law. They knew it when they referred folks to these advisers who created these sham corporations for them and other tax havens.

I am going to go now and vote, and then I will be back. I think Dr. Coburn would be—have you voted?

Senator COBURN. Yes, I have. And vote yes, by the way.

Senator LEVIN. You can be sure I——

Senator COBURN. It is my amendment.

Senator LEVIN. I know, yes. [Laughter.]

Senator LEVIN. You do not want to hear this, folks.

Senator MCCASKILL. I voted yes.

Senator LEVIN. All right. Well, then it is one to two.

Senator COBURN. Maybe it will be three to zero by the time you get down there and think about it.

Senator LEVIN. Doctor, well, I have thought a lot about this amendment, as a matter of fact, believe me. First Dr. Coburn, then Senator McCaskill.

Senator COBURN. Thank you, Mr. Chairman.

Through your admission of fact and statement, we know that you chose to send bankers on hundreds of trips to the United States to do things in violation of American law. What are we to understand that UBS is doing now to make sure that you are complying with U.S. law as we move forward?

Mr. BRANSON. Well, the No. 1 action, obviously, is to exit the business completely and, therefore, not to provide services to U.S. residents going forward. And as we said today, we are making steady, strong progress on exiting that business, and that will be completed as soon as it possibly can be. That is a major program involving the recruitment of a large number of staff, project management, and governance. We are putting a huge amount of effort into getting that exit done and right.

In terms of travel specifically, in the interim period, obviously we have got a complete ban in place that stops any client advisers making travel to the United States for any reason connected with visiting of those clients. It just simply cannot happen anymore. So the business is being exited, and that particular aspect in the meantime is strictly controlled.

Senator COBURN. And this is a small portion of UBS' business in this country, correct?

Mr. BRANSON. This is a minute portion of UBS' business overall.

Senator COBURN. Right.

Mr. BRANSON. This was some 60 client advisers, about 0.3 percent of the population of client advisers we have. And we have some 26,000, 27,000 employees located here in the United States. This is a very small part of our business where things went badly wrong.

Senator COBURN. So this is a compliance failure in one segment of your business. What is the assurance that UBS is in compliance in the other segments of your business in this country?

Mr. BRANSON. This is the top priority of UBS right now, is to make sure that nothing like this can happen in any other business within UBS, I mean that this just cannot reoccur. I mean, this particular business is finished, we are exiting it, that cannot reoccur.

I can only re-emphasize to you what I know about the culture of our firm, which is that compliance with all the applicable laws and regulation in every jurisdiction in which we operate, keeping that compliance is a No. 1 priority.

Senator COBURN. So that is part of the corporate culture at UBS today?

Mr. BRANSON. Yes, that is.

Senator COBURN. Thank you. Can you describe for me maybe a legitimate reason why someone might want to—other than business—might want to have an offshore account with UBS?

Mr. BRANSON. There are many reasons, and if we are talking particularly about Switzerland, which is the focus of this hearing, then Switzerland is a well-renowned financial center with a huge amount of expertise, particularly in the management of private wealth. It is the world's greatest center for that, so there is a delivery of expertise and service which you can get in Switzerland which is not available everywhere else. There are other aspects—diversification of jurisdictions, stability of the financial, political, legal systems of Switzerland which are attractive to people from outside Switzerland who want to hold their assets somewhere other than their home country. So there are many legitimate reasons why offshore banking exists and will continue to exist.

Senator COBURN. So let us say I had a significant amount of money, and I initiated—you did not initiate, but I initiated going to your company and, without evidence of giving you a 1099 or any other thing, are you going to take my money?

Mr. BRANSON. If you are a U.S. resident, no.

Senator COBURN. You are not?

Mr. BRANSON. We are exiting that business, U.S. residents——

Senator COBURN. Even if I initiate that I want to put a deposit in your bank?

Mr. BRANSON. We will not—if it was a deposit that fell within the small exception that Chairman Levin was talking about earlier, if you happened to be living in Switzerland as an expatriate and needed day-to-day banking services, then we would consider that, but in no other circumstances.

Senator COBURN. So if I live in Muskogee, Oklahoma, and I want to send you half a million dollars, you do not want my money?

Mr. BRANSON. No way.

Senator COBURN. And why not?

Mr. BRANSON. That is the business we have chosen to exit. We do not want to continue to operate that business.

Senator COBURN. Because of the compliance?

Mr. BRANSON. Because of the fact that the particular nature of operating in the United States is extremely complicated. There is no way, with the SEC restrictions around that business, that we can provide the kind of service that we would consider would be a good service for you, and we have operations here in the United States that those 30,000 people are operating which would be much better suited for your needs.

Senator COBURN. Let us say I am an expatriate living in Zurich, and I want to put a million dollars in your bank, and I am not going to give you a 1099 or anything else. Are you going to take my million dollars?

Mr. BRANSON. Obviously, there would be a number of checks around any account opening and any large amounts that come in——

Senator COBURN. But there is no requirement for you to check on whether or not I am supplying a 1099 or any other compliance fact that I have paid taxes on that money that I am depositing?

Mr. BRANSON. There is currently no formal treaty mechanism or any kind of bilateral agreement in place that would force that check on UBS or any other bank in Switzerland or anywhere else.

Senator COBURN. Well, let me ask you this: Should there be?

Mr. BRANSON. And that is what we said, we will evaluate what the proper controls will be around that small exception.

Senator COBURN. Is it UBS' position that there should be an enhancement in the treaty obligations between Switzerland and the United States for such a thing like that?

Mr. BRANSON. Obviously, I am not here to talk about the Swiss Government's position——

Senator COBURN. No, I am just saying, as a business decision for UBS, would you see that as advantageous for your business model for expatriates living in Switzerland?

Mr. BRANSON. I mean, this is not a major part of our business model. It is not something that we are seeking to market as a big part of our business. As the biggest, by far the biggest bank in Switzerland, it seems impractical to us not to be able to offer those kind of services. And to the extent we need to put controls around those services to make sure everybody is comfortable, that we continue to operate that, that is what we will be evaluating.

Senator COBURN. Of those accounts that are there now, if a person's account was nothing but cash, no securities or anything else, would UBS have any reason to know or not know whether or not the earnings off that cash account had been reported to the IRS?

Mr. BRANSON. We would not as a bank—UBS or any other bank would not have a reason to know.

Senator COBURN. And you would not attempt to know?

Mr. BRANSON. We would have no reason to know, no.

Senator COBURN. Because the QI between UBS and the IRS is about stocks only.

Mr. BRANSON. It is about stocks, and it is, in fact——

Senator COBURN. American stocks.

Mr. BRANSON. American stocks only.

Senator COBURN. Right.

Mr. BRANSON. Not non-U.S. stocks.

Senator COBURN. All right. I will have additional questions to submit, if you would not mind responding to them in writing. I will not take additional time.

The Senator from Missouri is recognized.

Senator MCCASKILL [presiding]. You say that UBS will continue to keep open the Swiss accounts of U.S. citizens who are not residents in the United States as long as these accounts do not hold securities. Could you give us an estimate of how many accounts that is?

Mr. BRANSON. It is certainly a minor amount of that population. The amount of assets in there is certainly well below $1 billion. I do not have the exact number at hand.

Senator MCCASKILL. OK. If you could try to get that for the Subcommittee, we would appreciate it.[1]

The good news is that Switzerland has a reputation for secrecy; the bad news is Switzerland has a reputation for secrecy. I understand that this is causing quite an uproar in the banking community in Switzerland, and I would like you to speak to that.

You are trying to compete with other banks in what I think we need to acknowledge today, in fairness to UBS and to every other banking institution, could not be a more difficult climate right now. I know that the financial sector is taking a pounding for a variety of reasons, some self-inflicted, some a matter of confidence right now in terms of the perception of investors and people engaged in the financial sector about what is out there that we do not know about.

I am trying to figure out how in this global economy we are going to effectively get at this problem. Clearly, you guys got caught big time, but I realize there are many other banks that are crossing the line on a daily basis because a whole lot of people do not want to pay taxes and a whole lot of people have money they do not want other people to know about.

Could you speak to how you think the laws in Switzerland could possibly evolve to at least acknowledge that the kind of secrecy that you all have branded yourself with is going to be counterproductive in a global economy when you run into problems like this?

Mr. BRANSON. Obviously, I cannot speak on behalf of the Swiss Government, and it is a Swiss Government/Swiss people issue. But I think the most important thing as far as we are concerned is that discussions about that, bilateral discussions are taking place, should be taking place, those diplomatic discussions which we think are a more appropriate way of working on that evolution than through the courtroom. We are very happy to see those discussions have started. The Swiss Justice Minister was here in Washington visiting her counterpart on Monday. They discussed this topic. Those discussions have started and should be ongoing, and only through those kinds of discussions can you get the evolution in these kinds of legal frameworks which will result in a satisfactory outcome for the parties involved.

Senator MCCASKILL. What is the most likely place—if Switzerland changes its very bright lines of financial secrecy and begins to become more of a cooperative world player, where is the next likely place that people are going to try to park money?

Mr. BRANSON. I could not comment on other people's motivation.

Senator MCCASKILL. No, not motivations. I am just talking about your knowledge of the banking world. I know this is uncomfortable for you because this is not your nature to give an opinion about this. But you are a businessman in this sector of the economy. You are someone who is involved in global banking. I am trying to predict, if we work on this problem with Switzerland and we resolve this issue about whether or not we are entitled to these names and entitled to get our pound of flesh from these Americans who have broken the law with the aid and assistance of your bank, I am try-

[1] See Exhibit No. 32, which appears in the Appendix on page 939.

ing to get at the issue of where is the next place that we need to be looking where this is going to continue to go on.

Mr. BRANSON. There are many financial centers in the world that run big offshore businesses. Switzerland is obviously well known for that. In terms of the size of assets in offshore centers, you have centers in the United States; you have centers in the U.K. and their dependencies; you have centers in Asia. So there are many different offshore jurisdictions in the world that have a different overlapping network of bilateral treaties between them and the destination countries. So I think it is impossible to single out one location or the other, but offshore banking is regulated generally through these kind of double taxation treaties.

It is clear that in the case of Switzerland and the United States that treaty is going to be discussed as part of these diplomatic contacts between the governments. We think that is right, proper. We are going to actively support those discussions. And then for Switzerland, if that framework adapts, then the new framework is the one we comply with, and that is the way things move forward.

Senator MCCASKILL. Are there middlemen in this business?

Mr. BRANSON. I am not quite sure I understand.

Senator MCCASKILL. Brokers or people who actually deal with wealthy people to try to help find places they can park money and avoid taxes, that they help locate folks for them, someone who is a go-between—back when you did this business, between your bank and the person who holds the monies or securities. Is there an industry there?

Mr. BRANSON. There is a part of the wealth management industry which would be referred to as "financial intermediaries," where advisory firms look after the clients' interests, but maybe the assets are booked elsewhere.

Senator MCCASKILL. Are they, in your opinion, sufficiently regulated?

Mr. BRANSON. That is not something I have a clear opinion on. There is a mosaic of those kind of intermediaries in many different jurisdictions around the world.

Senator MCCASKILL. We are not going to get you to offer opinions on much outside your lane, are we? I think I am beginning to get that. Have the deposits in your bank dropped since this controversy?

Mr. BRANSON. Yes.

Senator MCCASKILL. And how much of that do you attribute to this controversy as opposed to the economic climate?

Mr. BRANSON. That is impossible to tell. UBS has been faced with a number of problems, as you said, many of them self-inflicted, many of them connected to the global meltdown in the financial sector. As a result of that, we have seen outflows of client assets. There is no way of pinning each of those onto a specific reason. But each and every client that leaves the bank is a problem for us. It is painful for us, and that is clearly why re-establishing trust in UBS is absolutely the No. 1 priority, and getting these issues behind us is absolutely critical to re-establishing trust in UBS.

Senator MCCASKILL. And it is my understanding you have a new CEO?

Mr. BRANSON. That is correct, yes.

Senator MCCASKILL. And his name is?

Mr. BRANSON. Oswald Gruebel.

Senator MCCASKILL. And is he Swiss?

Mr. BRANSON. He is German.

Senator MCCASKILL. I know I will not get you to give an opinion of your competitors, but you are the largest bank in Switzerland?

Mr. BRANSON. That is correct.

Senator MCCASKILL. Who is No. 2?

Mr. BRANSON. Credit Suisse.

Senator MCCASKILL. Credit Suisse. And No. 3?

Mr. BRANSON. Three, single bank, it may be one of the cantonal banks, so the Zurich Cantonal Bank.

Senator MCCASKILL. And how much bigger are you than Credit Suisse?

Mr. BRANSON. In terms of market capitalization, not tremendously bigger now.

Senator MCCASKILL. So you are the two big ones.

Mr. BRANSON. We are the two big multinational banks based in Switzerland. That is correct.

Senator MCCASKILL. And I do not even need to ask because you would not offer an opinion, as to whether or not Credit Suisse has been involved in the same kind of activity.

Mr. BRANSON. I would have no knowledge.

Senator MCCASKILL. OK. That is all, Mr. Chairman. I will have further questions for the record.

Senator LEVIN [presiding]. Thank you.

Just going back to this 47,000 number again, is that estimate, that approximation, the number of accounts or clients or both?

Mr. BRANSON. That is the number of accounts.

Senator LEVIN. And how close would that be to the number of U.S. clients?

Mr. BRANSON. It would be relatively close.

Senator LEVIN. You do not have a better number for the clients than that?

Mr. BRANSON. Not today. There are a number of reasons why. Obviously, clients can hold multiple accounts or accounts can have multiple clients behind them. So there is not a one-to-one mapping. But there is no reason to think you would get something of a grossly different order of magnitude.

Senator LEVIN. All right. So it is somewhere in the mid-40s, probably, the number of clients?

Mr. BRANSON. I would not like to hazard an exact number, but I think——

Senator LEVIN. Well, that is not an exact number. That is an approximation. I am just saying would it be in the area of the mid-40s, probably.

Mr. BRANSON. I do not have that level of precision today.

Senator LEVIN. OK. Is it as good a number as you got in terms of clients?

Mr. BRANSON. Well, we can pull that number out of our systems if we——

Senator LEVIN. Well, that would be great.

Mr. BRANSON [continuing]. Go back and do that.

Senator LEVIN. Would you do that?

Mr. BRANSON. I can make sure that we work on that.[1]

Senator LEVIN. OK. Mr. Branson, this is kind of a summary as to what has happened here recently in the last 2 weeks. You have entered into a Deferred Prosecution Agreement with the United States in which it admitted facts, the bank, that related to past conduct, accepted responsibility for a violation of U.S. law, paid a $780 million fine, and turned over the names of a very tiny subset of U.S. clients. The President of Switzerland estimated that number was 250 to 300, and that is, if it is 40,000 clients—and you do not want to hazard a number, but it is the best number we have got—that would be less than half of 1 percent of those clients' names so far.

Now, you have agreed that you have committed wrongdoing by referring U.S. clients who wanted to hide their assets to outside firms because you had the understanding that these outside advisers would help those clients form offshore companies in order to enable the clients to evade—those are your words—U.S. law.

UBS also admitted that its bankers and managers took a range of other actions which actively assisted or otherwise facilitated U.S. taxpayers—again, your words—"actively assisted or otherwise facilitated"—U.S. taxpayers who were evading U.S. taxes. You agreed in court that, acting through your bankers and managers, you "participated in a scheme to defraud the United States of America."

Now, you have acknowledged that you schemed with people. Why won't you give us the names of the people with whom you schemed to commit violations of American law?

Mr. BRANSON. The issue with the John Doe summons and the production of those names is to go beyond what we have done already, which is to produce information located here in the United States and to move to information located in Switzerland, and to produce would be a breach of Swiss client confidentiality laws.

Senator LEVIN. All right. So the short answer is that Swiss law in your judgment does not allow you to produce more than that small subset of names which you have already produced. Is that the short answer?

Mr. BRANSON. Yes.

Senator LEVIN. And if it were not for Swiss law, would you do it?

Mr. BRANSON. We can only live within the legal framework we have today.

Senator LEVIN. If there were no prohibition in Swiss law, would you then give the IRS the names since you have acknowledged that you participated in a scheme with a large number of people to defraud the United States? If it were not prohibited by Swiss law, would your bank give us those names?

Mr. BRANSON. If there was a framework and these frameworks will evolve—and if the frameworks evolve, then we will comply with however that framework evolves. So if the framework evolves to make that appropriate, that would happen. If it doesn't, then it wouldn't.

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[1] See Exhibit No. 32, which appears in the Appendix on page 939.

Senator LEVIN. All right. I do not know why I cannot get direct answers here. Your answers are needlessly evasive, it seems to me. If it were not for the Swiss prohibition, would you be willing to provide those names to the IRS when you have agreed that you participated in a scheme with people to defraud our government? Would you then be willing to supply the names?

Mr. BRANSON. If there is a treaty framework——

Senator LEVIN. No treaty framework. No treaties. You have agreed you participated in a fraud with certain people. Since you have agreed that you have done that, if it were not for a prohibition in law and there is no treaty involvement, would you be willing as a bank to give us the names so we could enforce our laws? Would that be something you would be willing to do, do you think?

Mr. BRANSON. Well, with respect to all kinds of exchange of information across borders are always going to be subject to a treaty framework or some other bilateral or multilateral framework. And it is only within that framework—

Senator LEVIN. Would you be willing to enter into an agreement to give us those names?

Mr. BRANSON. We believe that the discussions between the governments is the right way to look at those agreements, and we are very happy that those discussions are underway. We are very supportive of those discussions, and whatever framework evolves out of those discussions will be the one that we comply with.

Senator LEVIN. The last discussion I have heard is a unilateral statement on the part of the President of Switzerland or the head of the banking industry in Switzerland saying that you are going to continue Swiss secrecy. That is the last so-called discussion that we have heard.

I think the document we have made reference to indicated—it is a UBS document—that during the period in question, 32 UBS bankers made 3,800 client visits to the United States. Your bankers chose to come to this country and to conduct business here voluntarily. Is that correct?

Mr. BRANSON. That is correct.

Senator LEVIN. Now, since you have acknowledged participating in a scheme to defraud the government, why didn't you consider that before you sent your bankers over here? Or did you? Were there discussions inside UBS about, hey, wait a minute, if we have our bankers go over there and carry out all these shenanigans, then that would be participating in a scheme to defraud the U.S. Government. Were there any discussions about that and any urging not to do that, that you know of?

Mr. BRANSON. Not that I am aware of, but everything about this inappropriate travel is acknowledged within the statement of facts. It is something we acknowledged. The way that travel was done and the use of U.S. jurisdictional means should not have happened.

Senator LEVIN. No, we understand that, but were there conversations prior to those bankers and employees of UBS coming here as to the propriety of their coming to the United States and engaging in those activities?

Mr. BRANSON. I would not have knowledge of the conversations. My responsibility, as you know, for the business is limited to last year, so I am not privy to the conversations there may have been.

Senator LEVIN. All right. Now, we have been informed by the Swiss Government that it has identified 12 U.S. clients whose names and account information can be supplied under the treaty. So that is 12 out of somewhere in the area of 40,000 persons. Why is there only 12 when you have acknowledged in this statement, this joint statement, that you have helped to hide thousands of accounts from the IRS? Why only 12?

Mr. BRANSON. Well, I believe the number of 12 is probably superseded by the production of client data pursuant to the settlement agreement that was reached with the Department of Justice.

Senator LEVIN. And that is 250, roughly?

Mr. BRANSON. It is a number I am not at liberty to confirm exactly, but——

Senator LEVIN. I have made reference to a UBS memo, and it is on a chart[1] which says that, "In the case where the U.S. person holds his U.S. investments directly, we have been advised by Baker & McKenzie that we cannot recommend products . . . to our clients as an 'alternative' to filing a Form W–9. This could be viewed as actively helping our clients to evade U.S. tax, which is a U.S. criminal offense."

"What we can do is to suggest that clients seek external professional advice and offer them a choice of approved service providers, if they request it."

Do you agree—again, I want to be very clear on this point—that your folks knew when they—that you understood from Baker & McKenzie that you could recommend your clients to outside professional advisers who you knew would offer them advice on how to create shell corporations and tax havens? Is that what you understood the advice to mean?

Mr. BRANSON. I think this is the point we covered earlier about what was in the statement of——

Senator LEVIN. It is not quite the same point. I am asking about did you understand that Baker & McKenzie were advising you that you could seek external professional advice knowing that advice would be the same as your bank could not directly recommend? Is that what you understood the Baker & McKenzie advice to be? Or did you ignore the Baker & McKenzie advice in going to these outside advisers—or having these clients go to the outside advisers?

Mr. BRANSON. I do not have a knowledge of the Baker & McKenzie advice or what was or was not done with that. But that behavior or that memo that you have referred to there does seem to be consistent to the quick review with what we have referred to in the statement of facts earlier, part of this misconduct related to the sham offshore structures and the referral to outside advisers.

Senator LEVIN. Did Baker & McKenzie tell you you could go to an adviser who would recommend the creation of a sham corporation?

Mr. BRANSON. I have no knowledge of that.

Senator LEVIN. Are you familiar with your own document which says that, "We have been advised by Baker & McKenzie we cannot recommend products . . . to our clients as an 'alternative' to filing a Form W–9," that would be "viewed as actively helping our clients

[1] See Exhibits No. 1.e. and 15, which appear in the Appendix on pages 65 and 235.

to evade U.S. tax. What we can do"—presumably referring to Baker & McKenzie—"is to suggest that clients seek external professional advice and offer them a choice of approved service providers."[1]

Did you understand from that document, which is UBS' own memo, that Baker & McKenzie was telling you that you could do indirectly and knowingly what you could not do directly?

Mr. BRANSON. I think it is really impossible for me to impute a motive of Baker & McKenzie.

Senator LEVIN. It is not the motive; it is the words. Did you understand, did UBS understand from those words that you could recommend to your clients that they go to external professional advice and have the same effect as if you directly referred them to the creation of a sham corporation offshore? Is that what you understood that advice to mean?

Mr. BRANSON. I think the result of this——

Senator LEVIN. The words. I am asking about did you understand those words to mean—not motive, not intent. Those words.

Mr. BRANSON. I think the result of this is the creation of the sham offshore structures that we have acknowledged this misconduct. We are not trying to minimize it. We are not trying to run away from it. We have acknowledged it. We have paid for it. It is acknowledged, set out there in the statement of facts.

Senator LEVIN. Maybe you have paid for it, but 40,000 American tax evaders have not.

Do you have the exhibits in front of you? If you take a look at Exhibit 16,[2] this is an internal UBS e-mail. These are not just 40,000 American citizens who have avoided paying taxes. These are folks that you aided and abetted in that process.

Anyway, take a look at Exhibit 16. It says here that you contacted in this e-mail some of the company formation agents that have been opening accounts at UBS in the name of offshore shell companies at the request of U.S. clients. Here is the message from you: "We invite you to make a short presentation on the structures/vehicles that you recommend to U.S. and Canadian clients who do not appear to declare income/capital gains to their respective tax authorities."

So when you were asking these folks to make a short presentation to UBS, you were aware that these folks were providing these structures and vehicles to your clients who were not apparently declaring their income to their governments' tax authorities. Is that correct?

Mr. BRANSON. I have no personal knowledge of that e-mail or any of the details around it. It does appear to be conduct consistent with what we have discussed from the statement of facts and that acknowledged pattern of misconduct around offshore structures.

Senator LEVIN. And, again, these structures were being set up for the purpose of hiding who the true owner or beneficiary of the accounts were. Is that correct?

Mr. BRANSON. On all of these topics, Chairman Levin, it is difficult for me to have any knowledge of the exact conversations. I

[1] See Exhibits No. 1.e. and 15, which appear in the Appendix on pages 65 and 235.
[2] See Exhibit No. 16, which appears in the Appendix on page 237.

have been in my job less than a year. I do not have a personal knowledge of the way——

Senator LEVIN. Well, is it your understanding—I mean, this is based on the documents that you folks have signed. Is it your understanding that these structures that I have been referring to were being set up for the purpose of trying to hide who the true beneficial owner was of these accounts?

Mr. BRANSON. The sham use of offshore structures is part of the misconduct that we have identified and acknowledged.

Senator LEVIN. And was the purpose of those sham structures to hide who the true owner of the accounts were? Was that the purpose?

Mr. BRANSON. Yes.

Senator LEVIN. Now, that message that I made reference to went to four companies. I am not sure I am pronouncing their names correctly. Quadris, Sinco Treuhand, Rickenbach & Partner, and MMG Panazur. You asked those companies to come in, in 2004, and they actually had started forming offshore shell corporations for U.S. persons in 2000 when the QI Program was set up for the first time. Is that correct?

Mr. BRANSON. I have no knowledge of the activities of those firms.

Senator LEVIN. OK. Well, at our request, your company estimated that about 81 non-U.S. entities were established in 2000 to open accounts for U.S. clients, and your company, your bank provided estimates for the number of entities created by three companies named in that e-mail. This is what UBS told us: Sinco formed 26 entities, Rickenbach formed 10 entities, MMG Panazur formed 12 entities, for a total of 48.

Do you know whether there were other companies that were establishing these type of entities for U.S. clients with UBS accounts in Switzerland?

Mr. BRANSON. I do not know, no.

Senator LEVIN. A recent press article quoted your new CEO, Mr. Gruebel, as follows. He said, "It is questionable whether we can continue to hide tax evaders behind banking secrecy." Is your bank going to recommend to the Swiss Government that they drop their strict secrecy requirements and cooperate with law enforcement in friendly countries such as ours to go after people who violate our laws? Is that what UBS is going to recommend to the Swiss authorities?

Mr. BRANSON. We are going to actively support the discussions between the Swiss Government and your government. We think that is the right way for this to evolve and this to develop, and that will create a framework which will be the one with which we would comply in the future.

Senator LEVIN. What is going to be your recommendation in terms of any shift in Swiss policy so that bank secrecy is no longer used to protect tax avoiders?

Mr. BRANSON. I cannot speak today to a position the bank may develop on that topic.

Senator LEVIN. Is that the bank's official position, that it is questionable whether we can continue to hide tax evaders behind banking secrecy? Is that what you understand when Mr. Gruebel made

that statement? Or is that just kind of an off-the-cuff kind of statement?

Mr. BRANSON. I am not aware that the bank has an official publicly stated position on the issue.

Senator LEVIN. Mr. Branson, thank you for being here today. Needless to say, we and I hope most of the rest of the world that loses tax revenues to your secrecy policies will come together and jointly determine to end those policies. When you say that our problem is with the law of Switzerland, we have problems with, obviously, your bank. That is why you are involved in a criminal proceeding. But we also have very serious problems with the Swiss secrecy laws because of what they lead to, which is the kind of participation, the aiding and abetting in tax evasion which has taken place so prominently in this situation.

We now have a President of the United States who cosponsored my bill last Congress to go after these secrecy jurisdictions with all of our might. It is absurd that any country wants to make money off our loss of tax revenues, particularly friends. And we consider the Swiss our friends. It offends our people who are in very stressful economic times, but even before that. It is offensive to us that our laws are being circumvented with the assistance of tax havens in secrecy jurisdictions.

We may not be able to change your law, but we are going to do everything we can to pass a law here which is going to make it difficult, if not impossible, for American citizens, whether they are residents or non-residents, to use tax havens offshore that maintain the secrecy of bank accounts in order, obviously, to make our law enforcement more difficult since that is the purpose of so many of these account holders.

So I hope you will take that message back to your bank. I hope your bank will not just say you will follow the law. It is a law which has created real harm in terms of other countries' tax revenues, and I do not know why any country would want to benefit from that kind of behavior. I do not know why any country that genuinely cares about values would want to be in a position where its entities, its businesses are operated in such a way that other countries which have legitimate tax laws are the losers.

You may be the gainers so far, but we are going to do everything we can to take away that ill-begotten gain because that is the way we view it, and I think that is the way the world more and more views it. Prime Minister Brown today made that very clear in his speech to the Congress of the United States. And I know our President—and I have spoken to him personally about this today at the White House—and I know that his heart is exactly in making sure that we do not lose revenues to these offshore secrecy jurisdictions.

Again, I hope you will take back the message. I will give you a chance if you want to say anything, obviously, but I want to thank you for being here today. Do you want to say anything?

Mr. BRANSON. I have nothing further to add.

Senator LEVIN. Thank you.

[Whereupon, at 5:03 p.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENT OF

JOHN DiCICCO
ACTING ASSISTANT ATTORNEY GENERAL
TAX DIVISION
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

HEARING ENTITLED

"TAX HAVEN BANKS AND U. S. TAX COMPLIANCE - OBTAINING
THE NAMES OF U.S. CLIENTS WITH SWISS ACCOUNTS"

PRESENTED

MARCH 4, 2009

Chairman Levin, Acting Ranking Member Coburn, and Members of the Subcommittee, thank you for the opportunity to appear before you this afternoon to discuss the Department of Justice's (Department) efforts to combat the use of banks and other entities abroad by United States taxpayers to evade income taxes.

The Department greatly appreciates the extraordinary commitment that the Chairman, Members of the Subcommittee, and staff have made to investigate the often arcane world of offshore tax evasion and avoidance by United States citizens. Your tireless work over the last several years has brought attention to serious misconduct that threatens to undermine the fundamental integrity of our tax system. Although we will vigorously enforce United States tax laws whenever and wherever necessary, enforcement is only one element of successful tax administration. Thanks to your efforts, taxpayers have a greater understanding of their obligations and the consequences of noncompliance. You have also put tax professionals and financial advisors on notice that their efforts to design, market, and facilitate tax evasion schemes will not be tolerated.

The Subcommittee's July 2008 report outlined the role played by UBS AG (UBS), in facilitating the circumvention of federal tax laws by United States taxpayers. UBS is a corporation organized under the laws of Switzerland and is engaged in the global financial services business. In particular, you have expressed an interest in learning more about the progress UBS has made in its commitment to exit its cross-border business involving United States clients, its response to the "John Doe" summons issued by the Internal Revenue Service (IRS), and the status of the parallel criminal and civil investigations undertaken by DOJ's Tax Division.

The criminal investigation into UBS's activities within the United States includes the recently filed Deferred Prosecution Agreement entered into with UBS. The civil investigation is focused on obtaining additional information from UBS about the names of the tens of thousands of United States citizens who may have undeclared accounts with UBS that they may be using to avoid paying United States taxes.

In conducting law enforcement investigations, the Department goes to great lengths to ensure that the government's inquiry is complete, and that testimony and evidence are gathered and fully analyzed outside of the public arena. Our policy of not disclosing non-public information about ongoing matters protects both the rights of individuals who may be assisting in the investigation and the rights of criminal defendants, as well as the integrity of the investigation itself. Our ability to comment is also circumscribed by Federal Rule of Criminal Procedure 6(e), which protects the disclosure of grand jury information. In a tax case, the tax privacy statute, 26 U.S.C. § 6103, further limits the government's disclosure of tax information. Although certain aspects of the UBS matter are public, both the civil and the criminal matters are ongoing, and certain documents relating to the criminal matter remain under court seal. Therefore, my remarks today will be strictly limited to positions the Department has taken on the public record.

On February 18, 2009, the United States District Court for the Southern District of Florida accepted a deferred prosecution agreement between the government and UBS. Under the terms of that agreement, UBS waived indictment and consented to the filing of a one-count criminal information charging UBS in a conspiracy to defraud the United States and the Internal Revenue Service, in violation of United States criminal law. As part of the deferred prosecution agreement, UBS also agreed to pay $780 million in fines, penalties, interest, and restitution. If UBS carries out its obligations under the deferred prosecution agreement, the government will recommend dismissal of the charge.

Fundamental to the agreement is UBS's acceptance of responsibility for violating United States law. As set forth in detail in the deferred prosecution agreement and accompanying Statement of Facts – the documents are available for public viewing – UBS acknowledged that, beginning in 2000 and continuing through 2007, it participated in a scheme to defraud the United States and the IRS, through its cross-border business. UBS private bankers and managers actively facilitated the creation of accounts in the names of offshore companies, allowing United States taxpayers to conceal their ownership or beneficial interest in the accounts in an effort to evade United States tax reporting and payment requirements. UBS also admitted in the deferred prosecution agreement that it had failed to implement effective controls to detect and prevent the unlawful activity, and that it had failed to initiate an effective investigation into credible allegations of such unlawful activity, and had failed to take effective action to stop such activities.

In looking at this case, it is important to understand both the obligations of United States taxpayers holding assets in overseas accounts, as well as the obligations of UBS when it voluntarily entered into a Qualified Intermediary (QI) Agreement with the IRS. Under United States law, taxpayers are subject to taxation on their worldwide income. A United States taxpayer is free to hold accounts offshore or in a foreign bank. But the United States taxpayer still must report information about those assets and the income they generate, and pay all United States taxes that result from that income. Taxpayers who fail to make disclosure or to report their income are potentially subject to civil penalties and, in appropriate circumstances, criminal prosecution.

In an effort to improve compliance by United States and foreign taxpayers with foreign accounts invested in United States securities, the IRS developed the Qualified Intermediary Program. Under the QI program a foreign bank must document whether its accountholders were United States or foreign owners. If an accountholder is a United States owner, and the account holds United States securities, then the foreign bank agrees to report, and if necessary to backup withhold, on a taxpayer specific basis on each United States accountholder's earnings in their foreign account. The foreign bank is not required to report on a United States accountholder if the account does not hold United States securities.

In 2000, UBS purchased the brokerage firm Paine Webber. In 2001, UBS voluntarily entered into a QI Agreement with the IRS. Under this Agreement, UBS agreed to report to the IRS income and other identifying information for its United States

accountholders who held United States securities in a UBS account. UBS also agreed to report on United States accountholders who directed investment activities in foreign securities from the United States. Under the QI Agreement, United States taxpayers with UBS accounts had two options: (1) report on income from United States paid into their accounts; or (2) divest their UBS account of United States securities. It is important to reiterate that United States law still required taxpayers who chose the second option to identify their ownership of foreign accounts and report the income from those accounts on their tax returns.

Almost from the inception of the QI Agreement, however, UBS began to undermine its purpose. Directly or indirectly, UBS aided some of its United States customers in disguising their ownership in UBS accounts, in order to help those customers evade their United States tax reporting and payment responsibilities. Between 2000 and 2007, UBS violated United States tax and securities laws. UBS bankers routinely traveled to the United States to market Swiss bank secrecy to United States clients interested in attempting to evade United States income taxes. An internal UBS memorandum filed with the court demonstrates that, in 2004 alone, UBS bankers traveled to the United States where they held approximately 3,800 separate meetings with U.S. clients to discuss their clients' Swiss accounts.

UBS used a variety of strategies to conceal their cross-border activities. For example, UBS instructed its bankers who traveled to the United States to falsely represent to United States Customs that they were traveling for pleasure. They also recommended that bankers rotate hotel accommodations while visiting the United States UBS bankers used counter-surveillance techniques to help prevent the detection of their marketing efforts and the identities and offshore assets of their U.S. clients. Clients of the cross-border business in turn filed false tax returns with the IRS which omitted the income earned on their Swiss bank accounts and failed to disclose the existence of those accounts to the IRS. UBS bankers also advised United States clients to misrepresent the receipt of funds in the United States from their UBS accounts as loans from UBS, and to destroy all United States-based records of their offshore accounts. United States clients of UBS's cross-border business have used Swiss bank secrecy laws and steps taken by UBS to conceal from the IRS approximately $20 billion in assets. For the period 2000 through 2007, UBS failed to withhold approximately $220 million in income taxes on income earned in those accounts.

Despite the difficulties posed as a result of historical concealment efforts and Swiss bank secrecy laws, the Department's Tax Division, together with the Internal Revenue Service, has been aggressively investigating those who participated in this scheme. In June 2008, former UBS private banker Bradley Birkenfeld pled guilty to a charge of conspiring to defraud the United States for his part in the scheme. Mr. Birkenfeld is scheduled to be sentenced on May 1, 2009. In November 2008, UBS executive Raoul Weil was indicted by a federal grand jury in Fort Lauderdale and charged with conspiring to defraud the United States for his alleged role in overseeing the United States cross-border business. The district court recently declared him to be a fugitive.

As part of the deferred prosecution agreement, UBS has agreed to provide the United States with voluminous and detailed records concerning accounts held directly or through beneficial arrangements by United States persons. UBS has also undertaken a continuing obligation to cooperate with the criminal investigation and any resulting prosecutions, and also to search for and turn over any additional records found concerning such accounts. The specific criteria for account records disclosed, and the number of such accounts as to which records have been disclosed to date are set forth in a document that the District Court has ordered sealed.

UBS has also agreed to the following conditions:

- UBS will terminate its United States cross-border business. Accounts of United States customers covered by the deferred prosecution agreement will be closed and assets liquidated, with proceeds distributed to the United States owners in dollar-denominated instruments. While we are not at liberty to discuss the specific provisions due to the Court's order to seal, the agreement does provide what we believe will be effective means to detect and defeat attempts to transfer and further conceal assets or proceeds from the accounts subject to this Agreement.

- UBS has agreed to pay to the United States $780 million.

- UBS's challenge to the Government's motion to enforce the "John Doe" summons, including the filing of an appeal from an adverse ruling, will not be considered a breach of the deferred prosecution agreement. However, upon completion of that litigation, if the Court were to order UBS to produce the documents sought and hold UBS in contempt for failure to do so; UBS's non-compliance may be determined to be a material breach of the deferred prosecution agreement, permitting the Government to proceed with the criminal prosecution of UBS.

- UBS's failure to comply with a term of the deferred prosecution agreement may, in the sole discretion of the Government, be deemed a material breach, permitting the Government to proceed with the criminal prosecution of UBS. If UBS fully complies with the deferred prosecution agreement, then the criminal information will be dismissed.

- The deferred prosecution agreement only applies and provides protection for the bank as to the specific conduct set forth in the deferred prosecution agreement. It does not provide any protection for any conduct or as to any matter or proceeding outside the scope of the agreement.

As noted in the deferred prosecution agreement, in addition to addressing UBS's role in designing and facilitating this scheme, the Department is also assisting the IRS in determining the identities of the United States taxpayers involved. On July 1, 2008, the United States District Court in Miami authorized the IRS to serve upon UBS a "John

Doe" summons seeking records that would identify all United States taxpayers with accounts at UBS in Switzerland who have elected to conceal the existence of their accounts from the IRS. On July 21 2008, the IRS served the summons on UBS.

On February 19, 2009, the government filed a petition to enforce the "John Doe" summons with the United States District Court in Miami. The government requested that the court issue an order requiring UBS to disclose to the IRS the identities of the bank's United States customers with undeclared Swiss accounts. The suit alleges there may be as many as 52,000 undeclared accounts with approximately $14.8 billion in assets as of the mid-2000s. This case is currently pending with the district court, and therefore, we are not in a position to provide additional information at this time.

It is important to remember that the vast majority of Americans voluntarily pay their taxes on time and in full. At a time when millions of Americans are losing their jobs, their homes, and their health care, it is deeply troubling that thousands of the wealthiest among us have actively sought to evade their civic and legal duty to pay taxes. The Department of Justice is committed to doing all that it can to aid the IRS in locating those who would seek to hide behind secret accounts and in holding them accountable under the federal tax laws and we greatly appreciate your interest in and support of our efforts.

Thank you for this opportunity to testify before the Subcommittee, and I am happy to take your questions, within the parameters that I have outlined.

PREPARED TESTIMONY OF
DOUG SHULMAN
COMMISSIONER
INTERNAL REVENUE SERVICE
BEFORE THE
SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
MARCH 4, 2009

Introduction

Mr. Chairman, Acting Ranking Member Coburn and Members of the Subcommittee, I want to thank you for the opportunity to testify today on the Internal Revenue Service's ongoing efforts to detect and stop unlawful offshore tax avoidance.

Mr. Chairman, international issues are a major strategic focus of the IRS. It is of paramount importance to our system of voluntary compliance with the tax law that citizens of this country have confidence that the system is fair. We cannot allow an environment to develop where wealthy individuals can go offshore and avoid paying taxes with impunity. As you will hear from my testimony today, the IRS is aggressively pursuing these individuals and institutions that facilitate unlawful tax avoidance.

These issues are so important to the agency that I have both increased the number of audits in this area over the last five months and prioritized stepped-up hiring of international experts and investigators. This occurred during a time when agency staffing levels were effectively frozen because of the Continuing Resolution.

While it is true that IRS agents and investigators will ultimately generate net enforcement revenues for the government, we view our international compliance strategy as much more focused on protecting the approximately $2.7 trillion base of revenue that the IRS collected in 2008 than the incremental enforcement revenue that we collect from these specific activities. We cannot allow corrosive behavior to undermine the fundamental fairness of our tax system.

Moreover, seen through the prism of the current economic crisis, it is egregious and scandalous that wealthy individuals continue hiding assets overseas and unlawfully avoiding US tax. It is an affront to the honest taxpayers of America, many of whom are struggling to pay their bills, who play by the rules and expect others to do the same.

Specific Ongoing Cases

Mr. Chairman, I am fully aware that the intended focus of today's hearing is the specific facts and circumstances around a particular case of interest to the Subcommittee.

As an agency that takes pride in its enforcement record and our investigative results, there is nothing that would be more fulfilling than to discuss our investigations with the Subcommittee. Unfortunately, the IRS is unable to provide information to the Subcommittee on these specific ongoing cases. Because we do not arrive at this conclusion lightly, I offer the following explanation.

First, Section 6103 of the Internal Revenue Code generally prohibits the Internal Revenue Service from publicly disclosing information that could identify a specific taxpayer, and there is no exception for disclosing such information to this Subcommittee.

Additionally, because the Subcommittee is inquiring on matters that have yet to be adjudicated, public commentary by the IRS officials on these matters could unnecessarily create risk to the government's case. Therefore as a matter of policy, the IRS cannot comment on these cases.

Although I cannot discuss the specifics of the case, I have attached to my testimony the summons in question, which is a matter of public record, and contains the legal basis of the case.

IRS Enforcement: Tightening the Net

There is general agreement in the tax administration community that there is no "silver bullet" or one strategy that will alone solve the problems of offshore tax avoidance. If such a solution existed, it would have been implemented a long time ago. Rather, an integrated approach is needed, made up of separate but complementary programs that will tighten the net around these tax cheats.

As previously noted, the IRS has taken an aggressive and focused approach to international tax compliance that has included increasing its resources in this area by hiring specialists devoted strictly to this international effort. We also have a number of important enforcement tools that are described in greater detail below.

International Collaboration

International collaboration is essential in the fight against offshore tax avoidance. On this topic there is clear consensus among our closest economic partners.

To help stem the tide of tax evasion, the United States currently has tax treaties and cooperative tax information exchange agreements (TIEAs) with over 70 jurisdictions. We continue to expand the number of countries with which we have agreements and to renegotiate agreements to improve information exchange. However, in some instances the process to obtain names of account holders is inefficient, and in those cases we use other legal and investigative techniques described below.

The Joint International Tax Shelter Information Center – or JITSIC – has also proved to be another important arrow in our quiver. JITSIC's primary focus has been on the

bilateral exchange of specific abusive transactions and their promoters and investors. The results, to date, have been promising. The U.S. has received information regarding transactions of which it had not been previously aware.

Indeed, in light of the complexity of the transactions, and considering the inherent difficulty normally associated with obtaining taxpayer-specific shelter information from foreign countries, it is unlikely that these transactions would have been uncovered and understood, but for JITSIC.

We need to redouble our commitment to international cooperation, and explore new and different ways to work with our counterparts overseas. Of direct relevance to today's discussion, we recently announced plans to build upon the initial success of JITSIC to specifically focus on international cooperation to combat offshore tax avoidance.

Qualified Intermediary Program (QI)

In detecting and attacking unreported off-shore accounts, we have a combination of tools at our disposal – all of which we are using simultaneously.

One of our best is the Qualified Intermediary program. The QI program gives the IRS an important line of sight into the activities of foreign banks and other financial institutions. It also provides information reporting that the IRS did not receive before this program was implemented. Most major financial institutions worldwide are QI participants, although a large number of smaller financial institutions do not participate in the program.

The QI system is an opt-in system that encourages foreign investment in the US by allowing foreign banks to deal on an aggregate basis with US withholding agents for all of their foreign customers investing in US securities. In exchange for QI status, the bank must follow detailed documentation procedures to ensure that the IRS receives information about their US customers investing in US securities.

Indeed, the QI program is critical to facilitating sound tax administration in a global economy. By bringing foreign financial institutions more directly into the U.S. tax information reporting system, we can better ensure that U.S. persons are properly paying U.S. tax, and that foreign persons are subject to the proper U.S. withholding tax rates.

Nonetheless, there are issues in the QI program that must be addressed. We need to shore up the QI program and enhance, improve and strengthen it. And we are.

In mid-October 2008, we issued a set of proposed QI amendments for comment which we believe will make QI audits more useful and help give us a clearer line of vision and transparency that we need in tax administration. Under the proposed changes, financial institutions that are QIs must provide early notification of material failure of internal controls. They must also improve evaluation of risk of circumvention of U.S. taxation by U.S. persons. And they must include audit oversight by a U.S. auditor.

The IRS and Treasury Department are also considering additional changes to the QI program to expand the information reporting required for U.S. customers holding accounts overseas, which I will describe later in my testimony.

Whistleblowers/John Doe Summons/Criminal Investigation

Informants are another part of IRS' enforcement net. Since the inception of the Whistleblower Office in 2007, the IRS has received hundreds of tips on financial institutions and individuals with foreign accounts and international compliance issues. Some of these have become significant cases.

Dozens of these tips involve the names of individuals with offshore accounts; others involve the names and practices of financial institutions in those countries that typically have strict bank secrecy laws.

And keep in mind that the value here is far greater than just the names of specific individuals. With additional development, these tips provide information that can lead to a John Doe summons – our next important tool.

The IRS generally uses the John Doe summons authority to identify individuals, groups or classes of US taxpayers: (1) whose member identities are unknown; (2) who may be involved in specific areas of tax noncompliance; and (3) who cannot be identified through other means.

For example, we would employ this type of summons when we strongly suspect US taxpayers are using offshore bank accounts to avoid paying taxes, but do not know their identities.

While the John Doe summons is a powerful tool in the civil arena, the IRS has also deployed significant resources to criminal tax investigations. The IRS is increasing its resources devoted to investigating the misuse of foreign entities and the use of foreign bank accounts to hide taxable income and is currently pursuing hundreds of criminal leads involving U.S. taxpayers potentially involved in offshore tax evasion.

The IRS has established a group of Criminal Investigation agents that focuses solely on international matters. As a part of this effort, the IRS participates in an interagency team led by the Department of Justice to review suspicious activity reports focusing on individuals and businesses based in foreign countries.

Another group of IRS Criminal Investigation agents on the West Coast focuses on international matters that arise on the Pacific Rim. This project is part of a long-term strategy for enhancing bilateral law enforcement cooperation to combat offshore tax evasion, money laundering, and related financial crimes.

In FY 2008, IRS-developed cases related to foreign and offshore issues resulted in 61 criminal convictions, and the average term for those going to jail was 32 months. For the

first fourth months of FY 2009, there were 20 convictions, and the average jail term was 84 months.

Effect of IRS Actions on Offshore Tax Avoidance

In recent months and years, the IRS has concluded a number of significant cases where U.S. citizens have been caught attempting to hide assets and income overseas.

A much less quantifiable, but no less certain effect has been the creation of an environment in which offshore tax evaders fear detection and prosecution.

The tax evader on the run is especially vulnerable. Every instance where that individual withdraws or moves money creates a paper trial. That is because foreign banks are providing new information to the IRS or the IRS is investigating similarly situated taxpayers. This generates greater scrutiny of the transaction and increases the potential for suspicious activity to be spotted.

These actions also create greater legal jeopardy for those who break cover. Once these activities occur, it is far more likely that the IRS will uncover them through whistleblowers, other non-tax related investigations or through JITSIC and our treaty partners.

I would be remiss if I did not take this opportunity to directly address those that may have undeclared offshore accounts and income, wondering what they should do. I would advise anyone in this situation to come in, and get right with your government as soon as possible. Under long-standing IRS policy, taxpayers who voluntarily disclose in most cases avoid criminal prosecution. You will certainly suffer the appropriate economic consequences, but in most cases you will no longer have to play the lottery with your freedom and livelihood.

To the extent that anyone – even those with experience in this area – advises you to wait it out, I would suggest that this advice is misguided at best and foolish at worst. The IRS is entering a time of unprecedented focus on offshore tax evasion.

In the first four months of FY 2009, the IRS has already seen a significant increase in the number of voluntary disclosures that we have received compared to the same period last year.

Next Steps

Mr. Chairman, while tangible progress has been made to combat offshore tax evasion, our experience shows that there are areas where improvements can be made. I am pleased to discuss several proposals that we are currently considering to improve our existing administrative programs.

I can also tell you that offshore issues are high priority to the President and his Administration. The President's budget committed to identifying $210 billion in savings

over the next decade from international enforcement, reforming deferral and other tax reform policies. The Administration will have more detailed and specific announcements in this area in the near future.

For today's hearing, I wanted to focus on some areas affecting offshore issues. I would like to start with some changes we are considering in the QI program.

Some measures that the IRS and Treasury Department are considering include:

- Expanding information reporting requirements to include more sources of income for US persons with accounts at QI banks
- Strengthening documentation rules to ensure that the program is delivering on its original intent
- Requiring withholding for accounts with documentation that is considered insufficient

Additionally, the IRS has already proposed changes that would shore up the independent review of the QI program in substantial ways. This proposal is currently out for comment, and the IRS looks forward to reviewing these comments.

As you can see, the IRS and Treasury Department are considering a wide range of measures to ensure that the QI program is working as intended. However, there will always be instances where the IRS discovers a potential violation of the tax law after the fact. In these cases, there may administrative and legislative changes that may be helpful to the IRS as we investigate potential wrongdoing.

For example, Secretary Geithner committed during his confirmation process to examine a number of policy options, including changing the presumption for transactions in tax-secrecy jurisdictions and other ideas included in your legislation.

Finally, as you know, in past testimony we have stated that in cases involving offshore bank and investment accounts located in bank secrecy jurisdictions, it would be helpful for Congress to extend the time to assess a tax liability with respect to offshore issues from three years to six years.

Conclusion

Mr. Chairman, I want to thank you for this opportunity to provide an update on IRS' activities to combat illegal tax avoidance schemes relating to offshore accounts and transactions. Because this is a global problem, it will require a closely coordinated strategy among nations dedicated to ending this scourge that deprives our country of precious resources and erodes confidence in the fairness of effectiveness of our tax administration system. I would be happy to respond to your questions.

OPENING STATEMENT OF MARK BRANSON

BEFORE THE PERMANENT SUBCOMMITTEE ON INVESTIGATION

UNITED STATES SENATE

MARCH 4, 2009

* * *

Chairman Levin, Senator Coburn (and Members of the Subcommittee). My name is Mark Branson. I am the Chief Financial Officer of the global wealth management and Swiss businesses of UBS based in Zurich, and I am responsible for the financial and risk control of this division.

When I testified before this Subcommittee last summer, I described our efforts to investigate and correct problems with the bank's provision of cross-border financial services to U.S. residents. At the hearing, we committed: to cooperate with the U.S. government's investigations; to exit the cross border business for U.S. residents; and to take corrective measures to ensure that such problems cannot reoccur. I am pleased to say that we are making good on each of those commitments.

Firstly, we recently entered agreements with the U.S. Justice Department and the Securities & Exchange Commission that resolve their investigations of our cross-border business. Through these agreements, UBS has delivered on its promise to cooperate with the various investigations of the bank, accept responsibility for its unlawful conduct and remedy that misconduct.

As part of these settlements, we agreed to disgorge profits from the U.S. cross- border business. We also agreed to pay back taxes, interest and substantial civil penalties. In addition, following an emergency order from the Swiss financial regulator, we disclosed on an expedited

basis the name and account information of certain U.S. clients who appear to have engaged in "tax fraud or the like" within the meaning of the Double Taxation Treaty between the U.S. and Switzerland. Those clients misused the confidentiality protection of Swiss law.

Second, following my testimony before the Subcommittee last summer, we began the process of exiting the U.S. cross border business. Since then, we have closed more than 14,000 individual relationships. Going forward, U.S. residents will only be permitted to maintain accounts that are fully disclosed to the IRS, with UBS affiliates that are SEC registered.

Our exit plan is also designed to encourage our cross-border U.S. clients to make voluntary disclosures to the IRS, where appropriate. Our communications to affected clients clearly encourage them to disclose their accounts to the IRS, if they have not already done so. We also guarantee our exiting U.S. clients that we will provide them with the documentation necessary to file amended U.S. tax returns.

As part of the recent settlements, the U.S. government has authorized our exit plan. We will now complete the exit in accordance with those agreements. Progress will be reviewed by an independent auditor who will periodically report to the U.S. government.

Third, UBS will implement an enhanced control framework around our compliance with the Qualified Intermediary or QI Agreement. This new framework will include the appointment of a senior executive to supervise QI compliance across UBS.

Through all these actions, UBS is making good on the commitments that I gave to the Subcommittee last summer.

Mr. Chairman, we deeply regret our breaches of U.S. law. I can honestly say that what took place in one small part of our business is not representative of the firm's culture or the values of the 78,000 UBS employees around the world. Those employees, including over 25,000 employees here in the U.S. and roughly the same number in Switzerland, have suffered as they have seen the reputation of their firm harmed. That is very painful to me, as is the fact that the bank's behaviour has brought international criticism to the country of Switzerland.

Before I conclude, I would like to address the recent civil action filed by the IRS. That action asks a U.S. court to compel UBS to disclose the names and account information of thousands of U.S. clients who maintained cross-border accounts with UBS in Switzerland and did not provide the bank with a Form W-9. Because Swiss law prohibits UBS from producing responsive information located in Switzerland, UBS has sought to work cooperatively with the IRS to identify information responsive to the summons that is located in the U.S. We undertook substantial efforts over many months to collect and produce such U.S. based information. This was information that we could provide to the IRS without violating Swiss law, and this process is continuing. We took these steps in a good faith effort to cooperate with the summons. But we believe that UBS has now complied with the summons to the fullest extent possible without subjecting its employees to criminal prosecution in Switzerland.

Mr. Chairman, the John Doe Summons is fundamentally a dispute between the IRS and the Swiss government. UBS believes this dispute should be resolved through diplomatic discussions between the two governments, and we will continue to support actively such discussions. But we respectfully submit that the IRS is attempting to resolve this diplomatic dispute in a courtroom, which is neither productive nor proper.

The QI Agreement that UBS entered with the IRS in 2001 expressly recognized that UBS would open and maintain accounts covered by Swiss financial privacy laws for U.S. clients who chose not to provide a Form W-9, as long as those accounts held no U.S. securities. The Swiss accounts that are potentially subject to the Summons do not contain U.S. securities. UBS legitimately maintained those accounts consistent with the QI Agreement signed by the IRS. The summons therefore seeks client information that the IRS itself agreed would be kept confidential.

In addition, Switzerland and the U.S. are signatories to treaties that specify the circumstances under which client names and account information located in Switzerland can be shared with U.S. authorities. We believe that the John Doe Summons is inconsistent with those long standing treaties.

When I was last before the Subcommittee, I promised that UBS would cooperate with the IRS, and I believe we have. We made a good faith effort to produce responsive information available in this country that could be disclosed without violation of Swiss law. The bank has now done all that it can do to cooperate with the John Doe Summons. But UBS cannot disclose information to the IRS that would put its employees at serious risk of criminal prosecution under Swiss law.

Mr. Chairman these are challenging times for the firm. But everyone at the bank is now dedicated to one goal -- fixing UBS -- its finances and the problems we have created here in the U.S. Thank you for this opportunity to address the Subcommittee and I will be pleased to answer any questions that you may have.

Tax Haven Bank Secrecy Tricks

- Code Names for Clients
- Pay Phones, not Business Phones
- Foreign Area Codes
- Undeclared Accounts
- Encrypted Computers
- Transfer Companies to Cover Tracks
- Foreign Shell Companies
- Fake Charitable Trusts
- Straw Man Settlors
- Captive Trustees
- Anonymous Wire Transfers
- Disguised Business Trips
- Counter-Surveillance Training
- Foreign Credit Cards
- Hold Mail
- Shred Files

Prepared by the U.S. Senate Permanent Subcommittee on Investigations, July 2008.

Permanent Subcommittee on Investigations
EXHIBIT #1a

EXCERPTED FROM
EXHIBIT #12

"In the last year, we are advised that 32 different Client Advisors from BS NAM have travelled to the US on business. On average, each Client Advisor visited the US for 30 days per year, seeing 4 clients per day. This means that approximately 3,800 clients are visited in the US per year by WM&BB Client Advisors based in Switzerland."

- UBS Wealth Management & Business Banking internal report: "Review of US Resident Non-W9 Business, Legal and Compliance," page 9, Dec. 10, 2004.

Permanent Subcommittee on Investigations
EXHIBIT #1b

EXCERPTED FROM
EXHIBIT #12

"The number of account relationships in WM&BB in Switzerland with US residents where the account holder has not provided a W-9 is approximately 52,000 (representing CHF 17 billion in assets)."

- UBS Wealth Management & Business Banking internal report: "Review of US Resident Non-W9 Business, Legal and Compliance," page 3, Dec. 10, 2004.

Permanent Subcommittee on Investigations
EXHIBIT #1c

EXCERPTED FROM
EXHIBIT #13

"In case of an interrogation by any authority:

- **protect the banking secrecy**
- **no client respective communication/wait for assistance of a UBS lawyer"**

- UBS document: "US International Training," in section subtitled, "Lessons Learned," page 5, Sept. 26, 2006.

Permanent Subcommittee on Investigations
EXHIBIT #1d

Prepared by U.S. Senate Permanent Subcommittee on Investigations, March 2009

EXCERPTED FROM
EXHIBIT #15

"In the case where the US person holds his U.S. investments directly, we have been advised by Baker & McKenzie that we cannot recommend products (such as the use of offshore companies, annuity or insurance products) to our clients as an 'alternative' to filing a Form W-9. This could be viewed as actively helping our clients to evade US tax, which is a U.S. criminal offense. Further, such recommendations could infringe upon our Qualified Intermediary status if, on audit in 2003, it is determined that we have systematically helped US person to avoid the QI rules.

What we can do is suggest that clients seek external professional advice and offer them a choice of approved service providers if they request it."

-UBS memorandum: "FPWM Policy for Dealing with US Persons under the QI Agreement," in section subtitled, "Purchase of Alternative Structures," page 2, July 4, 2000.

Permanent Subcommittee on Investigations
EXHIBIT #1e

EXCERPTED FROM
EXHIBIT #16

"We invite you to make a short presentation on the structures/vehicles that you recommend to U.S. and Canadian clients who do not appear to declare income/capital gains to their respective tax authorities."

-UBS email to third-party corporate formation agents: "Structures/Vehicles for U.S./Canadian Clients," Aug. 17, 2004.

Permanent Subcommittee on Investigations
EXHIBIT #1f

Prepared by U.S. Senate Permanent Subcommittee on Investigations, March 2009

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Embassy of Switzerland in the United States of America

The Honorable Carl Levin
Chairman, Senate Permanent
Subcommittee on Investigations
SR-199 Russell Senate Office Building
Washington, D.C. 20510

Our ref. 522.0 – GHE

Washington D.C., February 20, 2009

RE: Subcommittee Hearing of February 24, 2009

Dear Mr. Chairman:

I am referring to your letter of February 11, 2009, in which you invited the Government of Switzerland to send a representative to participate in the hearing to be held on February 24 and to brief the Subcommittee on matters related to U.S. investigations regarding UBS.

As you may know, the Swiss authorities have been cooperating intensively with their U.S. counterparts in the last few months and provided their support to their ongoing investigations against UBS AG. The cooperation takes place within the commonly agreed framework for cooperation between Switzerland and the United States. This framework includes the Swiss-U.S. bilateral Mutual Legal Assistance Treaty of May 25, 1973 as well as the Double Taxation Convention of October 2, 1996.

A few days ago, UBS entered into a deferred prosecution agreement with the U.S. Department of Justice. This agreement was made possible, among others, by a decision made on February 18, 2009, by the Swiss Financial Market Supervisory Authority FINMA to order UBS to surrender certain client data to be handed over immediately to the competent U.S. authorities. Despite these measures, the U.S. Government filed a law suit against UBS to enforce IRS summonses on a very large number of accounts.

The Swiss Government regrets that, despite the cooperation displayed by UBS and the Swiss authorities, the U.S. authorities continue to threaten the bank with unilateral measures. Such measures would not be in the mutual interest of both countries, nor do they serve to enhance the already close cooperation in tax matters. The Swiss authorities nonetheless remain committed to cooperating with their competent U.S counterparts within the framework of the applicable Swiss legislation, the relevant U.S.-Swiss treaties and subject to legal proceedings. Under these circumstances, the Federal Council considers that it is not appropriate to send a representative to participate in the February 24 hearing.

2900 Cathedral Ave. NW
Washington, D.C. 20008-3499
Phone: (202) 745 7900, Fax: (202) 387 2564
was.vertretung@eda.admin.ch, www.swissemb.org

Permanent Subcommittee on Investigations
EXHIBIT #2

In closing, I wish to emphasize that Switzerland has no interest in protecting tax fraud, which is also a serious offense in our country, nor does the Swiss Federal Council approve of any acts that may have been committed by UBS in violation of its obligations under the Qualified Intermediary Agreement or any other applicable law.

Sincerely,

The Ambassador of Switzerland

Urs Ziswiler

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60033-CR-COHN

UNITED STATES OF AMERICA

vs.

UBS AG

Defendant.
_____/

DEFERRED PROSECUTION AGREEMENT

The United States Department of Justice Tax Division and the United States Attorney's Office for the Southern District of Florida (the "Government") and the defendant UBS AG ("UBS"), by its Group General Counsel and undersigned attorneys, pursuant to the authority granted to them by its Board of Directors in the form of a Board Resolution, attached hereto as Exhibit A, hereby enter into this Deferred Prosecution Agreement (the "Agreement").

The Criminal Information

1. UBS will waive indictment and consent to the filing of a one-count Information (the "Information") in the United States District Court for the Southern District of Florida (the "Court") charging UBS with participating in a conspiracy to defraud the United States and its agency the Internal Revenue Service ("IRS") in violation of 18 U.S.C. § 371. A copy of the Information is attached hereto as Exhibit B.

Permanent Subcommittee on Investigations
EXHIBIT #3

Acceptance of Responsibility for Violation of Law

2. UBS acknowledges and accepts that, as set forth in the Statement of Facts, attached hereto as Exhibit C:

> Beginning in 2000 and continuing until 2007, UBS, through certain private bankers and managers in the United States cross-border business, participated in a scheme to defraud the United States and its agency, the IRS, by actively assisting or otherwise facilitating a number of United States individual taxpayers in establishing accounts at UBS in a manner designed to conceal the United States taxpayers' ownership or beneficial interest in these accounts. In this regard, these private bankers and managers facilitated the creation of accounts in the names of offshore companies, allowing United States taxpayers to evade reporting requirements and to trade in securities as well as other financial transactions (including making loans for the benefit of, or other asset transfers directed by, the United States taxpayers, and using credit or debit cards linked to the offshore company accounts).
>
> In connection with the establishment of these offshore company accounts, UBS private bankers and managers accepted and included in UBS's account records IRS Forms W-8BEN (or UBS's substitute forms) provided by the directors of the offshore companies which represented under penalty of perjury that these companies were the beneficial owners, for United States federal income tax purposes, of the assets in the UBS accounts. In certain cases, the IRS Forms W-8BEN (or UBS's substitute forms) were false or misleading in that the United States taxpayer who owned the offshore company actually directed and controlled the management and disposition of the assets in the company accounts and/or otherwise functioned as the beneficial owner of the assets in disregard of the formalities of the purported corporate ownership.
>
> Additionally, these private bankers and managers would actively assist or otherwise facilitate certain undeclared United States taxpayers, who these private bankers and managers knew or should have known were evading United States taxes, by meeting with these clients in the United States and communicating with them via United States jurisdictional means on a regular and recurring basis with respect to their UBS undeclared accounts. This enabled the United States clients to conceal from the IRS the active trading of securities held in these accounts and/or the making of payments and/or asset transfers to or from these accounts. Certain UBS executives and managers who knew of the conduct described in this paragraph continued to operate and expand the United States cross-border business because of its profitability. It was not until August 2007 that executives and managers made a decision to wind down the United States cross-border business. Executives and managers delayed this decision due to concerns that it would be costly, that it was not likely a third party buyer of the business could be found, and it could damage UBS's business reputation.

3. Pursuant to this Agreement, UBS agrees that it shall pay to the United States a total of $780,000,000 (the "Settlement Amount"), which includes (i) $380,000,000 in disgorgement of the profits from maintaining the United States cross-border business from 2001 through 2008, of which $200,000,000 will be separately paid to the United States Securities and Exchange Commission (the "SEC") pursuant to a payment schedule set forth in the Consent Order and Final Judgment, and (ii) $400,000,000 for: federal backup withholding tax required to be withheld by UBS with respect to the Disclosed Accounts for calendar years 2001 through 2008; interest and penalties; and restitution for unpaid taxes, together with interest thereon, for undeclared United States taxpayers who were actively assisted or facilitated by UBS private bankers who met with these clients in the United States and communicated with them via United States jurisdictional means on a regular and recurring basis as described in paragraph 4 of the Statement of Facts (as agreed to more fully in a separate letter between the IRS and UBS). In recognition of the current international financial crisis and after consultation with the Federal Reserve Bank of New York, the Government will forgo additional penalties. In addition to the $200,000,000 to be paid to the SEC pursuant to the Consent Order and Final Judgment as noted above, the balance of the Settlement Amount shall be paid to DOJ/IRS in installments as follows: within 30 days of the Court's approval of this Agreement (the "Approval Date"), $115,000,000; six months after the Approval Date, $40,000,000; at the one-year anniversary of the Approval Date, $180,000,000; and at the one and one-half year anniversary of the Approval Date, $245,000,000. UBS shall have the option to accelerate all payments due under this Agreement. Further UBS has the option, as needed, at any time before the one and one-half year anniversary of the Approval Date, of extending the final payment by up to the four-year anniversary of the Approval Date by providing written notice to the Government.

4. UBS agrees that no portion of the amounts that UBS has agreed to pay to the United States under the terms of this Agreement is deductible on any United States federal, state, or local tax return.

Permanent Restrictions On and Elevated Standards for UBS's United States Cross-Border Business

5. The Government recognizes that UBS has previously announced that it will exit the United States cross-border business and in the future will only provide banking or securities services to United States resident private clients (including offshore trusts, foundations, and non-operating companies with one or more United States individuals as a beneficial owner) through subsidiaries or affiliates registered to do business in the United States with the United States Securities and Exchange Commission ("SEC") and which require United States private clients to supply a fully executed IRS Form W-9, "Request for Taxpayer Identification Number and Certification" (the "Exit Program"). Upon acceptance of this Agreement by the Court, UBS shall undertake to implement the Exit Program in an orderly and expeditious manner consistent with the client communication attached hereto as Exhibit D. The Exit Program shall be overseen by the Risk Committee of the Board of Directors of UBS (the "Risk Committee"), which has delegated responsibility for administering and monitoring the Exit Program to the Exit Decision Committee, which in turn shall provide periodic reports to the Risk Committee on the progress of the Exit Program. In addition, during the term of this Agreement, UBS will provide to the Government periodic reports on the progress of the Exit Program, subject to applicable Swiss laws. The first report shall be due on or before the sixth month anniversary of the Approval Date, and subsequent reports shall be due on a quarterly basis during the term of this Agreement. The Exit Decision Committee shall take steps to see that adequate records are maintained to permit the progress and

implementation of the Exit Program to be subjected to agreed upon procedures testing as set forth in paragraphs 21-22 below.

6. In addition to implementing the Exit Program, UBS agrees to implement and maintain an effective program of internal controls with respect to compliance with UBS's obligations under the Qualified Intermediary ("QI") Agreement and related rules or regulations (the "QI Compliance Program"). The QI Compliance Program shall include, but not necessarily be limited to, the following measures:

(a). The appointment of personnel with direct authority for oversight of UBS's performance under the QI Agreement. In this regard, UBS has established the position of Group Head U.S. Withholding and QI Compliance, which position has direct reporting responsibility to the head of Group Tax and the Risk Committee. In addition, UBS has established the position of Wealth Management and Swiss Bank Unit's QI Tax Coordinator, which position has primary day-to-day responsibility over Wealth Management's performance under the QI Agreement and which position has reporting responsibility to the Chief Compliance Officer in Switzerland;

(b). The development and implementation of enhanced written policies and procedures to promote compliance under the QI Agreement;

(c). The development and implementation of enhanced controls to identify, prevent, detect and correct any material failures in UBS's performance under the QI Agreement (including auditing and testing procedures);

(d). The development and implementation of periodic training of relevant personnel with respect to compliance with the QI Agreement and UBS's QI Agreement-related internal policies and procedures; and

(e). The development and implementation of policies and procedures for receiving and investigating allegations of material failures of QI Agreement-related internal controls.

7. The obligations set forth in paragraph 6 above shall apply only so long as UBS continues to serve as a Qualified Intermediary, and this Agreement does not modify or amend the QI Agreement between UBS and the IRS and does not affect any of the IRS's or UBS's rights or remedies under the QI Agreement between them.

8. In addition to the QI Agreement-related compliance measures described above, UBS will implement a revised governance structure for the legal and compliance functions. Within this new framework, the Group General Counsel will have functional management responsibility and joint line management authority over the legal and compliance functions that advise the different business divisions, including the wealth management division. The Group General Counsel will also have authority to identify issues of Group level importance, and will have final authority with respect to compensation and promotion matters for divisional level legal and compliance personnel.

Disclosure of Client Data

9. Pursuant to and consistent with an order issued by the Swiss Financial Market Supervisory Authority ("FINMA"), UBS shall provide or cause to be provided to the Government the identities and account information of certain United States clients (the "Disclosed Accounts") as set forth in a letter between UBS and the Government, dated February 16, 2009 (the "Account Disclosure Letter"), attached hereto as Exhibit E and filed separately under seal, upon the entry of an order by the Court accepting this Agreement. This Agreement shall not be effective or enforceable against the Government unless the disclosure obligations set forth in this paragraph and the Account Disclosure Letter are fully satisfied.

Cooperation

10. The Government acknowledges that UBS has provided substantial and important assistance to the Government in connection with the investigation of UBS's United States cross-border business. Among other things, UBS undertook substantial efforts to provide information to assist United States investigators while complying with established Swiss legal restrictions governing information exchange. UBS also facilitated cooperative efforts between the United States and Swiss governments regarding the Government's investigation. UBS acknowledges and understands that the cooperation it has provided to date with the criminal investigation by the Government, and its pledge of continuing cooperation, are important and material factors underlying the Government's decision to enter into this Agreement. The Government acknowledges and understands that UBS is subject to certain Swiss laws, which may impact its ability to provide documents and information in connection with its cooperation obligations under this Agreement and that FINMA and other competent Swiss Authorities provide authoritative guidance in this regard. Therefore, consistent with the disclosure obligations set forth in paragraph 9 of this Agreement and Swiss law, UBS agrees to cooperate fully with the Government regarding any matter related to the Government's criminal investigation of UBS's United States cross-border business, including in connection with any criminal investigation or prosecution based on information disclosed pursuant to paragraph 9 above and as set forth in the Account Disclosure Letter.

11. UBS agrees that its continuing cooperation with the Government's investigation as set forth in paragraph 10 above shall encompass the obligations as set forth in the Account Disclosure Letter and shall further include, but not be limited to, the following:

(a). Completely and truthfully disclosing all information in its possession to the

Government about which the Government may inquire in connection with its investigation of UBS's United States cross-border business;

(b). Assembling, organizing, and providing, in a responsive and prompt fashion, and, upon request, expedited fashion, all documents, records, information, and other evidence in UBS's possession, custody, or control as may be requested by the Government related to its United States cross-border business and the Disclosed Accounts;

(c). Providing, at its own expense, fair and accurate translations of any foreign language documents produced by UBS to the Government pursuant to paragraph 9 of this Agreement as may be requested by the Government, and;

(d). Providing testimony or information, including testimony and information necessary to identify or establish the original location, authenticity, or other basis for admission into evidence of documents or physical evidence in any criminal or other proceeding as requested by the Government, including information and testimony concerning the Government's investigation, including but not limited to the conduct set forth in the Statement of Facts.

Nothing in this Agreement, however, shall require UBS to waive any of the protections of the attorney-client privilege, attorney work-product doctrine or any other applicable privilege.

12. UBS agrees that its obligations to cooperate under the terms set forth in this Agreement (and further delineated in the Account Disclosure Letter and subject to the limitations set forth in paragraph 13 of this Agreement) will continue even after the dismissal of the Information, and UBS will continue to fulfill the cooperation obligations set forth in this Agreement and the Account Disclosure Letter in connection with any investigation, criminal prosecution, or civil proceeding brought by the Government arising out of the conduct set forth in the Information and the Statement of Facts and

relating in any way to the Government's investigation of UBS's United States cross-border business.

13. On July 1, 2008, the United States District Court for the Southern District of Florida granted the IRS authority to issue and serve upon UBS a "John Doe" summons seeking records for United States persons who maintained accounts with UBS in Switzerland, which records are located in Switzerland. The United States will be seeking enforcement of this summons, but shall not deem UBS's interposing of any defenses, objections, arguments or the filing of any motions in a proceeding to enforce this summons, and/or its exhausting of all available appellate remedies relative to the enforcement of this summons to be a violation or breach of any provision of this Agreement. Nothing in this Agreement shall constitute an admission by the Government that Swiss law is a valid defense to compliance with the "John Doe" summons and nothing in this Agreement will prevent UBS from arguing that Swiss law is a bar to compliance with the "John Doe" summons. If UBS fails to comply with an enforcement order after all its appellate remedies have been fully and finally exhausted, the Government may, in its sole discretion, after consultation with the IRS and the Board of Governors of the Federal Reserve System, deem this to be a material violation of this Agreement under paragraphs 16 and 18 below. In addition, nothing in this Agreement shall limit the rights, arguments, defenses, and/or objections of either the United States or UBS in any proceeding to enforce the "John Doe" summons referenced herein.

Deferral of Prosecution

14. In consideration of UBS's entry into this Agreement and its commitment to: (a) accept and acknowledge responsibility for its conduct; (b) cooperate with the Government; (c) make payments specified in this Agreement; (d) comply with United States federal criminal laws and any guidance, directive or order issued by the Board of Governors of the Federal Reserve System, which is UBS's primary United States bank regulator; and (e) otherwise comply with all of the terms of this Agreement,

the Government shall recommend to the Court that prosecution of UBS on the Information be deferred for the period of the longer of eighteen (18) months from the date of the signing of this Agreement, the resolution of the "John Doe" Summons enforcement action, or the completion of UBS's Exit Program, subject to the provisions of paragraph 18 below. UBS shall expressly waive indictment and all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the Southern District of Florida for the period during which this Agreement is in effect.

15. The Government agrees that if UBS is in compliance with all of its obligations under this Agreement, the Government shall: (i) within 30 days of the expiration of the 18 month period of deferral (including any extension thereof) hereunder, seek dismissal with prejudice as to UBS of the Information filed against UBS pursuant to paragraphs 1 and 14 above, and (ii) during the term of this Agreement and thereafter, refrain from pursuing any additional charges against or investigation of UBS or any of its past, present, or future subsidiaries or affiliates arising out of, in connection with, or otherwise relating to the conduct of its United States cross-border business and its compliance with the QI Agreement, as admitted to or disclosed by UBS. In addition, so long as UBS is in compliance with all of its obligations under this Agreement, both during and at the expiration of the period of deferral (including any extensions thereof), the Government shall not (i) seek to interfere with, revoke, or limit any licenses, approvals or other authorizations to conduct broker-dealer, investment adviser, banking, investment banking or other activities in the United States of UBS, or (ii) issue a grand jury subpoena to seek to obtain the names of United States clients with accounts booked at UBS. This Agreement does not provide any protection against prosecution for any crimes except as set forth above and does not apply to

any individual or entity other than UBS as set forth herein. UBS and the Government understand that the Agreement to defer prosecution of UBS must be approved by the Court, in accordance with 18 U.S.C. § 3161(h)(2). Should the Court decline to approve the Agreement to defer prosecution for any reason, both the Government and UBS are released from any obligation imposed upon them by this Agreement, and this Agreement shall be null and void.

16. It is further understood that should the Government in its sole discretion determine that UBS has, after the date of the execution of this Agreement: (a) given false, incomplete, or misleading information; (b) violated any United States federal criminal law or failed to comply with any guidance, directive or order issued by the Board of Governors of the Federal Reserve System (excluding any violations of federal criminal law relating to matters already under investigation or review by the Government or any other federal department, agency, or authority); or, (c) otherwise committed a material violation of this Agreement, UBS shall, in the Government's sole discretion, thereafter be subject to prosecution for any federal criminal violations of which the Government has knowledge, including but not limited to a prosecution based on the Information of the conduct described therein. Any prosecution may be premised on any information provided by or on behalf of UBS to the Government at any time. Any prosecutions that are not time-barred by the applicable statute of limitations on the date of this Agreement may be commenced against UBS within the applicable period governing the statute of limitations. In addition, UBS agrees to toll, and exclude from any calculation of time, the running of the federal criminal statute of limitations for the duration of this Agreement. By this Agreement, UBS expressly intends to and hereby does waive its rights in the foregoing respects, including any right to make claims premised on the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay. These waivers are knowing, voluntary, and in

express reliance on the advice of UBS's counsel.

17. It is further agreed that in the event that the Government, in its sole discretion, determines that UBS has committed a material violation of this Agreement, including UBS's failure to meet its obligations under this Agreement: (a) all statements set forth in the Statement of Facts, as well as any testimony given by UBS or by any employee of UBS before a grand jury, or otherwise, whether before or after the date of this Agreement, or any leads from statements or testimony, shall be admissible in evidence in any and all criminal proceedings hereinafter brought by the Government against UBS, and; (b) UBS shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by or on behalf of UBS before or after the date of this Agreement, or any leads derived therefrom, should be suppressed or otherwise excluded from evidence. It is the intent of this Agreement to waive any and all rights in the foregoing respects.

18. UBS agrees that, in the event that the Government determines, in its sole discretion, during the period of deferral of prosecution described in paragraph 14 above (or any extension thereof) that UBS has committed a material violation of this Agreement, a one-year extension of the period of deferral of prosecution may be imposed in the sole discretion of the Government, and, in the event of continuing or additional violations, additional one-year extensions as appropriate; provided, however, that in no event shall the total term of the deferral of prosecution period of this Agreement exceed four (4) years.

19. UBS agrees that it shall not, through its attorneys, agents or employees, make any statement, in litigation or otherwise, contradicting the Statement of Facts or UBS's representations set forth in this Agreement; provided, however, that the restrictions set forth in this paragraph are not

intended to and shall not apply to any current or former UBS employee, or any other individual or entity, in the course of any criminal, regulatory, or civil case, investigation, or other proceeding initiated by the Government or any other governmental agency or authority against an individual or entity, whether in the United States or any other jurisdiction, as long as the individual or entity is not authorized to speak on behalf of UBS. Any contradictory statement by UBS shall constitute a breach of this Agreement and UBS thereafter shall be subject to prosecution as specified in paragraph 16 above, or the deferral of prosecution period shall be extended pursuant to paragraph 18 above. The decision as to whether any contradictory statement will be imputed to UBS for the purpose of determining whether UBS has breached this Agreement shall be at the sole discretion of the Government. Upon the Government's reaching a determination that a contradictory statement has been made by UBS, the Government shall promptly notify UBS in writing of the contradictory statement, and UBS may avoid a breach of this Agreement by repudiating the statement both to the recipient of the statement and to the Government within 72 hours after receipt of notice by the Government. UBS consents to the public release by the Government, in its sole discretion, of any repudiation.

20. The Government agrees that nothing in this Agreement shall in any way prevent UBS from taking good faith positions in litigation involving private parties, including asserting defenses and affirmative defenses.

External Auditor

21. UBS agrees to retain, at its own expense, an independent accounting or other appropriate firm as described below (hereinafter the "Auditor"). The selection of the Auditor shall be subject to the consent of the Government.

22. The Auditor will conduct procedures testing, as agreed upon by the Government and

UBS, and issue reports (on the eighth month and sixteenth month anniversaries of the Approval Date) of UBS's compliance with its obligations under this Agreement as to the progress of and compliance with respect to the Exit Program described in paragraph 5 above and the implementation of an effective program of internal controls with respect to compliance with the QI Agreement as set forth in paragraph 6 above. The Auditor shall submit reports of its findings and any recommendations to the Government and the Audit Committee. The Government acknowledges that the audit process and any reports must comply with Swiss law. UBS agrees to adopt reasonable recommendations to further enhance QI Agreement-related compliance that may be set forth in the Auditor's reports.

The Government's Discretion

23. UBS agrees that it is within the Government's sole discretion to choose, in the event of a violation of this Agreement, the remedies contained in paragraph16, or instead choose to extend the period of deferral of prosecution pursuant to paragraph 18. UBS understands and agrees that the exercise of the Government's discretion under this Agreement is not reviewable by any court. Should the Government determine that UBS has committed a material violation of this Agreement, the Government shall provide prompt written notice to UBS addressed to its Group General Counsel, Markus Diethelm, Esq., UBS AG, Bahnhofstrasse 45, CH-8098, Zurich, Switzerland, and to UBS's counsel, John Savarese and Ralph Levene of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York, 10019, or to any successor UBS may designate, of the alleged material violation and provide UBS with a three-week period from the date of receipt of notice in which to make a presentation to the Government, including upon request by UBS the Assistant Attorney General in charge of the Tax Division of the Department of Justice, to demonstrate that no material violation has occurred, or, to the extent applicable, that the material violation should not result in the exercise of those remedies or in an

extension of the deferral of prosecution period. The parties to this Agreement expressly understand and agree that the exercise of discretion by the Government under this paragraph is not subject to further review in any court or other tribunal outside of the United States Department of Justice.

Limits on This Agreement

24. It is understood that this Agreement is binding on UBS and the Government, but specifically does not bind any other Federal agencies, any state or local law enforcement authorities, any licensing authorities, or any regulatory authorities. However, if requested by UBS or its attorneys, the Government will bring to the attention of any agencies or authorities, this Agreement, the cooperation of UBS, and its compliance with its obligations under this Agreement, and any remedial steps specified in or implemented pursuant to this Agreement.

Public Filing and Miscellaneous Provisions

25. UBS and the Government agree that, upon filing of the Information in accordance with paragraph 1 above, this Agreement (including the Statement of Facts and the other attachments hereto, with the exception of Exhibit E, filed under seal) shall be filed publicly in the proceedings in the United States District Court for the Southern District of Florida.

26. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same document.

27. This Agreement sets forth all of the terms of the Deferred Prosecution Agreement between UBS and the Government. No modifications or additions to this Agreement, in whole or in part, shall be valid unless they are set forth in writing and signed by the Government, UBS's attorneys, and a duly authorized representative of UBS.

Respectfully submitted,

JOHN A. DICICCO, ESQ.
Acting Assistant Attorney General
United States Department of Justice
Tax Division

KEVIN M. DOWNING, ESQ.
Senior Litigation Counsel
MICHAEL P. BEN'ARY, ESQ.
Trial Attorney

R. ALEXANDER ACOSTA, ESQ.
United States Attorney
Southern District of Florida

JEFFREY A. NEIMAN, ESQ.
Assistant United States Attorney

UBS AG
Defendant

By: _____
MARKUS DIETHELM, ESQ.
Group General Counsel

WACHTELL, LIPTON, ROSEN, & KATZ

By: _____
JOHN F. SAVARESE, ESQ.
Counsel to UBS AG

By: _____
RALPH M. LEVENE, ESQ.
Counsel to UBS AG

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Jeffrey A. Neiman, Esq.
Assistant United States Attorney

UBS AG

By: _____
Markus Diethelm, Esq.
Group General Counsel

Wachtell, Lipton, Rosen & Katz
Counsel to UBS AG

By: _____
John H. Savarese

By: _____
Ralph M. Levene

EXHIBIT A

EXHIBIT A TO DEFERRED
PROSECUTION AGREEMENT

RESOLUTION OF THE BOARD OF DIRECTORS OF UBS AG

At a duly held meeting held on February 11, 2009, the Board of Directors of UBS AG ("UBS" or the "Company") resolved as follows:

WHEREAS, the Company has been engaged in discussions with the United States Department of Justice and the United States Attorney's Office for the Southern District of Florida (collectively, the "Office") regarding certain issues arising out of, in connection with, or otherwise relating to the conduct of its U.S. cross-border business;

WHEREAS, in order to resolve such discussions, it is proposed that the Company enter into a certain agreement with the Office; and

WHEREAS, the Company's Group General Counsel and its U.S. outside counsel have advised the Board of Directors of the Company's rights, possible defenses, and the consequences of entering into such agreement with the Office;

This Board hereby **RESOLVES** that:

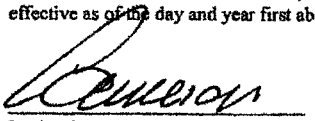
1. The Company (i) consent to the filing in the United State District Court for the Southern District of Florida of an Information charging the Company with one count of participating in a conspiracy in violation of 18 U.S.C. § 371 to defraud the United States and its agency the Internal Revenue Service in connection with the conduct of its U.S. cross-border business as set forth more fully in the Information, and (ii) that the Company agree to pay an amount no greater than $780 million in connection with the execution of the agreement described in paragraph 2 below and to execute the ongoing obligations described therein;

2. The Group General Counsel, or his delegate, hereby is authorized on behalf of the Company to execute the deferred prosecution agreement substantially in such form as reviewed by this Board of Directors at this meeting with such changes as the Group General Counsel, or his delegate, may approve;

3. The Board hereby authorizes, empowers and directs the Group General Counsel of the Company, or his delegate, to take any and all actions as may be necessary or appropriate, and to approve and execute the forms, terms or provisions of any agreement or other documents as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions, including to make any appropriate changes to the Company's divisional or corporate center regulations; and

4. All of the actions of the Group General Counsel of the Company, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as actions on behalf of the Company.

IN WITNESS WHEREOF, the Board of Directors of the Company has executed this Resolution effective as of the day and year first above written.



Luzius Cameron
Company Secretary

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

09-60023 CR-MARRA ZHOPKINS

CASE NO.
18 U.S.C. § 371

UNITED STATES OF AMERICA

vs.

UBS AG,

Defendant.

_____/

INFORMATION

The United States charges that:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

1. The Internal Revenue Service ("IRS") was an agency of the United States Department of Treasury responsible for administering and enforcing the tax laws of the United States and collecting the taxes owed to the Treasury of the United States.

2. UBS AG ("UBS") was Switzerland's largest bank. UBS owned and operated banks, investment banks, and stock brokerage businesses throughout the world, also operating in the Southern District of Florida and elsewhere in the United States. Because of UBS's ownership of banks and investment brokerages in the United States, United States tax laws applied to UBS and to its United States clients.

3. UBS operated a cross-border banking business with United States clients ("United States cross-border business"). The United States cross-border business employed approximately

60 private bankers and had offices in Geneva, Zurich, and Lugano, Switzerland. These private bankers frequently traveled to the United States to meet with and to conduct business with their United States clients.

4. The United States cross-border business provided private banking services to approximately 20,000 United States clients with assets worth approximately $20 billion. Approximately 17,000 of the 20,000 cross-border clients concealed their identities and the existence of their UBS accounts from the IRS. Many of these clients willfully failed to pay tax to the IRS on income earned on their UBS accounts. UBS assisted these United States clients conceal the income earned on UBS accounts by failing to report IRS Form 1099 information to the IRS. From 2002 through 2007, the United States cross-border business generated approximately $200 million a year in revenue for UBS.

The Conspirators

5. Some UBS executives ("Executives") are unindicted co-conspirators not named as defendants herein. These Executives occupied positions at the highest levels of management within UBS, including positions on the committees that oversaw legal, compliance, tax, risk, and regulatory issues related to the United States cross-border business.

6. Some UBS employees who managed the United States cross-border business ("Managers") are unindicted co-conspirators not named as defendants herein. These Managers were responsible for overseeing the United States cross-border business operations. These Managers were responsible for regulatory and compliance issues, as well as issues related to bankers' incentives and compensation. These Managers were also responsible for traveling to the United States to meet with UBS's wealthiest United States clients. These Managers reported directly to Executives.

7. UBS employees who managed the bankers servicing the United States cross-border business ("Desk Heads") are unindicted co-conspirators not named as defendants herein. These Desk Heads exercised direct management over the day-to-day operations of the business. In addition to having management duties, Desk Heads traveled to the United States to conduct unlicensed banking and investment advisory activity for UBS's United States clients. These Desk Heads reported directly to Managers.

8. UBS private bankers who serviced the United States clients ("Bankers") are unindicted co-conspirators not named as defendants herein. These Bankers were not licensed to engage in banking and investment advisory activity in the United States. However, these Bankers routinely traveled to the United States to conduct unlicensed banking and investment advisory activity for UBS's United States clients. While in Switzerland, these Bankers routinely communicated with their clients in the United States about banking and investment advice. These Bankers reported directly to the Desk Heads. UBS Executives and Managers authorized and encouraged through incentives Bankers' activities with respect to their United States clients.

9. Some of UBS's 20,000 United States clients are unindicted co-conspirators not named as defendants herein. These United States clients knowingly concealed from the United States government, including the IRS, approximately $20 billion in assets held at UBS and willfully evaded United States income taxes owed on the income earned on these secret UBS accounts. United States clients were required to report and pay taxes to the IRS on income they earned throughout the world, including income earned from the UBS account.

COUNT ONE
(18 U.S.C. § 371)

10. The allegations contained in paragraphs 1 through 10 of the Introduction are re-alleged and incorporated herein.

11. From in or a time unknown to the Grand Jury and continuing up to and including the date of the return of this Indictment, in the Southern District of Florida, and elsewhere, the defendant,

UBS AG,

together with its co-conspirators, did unlawfully, willfully and knowingly, combine, conspire, confederate and agree to defraud the United States and an agency thereof, to wit, the Internal Revenue Service of the United States Department of Treasury in the ascertainment, computation, assessment and collection of federal income taxes.

OBJECT OF THE CONSPIRACY

12. It was a part and an object of the conspiracy that defendant UBS and its co-conspirators would and did increase the profits of UBS by providing unlicensed and unregistered banking services and investment advice in the United States and other activities intended to conceal from the IRS the identities of UBS's United States clients, who willfully evaded their income tax obligations by, among other things, filing false income tax returns and failing to disclose the existence of their UBS account to the IRS.

MEANS AND METHODS OF THE CONSPIRACY

Among the means and methods by which defendant UBS and its co-conspirators would and did carry out the conspiracy were the following:

13. It was part of the conspiracy that defendant UBS, Executives, Managers, Desk Heads, and Bankers utilized nominee entities, encrypted laptops, numbered accounts, and other counter surveillance techniques to conceal the identities and offshore assets of United States clients from authorities in the United States.

14. It was part of the conspiracy that UBS expanded their business beyond the borders of Switzerland by purchasing a large United States stock brokerage firm. Executives at UBS voluntarily entered into an agreement, known as the Qualified Intermediary Agreement ("QI Agreement") with the IRS that required UBS to report to the United States income and other identifying information for its United States clients who held an interest in United States securities in an account at UBS. Further, this agreement required UBS to withhold taxes from United States clients who directed investment activities in foreign securities from the United States.

15. It was part of the conspiracy that UBS, Executives, and Managers entered into the QI Agreement and represented to the IRS that UBS was in compliance with the terms of the QI Agreement, while knowing that the United States cross-border business, was not conducted in a manner which complied with the terms of the QI Agreement.

16. It was part of the conspiracy that UBS, Executives, and Managers mandated that Desk Heads and Bankers increase the United States cross-border business, knowing that this mandate would cause Bankers and Desk Heads to have increased unlicensed contacts with the United States, in violation of United States law and the QI Agreement.

17. It was further part of the conspiracy that defendant UBS, Executives, and Managers, who referred to the United States cross-border business as "toxic waste" because they knew that it was not being conducted in a manner that complied with United States law and the QI Agreement, put in place monetary incentives that rewarded Desk Heads and Bankers who increased the United States cross-border business.

18. It was further part of the conspiracy that Managers, Desk Heads, and Bankers solicited new investments in the United States cross-border business by marketing UBS secrecy to United States clients interested in attempting to evade United States income taxes, in particular by claiming that Swiss bank secrecy was impenetrable.

19. It was further part of the conspiracy that Managers, Desk Heads, and Bankers provided unlicensed and unregistered banking services and investment advice to United States clients in person while on travel to the United States and by mailings, email, and telephone calls to and from the United States.

20. It was further part of the conspiracy that, when approached about the continuous unregistered and unlicensed contacts with the United States associated with the United States cross-border business, defendant UBS and Executives would not implement effective restrictions on the United States cross-border business because the business was too profitable for UBS.

21. It was further part of the conspiracy that UBS, Managers, and Bankers assisted United States clients conceal their beneficial ownership in UBS accounts from the IRS by assisting United States clients create nominee offshore structures and by transferring assets of United States clients into UBS accounts in the name of the nominee offshore structure.

22. It was further part of the conspiracy that Managers, Desk Heads, and Bankers assisted

United States clients in preparing IRS Forms W-8BEN that falsely and fraudulently stated that nominee offshore structures, and not the United States clients, were the beneficial owners of offshore bank and financial accounts maintained in foreign countries, including accounts in Switzerland at UBS.

23. It was further part of the conspiracy that some United States clients prepared and filed with the IRS income tax returns that falsely and fraudulently omitted income earned on their undeclared UBS account and that falsely and fraudulently reported that United States citizens did not have an interest in, or a signature or other authority over, financial accounts located in a foreign country.

24. It was further part of the conspiracy that the United States clients failed to file with the Department of Treasury a Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1, which would have disclosed the existence of and their interest in, or signature or other authority over, a financial account located in a foreign country.

OVERT ACTS

In furtherance of the conspiracy and to achieve the object and purpose thereof, at least one of the co-conspirators committed at least one of the following overt acts, among others, in the Southern District of Florida and elsewhere:

25. On or about July 6, 2000, a Manager authorized Bankers to refer United States clients to outside lawyers and accountants to create offshore structures to conceal from the IRS United States clients' UBS accounts, while knowing that creating these structures constituted helping the United States clients commit tax evasion.

26. On or about July 14, 2000, Managers changed the wording on UBS Document 61393,

Declaration for US Taxable Persons, from "I would like to avoid disclosure of my identity to the US IRS" to "I consent to the new tax regulations . . . ." after United States clients expressed fears that the form as originally drafted could be used as evidence against them for tax evasion.

27. On or about July 11, 2002, a Manager and others instructed Bankers to tell United States clients who were contemplating transferring their assets to another offshore bank that UBS has the largest number of United States clients among all banks outside the United States, creates jobs in the United States, has better lobbying possibilities in the United States than any other foreign bank and would not be pressured by United States authorities to disclose the clients' identities.

28. On or about September 19, 2002, Executives on UBS's executive board knowingly failed to disclose to the IRS deficiencies in implementing UBS's requirements to report and withhold taxes for clients of the United States cross-border business that were discovered after the completion of an internal audit.

29. On or about September 26, 2002, a Desk Head instructed Bankers that if they have unauthorized contact with United States clients in the United States, that the Bankers should not report the contact in UBS's internal computer system.

30. In or about December 2002, Executives authorized Managers, to institute a temporary five month travel ban to the United States. The ban coincided with an IRS initiative relating to identifying holders of offshore credit cards.

31. On or about January 22, 2003, after being advised by outside lawyers to take immediate action in order to build a defense against a possible future criminal case brought against UBS, a Manager instructed another Manager to limit written communications relating to offshore structures created for United States clients and instructed that Manager to begin issuing Form 1099

information to clients, but not to the IRS, for certain UBS accounts where UBS officials served as a manager for the offshore structures.

32. On or about January 24, 2003, Managers issued a form letter to United States clients reminding them that since at least 1939 UBS has been successful in concealing account holder identities from United States authorities and that even after UBS's presence in the United States recently increased after the purchase of a large United States brokerage firm, UBS was still dedicated to the protection of their identities.

33. On or about July 9, 2004, UBS represented to the IRS that its United States based operations had failed to provide Form 1099 information to the IRS, failed to withhold the appropriate tax when required to do so, and failed to properly document the owners of certain accounts, but failed to inform the IRS that the United States cross-border business continued to fail to provide Form 1099 information to the IRS, continued to fail to withhold the appropriate tax when required to do so, and continued to fail to properly document the owners of certain accounts.

34. On or about August 17, 2004, Managers organized a meeting in Switzerland with outside lawyers and accountants to discuss the creation of structures and other vehicles for clients who wanted to conceal their UBS accounts and income derived therefrom tax authorities in the United States and Canada.

35. In or about September 2004, Desk Heads and Bankers received training in Switzerland on how to avoid detection by authorities when traveling in the United States on UBS business.

36. During calendar year 2004, approximately 32 Bankers traveled to the United States and met with United States clients approximately 3,800 times to provide unlicensed and unregistered

banking services and investment advice relating to the clients' UBS account.

37. On or about April 15, 2005, a United States client identified as I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2004 tax year, listing an address in Lighthouse Point, Florida, that fraudulently omitted income earned from offshore assets and falsely represented that I.O. did not have an interest in, and signature and other authority over, financial accounts located in a foreign country.

38. On or about April 25, 2005, Executives instructed Managers, Desk Heads, and Bankers to grow the United States cross-border business.

39. In or about early December 2005, Desk Heads and Bankers solicited new business from existing and prospective United States clients at Art Basel Miami Beach in Miami Beach, Florida.

40. On or about March 31, 2006, Executives enacted restrictions that would have "little" or "some impact" on the profitability of the United States cross-border business.

41. In or about August 2006, Executives refused to approve the recommendations of Managers to wind down, sell, or spin off the United States cross-border business, as too costly and requiring public disclosures that would harm UBS.

42. On or about September 26, 2006, Desk Heads and Bankers were trained at UBS on how to conduct business discreetly by using mail that would not show UBS's name and address, by changing hotels while traveling, and by using encrypted laptop computers when traveling to the United States on UBS business and when meeting with United States clients.

All in violation of Title 18, United States Code, Section 371.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

KEVIN M. DOWNING
MICHAEL P. BEN'ARY
TRIAL ATTORNEYS

JEFFREY A. NEIMAN
ASSISTANT U.S. ATTORNEY

EXHIBIT C

EXHIBIT C TO DEFERRED PROSECUTION AGREEMENT

STATEMENT OF FACTS

1. UBS AG, a corporation organized under the laws of Switzerland ("UBS"), directly and through its subsidiaries, operates a global financial services business. As one of the biggest banks in Switzerland and largest wealth managers in the world, UBS provides banking, wealth management, asset management and investment banking services, among other services, around the globe, including through branches located in the United States (including the Southern District of Florida).

2. Effective January 1, 2001, UBS entered into a Qualified Intermediary Agreement (the "QI Agreement") with the Internal Revenue Service ("IRS"). The Qualified Intermediary ("QI") regime provides a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution that acts as a QI with respect to customer accounts held by non-U.S. persons and by U.S. persons. The QI Agreement is designed to help ensure that non-U.S. persons are subject to the proper U.S. withholding tax rates and that U.S. persons are properly paying U.S. tax, in each case, with respect to U.S. securities held in an account with the QI. QI agreements were subject to a "documentation transition period" announced by the IRS in Notice 2001-4 (Jan. 8, 2001) that gave QIs until the end of 2002 to achieve "substantial compliance" with the provisions of the QI Agreement. The QI Agreement expressly recognizes that a non-U.S. financial institution such as UBS may be prohibited by foreign law, such as Swiss law, from disclosing an account holder's name or other identifying information. In general, a QI subject to such foreign-law restrictions must request that its U.S. clients either (a) grant the QI authority to disclose the client's identity or disclose himself by mandating the QI to provide an IRS Form W-9 completed by the account holder, or (b) grant the QI authority to sell all U.S. securities of the account holder (in the case of accounts opened before January 1, 2001) or to exclude all U.S. securities from the account (in the case of accounts opened on or after January 1, 2001). Following the effective date of the QI Agreement, a sale of U.S. securities, if any, held by a U.S. person who chose not to provide a QI with an IRS Form W-9 was subject to tax information reporting on an anonymous basis and backup withholding.

3. For some time, UBS has operated a U.S. cross-border business through which its private bankers have provided cross-border securities-related and investment advisory services to U.S.-resident private clients who maintained accounts at UBS in Switzerland and other locations outside the United States. UBS was not registered as a broker-dealer or an investment adviser pursuant to the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940, and the private bankers and managers engaged in this U.S. cross-border business were not affiliated with a registered broker-dealer or investment adviser. The Securities Exchange Act and Investment Advisers Act restricted the activities that UBS (and the private bankers and managers engaged in the U.S. cross-border business), absent

registration, could engage in with such U.S. private clients either while in the United States or by using U.S. jurisdictional means such as telephone, fax, mail or e-mail, including the provision of investment advice and the soliciting of securities orders. During the relevant time period from 2001 through 2007, UBS private bankers in this U.S. cross-border business traveled to the United States to meet with certain U.S. private clients, and communicated by telephone, fax, mail and/or e-mail with such U.S. private clients while those clients were in the United States. Certain of these U.S. clients had chosen not to provide UBS with an IRS Form W-9 with respect to their UBS accounts and thereby concealed such accounts from the IRS.

4.A. Beginning in 2000 and continuing until 2007, UBS, through certain private bankers and managers in the U.S. cross-border business, participated in a scheme to defraud the United States and its agency, the IRS, by actively assisting or otherwise facilitating a number of U.S. individual taxpayers in establishing accounts at UBS in a manner designed to conceal the U.S. taxpayers' ownership or beneficial interest in said accounts. In this regard, said private bankers and managers facilitated the creation of such accounts in the names of offshore companies, allowing such U.S. taxpayers to evade reporting requirements and to trade in securities as well as other financial transactions (including making loans for the benefit of, or other asset transfers directed by, the U.S. taxpayers, and using credit or debit cards linked to the offshore company accounts).

4.B. In connection with the establishment of such offshore company accounts, UBS private bankers and managers accepted and included in UBS's account records IRS Forms W-8BEN (or UBS's substitute forms) provided by the directors of the offshore companies which represented under penalty of perjury that such companies were the beneficial owners, for U.S. federal income tax purposes, of the assets in the UBS accounts. In certain cases, the IRS Forms W-8BEN (or UBS's substitute forms) were false or misleading in that the U.S. taxpayer who owned the offshore company actually directed and controlled the management and disposition of the assets in the company accounts and/or otherwise functioned as the beneficial owner of such assets in disregard of the formalities of the purported corporate ownership.

4.C. Additionally, said private bankers and managers would actively assist or otherwise facilitate certain undeclared U.S. taxpayers, who such private bankers and managers knew or should have known were evading United States taxes, by meeting with such clients in the United States and communicating with them via U.S. jurisdictional means on a regular and recurring basis with respect to their UBS undeclared accounts. This enabled the U.S. clients to conceal from the IRS the active trading of securities held in such accounts and/or the making of payments and/or asset transfers to or from such accounts. Certain UBS executives and managers who knew of the conduct described in this paragraph continued to operate and expand the U.S. cross-border business because of its profitability. It was not until August 2007 that executives and managers made a decision to wind down the U.S. cross-border business. Executives and managers delayed this decision due to concerns that it would be costly, that it was not likely a third party buyer of the business could be found, and it could damage UBS's business reputation.

5. In or about 2004, the UBS Wealth Management International business changed its compensation approach to take account of a number of factors, including net new money, return on assets, net revenue, direct costs and assets under management, with weightings varying depending on the particular geographic market involved. Thereafter, the managers of the U.S. cross-border business implemented this new compensation structure in a way that provided incentives for U.S. cross-border private bankers to expand the size of the U.S. cross-border business. This encouraged those private bankers to have increased contacts in the United States with U.S.-resident private clients via travel to the United States and contact with U.S. clients via telephone, fax, mail and/or e-mail.

The U.S. Cross-Border Business

6. U.S. private clients often visited their private bankers in Switzerland and otherwise communicated with their private bankers from outside the United States. However, during the relevant period, Swiss-based UBS private bankers also traveled to the United States to meet with certain of their U.S. private clients, including U.S. persons who were beneficial owners of offshore companies that maintained accounts at UBS. This U.S. cross-border business was serviced primarily from service desks located in Zurich, Geneva, and Lugano, which employed about 45 to 60 Swiss-based private bankers or client advisors who specialized in servicing U.S. clients. These private bankers traveled to the United States an average of two to three times per year, in trips that generally varied in duration from one to three weeks, and generally tried to meet with about three to five clients per day. An internal UBS document estimated that U.S. cross-border business private bankers had made approximately 3,800 visits with clients in the United States during 2004. In addition, while in Switzerland, these private bankers would communicate via telephone, fax, mail and/or e-mail with certain of their private clients in the United States about their account relationships, including on occasion to take securities transaction orders in respect of offshore company accounts. Private bankers in the U.S. cross-border business typically traveled to the United States with encrypted laptop computers to maintain client confidentiality and received training on how to avoid detection by U.S. authorities while traveling to the United States.

7. In response to concerns expressed in 2002 by some clients of the U.S. cross-border business regarding the effect of UBS's then-recent acquisition of U.S.-based brokerage firm PaineWebber on UBS's ability to keep client information confidential, UBS sought to reassure such clients that Swiss bank secrecy restrictions would continue to protect the confidentiality of their identities. Thus, on or about November 4, 2002, two managers in the U.S. cross-border business sent a form letter to U.S. clients of UBS, noting that UBS had been exposed to, and successfully challenged, attempts by U.S. authorities to assert jurisdiction over assets in accounts maintained abroad since it opened offices in the U.S. in 1939, and that the QI Agreement fully respected client confidentiality and thus UBS would be able to maintain the confidentiality of client information.

8. During the relevant period, UBS's U.S. cross-border business provided securities-related and investment advisory services to accounts of approximately 11,000 to approximately 14,000 U.S.-domiciled U.S. private clients who had chosen not to provide an IRS Form W-9 (or UBS's substitute form) to UBS or who were the underlying beneficial owners of

offshore companies that maintained accounts with UBS. The U.S. cross-border business generated approximately $120 million - $140 million in annual revenues for UBS and was relatively a very small part of UBS's global wealth management business: in 2007, for example, all of NAM (the business sector that included, among other businesses, the U.S. cross-border business) represented only approximately 0.3% of all client advisors; 0.7% of invested assets; 1.03% of clients; and 0.3% of net new money.

The QI Agreement

9. In 2000, UBS decided to apply to become a QI because operating as a QI would enable UBS to continue handling U.S. securities transactions for non-U.S. persons in accordance with the requirements of the QI Agreement at reduced U.S. withholding tax rates and to handle QI-compliant accounts for U.S. persons. Also in 2000, UBS began communicating with its U.S. clients about the requirements of the QI Agreement. On July 14, 2000, managers in the U.S. cross-border business, with the approval of UBS's QI Coordination Committee, which was made up of various groups, including the U.S. cross-border business and UBS's Group Tax, Legal, Compliance, Operations and Financial Planning departments, changed the wording on a UBS form letter that was sent to U.S. clients entitled "Declaration for US Taxable Persons" from "I would like to avoid disclosure of my identity to the US Internal Revenue Service under the new tax regulations" to "I am aware of the new tax regulations" after U.S. clients expressed concern that the form as originally drafted could be considered an admission of tax evasion by such U.S. clients.

10. In advance of the January 1, 2001 effective date of the QI Agreement, UBS undertook substantial implementation efforts designed to address its obligations under the QI Agreement, including through a global program to communicate the new QI requirements to all affected clients, new policies, procedures and IT systems, and training. As part of those QI compliance efforts, UBS obtained authorizations from U.S. clients holding U.S. securities to sell, or required sales by such U.S. clients, totaling approximately $530 million of U.S. securities prior to the January 1, 2001 effective date of the QI Agreement. As a result of these efforts, the vast majority of UBS's U.S. person client accounts no longer held U.S. securities by the effective date of the QI Agreement and had executed waivers agreeing not to invest in U.S. securities in the future.

The Offshore Company Scheme

11. Some U.S. clients, however, indicated that they wanted to continue to maintain their U.S. securities holdings and not provide UBS with an IRS Form W-9 (or UBS's substitute form), thereby concealing their U.S. securities holdings from the IRS. As part of its QI compliance efforts, UBS had issued written guidelines advising U.S. cross-border managers and private bankers not to actively assist U.S. taxpayers who may seek to establish offshore companies, and that any such companies should respect corporate formalities and not be operated as a sham, conduit or nominee entity. Internal UBS documents also noted that active assistance by private bankers to help U.S. private clients set up offshore companies to evade the U.S. securities investment restrictions in the QI Agreement might be viewed as actively helping such clients to engage in tax evasion. Notwithstanding those warnings, certain managers in the U.S. cross-border business thereafter authorized UBS private

bankers to refer those U.S. clients who did not wish to comply with the new requirements of the QI Agreement to certain outside lawyers and consultants, and did so with the understanding that these outside advisors would help such U.S. clients form offshore companies in order to enable such clients to evade the U.S. securities investment restrictions in the QI Agreement. Thus, rather than risk losing these clients, UBS, through such referrals to outside advisors made by certain private bankers and managers in the U.S. cross-border business, assisted such U.S. clients in creating and maintaining sham, nominee or conduit offshore companies in jurisdictions like Panama, Hong Kong, and the British Virgin Islands, that enabled such clients to conceal their investments in U.S. securities, and thereby evade UBS's obligation to provide tax information reporting on an anonymous basis and to backup withhold with respect to certain payments made to such accounts.

12. Also as part of the offshore company scheme, such offshore structures continued to be established after the January 1, 2001 effective date of the QI Agreement. For example, on August 17, 2004, certain managers in the U.S. cross-border business organized a meeting in Switzerland for certain UBS private bankers with outside lawyers and consultants to review options for the establishment of offshore entity structures in various tax-haven jurisdictions, including recommendations to U.S. clients who did not appear to declare income/capital gains to the IRS.

Inadequate Compliance Systems

13. During the period from 2000 through 2007, UBS adopted a series of compliance initiatives that were intended to improve compliance by the U.S. cross-border business with UBS policies, the QI Agreement and U.S. laws. For example, UBS adopted written policies regarding the proper handling of accounts for offshore companies beneficially owned by U.S. persons, including prohibitions on actively assisting undeclared U.S. private clients in setting up legal entity structures to evade QI Agreement restrictions against U.S. persons holding U.S. securities, and advisory guidelines which stated that offshore companies beneficially owned by U.S. persons should follow corporate formalities and should not be operated as sham, conduit or nominee entities. In addition, UBS adopted written policies designed to prevent UBS private bankers from providing securities-related and investment advisory services to U.S. private clients, including prohibitions on taking securities orders from or furnishing securities investment advice to U.S. clients, while those clients were in the United States, or by using U.S. jurisdictional means, as well as, among other things, instituting written internal guidelines, IT system changes, training, and centralizing the cross-border servicing of U.S. clients at desks in Zurich, Geneva and Lugano.

14. However, during the relevant time period, UBS did not develop and implement an effective system of supervisory and compliance controls over the private bankers in the U.S. cross-border business to prevent and detect violations of UBS policies regarding the proper handling of accounts for offshore companies beneficially owned by U.S. persons, and regarding restrictions on providing securities-related and investment advisory services to U.S. clients while those clients were in the United States or by using U.S. jurisdictional means. UBS failed to monitor and control the activities of certain private bankers and managers in the U.S. cross-border business, and, as a result, some private bankers and their managers came to believe that a certain degree of non-compliance with UBS policy was

acceptable in connection with operating the U.S. cross-border business. Also, despite the above-described policies prohibiting certain contacts with U.S. persons, UBS did not have an effective system to capture and record instances when private bankers in the U.S. cross-border business may have violated U.S. laws. As a result, UBS did not monitor such activity and thus was not able to determine whether or not such activity may have required tax information reporting and backup withholding for certain payments made to the accounts of such clients.

15. Following a March 2006 whistleblower letter by a former Geneva-based UBS private banker alleging that the actual practices of UBS private bankers ran contrary to an internal legal document posted on UBS's intranet that outlined what business practices were forbidden by UBS and further alleging that the actual practices were actively encouraged by managers in the U.S. cross-border business, UBS conducted a limited internal investigation of the U.S. cross-border business. That investigation did not examine or follow up on available evidence of private banker communications with U.S. clients and, as a result, it found only "isolated instances" of non-compliance. A thorough investigation would have uncovered violations of U.S. law as described in this statement of facts.

EXHIBIT D

EXHIBIT D TO DEFERRED
PROSECUTION AGREEMENT

INFORMATION LETTER REGARDING TERMINATION OF YOUR CURRENT BUSINESS RELATIONSHIP WITH UBS AG

Dear Client,

On 17 July 2008, UBS publicly announced that we will no longer provide cross-border services to U.S. domiciled private clients and to offshore trusts, foundations and non-operating corporations beneficially owned by a U.S. individual) through non-U.S. regulated entities, such as the UBS unit currently serving you. UBS is writing to you today to provide information on how this change affects you.

UBS unfortunately will no longer be able to continue to provide services to you through your current account relationship. Going forward, UBS will provide services to persons domiciled in the United States solely through our U.S.-regulated domestic U.S. business (UBS Wealth Management USA) and our other SEC-registered units such as UBS Swiss Financial Advisers AG ("UBS SFA") and UBS International Hong Kong Limited (UBS-I) with client assets booked in New York. We are thus providing you with notice to terminate your current banking relationship and all associated services and agreements with the master number [[NUMBER]] within 45 days from the date of this letter, pursuant to Article 13 of the General Terms and Conditions of your agreement with UBS AG.

UBS is fully committed to executing the complete exit from this business as expeditiously as possible and in an orderly and lawful manner. This exit will result in the termination of your current business relationship with the UBS unit currently serving you.

What you must do in connection with the closure of your account.

You must promptly instruct us to transfer the positions currently held in your account (or to liquidate such positions and transfer any resulting proceeds) to a financial institution that you designate. Further, you must promptly instruct us to transfer all contents, including cash, property and documents, held in your custody, safety deposit box or other safekeeping accounts. In this regard, a return notice form is enclosed. We kindly ask that you execute this form and return it to us within 45 days.

We suggest that you authorize a transfer to one of our SEC registered entities – UBS Wealth Management USA, UBS SFA or UBS-I -- each of which allows UBS to provide a broad array of quality advice and services to U.S. clients (in the US and elsewhere) consistent with our global standards. Please note that a transfer to any of these UBS units requires that you supply a properly executed U.S. Form W-9. "Request for Taxpayer Identification Number and Certification" [Note: Attach or enclose – W-9].

U.S. clients have responded very positively to the investment opportunities and service models that those units offer. UBS Wealth Management USA provides a complete set of domestic wealth management services to private clients through 480 branches throughout the United States and 8100 client advisors. UBS SFA is a Swiss-based investment adviser that offers investment programs, trained private bankers, and expertise in global investment diversification. UBS-I is a Hong Kong based investment adviser (with client assets booked in New York) that offers investment programs, trained private bankers, and expertise in global investment diversification.

What other considerations might apply in connection with the closure of your account.

UBS recommends that you consult with your U.S. tax advisor or tax preparer to determine any applicable U.S. tax consequences in connection with the closure of your existing UBS account, including whether you have any additional U.S. tax return filing or other disclosure obligations with respect to prior tax years or the closure of your account. In the event that you and your tax advisor identify any issues arising from prior tax years, UBS would like to inform you that the Internal Revenue Service (IRS) has a voluntary disclosure practice to encourage U.S. taxpayers to bring themselves voluntarily into full compliance with the U.S. tax laws, and, in exchange, the IRS may provide for substantial relief from otherwise applicable penalties and fines. [redacted]).

What are the consequences of not pursuing voluntary disclosure to address any issues arising from prior tax years in connection with the closure of your account.

You should be aware that, as publicly reported, the Department of Justice (DOJ) has an ongoing investigation of United States taxpayers using offshore accounts to evade U.S. taxes and defraud the IRS. As publicly reported, UBS is continuing to cooperate with the ongoing investigation. In addition, as publicly reported, the IRS has issued a civil "John Doe" summons to UBS seeking the identities of U.S. taxpayers who maintained accounts with UBS in Switzerland for which they did not supply UBS with an IRS Form W-9. We understand that, among other things, if the DOJ and IRS based on information obtained through these processes, or otherwise, were to initiate a civil examination or criminal investigation of a taxpayer who has not already pursued voluntary compliance, the advantages of the IRS voluntary disclosure practice will be unavailable.

Please be advised that, pursuant to Swiss law requirements, UBS will preserve all records of your account following termination for a period of ten years.

What will UBS do to help you in connection with the closure of your account.

UBS has assembled and trained a dedicated team of advisory personnel to fully support you in relation to the closing of your account(s). In order to assist clients with voluntary disclosure to the IRS, UBS will provide documentation necessary, including income statements and, upon request by an accredited tax advisor of your choice, capital gain and loss statements free of charge.

What will happen if you do not provide instructions within 45 days with respect to your account.

Please be advised that if your instructions are not received within 45 days of the date of this letter, UBS AG will initiate any steps deemed appropriate for the closure of and remittance of funds in your account. Such steps may include the liquidation of your assets, and sending a U.S. dollar-denominated check to you in the amount of the closing balance of your account, or the holding of such a check at UBS in Switzerland for you.

Should you have any questions, please do not hesitate to contact UBS AG at [[NUMBER]].

Sincerely,

Stephan Zimmermann
Chief Operating Officer Global WM&BB

EXHIBIT E

(Filed Separately Under Seal)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION, **100 F Street, N.E.** **Washington, D.C. 20549** **Plaintiff,** **v.** **UBS AG,** **Defendant.**	Civil Action No. Case: 1:09-cv-00316 Assigned To : Robertson, James Assign. Date : 2/18/2009 Description: General Civil

COMPLAINT

Plaintiff, Securities and Exchange Commission ("Commission") alleges as follows:

SUMMARY

1. From at least 1999 through 2008, defendant UBS AG ("UBS") acted as an unregistered broker-dealer and investment adviser to thousands of United States cross-border clients to facilitate the ability of those clients to maintain undisclosed accounts in Switzerland and other locations outside of the United States, which enabled those clients to avoid paying taxes related to those accounts. UBS used United States jurisdictional means to engage in a cross-border business of soliciting, establishing, and maintaining brokerage accounts, executing securities transactions, and providing investment advice for its United States cross-border clients. At all times, UBS was aware that it could provide these services to United States cross-border clients only through an entity registered with the Commission as a broker-dealer or investment adviser. UBS was not

Permanent Subcommittee on Investigations
EXHIBIT #4

so registered with the Commission. From 2001 through 2008, as a result of its provision of unregistered broker-dealer and investment advisory services to United States cross-border clients, UBS had ill-gotten gains of at least $380 million.

2. By acting as an unregistered broker-dealer and investment adviser, UBS violated Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78o(a)] and Section 203(a) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §80b-3(a)]. The Commission, accordingly, seeks a final judgment that (a) permanently enjoins UBS from violating Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)] and Section 203(a) of the Advisers Act [15 U.S.C. §80b-3(a)], (b) orders UBS to disgorge the ill-gotten gains that it received from its United States cross-border business, and (c) grants such other relief as the Court deems appropriate.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to Sections 21(d)(1) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(1) and 78aa] and Sections 209(d) and 214 of the Advisers Act [15 U.S.C. §§80b-9(d) and 80b-14]. Defendant UBS, directly or indirectly, made use of the mails or the means and instrumentalities of interstate commerce in connection with the acts, practices, and courses of business alleged in this Complaint.

4. Venue in this Court is proper under Section 27 of the Exchange Act [15 U.S.C. § 78aa] and Section 209(d) of the Advisers Act [15 U.S.C. §80b-9(d)].

DEFENDANT

5. Defendant UBS is a corporation organized under the laws of Switzerland with its headquarters located in Zurich and Basel, Switzerland. UBS, directly and through its subsidiaries, operates a global financial services business. Certain of UBS's

securities are listed on the New York Stock Exchange. UBS has certain subsidiaries that are registered with the Commission under the Exchange Act and the Advisers Act.

FACTS

6. Beginning no later than 1999, UBS operated a cross-border business through which it provided brokerage and investment advisory services to certain United States persons and offshore entities with United States citizens as beneficial owners ("United States cross-border clients") who maintained accounts at UBS in Switzerland and other locations outside of the United States. UBS provided the brokerage and investment advisory services largely through individuals known as clients advisers. At all relevant times, UBS held billions of dollars of assets for these United States cross-border clients.

7. These cross-border brokerage and investment advisory services that UBS provided required registration with the Commission pursuant to the Exchange Act and the Advisers Act. UBS, however, was not so registered with the Commission as a broker-dealer or investment adviser, and the client advisers servicing the United States cross-border clients were not associated with a registered broker-dealer or investment adviser. The Exchange Act and the Advisers Act restricted the activities that UBS (and the client advisers engaged in the United States cross-border business), absent registration, could engage in with such United States cross-border clients either while in the United States or by using United States jurisdictional means such as telephones, facsimiles, mail or e-mail, including the provision of investment advice and the soliciting of securities orders. At all relevant times, UBS was aware that the brokerage and advisory services it provided through its cross-border business to United States clients required that UBS register.

8. UBS operated its cross-border business with United States clients in part by having client advisers travel to the United States to meet with existing and prospective clients. The United States cross-border business was serviced primarily from service desks located in Zurich, Geneva, and Lugano, Switzerland which, during 2001 through 2007, employed approximately 45 to 60 Swiss-based client advisers who specialized in servicing United States cross-border clients. These client advisers traveled to the United States, on average, two to three times per year on trips that generally varied in duration from one to three weeks, during which the client advisers generally tried to meet with three to five clients per day. In many instances, client advisers attended exclusive events such as art shows, yachting events, and sporting events in the United States, often sponsored by UBS, for the purpose of soliciting and communicating with United States clients. When meeting with United States cross-border clients, the client advisers provided account information; marketing materials; recommendations as to the types of accounts that would be most appropriate for their clients; advice as to the merits of the various types of investments, including managed accounts; and on certain occasions, accepted and transmitted orders for securities transactions.

9. UBS also provided these services to United States cross-border clients by having the client advisers use other United States jurisdictional means such as telephones, facsimiles, mail, and e-mail.

10. As a result of providing its brokerage and investment advisory services, UBS received transaction-based and other compensation from its United States cross-border clients.

11. Because UBS provided these brokerage and investment advisory services without registering as a broker-dealer or investment adviser, the accounts that UBS maintained for United States cross-border clients were not subject to record-keeping, examination, and other requirements of the Exchange Act and the Advisers Act. Thus, the accounts, the beneficial owners of the accounts, and the activity in the accounts were undisclosed to United States regulators, which enabled those United States cross-border clients with undisclosed accounts to avoid the payment of taxes related to the assets in those accounts.

12. During the relevant period, UBS's United States cross-border business provided unregistered securities-related and investment advisory services to accounts of at least 11,000 to 14,000 United States cross-border clients. The United States cross-border business generated approximately $120 to $140 million in annual revenues for UBS.

13. Effective January 1, 2001, UBS entered into what was known as a Qualified Intermediary Agreement ("QI Agreement") with the Internal Revenue Service ("IRS"). The Qualified Intermediary regime imposed certain backup withholding and information reporting requirements on foreign financial institutions. As part of the process of implementing the QI Agreement, UBS, as a foreign financial institution, was required to ensure that its United States cross-border clients that were holding United States securities either disclosed their accounts to the IRS or disposed of their United States securities. As a result of its decision to enter into the QI Agreement, UBS had a heightened sensitivity to its exposure to the federal securities laws.

14. Because it wanted to continue to allow United States cross-border clients who wished to do so to maintain undisclosed accounts, UBS, through the use of United States jurisdictional means, sought authorization by United States cross-border clients to sell United States securities in their accounts even though UBS was aware that solicitation of securities transactions required registration under the federal securities laws. Prior to January 1, 2001, UBS effected sales of approximately $530 million of United States securities held by United States clients. UBS also continued to provide unregistered securities-related services with respect to foreign securities to United States cross-border clients.

15. UBS also advised United States cross-border clients to establish managed accounts under which foreign-based UBS portfolio managers would make virtually all investment decisions for the clients. UBS believed the maintenance of managed accounts would enable UBS to reduce the improper use of United States jurisdictional means. Managed accounts also were more profitable to UBS than were standard securities accounts. Ultimately, however, a significant percentage of United States cross-border clients were unwilling to establish managed accounts.

16. UBS, through its client advisers, used a variety of United States jurisdictional means to communicate with United States cross-border clients about their United States and foreign securities and about establishing managed accounts.

17. UBS took action to conceal its use of United States jurisdictional means to maintain its cross-border business with United States cross-border clients. Among other things, client advisers typically traveled to the United States with encrypted laptop computers and received training on how to avoid detection by United States authorities of

the client advisers' activities in the United States. UBS client advisers used the encrypted computers to provide account-related information to United States cross-border clients, to show marketing materials for securities products to those clients, and occasionally to communicate orders for securities transactions to UBS in Switzerland.

18. During the relevant time, UBS adopted written policies and provided training that purported to address the limits on the activities in which UBS client advisers could engage in servicing United States cross-border clients. UBS, however, did not have a meaningful method of monitoring for compliance with those limits. As a result, client advisers and their managers came to believe that a certain degree of non-compliance with UBS policy was acceptable in connection with operating the United States cross-border business. UBS was aware that client advisers continued to travel to the United States and to use other United States jurisdictional means to provide brokerage and investment advisory services to United States cross-border clients.

19. In a series of communications starting in 2005, while he was still employed at UBS, and culminating in a March 2006 whistleblower letter to UBS following his departure, a former Geneva-based UBS client adviser alleged that the actual practices of UBS client advisers ran contrary to an internal legal document posted on UBS's intranet that outlined what business practices were prohibited and further alleged that the actual practices were actively encouraged by managers in the United States cross-border business. UBS conducted a limited internal investigation of the United States cross-border business that found only "isolated instances" of non-compliance. The communications served again to highlight for UBS the legal challenges posed by the continuing operation of the United States cross-border business.

20. In February 2006, UBS undertook a review of measures that could improve the compliance in UBS's United States cross-border business with United States laws, including the federal securities laws. In the course of the review, UBS examined the impact that those measures would have on its United States cross-border business. Only those measures that were classified as having "No/little business impact" or "Some reduction in business" were adopted by UBS, whereas those measures that were classified as resulting in a "Virtual/real exit" from the United States cross-border business were not adopted at that time.

21. Beginning no later than April 2006, and continuing until August 2007, UBS conducted a review of strategic options for the United States cross-border business in light of the continued focus by UBS on the compliance risks faced by that business. The review identified various options for the United States cross-border business, including winding down, selling, or spinning off the business. Throughout the entire period of this review, UBS continued to use United States jurisdictional means to provide the unregistered brokerage and investment advisory services to United States cross-border clients.

22. In August 2007, UBS determined to seek a gradual elimination of the United States cross-border business, as opposed to ending the business immediately. In the fall of 2007, after initial contacts by the Department of Justice concerning UBS's cross-border business, UBS took steps to begin implementing its August 2007 decision to wind down the United States cross-border business, including by imposing a ban on client adviser travel to the United States and limiting new securities account openings for United States clients to UBS's registered entities. As late as November 2007, UBS

allowed certain client advisers to travel to the United States to meet with United States cross-border clients.

23. On July 17, 2008, in the course of a hearing by the United States Senate Permanent Subcommittee on Investigations, UBS announced that it would cease providing securities services to United States cross-border clients.

24. As a result of its provision of unregistered broker-dealer and investment advisory services to United States cross-border clients, as described above, UBS had ill-gotten gains of at least $380 million.

CLAIM ONE

Violation of Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)]

25. Paragraphs 1 through 24 of this Complaint are hereby restated and incorporated herein by reference.

26. Defendant UBS acted as a broker-dealer within the meaning of Sections 3(a)(4) and 3(a)(5) of the Exchange Act [15 U.S.C. §§78c(a)(4) and 78c(a)(5)] and, directly or indirectly, made use of the mails or means or instrumentality of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, securities (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) without being registered with the Commission in accordance with Section 15(b) of the Exchange Act [15 U.S.C. §78o(b)].

27. As set forth more fully above, Defendant UBS, while acting as an unregistered broker-dealer, among other things, solicited, established, and maintained brokerage accounts for United States cross-border clients; provided account information; executed securities transactions; and received transaction-based compensation.

28. By reason of the foregoing, Defendant UBS violated Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)].

CLAIM TWO

Violation of Section 203(a) of the Advisers Act [15 U.S.C. §80b-3(a)]

29. Paragraphs 1 through 24 of this Complaint are hereby restated and incorporated herein by reference.

30. Defendant UBS acted as an investment adviser within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)] and, directly or indirectly, made use of the mails or means or instrumentality of interstate commerce in connection with its business as an investment adviser without being registered and without the applicability of Section 203(b) of the Advisers Act [15 U.S.C. §80b-3(b)] or Section 203A of the Advisers Act [15 U.S.C. §80b-3a].

31. As set forth more fully above, UBS, while acting as an unregistered investment adviser for compensation, solicited managed accounts; provided investment advice; and managed greater than $25 million in assets for United States cross-border clients.

32. By reason of the foregoing, defendant UBS violated Section 203(a) of the Advisers Act [15 U.S.C. §80b-3(a)].

PRAYER FOR RELIEF

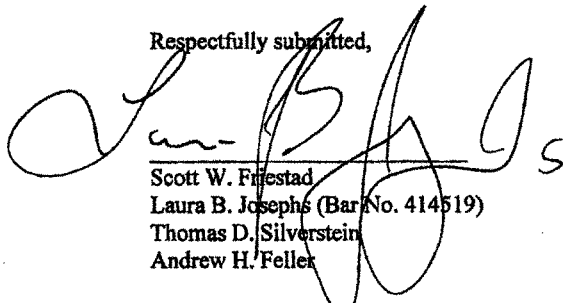
WHEREFORE, the Commission respectfully requests that this Court enter a final judgment

A. Permanently enjoining Defendant UBS from violating Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)] and Section 203(a) of the Advisers Act [15 U.S.C. §80b-3(a)];

B. Ordering Defendant UBS to disgorge the ill-gotten gains that it received from the business of acting as an unregistered broker-dealer and investment adviser as described in this Complaint; and

C. Granting such other relief as the Court deems appropriate.

Respectfully submitted,



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Dated: February 18, 2009

FILED by IG D.C.
ELECTRONIC
JUNE 30, 2008
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO.
08-21864-MC-LENARD/GARBER

IN THE MATTER OF THE TAX
LIABILITIES OF:

JOHN DOES, United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers.

DECLARATION OF DANIEL REEVES

I, Daniel Reeves, pursuant to 28 U.S.C. Section 1746, declare and state:

1. I am a duly commissioned Internal Revenue Agent and Offshore Compliance Technical Advisor employed in the Small Business/Self Employed Business Division of the Internal Revenue Service and am assigned to the Internal Revenue Service's Offshore Compliance Initiative. The Offshore Compliance Initiative develops projects, methodologies, and techniques for identifying United States taxpayers who are involved in abusive offshore transactions and financial arrangements for tax avoidance purposes. I have been an Internal Revenue Agent for more than thirty years and have specialized in offshore investigations for the

Permanent Subcommittee on Investigations
EXHIBIT #5

last eight years. As an Internal Revenue Agent, I have received training in tax law and audit techniques, including specialized training in abusive offshore tax issues, and have extensive experience in investigating offshore tax matters.

2. For the past six years I have been the lead investigator for the Internal Revenue Service's Offshore Credit Card Project and other offshore compliance initiatives. I developed many of the investigative techniques and procedures being used to identify United States taxpayers with offshore bank accounts. I am also one of the developers of the Internal Revenue Service's offshore training programs for investigators and have participated as an instructor and expert at numerous presentations and training sessions on identifying offshore accounts.

3. The Internal Revenue Service is now investigating United States taxpayers who maintain accounts with UBS AG in Switzerland but who have not provided to UBS (via Forms W-9) their taxpayer identification numbers and other information necessary for reporting to the Internal Revenue Service (via Forms 1099) taxable income earned from their Swiss accounts. To facilitate this investigation, the Internal Revenue Service, once authorized by the Court, will issue under the authority of Section 7602 of the Internal Revenue Code (26 U.S.C.), a "John Doe" summons to UBS. A copy of this summons is attached as Exhibit A.

4. UBS is a Swiss bank with branches around the world and with a major presence in the United States. UBS provides, among other services, private banking services to wealthy United States taxpayers. The records sought by the summons will reveal the identities of and disclose transactions by persons who may be liable for federal taxes and will enable the Internal Revenue Service to investigate whether those persons have complied with the internal revenue laws.

5. Based on information received by the Internal Revenue Service, it is likely that the persons in the "John Doe" class may have been under-reporting income, evading income taxes, or otherwise violating the internal revenue laws of the United States.

6. The "John Doe" summons to UBS relates to the investigations of an ascertainable group or class of persons. There is a reasonable basis for believing that this group or class of persons has failed or may have failed to comply with provisions of the internal revenue laws. The information and documents sought to be obtained from the examination of the records or testimony (and the identity of the persons with respect to whose tax liabilities the summonses have been issued) are not readily available from sources other than UBS.

I. THE SUMMONS DESCRIBES AN ASCERTAINABLE CLASS OF PERSONS

7. The proposed "John Doe" summons seeks information regarding United States taxpayers who, at any time between December 31, 2002 and December 31, 2007, had financial accounts with UBS in Switzerland, and for whom UBS (1) did not have in its possession IRS Forms W-9, and (2) had not submitted timely and accurate IRS Forms 1099 to United States taxing authorities reporting all reportable payments made to the United States taxpayers.

8. This class of persons is easily ascertainable by UBS. As explained below, UBS divides their United States taxpayer clients into those who provide an IRS Form W-9 and those who do not. The very nature of private banking suggests that UBS will be conversant with virtually all of a client's significant financial affairs, including the formation of controlled foreign entities and the opening of foreign accounts. Private banking requires that the primary client advisor be familiar with all of the financial affairs of the client in order to advise the client on a

comprehensive financial plan. For these reasons, UBS will be able to readily ascertain the identity of the proposed "John Doe" class.

II. REASONABLE BASIS FOR BELIEF THAT THE 'JOHN DOE' CLASS HAS FAILED TO COMPLY WITH INTERNAL REVENUE LAWS

A. A United States Taxpayer Who Fails to Disclose Taxable Payments Has Failed to Comply with the Internal Revenue Laws

9. United States taxpayers are required to file annual income tax returns reporting to the Internal Revenue Service their income from all sources worldwide. Taxpayers who fail to include taxable payments on their income tax returns have failed to comply with the internal revenue laws.

10. As will be described in further detail below, the "John Doe" class is limited to United States taxpayers with UBS accounts in Switzerland who affirmatively chose not to provide to UBS Forms W-9 disclosing their status as United States taxpayers, and for whom UBS did not submit Forms 1099 reporting to the Internal Revenue Service all of their reportable payments. Based on my experience with offshore accounts, taxpayers who choose not to provide the documents necessary for proper reporting do so in order to conceal their income from the Internal Revenue Service. The fact that these United States taxpayers chose not to submit Forms W-9 to UBS, thus choosing to remain "undeclared," provides a reasonable basis to believe that they have failed to comply with the internal revenue laws. Because it does not know the identities of those in the "John Doe" class, the Internal Revenue Service cannot yet audit these United States taxpayers' income tax returns to determine whether they reported such payments.

B. The Tradition of Offshore Tax Haven or Financial Privacy Jurisdictions

11. The Internal Revenue Service has been concerned with the growing problem of United States taxpayers, involved in both lawful and unlawful activities, evading the payment of United States taxes by concealing unreported taxable income in accounts in offshore tax haven or financial privacy jurisdictions. I summarize below several studies that describe the use of offshore tax haven or financial privacy jurisdictions and provide a background of the offshore private banking system.

a. The Gordon Report

12. On January 12, 1981, the Internal Revenue Service issued a report entitled "Tax Havens and Their Use by United States Taxpayers - An Overview," commonly known as the "Gordon Report" for its author, Richard A. Gordon, Special Counsel for International Taxation. The Gordon Report was based on a review of judicial decisions and published literature in the field of international tax planning, research into internal Internal Revenue Service documents concerning taxpayer activities, interviews with Internal Revenue Service personnel, personnel who dealt with tax haven issues for other federal government agencies, and lawyers and certified public accountants who specialized in international taxation. Additionally, the findings in the Gordon Report were based on a statistical analysis of available data concerning international banking, United States direct investment abroad and foreign investment in the United States.

13. The Gordon Report states that the available data support the view that taxpayers ranging from large multi-national companies to individuals and criminals are making extensive use of tax haven and financial privacy jurisdictions. The Gordon Report concluded that there are:

> enormous and growing levels of financial activity and accumulation of funds in tax havens [as well as a] large number of transactions involving illegally earned income and legally earned income which is diverted to or passed through havens for purposes of tax evasion.

b. The Crime and Secrecy Report

14. On August 28, 1985, the Permanent Subcommittee on Investigations of the United States Senate Governmental Affairs Committee issued a report entitled "Crime and Secrecy: The Use of Offshore Banks and Companies." The Crime and Secrecy Report summarized the offshore problem as follows:

> The subcommittee found that the criminal exploitation of offshore havens is flourishing because of haven secrecy and foreign government intransigence in the face of overwhelming evidence of dirty money in their banking systems. The effect has been to systematically obstruct U.S. law enforcement investigations, erode the public's confidence in our criminal justice system, and thwart the collection of massive amounts of tax revenues.

15. The report includes a quote from Senator William V. Roth, Chairman of the subcommittee regarding the committee's findings on the use of tax haven and financial privacy jurisdictions by American citizens:

> But equally shocking is the fact that we have also found that offshore havens are no longer used exclusively by criminals. Instead, they are increasingly being used by otherwise law abiding Americans to avoid paying taxes and to shield assets from creditors.

16. The Crime and Secrecy Report estimated that the "underground economy" at that time (1985) was hiding between $150 billion and $600 billion apparently unreported income from both legal and illegal business from the Internal Revenue Service. Furthermore, it stated that the underground economy was unquestionably linked to the use of offshore facilities.

c. The United Nations Report

17. On May 29, 1998, the United Nations' Office for Drug Control and Crime Prevention, Global Programme Against Money Laundering, released a report entitled "Financial Havens, Banking Secrecy and Money Laundering." The United Nations Report (at http://www.imolin.org/imolin/finhaeng.html) states that offshore financial centers, tax havens and bank secrecy jurisdictions --

> attract funds partly because they promise both anonymity and the possibility of tax avoidance or evasion. A high level of bank secrecy is almost invariably used as a selling point by offshore financial centers. Many Internet advertisements for banks emphasize the strictness of the jurisdiction's secrecy and assure the prospective customers that neither the bank nor the government will ever give bank data to another government. When the advertising is for private banks, it also stresses the protection from tax collectors.

United Nations Report, Part II, "The Global Financial System."

d. Offshore Private Banks

18. Private banks are operational units within banks that specialize in providing financial and related services to wealthy individuals, primarily by acting as a financial advisor, estate planner, credit source, and investment manager.

19. To open an account in a private bank, prospective clients usually must deposit a substantial sum, often $1 million or more. In return for this deposit, the private bank assigns a "private banker" or "client advisor" to act as a liaison between the client and the bank and to facilitate the client's use of a wide range of the bank's financial services and products. Those products and services often span the globe, enabling the client to benefit from services in carefully selected offshore jurisdictions that tout their strong financial privacy laws.

20. Offshore private banking practices have received considerable attention in recent years. The Senate Permanent Subcommittee on Investigations issued a report concluding that:

> Most private banks offer a number of products and services that shield a client's ownership of funds. They include offshore trusts and shell corporations, special name accounts, and codes used to refer to clients or fund transfers.
>
> All of the private banks interviewed by the Subcommittee staff made routine use of shell corporations for their clients. These shell corporations are often referred to as "private investment corporations" or PICs. They are usually incorporated in [tax haven or financial privacy] jurisdictions . . . which restrict disclosure of a PIC's beneficial owner. Private banks then open accounts in the name of the PIC, allowing the PIC's owner to avoid identification as the account holder.

Minority Staff Report for Permanent Subcommittee on Investigations Hearing on Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities, November 9, 1999, pp. 881-882.

21. Similarly, the Federal Reserve Bank of New York concluded, after a study of forty institutions engaged in private banking, that:

> Most banking institutions maintain and manage accounts for PICs in their U.S. offices; in fact, frequently PICs are established for the client – the beneficial owner of the PIC – by one of the institution's affiliated trust companies in an offshore secrecy jurisdiction. The majority of these institutions employ the sound practice of applying the same general KYC ["Know Your Customer"] standards to PICs as they do to personal private banking accounts – they identify and profile the beneficial owners. Most institutions had KYC documentation on the beneficial owners of the PICs in their U.S. files.

Federal Reserve Bank of New York, Guidance on Sound Risk Management Practices Governing Private Banking Activities, July 1997.

22. More recently, the Senate Permanent Subcommittee on Investigations issued a report describing this "sophisticated offshore industry," noting that:

> A sophisticated offshore industry, composed of a cadre of international professionals including tax attorneys, accountants, bankers, brokers, corporate service providers, and trust administrators, aggressively promotes offshore jurisdictions to U.S. citizens as a means to avoid taxes and creditors in their home jurisdictions. These professionals, many of whom are located or do business in the United States, advise and assist U.S. citizens on opening offshore accounts, establishing sham trusts and shell corporations, hiding assets offshore, and making secret use of their offshore assets here at home. Experts estimate that Americans now have more than $1 trillion in assets offshore and illegally evade between $40 and $70 billion in U.S. taxes each year through the use of offshore tax schemes . . . Utilizing tax haven secrecy laws and practices that limit corporate, bank, and financial disclosures, financial professionals often use offshore tax haven jurisdictions as a "black box" to hide assets and transactions from the Internal Revenue Service ("IRS"), other U.S. regulators, and law enforcement.

Minority & Majority Staff Report for Permanent Subcommittee on Investigations Hearing on Tax Haven Abuses: The Enablers, The Tools and Secrecy, August 1, 2006, p. 1.

23. Thus, although a United States taxpayer may open a private account in Switzerland, it is often the case that the bank will form a foreign shell entity in a third jurisdiction to act as the nominal owner of the assets. Keeping the account in the name of a foreign entity enables the bank to avoid reporting to the Internal Revenue Service payments that were essentially made to the United States taxpayer (the true owner of the account). The banks remove all visible connections between United States taxpayers and the offshore accounts by structuring the arrangement to appear as though foreign entities are the actual and sole beneficial owners.

C. **UBS & Bradley Birkenfeld**

24. UBS is a bank headquartered in Switzerland with branches throughout the United States, including two in Miami, Florida. According to its 2007 Annual Report, relevant portions of which are attached as Exhibit B, UBS provides "a comprehensive range of products and services, individually tailored for wealthy and affluent clients around the world . . ." According to the Annual Report, UBS Wealth Management International & Switzerland reported a record "net new money intake" of 125 billion Swiss Francs for 2007 alone, "leading to an all-time high in invested assets of [1,294 billion Swiss Francs] . . ."

25. On October 12, 2007, I interviewed Bradley Birkenfeld, a former employee of UBS, regarding his practices as a client advisor for United States taxpayers with UBS accounts in Switzerland. On June 19, 2008, Birkenfeld pleaded guilty to conspiring to assist Igor Olenicoff, a United States taxpayer, evade paying $7.2 million in taxes by assisting him to conceal $200 million of assets. Attached as Exhibit C is Birkenfeld's executed Statement of Facts offered at his allocution ("Statement"). Although the Statement does not specifically name UBS, I know from my prior conversation with Birkenfeld that UBS is indeed the "Swiss Bank" referenced in his Statement. Similarly, although Birkenfeld's indictment and Statement refers to an individual with the initials "I.O.," according to an article appearing in the Wall Street Journal and attached as Exhibit D, Olenicoff's attorney has confirmed this is indeed a reference to Olenicoff. The following description is based on information gathered during my interview with Birkenfeld and from his Statement.

26. Birkenfeld worked with UBS Global Wealth Management International & Switzerland. His primary duties being to acquire and develop new clients in the United States,

Birkenfeld was one of approximately 40 to 50 private banking employees of UBS who, with the encouragement of UBS management, traveled to the United States on a quarterly basis to service United States taxpayers. In order to avoid detection by U.S. authorities, according to Birkenfeld, UBS trained its bankers when entering the United States to state falsely on customs forms that they were traveling for pleasure rather than for business. UBS private bankers also traveled with encrypted laptop computers containing clients' portfolios.

27. According to Birkenfeld, UBS assisted wealthy United States taxpayers conceal their assets in offshore UBS accounts nominally held by sham entities formed in overseas jurisdictions, many of which were tax havens. UBS collaborated with United States taxpayers to prepare false and misleading IRS Forms W-8BEN ("Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding") claiming that the sham entities owned the accounts, and they failed to prepare and file IRS Forms W-9 ("Request for Taxpayer Identification Number and Certification") that should have identified the United States taxpayers as the owners of the accounts. Because it was made to appear as though non-United States taxpayers owned the accounts, UBS would not submit Forms 1099 reporting income earned on the offshore accounts. By concealing the United States taxpayers' ownership and control over the assets in the offshore accounts, UBS assisted these United States taxpayers evade the reporting and payment of their income taxes.

28. During our interview, Birkenfeld provided to me a letter from UBS addressed to all of its United States taxpayer clients with offshore accounts dated November 4, 2002. UBS sent the letter following its entry into a Qualified Intermediary Agreement ("Q.I. Agreement") with the Internal Revenue Service in order to assuage concerns of United States taxpayers that

the Q.I. Agreement would result in the disclosure of their identities to U.S. authorities. The Declaration of Barry Shott contains a full explanation of the Q.I. Agreement. In this letter UBS advised that United States taxpayers who did not want to provide Forms W-9 would continue to enjoy anonymity, and their identities would not be shared with U.S. authorities. This letter, which is attached as Exhibit E, states in part:

> The QI regime fully respects client confidentiality as customer information are only disclosed to U.S. tax authorities based on the provision of a W-9 form. Should a customer choose not to execute such a form, the client is barred from investments in U.S. securities but under no circumstances will his/her identity be revealed. Consequently, UBS's entire compliance with its QI obligation does not create the risk that his/her identity be shared with U.S. authorities.

29. Because it assisted certain United States taxpayers conceal their ownership of the accounts, UBS divided its United States taxpayer clients into two groups: (1) those who were willing to submit Forms W-9 and have the bank file Forms 1099 reporting their earned income, and (2) those who wished to remained "undeclared."

30. UBS, through Birkenfeld, assisted Igor Olenicoff, a high-profile United States taxpayer, to conceal his ownership of offshore UBS accounts. Igor Olenicoff's story is illustrative because he is similarly situated to the "John Doe" class described in the summons. Many of Birkenfeld's representations regarding his dealings with Olenicoff have been extensively covered by both the national and the international media. Some of these news articles are attached as composite Exhibit F. According to a Wall Street Journal article attached as Exhibit D, Olenicoff was "a major player in Southern California real estate after starting his company, Olen Properties, in 1973." According to the article, Forbes magazine listed Olenicoff as the 286th richest U.S. citizen with an estimated worth of approximately $1.7 billion.

31. According to Birkenfeld, Olenicoff, with UBS's assistance, formed a Bahamian corporation and fraudulently completed an IRS Form W-8BEN to make it appear as though the corporation was the beneficial owner of an offshore account that he had with UBS. To this and other bogus entities, Olenicoff transferred $60 million, as well as a 147-foot yacht. Because it was in the name of a foreign entity, UBS did not report to the Internal Revenue Service any payments made to the account, and Olenicoff was able to refrain from reporting the income secure in the knowledge that UBS would maintain the traditional secrecy of Swiss accounts. In December 2007, Olenicoff pleaded guilty to a criminal count of filing a false 2002 tax return for omitting income earned from the offshore assets.

32. In a document attached as Exhibit G, UBS describes similar tactics to assist United States taxpayers evade the reporting and payment of their income taxes in a document found on its own website (last visited June 18, 2008). The document is called "Qualified Intermediary System: US withholding tax on dividends and interest income from US securities," and in it UBS acknowledges that:

> While the main issue concerning [offshore entities] is whether they really are companies and also whether they really are the beneficial owner of the assets as defined by US tax law (facts which can be confirmed using the appropriate forms), the basic problem with trusts and foundations is that US tax law tends to regard them as transparent intermediaries with corresponding disclosure obligations.

For those clients who wish to use such trusts and foundations but who also wish to avoid the "corresponding disclosure obligations," the document continues, in relevant part, as follows (emphasis added):

> [I]f there is no desire to disclose the identities of either the bank's contracting partner or the beneficial owner to the US tax authorities, the possible alternatives

are for US securities to be excluded from the portfolio, for the beneficial owner to hold them directly, *or for a structure to be put in place between the foundation/trust and the bank* which itself serves as an independent, non-transparent beneficial owner (e.g. a legal entity/corporation/company) and submits documentation to the QI to this effect.

33. Based on what I have learned from Birkenfeld and from UBS's website, it appears that UBS offered, throughout the years addressed by the "John Doe" summons, undeclared offshore accounts to United States taxpayers. In a document found on its own website, UBS suggests putting a "structure in place" between the beneficial owner and the bank in order to avoid disclosure of their beneficial ownership of the account to the Internal Revenue Service. In short, UBS, in plain language, suggests using a nominee entity as a means of avoiding the reporting requirements of the U.S. tax laws.

34. United States taxpayers in the "John Doe" class who choose to remain undisclosed to the Internal Revenue Service are likely failing to comply with the Internal Revenue Code provisions governing a United States taxpayer's obligations to report and pay tax on world-wide income. Given my general knowledge and experience concerning taxpayers who use banking and other services in offshore tax havens and financial privacy jurisdictions, as well as Birkenfeld's Statement, and the story of Olenicoff, I believe it is reasonable to believe that the unidentified United States taxpayers described as the John Doe class, above, may have failed to comply with provisions of the internal revenue law of the United States.

III. THE REQUESTED MATERIALS ARE NOT READILY AVAILABLE FROM OTHER SOURCES

35. As described in the Declaration of Barry Shott, the United States potentially has two means of obtaining Swiss banking records other than through UBS's compliance with the

proposed John Doe summons. First, the United States Competent Authority may make an official request to the Swiss government pursuant to the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income ("the Swiss treaty"). Second, the United States has a Mutual Legal Assistance Treaty (MLAT) with Switzerland which contains a mechanism for the exchange of information in certain circumstances. The MLAT, however, authorizes the exchange of information only in connection with a United States criminal investigation of specific charges. Here, the Internal Revenue Service is not currently conducting a criminal investigation of the John Doe class. By its terms, therefore, the MLAT is not available to obtain information for this civil investigation.

36. As Mr. Shott states in his declaration, the Swiss treaty historically has been applied by the Swiss to require that a request for records identify the particular taxpayer whose records are sought. We cannot identify the specific members of the John Doe class. Although the Swiss government has indicated a willingness to consider a treaty request for the records of the John Doe class of taxpayers, there is no guarantee the request will be successful since Swiss courts could have the final say in whether the records are produced under the Swiss treaty. Furthermore, proceeding under the Swiss treaty, which involves action by the Swiss government and its judicial system, might result in delays that could delay the investigation of the taxpayers in the John Doe class. Section 6501 of the Internal Revenue Code imposes a general three-year period of limitations on the assessment of taxes after a return is filed and a six-year period for returns with a substantial omission of income. A lengthy delay in pursuing a possibly unsuccessful treaty request could jeopardize the timely assessment of taxes against the taxpayers whose records are sought in this summons due to the expiration of the statute of limitations.

37. Finally, the source of any information obtained in response to a request made under the Swiss treaty is the same source from which the Internal Revenue Service will seek information pursuant to the summons – UBS. A request pursuant to the Swiss treaty is a request that the Swiss government use its legal processes to obtain information from UBS. UBS is the only source for the information, whether obtained in response to the Swiss treaty or the John Doe summons. I am not aware of any other institution or person that could provide this information without getting it from UBS in the first instance.

38. In light of the above, the records sought by the John Doe summons are not otherwise reasonably and timely available to the Internal Revenue Service.

IV. CONCLUSION

39. As a general proposition, Internal Revenue Service's experience has shown a direct correlation between unreported income and the lack of visibility of that income to the Internal Revenue Service. That is, income not subject to third party reporting (such as on Forms 1099) is far more likely to go unreported than income that is subject to such reporting. This general proposition is buttressed by examples such as Igor Olenicoff. In short, the Internal Revenue Service's experience provides a reasonable basis to believe United States taxpayers with "undeclared" offshore accounts with UBS are not in compliance with internal revenue laws with respect to such accounts.

I declare under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the foregoing is true and correct.

Executed this 26th day of June 2008.

DANIEL REEVES
Revenue Agent
Internal Revenue Service

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

IN THE MATTER OF THE TAX
LIABILITIES OF:

JOHN DOES, United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers.

DECLARATION OF BARRY B. SHOTT

I, Barry B. Shott, pursuant to 28 U.S.C. Section 1746, declare and state:

1. I am the duly commissioned Deputy Commissioner (International) with the Large & MidSize Business Division of the Internal Revenue Service. I am employed in the office of the Commissioner, Large & MidSize Business Division, and I am the United States Competent Authority. As the Competent Authority, I oversee the international exchange of information pursuant to tax treaties between the United States and foreign countries. Prior to my appointment as the Deputy Commissioner (International) I was a Director of Field Operations, and then Industry Director for the Financial Services Industry in the Large & MidSize Business Division.

Permanent Subcommittee on Investigations
EXHIBIT #6

While with the Financial Services Industry, I was directly responsible for oversight of the Qualified Intermediary Program.

The Qualified Intermediary Program

2. The United States Government issued regulations, effective in 2001, confirming that the IRS would require that thirty (30) percent be withheld on income earned with respect to United States investments maintained in foreign financial accounts unless the foreign banks gave U.S. withholding agents documentation obtained from the beneficial owners of the accounts.

3. In order to simplify the documentation procedure, the IRS created the Qualified Intermediary Program ("Q.I. Program"). Foreign banks that agreed to follow certain procedures could assume the responsibilities of a U.S. withholding agent (including determining which customers qualified for treaty benefits, such as reduced or eliminated withholdings, based on documents establishing the identity of the account's beneficial owner) without disclosing to U.S. authorities the identities of these non-United States taxpayers. This was a valuable benefit to foreign banks in maintaining their business with respect to the holdings of United States investments by non-United States taxpayers.

4. In order for the Q.I. Program to function as intended, the foreign banks must correctly and truthfully ascertain the identity and citizenship/residence of its clients. Thus, the Q.I. Program requires foreign banks to obtain and maintain IRS Forms W-8BEN, which report the identities of non-United States account holders, or IRS Forms W-9, which report the identities of United States account holders. Model copies of Forms W-8BEN and W-9 are attached as Exhibits A and B, respectively. In addition, the Q.I. Program requires foreign banks to confirm client identities with greater scrutiny than in the past. Specifically, foreign banks

must examine formal identification, citizenship and residency documentation. Clients claiming non-United States residence/citizenship are obligated to document their status, especially where bankers have contact with the client in the United States, such as meetings in person and contacts via telephone, mail, e-mail and fax.

5. Pursuant to the Q.I. Program, foreign banks maintaining accounts for United States clients are required to prepare and transmit to the IRS, Forms 1099 reporting payments on United States investments. Generally, the Form 1099 reporting cover interest, dividends and sales proceeds on United States investments. The Form 1099 is issued by the bank to the United States taxpayer and the information contained therein is provided to the IRS.

6. Where a United States taxpayer refuses to submit the proper documentation, a foreign bank that is party to a Q.I. Agreement must backup withhold at twenty-eight (28) percent on all U.S. source income, just like a U.S. bank. If a foreign bank that is party to a Q.I. Agreement (1) knows that an account holder is a United States taxpayer who should be providing documentation, and (2) the foreign bank is prohibited by law (including by contract) from disclosing the account holder, then the foreign bank must request from the account holder the authority either to disclose his identity or to exclude U.S. securities from his account. If the foreign bank does not receive authority to disclose the owner's identity or to exclude U.S. securities in 60 days, it must sell the U.S. securities in the account.

7. If clients claiming non-United States residence/citizenship do not document their status, the foreign bank is required to apply various presumptions, all of which would result in withholding on U.S. source payments.

8. UBS entered into a Q.I. Agreement with the IRS in 2001.

Access to Swiss Bank Records Through Treaty Requests

9. One of my current responsibilities is exchanges of information under tax conventions, including the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (the "Swiss treaty"). Article 26 of the Swiss treaty, which was signed at Washington on October 2, 1996, provides for the exchange of information as is necessary "for the prevention of tax fraud or the like."

10. In our experience, Article 26 has been applied consistently by the Swiss Competent Authority, since the inception of the treaty, to provide the Internal Revenue Service assistance only in response to specific requests that name a particular taxpayer. It has also been our experience that the Service must have an existing examination or investigation concerning a specific taxpayer and it must make detailed factual allegations regarding conduct constituting tax fraud by the taxpayer in accordance with the Mutual Agreement of January 23, 2003, between the Competent Authorities of the Swiss Federation and the United States, regarding Article 26.

11. Recently, representatives of the Swiss government indicated a willingness to consider a request under the treaty that did not specifically identify the taxpayers whose records were sought. Even if such a request is made pursuant to the Swiss treaty, the account holders whose information is the subject of the request would be notified by the Swiss government and granted the right to object to the production of their records. If the account holder objects to the production of the records, a Swiss court would determine if the records could be produced under the treaty. The Swiss court would approve the production of records only if it found evidence of tax fraud.

12. The United States also has a Mutual Legal Assistance Treaty (MLAT) with Switzerland, which entered into force January 23, 1977. The MLAT also provides a mechanism for the exchange of information, but applies only to criminal investigations. Because the investigation in which the UBS John Doe summons will be issued is civil in nature, the MLAT does not provide a means for securing the information sought in the summons.

I declare under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the foregoing is true and correct.

Executed this 24 day of June 2008.

BARRY B. SHOTT
Deputy Commissioner,
Internal Revenue Service

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil No. 09-20423 MC - GOLD

[McALILEY]

UNITED STATES OF AMERICA,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
UBS AG,	)	
	)	
Respondent.	)	

FILED by ___ D.C.
FEB 19 2009
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

PETITION TO ENFORCE JOHN DOE SUMMONS

The United States of America petitions this Court for an order enforcing the IRS "John Doe" summons served on the respondent, UBS. In support, the United States alleges as follows:

1. The Court has jurisdiction over this case under 26 U.S.C. §§ 7402 and 7604(a) and 28 U.S.C. §§ 1340 and 1345.

2. UBS is an international bank that is also found within this district.

3. Daniel Reeves is a duly commissioned Internal Revenue Agent and Offshore Compliance Technical Advisor employed in the Small Business/Self Employed Division of the Internal Revenue Service. He is assigned to the Internal Revenue Service's Offshore Compliance Initiative.

4. Revenue Agent Reeves is conducting an investigation to determine the identity of US taxpayers who have violated the Internal Revenue Code by failing to report the existence of, and income earned in, undeclared Swiss accounts with UBS.

Permanent Subcommittee on Investigations
EXHIBIT #7

5. On February 18, 2009, this Court approved a "Deferred Prosecution Agreement" (DPA) between UBS and the United States, in which UBS admitted that it had engaged in certain specified criminal activities in violation of U.S. law. United States v. UBS AG, 09-60033-CR-COHN (S.D. Fl.) Those activities relate to the matters discussed in the Declaration of Daniel Reeves, filed in support of this petition. The Court should take judicial notice of the DPA and the Court's files in that case. United States v. Rey, 811 F.2d 1453, 1457 n. 5 (11th Cir. 1987).

6. Attached to the DPA is a Statement of Facts that UBS admits are true. In the Statement of Facts, UBS admitted the following, among other things:

a. "Beginning in 2000 and continuing until 2007, UBS . . . participated in a scheme to defraud the United States and . . . the IRS, by actively assisting or otherwise facilitating a number of U.S. individual taxpayers in establishing accounts at UBS in a manner designed to conceal the U.S. taxpayers' ownership or beneficial interest in such accounts." ¶ 4.A.

b. UBS "private bankers and managers would actively assist or otherwise facilitate certain undeclared U.S. taxpayers, who such private bankers and managers knew or should have known were evading United States taxes, by meeting with such clients in the United States and communicating with them via U.S. jurisdictional means in a regular and recurring basis with respect to the their UBS undeclared accounts. This enabled the U.S. clients to conceal from the IRS the active trading of securities held in such accounts and/or the making of payments and/or asset transfers to or from such accounts. Certain UBS executives and managers who knew of the conduct described in this paragraph continued to operate and expand the U.S. cross-border business because of its profitability." ¶ 4.C.

c. "In or about 2004, the UBS Wealth Management International business changed its compensation approach . . . Thereafter, the managers of the U.S. cross-border business implemented this new compensation structure in a way that provided incentives for U.S. cross-border private bankers to expand the size of the U.S. cross-border business. This encouraged those private bankers to have increased contacts in the United States with U.S.-resident clients via travel to the United States and contact with U.S. clients via telephone, fax, mail and/or e-mail." ¶ 5.

d. "During the relevant period [2001 through 2007], Swiss-based UBS private bankers also traveled to the United States to meet with certain of their U.S. private clients, . . . These [45 to 60 Swiss-based] private bankers traveled to the United States an average of two to three times per year, in trips that generally varied in duration from one to three weeks, and generally tried to meet with three to five clients per day. An internal UBS document estimated that U.S. cross-border business private bankers had made approximately 3,800 visits with clients in the United States during 2004. In addition, while in Switzerland, these private bankers would communicate via telephone, fax, mail and/or e-mail with certain of their private clients in the United States about their account relationships, including on occasion to take securities transaction orders in respect of offshore company accounts. Private bankers in the U.S. cross-border business typically traveled to the United States with encrypted laptop computers to maintain client confidentiality and received training on how to avoid detection by U.S. authorities while traveling to the United States." ¶ 6.

e. "The U.S. cross border business generated approximately $120 million - $140 million in annual revenues for UBS. . .". ¶ 8. This conflicts with the estimate of two other sources that UBS's cross-border business generated $200 million in annual profits. See, Reeves Decl., ¶ 43.

7. On July 1, 2008, this Court issued an order granting the United States leave to serve a "John Doe" summons on UBS AG. Case No. 08-21864-MC-LENARD/GARBER.

8. Internal Revenue Agent Arthur S. Brake is authorized to issue "John Doe" summonses pursuant to 26 U.S.C. § 7602, 26 C.F.R. § 301.7602-1, 26 C.F.R. § 301.7602-1T, and Internal Revenue Service Delegation Order No. 4 (as revised).

9. In furtherance of the investigation described in ¶ 4 above, on July 21, 2008 Revenue Agent Brake issued a "John Doe" summons to UBS. That summons directed UBS to appear before Revenue Agent Reeves or his designee on August 8, 2008 at 10:00 a.m., at the place identified in the summons, to give testimony and produce for examination certain books, papers, or other data as described in the summons.

10. Revenue Agent Brake served an attested copy of the summons on July 21, 2008 by delivering it in person to James Dow, Director & Head of Compliance for UBS.

11. UBS failed to appear on August 8, 2008. To date, UBS has failed to comply in full with the summons.

12. Except for the items specifically identified in Revenue Agent Reeves's Declaration filed with this Petition, the testimony and documents described in the summons are not already in the possession of the IRS.

13. All administrative steps required by the Internal Revenue Code for the issuance of the summons have been followed.

14. The testimony, books, records, papers, and/or other data sought by the summons may be relevant to the IRS's investigation.

15. The identities of the "John Does" are unknown. Accordingly, the IRS does not know whether there is any "Justice Department referral," as that term is defined by 26 U.S.C. § 7602(d)(2), in effect with respect to any unknown "John Doe" for the years under investigation.

16. The Declarations of Daniel Reeves and Barry B. Shott filed with this Petition establish the four elements necessary to prove a *prima facie* case to enforce the summons:

a. The investigation will be conducted pursuant to a legitimate purpose.

b. The information sought may be relevant to that purpose.

c. The information sought is not already in the possession of the IRS.

d. All administrative steps required by the Internal Revenue Code have been followed.

United States v. Powell, 379 U.S. 48, 57-58 (1964). Accordingly, the burden now shifts to the respondent to show why the summons should not be enforced. United States v. Medlin, 986 F.2d 463, 466 (11th Cir. 1993).

WHEREFORE, the United States respectfully prays that the Court:

A. Enter an order directing the respondent to show cause, if any it has, why it should not comply with summons in all respects; and,

B. Enter an order directing the respondent to comply in full with the summons, by ordering the respondent to appear, testify and produce documents demanded in the summons, before Revenue Agent Daniel Reeves, or such other officer or employee of the IRS that it may designate, within 10 days of entry of the Order, or at such later time and place as may be set by Revenue Agent Reeves or such other officer or employee of the IRS.

R. ALEXANDER ACOSTA
United States Attorney

By: 2/18/2009
STUART D. GIBSON
Senior Litigation Counsel, Tax Division
U.S. Department of Justice
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JS 44 (Rev. 2/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provide by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiatin the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

(a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Stuart D. Gibson, U.S. Department of Justice
Tax Division, P.O. Box 403
Washington, DC 20044 (202) 307-6586

DEFENDANTS

UBS AG

County of Residence of First Listed Defendant Dade
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

FILED by _____ D.C.
FEB 19 2009
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

(d) Check County Where Action Arose: ☑ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☑ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff (For Diversity Cases Only) and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

Dade 09mc20423-Gold/Maddilly

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reapportionment
☐ 120 Marine	☐ 310 Airplane	☐ 362 Personal Injury - Med. Malpractice	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881		☐ 430 Banks and Banking
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 630 Liquor Laws	PROPERTY RIGHTS	☐ 450 Commerce
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	☐ 640 R.R. & Truck	☐ 820 Copyrights	☐ 460 Deportation
151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 650 Airline Regs.	☐ 830 Patent	☐ 470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 660 Occupational Safety/Health	☐ 840 Trademark	☐ 480 Consumer Credit
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 690 Other		☐ 490 Cable/Sat TV
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	LABOR	SOCIAL SECURITY	☐ 810 Selective Service
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 710 Fair Labor Standards Act	☐ 861 HIA (1395ff)	☐ 850 Securities/Commodities/ Exchange
☐ 195 Contract Product Liability			☐ 720 Labor/Mgmt. Relations	☐ 862 Black Lung (923)	☐ 875 Customer Challenge 12 USC 3410
☐ 196 Franchise			☐ 730 Labor/Mgmt.Reporting & Disclosure Act	☐ 863 DIWC/DIWW (405(g))	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	☐ 740 Railway Labor Act	☐ 864 SSID Title XVI	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 441 Voting	☐ 510 Motions to Vacate Sentence Habeas Corpus:	☐ 790 Other Labor Litigation	☐ 865 RSI (405(g))	☐ 892 Economic Stabilization Act
☐ 220 Foreclosure	☐ 442 Employment	☐ 530 General	☐ 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 443 Housing/ Accommodations	☐ 535 Death Penalty		☑ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 894 Energy Allocation Act
☐ 240 Torts to Land	☐ 444 Welfare	☐ 540 Mandamus & Other	IMMIGRATION	☐ 871 IRS—Third Party 26 USC 7609	☐ 895 Freedom of Information Act
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities Employment	☐ 550 Civil Rights	☐ 462 Naturalization Application		☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities Other	☐ 555 Prison Condition	☐ 463 Habeas Corpus-Alien Detainee		☐ 950 Constitutionality of State Statutes
	☐ 440 Other Civil Rights		☐ 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

(See instructions second page): a) Re-filed Case ☐ YES ☑ NO b) Related Cases ☑ YES ☐ NO

JUDGE Lenard DOCKET NUMBER 08-mc-21864-JAL

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

26 U.S.C. Section 7604, Petition to Enforce "John Doe" Summons

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND $ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☑ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE SIGNATURE OF ATTORNEY OF RECORD DATE 2/18/2009

FOR OFFICE USE ONLY
AMOUNT NFR RECEIPT # IFP

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil No. 09-20423 MC - GOLD

McALILEY

UNITED STATES OF AMERICA,	)
	)
Petitioner,	)
	)
v.	)
	)
UBS AG,	)
	)
Respondent.	)

DECLARATION OF DANIEL REEVES

Daniel Reeves, pursuant to 28 U.S.C. § 1746, declares:

1. I am a duly commissioned Internal Revenue Agent and Offshore Compliance Technical Advisor employed in the Small Business/Self Employed Division of the Internal Revenue Service. I am assigned to the Internal Revenue Service's Offshore Compliance Initiative. The Offshore Compliance Initiative develops projects, methodologies, and techniques for identifying US taxpayers who are involved in abusive offshore transactions and financial arrangements for tax avoidance purposes. I have been an Internal Revenue Agent since 1977, and have specialized in offshore investigations since 2000. As a Revenue Agent, I have received training in tax law and audit techniques, and have received specialized training in abusive offshore tax issues. I also have extensive experience in investigating offshore tax matters.

2. Under the authority of 26 U.S.C. § 7602, 26 C.F.R. § 301.7602-1, and Internal Revenue Service Delegation Order No. 4 (as revised), Revenue Agent Arthur S. Brake is authorized to issue administrative summonses.

Permanent Subcommittee on Investigations
EXHIBIT #8

3. UBS AG is a Swiss Bank with offices in more than fifty countries, including the United States, where it has 437 offices. Among other services, UBS provides private banking services to extremely wealthy US taxpayers, including individuals whose net worth exceeds $1 billion. Unless otherwise indicated, all references in this Declaration to "UBS" or "UBS AG" refer to those offices located, or those employees based, in Switzerland.

4. In my capacity as a Revenue Agent, I am conducting an investigation to determine the identities of US taxpayers who have violated the Internal Revenue Code by failing to report the existence of, and income earned in, undeclared Swiss accounts with UBS.

5. On July 1, 2008, this Court granted a petition filed by the United States for leave to serve a "John Doe" summons on UBS, under the authority of 26 U.S.C. §7609(f).

6. On July 21, 2008, in furtherance of my investigation, Revenue Agent Brake issued a "John Doe" summons to UBS AG. On that same day, Revenue Agent Brake served that summons on UBS by handing a copy to James Dow, Director and Head of Compliance for UBS in Miami, Florida as reflected on the reverse side of the summons. A copy of the summons is attached as Ex. 1.

7. The summons describes the "John Doe" class as:

> United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates in Switzerland and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all payments made to such United States taxpayers.

8. The summons directed UBS to appear at 10:00 a.m. on August 8, 2008, to give testimony and produce for examination certain books, papers, records, or other data as described in the summons.

9. UBS failed to appear at the time and place required in the summons. To date, it has failed to comply in full with the summons.

10. Except as otherwise indicated in this Declaration, the books, records, papers and other data sought by the summons are not already in the possession of the IRS.

11. The testimony, books, records, papers, and/or other data sought by the summons will reveal the identities of US taxpayers who did not disclose the existence of their Swiss accounts to the IRS, and who may not have reported to the IRS income related to those accounts.

12. The identities of the "John Does" are unknown. Accordingly, the IRS does not know whether there is any "Justice Department referral," as that term is defined by 26 U.S.C. § 7602(d)(2), in effect with respect to any unknown "John Doe" for the years under investigation.

13. All administrative steps required by the Internal Revenue Code for issuance of the summons have been followed.

I. THE SUMMONS SATISFIES THE POWELL REQUIREMENTS

A. The Internal Revenue Service Issued the Summons for a Legitimate Purpose

14. US taxpayers are required to file annual income tax returns with the IRS, disclosing the existence of, and reporting any income earned from, foreign financial accounts. Taxpayers who fail to make these disclosures on their income tax returns have failed to comply with internal revenue laws. Many US taxpayers have long employed offshore accounts in countries with strict banking secrecy laws (such as Switzerland) as a means to conceal assets and

income from the IRS. This conduct has deprived the United States Treasury of untold billions of dollars in unpaid taxes.

15. Thus far, my investigation has revealed that many US taxpayers concealed their assets in this manner by using secret UBS Swiss bank accounts. UBS describes the secret accounts maintained for its US customers as "undeclared accounts." By using such undeclared accounts, these US taxpayers have violated internal revenue laws requiring full disclosure of all foreign financial accounts and all income. These US taxpayers are the focus of my investigation.

16. UBS, the summoned party, is a Swiss bank that collaborated with many US taxpayers to establish offshore accounts, and actively conceal those accounts from the IRS. UBS has helped these US taxpayers violate US laws by failing to report the existence of foreign bank accounts under their ownership or control, and failing to report and pay US income taxes on income earned in those accounts. The IRS seeks documents from UBS that would identify and help the IRS to investigate these US taxpayers.

B. The Summoned Information May Be Relevant to the Internal Revenue Service's Legitimate Purpose for Issuing the Summons

17. The information sought by the summons may be relevant to the IRS's investigation of the "John Does." The summoned materials include:

- documents identifying each US taxpayer within the "John Doe" class, as well as any documents pertaining to any offshore entities used to hide the true beneficial owner of undeclared accounts. These documents are necessary to identify US taxpayers involved in this scheme, as well as any entities that may have been used to conceal the true owners' identities;

- documents reflecting any activity in the undeclared accounts. This information could aid in the determination of taxable income;

- documents identifying relationship managers for each US taxpayer. Relationship managers may be found within the United States and would be subject to questioning by the IRS. Relationship managers may know more about why and how the US taxpayers formed and concealed their Swiss accounts from the IRS;

- documents relating to the creation of the undeclared accounts and any foreign entities used to conceal such accounts. These documents will further reveal precisely how US taxpayers conducted their affairs to avoid compliance with internal revenue laws, and may reveal whether funds transferred to the accounts had previously been taxed;

- documents pertaining to the referral of each US taxpayer interested in offshore accounts from UBS offices in the United States to UBS offices in Switzerland. These documents will demonstrate the identity of the US taxpayers, the types of products and services provided by UBS, as well as UBS's referral process, and may reveal facts pertaining to the source of the funds in the offshore accounts and the potential liability of the US taxpayers for penalties; and,

- documents related to any domestic bank accounts held by US taxpayers in the "John Doe" class. This information may establish the existence of a related offshore account, may establish the taxability of funds in the offshore accounts, and may additionally uncover potential collection sources for any taxes that may be assessed.

C. <u>The Summoned Information Is Not Already in the Government's Possession</u>

18. UBS has provided to the IRS a list of 323 US accounts used to send or receive wire transfers to or from UBS Swiss accounts held in the same name, as well as related account statements for 57 of the 323 US accounts. UBS provided these names and account numbers after the United States requested that UBS search for wire transfers between accounts within the United States and accounts in Switzerland. UBS produced only US-based records, and did not produce any Swiss-based records for these accounts.

19. The IRS also has possession of the following documents:

- six client-specific binders, each relating to one particular member of the "John Doe" class. Those binders do not identify any of the clients to whom the accounts relate, as UBS redacted all client-identifying information from the documents before producing them to the IRS. UBS provided those binders to the IRS as examples of types of documents in its possession;

- documents provided by Bradley Birkenfeld, a former director in the private banking division of UBS, during an interview that I conducted on October 12, 2007; and

- documents provided by UBS through the Swiss Banking Commission, with client-identifying information redacted.

20. On July 16, 2008, the United States made a formal request to the Swiss Government for records pursuant to the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income ("Treaty Request"). Thus far no records have been produced in response to the Treaty Request. The Declaration of Barry Shott explains the present status of the Treaty Request.

D. The Summons Meets All Administrative Requirements

21. All procedures required by the Internal Revenue Code, as amended, were followed with respect to the summons.

II. UBS HAS ASSISTED ITS US CLIENTS IN THE "JOHN DOE" CLASS TO ESTABLISH AND MAINTAIN "UNDECLARED" ACCOUNTS, AND TO CONCEAL THOSE ACCOUNTS FROM US AUTHORITIES.

A. A Congressional Investigation Concluded UBS has Engaged in Conduct that Assisted US Taxpayers to Violate US Law With Impunity.

22. Following an investigation, in 2008 the Permanent Subcommittee on Investigations of the United States Senate Committee on Homeland Security and Governmental Affairs (PSI) issued a report entitled "Tax Havens and U.S. Tax Compliance" ("Tax Haven Report"). The portion of the Tax Haven Report dealing with UBS, pp. 80-110, is attached as Ex. 2. In the Tax Haven Report, the PSI concluded that, from at least 2000 to 2007, UBS directed its Swiss bankers to target US clients willing to open bank accounts in Switzerland. According to the Tax Haven Report, "In 2002, UBS assured its U.S. clients with undeclared accounts that U.S. authorities

would not learn of them, because the bank is not required to disclose them; UBS procedures, practices and services protect against disclosure; and the account information is further shielded by Swiss bank secrecy laws." (Ex. 2 at 83) The report also noted:

a. "Until recently, UBS encouraged its Swiss bankers to travel to the United States to recruit new U.S. clients, organized events to help them meet wealthy U.S. individuals, and set annual performance goals for obtaining new U.S. business." (Id.)

b. "[UBS] also encouraged its Swiss bankers to service U.S. client accounts in ways that would minimize notice to U.S. authorities. The evidence suggests that UBS Swiss bankers marketed securities and banking products and services in the United States without an appropriate license to do so and in apparent violation of U.S. law and the bank's own policies." (Id.)

c. Between 2000 and 2007, UBS opened "tens of thousands of accounts in Switzerland that are beneficially owned by U.S. clients, hold billions of dollars in assets, and have not been reported to U.S. tax authorities." The report notes that although these accounts were owned by US taxpayers, the account owners did not file Forms W-9 identifying themselves as the owners, and the bank did not file Forms 1099 reporting the earnings on those accounts to the IRS. The bank refers to these accounts as "undeclared accounts." (Ex. 2 at 83-84).

d. UBS officials told the PSI in 2008 that UBS maintains accounts in Switzerland for about 20,000 US clients, and that only about 1,000 of those accounts have been "declared" to the US authorities. According to UBS, the 19,000 US clients with undeclared accounts hold about $18 billion in undeclared assets. (Ex. 2 at 84).

e. UBS recognized that US taxpayers "may have a legal obligation to report a foreign trust, foreign bank account, or foreign income to the IRS." (Ex. 2 at 87).

B. UBS Internal Documents Show that UBS Systematically Maintained a Significant and Ongoing Presence in the United States.

23. In a December 2004 internal report, UBS estimated that in the "last year," 32 different UBS Client Advisors traveled to the United States on business. "On average, each Client Advisor visited the US for 30 days per year, seeing 4 clients per day. This means that approximately 3,800 clients are visited in the US per year by [Wealth Management and Business Banking] Client Advisors based in Switzerland." (Ex. 3 at U00006000)

24. In that same report, UBS estimated that it had approximately 52,000 undeclared "account relationships" with US taxpayers, containing assets valued at 17 billion CHF (Swiss Francs), the equivalent of about $14.8 billion at the time. (Ex. 3 at U00005994) About 32,940 of those undeclared accounts contain only cash, while the remaining 20,877 accounts contain at least some securities. Although there are more cash accounts than securities accounts, the securities accounts held approximately 39 times the amount of assets in the cash accounts. (Ex. 4 at U00006029).

C. UBS Assisted its US Customers in Avoiding their Reporting Obligations Under US Law, by Counseling Them to Sell their US Holdings and by Helping Them Establish Sham Offshore Ownership Entities to Avoid UBS's Obligations Under the QI Program.

25. US taxpayers who control cash-only accounts have a legal obligation to disclose the existence of those accounts to the IRS, and to report any income earned in those accounts on their annual income tax returns. US taxpayers who control securities accounts must also disclose to the IRS their accounts that contain securities. For accounts containing US securities, however,

UBS and the IRS entered into a Qualified Intermediary Agreement (QI Agreement, See Shott Declaration) that required UBS to procure Forms W-9 from its US clients. The Forms W-9 provided UBS with the information necessary for it to file Forms 1099 with the IRS reporting income paid on the offshore accounts. Thus, the QI Agreement should have enabled the IRS to learn directly from UBS the identities of US taxpayers holding US securities accounts at UBS. As explained in greater detail in the following section, this did not happen.

26. UBS and its US clients knew that it violated US law for US taxpayers to maintain undeclared accounts with UBS in Switzerland – whether the accounts held cash or securities. In fact, UBS had its undeclared account holders complete a boilerplate declaration swearing that they were aware that their relationship with UBS could have legal ramifications. In the declaration's original form, attached hereto as Ex. 5, a client was required to state that he is "liable to tax in the USA as a US person." (Ex. 5 at U00014257).

27. As originally presented to clients, the boilerplate declaration required the client to state, ***"I would like to avoid disclosure of my identity to the US Internal Revenue Service . . ."*** (Emphasis added) (Id.). According to a UBS internal e-mail, many US taxpayers refused to sign the declaration since it "fully incriminates a US person of criminal wrongdoing should this document fall into the wrong hands." As a result of those complaints from its US clients, UBS revised the form to state simply that the client "consent[s] to the new tax regulations." (Ex. 6)

28. As explained in greater detail in the Declaration of Barry Shott, in 2001 UBS entered into a Qualified Intermediary (QI) Agreement with the IRS. As described in greater detail below, UBS systematically violated and circumvented its obligations under the QI Agreement, all in order to help its US clients conceal from the IRS their Swiss accounts at UBS.

29. According to former UBS private banker, Bradley Birkenfeld, UBS recognized that its entry into the QI Agreement could damage its US business, as its responsibilities under the QI Agreement could defeat the purpose of many US taxpayers in opening their offshore accounts in the first place. (Ex. 7 at 3).

30. The Tax Haven Report concluded that soon after entering into the QI Agreement UBS, "took steps to assist its U.S. clients to structure their Swiss accounts in ways that avoided U.S. reporting rules under the QI Program." (Ex. 2 at 87)

31. One way that UBS proposed its US customers could avoid disclosing their Swiss accounts to the IRS was for the customer to liquidate all US securities from those accounts, and block the accounts from acquiring US securities in the future. (Ex. 5, p. U00014257) This would enable US customers to continue to trade non-US securities in their Swiss accounts, with the assurance that UBS would not disclose their accounts to the IRS.

32. Another option proposed by UBS was to make it appear as though non-US taxpayers were the actual beneficial owners of these accounts, thereby enabling UBS to forgo reporting any income from those accounts to the IRS. UBS and its clients achieved this result by helping their US clients to arrange for the undeclared accounts to be listed as owned by foreign corporations or other entities that were, in fact, shams. In truth, the accounts were owned and controlled by US taxpayers. These clients, with UBS's knowledge and active assistance, failed to prepare IRS Forms W-9 declaring themselves as US taxpayers and providing the information necessary for UBS to report their income to the IRS. Then, with UBS's knowledge and assistance, these US taxpayers prepared false and misleading IRS Forms W-8BEN ("Certificate of

Foreign Status of Beneficial Owner for United States Tax Withholding"), reporting that their sham entities actually owned the accounts.

33. UBS understood that this "structured solution" could violate US tax laws, as well as its obligations under the QI Agreement. In a memorandum discussing the effect of the QI Agreement on UBS's servicing of US taxpayers, a UBS official explained that:

> . . . we cannot recommend products (such as the use of offshore companies . . .) to our clients as an 'alternative' to filing a Form W-9. This could be viewed as actively helping our clients evade US tax, which is a U.S. criminal offence. Further, such recommendations could infringe upon our Qualified Intermediary status, if, on audit in 2003, it is determined that we have systematically helped US person (sic) to avoid the QI rules. What we can do is suggest that clients seek external professional advice and offer them a choice of approved service providers, if they request it.

(Ex. 8 at U00014262). Thus, UBS acknowledged that it could be helping its US clients to commit tax crimes, if its officials recommended that its US clients use offshore entities in order to prevent disclosure of their identity.

34. In effect, UBS made precisely that recommendation, when it gave its US customers a list of "approved service providers." UBS expected those providers to recommend how its US customers could avoid detection by US tax authorities, by having their UBS accounts held in the name of dummy offshore entities. To determine which service providers to recommend, on August 17, 2004, six UBS officials met to review presentations from competing service providers who were invited, "to make a short presentation on the structures/vehicles that you recommend to U.S. and Canadian clients who do not appear to declare income/capital gains to their respective tax authorities." (Ex. 9)

35. UBS went farther to advance this plan. In a document found on its website, "Qualified Intermediary System: US withholding tax on dividends and interest income from US

securities" (last visited June 18, 2008), UBS counsels clients who wish to hold their accounts through simple trusts:

> While the main issue concerning [offshore entities] is whether they really are companies and also whether they really are the beneficial owner of the assets as defined by US tax law (facts which can be confirmed using the appropriate forms), ***the basic problem with trusts and foundations is that US tax law tends to regard them as transparent intermediaries with corresponding disclosure obligations***. (Emphasis added).

(Ex. 10 at 3). For those clients who wish to continue holding their accounts through such trusts and foundations but who also wish to avoid the "corresponding disclosure obligations," the document suggests, in relevant part, as follows (emphasis added):

> [I]f there is no desire to disclose the identities of either the bank's contracting partner or the beneficial owner to the US tax authorities, the possible alternatives are for US securities to be excluded from the portfolio, for the beneficial owner to hold them directly, ***or for a structure to be put in place between the foundation/trust and the bank*** which itself serves as an independent, non-transparent beneficial owner (e.g. a legal entity/corporation/company) and ***submits documentation to the QI to this effect***.

(Ex. 10 at 3).

36. As noted above, UBS acknowledged that it would be illegal to recommend that its US customers use offshore entities to avoid their US reporting obligations. Nonetheless in 2004, on its own initiative, UBS planned to create approximately 900 offshore corporations for its largest US customers – those holding UBS accounts with asset balances exceeding 500,000 CHF. It intended to create 650 such dummy corporations for customers it could not contact by October 31, 2004, and another 250 dummy corporations for customers it could contact, and who UBS expected would employ these dummy corporations to hide their Swiss accounts from the IRS. (Ex. 11, U00005303)

37. Although UBS unabashedly recommended that its clients use nominee entities to circumvent the QI Agreement – and, accordingly, violate US tax laws – the bank remained concerned that US authorities would discover this scheme. At one point, UBS received word of a possible undercover IRS investigation into UBS's compliance with the QI Agreement. Though a UBS official expressed "doubts" as to the veracity of the report, he nevertheless admonished that the bank should "be on the safe side" and instructed client advisors "to be prudent in first time clients re QI, possible structures etc. mentioning of solutions only to clients which we already know since some time." (Ex. 12 at U00007530)

38. The documents compiled at Exhibit 13 demonstrate the precise way that UBS and its clients used to structure these accounts, in the following sequence:

a. A US taxpayer directly holds a "predecessor account" with UBS which, in this example, had been opened in 1985. (U00000816-817)

b. In 2000, shortly before the QI Agreement was to take effect, the US taxpayer formed an overseas nominee corporation, which formally resolved to open a new Swiss account with UBS. (U00000854 and 857)

c. Following its formation, the offshore entity opened a new, separate account with UBS. (U00000858-859)

d. As part of the account opening process, UBS had the US taxpayer complete an internal UBS form entitled "Verification of the beneficial owner's identity," for the newly-opened account. (Even though the new account was ostensibly opened by the overseas entity, this particular form confirmed for UBS's internal purposes that, in fact, the beneficial owner was the US taxpayer.) (U00000863)

e. The US taxpayer then executed a Form W-8BEN representing that the oversees entity was the beneficial owner for IRS purposes. In this important respect, the Form W-8BEN directly contradicted the UBS form "Verification of the beneficial owner's identity." Thus, UBS maintained its own form identifying the actual beneficial owner of the account – the US taxpayer – while simultaneously accepting a fraudulent Form W-8BEN. (U00000865)

f. UBS relied on the knowingly fraudulent Form W-8BEN to avoid reporting the true ownership of the account to the IRS.

39. UBS used this procedure to help Igor Olenicoff hide from the IRS his beneficial ownership of undeclared accounts, thereby helping him to evade approximately $7.2 million in US income taxes, as described more fully in ¶ 59 below.

D. UBS Took Affirmative Steps to Prevent the United States Government from Discovering its Violations of US Securities and Tax Laws.

40. Except for two subsidiaries that UBS established in London (UBS Investment Advisors Ltd., Ex. 14) and in Switzerland (UBS Swiss Financial Advisors, AG, Ex. 3 at U00005996) to provide investment advisory services to US customers who had submitted Forms W9, UBS's offices and affiliates located outside of the United States are not licensed by the Securities and Exchange Commission ("SEC") to provide broker/dealer services to US taxpayers. (Ex. 15 at U00013486).

41. According to an internal UBS document, because it is not an SEC-licensed broker, UBS may not establish or maintain "relationships for securities services" with US taxpayers if doing so requires communicating with the client by using US jurisdictional means, which UBS defined as "telephone, mail, e-mail, advertising, the internet or personal visits into the United States." (Ex. 15 at U00013487). As further explained in a UBS memo:

> Many of the core PB ["Private Banking"] services provided by UBS to U.S. persons out of Switzerland are problematic due to the very restrictive approach the U.S. regulatory regime takes with regard to permissible cross-border activities. (Ex. 16 at U00007121).

42. In the Tax Haven Report, the PSI concluded, "UBS Swiss bankers marketed securities and banking products and services in the United States without an appropriate license to do so and in apparent violation of U.S. law and the bank's own policies." (Ex. 2 at 83).

43. In its internal documents, UBS acknowledged that accepting cross-border trades with its US clients would violate US securities law. And yet, despite knowing such trading violated US law, UBS was committed in "exceptional circumstances" to accepting such cross-border trades (Ex. 17 at U00013755). Those cross-border services earned $200 million per year in profit for UBS. (Ex. 7 at 3, Ex. 28 at ¶ 4).

44. Not only did UBS Client Advisors conduct business in person within the United States. UBS also conducted its cross-border business through telephone, facsimile and e-mail.

45. In one case, a UBS Client Advisor went so far as to conceal UBS's cross-border securities trading through the use of an elaborate code. In one report, the Advisor recounts a "new code to facilitate discreet email contacts" created by his client, with the following translation key:

> EUR = orange
> USD = green
> GBP = blue
>
> 100K = C
> 250K = 1 nut
> 1 M = a swan

The meeting report then proceeds to use code as follows: "The [REDACTED] are all comfortable: about 2.5 orange nuts @13710 (3%) and about 2.05 green nuts @13270 (12%). All clear?"

Using the key, the client requested a purchase of 625,000 euros @13710(3%) and about 512,500 US dollars at @13270(12%). (Ex. 18)

46. UBS acknowledged that maintaining both an actual and a virtual presence in the United States was critical to building and sustaining its US business. One UBS study concluded that either discontinuing the use of telephone and e-mail to provide "investment advice," or banning US travel, would be tantamount to UBS's "virtual/real exit" from the US market. (Ex. 19 at U00005989).

47. UBS maintains a "Risk Committee" as part of its organizational structure. The Risk Committee identifies, assesses, and makes recommendations regarding the risks associated with the bank's various activities. In 2004, the Risk Committee concluded, "the key risk arises from UBS AG in Switzerland being a non-SEC registered entity communicating with such clients in (or into) the US concerning securities." (Ex. 3 U00005995).

48. In a 2004 training session, UBS acknowledged that its cross-border brokerage services could trigger the United States' "broad subpoena powers [or] long-arm jurisdiction rules." (Ex. 20 at U00006011). In another document. UBS noted that its actions could also mean the "[l]oss of QI status and of US banking license," and that it could also result in the imposition of fines or penalties. (Ex. 4 at U00006019).

49. As early as 1999, UBS recognized that its activities in the United States violated US law. In a 1999 memorandum to UBS "Legal PB" (Private Banking) in Basel, UBS "Legal PB" in New York advised,

> As outlined in this memo, the provision or soliciting the provision of certain services by Swiss offices of the Bank (in particular brokerage services and investment advise) entail considerable risks for the Bank, because the Bank lacks the necessary license to provide these services. The registration requirements

> come into play because such activity of the Bank has its effect on U.S. territory and is therefore subject to U.S. jurisdiction.

The memorandum concluded that the use of certain preventative measures could, "at least dramatically reduce the risk of the SEC becoming aware of the activities of the Bank in the U.S. market." (Ex. 21 at U00018275) In response to these identified risks, UBS took the following steps to mitigate the risk that US authorities would detect its illegal activities within the United States:

a. UBS first divided its US taxpayer clients into two groups: (1) those who were willing to submit Forms W-9 and have the bank file Forms 1099 reporting their earned income, and (2) those who wished to remained "undeclared."

b. UBS then created the "Cross-Border U.S. Centralization" initiative ("Centralization"). Through its Centralization, UBS consolidated the theretofore disparate administration of all undeclared accounts from the various UBS branches worldwide and transferred them to the Zurich, Geneva, and Lugano offices in Switzerland. As one UBS document described the strategy: "To comply with the US business model and to mitigate compliance, liability, and reputation risk, relations with US persons (i.e. 'W-9 and US domiciled non W-9 clients') with custody account or investment fund account **were centralized**." (Emphasis in original). (Ex. 4 at U00006025).

50. A UBS report explained it this way: "In general, US Resident Non-W9 clients are now centralised [in Switzerland] . . . The aim of the centralisation exercise was to concentrate handling of these particularly sensitive client relationships in the area with the highest expertise." (Ex. 3 at U00005998)

51. By centralizing the administration of the undeclared US accounts, UBS could better oversee the precautionary initiatives put in place to minimize the risk of detection by US authorities (Ex. 4 at U00006019).

52. As another step in its Centralization, UBS created Swiss Financial Advisors ("SFA"), an SEC-registered broker/dealer, to provide securities services within the United States for those US taxpayers who chose to disclose the existence of their accounts. SFA allowed UBS to provide services to its declared US clients through a separate, legally registered affiliate. UBS saw this as a risk-mitigating measure because, **at least with regard to its declared US accounts,** this brought UBS into compliance with the QI Agreement and with applicable US securities laws. (Ex. 4 at U00006019).

53. SFA achieved another important goal, purportedly removing its securities business from the United States. Before UBS created SFA, UBS was concerned that providing services to its US clients holding declared Swiss accounts could result in an "[i]ncreased chance that UBS AG is treated like any other U.S. provider, which means that there is higher litigation risk." (Ex. 22 at U00010833). Thus, UBS concluded that "a separate legal entity [to service the W-9 accounts] is the only way to achieve SEC compliance without having UBS AG under U.S. jurisdiction." (Id. at U00010845). Acknowledging that UBS is "not a U.S. licensed company," the report explained that "[i]n the many decades UBS AG has been serving U.S. clients this issue has not surfaced as UBS did not file with the IRS and has therefore not had any direct relationship to any U.S. official body." (Id. at U00010833). With declared clients, however, such contact with the IRS would be necessary, and UBS wanted to insulate its undeclared clients from the consequences of its forthcoming interaction with the IRS. In other words, the centralization plan

allowed UBS to provide services to all its US clients, without having its services for the declared account holders shed light on its services for the undeclared account holders. This enabled UBS to continue, with reduced risk, to conceal from the IRS the identities of its undeclared account holders.

54. At the conclusion of its Centralization, UBS had consolidated all of its undeclared accounts under the auspices of the Swiss offices, while placing the administration of its transparent, tax-compliant accounts with the new, SEC-registered affiliate, SFA.

55. After it had consolidated the administration of all of its undeclared accounts, UBS then took further precautionary measures designed to mitigate even further the risk that US authorities would learn of its illegal activities and its undeclared US account holders. These measures included:

a. UBS trained its Client Advisors who traveled to the United States, teaching them to take care when traveling to the United States on business:

- Client advisors were advised to have an explanation prepared for the purpose of their trip when entering the United States. (Ex. 23 at U00011454). Birkenfeld reports that UBS had actually encouraged its client advisors to lie on customs forms by representing that they were "traveling into the United States for pleasure and not business." (Ex. 7 at 2). In the Tax Haven Report, the PSI found that on about half of their business trips to the United States, UBS Client Advisors falsely reported on Forms I-94 that they were traveling to the United States for pleasure when, in fact, they were traveling to the United States to provide services to US holders of undeclared UBS accounts. (Ex. 2, pp. 103-104)

- Client advisors were advised to keep an irregular hotel rotation. (Ex. 23 at U00011454).

- Travel laptops were to have a generic UBS power point presentation to show to US authorities in the event of a border search. (Ex. 24 at U00011460).

- Client advisors were warned that the United States Government uses various systems to monitor telephone, facsimile, electronic mail, and other communications systems. (Ex. 24 at U00011460).

- Client advisors were not permitted to bring printers into the United States to prevent them from printing statements, which could prove that a sale was deemed to have occurred on US soil, or that the client advisor "gave investment instructions on US soil." (Id.).

- Client advisors were advised to maintain a "clear desk policy" while in hotel rooms. (Ex. 25 at 5).

- In the event that a client advisor was detained and interrogated, or in the event of any other emergency, the client advisor is to contact UBS hotline that was operated 24 hours a day, 7 days a week. (Id. at 4).

b. With the clients' consent, UBS would not mail regular banking statements or trade confirmations to US taxpayers within the United States. Instead, UBS would retain those documents for the US taxpayers to pick up in person in Switzerland. (Ex. 19 at U00005979).

c. UBS also attempted to maintain its client-identifying documents in Switzerland. (Ex. 23 at U00011451). In fact, part of the Centralization initiative required that all account-opening documents not be maintained in the United States. (Ex. 3 at U00006000).

d. According to Birkenfeld, UBS had advised its US clients to "destroy all off-shore banking records existing in the United States." (Ex. 7 at 3). Birkenfeld also told the PSI that UBS client advisors often completed account documents in the United States and that "instead of saying, 'I signed it in New York,' they brought the forms back to Geneva and they put in 'Geneva.'" (Ex. 2 at 101).

56. UBS knew that it was critical to keep its activities in the United States hidden from US law enforcement. In one e-mail exchange discussing risks associated with UBS's use of

US jurisdictional means, UBS executive Martin Liechti admonished, "I think we need to take the utmost care of this issue, ***that's why I think we need to be extremely carefull*** (sic) ***with any written statement on the subject.***" (emphasis added) (Ex. 26 at U00009457). Similarly, in an e-mail exchange between UBS officials discussing the wording of minutes of a meeting between UBS Legal and UBS Compliance, one official suggested that language stating that UBS's visits to the United States are "not allowed under compliance" should be changed to say that such "behavior may however be problematic under SEC rules." (Ex. 27 at U00007587). UBS's legal counsel proceeded to note that the drafted minutes evidence, "how sensitive things get when you are writing them down." (Id. at U00007587).

57. After completing its Centralization initiative, and putting the other risk-mitigation steps in place, UBS continued to offer its products to wealthy, sophisticated US taxpayers who demanded confidentiality. A grand jury in Miami has charged that, in 2005, UBS actually set out to *increase* the volume of its cross-border services. (Ex. 28 at ¶ 38) As noted above, UBS reported that it had earned $200 million per year administering undeclared, offshore accounts for US taxpayers.

E. UBS Bankers and Customers Have Been Charged and Convicted of Crimes in Connection with Maintaining Undeclared Accounts.

58. The legal consequences of maintaining these undeclared accounts have recently resulted in criminal charges for a number of people associated with UBS's activities:

a. In 2008, a grand jury in the Southern District of Florida indicted Raoul Weil, former head of UBS's wealth management business, and since 2007 Chief Executive Officer of a division of UBS that oversaw UBS's cross-border business within the United States. The indictment charges that Weil and others conspired to defraud the United States and the

Internal Revenue Service in the ascertainment, computation, assessment and collection of federal income taxes. In particular, the indictment charges that Weil assisted some 20,000 US customers of UBS to knowingly conceal from the IRS $20 billion in assets that they held in secret accounts at UBS. (Ex. 28) The Court has declared him a fugitive from justice.

b. In 2007, former high-profile UBS client Igor Olenicoff, a California real estate developer, was charged in the Central District of California with filing false income tax returns by failing to disclose on his federal income tax returns the undeclared accounts he maintained at UBS in Switzerland. (Ex. 29). In 2007 Olenicoff pleaded guilty to one count of filing a false tax return for 2002. Olenicoff's Plea Agreement included a statement of facts which he admitted were true. Among other things, Olenicoff admitted that he had filed false income tax returns for each of the years 1998 through 2004, by failing to disclose his undeclared accounts at UBS. (Ex. 30)

c. In 2008 former UBS private banker Bradley Birkenfeld was indicted in the Southern District of Florida on one count of conspiracy to defraud the United States in violation of 18 USC § 371. The indictment charged Birkenfeld and co-conspirator Mario Staggl, a resident of Liechtenstein, with assisting UBS clients to open and maintain undisclosed accounts, and hide those accounts from the IRS, thereby enabling the US clients to evade millions of dollars in US income taxes. (Ex. 31) In June 2008, Birkenfeld pleaded guilty to conspiring to defraud the United States by helping at least one UBS client evade $7.2 million in taxes on income earned from about $200 million in assets that the client maintained in an undeclared UBS account. To support his plea of guilty, Birkenfeld agreed to a Statement of Facts, describing in detail how he and others at UBS conspired to assist thousands of US taxpayers to open, maintain, and conceal

undeclared Swiss accounts. (Ex. 7) In that Statement of Facts, among other things, Birkenfeld described in detail the steps that he, Staggl, and others at UBS took to help US taxpayers conceal the existence of undeclared accounts from the IRS. Among other things, they advised US clients to:

- place cash and valuables in Swiss safety deposit boxes;
- purchase jewels, artwork and luxury items from the UBS account while overseas;
- misrepresent the receipt of funds in the United States from their UBS account in Switzerland as loans from UBS;
- destroy all US-based records of their off-shore accounts;
- purchase goods and services with UBS-issued credit cards, which UBS officials claimed could not be discovered by US authorities.

In one instance, at the request of a US client of UBS, Birkenfeld purchased diamonds with funds from the client's undeclared UBS account, and smuggled the diamonds into the United States in a toothpaste tube. (Ex. 7, pp. 3-4)

59. Traditionally, taxpayers maintain undisclosed offshore accounts in order to conceal assets and income from the IRS. My investigation to date – and the Tax Haven Report discussed above – make clear that UBS has assisted tens of thousands of US taxpayers in the "John Doe" class to avoid the obligation to report all foreign financial accounts to the IRS, thereby helping the US taxpayers conceal from the IRS any income earned in those accounts.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 6th day of February 2009.

DANIEL REEVES
Revenue Agent
Internal Revenue Service

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil No. 09-20423 MC - GOLD

UNITED STATES OF AMERICA,	)
Petitioner,	)
v.	)
UBS AG,	)
Respondent.	)

MCALILEY

DECLARATION OF BARRY B. SHOTT

Barry B. Shott, pursuant to 28 U.S.C. § 1746, declares:

1. I am the duly commissioned Deputy Commissioner (International) with the Large & MidSize Business (LMSB) Division of the Internal Revenue Service. I am employed in the office of the Commissioner, LMSB, and I am the United States Competent Authority. As the Competent Authority, I oversee the international exchange of information between the United States and foreign countries pursuant to tax treaties. Before I was appointed to my present position, I was a Director of Field Operations, and then the Financial Services Industry Director, in the LMSB Division. While with the Financial Services Industry, I was directly responsible for oversight of the Qualified Intermediary Program.

The Qualified Intermediary Program

2. Effective in 2001, the Secretary of the Treasury issued regulations requiring foreign banks to withhold taxes and pay over to the IRS 30% of income earned with respect to US investments maintained in foreign financial accounts. Foreign banks could avoid this

Permanent Subcommittee on Investigations
EXHIBIT #9

requirement if they identified the beneficial owner of each such account to a US withholding agent.

3. In order to simplify the documentation procedure, the IRS created the Qualified Intermediary Program (QI Program). Under the QI Program, foreign banks that agree to follow certain procedures can – by entering into a QI Agreement – assume the responsibilities of a US withholding agent. Those responsibilities may include determining which customers qualify for treaty benefits (such as reduced or eliminated withholdings, based on documents establishing the identity of the account's beneficial owner), without disclosing to US authorities the identities of non-US taxpayers. The QI program provided a valuable benefit to foreign banks in maintaining their business with respect to the holdings of US investments by non-US taxpayers.

4. The QI Program governs the responsibilities of foreign banks only as to accounts that contain securities. The QI Program does not apply to cash-only accounts.

5. The purpose of the QI program is to make it easier for the IRS to obtain foreign banks' compliance with US tax laws, in respect of securities accounts maintained for both US and non-US taxpayers. The QI program was not, however, intended to assist US taxpayers in finding clever ways to avoid their obligations to comply with US tax laws.

6. The QI Program does **not** relieve US taxpayers of their obligation to report all income to the IRS, wherever that income is earned. And the QI Program does **not** relieve US taxpayers of their obligation to disclose to the IRS the existence of all foreign financial accounts over which they exercise signatory or other authority.

7. In order for the QI Program to function as intended, foreign banks must correctly and truthfully ascertain the identity and citizenship/residence of their clients. Thus, the QI

Program requires foreign banks to obtain and maintain IRS Forms W-8BEN, which report the identities of non-US account holders, and IRS Forms W-9, which report the identities of US account holders. Model copies of Forms W-8BEN and W-9 are attached as Exhibits A and B, respectively.

8. Under the QI program, foreign banks must examine formal identification, citizenship, and residency documentation. Clients claiming non-US residence/citizenship must document their status. Because of the potential for abuse, it is especially important that foreign bankers verify the non-US residence/citizenship of customers whom they contact within the United States – such as by meetings in person and contacts via telephone, mail, e-mail and facsimile. Foreign banks may not assist US taxpayers to conceal from the IRS their identities, or the true beneficial ownership of foreign securities accounts.

9. Foreign banks that participate in the QI Program and maintain accounts for US clients must prepare and transmit to the IRS Forms 1099 reporting payments on US investments. Although US taxpayers must report and pay US income tax on all income, regardless of where in the world it is earned, the Forms 1099 issued by foreign banks in the QI Program report only interest, dividends and sales proceeds on US investments. Under the QI Program, the bank must issue the Form 1099 to the US taxpayer, and report to the IRS the information contained on the Form 1099.

10. When a US taxpayer refuses to submit the proper documentation, a foreign bank that is party to a QI Agreement must make backup withholding at 28% of all US-source income. This is the same backup withholding obligation that is imposed on US banks.

11. If a foreign bank that is party to a QI Agreement, (1) knows that an account holder is a US taxpayer who must provide documentation, and (2) is prohibited by law – whether by statute or by contract – from disclosing the identity of the account holder, the foreign bank must request from the account holder the authority either to disclose that person's identity to the IRS, or to exclude US securities from that account. If, within 60 days, the foreign bank does not receive authority to disclose the owner's identity or exclude US securities, it must sell the US securities in the account.

12. Even where the foreign account does not contain US securities, the bank must make backup withholdings on all "deemed sales" for those US taxpayers who refuse to submit the proper documentation. "Deemed sales" are sales effected through the use of US jurisdictional means and are, therefore, "deemed" to have occurred within the United States.

13. UBS entered into a QI Agreement with the IRS in 2001. That QI Agreement remained in effect throughout the period covered by the IRS investigation in which the John Doe summons was issued to UBS in 2008.

Access to Swiss Bank Records Is Not Available Through Alternative Means

14. One of my current responsibilities is to engage in exchanges of information under tax conventions (treaties), including the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (the "Swiss Treaty"). Article 26 of the Swiss Treaty (signed in Washington, DC on October 2, 1996) provides for the exchange of information as is necessary, "for the prevention of tax fraud or the like."

15. In the experience of the IRS, the Swiss Treaty does not provide an alternative way to obtain the information sought in the John Doe summons at issue in this case. Based upon my conversations with the Swiss competent authority, this is because the Swiss government will not exchange information about a taxpayer unless the taxpayer committed an affirmative act of deception (such as falsifying a document), above and beyond a mere failure to report the existence of an account, or income earned in that account. The IRS may ultimately determine that at least some of the "John Does" have engaged in acts that would enable the IRS to obtain information under the Swiss Treaty. But for now, the IRS is investigating US taxpayers who failed to report the existence of Swiss bank accounts – or income earned on those accounts. Absent additional facts, those failures do not enable the IRS to obtain from the Swiss government the information demanded in the John Doe summons issued to UBS.

16. Until recently, with regard to this current matter, Article 26 of the Swiss Treaty had been strictly applied by the Swiss Competent Authority to provide the IRS assistance only in response to specific requests that name a particular taxpayer. As a consequence, it had also been the IRS's experience that the Swiss Competent Authority would only provide the IRS with information for an examination or investigation that concerns a specifically identified taxpayer. The current IRS investigation is focused on learning the identities of US taxpayers not known to the IRS.

17. Recently, representatives of the Swiss government have indicated to me that, under limited circumstances, they might be willing to consider a request under the Swiss Treaty that did not specifically identify taxpayers whose records are sought. As a consequence, on July 16, 2008, the United States made a formal request under the Swiss Treaty ("Treaty Request").

Thus far, however, the Swiss government has not produced any documents in response to the Treaty Request.

18. According to the declaration of Daniel Reeves (which I have read), the United States has learned that UBS maintained as many as 52,000 undeclared accounts for US taxpayers, all of which are subject to the summons. Based on the best information presently available to me, it appears that the Treaty Request may only result in the production of records for, at most, about 300 of those 52,000 accounts. According to my conversations with officials of the Swiss Government, this is because (as noted in ¶ 15 above) the Swiss Government interprets the Treaty to require a taxpayer to have committed affirmative acts of fraud or deception, in order to trigger Switzerland's obligation to provide information about that taxpayer to the IRS.

19. I last spoke with officials of the Swiss Government about the Treaty Request on January 21, 2009. During that conversation, I learned that the Swiss Government had made final determinations to provide the requested records for only twelve accounts. The Swiss Government will not, however, provide records to the IRS about those twelve accounts until after the account holders have been given an opportunity to litigate in a Swiss court the Swiss Government's decision to turn their records over to the IRS. During our January 21, 2009, conversation, I learned that the twelve account holders are either exercising their appeal rights, or contemplating exercising their appeal rights. I have also learned from my subordinates that the Swiss Government has determined there is insufficient evidence of "fraud and the like" with respect to two other accounts, and accordingly will not provide information about those two accounts. In sum, the Swiss Government has not provided any records sought under the Treaty Request, and it is not clear when, if ever, it will.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 6th day of February 2009 in Washington, DC.

BARRY BISHOTT
Deputy Commissioner, LMSB
Internal Revenue Service

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:09-MC-20423-GOLD/MCALILEY

UNITED STATES OF AMERICA,

Petitioner,

vs.

UBS AG,

Respondent.
_____/

BACKGROUND INFORMATION FOR THE COURT'S
CONSIDERATION PRIOR TO THE SCHEDULED STATUS CONFERENCE

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Permanent Subcommittee on Investigations
EXHIBIT #10

Yesterday, the Internal Revenue Service ("IRS") began a process pursuant to which it seeks to have this Court order Swiss-based employees of Respondent UBS AG ("UBS") to violate Swiss criminal law in Switzerland. Such violations would expose these employees to substantial prison terms, as well as fines, penalties and other sanctions. The IRS similarly believes that this Court should require UBS, a Swiss bank and one of the largest banks in the world, to violate Swiss law in a manner that will expose it to penalties, civil liability and the possible revocation of its banking license. The IRS makes this request notwithstanding that it has a contract with UBS that expressly permits UBS to comply with Swiss law by keeping confidential the very information that the IRS now demands.

Notwithstanding the extraordinary importance, consequences and international implications of these issues, the IRS submitted to this Court a proposed order to show cause that provides for a limited, expedited briefing schedule and a truncated procedure for this matter. Indeed, after waiting seven months to file its petition, the IRS proposes that the Court order that UBS be given only eleven days after service of the Court's order to respond to the IRS's petition. There is simply no reason to have, nor equity in having, such an expedited process here. UBS respectfully requests that, rather than entering the proposed order to show cause submitted by the IRS, the Court use the status conference now scheduled for February 23, 2009 to give the parties the opportunity to address a possible briefing schedule, discovery, the nature of the hearing that might take place in this matter, and the role of the governments of both Switzerland and the United States in these proceedings.

* * * * *

On July 1, 2008, this Court authorized the IRS to issue the "John Doe" summons to UBS. See In the Matter of the Tax Liabilities of John Does, 08-21864-MC-LENARD (S.D.

Fla.), Docket Entry No. 5. The summons seeks account information for a class of unidentified U.S. taxpayers who have accounts with UBS in Switzerland. See Declaration of Daniel Reeves ("Reeves Dec.") ¶¶ 5-6 & Ex. 1. The IRS issued the summons knowing full well that UBS and its employees could not provide information responsive to the summons that was located in Switzerland without violating Swiss law. Indeed, in full and fair recognition of the incompatibility between the John Doe summons and Swiss law, the IRS initially agreed to limit the scope of UBS's obligations in response to the summons to the production of documents or information located in the United States.

Since being served with the summons in July of 2008, UBS has cooperated fully, working diligently and in good faith to provide the IRS with information responsive to the summons that UBS could provide without violating Swiss law. Indeed, over the past seven months, UBS has provided the IRS with information located in the United States relating to more than three hundred accounts targeted by the John Doe summons. See Reeves Dec. ¶ 18.

The U.S. government has now also been provided with responsive account information that was located in Switzerland. On February 18, 2009, this Court approved a deferred prosecution agreement between UBS and the U.S. Department of Justice. See United States v. UBS AG, 09-60033-CR-COHN (S.D. Fla.), Docket Entry No. 19. As part of the deferred prosecution agreement, the U.S. government was provided with documentation located in Switzerland for certain additional accounts that are targeted by the John Doe summons. This production was made pursuant to an order issued by the Swiss Financial Market Supervisory Authority ("FINMA") based on evidence available in UBS's files that supported a reasonable suspicion that the holders of these accounts engaged in conduct that constituted "tax fraud or the like," as that term is used in the Convention between the United States of America and the Swiss

Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (the "Double Taxation Treaty"), and that therefore the account information could be provided to the U.S. government consistent with the Double Taxation Treaty and Swiss law.

In a very public move giving little or no credit to UBS's productions and its commitments in the deferred prosecution agreement — including UBS's agreement to exit the relevant U.S. cross-border business — the IRS now asks this Court to place UBS and its employees into an untenable position, stuck between the enforcement power of this Court and the criminal law of their sovereign home country. The petition filed by the IRS will thus force the Court to consider a series of important issues:

First, the IRS's petition raises significant issues of international comity and conflicts of law. The IRS has a legitimate interest in making sure that U.S. taxpayers pay taxes on their income. UBS does not dispute that. However, in the absence of the express authorization of the Swiss authorities granted pursuant to fully negotiated standards set forth by the two governments in U.S.-Swiss treaties, Swiss law strictly prohibits UBS and its employees from disclosing to the IRS the account information located in Switzerland that the IRS seeks through its summons. The IRS's petition does not acknowledge these restrictions and instead simply ignores the existence of Swiss law and sovereignty.

Second, while the IRS attempts to downplay them, the treaties between the United States and Switzerland provide administrative procedures pursuant to which the IRS has the ability to seek information relating to tax fraud or the like that is located in Switzerland. See Double Taxation Treaty art. 26(1); Double Taxation Treaty Protocol § 10; Treaty Between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters arts. 1(1), (4). It is true that the IRS may not be able to obtain information as quickly or as

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broadly through these treaty mechanisms as the IRS might be able to in the United States, but these treaty mechanisms reflect a carefully negotiated, mutually accepted agreement balancing the interests of the U.S. and Swiss governments. With yesterday's filing, the IRS asks this Court to rewrite the relevant treaties between two sovereign nations, the United States and Switzerland. To the extent that the IRS is not satisfied with treaties that the U.S. government has negotiated, that concern should be remedied through diplomacy, not an enforcement action such as the one the IRS has commenced here.

Third, the IRS entered into an agreement known as a "Qualified Intermediary Agreement" with UBS (and many other banks). That agreement sets forth, among other things, the manner in which UBS, in its capacity as a "Qualified Intermediary," is to conduct information reporting and tax withholding for U.S. clients with accounts in Switzerland. Most relevant for the present proceeding, the Qualified Intermediary Agreement contains specific procedures addressing the treatment of accounts held by U.S. taxpayers. Subject to special rules limiting investments by U.S. taxpayers in U.S. securities, these procedures expressly recognize that UBS — like any other Qualified Intermediary that is prohibited by law from disclosing account holder information — may maintain accounts for U.S. taxpayers who choose not to submit an IRS Form W-9 to UBS and that UBS is not required to disclose the identities of such account holders to the IRS. And that is what took place. In this action, the IRS seeks to repudiate its own contract and demands the production of the very account information that the IRS agreed would remain confidential.

* * * * *

The IRS issued the summons in July 2008. Now, seven months later, the IRS seeks to commence an enforcement proceeding on an expedited schedule and with a truncated

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process. In light of the complex issues and international implications raised by the IRS's petition, rather than entering the proposed order to show cause submitted by the IRS, we respectfully request that this Court use the scheduled status conference to address how this matter should proceed.

Dated: February 20, 2009

Respectfully submitted,

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CASE NO. 1:09-MC-20423

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I hereby certify that on February 20, 2009, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF or other approved means.

s/ Gordon M. Mead, Jr.
GORDON M. MEAD, JR.

CASE NO. 1:09-MC-20423

SERVICE LIST

United States of America v. UBS AG, No. 09-20423-GOLD

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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 09-20423-mc-GOLD

UNITED STATES OF AMERICA,	)
	)
Petitioner,	)
	)
v.	)
	)
UBS AG,	)
	)
Respondent.	)

RESPONSE TO BACKGROUND FILING BY RESPONDENT

Petitioner the United States files this short response to the "Background Information" document filed by respondent UBS on February 20, 2009. It plans to fully brief in due course any issues raised by any response to an Order to Show Cause.

1. Summons Enforcement Proceedings are Summary in Nature.

The respondent complains about the brief time limits in the Order to Show Cause tendered in support of the petition to enforce. This is consistent with well-established law governing summons enforcement cases, discussed briefly below.

The United States may seek to compel compliance with a summons "[w]henever any person summoned under section . . . 7602 neglects or refuses to obey such summons . . ." 26 U.S.C. § 7604(b). In such a case, the United States has the initial burden of making a prima facie showing that the following requirements have been met:

(1) the investigation has a legitimate purpose;

(2) the summoned materials may be relevant to that investigation;
(3) the information sought is not already within the IRS' possession; and,
(4) the IRS has followed the administrative steps required by the Internal Revenue Code.

United States v. Powell, 379 U.S. 48, 57-58 (1964). The United States typically makes this showing through the affidavit or sworn declaration of the IRS officer who issued the summons. Once the United States makes this showing, the burden shifts to the respondent to prove that enforcement of the summons would be an abuse of the court's process. Powell, 379 U.S. at 58; United States v. Medlin, 986 F.2d 463, 466 (11th Cir. 1993).

Because summons enforcement actions are intended to be summary proceedings, the burden on the United States to make out its prima facie case is light, but the burden on the respondent to demonstrate abuse of process is a heavy one. United States v. Davis, 636 F.2d 1028, 1034 (5th Cir.), cert. denied, 454 U.S. 862 (1981) (describing the Government's showing under Powell as "minimal"). The respondent must do more than just produce evidence that would call into question the United States' prima facie case. To meet this burden, the respondent "must allege specific facts and evidence to support his allegations." Liberty Financial Services v. United States, 778 F.2d 1390, 1392 (9th Cir. 1985). If the respondent cannot refute the United States' prima facie showing, or cannot provide factual support for an affirmative defense, the district court should properly dispose of the proceedings on the papers before it and without an evidentiary hearing. United States v. Balanced Financial Management, Inc., 769 F.2d 1440, 1444 (10th Cir. 1985).

Here the United States has established its prima facie case through the sworn Declarations of Daniel Reeves and Barry B. Shott. While the United States is amenable to altering the briefing schedule proposed in its Order to Show Cause, there is no reason to delay what should be a "summary proceeding" simply because the respondent wishes to raise a number of defenses to enforcement.

2. Nothing in the Tax Treaty Limits the IRS's Authority to Enforce a Duly Authorized Summons Issued to a Third-Party Witness Within the United States, or Requires the IRS to Exhaust its Treaty Rights With a Foreign Government Before Seeking to Enforce that Summons.

The respondent argues that the United States has a remedy under the tax treaty with Switzerland, and accuses it of using the summons to "rewrite the treaty." There is no authority for the notion that the United States must first seek information from a foreign government under a treaty, before it can enforce a summons that was duly authorized, issued and served on a witness located here in the United States. Certainly, the IRS should not have to sit idly by while tens of thousands of its citizens violate U.S. law with impunity. The existence of a treaty cannot obscure this indisputable fact, nor does it limit the rights granted to the United States under the laws of **this** country.

3. UBS Was Not Surprised by this Filing.

The respondent suggests it was surprised by the filing of this case, and claims that, in the pleadings filed in this case, it has "been given little or no credit" for its productions and commitment under the Deferred Prosecution Agreement (DPA). This claim is irrelevant. The DPA stated that the United States would file a petition to enforce the John Doe summons, and UBS expressly reserved the right to raise all

defenses to the enforcement of the summons, and to litigate those defenses through all appeals. It knew this day was coming, and it knew this day would come sooner, rather than later. UBS also knew that only a fraction of the accounts would be identified to the IRS, out of a universe of 52,000. It is, therefore, irrelevant whether UBS produced whatever accounts the DPA required it to produce. Certainly, that compliance should have no bearing on whether it should comply with the summons.

Moreover, it is odd for UBS to suggest that it should receive any credit at all in this case for complying with the DPA. UBS has already received credit by not facing immediate criminal prosecution for having committed very serious crimes on U.S. soil. Certainly agreeing to cease helping U.S. taxpayers break the law should count for nothing in a case that involves its failure to comply with a legitimate summons that this Court expressly authorized the IRS to serve.

4. The Comity Issue Raised Here is **Not** New.

The respondent suggests that the Court should treat this case differently from other IRS summons enforcement cases because it involves a question of international comity. But the respondent fails to acknowledge that the international comity analysis, in the context of an attempt by the United States to compel the U.S. office of a foreign bank to produce records, was decided long ago in this jurisdiction. In United States v. Bank of Nova Scotia, 691 F.2d 1384 (11th Cir. 1982), the Eleventh Circuit Court of Appeals described the scope of the analysis and the considerations that should be taken into account, in deciding whether to enforce a grand jury subpoena against a U.S.-

located bank, for records that it claimed would violate the bank secrecy laws of another country (The Bahamas in that case).

5. The QI Agreement Does Not Bar this Action, Especially in Light of UBS's Conduct.

The respondent argues that, because it entered into an agreement to help its U.S. clients meet their reporting obligations under U.S. law (the QI agreement), that agreement bars the IRS from enforcing this summons. While the United States will await the formal briefing process to show why this argument should not prevail, the Court should note that **only two days ago** UBS admitted to conspiring with its U.S. clients to violate that agreement, and thereby assist U.S. taxpayers to evade their U.S. tax obligations. That UBS and IRS entered into an agreement that UBS systematically violated over the past 7 years should not bar this action.

In conclusion, we welcome the opportunity to discuss how this case should proceed, including adopting a less hectic briefing schedule. It is important to understand, however, that the United States does not believe justice is served by delay. In fact, delay serves the cause of those U.S. taxpayers who continue to hide behind the actions of the respondent – and its spurious claims that it can do business within the United States with impunity, and still rely on Swiss bank secrecy law – to avoid their obligations to comply with the laws of **this** country.

Dated: February 20, 2009

Respectfully submitted,

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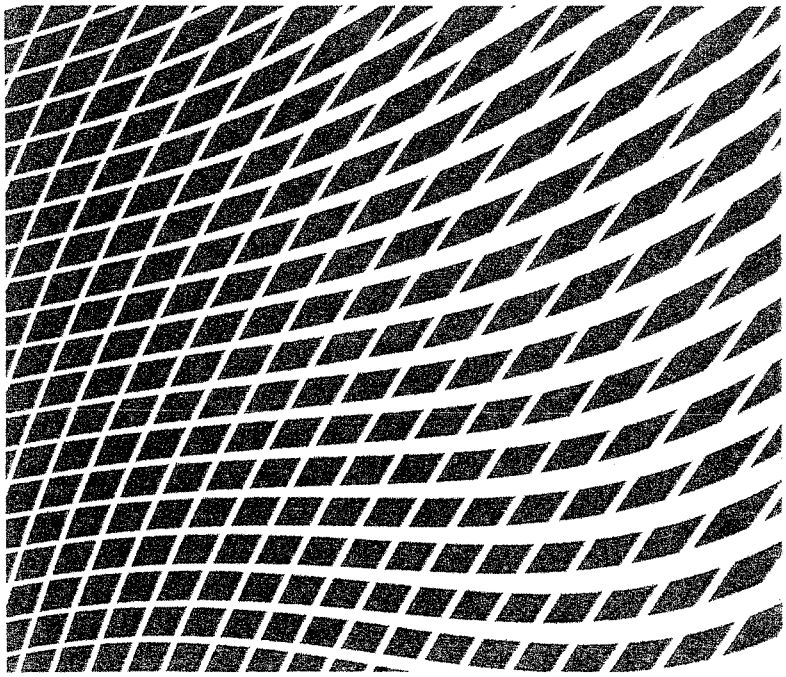
Swiss Financial Market Supervisory Authority FINMA

18 February 2009

EBK investigation of the cross-border business of UBS AG with its private clients in the USA

Summary Report



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Permanent Subcommittee on Investigations
EXHIBIT #11

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Summary

The present report of the Swiss Financial Market Supervisory Authority (FINMA) states the reasons for and results of proceedings conducted by the Swiss Federal Banking Commission ("EBK") between May and December 2008 which were closed by an injunction. The FINMA wrote this summary report because the EBK, being one of three supervisory authorities, has been merged into the FINMA as of 1 January 2009.

After preliminary inquiries the EBK opened supervisory proceedings against UBS AG in May 2008 which it closed with an injunction against UBS AG on 21 December 2008 after having gathered extensive evidence. The main topic of these proceedings was the question whether UBS AG has adequately captured, limited and supervised the legal and reputational risks which are associated with the implementation of the Qualified Intermediary Agreement ("QIA") and with the American supervisory restrictions of the cross-border business with U.S. persons ("SEC restrictions").

The EBK established in its injunction that UBS AG violated the requirement for fit- and properness as well as the organizational obligations set out in the Swiss Banking Act. Individual employees of UBS AG have, in a limited number of cases and contrary to the provisions of the QIA, considered client documents, which were drafted for U.S. tax purposes, sufficient whereas they knew or should have known that these documents do not correctly reflect the client's tax status. In addition, they ignored the SEC restrictions over a longer period of time, which provide for a mandatory license for cross-border financial services to U.S. investors. As a result, UBS AG exposed itself to massive legal and reputational risks, which materialized in the proceedings opened by several U.S. authorities.

Within the scope of its investigation, the EBK did not assert a negligent implementation of the QIA by UBS AG. The EBK did also not come to the conclusion that the top management of UBS AG knew about the afore mentioned fraudulent conduct by U.S. clients to the disadvantage of the U.S. fiscal authorities or of the violation of SEC restrictions committed by individual employees contrary to instructions. Nevertheless, the EBK barred UBS AG in its injunction from further operating the cross-border Private Banking business with persons having their residence or domicile in the USA. It obliged UBS AG, to adequately capture, limit and supervise the legal and reputational risks inherent to cross-border services and it ordered an audit of the implementation of this instruction. It imposed the bank to pay the procedural costs in the amount of more than half a million Swiss francs. This injunction was brought to UBS AG´s knowledge in December 2008 and has become effective in the meantime.

The EBK proceedings took place approximately at the same time as proceedings conducted by the U.S. Securities and Exchange Commission („SEC"), the U.S. Department of Justice („DoJ") and the American tax authority, the Internal Revenue Service („IRS"). The EBK provided administrative assistance to the SEC and the DoJ.

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Table of contents

Summary 2

1 Investigations of American authorities against UBS AG 4

2 EBK Investigation 4

3 The Qualified Intermediary Agreement 5

3.1 How did the Qualified Intermediary Agreement come about? 5

3.2 What is being regulated by the QIA? 7

4 Cross-border Private Client business into the USA: U.S. framework requirements 9

4.1 SEC Restrictions 9

4.2 The "deemed sales rules" under U.S. tax law 9

5 2001 - UBS AG becomes a „Qualified Intermediary" 11

6 Results of the investigation and sanctions of the EBK 12

6.1 Incorrect implementation of the Qualified Intermediary Agreement by UBS AG 12

6.2 Partial non-compliance with SEC restrictions 14

6.3 Increasingly difficult offshore Private Banking of UBS AG for U.S. clients 15

6.4 Responsibility on management level 16

6.5 Sanctions 17

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1 Investigations of American authorities against UBS AG

In September 2007, the DoJ contacted representatives of UBS AG and informed them that it was in possession of a letter regarding the internal investigation by UBS AG in connection with the "Whistleblowing" by Bradley Birkenfeld, a former client advisor in Private Banking North America with UBS AG in Geneva. At first, DoJ requested to keep related documents at its disposal. Eventually, DoJ opened an investigation and began to request more and more information on the cross-border Private Banking activities in the USA and on the adherence to the QIA. The bank reacted to these DoJ requests and allegations by immediately initiating an extensive internal investigation. In the course of its investigation the DoJ detained the person responsible for the North America business of UBS AG for a period of several of months as "material witness" and questioned several client advisors as well as managers in the USA. In November 2008, the DoJ caused the Grand Jury of the United States District Court of the Southern District of Florida to charge Raoul Weil, the currently suspended CEO of the business section Global Wealth Management & Business Banking („GWM&BB"), with „Conspiracy in violation of 18 U.S.C. §371". This act was made public without prior disclosure vis-à-vis the bank or Raoul Weil.

Around the same time and in close coordination with the DoJ, the IRS also opened an investigation. It analyses, to what extent U.S. clients of UBS AG have violated their tax duties. The IRS requested information from UBS AG relating thereto as well as to the bank's compliance with its obligations as a Qualified Intermediary ("QI"). The SEC commenced its investigation at the same time as the DoJ. It investigated the compliance with the SEC restrictions in connection with the performance of cross-border financial services into the USA.

2 EBK Investigation

After preliminary inquiries, the EBK opened an administrative proceeding against UBS AG on 23 May 2008 and examined four questions, which concern the (present) business unit GWM&BB (formerly referred to as: business unit Private Banking UBS Switzerland, subsequently Wealth Management & Business Banking):

(1) Has UBS AG or have its employees respectively participated actively in tax fraud of its clients?
(2) Has UBS AG, in the context of its obligations as QI or otherwise made false statements or provided false reports to American authorities, namely to the IRS?
(3) Did violations of the QIA by UBS AG occur and if so, how severe were these?
(4) How did UBS AG and how did its employees deal with the legal risks, which resulted from the cross-border business into the USA in connection with the QIA?

The EBK finalized its comprehensive investigation with an injunction on 21 December 2008.

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3 The Qualified Intermediary Agreement

3.1 How did the Qualified Intermediary Agreement come about?

The USA levies, *inter alia*, a withholding tax in the amount of 30% ("NRA Withholding Tax") on interests and dividends that are deriving from U.S. securities and are payable to a person who is not a U.S. resident („Non-Resident Alien" or „NRA"). The U.S. Withholding Agent is responsible for the levying and the delivery of the NRA Withholding Tax. Investors, who are domiciled in a country bound by a double tax treaty (*Doppelbesteuerungsabkommen*, "DBA") with the USA, may assert full or partial deduction of this tax. In most cases, the deduction of the withholding tax amounts to a reduction to 15% on dividends and to 0% on interest. Apart from specific exceptions, the proceeds generated through a sale of U.S. securities are not subject to a withholding tax.

Generally, no withholding tax is levied on payments which are credited to a U.S. person. Instead, the taxation of such proceeds is carried out through a reporting procedure to the IRS. The U.S. paying agent, particularly the banks, must possess an IRS-form W-9, by means of which the recipient of benefits confirms, subpoenal, that he is a U.S. person and that the indicated identification number for tax payers („tax payer identification number", or „TIN") is correct. Based on the details of this declaration, the paying agent, respectively the withholding agent, provides a standardized notification (the so-called "1099 Reporting") to the IRS. If the Withholding Agent cannot provide this report due to incorrectly or incompletely reported details, he raises a "Backup Withholding Tax" with reference to the respective payments, namely the U.S. Withholding tax of currently 28% (originally 31%).

At the end of 1997, the IRS enacted a new provision regarding the handling of the NRA Withholding Tax and the respective reporting. This provision was meant to affect payments of dividends and interest from U.S. sources, which were paid from 1 January 2001 onwards. The main reason for this amendment was the aspiration to prevent the widespread misapplication of DBAs in the context of deductions on dividends. Pursuant to the method previously in place, the deduction of withholding tax based on a DBA was based on the so-called "Address-Method". According to that method, the entitlement to reduce the U.S. Withholding tax was assessed solely by the address of the recipient of payments set out in the documentation. Such recipient could also refer to a bank's address, with which the client held his account/depot relation. Therefore, an address in a DBA-country was until then enough to claim a tax deduction.

The provisions passed in 1997 which were supposed to become effective on 1 January 2001 included very high requirements concerning the identification and documentation of the recipient of proceeds from U.S. sources. The initially contemplated provision set out that even if a person had not been subject to tax in the USA (NRAs), such person would only have been able to claim deductions from the NRA Withholding Tax based on a DBA if he had revealed his identity to the U.S. Withholding Agent. These extensive disclosure and reporting provisions led to substantial concern in the affected (financial services) circles, most notably with reference to the U.S. depot banks. At the end of the 90s, a

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delegation of the American IRS started talks with foreign financial centers to discuss possible solutions.

The IRS finally established the so- called „Qualified Intermediary"-System („QI-System") as an alternative to these extensive disclosure and reporting duties. It is based on the basic idea that the U.S. Withholding Agent's requirement to know the identity of those recipients of benefits whose payments he effected, is transferred to a (foreign) qualified financial institute, the so-called "Qualified Intermediary" ("QI"). Pursuant to this system, the QI incurs the determination of the identity of the recipient of benefits ("Beneficial Owner"[1]) and, as the case may be, the deduction of withholding taxes on dividends and interest. In return, the U.S. Withholding Agent will be released from this task. Only financial institutes could (and can) sign a QIA with the IRS, which commit to comply with the client identification provisions („Know Your Customer Rules") deemed sufficient by the IRS. The QI-System further envisages that external auditors control repetitively whether the QI performs the client allocation correctly and whether the necessary client documentation is available in each case.

Text box 1: Objectives pursued with the QIA

The IRS pursued various objectives with the worldwide execution of QIAs: (1) Primarily, NRAs were supposed to be recorded in such manner that the reduction of U.S. withholding tax based on a DBA could only benefit those beneficiaries who were in fact privileged through a DBA. (2) At the same time, U.S. taxable persons were not supposed to invest in the USA any longer without declaring the respective investments. (3) All income derived from U.S. sources, particularly U.S. securities, was supposed to be recorded in a correct fiscal manner. (4) Finally, the determination of the identity of the Beneficial Owner was supposed to be externalized newly within the meaning of a fundamental system change and was supposed to be made the subject of the preferred contact person, the QI.

Banks not domiciled in the USA and Clearing Organizations which sign a QIA with the IRS may claim the deductions of withholding tax for their clients who are not subject to tax in the USA (NRAs), without having to disclose the identity of the recipients of such benefits. This is of particular importance for non-U.S. banks, which would like to offer direct investment opportunities into U.S. securities for their domestic and foreign clients who are not U.S. persons.

The QIA contains special provisions on the treatment of clients who are U.S. persons. In principle, these provisions envisage that the QI makes investments by U.S. persons in U.S. securities impossible, unless such U.S. persons consent to the disclosure of their identity to the U.S. Withholding Agent and therewith the IRS. In situations, in which the disclosure of information about an account holder is prohibited pursuant to the applicable law -- such as the Swiss Banking Secrecy -- a QI may be obliged in addition to observe information and backup withholding duties on an anonymous basis.

[1] This is a technical term derived from the QIA or the U.S. tax law respectively, which is not to be confused with the term "Beneficial Owner" pursuant to Swiss money laundering provisions.

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3.2 What is being regulated by the QIA?

The QIA is a model agreement that is used by the IRS worldwide. The agreement contains a choice of law clause in favour of U.S. federal law. The interested financial intermediaries sign a standard text without the possibility to change or adapt the agreement individually. As a contractual partner of the IRS, the QI takes over far reaching documentation, reporting and withholding duties. The requirements regarding these duties and regarding the diligence necessary derive from the agreement and, because of the references therein partially from U.S. tax law.

To fulfil its obligations under the QIA, the QI is – amongst others - required to categorize its clients with a deposit account according to certain criteria.

Key is the classification of clients into U.S. and non-U.S. persons, respectively Non-Resident Aliens. At the time of the implementation of the QI system, this led to QIs worldwide approaching their clients and asking for a declaration regarding their U.S. tax status:

- *U.S. persons* within the meaning of U.S. tax law (this includes amongst others also Green Cards Holders) had the choice to (i) sign a W-9 form and in doing so disclosing their identity to the IRS (so-called W-9 clients); (ii) refrain from disclosure and sell all U.S. securities before 1 January 2001 when the QIA came into force (so-called non-W-9 clients); or (iii) refrain from disclosure, continue to hold U.S. securities and accept to pay an (anonymous) withholding tax of 31% on all so-called "reportable payments" (also called non-W9 clients). It was (and is) expected under the QIA that the number of clients falling under the last category is kept to a minimum.

- *Non-U.S. persons* holding U.S. securities were asked to confirm their status as non-U.S. persons on a form W-8BEN or through other adequate documentation (Non-Resident Aliens or NRA-clients). The QI had to deduct a withholding tax of 30% on income from U.S. sources from NRA clients with an insufficient QI documentation.

When creating a QI-compatible documentation, the QIs faced the procedural difficulties that the U.S. person they actually were in contact with was not the client in a technical sense, but instead the client was an offshore structure (mostly domiciliary companies such as for example foundations or trusts etc.): According to U.S. tax law structures are either "per se" considered to be the beneficial owners of the assets held (e.g. a Swiss Aktiengesellschaft is considered a "per se Corporation") or they can opt so under the "check-the-box-rule".

In case of a so-called non-tax-transparent "Non-Flow-Through Entity", the beneficial owner of that entity does not have to be disclosed to the IRS under the QIA (for example the shareholder of a Non-Flow-Through structure). In this case, the structure respectively the acting corporate bodies of the structure declare that the structure itself is the beneficial owner of the assets. If the structure is incorporated under U.S. law (and thus is a U.S. person), its corporate bodies sign a W-9 form. If the structure is founded under foreign law (and thus is a non-U.S. person), they sign a W-8BEN form. Such a

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structure, however, has the option according to the "check-the-box-rule" to be treated as tax-transparent – contrary to the actual qualification.

In case of tax transparent structures (so-called "Flow Through Entities"), the structure respectively the corporate bodies of the structure have to sign a form W-8IMY. Thereby, the structure declares it is holding the assets (simply) as *financial intermediary*. In addition, the beneficial owners of the structure are obliged to sign either a form W-9 (U.S. persons) or a W-BEN (non-U.S. person, respectively NRAs) in accordance with their U.S. tax status. Because of a special regulation, it was not necessary to disclose the beneficial owners of Flow-Trough foundations and trusts that were non-U.S. persons and protected by client banking secrecy. Such a structure, however, has the option according to the "check-the-box-rule" to be treated as non-tax-transparent – contrary to the actual qualification.

The difficulty in assessing the beneficial owner of assets held by offshore structures consists especially in finding out when an independent, fiscally non-transparent Non-Flow-Through structure is considered a "sham" or "mere conduit" under U.S. tax law and, as a result of that, one has - for U.S. tax purposes - to look through the structure to the beneficial owner standing behind it. No reliable guidelines exist to answer the question, when a structure is a "sham" or "mere conduit". In general, it was assumed that the mere knowledge derived from the Swiss Form A that the beneficial owner behind a domiciliary company is a U.S. person does not in and by itself lead to the qualification as "sham" or "mere conduit" structure.

The situation is clear inasmuch as the QI bank is not allowed to rely on the declaration that the structure itself is the beneficial owner of the assets given by the corporate bodies of a structure on a form W8-BEN, if it has knowledge of deceptive or fraudulent manoeuvres (for example sham structures) or other specific circumstances. In the past, the IRS has, however, neither explicitly asked nor implicitly expected an examination of the domiciliary companies' substance. Respective controls were so far never subject of the external QI audits required by the IRS.

Text box 2: Client identification by Swiss QIs according to the QIA

Special formalities for client identification by Swiss QIs in accordance with the QIA are laid down in an annex to the QIA, the so-called "Attachment for Switzerland". Accordingly, all documentation created in accordance with the requirements of the Attachment for Switzerland is considered as "Documentary Evidence" within the meaning of the QIA and has been put on a par as a method of identification with the use of official IRS forms. The KYC-Rules acknowledged by the IRS are based on the one hand on the Swiss KYC-rules, but are on the other hand amended with certain additional questions regarding U.S. tax obligations.

For the assessment whether a client is a U.S. person or a non-U.S. person as well as for the determination as to whether a client is the beneficial owner of certain assets, a QI bank, according to the QIA, is allowed to generally assume that an IRS form (W-9, W-8BEN, W-8IMY) properly filled out by the client reflects the truth, respectively that the client data collected in accordance with the KYC-rules accepted by the IRS is correct.

During the negotiations for the QIA, the IRS had (orally) confirmed that a Form A used for the assessment of the beneficial owner in accordance with Swiss anti-money laundering law was not relevant for QI purposes. For as-

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sessing the beneficial owner in accordance with U.S. tax law, the QI bank can thus generally rely on a signed IRS form or an adequate substitute it its possession. Potential discrepancies to a Form A in possession of the QI are generally irrelevant.

However, according to the QIA the QI is not allowed to rely on the documentation, if it has actual knowledge that the information or the declarations are unreliable or incorrect. Different opinions exist on when "actual knowledge" is given. Reliable guidance from the authorities applying the regulations does not exist. If a QI, because of reasons specifically described in the QIA, has reason to know that despite a contradicting declaration a client could be a U.S. person it is not allowed to rely on the QI client documentation without further inquiries.

4 Cross-border Private Client business into the USA: U.S. framework requirements

4.1 SEC Restrictions

Various U.S. laws (*inter alia* the „Securities Act of 1934", the „Securities and Exchange Act of 1934" and the „Investment Advisers Act of 1940") as well as further rules and regulations deriving from the aforementioned Acts limit the provision of cross-border financial services into the USA. The SEC is responsible for the enforcement of these provisions which explains the terminology "SEC restrictions" in this report. Pursuant to these provisions a foreign unit is subject to the respective U.S. restrictions, if it provides specific services to U.S. persons in the USA thereby using "U.S. Jurisdictional Means". Each communication from a foreign country into U.S. territory is considered „Use of U.S. Jurisdictional Means" (e.g. per e-mail, telephone, fax, regular mail) as well as travel activities on the Interstate Highways. Particularly the activity as broker or dealer (client trader or independent dealer) and the investment advice to U.S. persons in the USA constitute in general a duty to get authorized by the SEC. The U.S. legislator has furthermore enacted provisions, with which financial products need to comply, if they are offered to U.S. persons.

The SEC restrictions are diametrically opposed to the approach of the Swiss financial markets regulation. For example, a foreign financial intermediary may perform the services as broker, dealer or investment advisor described above cross-border into Switzerland without an authorization by FINMA being required. Only the distribution of foreign collective investments and structured products and also insurance services are regulated in Switzerland.

4.2 The "deemed sales rules" under U.S. tax law

Conceptually, similarities exist between the SEC restrictions and the so-called "Deemed Sales Rules" of the U.S. Treasury Regulations: according to these rules, a sale of securities which otherwise would have been deemed as having taken place in an office *outside* of the U.S. will be deemed as having taken place *inside* the U.S., if there is a certain connection to the USA. Such sales are therefore subject to reporting- and / or backup withholding duties. This kind of connection to USA exists, if the client has opened an U.S. account with an U.S. office of the broker or if the client has given instructions from

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within the USA per mail, telephone, electronically or otherwise concerning this sale or other sales (exception: this instruction from within the USA was given only "*in isolated and infrequent circumstances*"). Similarly, the Deemed Sales Rules apply, if the gross proceeds from the sale has been transferred to a client account within the USA or to an address of the client within the USA, if the client's selling order confirmation has been mailed to an U.S. address, if a branch of the respective broker in the USA has coordinated the sale with the client or receives instructions from the client regarding the sale.

The QIA contains explicit reporting and backup withholding duties relating to gross proceeds coming from the sale of U.S. securities. The QIA does not contain an explicit provision according to which the Deemed Sales Rules are applicable to non-U.S. securities.

At the time the QIA entered into force, the financial intermediaries were obviously well aware that there could be a duty on the QI-bank to notify the IRS when U.S. persons traded non-U.S. securities, if the Deemed Sales Rules was applicable to a transaction. Even today, the applicability of the Deemed Sales Rules is controversial and has at least been intermittently purported by U.S. authorities. According to the available information, the QI financial intermediaries have not yet reached a reliable, conclusive answer of this U.S. legal issue. This resulted in considerable legal uncertainty: In favour of the applicability of Deemed Sales Rules (on non-U.S. securities) it can be argued that Sec. 2.44(B) (2) and (3) QIA explicitly states that brokerage proceeds from the sale of U.S. securities are treated as "reportable payments". Sec 2.44 (B) QIA does not explicitly deal with brokerage proceeds from the sale of non-U.S. securities. In the FAQ relating to the QIA published on the IRS' website, the IRS is of the opinion that Sec. 2.44 (B) (4), which deals with certain payments of income from foreign sources, should be interpreted in a way that proceeds of securities transactions are included therein. However, an argument against the applicability of the Deemed Sales Rules is that the QIA does not contain any reporting- or backup withholding duties of proceeds coming from the sale of non-U.S. securities (therefore proceeds from the sale of non-U.S. securities would not be "reportable payments"). The latter view is being held today by UBS AG.

Text box 3: SEC Restrictions und Deemed Sales Rules: Parallelisms

There is no obvious connection between SEC restrictions and tax consequences based on the Deemed Sales Rules. However, there are parallels: The Deemed Sales Rules are, *inter alia*, relevant when a client gives sales orders for securities from within the USA more often than in an isolated and infrequent manner. The SEC restrictions apply to contacts – a single contact is enough - with the client in the USA, as soon as "U.S. Jurisdictional Means" are used and this results in the sale of a security. Both the Deemed Sales Rules and the SEC restrictions refer to clients domiciled in the USA. The definition of "domicile" is specified in the QIA in connection with the U.S. Internal Revenue Code, respectively the SEC restrictions. The fiscal Deemed Sales Rules as well as the SEC restrictions are not limited to US securities, but also apply to the sale of non-U.S. securities.

In taking corresponding measures it is possible to avoid the applicability of the (diverging) legal consequences: the Deemed Sales Rules and the SEC restrictions are not applicable, if there are no longer contacts between client and the bank regarding securities.

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5 2001 - UBS AG becomes a „Qualified Intermediary"

In the beginning of 2000, UBS AG operated a comprehensive Private Banking business with U.S. clients it took over from its predecessors *Schweizerischer Bankverein* and *Schweizerische Bankgesellschaft*. These clients either held an account / custody account directly with UBS AG or indirectly as beneficial owner of a domiciliary company. This business was conducted out of the North America Unit (NAM-business) within the bank. At the same time, UBS AG operated in a limited manner the „onshore" Private Banking in New York. With the acquisition of the U.S. broker and asset manager PaineWebber Group, Inc. („PaineWebber") with approximately 30'000 employees at the end of 2000, UBS AG became an important onshore Private Banking provider in the USA and at the same time one of the largest asset managers worldwide.

After signing the QIA which became effective as of 1 January 2001, UBS AG as QI was obliged to obtain and retain reliable documentation from all of its clients holding U.S. securities which gave information on the tax status of the clients according to U.S. tax laws. Based on this, the bank committed to the IRS, depending on the tax status of a U.S. taxable person, to either report directly or through an U.S. depositary (1099 Reporting) or where necessary to collect and deliver the backup withholding tax.

This fundamental system change with the levying of the U.S. withholding tax caused massive adjustments of client documentation, internal processes and IT-systems at UBS AG and at other QIs worldwide. To be in a position to provide information on the taxation status of clients a QI had to obtain from all clients either a corresponding declaration on an official IRS-form or documentary evidence approved by the IRS and archive it in the client files in an auditable form. The clients are - by way of the pertinent IRS-forms - adverted to the fact that their declarations are made under penalty of perjury in case they are untrue, incorrect or incomplete.

As with other banks worldwide the efforts for the implementation rose significantly in the course of 2000, because 1 January 2001 was set as the date for the QI-system coming into force. The implementation was made difficult by the fact that several questions were never clarified by the IRS or it only did so very late. UBS AG had to receive and make available QI-conforming client documentation not only for U.S. clients (status: 2000) but also had to ensure that the documentation of thousands and thousands of client relationships with non-U.S. persons who held U.S. securities in their accounts, provided information that the client and the Beneficial Owner is a non-U.S. persons according to U.S. tax law.

From an operational point of view requesting QI-compatible client documentation (especially W-9 and W-8BEN Forms signed by the client) as well as (forced-) sales of U.S. securities were reasons for concern for UBS AG. A particular challenge was the great number of domiciliary companies, which held U.S. securities in their accounts. In the year 2000, UBS AG maintained client relationships with approximately 32'000 offshore structures, 15'000 of which kept U.S. securities in their depots. Only a

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small part of these structures had a further reference to the USA apart from the fact that they had invested in U.S. securities.

With regards to the numerous natural persons and structures which held U.S. securities as clients of UBS AG in the year 2000, client documentation had to be obtained until the end of that year - respectively after the IRS granted a global grace period in the course of 2001. Additionally, U.S. securities held by non-W-9 clients had to be sold, as far as the QI was entitled to do so contractually. Forced sales were executed regularly, also after 2000, if a client became a U.S. person under U.S. tax law – for example by taking up a domicile in the USA – without signing a Form W-9.

6 Results of the investigation and sanctions of the EBK

6.1 Incorrect implementation of the Qualified Intermediary Agreement by UBS AG

In the course of its investigation the EBK ascertained that in the clear majority of client relations the U.S. tax status of NAM-clients was stated correctly. The investigation, however, brought to light three overlapping constellations in a very small number of cases compared to the total number of clients of the NAM-business where UBS AG seems to have violated its duties under the QIA.

- Category (1) - Restructuring („Switches"): These cases involve an entity (frequently an offshore domiciliary company) which was interposed between the bank and the natural person who until then was the contractual partner of the bank. The then executives of the NAM-business knew in light of the QIA implementation that UBS AG, as a signatory of the QIA, was not allowed to offer proactive support to clients respectively U.S. beneficial owners, who did not want to disclose their data to the IRS via a form W-9, in their search for possibilities to avoid taxes. Based on the bank's guidelines and in coordination with external U.S. tax advisors and in accordance with the interpretation aids of the Swiss Bankers Association, the client advisors were only allowed to arrange a client's contact with an external advisor (after having been asked by the client). In most of the cases, the client advisors complied with this. But there were – in the overall context a relatively small number of - exceptions, particularly in the case of very wealthy clients. At times, individual client advisors not only referred their clients to selected providers of Non-Flow-Through structures, but also actively advised them beforehand, accompanied them to visit such providers or even arranged to meet the client with the provider in the USA. The directly responsible management of the NAM-Business knew about this, although specialists had made it clear that an active role of the bank in setting up those structures may be interpreted as circumventing the QIA. From a U.S. tax law point of view this category is problematic and may be considered suitable of circumventing the QIA; this is due to the proximity of the period in which the restructuring took place and the QIA was implemented and due to the (real life) relations between the client advisors, the structure and the U.S. persons behind the structure.

- Category (2) „Upgrades": These cases involved already existing structures which – however - needed to be restructured with respect to QIA requirements (for example, a change of corporate

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form or interposing of an offshore domicile entity) to qualify as a non-tax-transparent Non-Flow-Through structure. In the year 2002, at the occasion of repatriating client relationships from the Bahamas to Switzerland, Upgrades of such structures were discussed within UBS AG and were allowed in isolated cases without any expressive objections raised by Group Tax.

- Category (3) - "Sham-", "Mere Conduit-", "Nominee-" and "Agent" Situations: In general, U.S. tax law assumes that a Non-Flow-Through structure is the beneficial owner of the assets held within the meaning of U.S. tax law. To qualify in such manner, it was and is required that the corporate legal prerequisites are upheld while managing the company with respect to the decision making process and other prerequisites under corporate law. For example, assets of such a structure may only be distributed or investments may only be made, if a formal resolution of the competent corporate bodies exists. Among individual structured clients (the bank's client is the structure) that held their assets in accounts with UBS AG, these requirements were not complied with thoroughly in such manner that the client advisor considered the beneficial owner as the "actual client" and served him like a "direct client". This led to, *inter alia*, monies being taken out of the company without any respective distribution resolutions of the entity which was the account holder. In these and similar cases (e.g. where structures were used to mask active trading or payment activities), the bank could no longer simply rely on the information by the structure which states it was a Non-Flow-Through structure. Insofar as the bank did not request a new form W-8IMY from the structure and the beneficial owners reported to the IRS using W-9 or W8-BEN, it violated its duties under the QIA.

A few individual client advisors of the NAM-Business and their direct supervisors were responsible for this severe misconduct. In addition, their behaviour was partially expected and partially at least tolerated and not, as would have been their duty, vigorously prevented by those responsible for the NAM-business and their direct supervisor. Thereby, UBS AG violated the requirement for fit- and properness as well as the organizational obligations set out in the Swiss Banking Act, because it assumed incontrollable legal and reputational risks for a long period of time. It was particularly severe that the management of the NAM-business failed to inform the top management of UBS AG timely and comprehensively.

With regard to the clarification of the U.S. tax status, the bank had bestowed a big responsibility upon its client advisors. This not only led to an inherent danger of overstraining, but also brought along a potential for malpractice. Although the bank had trained the client advisors concerning the categorization of client relations, it failed to ensure subsequently, by means of periodical and sample controls which are independent from the management, that client advisors only accepted declarations regarding the U.S. tax status of their clients where this was justified.

Text box 4: The QIA and the use of structures in Private Banking

The use of structures such as trusts, foundations and other domiciliary companies within the framework of a private client relationship corresponds to a legitimate need and is legally permissible pursuant to both U.S. and Swiss law. If the bank's client is not a natural person, nor an unincorporated as-

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sociation, nor a charitable foundation, nor an operative partnership or company, but a non-operating domiciliary company, then the bank needs to ensure that is has identified the beneficial owner/s pursuant the applicable anti-money laundering provisions and that it has inquired about the origin of monies. In principle, a bank does not have to take the tax status of the domiciliary company and of its beneficial owner into consideration. A bank needs to at least be able to exclude, by applying the necessary diligence, that the monies brought forward do not stem from a crime (Sec. 305bis para. 1 Swiss Criminal Code; StGB; SR 311.0), that embargo provisions are not violated or that the acceptance of monies is not connected to otherwise incontrollable legal and reputational risks. Finally, according to Art. 8 of the Agreement on the Swiss Bank's Code of Conduct with regard to the Exercise of Due Diligence (*Vereinbarung über die Sorgfaltspflichten der Bank* (VSB), banks may not abet to be part of any deception manoeuvres of their clients toward local or foreign authorities, particularly toward tax authorities, by incomplete or otherwise misleading statements.

If bank employees are providing advice themselves or perform certain activities for the client, respectively for the beneficial owner, they are exposed to the danger of getting into the proximity of contributing to a tax violation pursuant to foreign or Swiss law. In light of the requirement for fit- and properness as well as the organizational obligations set out in the Swiss Banking Act , certain constellations are problematic in which an institute, such as UBS AG in this case, takes over contractual duties with respect to the IRS towards domestic or foreign authorities by signing the QIA and subsequently neglecting it.

6.2 Partial non-compliance with SEC restrictions

In spring 2002, the bank decided to introduce a new "conservative" business-model (the so-called "Revised Business Model") in the non-W-9 business, whereupon contact with U.S. clients by use of U.S. Jurisdictional Means should no longer be permitted. Instead, already existing clients should be induced to enter into portfolio management agreements with UBS AG. With this measure, UBS AG sought to achieve compliance with the SEC restrictions as well as to avoid the risk of Deemed Sales with respect to U.S tax regulations. UBS AG issued a special country paper in 2004, which was revised in 2007, relating to the SEC restrictions and their impact on the activities of client advisors of the NAM-business, The EBK investigation revealed however that several client advisors of the NAM-business had kept in touch with selected non-W-9 U.S. clients over the years and repeatedly and had thus violated the SEC restrictions. These violations were however not limited to the business with non-W-9 clients. Before UBS Swiss Financial Advisers AG ("UBS SFA AG"), which is registered with the SEC, took over the W-9 clients living in the USA with assets above CHF 500'000- in the beginning of 2005, even W-9 clients were sometimes attended to in violation of SEC restrictions.

The EBK admonished the bank for not having enforced its own business policy and the Revised Business Model with necessary persistency. Thereby, the bank as a global company with a strong presence in the USA exposed itself to substantial legal and reputational risks. The EBK considers this neglect as serious. This especially so, because the bank is present as a financial services provider in the USA and since the unclear legal situation with respect to the application of the Deemed Sales Rules and its application in cases of non-observance of the SEC restrictions could not be excluded. The EBK

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acknowledged that UBS AG tried to adjust its internal regulations and its business model pursuant to applicable U.S. restrictions continuously. At the same time, the EBK determined that independent compliance controls of the directives for the cross-border provision of financial services into the USA were only established in 2006. The EBK considers this as insufficient in light of the risks inherent to this business.

6.3 Increasingly difficult offshore Private Banking of UBS AG for U.S. clients

The responsible managers of the NAM-business had been aware early that classic Private Banking, which is - *inter alia* - based on intensive contact between client advisors and clients, could only be conducted with maximum difficulties in the corset of the duties of a QI in connection with the restrictive SEC restrictions. The acquisition of PaineWebber redounded furthermore to the fact that UBS AG ran increased reputational risks with its parallel offshore business. Hence, the management of UBS AG tightened the general framework for cross-border Private Banking into the USA increasingly. This happened for instance in the year 2002 when it established the Revised Business Model for the non-W-9 business, generally centralized U.S. clients, founded a separate unit for W-9-clients (the UBS SFA AG) and decreed clear directives pursuant to a country paper USA as well as annotations for the QIA.

In its day-to-day business, UBS AG ran politics of strict compliance. However, it neglected to safeguard, via independent controls from direct management that the restrictions were adhered to unexceptionally on the client front. The way the NAM-business had been set up, left the impression with some client advisors of the NAM desks that even though one had to act carefully, a violation of SEC restrictions would be tolerated by their supervisors, as long as this would be unavoidable with respect to the sophisticated demands of wealthy clients. In addition, client advisors of NAM were confronted by two, in their incentives opposing changes of the general framework of the U.S. offshore Private Banking since the year 2004: On the one hand, the country paper USA (2004) had been uploaded to the intranet of UBS AG. This paper gave precise information about what was allowed in the cross-border business and what was not. Client advisors were also trained with respect to the country paper. On the other hand, the performance monitoring- and assessment system of the entire bank was changed and was set up within the Business Unit "Americas" in a special kind of way. In doing this, the criterion of net new money became the most important factor for the participation in the bonus pool; this had huge implications on the NAM-business which was in the same time confronted with sensitive restrictions and eventually resulted in an ultimate perversion of the targets set by the bank with its performance monitoring- and assessment system. Individual client advisors were inclined to the interpretation that – if the bank set such ambitious targets – it could not be very serious about the enforcement of the country paper USA.

Following the foundation of UBS SFA AG, to which W-9 clients had been transferred to in 2005, the responsible persons became increasingly aware of the fact that offshore Private Banking with U.S. clients was very risky; in particular, because further and further tightening of the U.S. regulatory framework had to be expected. Several (sequentially originated) project teams searched for solutions which turned out to be time-consuming. First, considerations of selling the business came to the fore,

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including the sale to a third party as well as a management buy-out by the management in charge of the NAM-business. In August 2007, the top management of UBS AG instead decided to shut down the existing business by way of melting it down step–by-step until zero. The implementation of this decision started in November 2007.

6.4 Responsibility on management level

The EBK did not find any indications that the bank's top management had any knowledge of violations of duties under the QIA. In particular, the EBK did not find any indications in the course of its extensive investigation that would lead to the conclusion that top management were accessories or accomplices regarding the violations of the QIA or that management had even proactively furthered such violations. Quite to the contrary, UBS AG undertook great efforts between 2001 and 2002 to ensure that it meets its obligations under the QIA in its entirety. With respect to the QI-documentation of client relationships, which had been a fundamental obligation under the QIA, the former CEO of WM&BB stated unmistakably that "non-compliance is not an option". In view of the then imminent QI-audit and the banking statutory audit Raoul Weil, at that time Head of Private Banking International, pointed out at a meeting of the upper managers of his business unit that there would be "zero tolerance" for non-compliance.

The fact that individual client advisers of the bank had assisted individual clients with their endeavour to avoid taxes while continuing to invest in U.S securities at the same time, was known to a few client advisers, the (few) managers of the NAM-business and its direct supervisor as well as certain experts of GWM&BB. Especially because of this fact and because the bank assumed it had implemented the QIA correctly – even the external auditors had confirmed this when carrying out the audit routine required by the IRS -, it had not established effective controls independent of the line reporting. This caused the now detected partial non-compliance with the obligations deriving from the QIA and the legal and reputational risks accumulated by the bank to have remained undetected by the bank for a longer time.

It was pointed out within the bank that with regards to the compliance with the SEC restrictions heightened reputational risks existed after the acquisition of PaineWeber as onshore and offshore business were operated at the same time. UBS AG, respectively its top management, basically reacted with two (proper) measures to that challenge: Firstly, by adopting the Revised Business Model for the non-W-9 business in the year 2002, and secondly, by establishing an SEC-registered provider for the W-9 business. UBS SFA AG finally took up its business operations in January 2005. Looking back, the EBK is of the opinion that whereas the Revised Business Model was not implemented with the necessary force, the setting up of UBS SFA AG took too long. These weaknesses in leadership cannot be blamed on persons who are to ensure fit- and properness ("Gewährsträger") currently in charge at the bank in a way that would justify imposing supervisory measures against these persons. Rather, these failures have to be attributed to the bank as a whole, as a complex company.

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The EBK also considers the fact very problematic that the management of "Americas International" had established a new incentive system from 2004 onwards, in which the criterion of net new money became a paramount factor for the distribution of the bonus pool. This apparently resulted in several client advisors of the NAM-business feeling under additional pressure to reach these goals while accepting the violation of the requirements of the Country Paper USA. Thus, to some extent there has been communication using U.S. Jurisdictional Means with U.S clients contrary to internal directives and also contrary to the SEC restrictions.

Overall, UBS AG lacked the unconditional will to comprehensively adjust itself to U.S. regulatory requirements at all times. The mandatory duty of taking foreign provisions into consideration does not directly result from Swiss supervisory law. It should also be noted that the applicable regulations of U.S. law are blurred at times and are alien to Swiss (supervisory) law. Nevertheless, with respect to the significant exposure of UBS AG in the USA, the adherence to U.S. law is an absolute must from a risk management perspective. Although this point of view was also clearly shared by the top management, it was not implemented dutifully and consistently by its cadres with respect to the NAM-business.

The fact that UBS AG is exposed to existence-threatening, legal and reputational risks emanating from Private Banking can - in the EBK's view - also be attributed to a cultural problem.

6.5 Sanctions

The EBK admonished the bank for severe violation of the warranty and organisational requirements and barred it from carrying on its business with U.S. clients out of Switzerland beyond UBS SFA AG. Furthermore, it instructed the bank to adequately capture, limit and supervise the legal and reputational risks with respect to the provision of cross-border financial services out of Switzerland. In contrast, the EBK did not impose any sanctions on former or current executives or employees of UBS AG. UBS AG has not appealed the injunction of 21 December 2008.

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Review of US Resident Non-W9 Business

Legal and Compliance

Strictly Private, Privileged and Confidential
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GOVERNMENT EXHIBIT 3

U00005992

Permanent Subcommittee on Investigations
EXHIBIT #12

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1. INTRODUCTION 3

1.1 Introduction and Background 3

1.2 Scope of the Review and Approach Applied 3

1.3 Key Findings / Conclusions 3

2. HISTORICAL INFORMATION 5

2.1 Analysis - 1999 to date 5
2.1.1 Background 5
2.1.2 Actions Taken 5

3. PRESENT STATUS 7

3.1 US Resident Non W9 Clients 7
3.1.1 Centralisation Process 7
3.1.2 Client Advisors Traveling to the US 9

3.2 US Resident Non-W9 Clients Dealing with WM&BB via Financial Intermediaries ("FIMs") 10

3.3 UBS Trusts, Foundations and Other UBS Administered Structures Involving US Residents 10

3.4 E-Banking Relationships with US Residents 11

4. HIGH-LEVEL RISK ASSESSMENT FOR VARIOUS CLIENT SEGMENTS 12

4.1 Risk Assessment 12
4.1.1 The Risk 12
4.1.2 The Business 12
4.1.3 Cross-Border Risk 12
4.1.4 Additional Specific Steps To Mitigate Risk 12

5. ANNEX 1 - CURRENT CROSS BORDER GUIDELINES 13

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1. Introduction

1.1 Introduction and Background

This report has been prepared by the Legal and Risk & Compliance functions of UBS Wealth Management and Business Banking ("WM&BB") and looks at the extent of business that WM&BB carries out with and for Non W9 US Persons. It was prepared with the help and input of Business Sector North America ("NAM"), headed by Michel Guignard and its content has been agreed with NAM.

1.2 Scope of the Review and Approach Applied

This report focuses on business in WM&BB's booking centre Switzerland (primarily within the Wealth Management International Business Area) with Non-W9 persons **resident** in the United States (note that WM&BB also services a significant number of Non-W9-customers who are currently not residing in the US. This segment should not trigger the concerns outlined in more detail in this report but it is understood that this population creates potential change management issues). WM&BB's booking centres abroad only service a limited number of US resident Non-W9 customers. (see overview on page 6) and are subject to the same rules as Swiss booked clients. This report does not therefore consider in detail WM&BB's locations abroad nor does it consider any other businesses servicing US persons within the UBS Group such as Investment Bank, Global Asset Management or those businesses physically located in the US such as WM (USA)'s business, WM&BB's business conducted through UBS AG, New York Branch etc.

This report also focuses primarily on the risk issues arising from Securities and Exchange Commission ("SEC") oversight and / or regulations affecting business with US Resident Non-W9s. In particular, it focuses on SEC rules governing marketing and communicating into the US and dealing with US customers. Only peripherally does this paper discuss the issues arising under the US Internal Revenue Services' ("IRS") Qualified Intermediary ("QI") regime and the UBS Group's arrangements for compliance therewith. These issues were and are dealt with by specialist working groups in WM&BB. Additionally, we do not address any [redacted] - though it bears mentioning that we have obtained legal advice from outside U.S counsel [redacted]

The approach we apply is to report on status by categorising client segments along risk-relevant factors i.e. cash only clients vs those holding securities in a custody account, arrangements for mail instructions, value of assets as these impact the communication issues etc..

We have also commented briefly on related service models as far as they deal with US residents, namely: exposures in our Financial Planning and Financial Intermediary ("FIM") businesses as well as e-banking relationships. We have also reviewed the banking process end to end over the full life span of the relationship i.e. prospecting, marketing, account opening and servicing.

1.3 Key Findings / Conclusions

The number of account relationships in WM&BB in Switzerland with US residents where the account holder has not provided a W-9 is approximately 52,000 (representing CHF 17 billion in assets). The business with US Resident Non-W9s generally raises the same types of risk as WM&BB's wider cross-border businesses raise. However, it is generally accepted that due to UBS AG's US listing, wider UBS Group exposure in the US and the particular regulatory environment existing there, the risks are higher. Consequently additional mitigating

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actions have been taken to further reduce the regulatory risk associated with the business with US Resident Non-W9s.

WM&BB has taken the view that the key risk arises from UBS AG in Switzerland being a non-SEC registered entity communicating with such clients in (or into) the US concerning securities. This risk has been mitigated by a number measures and factors as described in this report. These include:-

- 32,940 account relationships with US Resident non W-9 clients are cash accounts only. They are therefore not a factor in assessing risks regarding SEC compliance.
- The remaining account relationships (20,877) with US Resident non W9 clients have arrangements in place to the effect that UBS do not enter into postal or e-mail communication into the US regarding the portfolios (17,846 of these relationships have retained mail services and the rest provide addresses for correspondence outside the US). This obviously substantially limits the communications risks.
- The business has a mandate to strive hard to increase the number of relationships that require no (or little) communication into the US.

Guidelines are in place (and training has been and continues to be provided) for Client Advisors, indicating the limits of what they can do with respect to communicating into the US and with Cross-Border Banking Activities into the US generally. These guidelines (and further relevant information) can be found under http://pw.ubs.com/page/0/36/0,1080,636-80482-1-0,00.shtml. Advertising and events in the US by or on behalf of non-us entities are prohibited. Cold calling / prospecting in the us and use of us jurisdictional means is similarly clearly prohibited. Guidance on conduct of existing relationships is then provided. The attention paid in training, support of BU Americas International management and virtually daily contact between Legal / Compliance and the NAM team strongly indicates that the business is well aware of the sensitiveness of its services to US clients.

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2. Historical Information

2.1 Analysis - 1999 to date

2.1.1 Background

The issue of the bank's cross-border business into the United States has been the subject of intense Legal / Compliance scrutiny for quite some time. In 1999, Legal prepared a memo outlining the US regulatory framework relevant for UBS's Wealth Management business conducted into the US from non-US offices. With UBS AG becoming a Qualified Intermediary under the IRS QI regime and the acquisition of the former PaineWebber business, such discussions were intensified and ultimately led to an in-depth analysis being undertaken at the beginning of 2001. The results of this analysis were presented to senior management in September 2001 and essentially entailed as principal recommendations:

- the establishment of an SEC-registered investment adviser subsidiary to deal with W9-customers who typically expect an active service model; and
- to curtail the bank's activities when servicing US Resident Non-W9 customers by refraining from use of US "jurisdictional means".

The first decision resulted in the creation of UBS Swiss Financial Advisers AG and the second decision in a change of the business model. It merits highlighting that the issue of the so-called "deemed sales" rules which - taking a risk based approach were ultimately regarded as being integral to UBS's compliance with its QI Agreement with the IRS - further galvanised the process to make adjustments to the then existing business models for dealing with US Resident Non-W9 clients.

2.1.2. Actions Taken

In January 2002, UBS implemented strict principles for servicing U.S customers under the heading "Deemed Sales Guidelines" (for full details see materials at http://bw.ubs.com/page/0/36/0,1080,636-80482-1-0,00.shtml). In essence, these boil down to a development of a "ring-fenced" service model for US Resident Non-W9 clients having securities accounts, i.e. retained mail instructions to be in place and no securities-related communications into the US. In addition, the business was asked to transfer as many advisory / non-discretionary clients as possible into discretionary mandates, primarily in order to address the deemed sales issue but also improve SEC / Securities Act compliance as a result of the mandatory "ring-fencing". In September 2004, Business Sector North America ("BS NAM") also established a "Competence Centre Deemed Sales" to further ensure implementation of agreed principles.

During Q2 2002, an IT-based tool was implemented in Switzerland to make sure that no securities related instructions could be given when the customer was on U.S. territory. In Q3 2002, a project was initiated to "centralise" all W9 US clients and all US Resident Non-W9 clients to designated desks with a view to creating an enhanced control environment (ensuring that those Client Advisors most familiar with the particular requirements related to dealings with such clients were involved in these relationships etc.). This project remains current and progress is tracked on an ongoing basis.

Legal / Compliance has been in constant contact with senior management BS NAM and has held various training sessions with Client Advisors on cross border banking activities into the US. Most recently, updates were provided in Q3 2004. Below is the standard presentation.

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WMAborderedlocation.ppt

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3. Present Status

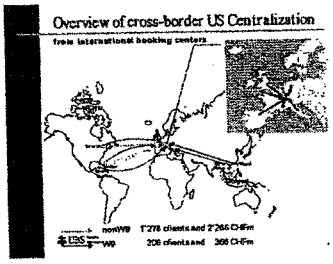
3.1 US Resident Non W9 Clients

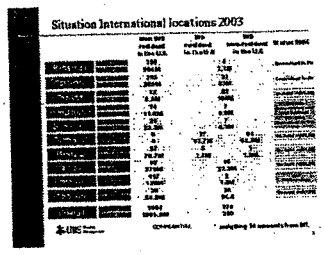
A presentation describing the breadth of the present business with US Resident Non W-9 clients has been prepared by M Guignard (Regional Market Manager BS NAM). The full presentation is embedded in this document at the end of this section and the following highlights the key aspects:

3.1.1 Centralisation Process

In general, US Resident Non-W9 clients are now centralised within WM&BB (excepting those with the Private Banks in SBC Wealth Management) in the Business Sector North Americas (Desks in Zurich, Geneva and Lugano). The centralisation process started in January 2003 and is over 90% complete. The aim of the centralisation exercise was to concentrate handling of these particularly sensitive client relationships in the area with the highest expertise.

The Centralisation Process started with the centralisation of all relevant clients to Booking Centre Switzerland from WM&BB's International booking centres as shown below.





In addition, within booking centre Switzerland, all clients were centralised to the Business Sector North Americas desks in Zurich, Geneva or Lugano:

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Overview of BC Switzerland US Centralization

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Certain categories of clients were excluded from the process as shown below. Largely these are specific client segments already handled in a distinct manner within WM&BB. BAP are employee accounts, FIM are Financial Intermediary relationships (see section 3.2 of this report). FK / GK are corporate clients (i.e. not individuals). NALO are dormant relationships and SCAP are clients designated as having a "sensitive country" connection under relevant WM&BB policy.:

Non-W9 categories excluded from Centralization

Australia CHF mn	Amount	With already	With additional Mail
[illegible]	313	145	75
[illegible]	[illegible]	[illegible]	725
[illegible]	912	210	47
[illegible]	[illegible]	820	816
[illegible]	13	13	7

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The number of US Resident Non W-9 account relationships now handled by the Business Sector North Americas Desks in Switzerland is shown on the following slide (note that references in these slides to "clients" are actually to account relationships and in some cases, the same "client" may have more than one account relationship - however WM&BB systems do not allow to see the number of linked account relationships):

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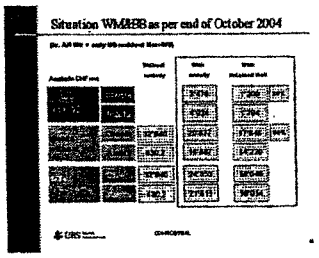
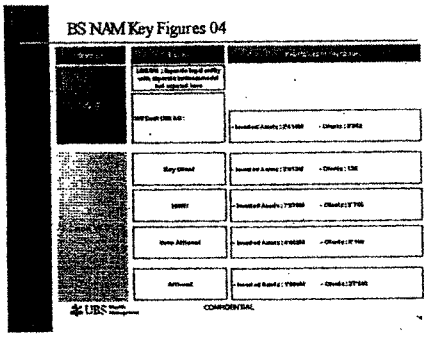


This breaks down as follows in terms of client segment:



As part of the centralization process, system restrictions are also in place to prevent any new accounts for US resident non-W9 clients being opened anywhere other than on the Business Sector North Americas Desks. Therefore going forward the centralization principles should be preserved.

3.1.2 Client Advisors Travelling to the US

In the last year, we are advised that 32 different Client Advisors from BS NAM have travelled to the US on business. On average, each Client Advisor visited the US for 30 days per year, seeing 4 clients per day. This means that approximately 3,800 clients are visited in the US per year by WM&BB Client Advisors based in Switzerland. Client visits are prioritised by asset size, and Affluent clients are not visited.

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No printed matter is taken into the US and as will be apparent from the above all clients have cash accounts or make use of other banking products that justify the Client Advisor visiting them. Guidelines have been established in relation to the conduct of cross border business generally into the US and a copy of the present text is set out in Annex 1 to this report. Training materials (case studies etc.) have also been developed and delivered to relevant Client Advisors to emphasise what is and what is not permissible activity.

Below is the full presentation produced by BS NAM on their business.

Risk_NAM_Lgal

3.2 US Resident Non-W9 Clients Dealing with WM&BB via Financial Intermediaries ("FIMs")

The following table shows numbers of account relationships with US Resident Non-W9 clients dealing with WM&BB through a Swiss-based Financial Intermediary. The numbers will be included in the information shown in 3.1 above but it is not open to us to isolate the relationships which appear in both groups.

		US Resident Non W9	Non US-Resident (US persons) non W9
Relationships With Custody Account	Account Numbers	826	2,686
	Assets (CHF)	1,334,486,100	5,792,927,159
Relationships Without Custody Account	Account numbers	64	30
	Assets (CHF)	1,741,476	1,008,448

In these cases, under standard UBS FIM business models, day to day (and in most cases all) client contact is via the FIM and not directly between UBS and the underlying client. Further details on the specific FIM relationships can be provided if required. As an aside, note that WM&BB also engages in business with 9 US-based FIMs that do, however exclusively bank customers who are not subject to U.S. tax (i.e. US Non-Resident Aliens). This segment does not create SEC or GI / deemed sales issues as we only work with US FIMs that have the appropriate SEC registrations.

3.3 UBS Trusts, Foundations and Other UBS Administered Structures Involving US Residents

The following table gives information on UBS administered Trusts, Foundations or other structures involving US residents. Again, the numbers may, to some extent be included in the information shown in 3.1 above but it is not open to us to isolate the relationships which appear in both groups. No such "double counting" will occur where the nature of the connection to the US resident is "indirect" - e.g. there is a beneficiary of a trust structure that is resident in the US.

UBS Trusts, Foundations and Other UBS Administered Structures where the Settlor is a US Resident	16
UBS Trusts, Foundations and Other UBS Administered Structures where one or more of the Beneficiaries are resident in US (Number)	315
UBS Trusts, Foundations and Other UBS Administered Structures where the Settlor is a US National (Number) INCLUDING TAX DOMICILE	15

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UBS Trusts, Foundations and Other UBS Administered Structures where one or more of the Beneficiaries is a US national (Number) INCLUDING TAX DOMICILE	283
Total Sum of Total Assets in Structures (in CHF)	4'132'826'804

WM&BB Financial Planning policy is that generally we do not take on relationships with US resident settlors and a tax opinion is required in the context of any structure involving a US resident settlor or beneficiary. Accordingly, it can be seen that the number of structures in place is very small (total universe of FP structures is over 10,000 trusts and foundations under administration).

3.4 E-Banking Relationships with US Residents

The following table gives information on UBS E-banking relationships with US residents. Again, the numbers may, to some extent be included in the information shown in 3.1 above, but again it is not open to us to isolate the relationships which appear in both groups.

Client Account Numbers in Abacus with Domicile USA and E-Banking access	**2'605**
With Custody Account	975
Without Custody Account (i.e. cash only)	1'630
Total clients Assets (CHF)	**486'323'526**
Total Invested Assets (CHF)	**425'312'811**
Invested Assets in Depot Accounts (i.e. securities) (CHF)	333'059'377
Invested Assets in Cash Accounts (CHF)	92'253'434

E-banking for US resident customers is constantly monitored by Legal to ensure appropriate restrictions are put in place.

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4. High-Level Risk Assessment For Various Client Segments

4.1 Risk Assessment

As can be seen from the information above, WM&BB's business relationships with US Resident Non-W9s are material both in number of clients and value of assets. However, various measures have been put in place to mitigate the risks attendant to the business.

4.1.1 The Risk

UBS AG, Switzerland, is not licensed to conduct regulated activities within the US. The primary risk facing WM&BB therefore in dealing with US Residents generally (whether or not W9s), is that we are alleged by the SEC to have carried on securities related activities within the US for US persons against SEC regulation. Specifically this is the risk that WM&BB has communicated within or into the US to US Persons regarding securities.

4.1.2 The Business

There is no prospecting or marketing for WM&BB's services (other than for our US operations and in the future for our Swiss-based SEC-registered investment adviser entity) performed on U.S. territory. Additionally, as a matter of policy, WM&BB does not accept account openings through correspondence for US resident clients.

US Resident Non-W9 Clients who hold only cash do not expose UBS AG, Switzerland to the risk of communicating into the US regarding securities and can therefore be discounted for the purposes of assessing risk in this respect. Of the remaining US Resident Non-W9 account relationships, over 20,000 hold at least some securities (although this figure maybe in fact be lower due to fiduciary deposits (i.e. cash deposits) being reported on investment accounts). In our view these are the higher risk clients.

4.1.3 Cross-Border Risk

Conducting business on a "cross border" basis (i.e. with non-resident clients in any jurisdiction) carries a certain amount of risk due to the inherent difficulties in reconciling often conflicting laws and regulations. Whilst WM&BB seeks to comply with the laws and regulations of the countries into which it carries out business (e.g. through restrictions on the types of products offered to clients and the way in which those products are offered). It is not possible to reduce the risks arising from such business to zero.

4.1.4 Additional Specific Steps To Mitigate Risk

There is no doubt that the US has its own specific risks due to the extent of the UBS Group exposure and the virulent regulatory atmosphere. Therefore, further steps have been taken over and above those generally taken for the cross border businesses of the WM&BB. As described in this report, these include the centralisation of all US Resident Non-W9 business into the BS NAM Desks in Zurich, Geneva and Lugano; ensuring that all such clients are retained mail clients (i.e. no systemised communication by the Bank into the US); providing further guidelines to Client Advisors regarding communications with such clients, and lower levels of Client Advisor visits to such clients when compared to other business areas.

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For internal use only

US International Training

26 September 2006

Agenda

Introduction	Hansjörg Bless, US International
Country Paper USA	Franz Zimmermann, Legal
Impact of Country Paper on Business Model US Intl	Hansjörg Bless, US International
Security Aspects	Paul Herger, Security Risk Control
Round table	all

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GOVERNMENT EXHIBIT 25

Permanent Subcommittee on Investigations
EXHIBIT #13

Introduction

- Scope of Training Sessions
- US Regulatory environment
- US Service Model
- New Country Paper USA
- Way forward

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US Service Model

Client Segment	Investments/ Reporting Needs	Domicile	Servicing Unit
US Person	All securities (incl. US secs.) (W9)	[redacted]	UBS SFA [1] [3]
		[redacted]	US Int'l. (W9) NAM [3]
	Securities (except US secs.) (non-W9)	[redacted]	US Int'l. NAM
		[redacted]	WMI, WMCH, PCC

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Country Paper USA

- Purpose of Country Paper ('CP')
- Launch of amended CP targeted in Oct 2006

- Travels to meet existing and prospective clients to be kept to a minimum
- Adequate training of Traveling Officers
- Specific approval for business travels required by supervisor
- Travel Plans and certification required from Traveling Officers
- No security-related communications to persons resident in the U.S. This includes in-person communication and communication by mail, telephone, e-mail, facsimile or telex.
- Distributing account opening documents is accepted within defined parameters
- No transport of assets (e.g. cash, checks, etc.) into or out of the U.S.
- Use of Travel notebook essential to safeguard client confidentiality

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Country Paper USA

- Provision of statements and account information related to banking services is allowed
- In a meeting in the U.S. communication may not be related to securities products or services
- Exception: a security client (non-discr.) inquiring about optimal servicing structures may be informed about a discretionary mandate with UBS

- Contacting prospects regarding banking services on an unsolicited basis and discussions on non-security related topics are permitted
- Standard UBS account opening documentation may be distributed to banking services prospects. However, the prospective client must return the forms by mail.

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Impact of Country Paper on Business Model US Intl

- Increase ring-fenced discretionary solutions further
- Strict adherence to Country Paper
- General traveling guidelines:
  - HNWI: client retention & referrals / switch to discretionary mandates
  - CORA: referrals / switch to discretionary mandates

- Development of specific education sessions (e.g. for traveling purposes, for walk-in's, for telephone servicing, for referrals)
- Performance measurement with respect to KPI's to be reviewed

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Travel Security

- Thorough preparation of trip
- First travel accompanied by senior CA
- Employment of Using Best Practices

- Reasoning of Business Trip: be prepared for arising questions when crossing the border.
- Travel habits:
  - Airlines, flight routes need not be altered from a security point of view
  - Strong recommendation to change hotels in rotation

In case of emergency (7 x 24h) : Tel. +41-44 234 24 24
Security Risk Governance will subsequently co-ordinate the next steps with Legal, Line Management, Family and others

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Travel Security

Observe Clients' Right to privacy at all times:
- Always maintain 'Clear Desk Policy' in hotel rooms
- Use secure infrastructure (Travel notebook, PDA)
- Be aware that cell phones are prone to eavesdropping
- Cross borders without client related documents

Usage of courier and postal services by clients:
- Regular mail may be used
- Use courier service if tracking is needed
- Address must not necessarily show 'UBS'
- Passport/Id copies should be sent separately

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Lessons learned

Tel. +41-44 234 24 24

No further calls

In case of an interrogation by any authority;
- protect the banking secrecy
- no client respective communication / wait for assistance of a UBS lawyer

No panic / rush! we are not criminals!

"Yes, I am meeting with clients" (banking products)

Comply with e-mail policy

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Traveling - way forward

- "Certification"
  - sign country paper
  - travel security training
- First trip together with a senior
- Written travel plan to be discussed / agreed with line manager prior to business trip
- Empty Travel notebook, no printer, blank forms only
- **NO** handover of asset statements
- Written debriefing / report with line manager
- Regular security training

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Useful Links

US Service Model

US Competence Center

Country Paper USA

Security Home page

Travel Tips & Personal Security Tips

Travel Risk Advisor

UBS

Round table

- Comments
- Questions
- Discussion

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Contacts

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Tel. +41-44-234 47 53

UBS

[redacted]

CONTACT REPORT

Number		Currency	Value
[redacted]		USD	1'599'000
	Strategy	Since	Performance
	Advisory	2004 ytd	5.6%
Date	Where	City	Who
29.11.2004	[redacted]	New York	Client

Introduces a new code to facilitate discreet email contacts:
EUR = orange
USD = green
GBP = blue

100K = C
250K = 1 nut
1 M = a swan

DOCU=D

Place EUR cash in DOCU approx 3%
Place USD in DOCU more or less ATM

Buy forward accrual USD 1 mio ag. EUR (buying EUR!), lower level about 2.5 cents below spot. Call to confirm final price with him.

Email:

Took care of the [redacted] this morning, green @ 12 (about 13275), orange @ 3 (around 13720). I say about because I neglected to write down the exact numbers (too early in the morning), I can get them to you later.

I also booked the other trip, because as I was talking to the agent, it looked like it was moving away from us and I believe that you would be good with that. I got you [redacted]

We expect to move in a range at the moment.

I had not forgotten you, on the contrary. I sent you a mail the next day which you do not seem to have received, but which, interestingly enough, is not to be found in my sent items either.

The upper and lower levels are [redacted] First leg is December 7th. I was able to do it when the level was [redacted] but had to move fast because it was on the upswing. Later on in the day we would have been over [redacted] So I decided to move without first consulting you, since you had agreed in essence. That saved us some money.

The[redacted]s are all comfortable: about 2.5 orange nuts @13710 (3%) and about 2.05 green nuts @13270 (12%).

All clear?
Dieter

PS Just give me a short confirmation when you get this mail, to make sure things are working.
Follow-up: Next visit: Apr05

GOVERNMENT EXHIBIT
18

U00004891

Permanent Subcommittee on Investigations
EXHIBIT #14

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Memorandum

4 July 2000

DRAFT

to Business Committee, Private Banking

cc Walter von Wyl, John Cusack, Hansruedi Schwaecher

from René Sonneveld and Jonathan Bourne, Financial Planning & Wealth Management.

ject IRS 2001
FPWM policy for dealing with US persons under the IB agreement

Gentlemen,

The Bank's Qualified Intermediary Agreement with the IRS forces US persons who invest in US securities to disclose themselves to the IRS by completing an IRS Form W-8.

This applies in particular to:-

1. US persons with accounts held directly;
2. The settlors of grantor trusts, as defined by US rules;
3. The beneficiaries of simple trusts, as defined by US rules;
4. The economic founders of foundations, treated as grantor trusts;
5. The beneficiaries of foundations, treated as simple trusts.
6. In the case of items 2-5 above, we will have to disclose non-US persons who are settlors or beneficiaries to the IRS, if the structures hold US securities.

Questionnaires will be sent to legal entities including trusts, foundations and underlying companies by the end of July 2000 to determine their status. The IB Project team (of which FPWM is not a part) is working on this questionnaire at the moment.

Certain other structures are not caught by these rules, and there is no need for the settlor/beneficiaries/individual owner to disclose themselves to the IRS, even though they are US persons. These structures are:-

- Offshore companies, with limited liability, which have not elected to be "flow-through" entities;
- Grantor, simple and complex trusts with underlying companies, holding the assets;
- Complex trusts;
- Foundations treated as complex trusts;
- Certain insurance products in which a non-US insurance company holds the assets underlying a deferred variable annuity policy or a life insurance policy.

We recommend the following FPWM policies for US persons in categories 1-6 above.

I. Change of investments

GOVERNMENT EXHIBIT 8

U00014261

Permanent Subcommittee on Investigations
EXHIBIT #15

ab

Where the client agrees, direct investments in US securities should be sold and replaced with investments on the approved list shown on the Private Web. These include UBS investment funds and certain derivative products.

II. Change of structure
Where the client/settlor/beneficiaries wish to retain direct investments in US securities, this can be achieved by placing an underlying company beneath the trust/foundation.
This is a relatively minor structural change, which could be made without upsetting the IRS, if done prior to 2001.
The conversion of a simple or grantor trust/foundation into a complex trust, by changing the trust/foundation deeds is not recommended by Baker & McKenzie, as the advantages of the original structure can be destroyed.

III. No more "flow-through" entities as a matter of policy
Baker & McKenzie have recommended that we give active consideration to setting a new policy, by which the bank would not accept "flow-through" entities as account holders. By "flow-through" entities we mean simple and grantor trusts/foundations and other entities, eg partnerships, where IRS rules look through the structure to the ultimate beneficial owners. Such a policy would be justified on the grounds of administrative convenience and avoiding costly mistakes, where a structure is mis-analysed under all the complex rules, rather than tax avoidance. Baker & McKenzie would have the capacity, for example, to place IPOs under each of our foundations.

IV. Purchase of alternative structures
In the case where the US person holds his US investments directly, we have been advised by Baker & McKenzie that we cannot recommend products (such as the use of offshore companies, annuity or insurance products) to our clients as an "alternative" to filing a Form W-8. This could be viewed as actively helping our clients to evade US tax, which is a U.S. criminal offence. Further, such recommendations could infringe upon our Qualified Intermediary status. If, on audit in 2003, it is determined that we have systematically helped US person to avoid the QI rules.
What we can do is suggest that clients seek external professional advice and offer them a choice of approved service providers, if they request it. With this approach it seems clear that we would not be able to share fees with, for example, an insurance provider.

Conclusion
We would recommend that direct US investments are replaced by indirect investments as far as possible.
Where the client in relation to a trust or foundation with no underlying company is against this, then an underlying company should be placed under the trust/foundation with the purpose of holding the US investments.
Consideration should be given to requiring all flow-through entities to have an underlying company as a matter of policy.
Where clients want an external solution, we should only offer them a choice of approved service providers offering insurance products and offshore companies.

Yours truly,

UBS AG

Jonathan Bourne René Sonneveld

Enc. Foreign Trusts & Liechtenstein Foundations: Impact of new QI rules

Subject:	Structures/vehicles for U.S./Canadian Clients
Location:	Palm Beach
Start:	Tue 8/17/2004 8:00 AM
End:	Tue 8/17/2004 12:30 PM
Recurrence:	(none)
Meeting Status:	Accepted
Required Attendees:	Maetzler, Claudia; Perron, Daniel; Bourne, Jonathan; La-Barre, Rene; Guignard, Michel; Marti, Georg

Dear colleagues,

You will meet at Bärengasse 16, 2nd floor, room Palm Beach:
8.00-9.00, Quadris
9.00-10.00, Sinco Treuhand AG
10.15.-11.15, Rickenbach & Partner
11.15-12.15, Panazur

Please see below the e-mail which was sent to the different service providers:

Dear .....,

We would like to conduct a review of the structures/vehicles that you offer to/have set up for our U.S. and Canadian clients. We invite you to make a short presentation on the structures/vehicles that you recommend to U.S. and Canadian clients who do not appear to declare income/capital gains to their respective tax authorities. Our meeting should be concluded in one hour. We kindly ask you to cover both types "simple" and "well managed" structures/vehicles. In your presentation please focus on the following issues for each structure/vehicle:

a) Filing requirements (e.g. accounts, tax returns)

b) Disclosure of BO info (e.g. locally under KYC rules or through tax information exchange)

c) Tax implications (e.g. inheritance tax or income tax in the relevant location)

d) Procedures for management (e.g. to ensure the company is well-managed)

e) QI status (e.g. whether the structure is flow-through or non-flow through)

f) Other issues that the provider believes are relevant to a complete risk assessment

We look forward to meeting with you soon.

Best regards,

Michel Guignard
Daniel Perron
Georg Marti
Rene La Barre
Jonathan Bourne

GOVERNMENT EXHIBIT 9

U00007165

Permanent Subcommittee on Investigations
EXHIBIT #16

FILED by IG D.C.
ELECTRONIC
June 30, 2008
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO.
08-21864-MC-LENARD/GARBER

IN THE MATTER OF THE TAX
LIABILITIES OF:

JOHN DOES, United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers.

EX PARTE PETITION FOR LEAVE TO SERVE "JOHN DOE" SUMMONS

The United States of America avers as follows:

1. This *ex parte* proceeding is commenced pursuant to Section 7402(a), 7609(f) and 7609(h) of the Internal Revenue Code (26 U.S.C.), for leave to serve an Internal Revenue Service "John Doe" summons on UBS AG.

2. UBS is found at 701 Brickell Avenue, Miami, Florida and at 100 SE 2nd Street, Miami, Florida, within the jurisdiction of this Court.

3. As explained in the Declaration of Revenue Agent Daniel Reeves attached hereto, the Internal Revenue Service is conducting an investigation to determine the correct federal

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1 of 4

Permanent Subcommittee on Investigations
EXHIBIT #17

income tax liabilities for tax years ended December 31, 2002 through December 31, 2007, of United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers.

4. In furtherance of this investigation, the Internal Revenue Service, once service of the summons is authorized by the Court, will issue under the authority of Section 7602 of the Internal Revenue Code, an administrative "John Doe" summons to UBS AG. A copy of the summons is attached as Exhibit A to the Declaration of Revenue Agent Reeves.

5. The "John Doe" summons relates to the investigation of an ascertainable group or class of persons, that is, United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates and

for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers. There is a reasonable basis for believing that such group or class of persons may fail, or may have failed, to comply with one or more provisions of the Internal Revenue laws. The information sought to be obtained from the examination of the records or testimony (and the identity of the persons with respect to whose tax liabilities the summonses have been issued) is not readily available from other sources.

6. In support of this Petition, the United States submits the Declarations of Revenue Agent Reeves and Deputy Commissioner Barry B. Shott; the Exhibits attached thereto; and a supporting Memorandum.

R. ALEXANDER ACOSTA
United States Attorney

By: _____
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FILED by IG D.C.
ELECTRONIC
JUNE 30, 2008
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO.
08-21864-MC-LENARD/GARBER

IN THE MATTER OF THE TAX
LIABILITIES OF:

JOHN DOES, United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers.

MEMORANDUM IN SUPPORT OF
EX PARTE PETITION FOR LEAVE
TO SERVE "JOHN DOE" SUMMONS

The United States of America respectfully submits the following Memorandum in support of its *Ex Parte* Petition for Leave to Serve John Doe Summons:

INTRODUCTION

This is an *ex parte* proceeding brought by the United States of America, pursuant to Sections 7609(f) and (h) of the Internal Revenue Code (26 U.S.C.), for leave to serve an Internal Revenue Service "John Doe" summons upon UBS AG ("UBS"). Section 7609(f) provides that a summons which does not identify the person with respect to whose liability it is issued may be

served only after a court proceeding in which the United States establishes certain factors. These types of summonses are known as "John Doe" summonses. Section 7609(h)(1) provides that a district court in which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under Section 7609(f). UBS is found in this judicial district, as it has two branch offices in Miami-Dade County. Section 7609(h)(2) provides that any determinations required to be made under Section 7609(f) shall be made *ex parte* and shall be made solely on the petition and supporting affidavits.

QUESTIONS PRESENTED

Whether, as required by Section 7609(f), the United States of America has demonstrated (1) that the "John Doe" summons which the Internal Revenue Service desires to serve upon UBS relates to the investigation of an ascertainable group or class of persons; (2) that there is a reasonable basis for believing that such group or class of persons may fail or may have failed to comply with any provision of any internal revenue law; and (3) that the information sought to be obtained from the examination of the records or testimony (and the identities of the persons with respect to whose liability the summons is issued) is not readily available from other sources.

BACKGROUND

Attached to this memorandum is a Declaration by Revenue Agent Daniel Reeves. In his Declaration, Reeves describes for the Court the tradition of offshore financial accounts in financial privacy jurisdictions. Through a review of numerous studies on the matter and his experience with the Internal Revenue Service, Revenue Agent Reeves explains that a growing number of United States taxpayers are making use of offshore accounts to evade the reporting and payment of income taxes. In the instant case, the Internal Revenue Service seeks to serve a

"John Doe" summons on UBS, a Swiss bank with branches around the world, including a major presence in the United States. As described in the Reeves Declaration, the Internal Revenue Service has learned that UBS has assisted certain United States taxpayers conceal their beneficial ownership of offshore accounts in order to avoid detection by the Internal Revenue Service. UBS segregates United States taxpayers with accounts in Switzerland into two categories: those who provide their taxpayer identification numbers to UBS on Forms W-9 to enable UBS to report their income to the Internal Revenue Service, and those who choose to remain undeclared. The Internal Revenue Service is conducting an investigation to determine the identities of those United States taxpayers with UBS accounts in Switzerland who failed to give UBS Forms W-9 and for whom UBS has not filed Forms 1099. Learning the identities of these individuals is one of the purposes that the United States seeks to achieve with the proposed "John Doe" summons.

In 2001, UBS entered into a Qualified Intermediary Agreement ("Q.I. Agreement") with the Internal Revenue Service. Prior to the Q.I. Agreement, United States tax laws required UBS to make U.S. income tax withholdings on all income earned from U.S. securities, whether the account holder was a United States taxpayer or not. Thus, UBS had an incentive to enter into the Q.I. Agreement, because doing so would allow it to limit or entirely forego these withholdings for its foreign, non-United States taxpayer clients. In exchange for this, however, UBS agreed to greater reporting obligations with regard to United States taxpayers. The Q.I. Agreement was intended to mark a significant departure from the historically strict financial secrecy laws enjoyed by United States taxpayers with Swiss accounts, which often resulted in the concealing of otherwise taxable income to the IRS.

As is described in further detail in the Declaration of Barry B. Shott, the Q.I. Agreement required UBS to identify truthfully the citizenship and residence of its clients so that UBS could either report taxable payments to the United States on a Form 1099 or, where appropriate, withhold tax at a twenty-eight percent rate to be paid over to the United States. UBS was to do this by having its clients complete either IRS Forms W-8BEN ("Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding") or IRS Forms W-9 ("Request for Taxpayer Identification Number and Certification"). Non-United States taxpayers were to complete Forms W-8BEN, which essentially certified that the beneficial owner of the offshore account was a foreign, non-United States taxpayer. On the other hand, United States taxpayers were to complete Forms W-9, which would identify them as United States taxpayers and provided UBS with the information necessary for it to file Forms 1099 with the Internal Revenue Service reporting all payments. As explained in the Shott Declaration, the Q.I. Agreement required UBS to prohibit any United States taxpayers refusing to complete Forms W-9 from investing in U.S. securities. Furthermore, under certain circumstances, UBS was to make back-up withholdings on income earned in these "undeclared" accounts.

Because compliance with the Q.I. Agreement meant that United States taxpayers would have to identify themselves to the Internal Revenue Service (or alternatively, remain anonymous but possibly be subject to a twenty-eight percent withholding), many United States taxpayers with offshore UBS accounts had their central motivation behind the account neutralized, to wit: the concealment of their offshore accounts from the Internal Revenue Service and the evasion of U.S. income tax. The Internal Revenue Service has since learned, however, that UBS assisted United States taxpayers avoid the disclosure obligations under the Q.I. Agreement.

Bradley Birkenfeld is a former employee of UBS who recently pleaded guilty to conspiring to assist high-profile United States taxpayer, Igor Olenicoff, evade paying $7.2 million in taxes by assisting him to conceal $200 million of assets. The criminal case against Birkenfeld is pending in this district, Case No. 0:08-CR-60099-ZLOCH. According to Birkenfeld's Statement of Facts provided by him at his allocution, UBS, in order to avoid the reporting requirements of the Q.I. Agreement, assisted wealthy United States taxpayers create offshore nominee and sham entities to act as foreign beneficial owners of the offshore accounts. Doing so enabled United States taxpayers to avoid filing Forms W-9 identifying them as such, which consequently meant that UBS would not report the United States taxpayers' identities or their income to the Internal Revenue Service. The Internal Revenue Service suspects that there are many United States taxpayers who similarly received UBS's assistance to hide their offshore accounts. The failure to submit Forms W-9 is the central attribute for those United States taxpayers looking to avoid disclosure of their identity and income to the Internal Revenue Service. Hence, the proposed "John Doe" class is described as follows:

> United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers.

DISCUSSION

In furtherance of this investigation, the Internal Revenue Service is requesting authorization to serve a "John Doe" summons on UBS, a financial institution that provides "a comprehensive range of products and services, individually tailored for wealthy and affluent clients around the world . . ." In 2007, UBS Wealth Management International & Switzerland recorded a "net new money intake" of 125 billion Swiss Francs, with a total of 1,294 billion Swiss Francs in invested assets. This memorandum explains how the proposed summons meets the necessary elements of a "John Doe" summons.

I. The Summons for Which the Government Seeks Authorization Meets the Requirements of a "John Doe" Summons

Section 7601 of the Internal Revenue Code requires the Secretary of the Treasury to "cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax." Section 7602 authorizes the Secretary to summon records and testimony for that purpose. Specifically, Section 7602 authorizes the Secretary "[f]or the purpose of ascertaining the correctness of any return, making a return where none has been made, [or] determining the liability of any person for any internal revenue tax . . . [t]o summon . . . any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax . . ., or any other person the Secretary may deem proper, to appear . . . and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry."

Section 7602 is the Internal Revenue Service's principal information-gathering authority, and, accordingly, the courts have broadly construed it in light of its intended purpose of furthering the effective conduct of tax investigations. Thus, the courts have repeatedly rejected attempts to circumscribe or thwart the effective exercise of the Internal Revenue Service's summons power. See, e.g., United States v. Euge, 444 U.S. 707, 715-716 (1980); United States v. Bisceglia, 420 U.S. 141 (1975); Couch v. United States, 409 U.S. 322, 338 (1973).

In Bisceglia, the Supreme Court held that Sections 7601 and 7602 empowered the Internal Revenue Service to issue a "John Doe" summons to a bank to discover the identity of a person who had engaged in certain bank transactions. This authority was explicitly codified in Section 7609(f) of the Internal Revenue Code, as added by the Tax Reform Act of 1976. Section 7609(f) provides as follows:

> Any summons . . . which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that –
>
> > (1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,
> >
> > (2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and
> >
> > (3) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

The "John Doe" summons for which the United States seeks authorization in the instant case meets those three requirements. It relates to the investigation of an ascertainable group or class of persons – United States taxpayers who, at any time between December 31, 2002 and

December 31, 2007, had financial accounts with UBS in Switzerland, and for whom UBS (1) did not have in its possession IRS Forms W-9, and (2) had not filed timely and accurate IRS Forms 1099 to United States taxing authorities for all reportable payments made to United States taxpayers. There is a reasonable basis for believing that such group or class of persons may fail, or may have failed, to comply with one or more provisions of the internal revenue laws. And the information sought to be obtained from the examination of the records or testimony (and the identity of the persons with respect to whose tax liabilities the summonses have been issued) is not readily available from other sources.

A. The Investigation Is Related to an Ascertainable Class

As required by Section 7609(f)(1), the group or class of persons to be investigated here is ascertainable – United States taxpayers, who at any time during the years ended December 31, 2002, through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS or its subsidiaries or affiliates, and for whom UBS or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 reporting to United States taxing authorities all reportable payments made to such United States taxpayers.

This class is readily ascertainable by UBS. As explained in the Reeves Declaration, UBS divided its United States taxpayer clients with UBS accounts in Switzerland into two groups: (1) those who submitted Forms W-9 (which would identify the United States taxpayer as the

beneficial owner of the account and provide UBS with the information necessary to file with the IRS Forms 1099 reporting all payments made thereto) ("declared accounts"); and (2) those who chose not to file Forms W-9 ("undeclared accounts"). Thus, it seems that UBS can readily identify which clients fall within the ambit of the "John Doe" class.

B. Reasonable Basis Exists for the Belief That the Unknown Persons May Fail, or May Have Failed to Comply with the Internal Revenue Laws

With respect to the second requirement, set forth in Section 7609(f)(2), the Declaration of Revenue Agent Daniel Reeves reflects a reasonable basis for believing that the unknown persons whose identities are sought by the summonses may fail, or may have failed, to comply with one or more provisions of the internal revenue laws.

In the first instance, money transfers between the United States and Switzerland, a jurisdiction with a widely-known reputation for protecting the identity of account holders, are inherently reasonably suggestive of tax avoidance. More importantly, the "John Does" chose not to submit the documents necessary for UBS to report their taxable payments to the IRS. See 26 U.S.C. Sections 6042 & 6049 (imposing a duty on payors of dividends and interest to file a information returns (e.g., Forms 1099) with the IRS). This omission leads to the reasonable suspicion that these United States taxpayers similarly failed to report these taxable items on their income tax returns. United States taxpayers are legally bound to report their various items of worldwide income, and failing to do so would be in direct violation of applicable internal revenue laws. See 26 U.S.C. Section 6012(a) (imposing a duty to file tax returns reporting income).

In United States v. Pittsburgh Trade Exchange, Inc., 644 F.2d 302, 306 (3d Cir. 1981), the court held that the "reasonable basis" test had been met based upon a revenue agent's testimony that barter transactions of the type arranged by the Pittsburgh Trade Exchange were "inherently susceptible to tax error." In United States v. Ritchie, 15 F.3d 592, 601 (6th Cir. 1994), the court held that the mere payment for legal services with large amounts of cash is a reasonable basis for the issuance of a "John Doe" summons. Likewise, omitting the steps necessary to ensure that UBS reports items of income to the Internal Revenue Service leads to the suspicion that the "John Does" similarly failed to report such income on their income tax returns. In short, there is a reasonable basis for the issuance of the summons at issue.

As detailed in the Declaration of Revenue Agent Reeves, UBS made clear to its United States taxpayer clients that they could remain anonymous to the Internal Revenue Service simply by not filing a Form W-9 with UBS. Not having Forms W-9 on file enabled UBS to avoid filing with the IRS, Forms 1099 for those United States taxpayers, which would have disclosed the identity of the account holder, as well as taxable payments made with respect to the account. According to a letter that UBS sent on November 4, 2002 to United States taxpayers with offshore accounts (Exhibit E to the Reeves Declaration), the only drawback for the U.S. clients not wishing to file a Form W-9 was a prohibition on their further investment in U.S. securities.

UBS, however, assisted its United States taxpayer clients with offshore accounts to avoid both the filing of Forms W-9 as well as the restrictions on holding U.S. securities. UBS achieved this favorable result by forming nominee entities in foreign jurisdictions to act as beneficial owners of the accounts. So long as documentation was submitted to UBS establishing the foreign entity as the beneficial owner (i.e., filing with UBS a Form W-8BEN as opposed to a

Form W-9), UBS treated it as such. In other words, if the account were structured so that it *appeared as though* a foreign entity were the beneficial owner–even though UBS may have known otherwise–UBS would not report to the Internal Revenue Service payments made on that account. The Declaration of Daniel Reeves describes Birkenfeld's Statement of Facts, a document on UBS's web page, as well as other evidence corroborating these suspicions.

Birkenfeld's Statement of Facts also describes the circumstances surrounding the high-profile indictment of former UBS client and United States taxpayer, Igor Olenicoff. As explained in the Declaration of Daniel Reeves, Olenicoff, with UBS's assistance, formed a Bahamian corporation and fraudulently completed an IRS Form W-8BEN to make it appear as though the corporation was the beneficial owner of his offshore account with UBS. To this and other bogus entities, Olenicoff transferred $60 million, as well as a 147-foot yacht. Because it was in the name of a foreign entity, neither Olenicoff nor UBS reported to the Internal Revenue Service payments made to the account. In December 2007, Olenicoff pleaded guilty to a criminal account of filing a false 2002 tax return.

There is reason to suspect that, much like Olenicoff, many United States taxpayers used UBS's services to shelter their assets and, as a result, failed to file accurate tax returns. In fact, in recent weeks, numerous articles in major newspapers have recounted the story of Birkenfeld and Olenicoff, with many also describing the angst among many United States taxpayers who fear that their false returns will now find their way to the desk of an Internal Revenue Service examiner.

The parallels between Olenicoff and the "John Doe" class provide further support for the IRS's reasonable belief that the "John Does" violated internal revenue laws. See, e.g., United

States v. Brigham Young University, 679 F.2d 1345, 1349-50 (10th Cir. 1982), vacated for consideration of mootness, 459 U.S. 1095 (1983) (prior audit experience with other contributors that had overvalued "in kind" contributions was a reasonable basis for issuing a "John Doe" summons for the identity of all "in kind" contributors to Brigham Young University); United States v. Kersting, 891 F.2d 1407 (9th Cir. 1989) ("John Doe" summons enforced after district court found "the existence of at least one case in which a Tax Court found some of Kersting's programs to be abusive of the tax code." 891 F.2d at 1409. The Ninth Circuit affirmed: "There was ample basis for believing that the persons about whom records were sought had not complied with the tax law." 891 F.2d at 1412).

C. The Identity of Persons in the Class Is Not Readily Available from Other Sources

With respect to the third and final requirement set forth in Section 7609(f)(3), the information sought (and the identity of the persons with respect to whose tax liabilities the summonses have been issued) is not readily available to the Internal Revenue Service from other sources, but is available from UBS.

Persons in the "John Doe" class may have filed tax returns with the Internal Revenue Service, but their names are unknown, and an inspection of a particular taxpayer's return is not likely to reveal understatements or misstatements of income resulting from transactions concealed through the offshore transfers of funds or the failure to report foreign accounts.

The United States has two diplomatic means of obtaining financial records from Switzerland, but neither avenue is an acceptable alternative to the "John Doe" summons. First, the United States has a Mutual Legal Assistance Treaty ("MLAT") with Switzerland, which

contains a mechanism for the exchange in connection with a United States criminal investigation of specific charges. Because the Internal Revenue Service does not have a criminal investigation of the "John Doe" class, however, the MLAT cannot be used for the present purposes.

Second, the United States can make an official request to the Swiss government pursuant to the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income ("the Swiss treaty"). As described in the Declaration of Barry B. Shott, however, the Swiss treaty historically has been applied to provide the Internal Revenue Service assistance only in response to specific requests that name the particular taxpayer, which the Internal Revenue Service cannot currently do since it does not know the identities of the "John Doe" class. Although the Swiss government has recently indicated a willingness to consider a treaty request for the records of the "John Doe" class of taxpayers, there is no guarantee that the request would be successful. Furthermore, a treaty request could delay the investigation of the taxpayers in the "John Doe" class. Section 6501 of the Internal Revenue Code imposes a general three-year period of limitations on the assessment of taxes after a return is filed and a six-year period for substantial omissions of income from a return. A delay in pursuing a possibly unsuccessful treaty request could jeopardize the timely assessment of taxes against the taxpayers whose records are sought in this summons.[1]

The records at issue are in the possession of UBS. The taxpayers whose records are sought have chosen to remain undisclosed to the Internal Revenue Service and have done so with

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[1] Once the Internal Revenue Service serves a summons for a taxpayer's records, Section 7609(e)(2) suspends the running of the statute of limitations if the records are not produced starting on the date 6 months after service of the summons.

the assistance of UBS. The only readily available means for the Internal Revenue Service to identify these taxpayers and obtain the records is pursuant to a John Doe summons.

II. COURTS HAVE APPROVED "JOHN DOE" SUMMONSES IN A SIMILAR INVESTIGATION

The circumstances discussed above has led the Internal Revenue Service to make this request for the Court's approval of the proposed "John Doe" summons. Because the IRS's investigation is still in its early stages, there are no prior instances where the Internal Revenue Service sought to issue a "John Doe" summons to gather information concerning Swiss financial accounts held by United States taxpayers. In a similar context, however, courts have previously approved the issuance of "John Doe" summonses to credit card companies for the identities of United States taxpayers using offshore credit cards as a means of tax evasion. For example, on October 30, 2000, the Southern District of Florida in Case No. 00-3919 CIV-JORDAN issued an order approving the service of "John Doe" summonses upon American Express and MasterCard International, Inc. Similarly, on August 20, 2002, the Southern District of Florida in Case No. 02-22404-CIV-UNGARO-BENAGES issued an order approving a second "John Doe" summons upon MasterCard International, Inc.

III. CONCLUSION

The summons for which the government seeks authorization meets the requirements of a "John Doe" summons. Accordingly, the Court should enter an order granting the Internal Revenue Service leave to serve a "John Doe" summons upon UBS AG in substantially the form as attached as Exhibit A to the Declaration of Daniel Reeves.

R. ALEXANDER ACOSTA
United States Attorney

By: _____
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FILED by IG D.C.
ELECTRONIC
JUNE 30, 2008
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO.
08-21864-MC-LENARD/GARBER

IN THE MATTER OF THE TAX
LIABILITIES OF:

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DECLARATION OF DANIEL REEVES

I, Daniel Reeves, pursuant to 28 U.S.C. Section 1746, declare and state:

1. I am a duly commissioned Internal Revenue Agent and Offshore Compliance Technical Advisor employed in the Small Business/Self Employed Business Division of the Internal Revenue Service and am assigned to the Internal Revenue Service's Offshore Compliance Initiative. The Offshore Compliance Initiative develops projects, methodologies, and techniques for identifying United States taxpayers who are involved in abusive offshore transactions and financial arrangements for tax avoidance purposes. I have been an Internal Revenue Agent for more than thirty years and have specialized in offshore investigations for the

last eight years. As an Internal Revenue Agent, I have received training in tax law and audit techniques, including specialized training in abusive offshore tax issues, and have extensive experience in investigating offshore tax matters.

2. For the past six years I have been the lead investigator for the Internal Revenue Service's Offshore Credit Card Project and other offshore compliance initiatives. I developed many of the investigative techniques and procedures being used to identify United States taxpayers with offshore bank accounts. I am also one of the developers of the Internal Revenue Service's offshore training programs for investigators and have participated as an instructor and expert at numerous presentations and training sessions on identifying offshore accounts.

3. The Internal Revenue Service is now investigating United States taxpayers who maintain accounts with UBS AG in Switzerland but who have not provided to UBS (via Forms W-9) their taxpayer identification numbers and other information necessary for reporting to the Internal Revenue Service (via Forms 1099) taxable income earned from their Swiss accounts. To facilitate this investigation, the Internal Revenue Service, once authorized by the Court, will issue under the authority of Section 7602 of the Internal Revenue Code (26 U.S.C.), a "John Doe" summons to UBS. A copy of this summons is attached as Exhibit A.

4. UBS is a Swiss bank with branches around the world and with a major presence in the United States. UBS provides, among other services, private banking services to wealthy United States taxpayers. The records sought by the summons will reveal the identities of and disclose transactions by persons who may be liable for federal taxes and will enable the Internal Revenue Service to investigate whether those persons have complied with the internal revenue laws.

5. Based on information received by the Internal Revenue Service, it is likely that the persons in the "John Doe" class may have been under-reporting income, evading income taxes, or otherwise violating the internal revenue laws of the United States.

6. The "John Doe" summons to UBS relates to the investigations of an ascertainable group or class of persons. There is a reasonable basis for believing that this group or class of persons has failed or may have failed to comply with provisions of the internal revenue laws. The information and documents sought to be obtained from the examination of the records or testimony (and the identity of the persons with respect to whose tax liabilities the summonses have been issued) are not readily available from sources other than UBS.

I. THE SUMMONS DESCRIBES AN ASCERTAINABLE CLASS OF PERSONS

7. The proposed "John Doe" summons seeks information regarding United States taxpayers who, at any time between December 31, 2002 and December 31, 2007, had financial accounts with UBS in Switzerland, and for whom UBS (1) did not have in its possession IRS Forms W-9, and (2) had not submitted timely and accurate IRS Forms 1099 to United States taxing authorities reporting all reportable payments made to the United States taxpayers.

8. This class of persons is easily ascertainable by UBS. As explained below, UBS divides their United States taxpayer clients into those who provide an IRS Form W-9 and those who do not. The very nature of private banking suggests that UBS will be conversant with virtually all of a client's significant financial affairs, including the formation of controlled foreign entities and the opening of foreign accounts. Private banking requires that the primary client advisor be familiar with all of the financial affairs of the client in order to advise the client on a

comprehensive financial plan. For these reasons, UBS will be able to readily ascertain the identity of the proposed "John Doe" class.

II. REASONABLE BASIS FOR BELIEF THAT THE 'JOHN DOE' CLASS HAS FAILED TO COMPLY WITH INTERNAL REVENUE LAWS

A. A United States Taxpayer Who Fails to Disclose Taxable Payments Has Failed to Comply with the Internal Revenue Laws

9. United States taxpayers are required to file annual income tax returns reporting to the Internal Revenue Service their income from all sources worldwide. Taxpayers who fail to include taxable payments on their income tax returns have failed to comply with the internal revenue laws.

10. As will be described in further detail below, the "John Doe" class is limited to United States taxpayers with UBS accounts in Switzerland who affirmatively chose not to provide to UBS Forms W-9 disclosing their status as United States taxpayers, and for whom UBS did not submit Forms 1099 reporting to the Internal Revenue Service all of their reportable payments. Based on my experience with offshore accounts, taxpayers who choose not to provide the documents necessary for proper reporting do so in order to conceal their income from the Internal Revenue Service. The fact that these United States taxpayers chose not to submit Forms W-9 to UBS, thus choosing to remain "undeclared," provides a reasonable basis to believe that they have failed to comply with the internal revenue laws. Because it does not know the identities of those in the "John Doe" class, the Internal Revenue Service cannot yet audit these United States taxpayers' income tax returns to determine whether they reported such payments.

B. The Tradition of Offshore Tax Haven or Financial Privacy Jurisdictions

11. The Internal Revenue Service has been concerned with the growing problem of United States taxpayers, involved in both lawful and unlawful activities, evading the payment of United States taxes by concealing unreported taxable income in accounts in offshore tax haven or financial privacy jurisdictions. I summarize below several studies that describe the use of offshore tax haven or financial privacy jurisdictions and provide a background of the offshore private banking system.

a. The Gordon Report

12. On January 12, 1981, the Internal Revenue Service issued a report entitled "Tax Havens and Their Use by United States Taxpayers - An Overview," commonly known as the "Gordon Report" for its author, Richard A. Gordon, Special Counsel for International Taxation. The Gordon Report was based on a review of judicial decisions and published literature in the field of international tax planning, research into internal Internal Revenue Service documents concerning taxpayer activities, interviews with Internal Revenue Service personnel, personnel who dealt with tax haven issues for other federal government agencies, and lawyers and certified public accountants who specialized in international taxation. Additionally, the findings in the Gordon Report were based on a statistical analysis of available data concerning international banking, United States direct investment abroad and foreign investment in the United States.

13. The Gordon Report states that the available data support the view that taxpayers ranging from large multi-national companies to individuals and criminals are making extensive use of tax haven and financial privacy jurisdictions. The Gordon Report concluded that there are:

> enormous and growing levels of financial activity and accumulation of funds in tax havens [as well as a] large number of transactions involving illegally earned income and legally earned income which is diverted to or passed through havens for purposes of tax evasion.

b. The Crime and Secrecy Report

14. On August 28, 1985, the Permanent Subcommittee on Investigations of the United States Senate Governmental Affairs Committee issued a report entitled "Crime and Secrecy: The Use of Offshore Banks and Companies." The Crime and Secrecy Report summarized the offshore problem as follows:

> The subcommittee found that the criminal exploitation of offshore havens is flourishing because of haven secrecy and foreign government intransigence in the face of overwhelming evidence of dirty money in their banking systems. The effect has been to systematically obstruct U.S. law enforcement investigations, erode the public's confidence in our criminal justice system, and thwart the collection of massive amounts of tax revenues.

15. The report includes a quote from Senator William V. Roth, Chairman of the subcommittee regarding the committee's findings on the use of tax haven and financial privacy jurisdictions by American citizens:

> But equally shocking is the fact that we have also found that offshore havens are no longer used exclusively by criminals. Instead, they are increasingly being used by otherwise law abiding Americans to avoid paying taxes and to shield assets from creditors.

16. The Crime and Secrecy Report estimated that the "underground economy" at that time (1985) was hiding between $150 billion and $600 billion apparently unreported income from both legal and illegal business from the Internal Revenue Service. Furthermore, it stated that the underground economy was unquestionably linked to the use of offshore facilities.

c. The United Nations Report

17. On May 29, 1998, the United Nations' Office for Drug Control and Crime Prevention, Global Programme Against Money Laundering, released a report entitled "Financial Havens, Banking Secrecy and Money Laundering." The United Nations Report (at http://www.imolin.org/imolin/finhaeng.html) states that offshore financial centers, tax havens and bank secrecy jurisdictions --

> attract funds partly because they promise both anonymity and the possibility of tax avoidance or evasion. A high level of bank secrecy is almost invariably used as a selling point by offshore financial centers. Many Internet advertisements for banks emphasize the strictness of the jurisdiction's secrecy and assure the prospective customers that neither the bank nor the government will ever give bank data to another government. When the advertising is for private banks, it also stresses the protection from tax collectors.

United Nations Report, Part II, "The Global Financial System."

d. Offshore Private Banks

18. Private banks are operational units within banks that specialize in providing financial and related services to wealthy individuals, primarily by acting as a financial advisor, estate planner, credit source, and investment manager.

19. To open an account in a private bank, prospective clients usually must deposit a substantial sum, often $1 million or more. In return for this deposit, the private bank assigns a "private banker" or "client advisor" to act as a liaison between the client and the bank and to facilitate the client's use of a wide range of the bank's financial services and products. Those products and services often span the globe, enabling the client to benefit from services in carefully selected offshore jurisdictions that tout their strong financial privacy laws.

20. Offshore private banking practices have received considerable attention in recent years. The Senate Permanent Subcommittee on Investigations issued a report concluding that:

> Most private banks offer a number of products and services that shield a client's ownership of funds. They include offshore trusts and shell corporations, special name accounts, and codes used to refer to clients or fund transfers.
>
> All of the private banks interviewed by the Subcommittee staff made routine use of shell corporations for their clients. These shell corporations are often referred to as "private investment corporations" or PICs. They are usually incorporated in [tax haven or financial privacy] jurisdictions . . . which restrict disclosure of a PIC's beneficial owner. Private banks then open accounts in the name of the PIC, allowing the PIC's owner to avoid identification as the account holder.

Minority Staff Report for Permanent Subcommittee on Investigations Hearing on Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities, November 9, 1999, pp. 881-882.

21. Similarly, the Federal Reserve Bank of New York concluded, after a study of forty institutions engaged in private banking, that:

> Most banking institutions maintain and manage accounts for PICs in their U.S. offices; in fact, frequently PICs are established for the client – the beneficial owner of the PIC – by one of the institution's affiliated trust companies in an offshore secrecy jurisdiction. The majority of these institutions employ the sound practice of applying the same general KYC ["Know Your Customer"] standards to PICs as they do to personal private banking accounts – they identify and profile the beneficial owners. Most institutions had KYC documentation on the beneficial owners of the PICs in their U.S. files.

Federal Reserve Bank of New York, Guidance on Sound Risk Management Practices Governing Private Banking Activities, July 1997.

22. More recently, the Senate Permanent Subcommittee on Investigations issued a report describing this "sophisticated offshore industry," noting that:

> A sophisticated offshore industry, composed of a cadre of international professionals including tax attorneys, accountants, bankers, brokers, corporate service providers, and trust administrators, aggressively promotes offshore jurisdictions to U.S. citizens as a means to avoid taxes and creditors in their home jurisdictions. These professionals, many of whom are located or do business in the United States, advise and assist U.S. citizens on opening offshore accounts, establishing sham trusts and shell corporations, hiding assets offshore, and making secret use of their offshore assets here at home. Experts estimate that Americans now have more than $1 trillion in assets offshore and illegally evade between $40 and $70 billion in U.S. taxes each year through the use of offshore tax schemes . . . Utilizing tax haven secrecy laws and practices that limit corporate, bank, and financial disclosures, financial professionals often use offshore tax haven jurisdictions as a "black box" to hide assets and transactions from the Internal Revenue Service ("IRS"), other U.S. regulators, and law enforcement.

Minority & Majority Staff Report for Permanent Subcommittee on Investigations Hearing on Tax Haven Abuses: The Enablers, The Tools and Secrecy, August 1, 2006, p. 1.

23. Thus, although a United States taxpayer may open a private account in Switzerland, it is often the case that the bank will form a foreign shell entity in a third jurisdiction to act as the nominal owner of the assets. Keeping the account in the name of a foreign entity enables the bank to avoid reporting to the Internal Revenue Service payments that were essentially made to the United States taxpayer (the true owner of the account). The banks remove all visible connections between United States taxpayers and the offshore accounts by structuring the arrangement to appear as though foreign entities are the actual and sole beneficial owners.

C. **UBS & Bradley Birkenfeld**

24. UBS is a bank headquartered in Switzerland with branches throughout the United States, including two in Miami, Florida. According to its 2007 Annual Report, relevant portions of which are attached as Exhibit B, UBS provides "a comprehensive range of products and services, individually tailored for wealthy and affluent clients around the world . . ." According to the Annual Report, UBS Wealth Management International & Switzerland reported a record "net new money intake" of 125 billion Swiss Francs for 2007 alone, "leading to an all-time high in invested assets of [1,294 billion Swiss Francs] . . ."

25. On October 12, 2007, I interviewed Bradley Birkenfeld, a former employee of UBS, regarding his practices as a client advisor for United States taxpayers with UBS accounts in Switzerland. On June 19, 2008, Birkenfeld pleaded guilty to conspiring to assist Igor Olenicoff, a United States taxpayer, evade paying $7.2 million in taxes by assisting him to conceal $200 million of assets. Attached as Exhibit C is Birkenfeld's executed Statement of Facts offered at his allocution ("Statement"). Although the Statement does not specifically name UBS, I know from my prior conversation with Birkenfeld that UBS is indeed the "Swiss Bank" referenced in his Statement. Similarly, although Birkenfeld's indictment and Statement refers to an individual with the initials "I.O.," according to an article appearing in the Wall Street Journal and attached as Exhibit D, Olenicoff's attorney has confirmed this is indeed a reference to Olenicoff. The following description is based on information gathered during my interview with Birkenfeld and from his Statement.

26. Birkenfeld worked with UBS Global Wealth Management International & Switzerland. His primary duties being to acquire and develop new clients in the United States,

Birkenfeld was one of approximately 40 to 50 private banking employees of UBS who, with the encouragement of UBS management, traveled to the United States on a quarterly basis to service United States taxpayers. In order to avoid detection by U.S. authorities, according to Birkenfeld, UBS trained its bankers when entering the United States to state falsely on customs forms that they were traveling for pleasure rather than for business. UBS private bankers also traveled with encrypted laptop computers containing clients' portfolios.

27. According to Birkenfeld, UBS assisted wealthy United States taxpayers conceal their assets in offshore UBS accounts nominally held by sham entities formed in overseas jurisdictions, many of which were tax havens. UBS collaborated with United States taxpayers to prepare false and misleading IRS Forms W-8BEN ("Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding") claiming that the sham entities owned the accounts, and they failed to prepare and file IRS Forms W-9 ("Request for Taxpayer Identification Number and Certification") that should have identified the United States taxpayers as the owners of the accounts. Because it was made to appear as though non-United States taxpayers owned the accounts, UBS would not submit Forms 1099 reporting income earned on the offshore accounts. By concealing the United States taxpayers' ownership and control over the assets in the offshore accounts, UBS assisted these United States taxpayers evade the reporting and payment of their income taxes.

28. During our interview, Birkenfeld provided to me a letter from UBS addressed to all of its United States taxpayer clients with offshore accounts dated November 4, 2002. UBS sent the letter following its entry into a Qualified Intermediary Agreement ("Q.I. Agreement") with the Internal Revenue Service in order to assuage concerns of United States taxpayers that

the Q.I. Agreement would result in the disclosure of their identities to U.S. authorities. The Declaration of Barry Shott contains a full explanation of the Q.I. Agreement. In this letter UBS advised that United States taxpayers who did not want to provide Forms W-9 would continue to enjoy anonymity, and their identities would not be shared with U.S. authorities. This letter, which is attached as Exhibit E, states in part:

> The QI regime fully respects client confidentiality as customer information are only disclosed to U.S. tax authorities based on the provision of a W-9 form. Should a customer choose not to execute such a form, the client is barred from investments in U.S. securities but under no circumstances will his/her identity be revealed. Consequently, UBS's entire compliance with its QI obligation does not create the risk that his/her identity be shared with U.S. authorities.

29. Because it assisted certain United States taxpayers conceal their ownership of the accounts, UBS divided its United States taxpayer clients into two groups: (1) those who were willing to submit Forms W-9 and have the bank file Forms 1099 reporting their earned income, and (2) those who wished to remained "undeclared."

30. UBS, through Birkenfeld, assisted Igor Olenicoff, a high-profile United States taxpayer, to conceal his ownership of offshore UBS accounts. Igor Olenicoff's story is illustrative because he is similarly situated to the "John Doe" class described in the summons. Many of Birkenfeld's representations regarding his dealings with Olenicoff have been extensively covered by both the national and the international media. Some of these news articles are attached as composite Exhibit F. According to a Wall Street Journal article attached as Exhibit D, Olenicoff was "a major player in Southern California real estate after starting his company, Olen Properties, in 1973." According to the article, Forbes magazine listed Olenicoff as the 286th richest U.S. citizen with an estimated worth of approximately $1.7 billion.

31. According to Birkenfeld, Olenicoff, with UBS's assistance, formed a Bahamian corporation and fraudulently completed an IRS Form W-8BEN to make it appear as though the corporation was the beneficial owner of an offshore account that he had with UBS. To this and other bogus entities, Olenicoff transferred $60 million, as well as a 147-foot yacht. Because it was in the name of a foreign entity, UBS did not report to the Internal Revenue Service any payments made to the account, and Olenicoff was able to refrain from reporting the income secure in the knowledge that UBS would maintain the traditional secrecy of Swiss accounts. In December 2007, Olenicoff pleaded guilty to a criminal count of filing a false 2002 tax return for omitting income earned from the offshore assets.

32. In a document attached as Exhibit G, UBS describes similar tactics to assist United States taxpayers evade the reporting and payment of their income taxes in a document found on its own website (last visited June 18, 2008). The document is called "Qualified Intermediary System: US withholding tax on dividends and interest income from US securities," and in it UBS acknowledges that:

> While the main issue concerning [offshore entities] is whether they really are companies and also whether they really are the beneficial owner of the assets as defined by US tax law (facts which can be confirmed using the appropriate forms), the basic problem with trusts and foundations is that US tax law tends to regard them as transparent intermediaries with corresponding disclosure obligations.

For those clients who wish to use such trusts and foundations but who also wish to avoid the "corresponding disclosure obligations," the document continues, in relevant part, as follows (emphasis added):

> [I]f there is no desire to disclose the identities of either the bank's contracting partner or the beneficial owner to the US tax authorities, the possible alternatives

> are for US securities to be excluded from the portfolio, for the beneficial owner to hold them directly, *or for a structure to be put in place between the foundation/trust and the bank* which itself serves as an independent, non-transparent beneficial owner (e.g. a legal entity/corporation/company) and submits documentation to the QI to this effect.

33. Based on what I have learned from Birkenfeld and from UBS's website, it appears that UBS offered, throughout the years addressed by the "John Doe" summons, undeclared offshore accounts to United States taxpayers. In a document found on its own website, UBS suggests putting a "structure in place" between the beneficial owner and the bank in order to avoid disclosure of their beneficial ownership of the account to the Internal Revenue Service. In short, UBS, in plain language, suggests using a nominee entity as a means of avoiding the reporting requirements of the U.S. tax laws.

34. United States taxpayers in the "John Doe" class who choose to remain undisclosed to the Internal Revenue Service are likely failing to comply with the Internal Revenue Code provisions governing a United States taxpayer's obligations to report and pay tax on world-wide income. Given my general knowledge and experience concerning taxpayers who use banking and other services in offshore tax havens and financial privacy jurisdictions, as well as Birkenfeld's Statement, and the story of Olenicoff, I believe it is reasonable to believe that the unidentified United States taxpayers described as the John Doe class, above, may have failed to comply with provisions of the internal revenue law of the United States.

III. THE REQUESTED MATERIALS ARE NOT READILY AVAILABLE FROM OTHER SOURCES

35. As described in the Declaration of Barry Shott, the United States potentially has two means of obtaining Swiss banking records other than through UBS's compliance with the

proposed John Doe summons. First, the United States Competent Authority may make an official request to the Swiss government pursuant to the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income ("the Swiss treaty"). Second, the United States has a Mutual Legal Assistance Treaty (MLAT) with Switzerland which contains a mechanism for the exchange of information in certain circumstances. The MLAT, however, authorizes the exchange of information only in connection with a United States criminal investigation of specific charges. Here, the Internal Revenue Service is not currently conducting a criminal investigation of the John Doe class. By its terms, therefore, the MLAT is not available to obtain information for this civil investigation.

36. As Mr. Shott states in his declaration, the Swiss treaty historically has been applied by the Swiss to require that a request for records identify the particular taxpayer whose records are sought. We cannot identify the specific members of the John Doe class. Although the Swiss government has indicated a willingness to consider a treaty request for the records of the John Doe class of taxpayers, there is no guarantee the request will be successful since Swiss courts could have the final say in whether the records are produced under the Swiss treaty. Furthermore, proceeding under the Swiss treaty, which involves action by the Swiss government and its judicial system, might result in delays that could delay the investigation of the taxpayers in the John Doe class. Section 6501 of the Internal Revenue Code imposes a general three-year period of limitations on the assessment of taxes after a return is filed and a six-year period for returns with a substantial omission of income. A lengthy delay in pursuing a possibly unsuccessful treaty request could jeopardize the timely assessment of taxes against the taxpayers whose records are sought in this summons due to the expiration of the statute of limitations.

37. Finally, the source of any information obtained in response to a request made under the Swiss treaty is the same source from which the Internal Revenue Service will seek information pursuant to the summons – UBS. A request pursuant to the Swiss treaty is a request that the Swiss government use its legal processes to obtain information from UBS. UBS is the only source for the information, whether obtained in response to the Swiss treaty or the John Doe summons. I am not aware of any other institution or person that could provide this information without getting it from UBS in the first instance.

38. In light of the above, the records sought by the John Doe summons are not otherwise reasonably and timely available to the Internal Revenue Service.

IV. CONCLUSION

39. As a general proposition, Internal Revenue Service's experience has shown a direct correlation between unreported income and the lack of visibility of that income to the Internal Revenue Service. That is, income not subject to third party reporting (such as on Forms 1099) is far more likely to go unreported than income that is subject to such reporting. This general proposition is buttressed by examples such as Igor Olenicoff. In short, the Internal Revenue Service's experience provides a reasonable basis to believe United States taxpayers with "undeclared" offshore accounts with UBS are not in compliance with internal revenue laws with respect to such accounts.

I declare under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the foregoing is true and correct.

Executed this 26th day of June 2008.

DANIEL REEVES
Revenue Agent
Internal Revenue Service

Exhibit A
to the
Reeves Declaration

Summons

In the matter of Tax Liability of John Does*

Internal Revenue Service (Division): Small Business/Self Employed Division

Industry/Area (name or number): Area

Periods: Years ending 12/31/2002, 12/31/2003, 12/31/2004, 12/31/2005, 12/31/2006, and 12/31/2007

The Commissioner of Internal Revenue

To: UBS AG

At:

You are hereby summoned and required to appear before Daniel Reeves or Designee an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

See attachment

* "John Does" are United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates in Switzerland, and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all payments made to such United States taxpayers.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

Telephone:

Place and time for appearance at IRS, 51 S.W. First Ave., Miami, Florida; Telephone: (305)

on the _____ day of _____, _____ (year) at _____ o'clock _____ m.

Issued under authority of the Internal Revenue Code this _____ day of _____, _____ (year).

Signature of issuing officer — Title: Territory Manager

Signature of approving officer *(if applicable)* — Title

IRS

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 12-2001)
Catalog Number 21405J

Original — to be kept by IRS

Attachment to "John Doe" Summons to UBS AG

1. For each financial account maintained at, monitored by or managed through any Switzerland office of UBS AG or its subsidiaries or affiliates, if, at any time during the years ended December 31, 2002 through December 31, 2007:

   (A). any United States taxpayer had signature or other authority over such account;

   (B). UBS AG did not have in its possession a Form W-9 executed by the United States taxpayer; and,

   (C). UBS AG did not file a timely and accurate Form 1099 with United States taxing authorities;

      (i). naming the United States taxpayer; and,

      (ii). reporting all reportable payments made to the United States taxpayer;

   please provide all account records for the period January 1, 2002, through the date of compliance with this summons, including but not limited to:

   a. documents identifying each United States taxpayer by name, address, telephone number, date of birth, or taxpayer identification number;
   b. documents pertaining to any foreign entities established or operated on behalf of each United States taxpayer;
   c. documents identifying any relationship managers, domestic and foreign, for each United States taxpayer during the period;
   d. documents pertaining to the opening of such financial accounts and/or the creation of foreign entities created for or on behalf of each United States taxpayer during the period, including, but not limited to, desk files or other records of the relationship manager, e-mails, facsimiles, memoranda of telephone conversations, memoranda of activity, and other correspondence;
   e. documents, including but not limited to, monthly or other periodic statements and records of wire transactions, reflecting the activity of such financial accounts and of such financial accounts maintained in the names of any foreign entity

established or operated on behalf of each United States taxpayer; and,

f. documents pertaining to the referral of each United States taxpayer to UBS offices in Switzerland, including, but not limited to, desk files or other records of the relationship manager, e-mails, facsimiles, memoranda of telephone conversations, memoranda of activity, and other correspondence, and records of any UBS office processing such referrals, including specifically:

   i. documents identifying the UBS office in Switzerland to which the referral was directed and any accounts established;
   ii. documents reflecting annual or other periodic balances of accounts opened at the UBS office in Switzerland receiving the referral and any activity in such accounts; and,
   iii. documents reflecting the receipt of fees by a UBS office for referral of each United States taxpayer, a UBS office servicing the United States taxpayer, or a relationship manager with respect to the referral, documents reflecting how such fees were calculated, and documents reflecting bonuses paid or evaluations given to any UBS employee with reference to such referrals.

2. Please also provide, for the period January 1, 2002, through the date of compliance with this summons, records of wire transfers, and annual account summaries or other annual statements for each domestic financial account held by any United States taxpayer (or by any foreign entity established or operated on behalf of a United States taxpayer) who, at any time during the years ended December 31, 2002 through December 31, 2007, held a Swiss UBS branch financial account with the attributes listed in Part 1(A), (B), and (C), above; or by (2) any foreign financial entity established or operated on behalf of a United States taxpayer.

3. For purposes of this summons "United States taxpayer" means any person with an address in the United States or who is known to UBS or any of its employees or agents, through its business records, anti-money laundering due diligence, or know your customer practices, or through any other means, to be a United States citizen or resident.

4. For purposes of this summons, "UBS office" means any office bearing the name UBS in whole or in part, or holding itself out to the public as part of UBS, including any office controlled by UBS AG, including but not limited to the office of the parent bank, any UBS branch office, and any subsidiary or affiliate of UBS AG.

5. For purposes of this summons, "financial account" means a bank account, securities account or other financial account of any kind.

6. For purposes of this summons, "domestic financial account" means a financial account at a financial institution doing business inside the United States.

7. For purposes of this summons, "foreign entity" means a corporation, limited liability company, international business company, personal investment company, partnership, trust, anstalt, stiftung, or other legal entity created under the laws of a jurisdiction other than the United States.

8. For the purpose of this summons, the word "documents" refers to any electronic, written, printed, typed, graphically, visually or aurally reproduced materials of any kind or other means of preserving thought or expression, recording events or activities, and all tangible things from which information can be processed or transcribed, including, but not limited to:

(A). contracts, agreements, plans, summaries, opinions, reports, commentaries, communications, correspondence, memoranda, minutes, notes, comments, messages, telexes, telegrams, teletypes, cables, facsimiles, wire instructions and electronic mail; and,

(B). video and/or audio tapes, cassettes, films, microfilm, spreadsheets, databases, computer discs and other information which is stored or processed by means of data processing equipment and which can be retrieved in printed or graphic form.

9. For the purpose of this summons, you are required to produce all documents described in this attachment, whether located in the United States, Switzerland, or elsewhere, that are in your possession, custody, or control, or otherwise accessible or available to you either directly or through other entities, including but not limited to offices of UBS AG or its

subsidiaries or affiliates (such as UBS Private Bank) in Zurich, Geneva, or Lugano. Where documents are prepared, stored or maintained in electronic form, they are required to be produced in electronic form together with any instructions, record descriptions, data element definitions, or other information needed to process them in electronic form.

Exhibit B
to the
Reeves Declaration

UBS

Annual Report 2007

1 | Strategy, Performance and Responsibility
2 | Risk, Treasury and Capital Management
3 | Corporate Governance and Compensation Report
4 | Financial Statements

1

Contents

Introduction	3
Letter to shareholders	4
Strategy and development	7
Strategy and structure	10
Industry trends	15
The making of UBS	18
Risk factors	20
Financial performance	25
Measurement and analysis of performance	28
UBS reporting structure	31
Performance indicators	33
UBS results	36
Financial businesses results	38
Balance sheet and off balance sheet	46
Cash flows	54
UBS employees	57
Corporate Responsibility	69
UBS's businesses	85
Global Wealth Management & Business Banking	86
Global Asset Management	122
Investment Bank	134
Corporate Center	147
Industrial Holdings	151
More about UBS	153
Sources of information	154
Corporate Information	155
Contacts	156

Global Wealth Management & Business Banking

- Leading global provider of financial services for wealthy clients
- Top bank for individual and corporate clients in Switzerland
- Record profitability and net new money inflows in 2007

Business description

Wealth Management International & Switzerland

Wealth Management US

Business Banking Switzerland

Performance in 2007

Wealth Management International & Switzerland

Wealth Management US

Business Banking Switzerland

Exhibit C
to the
Reeves Declaration

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 08-CR-60099-ZLOCH

UNITED STATES OF AMERICA
vs.
BRADLEY BIRKENFELD,
Defendant.
_____/

STATEMENT OF FACTS

The United States Attorneys Office for the Southern District of Florida, the United States Department of Justice, Tax Division, and the defendant, Bradley Birkenfeld (hereinafter referred to as the "defendant Birkenfeld") and his counsel agree that, had this case proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt, and that the following facts are true and correct and are sufficient to support a plea of guilty:

The Qualified Intermediary Program

Beginning in 2000, the Internal Revenue Services ("IRS") sought to increase the collection of tax revenues without raising tax rates. In furtherance of this mission, the IRS established the Qualified Intermediary ("Q.I.") Program. Pursuant to the Q.I. Program, foreign banks voluntarily entered into Qualified Intermediary agreements with the IRS pursuant to which these foreign banks agreed to identify and document any customers who held U.S. investments, which were generally marketable securities and bonds, or received United States source income into their off-shore accounts. In accordance with IRS requirements, foreign banks agreed to have their customers fill out IRS Forms W-8BEN, which required the beneficial owner of a bank account to be identified on the form, or IRS Forms W-9, which required United States beneficial owners of bank accounts to be identified.

Foreign banks further agreed to issue IRS Forms 1099 to United States customers for United States source payments of dividends, interest, rents, royalties and other fixed or determinable income paid into the United States customers' off-shore bank accounts. Alternatively, if a client refused to be identified under the Q.I. Agreement, foreign banks agreed to withhold and pay over a twenty-eight percent withholding tax on U.S. source payments and then bar the client from holding U.S. investments. In addition, the sales proceeds, interest and

dividends earned on non-United States investments, if the purchase or sale of the investment was made as a result of contact (in person, via email, telephone or fax) with the U.S. client in the United States, were subject to the Form 1099 reporting requirements or twenty-eight percent withholding. These transactions are referred to under the Q.I. Program as "deemed sales."

In January 2001, a large Swiss bank ("Swiss Bank"), entered into a Q.I. agreement with the IRS. Swiss Bank owns and operates banks, investment banks and stock brokerage businesses throughout the world, and has locations in the United States, with branch locations in the Southern District of Florida. This agreement was a major departure from historical Swiss bank secrecy laws under which Swiss banks concealed bank information for United States clients from the IRS. At all relevant times to this indictment, the Swiss bank represented to the IRS that it had continued to honor this Qualified Intermediary agreement.

Defendant Birkenfeld's Employment

During the entire period from 1998 through 2006, defendant Birkenfeld was employed by various banks in Switzerland as a private banker primarily servicing United States clients. From 1998 through July 2001, defendant Birkenfeld was employed by Barclays Bank in Geneva, Switzerland. In 2001, Barclays Bank entered into a Q.I. agreement with the IRS. In order to comply with the terms of the Q.I. agreement, Barclays Bank decided to terminate its off-shore private banking business for United States clients that refused to complete an IRS Form W-9. Accounts owned by United States clients that refused to fill out IRS Forms W-9 were known in the off-shore banking business as "undeclared" accounts.

From 2001 through 2006, defendant Birkenfeld was employed as a director in the private banking division of a large Swiss bank ("Swiss Bank"), which owns and operates banks, investments banks, and stock brokerage businesses throughout the world, including the United States, with offices in the Southern District of Florida. A manager at the Swiss Bank assured defendant Birkenfeld that even though the Swiss Bank signed a Q.I. Agreement, the Swiss Bank was committed to continue to provide private banking services to United States clients who wished for their accounts to remain undeclared. Swiss Bank managers authorized and encouraged defendant Birkenfeld and other private bankers to travel to the United States to solicit new clients and conduct banking for existing United States clients. The Swiss Bank sponsored events in the United States where Swiss bankers met with U.S. clients, including Art Basel in Miami and the NASDAQ 100 tennis tournament in Miami. The Swiss Bank trained bankers traveling to the United States in techniques to avoid detection by United States law enforcement authorities, including training bankers to falsely state on customs forms that they were traveling into the United States for pleasure and not business. Defendant Birkenfeld, Swiss Bank managers and bankers knew that they were not licensed to provide banking services, offer investment advice or solicit the purchase or sale of securities through contact with clients in the United States.

The Tax Fraud Scheme

When the Swiss Bank notified its U.S. clients of the requirements of the Q.I. agreement, many of the Swiss Bank's wealthy U.S. clients refused to be identified, to have taxes withheld from the income earned on their offshore assets, or to sell their U.S. investments. To these clients, the Q.I. reporting requirements defeated the purpose of opening a Swiss bank account; to conceal their accounts from the IRS and to evade U.S. income taxes. These accounts were known at the Swiss Bank as the United States undeclared business. Rather than risk losing the approximately $20 billion of assets under management in the United States undeclared business, which earned the bank approximately $200 million per year in revenues, managers and bankers at the Swiss Bank, including defendant Birkenfeld, assisted these wealthy U.S. clients in concealing their ownership of the assets held offshore by assisting these clients in creating nominee and sham entities. These entities were usually set up in tax haven jurisdictions, including Switzerland, Panama, British Virgin Islands, Hong Kong and Liechtenstein. Defendant Birkenfeld, Swiss Bank managers and bankers and U.S. clients prepared false and misleading IRS Forms W-8BEN that claimed that the owners of the accounts were sham off-shore entities and failed to prepare and file IRS Forms W-9 that should have identified the owner of the account, the U.S. client.

Managers and bankers at the Swiss Bank, including defendant Birkenfeld, maintained relationships with Swiss and Liechtenstein businessmen, such as Mario Staggl, who would set up these nominee and sham entities for the Swiss Bank's U.S. clients and pose as owners or directors of these entities. By concealing the U.S. clients' ownership and control in the assets held offshore, defendant Birkenfeld, the Swiss Bank, its managers and bankers evaded the requirements of the Q.I. program, defrauded the IRS and evaded United States income taxes.

In order to further assist U.S. clients in concealing their Swiss bank accounts, defendant Birkenfeld, Mario Staggl, other private bankers and managers at the Swiss Bank and others advised U.S. clients to:

place cash and valuables in Swiss safety deposit boxes;

purchase jewels, artwork and luxury items using the funds in their Swiss bank account while overseas;

misrepresent the receipt of funds from the Swiss bank account in the United States as loans from the Swiss Bank;

destroy all off-shore banking records existing in the United States, and;

utilize Swiss bank credit cards that they claimed could not be discovered by United States authorities.

On one occasion, at the request of a U.S. client, defendant Birkenfeld purchased

diamonds using that U.S. client's Swiss bank account funds and smuggled the diamonds into the United States in a toothpaste tube. Defendant Birkenfeld and Mario Staggl accepted bundles of checks from U.S. clients and facilitated the deposit of those checks into accounts at the Swiss Bank, Liechtenstein and Danish banks.

The Billionaire U.S. Real Estate Developer

Defendant Birkenfeld's largest client was a billionaire real estate developer whose initials are I.O. (hereinafter identified as "I.O."). I.O. had residences in Southern California and in Broward County, within the Southern District of Florida. On several occasions, defendant Birkenfeld, Mario Staggl and Swiss Bank managers met with I.O. in Switzerland and in the United States. It was well-known at the Swiss Bank that I.O. was a U.S. citizen, that the income earned on his accounts was subject to Q.I. withholding and reporting requirements, however, during the period from 2001 through 2005, the Swiss Bank issued no Forms 1099 to I.O., nor did the Swiss Bank report any Form 1099 information to the IRS or withhold or pay over any taxes to the IRS.

From at least 2001 through the date of the Indictment, defendant Birkenfeld conspired with Mario Staggl, an owner and operator of a Liechtenstein trust company, I.O., additional private bankers and mangers employed by the Swiss Bank, and others to defraud the United States by assisting I.O. in evading income tax on the income earned on $200 million of assets hidden offshore in Switzerland and Liechtenstein. In order to circumvent the requirements of the Q. I. Agreement, the defendant and others conspired to conceal I.O.'s ownership and control of the $200 million of assets hidden offshore by creating and utilizing nominee and sham entities.

Defendant Birkenfeld, Mario Staggl, I.O, additional private bankers and managers employed by the Swiss Bank, and others committed numerous overt acts in Broward County in the Southern District of Florida, Central District of California, Switzerland, Liechtenstein, and elsewhere in furtherance of the conspiracy, including the following:

On or about June 21, 2001, I.O. caused to be sent completed bank account opening documents for an account at the Swiss branch of a large bank based in London to defendant Birkenfeld, including a Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding that falsely and fraudulently claimed that the beneficial owner of the newly opened account was a shell corporation located in the Bahamas.

On or about July 26, 2001, defendant Birkenfeld caused to be sent an email to I.O. and others that the large bank based in London was terminating North American clients, travel and resources, and that his new employer, the Swiss Bank, had a superior network, product range and

management, and had recently acquired a large United States securities brokerage house in order to enhance United States investment expertise.

On or about October 19, 2001, defendant Birkenfeld caused to be sent via facsimile to I.O. at a United States facsimile number Swiss bank account opening documents from the Swiss Bank, including a form entitled "Verification of the beneficial owner's identity." This form, executed by I.O., falsely and fraudulently stated that I.O. was not the beneficial owner, and that a nominee Bahamian corporation was beneficial owner of the account. The application further listed I.O. as a signatory to the account.

On or about December 4, 2001, Mario Staggle recommended to I.O. that in order to further conceal I.O.'s ownership of off-shore assets, in addition to setting up Liechtenstein trusts and Dutch holding companies, I.O. should set up an entity in the British Virgin Islands, Panama or Gibraltar that "would lead to another 'safety break' in a tax and anonymity aspect."

On or about December 19, 2001, Mario Staggl caused to be executed a "Letter of Intent," which stated that New Haven Trust Company Limited, trustee of The Landmark Settlement, intended to hold the trust property for the benefit of I.O., and, after his demise, for his children.

On or about March 13, 2002, defendant Birkenfeld caused to be sent a facsimile to I.O. at a United States facsimile number listing $15 million of bonds that an investment manager at the Swiss Bank had purchased for I.O.

On or about March 25, 2002, I.O. caused to be sent a facsimile to defendant Birkenfeld authorizing defendant Birkenfeld to issue five credit cards from the Swiss Bank to I.O. and others.

On or about April 16, 2002, I.O. caused to be sent a letter to defendant Birkenfeld authorizing the wire transfer of $80 million from one account at the Swiss Bank to another account at the Swiss Bank.

On or about April 23, 2002, Mario Staggl caused to be sent an email to I.O. in the United States with instructions for I.O. to transfer a portfolio, worth approximately $60 million, containing United States securities from a brokerage house in London to an account in the name of a Danish shell corporation at a Liechtenstein bank.

On or about April 25, 2002, an unindicted co-conspirator caused to be sent an email to I.O., with a copy to Mario Staggl, that recommended that in addition to the Liechtenstein trusts

and Danish holding companies, I.O. should set up United Kingdom companies to act as nominee shareholders. As stated in the email, "... the partners appear to be U.K. companies and Liechtenstein does not appear to be connected.... The role of the U.K. companies is simply to act as nominee shareholders."

On March 25, 2002, I.O. caused to be sent a fax authorizing defendant Birkenfeld to wire transfer $39 million from one account at the Swiss Bank to another account at the Swiss Bank.

On or about May 7, 2002, Mario Staggl caused to be sent a reply email advising I.O. not to put his name on any Liechtenstein accounts because doing so could "jeopardize the structure," and reminded I.O. that he had executed blank account signature cards that Mario Staggl could use.

On or about April 15, 2003, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2002 tax year, listing his address as Sanctuary Cove, Florida that fraudulently omitted income earned on off-shore assets.

On or about May 19, 2003, Mario Staggl caused to be sent an email to I.O., with a copy to defendant Birkenfeld, that stated that Mario Staggl's lawyers in Gibraltar told him "that everything is now in order to proceed with the application to transfer ownership to Gibraltar" of I.O.'s 147 foot yacht.

On or about March 24 and March 25, 2004, defendant Birkenfeld traveled to the Southern District of Florida to meet with I.O. and a banker from the Swiss Bank's New York branch in order to solicit I.O. to take out real estate loans with the Swiss Bank using his undeclared off-shore assets as collateral.

On or about April 15, 2004, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2003 tax year, listing his address as Lighthouse Point, Florida that fraudulently omitted income earned on off-shore assets.

On or about April 15, 2004, I.O. filed his United States individual income tax return, Form 1040, for the 2003 tax year, listing his address as Lighthouse Point, Florida that fraudulently omitted income earned on off-shore assets.

On or about April 15, 2005, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2004 tax year, listing an address in Lighthouse Point, Florida that failed to report the income earned on off-shore assets.

On or about June 12, 2005, defendant Birkenfeld and Mario Staggl met with I.O. at a Liechtenstein bank and advised him to transfer all of his assets held by the Swiss Bank to a Liechtenstein bank because Liechtenstein had better bank secrecy laws than Switzerland.

The tax loss associated with the conspiracy involving the evasion of income taxes of the approximate $200 million I.O. concealed offshore is $7,261,387 million, exclusive of penalties and interest.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Date: 6/10/08 By: _____
KEVIN DOWNING
SENIOR TRIAL ATTORNEY
MICHAEL P. BEN'ARY
TRIAL ATTORNEY
UNITED STATES DEPARTMENT OF JUSTICE
TAX DIVISION

Date: 6/13/08 By: _____
JEFFREY A. NEIMAN
ASSISTANT UNITED STATES ATTORNEY

Date: 6/10/08 By: _____
DANNY ONORATO
PETER RABEN
ATTORNEYS FOR DEFENDANT

Date: 10/06/08 By: _____
BRADLEY BIRKENFELD
DEFENDANT

Exhibit D
to the
Reeves Declaration

THE PROPERTY REPORT C1

MARKETPLACE B1

STREET JOURNAL.

DAY, MAY 14, 2008 - VOL. CCLI NO. 113 ★★★★ $1.50

XX-50 3239.02 ▼ 0.01% 10-YR TREAS ▼ 1 4/32, yield 3.909% OIL $125.80 ▲ $1.57 GOLD $868.50 ▼ $15.20 EURO $1.5478 YEN 104.79

ina Earthquake Exposes Widening Wealth Gap

: death toll from Chi- ıake mounting, the di- rowing a harsh spot- ıe widening gap be- ıation's rich and poor. and paramilitary po- l to dig victims out

retta Chao and eow in Pengzhou, James T. Areddy ghai and Gordon ough in Shifang

ɔsed schools, homes ıls. As the grim work it is increasingly clear ıke inflicted its great- ction on rural areas ımaller towns and cit- ve mushroomed from in recent years as part ·apid urbanization. :as have far less strin- ing-safety practices 's relatively wealthy construction experts 'esult, some citizens vulnerable than oth- lisaster struck.

and relief workers Tuesday to reach vic- ıote areas most dam- : magnitude-7.9 quake hwestern province of :aths in Sichuan alone led 12,000 as of Tues- ng, with more than ired and at least 9,400 debris, the state-run ws agency said, quot- r provincial official. lnesday morning, a lo- who had just returned

Color China Photo/AlexFrangos

RESCUE OPERATIONS: A woman cries before a group of soldiers preparing to search for victims at a collapsed school in Dujiangyan on Tuesday. For full coverage, please see articles on **Page A22.**

from Beichuan County—one of the worst hit areas of Sichuan—described a scene of widespread devastation. A town of 20,000 was crushed when mountains surrounding it collapsed. More than half of the town's residents are still missing. He said there is not even a place to land a helicopter for supplies or rescue missions.

Rescuers have pulled out 2,000 bodies so far, but they are still finding some survivors, he said. He saw one man pulled out with an injured arm and leg. "They revived him, and then he just started to cry," the official said. They have opened up the road to about six miles away from the town, and rescuers are having to hike the rest of the way.

On the outskirts of the small city of Shifang, east of the epicenter, Fang Haiying, a 40-year-old rice farmer, said more than 10 members of her village remained buried in the rubble of their houses. She and her extended family were wearing surgical masks to protect themselves from a chemical leak at a damaged ammonia plant a few miles away. "We've been waiting but no one from the government has come. We have nothing to eat," she said.

Nearly every house in Yinhua village on Shifang's western edge was destroyed. Boulders loosed by Monday's quake, some as big as vans, littered the main road in the area, along with the vehicles they knocked over or crushed.

Survivors of the chaos walked

Please turn to the back page

Two Charged In Tax Case Tied to UBS, Billionaire

By Carrick Mollenkamp, Glenn R. Simpson And Alex Frangos

As part of a widening probe, the U.S. has charged a former UBS AG banker and a Liechtenstein consultant with helping clients avoid taxes by opening secret bank accounts, destroying documents, using Swiss credit cards and filing false tax returns.

One client was billionaire California real-estate developer Igor Olenicoff. Mr. Olenicoff set up a web of secret bank accounts in Switzerland and Liechtenstein to avoid taxes on $200 million in assets, a person familiar with the U.S. case said. Mr. Olenicoff has been cooperating with investigators in the wake of his December guilty plea to a criminal count of filing a false 2002 U.S. tax return. He was ordered to pay $52 million.

The case provides a rare window into the world of private banking—the personalized financial services offered to wealthy customers—where Switzerland's UBS has long dominated. The case could lead to other U.S. clients: The indictment says the two financiers—former UBS private banker Bradley Birkenfeld and Liechtenstein financial adviser Mario Staggl—courted rich Americans and helped some of them avoid paying taxes.

The indictments are the latest sign that elaborate tax-evasion schemes available only to the super-rich are teetering toward a collapse. New information in recent months has come from current or former bank employees who possess the names of clients.

The U.S. investigation into the

Please turn to page A17

2 Charged in Case Tied to UBS, Billionaire

Continued from Page One

alleged UBS tax schemes comes amid a multinational probe into the role that Liechtenstein, a European principality, played as a tax haven for citizens from at least eight countries. That probe began after a then-employee of a Liechtenstein bank obtained and then began distributing to authorities customer data. Now, multiple countries, including the U.S., are investigating their own citizens for hiding assets in the tiny principality between Austria and Switzerland.

Mr. Birkenfeld appeared in court Tuesday where he pleaded not guilty. He is out on bond and is wearing an electronic monitoring device, a Justice Department spokeswoman said. His lawyer declined to comment.

Born and educated in the U.S., Mr. Birkenfeld has lived in Switzerland since 1996, according to the indictment. The 43-year-old worked at UBS from 2001 to 2006 and then joined another Swiss company that also operates in Miami.

He had approached U.S. prosecutors seeking to provide information on the alleged tax schemes and offering the names of UBS clients, a person familiar with the matter said. Prosecutors opted to indict him anyway.

Mr. Staggl, also 43, lives in Liechtenstein where he owns a trust company called New Haven Trust Co. Ltd. According to the indictment, Mr. Staggl has been devising tax-evasion schemes since 2001 that utilized Liechtenstein banks and Danish shell companies.

Mr. Staggl remains at large, prosecutors said.

The indictment comes at a difficult time for UBS. Switzerland's biggest bank already is reeling from about $38 billion in write-downs tied to subprime-mortgage loan securities and has replaced its senior leadership team this year. The U.S. investigation threatens to taint UBS's private bank, which has more assets under management than any other in the world and has long prided itself on its ability to provide confidential services to the world's wealthiest.

The Justice Department alleges that a central component of the scheme was an effort to get around a 2001 agreement between UBS and U.S. authorities that called for UBS to identify clients who received taxable U.S. income. The pact was seen as a landmark departure from historical Swiss bank-secrecy laws.

The indictment alleges the scheme with Mr. Olenicoff dates to the fall of 2001 and lasted at least through 2005: The first step was setting up accounts in Swiss and Liechtenstein banks that concealed Mr. Olenicoff's control of assets with taxable U.S. income. Once those assets had been tucked away, Mr. Olenicoff then was able to comfortably file U.S. tax returns that made no mention of his foreign accounts.

In October 2001, for example, Mr. Birkenfeld faxed account paperwork to Mr. Olenicoff that established a Bahamian corporation as the beneficial owner of the account instead of Mr. Olenicoff, according to the indictment. In 2003, Mr. Staggl emailed Mr. Olenicoff, copying in Mr. Birkenfeld, to inform the developer that lawyers in Gibraltar were ready to transfer ownership of Mr. Olenicoff's 147-foot yacht to a Gibraltar holding company.

On four years' tax returns, Mr. Olenicoff said he didn't have control of accounts in a foreign country, according to the indictment. According to court records from Mr. Olenicoff's December guilty plea, he controlled financial accounts through a series of firms in the United Kingdom, Switzerland, the Bahamas, and Liechtenstein.

Mr. Olenicoff's lawyer, Edward Robbins Jr. of Beverly Hills, Calif., confirmed Mr. Olenicoff is the person described in the indictment as "I.O." but otherwise said Mr. Olenicoff directed him to decline to comment Tuesday.

Mr. Olenicoff was raised in Iran by Russian émigré parents who moved to the U.S. in the 1950s. He later attended the University of Southern California and became a major player in Southern California real estate after starting his company, Olen Properties, in 1973. Forbes magazine's list of rich Americans ranked him in 2007 at 286, worth $1.7 billion.

Mr. Olenicoff's properties are mostly humdrum suburban office buildings and apartment complexes. But he added some flare in 2006 when Olen Properties spent $350 million for One South Dearborn, a new, 40-story glass skyscraper in Chicago. He has several development projects in the pipeline in Florida and Southern California, according to his company's Web site.

California real-estate executives describe Mr. Olenicoff as a private man who stays away from the Orange County social scene of benefits and country clubs. He also has a reputation as being sometimes difficult to deal with. "He doesn't get a lot of fruit baskets at Christmas time from people who did business with him in the past," says Charles Schreiber, founder of KBS Realty Advisors, a Newport Beach, Calif., real-estate investment firm.

On April 15, 2002, Mr. Olenicoff filed a false tax return that "fraudulently omitted income earned from offshore assets," the indictment alleges.

At one point in 2002, Mr. Olenicoff appeared to get cold feet about the security of the Liechtenstein accounts and asked to become a signatory to the accounts, according to the indictment. Mr. Staggl replied in an email telling Mr. Olenicoff not to put his name on the accounts because it would jeopardize the structure. According to the indictment, he allegedly filed fraudulent returns in 2002, 2003, 2004 and 2005.

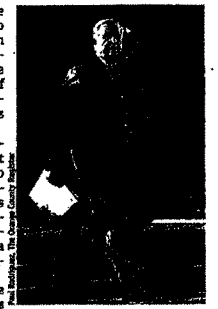
In the summer of 2005, Messrs. Birkenfeld and Staggl told their client to move his assets from the Swiss account and to Liechtenstein. Their reasoning, according to the indictment: "because Liechtenstein had better bank secrecy than Switzerland."

The indictment doesn't name UBS and identifies only a Swiss bank. A person familiar with the matter said it was UBS. UBS recently disclosed that it was the subject of a U.S. investigation in a regulatory filing with the U.S. Securities and Exchange Commission. As part of the tax probe, high-ranking UBS private-bank executive Martin Liechti was detained.

In an emailed statement, UBS said it is continuing to cooperate with the Department of Justice investigation of its conduct in relation to cross-border services provided by Swiss-based UBS client advisers to U.S. clients. "In light of the pending investigation it is not appropriate to comment on charges brought against a former UBS employee," UBS said in its statement.

A Taxing Time

- **The News:** A former UBS private banker and a financial consultant were charged with helping a U.S. real-estate billionaire evade taxes.
- **The Background:** The heat is on elaborate tax-evasion schemes used by the wealthy.
- **The Bottom Line:** The indictment comes at a tough time for UBS, which is reeling from $38 million in subprime losses.



Billionaire real-estate developer **Igor Olenicoff** is cooperating in a widening tax-evasion investigation.

Exhibit E
to the
Reeves Declaration

UBS

UBS AG
P.O. Box, 8098 Zurich
Tel. +41 1 234 11 11

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8001 Zürich

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Fax +41 1 237 70 77
daniel.perron@ubs.com

www.ubs.com

November 4, 2002

Dear client

From our recent conversations we understand that you are concerned that UBS' stance on keeping its U.S. customers' information strictly confidential may have changed especially as a result of the acquisition of Paine Webber. We are writing to reassure you that your fear is unjustified and wish to outline only some of the reasons why the protection of client data can not possibly be compromised upon:

- The sharing of customer data with a UBS unit/affiliate located abroad without sufficient customer consent constitutes a violation of Swiss banking secrecy provisions and exposes the bank employee concerned to severe criminal sanctions. Further, we should like to underscore that a Swiss bank which runs afoul of Swiss privacy laws will face sanctions by its Swiss regulator, the Swiss Federal Banking Commission, which can amount up to the revocation of the bank's charter. Already against this background, it must be clear that information relative to your Swiss banking relationship is as safe as ever and that the possibility of putting pressure on our U.S. units does not change anything. Our bank has had offices in the United States as early as 1939 and has therefore been exposed to the risk of US authorities asserting jurisdiction over assets booked abroad since decades. Please note that our bank has a successful track record of challenging such attempts.

- As you are aware of, UBS (as all other major Swiss banks) has asked for and obtained the status of a Qualified Intermediary under U.S. tax laws. The QI regime fully respects client confidentiality as customer information are only disclosed to U.S. tax authorities based on the provision of a W-9 form. Should a customer choose not to execute such a form, the client is barred from investments in US securities but under no circumstances will his/her identity be revealed. Consequently, UBS's entire compliance with its QI obligations does not create the risk that his/her identity be shared with U.S. authorities.

We look forward to working with you.

Sincerely,
UBS AG

Michel P. Guignard
Executive Director

Daniel H. Perron
Executive Director

A-47

Exhibit F
to the
Reeves Declaration

ELECTRONIC DATA SYSTEMS

service management center for Electronic Data Systems in Plano, Tex. Hewlett-Packard is iring E.D.S., but analysts say it will be difficult to double profit margins without layoffs

PAUL SAKUMA/ASSOCIATED PRESS

c V. Hurd, chief of Hewlett-Packard, cut costs, increased

ny's work force has grown, reaching about 172,000 in 2008.

H.P. might provide more details about its plans for E.D.S. when it reports second-quarter earnings next week.

In a preliminary report, H.P. said Tuesday that it earned 80 cents a share on revenue of $28.3 billion in the period ended April 30, compared with net income of 65 cents a share on revenue of $25.5 billion for the same quarter last year. That was slightly better than analysts had expected.

Christine Ferrusi Ross, an analyst with Forrester Research who covers the services industry, said that the E.D.S. deal was potentially less disruptive to Hewlett-Packard than the Compaq one because E.D.S. was going to retain much of its identity.

"There's a tendency to say that because this deal is so huge, it's a massive shake-up," she said. But she views the transaction as more about Mr. Hurd's imposing the discipline he brought to Hewlett-Packard on E.D.S.

Mr. Bracelin said that the E.D.S. deal provided a chance to see if Mr. Hurd could expand his

Ex-Banker From UBS Is Indicted In Tax Case

By LYNNLEY BROWNING

Some of the secrets of Switzerland's biggest bank were put on display on Tuesday as federal authorities indicted a former UBS banker on charges of helping a wealthy American real estate developer evade taxes.

The one-count conspiracy indictment, unsealed in federal court, accuses the former banker, Bradley Birkenfeld, of helping the developer evade taxes on $200 million held in bank accounts in Switzerland and Liechtenstein. The indictment also names as a co-conspirator Mario Staggl, an executive at a trust company in Liechtenstein, a major European tax haven.

An official briefed on the investigation identified the developer as Igor Olenicoff, the billionaire founder of Olen Properties. A lawyer for Mr. Olenicoff, Edward M. Robbins Jr., declined to comment, as did Mr. Olenicoff when contacted by e-mail.

The indictment is part of a widening federal investigation into whether UBS, one of the world's largest money managers for the wealthy, helped certain clients evade taxes, and it suggests that American authorities are stepping up scrutiny of offshore tax transactions. The inquiry focuses on UBS's private bank based in Zurich, which does much of its business through Liechtenstein.

Martin Liechti, a top private banker at UBS, recently was detained briefly by federal authorities in Florida as a material witness in the investigation.

Mr. Birkenfeld, 43, a citizen of the United States, was the director of important clients for UBS in Geneva from 2002 to 2006, and is a partner and chairman at Union Charter, which caters to wealthy investors through offices in Geneva, Dubai and Hong Kong. Mr. Staggl, also 43, is a cofounder of the New Haven Trust Company in Liechtenstein, which specializes in tax planning.

PAUL SAKUMA/ASSOCIATED PRESS

ewlett-Packard, cut costs, increased ntegrated several acquisitions.

stry. has the port cost ndia. f its s. d be nore she nany

would move or be cut, in part because the companies have not yet done detailed integration plans.

Mr. Hurd also declined to be specific about cost cuts. But "it is important to make our model work on the cost side," he said.

There is no question that Mr. Hurd has excelled at cost-cutting. Early in his tenure, H.P. laid off more than 15,000 employees, although more recently, the compa-

E.D.S. deal provided a chance to see if Mr. Hurd could expand his effectiveness beyond the hardware business.

"There is a little question mark on how well he's been able to drive improvement in the demand fundamentals for H.P.'s other products," Mr. Bracelin said.

In the long run, Mr. Bracelin predicted, Wall Street will embrace the E.D.S. deal. "Three years from now we'll look back and say this is the right acquisition," he said. "In the next 6 to 12 months, it's going to be sloppy."

elivery of Airbus A380s Again

LEON NEAL/AGENCE FRANCE-PRESSE — GETTY IMAGES

is A380, the production of which has been plagued by delays.

ed a hree will : the their ising esti- f the l dis- ners. and iver- KLM eive chief s al- will from gest ered.

will potentially have some impact, the details of which we will need to understand from Airbus."

Fabrice Brégier, chief operating officer at Airbus, told Reuters that Air France-KLM would be among those airlines whose A380s would be delayed. "All the dates are going to slip by around three months and notably for Air France-KLM," he said.

Singapore Airlines, with 19 A380s on order, has received 4 and is expecting the fifth by mid-June. "We will be discussing with Airbus how this will impact on our future deliveries," a spokesman for the carrier, Stephen Forshaw, said.

Lufthansa, with a delivery schedule that extends to 2015 for 15 planes, expects its first deliveries from March to October 2009.

"We are waiting for new in-

airlines' opting to delay delivery of some planes into next year.

Tim Coombs, managing director of Aviation Economics, a consulting firm in London, said airlines might increasingly factor scheduling reliability into their buying considerations.

"They might wait until the aircraft's design, production and teething problems had been ironed out," Mr. Combs said. "There is an issue around not building in enough space in the timetable to iron out problems."

Mr. Brégier, the Airbus chief operating officer, said the A380 delay would not have any impact on the A350 passenger plane now under development. "The A350 and the A380 are not in competition for resources, since the A350 is in the early phases of design," he said.

Shares in European Aeronautic

Company in Liechtenstein, which specializes in tax planning.

Mr. Birkenfeld made an initial appearance on Tuesday in the United States District Court for the Southern District of Florida in Fort Lauderdale. Mr. Staggl, who is a citizen of Liechtenstein, remains at large and did not respond to e-mail messages.

According to the indictment, the two men created fictitious trusts and bogus corporations to conceal the ownership and control of offshore assets. They also advised clients to destroy bank records and helped them file false tax returns, the indictment said.

The two men and others made several trips to the United States to pitch tax plans that were intended to conceal American bank clients' ownership of accounts in a Swiss bank, the indictment said.

The plans enabled UBS to avoid its obligations to disclose certain income information to the I.R.S., the indictment said, while also evading certain American tax requirements. The cornerstone to the defendants' pitch was that Swiss and Liechtenstein bank secrecy was impenetrable, the indictment said.

UBS declined to comment on the charges.

In December, Mr. Olenicoff pleaded guilty to tax evasion and to lying on his tax returns, and agreed to pay back taxes totaling $52 million. Mr. Olenicoff, who was born in Russia and emigrated to the United States decades ago, is on the Forbes 400 list of wealthiest people, with an estimated net worth of $1.7 billion.

The developments come at a difficult time for UBS, which has been hit by hard by the credit crisis. The bank has suffered write-downs of about $38 billion since last summer, leading to the departure of a chief executive, a chairman and other senior managers.

Liz Claiborne Beats Wall St. Expectations

By Reuters

Liz Claiborne said Tuesday that higher-than-expected sales helped first-quarter operating profit zoom past Wall Street estimates.

Despite the strong results, Liz projected weakness in the second quarter because of a calendar shift, disappointing sales trends in its Mexx Europe business and discounting by American retailers.

Liz cut its full-year profit forecast, citing the weak economy.

Liz's first-quarter net sales

FT.com FINANCIAL TIMES WORLD

Close

Hurdles abound in cross-border chase

Print

By Haig Simonian in Zurich
Published: May 15 2008 03:00 | Last updated: May 15 2008 03:00

Senior lawyers warned yesterday that US authorities could face serious impediments in mounting prosecutions after the indictment this week of two bankers based in Switzerland and Liechtenstein on alleged conspiracy to aid tax evasion.

The US Department of Justice said on Tuesday that it had indicted Bradley Birkenfeld, a US citizen living in Switzerland, and Martin Staggl, a Liechtenstein national, on charges of aiding a US billionaire evade income tax on $200m held abroad.

The move came to the backdrop of mounting pressure from industrialised countries for a crackdown on tax evasion, including banks, trust companies and their employees, from traditional havens of client confidentiality such as Switzerland and Liechtenstein.

"This is not the end of the story," said Philip Marcovici, a partner and private banking specialist at Baker & McKenzie in Zurich.

The US indictments followed unconnected action this year by the authorities in Germany involving two Liechtenstein banks that suffered the theft of client data.

Lawyers warned that high-profile arrests or investigations of prominent citizens, such as those undertaken in Germany, were a blunt way to tackle the problem of tax evasion and "legacy" assets abroad.

"There needs to be some sort of co-ordinated international approach", said Mr Marcovici.

The DoJ case is based on allegations that Mr Birkenfeld and Mr Staggl "conspired to defraud the United States by assisting a US citizen . . . in creating nominee entities, fictitious trusts, and bogus corporations" to conceal the ownership of offshore assets.

The case involves the US Qualified Intermediary agreement - an arrangement between banks and the US authorities allowing a degree of client confidentiality in return for the provision of certain client information.

The US rules cover individuals but not companies, meaning that individuals could exploit the rules to channel assets to non-declarable companies created in tax havens.

To secure prosecutions, the US authorities would have to demonstrate that bankers or their employers deliberately encouraged clients to exploit such legal loopholes. Banks involved could have an additional line of defence in arguing, for example, that any wrong-doing was the work of "rogue" employees rather than company policy.

In the case of UBS, for example, the world's biggest wealth manager required Swiss-based executives covering wealthy US clients to sign a detailed document demonstrating they were aware of all legal constraints before crossing the Atlantic on business.

However, the US investigations are being helped by the co-operation of at least one of the three people involved.

The Financial Times has learned that Mr Birkenfeld is a former UBS private banker who turned whistleblower after an acrimonious parting with his employer in 2006.

Meanwhile, the unnamed US property developer involved in the case, identified as Igor Olenicoff, pleaded guilty in December to filing a false tax return and agreed to pay $52m in back taxes. He was sentenced to probation, 120 hours of community service and was fined $3,500.

Mr Birkenfeld, who appeared in court this week, was released on a $2.1m surety, along with electronic monitoring and unspecified other conditions.

The fact that Mr Birkenfeld, as a senior UBS client adviser, might typically have handled 50-100 big accounts,

suggests further investigations will follow in what is likely to be a widening investigation. The legal complexities suggest securing prosecutions might be another matter.

Additional reporting by Joanna Chung in New York

Taken to task

The latest register of specialist advisers for clients setting up trusts compiled by the Liechtenstein Financial Markets Authority runs to no less than 258 names in a country of just 34,000 people, **writes Haig Simonian in Zurich** .

New Haven Trust (or Treuhand in German), the company cited in the US DoJ indictment, is a small and recent addition. Established in 1995, its 14 staff include Mario Staggl, the Liechtenstein citizen named by the DoJ as a defendant alongside Mr Birkenfeld.

According to the UK-based Society of Trust and Estate Practitioners, New Haven's activities involve the classic trust tasks, as well as tax planning and estate and succession planning.

Mr Staggl, a partner in New Haven, said he had been surprised by the indictment. "I know no more than what I've read in the press," he said.

He declined to comment on the DoJ's allegations that he had since 2001 "devised, marketed and implemented tax evasion schemes for United States clients". He said he was in touch with his lawyers regarding the claims.

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TAX HAVENS

Europe, US Battle Swiss Bank Secrecy

By Beat Balzli and Frank Hornig

After fighting Switzerland's banking secrecy laws for decades, European finance ministers are about to receive support from the United States. Investigations into major Swiss bank UBS and a proposed law against tax havens are ratcheting up pressure against the system.

REUTERS

UBS headquarters in Zurich, Switzerland

Martin Liechti, a senior executive with the private banking division of major Swiss bank UBS, worked through his business appointments in New York with his usual efficiency. A subsequent trip to the Bahamas for a meeting in late April was also pure routine. In the Caribbean paradise, Liechti was scheduled to attend a supervisory board meeting of UBS (Bahamas) Ltd., and to take a closer look at the options for doing business with America's super-rich, including parking their money in Swiss trust accounts. But Liechti, a man known for his abrasive manner, never arrived in the Bahamas. US officials abruptly ended his trip when he was about to change planes in Miami. Since then, Liechti has been barred from leaving the country because the American authorities are investigating his employer for allegedly helping clients to evade taxes.

Liechti's former colleague Bradley Birkenfeld, as well as Mario Staggl, an executive with a trust company in Liechtenstein, are under indictment for allegedly helping American billionaire Igor Olenicoff evade taxes. According to the indictment, a fortune of about $200 million (€129 million) was sheltered from tax authorities "in secret bank accounts in Switzerland and Liechtenstein." Prosecutors allege that Staggl's attorney in Gibraltar even helped Olenicoff hide the details of his ownership of a "147-foot yacht."

The accused are alleged to have forged special forms that Swiss banks use to report their US customers' capital gains to the US tax authority, the Internal Revenue Service (IRS). Both Birkenfeld and Staggl have declined to comment on the charges.

"UBS is walking a thin line. On the one hand, it has to show a willingness to cooperate. On the other, it is trying to protect its customers' banking secrets," says Robert Heim, an attorney in New York and a former investigator with the US Securities and Exchange Commission.

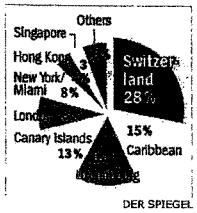
"The Justice Department will urge the two to cooperate," says Heim. "The more information they provide, the less severe their penalties will be." He expects that their testimony will soon lead to further indictments and arrests. "This is a very bad development for UBS," says Heim.

According to Heim, the United States is by no means the only place where Swiss high finance and the country's banking secrecy laws are coming under growing pressure. Foreign authorities around the globe are increasingly taking sharper action against tax evaders. Swiss financial institutions, often in tandem with partners in Liechtenstein, play a central role in helping the ultra-rich avoid paying billions in taxes.

An almost unimaginable fortune of more than €3 trillion ($4.7 trillion) is currently sitting in Swiss bank accounts. The discreet Swiss allow vast amounts of money to disappear into trusts, offshore companies and bank accounts, money that is often protected by Switzerland's banking secrecy laws.

"Criminal Support of Economic Crime"

Because of these laws, foreign officials on the hunt for untaxed riches are often forced to end their quests at the Swiss border -- to the anger and dismay of the world's finance ministers, and others. Rudolf Elmer, a controversial former executive with the private bank Julius Bär, condemned the dubious methods employed by Switzerland's financial institutions at a press conference in Berlin last week. He sharply attacked his native Switzerland, accusing it of engaging in "criminal support of economic crime."



DER SPIEGEL

Graphic: Money Hubs

Many politicians agree. The most recent challenge comes from French Finance Minister Eric Woerth, who plans to dry up the profit sources of Alpine "tax robbers," as he announced in a recent interview. The Frenchman has called for an initiative against tax havens and wants Switzerland to guarantee "maximum transparency and the exchange of information."

Woerth also plans to examine the black list of the Organization for Economic Cooperation and Development (OECD) because, as he claims, many countries have only been removed from the list thanks to "vague promises." Woerth says that he has already discussed the matter with German officials.

One man he can count on as an ally in his campaign against tax havens is German Finance Minister Peer Steinbrück. The Germans are especially fond of parking their untaxed assets in foreign tax shelters. According to a study based on data from DSTG, the German national tax collectors' union, and the Bundesbank, Germany's central bank, close to €500 billion ($775 billion) in untaxed German assets are in foreign tax shelters, with fully one-third of that amount on deposit in accounts in banks in Swiss cities like Geneva, Zürich and Lugano.

Former German Finance Minister Hans Eichel is a vocal critic of Switzerland's special status, and he is fond of appearing on Switzerland's prime-time television talk shows, where he sharply attacks Swiss banking secrecy. "A person who receives stolen goods is no better than a thief," he says.

Nevertheless, Eichel's comments are greeted with complete incomprehension. Despite the rallying cries of Eichel -- a member of Germany's center-left Social Democratic Party -- such as "tax evasion is committing theft against the people," the majority of Swiss continue to support banking secrecy.

One of the system's strongest advocates is a senior executive with Switzerland's oldest private bank. For Konrad Hummler, a partner in Wegelin & Co., German tax evasion is a legitimate defense by citizens attempting to "partially escape the current grasp of the administrators of a disastrous social welfare state and its fiscal policies."

"Swiss-style saving outside the system" is something to which not only the wealthy, but also productive small and mid-sized businesses are entitled. "These people must be protected," says Hummler.

Banking secrecy as an act of humanitarian compassion? More than anything, Switzerland's system of banking secrecy amounts to a very good business. It is considered the most controversial model of success in the history of global high finance. In past decades, the banking secrecy that is protected by law in Switzerland has acted like a magnet, drawing in trillions of euros and contributing to the meteoric rise of the small Alpine country's financial sector.

Switzerland's Largest Banks

by assets under management at the end of 2007, in billions of euros

UBS	1,927
Credit Suisse	940

Once insignificant boutique banks transformed themselves into banking industry giants. Despite suffering record losses as a result of the US subprime mortgage crisis, banks like UBS and Credit Suisse are still seen as top choices for portfolio managers. The entire industry makes up 15 percent of Switzerland's gross domestic product. "It makes us fat, but impotent," top banker Hans J. Bär complained a few years ago in his memoirs.

From small and mid-sized businesses to athletes to actors, everyone values the Swiss authorities' policy of refusing to respond to inquiries from foreign tax investigators. Those seeking a place to park untaxed income have

Pictet 259 DER SPIEGEL

nothing to fear in Switzerland. Their account information is kept under lock and key because tax evasion is not considered a criminal offence in the country. Foreign governments can only expect assistance from the Swiss when it comes to tax fraud, such as when their tax authorities are deceived with falsified documents like bogus company accounts.

A recent incident at Credit Suisse illustrated how routine and matter-of-fact it is for Swiss banks to help their foreign clients avoid paying taxes. Because of embezzlement of customer money, one of the bank's customer advisors was summoned to appear in court in Zurich and divulge his employer's practices. At the bank's offices on downtown Zurich's posh Paradeplatz square, the defendant and his coworkers helped manage the assets of customers living in Germany, including a wealthy, elderly woman. According to the indictment, house visits with the client were as much a part of Credit Suisse's service as "tax optimization." The banker allegedly deposited the proceeds of real estate sales as cash into trust accounts, in an attempt to "make it impossible to trace the source of the funds," the prosecutor writes.

Naturally, the Zurich court refused to overrule the country's banking secrecy laws. The names and addresses of the injured parties were not divulged -- neither in the indictment nor in the courtroom.

A Wall of Silence

Switzerland's wall of silence has been in place for more than 70 years. In the Third Reich, both the Nazis and the persecuted Jews valued the small country's discreet services. After the war, Colombian drug dealers, African dictators and tax evaders from around the world pumped their ill-gotten billions into Swiss vaults. Former Philippine dictator Ferdinand Marcos, for example, had more than $600 million (€387 million) stashed away in Swiss bank accounts.

Money-laundering was not made a criminal offense in Switzerland until 1990. Before that, Swiss banking secrecy laws were even impregnable to foreign authorities pursuing members of the mafia.

In the meantime, however, it has become easier to crack the country's once hermetically sealed vaults.

A treaty with the European Union "to combat fraud" is expected to come into effect by the end of the year. When that happens, Switzerland will "also provide administrative and legal assistance in cases of tax evasion in the area of value-added tax," says Robert Waldburger, a professor of tax law and former deputy director of the Swiss Tax Administration. German tax investigators will then be able to contact their Swiss counterparts directly and discuss the necessary account information.

The new rules will be especially detrimental to small and mid-sized companies. Their private illicit earnings are often derived from undeclared company sales, for which they also failed to pay value-added tax.

The Demise of Swiss Banking Secrecy

Is Swiss banking secrecy headed for the history books? And are Steinbrück and other finance ministers fighting a paper tiger?

Almost, but not entirely. According to Waldburger, "the automatic exchange of information," in other words, the disclosure of account details, "would spell the real demise of Swiss banking secrecy." But the treaty on the taxation of interest between Switzerland and the EU still prevents this from happening.

After years of negotiations, the EU member states agreed that the Swiss could levy a source tax, a sort of withholding tax, which would increase over time, on the interest earnings of foreign customers, and turn over this source tax to the EU states without including customer data. However, the tax is easily circumvented with special financial products and letterbox companies, because it does not apply to legal persons.

But this is precisely what EU member states Austria, Luxembourg and Belgium are also doing. For this reason, a uniform EU directive to strengthen the interest taxation directive is not in sight. When finance ministers met in Brussels last Wednesday, Steinbrück encountered strong resistance to his demands. Austrian Finance Minister Wilhelm Molterer has said that banking secrecy is "not up for discussion."

In the United States, on the other hand, the Swiss banking industry could run into difficulties sooner. For years, the US Senate has been conducting its own detailed inquiries into the issue of tax evasion. Senators have summoned key representatives of the industry, including tax advisors, accountants, lawyers and

bankers, to the Capitol in Washington for lengthy hearings.

These hearings have produced reports, some of them hundreds of pages long, on the "tax shelter industry" and "its tools, methods of obfuscation and those pulling the strings." UBS was mentioned early in the Senate documents as an offender. With relish, the senators cited a letter written by an insider to UBS management. According to the letter, the bank offers "US taxpayers illegal tax evasion models," part of a system that costs American tax authorities "several hundred million dollars a year."

Of course, others -- the auditors at KPMG -- invented the system on which this is based. After admitting to charges of criminal tax fraud conspiracy, they only managed to avoid further criminal prosecution in the United States in 2005 by paying $456 million (€294 million) in fines and penalties.

By this point, the UBS executives should have known that they were likely to face significant problems in the United States. Many of the "tax optimizers" advised by KPMG had maintained accounts with the Swiss bank. The trail had been set. All the American officials had to do was to follow it.

Three US authorities are now conducting investigations against the Swiss portfolio managers: tax investigators from the US Justice Department, the Securities and Exchange Commission (SEC), headed by Christopher Cox, and New York Attorney General Michael Garcia. All are now hunting down the Swiss.

Political conflict is also on the horizon. An aggressive bill to combat tax evasion, the "Stop Tax Haven Abuse Act," was introduced in the US Congress last year. The legislation provides for tough measures against 34 tax havens, including Liechtenstein, Luxembourg and Switzerland.

The bill has stood little chance of becoming law until now. But that could quickly change after the presidential election in November. Once of the bill's three sponsors is Senator Barack Obama, who is currently favored to win the White House.

Translated from the German by Christopher Sultan

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Section: C

Inquiry Into a Guarded World

LYNNLEY BROWNING

One afternoon in April, six dozen wealthy Americans were entertained at a luncheon party in Midtown Manhattan, along with a special guest from Paris: Henri Loyrette, the director of the Louvre.

The host of the exclusive gathering was the Swiss bank UBS, whose elite private bankers built a lucrative business in recent years by discreetly tending the fortunes of American millionaires and billionaires. As the wine flowed and Mr. Loyrette spoke of the glories of France, UBS bankers courted their affluent guests.

But now, as the federal authorities intensify an investigation into offshore bank accounts, the secrets of this rarefied world are being dragged into the open

-- and UBS's privileged clients are running scared.

Under pressure from the authorities, UBS is considering whether to divulge the names of up to 20,000 of its well-heeled American clients, according to people close to the inquiry, a step that would have once been unthinkable to Swiss bankers, whose traditions of secrecy date to the Middle Ages.

Federal investigators believe some of the clients may have used offshore accounts at UBS to hide as much as $20 billion in assets from the Internal Revenue Service. Doing so may have enabled these people to dodge at least $300 million in federal taxes on income from those assets, according to a government official connected with the investigation.

One prominent UBS client, a wealthy property developer in California named Igor Olenicoff, has already pleaded guilty to filing a false 2002 tax return. But as the investigation tears holes in the veil of secrecy surrounding tax havens like Switzerland and Liechtenstein, other names are surfacing, according to the authorities.

New revelations are likely to come Monday, when a former UBS banker is expected to testify in a court in Florida about how he helped Mr. Olenicoff and other clients evade taxes. The former banker, Bradley Birkenfeld, is set to plead guilty to helping Mr. Olenicoff conceal $200 million.

''He's going to sing like a parakeet,'' one of Mr. Birkenfeld's former clients said.

UBS said that it was cooperating with investigators and that it was against its policy to help Americans evade taxes. Officials at the bank declined to comment for this article.

Using offshore accounts is not illegal for United States taxpayers, but hiding income in so-called undeclared accounts is. At issue is whether the UBS clients filed W-9 tax forms with the I.R.S., disclosing securities and assets held offshore, as required by law. Switzerland does not consider tax evasion a crime, and using undeclared accounts is legal there.

The case could turn into an embarrassment for Marcel Rohner, the chief executive of UBS and the former head of its private bank, as well as for Phil Gramm, the former Republican senator from Texas who is now the vice chairman of UBS Securities, the Swiss bank's investment banking arm. It also comes at a difficult time for UBS, which is reeling from $37 billion in bad investments, many of them linked to risky American mortgages.

The federal investigation, which is part of a broad, international crackdown on tax cheats, suggests that United States authorities are shifting their focus to Liechtenstein and Switzerland from Caribbean havens like the Bahamas and the Cayman Islands. The Senate Permanent Subcommittee on Investigations is scheduled

to hold hearings as early as this month on offshore products sold by UBS and by the LGT Group, the bank owned by Liechtenstein's royal family.

At the center of the UBS investigation is Mr. Birkenfeld, 43, who grew up in the Boston area and went on to live what might seem like a charmed life as a private banker in Switzerland. Through his lawyer, Danny Onorato, Mr. Birkenfeld declined to comment.

Mr. Birkenfeld's testimony could deal a stinging blow to UBS, the world's largest money manager for people whom bankers politely call ''high net worth individuals.'' Since 2006, the bank has opened plush offices in New York and six other United States cities, among them Boston, Chicago and Houston, to cater to people who are worth at least $10 million.

Many UBS customers are worth far more than that. To lure them, UBS bankers canvassed cultural and sports events like Art Basel, the America's Cup and Boston Symphony Orchestra concerts.

''It's not a question of finding wealthy people; it's a question of how do you develop a network,'' said Purvez Siddiqi, who recruits private bankers like Mr. Birkenfeld for big banks. But Mr. Siddiqi said he was ''astonished'' by how aggressively UBS marketed its offshore accounts to Americans.

Mr. Birkenfeld took care of important clients for UBS's private bank catering to United States citizens with offshore accounts, and was central to UBS's effort to lure them.

Before joining UBS in 2001, he worked at Barclays Bank in Geneva, where brought in Mr. Olenicoff, the billionaire owner of Olen Properties. When Mr. Birkenfeld joined UBS, he brought Mr. Olenicoff along, and later helped him move hundreds of millions of dollars from the Bahamas to Switzerland, according to a financial executive briefed on the matter.

Shortly after Mr. Olenicoff left UBS for LGT, the Liechtenstein bank, in 2005, Mr. Birkenfeld resigned. The banker formally left UBS in March 2006.

Mr. Birkenfeld later claimed in a Swiss legal proceeding that UBS had not paid him a bonus he was owed. A former associate said Mr. Birkenfeld had become angry over what he considered the bank's wink-and-nod standard regarding tax evasion. UBS typically rewarded private bankers for attracting new clients in the United States, rather than for the fees the bankers generated for UBS from existing customers.

Mr. Birkenfeld also was angered when UBS asked bankers to sign papers saying that they, not the bank, would be responsible if they broke non-Swiss tax laws, according to a European financial executive briefed on the matter.

About a year ago, concerned by a tax investigation into Mr. Olenicoff, Mr.

Bloomberg.com

UBS to Give Some Names in U.S. Tax Probe, SonntagsZeitung Says

By Carey Sargent

June 8 (Bloomberg) -- UBS AG plans to give some customers' names to the U.S. Justice Department to end an inquiry into whether it helped clients evade U.S. taxes, SonntagsZeitung said, citing a ``high-ranking employee" it didn't identify by name.

UBS will only give names of customers when it doesn't contravene Swiss banking secrecy laws, the newspaper said, citing the U.S.-based employee. That would cover only ``a few" clients, the employee told the newspaper. UBS said June 6 it is treating the case seriously. Dominique Gerster, a spokesman for the bank, declined to comment further today.

The New York Times reported June 6 that UBS is considering whether to disclose the names of 20,000 U.S. customers. U.S. authorities are investigating whether some clients may have used offshore accounts at UBS to hide as much as $20 billion in assets from the Internal Revenue Service and dodge at least $300 million in taxes, the New York Times said.

The number of clients and the sum of money is correct, although the allegation that most of the money is illicit is ``nonsense," an unidentified Zurich-based UBS employee told SonntagsZeitung.

Former UBS AG private banker Bradley Birkenfeld has agreed to plead guilty in a tax-evasion probe in federal court in Fort Lauderdale, Florida. Birkenfeld and Mario Staggl, a Liechtenstein banker, were indicted for helping wealthy Americans evade taxes by setting up sham corporations.

Birkenfeld, 43, has been cooperating in the probe of Zurich- based UBS for more than a year, U.S. prosecutors said at a hearing on May 13. Birkenfeld and Staggl marketed Swiss and Liechtenstein bank accounts to Americans who wanted to evade U.S. taxes, telling them that ``Swiss and Liechtenstein bank secrecy was impenetrable," according to the indictment.

To contact the reporter on this story: Carey Sargent in Geneva at Csargent3@bloomberg.net

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BusinessWeek

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Tax Scandal's Mystery Man

Liechtenstein's Mario Staggl is accused of working with a former UBS banker to hide $200 million from the IRS. Now he's a fugitive

by David Henry, Matthew Goldstein and Jack Ewing

From all appearances it's business as usual for financial consultant Mario Staggl. The 43-year-old married father of two continues to report for work at a modest three-story building in his native Liechtenstein, the tiny principality of 35,000 between the Austrian and Swiss Alps. He answers calls and e-mails as before. When friends stop by his office, they're greeted by an affable assistant.

Half a world away, however, Staggl is in deep trouble. Last month he failed to appear in U.S. federal court in Fort Lauderdale to answer charges that he helped a billionaire hide $200 million from the IRS. After that, prosecutors branded him a fugitive. Staggl's partner in the alleged scheme, former UBS private banker Bradley Birkenfeld, was expected to plead guilty on June 19—and to implicate colleagues and wealthy U.S. clients. It would be another black eye for UBS, already battered by subprime—related losses.

Yet the Staggl scandal barely merits notice in Liechtenstein, which rivals Switzerland as one of the world's most prominent tax havens. Tax evasion isn't considered a major offense here, so Staggl may not be extradited; local newspaper editor Tino Quaderer call the charges "no big deal." So far Staggl doesn't seem inclined to fly to the States to dispute allegations that he set up secret accounts and offshore companies for Birkenfeld's client. Staggl declined to comment. "It's all too much," says Staggl's attorney, Andreas Schurti, declining *BusinessWeek*'s interview request.

A SAVVY OPERATOR, BUT DOUR

Despite Staggl's silence, a portrait of this mystery man emerges from court documents, regulatory filings, and company reports, as well as interviews with associates and authorities in the U.S. and Europe. It shows Staggl to be a savvy, if dour, operator for a roster of notorious clients, including an heir to Britain's Tesco grocery store fortune, a penny stock promoter, and an alleged smuggler of atomic bomb secrets.

For decades, some wealthy people have called on Liechtenstein bankers to hide their cash—honestly earned or ill—gotten—from the prying eyes of tax collectors and regulators. Some are uneasy about the perceptions. "The banking community in Liechtenstein stands for privacy and confidentiality," says Michael Lauber, director of the Liechtenstein Bankers Assn., "but not tolerance for financing terrorism, money laundering, organized crime, or corruption."

Staggl, who attended the Liechtenstein Trustee School in the early 1990s, has been on the banking scene since at least 1995. That year he and Klaus Biedermann, a former member of the Liechtenstein Banking Commission, co-founded a firm called New Haven Trust. Bypassing Vaduz, the principality's financial center, they set up shop in nearby Schaan, a town in a picturesque valley known for denture making.

Soon Staggl was helping a host of wealthy clients, some of them quite colorful. His services proved valuable to Dame Shirley Porter, an heir to the Tesco grocery fortune and a supporter of former Prime Minister Margaret Thatcher. During the late 1990s, Porter was fighting charges in Britain that she rigged elections by evicting low-income residents from public housing and replacing them with well-to-do Conservative Party voters. Facing penalties of more than 20 million pounds, the Porters moved the majority of their wealth to offshore accounts, according to British authorities. Staggl, a stocky man who favors expensive suits, acted as a director for at least one entity, Zollikon Investments, which was registered in the British Virgin Islands, another popular place to hide money.

COMING UP WITH THE CASH

In 2002, Porter wrote to her son, John R.C. Porter, explaining that she needed cash. Shortly thereafter Staggl authorized changes in a loan made by Zollikon to Telos, a U.S. defense contractor owned primarily by Porter's son. The deal allowed Telos to get a new loan and funnel nearly $3 million to the Porters, according to regulatory filings. John Porter didn't respond to requests for comment.

Around that time, Staggl was also working with Claude Greaves, a penny stock promoter and tax cheat convicted in an unrelated matter. New Haven was the Liechtenstein affiliate of ICM International, a consortium of tax consultants and offshore incorporators organized by Greaves, a native of Grenada. People familiar with the company say Greaves and his crew turned to Staggl when they needed to squirrel away proceeds from Grenada's defunct Salisbury Merchant Bank and three small British brokerages that sold dubious stocks. Court-appointed liquidators traced the money to three accounts Staggl set up at Liechtenstein's Neue Bank. British authorities investigated, but no charges were filed after Neue agreed to return the money. Neue declined to comment. "I've known Mr. Staggl a long time," says Greaves, who is awaiting trial in London for an unrelated alleged stock scam. "I don't believe what's written about him."

It wasn't the only time Staggl got mixed up in penny stocks. In 2006, he worked with Toronto financier Morrie Tobin to drum up investors for Calibre Energy and Standard Drilling, whose shares soared and crashed within 12 months. Working both sides of the Atlantic, the pair arranged meetings between bankers and prospective investors. Tobin says his "projects [with Staggl] are not related to the indictment."

Perhaps Staggl's most infamous client is Gotthard Lerch, a German engineer on trial in Stuttgart for allegedly supplying sensitive nuclear technology to Libya and the network of Abdul Qadeer Khan, considered by many to be the father of Pakistan's atomic bomb. Staggl managed money for Lerch—but gave up information to German investigators after two rounds of interrogation. In a June 1 article in the Swiss newspaper Neue Zürcher Zeitung, Staggl said he "never noticed anything suspicious" about Lerch's transactions and that they "didn't involve enormous sums." Even so, authorities have asked Staggl to testify in July. It isn't clear whether he'll comply, but the German court could offer Staggl immunity from extradition to the U.S. while traveling to and from Stuttgart to testify.

PATRIOT GAMES

Staggl has gotten creative in the wake of the Patriot Act and other laws that empower governments to probe bank accounts more aggressively. In 2002, for example, Staggl established a New Haven office in Denmark. Unlike Liechtenstein, Denmark doesn't have a reputation as a tax haven, giving the accounts an extra layer of respectability. "They were looking for a jurisdiction that was kosher," says a person familiar with Staggl.

Staggl showed some fancy financial footwork in moving money around for Igor Olenicoff, the Russian émigré and California developer at the center of the Florida indictment. As part of his services, Staggl used a shell company known as Landmark Settlement. The entity had a complicated—and therefore difficult to trace—parentage. Headquartered in Denmark, Landmark was owned by a company in the Bahamas but controlled by a Liechtenstein trust, according to incorporation records. Adding to a veneer of propriety, Landmark was audited by BDO ScanRevision, the Danish affiliate of accounting firm BDO International. Among Olenicoff's other repositories: an account at Neue, the same bank used by Greaves. Olenicoff pled guilty to tax evasion in December, agreeing to pay $52 million in back taxes and perform community service.

Now U.S. and European authorities are focusing more intensely on Liechtenstein. As part of a probe into tax cheats, the U.S. Senate's permanent subcommittee on investigations is focusing on Americans with accounts at LGT Group, a bank controlled by Liechtenstein's royal family. Earlier this year, German authorities arrested Deutsche Post Chief Executive Klaus Zumwinkel on tax evasion charges after an LGT insider sold secret records to spies enlisted by the German government. Zumwinkel denies the accusations. "LGT does not encourage or aid in tax evasion. It is in contact with the relevant authorities to cooperate," says an LGT spokesman.

With Staggl's fate unclear, a few of his associates are distancing themselves from him. When news of his indictment broke in May,

Principle Capital persuaded him to resign his directorships at a number of the European money manager's subsidiaries. Partners at New Haven's Denmark branch say he's no longer involved. BDO, meanwhile, says it quit auditing the Landmark vehicle Staggl set up for Olenicoff. At this rate, Staggl may soon find his bunker in Liechtenstein lonely.

Henry is a senior writer at BusinessWeek. Goldstein is an associate editor at BusinessWeek, covering hedge funds and finance. Ewing is BusinessWeek's European regional editor.

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Exhibit G
to the
Reeves Declaration

UBS

Qualified Intermediary System: US withholding tax on dividends and interest income from US securities

1. Background

The USA levies a withholding tax of 30% on dividends and interest paid on US securities to foreign investors. Investors from countries with which the USA has concluded a double taxation agreement (DBA) can request full or partial relief from this tax. Relief of 15% is normally granted on *dividends*, which means investors are credited with a net 85% of the income.

By contrast, according to domestic US tax law, *interest payable* to foreign investors on the most common US (domestic) bonds issued after 1984 is already exempt from the withholding tax ("portfolio interest exemption rules"), subject to confirmation of the status and identity of the non-US investor. Relief from the withholding tax payable on interest income (usually 0%) as provided for in the DBAs is therefore only of secondary importance.

Interest income on those bonds issued by US borrowers that are most commonly traded on the Euromarket are already exempt from any withholding tax – provided that the bonds concerned are bearer securities – on the basis of the issuing process alone, i.e. without the need for any further proof and without any duty of disclosure.

2. Relief procedure since 2001 ("Qualified Intermediary System")

The Qualified Intermediary System, which came into effect in early 2001, allows foreign banks to obtain relief from withholding tax for their non-US clients (those not liable to US taxation) in accordance with the relevant DTA, directly and without having to file applications to reclaim the tax. Essentially, as long as its documentation on the clients concerned fulfils the accepted client identification rules, the foreign bank may credit these clients with interest and dividends as befits their tax status, having applied the correct withholding tax rate as defined in the relevant DTA, or having effected the relief in line with domestic US tax law. The simple address rule previously in force has been replaced by a "modified" address rule with additional documentation requirements. This makes it much easier than it was before for clients to buy US domestic interest-bearing paper (corporate bonds and government paper).

3. Implications for clients

It is, however, a necessary part of the procedure for the non-US bank concerned to acquire the status of 'Qualified Intermediary' (QI). UBS AG has this status and has entered into a contractual agreement with the US tax authority (the IRS) known as the "QI Agreement". It goes without saying that as well as the advantages associated with the continued or even extended ability to directly apply relief to US withholding tax, QI status also entails certain obligations.

3.1. Natural persons

Firstly, a QI has to ensure that *US Persons*, i.e. natural persons liable in full for taxes in the US (defined as US citizens and Greencard holders irrespective of their actual place of residence and persons resident in the USA for more than 183 days during the current year) either declare themselves to the US tax authorities (US form W-9, no deduction of withholding tax but reporting procedure 1099 must be followed) or are no longer permitted to invest in US securities.

In the case of persons who are *not* US persons as defined by US tax law, as long as statutory client identification procedures would appear to confirm entitlement pursuant to the DTA concluded with the USA, the QI can apply withholding tax relief on dividends and interest as conferred by the DTA, and/or directly apply the full relief to interest income as permitted by the US "portfolio interest exemption rules". In practice, most Swiss banks also seek internal confirmation of whether the client wishes to take advantage of the DTA relief before applying it. For persons resident in countries which do not have a DTA with the USA, the full withholding tax of 30% must still be deducted

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from dividend payments. However, such investors do benefit from full relief on "portfolio interest exempt" earnings.
The main advantage of the QI system and the effect intended by the USA, is to enable investments to receive correct withholding tax treatment in the USA without the need to disclose any information on foreign investors to the US custodian bank, the US tax authorities or any other tax authority.
The client's current tax status is documented by the normal client identification procedures and also by means of the internal forms used by UBS AG.

3.2. Legal entities

The above rules also apply to bank clients that are legal entities.

Legal entities which are domiciled in the USA or which are incorporated in the USA qualify as US persons. These entities are not subject to the same restrictions and reporting procedures that apply to natural persons, but in order to avoid misunderstandings, the QI is also entitled to ask these persons to submit US form W-9.

Foreign legal entities that are not US persons, such as Swiss incorporated companies, GmbH's (companies with limited liability), cooperatives, foundations, associations autonomous public sector bodies and similar foreign legal forms benefit in the same way as natural persons from full relief on earnings from qualifying bonds pursuant to the "portfolio interest exemption rules"; they also benefit from a reduced withholding rate on dividends and interest income, provided that they are covered by a DTA concluded with the USA. As with natural persons, the general condition here is of course that the investor concerned is the beneficial owner of the earnings in question.

For legal entities, the QI Agreement additionally requires that before any relief under a DTA can be applied, the legal entity must expressly confirm to the QI that it fulfils the conditions for DTA entitlement pursuant to the applicable provisions in respect of the "Limitation on Benefits" (no such express confirmation is required for natural persons). These highly complex provisions are included in all the more recent DTA's concluded with the USA, including those concluded with the Netherlands, Germany, France and, nota bene, Switzerland. The DTA's in question, the withholding tax rates and the relevant "Limitation on Benefits" clauses can be called up via a link on the homepage of the Swiss Bankers Association (www.swissbanking.org).

In order to ensure compliance with the clauses of the QI Agreement, the affirmation of non-US person status obtained by UBS AG from the legal entity by way of an internal form includes express confirmation by the legal entity that it has taken note of the provisions of the "Limitation on Benefits" and that it fulfils the conditions for recourse to the DTA. In cases of uncertainty or where there are outstanding questions in respect of these conditions, we recommend consulting a professional tax advisor.

If there is no express confirmation that the "Limitation on Benefits" clauses have been fulfilled, the QI regulations dictate that UBS AG cannot apply the relief from withholding tax on dividends under a DTA, even if the legal entity is domiciled in a country that has a DTA with the USA. Instead, dividends (and DTA interest income) are taxed at the full US withholding rate of 30%. Of course the same applies if there is no DTA between the country of domicile and the USA.

This does not affect the grant of full relief in respect of interest income from qualifying (US domestic) bonds under the "portfolio interest exemption rules", which does not depend on the existence of a DTA or the fulfilment of any DTA criteria.

3.3. Special conditions for persons resident /domiciled in Switzerland (additional tax deduction USA)

Because the Swiss federal authorities have decided that the "additional tax deduction USA" will continue to apply to persons domiciled or resident in Switzerland, the QI must continue to levy a tax payment totaling 30% in respect of dividends, on all natural persons and legal entities resident or domiciled in Switzerland (i.e. the original 15% withholding tax due in the USA plus the 15% "additional tax deduction USA" in Switzerland). Taxpayers may continue to claim back the

UBS

"additional tax deduction USA" from the relevant Swiss tax authority as part of the normal tax declaration process. It may be possible under the DTA to claim a flat-rate tax credit in Switzerland for the non-reclaimable original 15% withholding tax due in the USA.

If the Swiss legal entity does not supply the confirmation as detailed under 3.2 that it fulfils the conditions set out in the "Limitation on Benefits" clause, the full original US withholding tax deduction of 30% applies. The "additional tax deduction USA" does not apply in such a case and essentially there is no possibility of reclaiming the tax in Switzerland. The full deduction should be seen as a definitive charge.

According to the decision taken by the Swiss federal authorities, the organizational forms that are exempt from tax pursuant to Art. 56 of Switzerland's law on direct federal taxes are treated as special cases. The "additional tax deduction USA" does not apply to these organizational forms, i.e. they are only taxed at the original US withholding rate of 15%. In order to qualify for this special treatment, however, the required form must be submitted to UBS AG in good time.

The comments on the "additional tax deduction USA" do not apply to interest earnings that benefit from full tax relief under the US "portfolio interest exemption rules".

3.4. Not applicable to organizational forms that are not legal entities

The above comments apply exclusively to companies and organizations that qualify as legal entities under national law. They do not apply to companies or organizational forms that have no legal personality, such as unincorporated firms (collective companies, limited partnerships, limited partnership corporations, general partnerships, unlimited companies, etc.). These are subject to other regulations and, under US tax law, some of them may qualify as transparent intermediaries with a possible duty of disclosure. They also have to be treated differently in the matter of recourse to DTA benefits.

3.5. Special investment vehicles (domiciliary companies such as offshore companies, foundations, trusts, etc.)

(Non-US) organizational forms used as investment vehicles that could be classed as domiciliary companies as defined in the Swiss code of due diligence are subject to a special regulation. Such organizations will either be an offshore company or one of the wide range of foundations and trusts that are used in asset management business. While the main issue concerning domiciliary companies is whether they really are companies and also whether they really are the beneficial owner of the assets as defined by US tax law (facts which can be confirmed using the appropriate forms), the basic problem with trusts and foundations is that US tax law tends to regard them as transparent intermediaries with corresponding disclosure obligations.
Whereas there was originally a solution to this, whereby foreign investors could avoid having to disclose information for the sake of it, changes introduced in the relevant US regulations in fall 2003 largely made the continuation of this solution unworkable. Given this change in circumstances, if there is no desire to disclose the identities of either the bank's contracting partner or the beneficial owner to the US tax authorities, the possible alternatives are for US securities to be excluded from the portfolio, for the beneficial owner to hold them directly, or for a structure to be put in place between the foundation/trust and the bank which itself serves as an independent, non-transparent beneficial owner (e.g. a legal entity/corporation/company) and submits documentation to the QI to this effect.

4. Relevant US securities

The new regulations apply to securities issued by US companies and borrowers. In general terms, the securities involved are equities (of whatever form) of US companies traded on US or foreign stock markets or bonds (straights, zeros, etc.) from US issuers (companies, local authorities, government agencies, etc.) destined for the US domestic market. The equity certificates issued by these companies for trading outside the USA (depositary receipts, Swiss certificates, etc.) are subject to the QI regulations in the same way as are the underlying securities. Clearly, units in US

UBS

investment funds (regulated investment companies, mutual funds, etc.) also qualify as US securities, although units in foreign (non-US) investment funds do not, even if the funds themselves invest in US paper.

Different rules apply to Eurobonds that are issued by US borrowers specifically for foreign markets and/or foreign investors, provided that these qualify as bearer paper under the "portfolio interest exemption rules". Such bonds are not affected by the changes and are exempt from the QI procedure. However they are already subject to certain sales restrictions, at least in the primary market, that prevent or make difficult any sale to US persons.

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

IN THE MATTER OF THE TAX
LIABILITIES OF:

JOHN DOES, United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers.

DECLARATION OF BARRY B. SHOTT

I, Barry B. Shott, pursuant to 28 U.S.C. Section 1746, declare and state:

1. I am the duly commissioned Deputy Commissioner (International) with the Large & MidSize Business Division of the Internal Revenue Service. I am employed in the office of the Commissioner, Large & MidSize Business Division, and I am the United States Competent Authority. As the Competent Authority, I oversee the international exchange of information pursuant to tax treaties between the United States and foreign countries. Prior to my appointment as the Deputy Commissioner (International) I was a Director of Field Operations, and then Industry Director for the Financial Services Industry in the Large & MidSize Business Division.

While with the Financial Services Industry, I was directly responsible for oversight of the Qualified Intermediary Program.

The Qualified Intermediary Program

2. The United States Government issued regulations, effective in 2001, confirming that the IRS would require that thirty (30) percent be withheld on income earned with respect to United States investments maintained in foreign financial accounts unless the foreign banks gave U.S. withholding agents documentation obtained from the beneficial owners of the accounts.

3. In order to simplify the documentation procedure, the IRS created the Qualified Intermediary Program ("Q.I. Program"). Foreign banks that agreed to follow certain procedures could assume the responsibilities of a U.S. withholding agent (including determining which customers qualified for treaty benefits, such as reduced or eliminated withholdings, based on documents establishing the identity of the account's beneficial owner) without disclosing to U.S. authorities the identities of these non-United States taxpayers. This was a valuable benefit to foreign banks in maintaining their business with respect to the holdings of United States investments by non-United States taxpayers.

4. In order for the Q.I. Program to function as intended, the foreign banks must correctly and truthfully ascertain the identity and citizenship/residence of its clients. Thus, the Q.I. Program requires foreign banks to obtain and maintain IRS Forms W-8BEN, which report the identities of non-United States account holders, or IRS Forms W-9, which report the identities of United States account holders. Model copies of Forms W-8BEN and W-9 are attached as Exhibits A and B, respectively. In addition, the Q.I. Program requires foreign banks to confirm client identities with greater scrutiny than in the past. Specifically, foreign banks

must examine formal identification, citizenship and residency documentation. Clients claiming non-United States residence/citizenship are obligated to document their status, especially where bankers have contact with the client in the United States, such as meetings in person and contacts via telephone, mail, e-mail and fax.

5. Pursuant to the Q.I. Program, foreign banks maintaining accounts for United States clients are required to prepare and transmit to the IRS, Forms 1099 reporting payments on United States investments. Generally, the Form 1099 reporting cover interest, dividends and sales proceeds on United States investments. The Form 1099 is issued by the bank to the United States taxpayer and the information contained therein is provided to the IRS.

6. Where a United States taxpayer refuses to submit the proper documentation, a foreign bank that is party to a Q.I. Agreement must backup withhold at twenty-eight (28) percent on all U.S. source income, just like a U.S. bank. If a foreign bank that is party to a Q.I. Agreement (1) knows that an account holder is a United States taxpayer who should be providing documentation, and (2) the foreign bank is prohibited by law (including by contract) from disclosing the account holder, then the foreign bank must request from the account holder the authority either to disclose his identity or to exclude U.S. securities from his account. If the foreign bank does not receive authority to disclose the owner's identity or to exclude U.S. securities in 60 days, it must sell the U.S. securities in the account.

7. If clients claiming non-United States residence/citizenship do not document their status, the foreign bank is required to apply various presumptions, all of which would result in withholding on U.S. source payments.

8. UBS entered into a Q.I. Agreement with the IRS in 2001.

Access to Swiss Bank Records Through Treaty Requests

9. One of my current responsibilities is exchanges of information under tax conventions, including the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (the "Swiss treaty"). Article 26 of the Swiss treaty, which was signed at Washington on October 2, 1996, provides for the exchange of information as is necessary "for the prevention of tax fraud or the like."

10. In our experience, Article 26 has been applied consistently by the Swiss Competent Authority, since the inception of the treaty, to provide the Internal Revenue Service assistance only in response to specific requests that name a particular taxpayer. It has also been our experience that the Service must have an existing examination or investigation concerning a specific taxpayer and it must make detailed factual allegations regarding conduct constituting tax fraud by the taxpayer in accordance with the Mutual Agreement of January 23, 2003, between the Competent Authorities of the Swiss Federation and the United States, regarding Article 26.

11. Recently, representatives of the Swiss government indicated a willingness to consider a request under the treaty that did not specifically identify the taxpayers whose records were sought. Even if such a request is made pursuant to the Swiss treaty, the account holders whose information is the subject of the request would be notified by the Swiss government and granted the right to object to the production of their records. If the account holder objects to the production of the records, a Swiss court would determine if the records could be produced under the treaty. The Swiss court would approve the production of records only if it found evidence of tax fraud.

12. The United States also has a Mutual Legal Assistance Treaty (MLAT) with Switzerland, which entered into force January 23, 1977. The MLAT also provides a mechanism for the exchange of information, but applies only to criminal investigations. Because the investigation in which the UBS John Doe summons will be issued is civil in nature, the MLAT does not provide a means for securing the information sought in the summons.

I declare under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the foregoing is true and correct.

Executed this 24 day of June 2008.

BARRY B. SHOTT
Deputy Commissioner,
Internal Revenue Service

Exhibit A
to the
Shott Declaration

Form **W-8BEN**
(Rev. February 2006)
Department of the Treasury
Internal Revenue Service

Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding

▶ Section references are to the Internal Revenue Code. ▶ See separate instructions.
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

Do not use this form for: **Instead, use Form:**

- A U.S. citizen or other U.S. person, including a resident alien individual W-9
- A person claiming that income is effectively connected with the conduct of a trade or business in the United States W-8ECI
- A foreign partnership, a foreign simple trust, or a foreign grantor trust (see instructions for exceptions) . . . . . W-8ECI or W-8IMY
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (see instructions) . . . . . W-8ECI or W-8EXP

Note: *These entities should use Form W-8BEN if they are claiming treaty benefits or are providing the form only to claim they are a foreign person exempt from backup withholding.*

- A person acting as an intermediary W-8IMY

Note: *See instructions for additional exceptions.*

Part I Identification of Beneficial Owner (See instructions.)

1 Name of individual or organization that is the beneficial owner

2 Country of incorporation or organization

3 Type of beneficial owner: ☐ Individual ☐ Corporation ☐ Disregarded entity ☐ Partnership ☐ Simple trust ☐ Grantor trust ☐ Complex trust ☐ Estate ☐ Government ☐ International organization ☐ Central bank of issue ☐ Tax-exempt organization ☐ Private foundation

4 Permanent residence address (street, apt. or suite no., or rural route). **Do not use a P.O. box or in-care-of address.**

City or town, state or province. Include postal code where appropriate.

Country (do not abbreviate)

5 Mailing address (if different from above)

City or town, state or province. Include postal code where appropriate.

Country (do not abbreviate)

6 U.S. taxpayer identification number, if required (see instructions) ☐ SSN or ITIN ☐ EIN

7 Foreign tax identifying number, if any (optional)

8 Reference number(s) (see instructions)

Part II Claim of Tax Treaty Benefits (if applicable)

9 **I certify that (check all that apply):**

a ☐ The beneficial owner is a resident of ..... within the meaning of the income tax treaty between the United States and that country.

b ☐ If required, the U.S. taxpayer identification number is stated on line 6 (see instructions).

c ☐ The beneficial owner is not an individual, derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits (see instructions).

d ☐ The beneficial owner is not an individual, is claiming treaty benefits for dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation, and meets qualified resident status (see instructions).

e ☐ The beneficial owner is related to the person obligated to pay the income within the meaning of section 267(b) or 707(b), and will file Form 8833 if the amount subject to withholding received during a calendar year exceeds, in the aggregate, $500,000.

10 **Special rates and conditions** (if applicable—see instructions): The beneficial owner is claiming the provisions of Article ..... of the treaty identified on line 9a above to claim a ..... % rate of withholding on (specify type of income): .....

Explain the reasons the beneficial owner meets the terms of the treaty article: .....

Part III Notional Principal Contracts

11 ☐ I have provided or will provide a statement that identifies those notional principal contracts from which the income is not effectively connected with the conduct of a trade or business in the United States. I agree to update this statement as required.

Part IV Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

1 I am the beneficial owner (or am authorized to sign for the beneficial owner) of all the income to which this form relates,
2 The beneficial owner is not a U.S. person,
3 The income to which this form relates is (a) not effectively connected with the conduct of a trade or business in the United States, (b) effectively connected but is not subject to tax under an income tax treaty, or (c) the partner's share of a partnership's effectively connected income, and
4 For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner.

Sign Here ▶ ..... Signature of beneficial owner (or individual authorized to sign for beneficial owner) ..... Date (MM-DD-YYYY) ..... Capacity in which acting

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 25047Z Form **W-8BEN** (Rev. 2-2006)

Printed on Recycled Paper

Exhibit B
to the
Shott Declaration

Form **W-9**
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ _____
☐ Other (see instructions) ▶

☐ Exempt payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
: :

or

Employer identification number
:

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here | **Signature of U.S. person ▶** | **Date ▶**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

COPY FOR JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO.
08-21864-MC-LENARD/GARBER

IN THE MATTER OF THE TAX LIABILITIES OF:

JOHN DOES, United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers.

ORDER

THIS MATTER is before the Court upon the United States of America's "*Ex Parte* Petition for Leave to Serve John Doe Summons." Based upon a review of the Petition and exhibits thereto, the Court has determined that the "John Doe" summons to UBS AG and its affiliates and subsidiaries relates to the investigation of an ascertainable group or class of persons, that there is a reasonable basis for believing that such group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and that the information sought to be obtained form the examination of the records or testimony (and the identities of the persons with respect to whose liability the summons is issued) are not readily

available from other sources. It is therefore–

ORDERED AND ADJUDGED that the Internal Revenue Service, through Revenue Agent Daniel Reeves or any other authorized officer or agent, may serve an Internal Revenue Service "John Doe" summons upon UBS AG and its affiliates and subsidiaries in substantially the form as attached as Exhibit A to the Declaration of Revenue Agent Daniel Reeves. A copy of this Order shall be served together with the summons.

DONE AND ORDERED this 1 day of July, 2008.

John A. Lenard
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Richard D. Euliss
Trial Attorney, Tax Division
United States Department of Justice
P.O. Box 14198
Washington, DC 20044

R. Alexander Acosta
United States Attorney
Southern District of Florida
99 N.E. 4th Street
Miami, Florida 33132

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil No. 09-20423 MC - GOLD

UNITED STATES OF AMERICA,	)	
	)	
Petitioner,	)	McALILEY
	)	
v.	)	
	)	
UBS AG,	)	
	)	
Respondent.	)	

DECLARATION OF DANIEL REEVES

Daniel Reeves, pursuant to 28 U.S.C. § 1746, declares:

1. I am a duly commissioned Internal Revenue Agent and Offshore Compliance Technical Advisor employed in the Small Business/Self Employed Division of the Internal Revenue Service. I am assigned to the Internal Revenue Service's Offshore Compliance Initiative. The Offshore Compliance Initiative develops projects, methodologies, and techniques for identifying US taxpayers who are involved in abusive offshore transactions and financial arrangements for tax avoidance purposes. I have been an Internal Revenue Agent since 1977, and have specialized in offshore investigations since 2000. As a Revenue Agent, I have received training in tax law and audit techniques, and have received specialized training in abusive offshore tax issues. I also have extensive experience in investigating offshore tax matters.

2. Under the authority of 26 U.S.C. § 7602, 26 C.F.R. § 301.7602-1, and Internal Revenue Service Delegation Order No. 4 (as revised), Revenue Agent Arthur S. Brake is authorized to issue administrative summonses.

Permanent Subcommittee on Investigations
EXHIBIT #18

3. UBS AG is a Swiss Bank with offices in more than fifty countries, including the United States, where it has 437 offices. Among other services, UBS provides private banking services to extremely wealthy US taxpayers, including individuals whose net worth exceeds $1 billion. Unless otherwise indicated, all references in this Declaration to "UBS" or "UBS AG" refer to those offices located, or those employees based, in Switzerland.

4. In my capacity as a Revenue Agent, I am conducting an investigation to determine the identities of US taxpayers who have violated the Internal Revenue Code by failing to report the existence of, and income earned in, undeclared Swiss accounts with UBS.

5. On July 1, 2008, this Court granted a petition filed by the United States for leave to serve a "John Doe" summons on UBS, under the authority of 26 U.S.C. §7609(f).

6. On July 21, 2008, in furtherance of my investigation, Revenue Agent Brake issued a "John Doe" summons to UBS AG. On that same day, Revenue Agent Brake served that summons on UBS by handing a copy to James Dow, Director and Head of Compliance for UBS in Miami, Florida as reflected on the reverse side of the summons. A copy of the summons is attached as Ex. 1.

7. The summons describes the "John Doe" class as:

> United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates in Switzerland and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all payments made to such United States taxpayers.

8. The summons directed UBS to appear at 10:00 a.m. on August 8, 2008, to give testimony and produce for examination certain books, papers, records, or other data as described in the summons.

9. UBS failed to appear at the time and place required in the summons. To date, it has failed to comply in full with the summons.

10. Except as otherwise indicated in this Declaration, the books, records, papers and other data sought by the summons are not already in the possession of the IRS.

11. The testimony, books, records, papers, and/or other data sought by the summons will reveal the identities of US taxpayers who did not disclose the existence of their Swiss accounts to the IRS, and who may not have reported to the IRS income related to those accounts.

12. The identities of the "John Does" are unknown. Accordingly, the IRS does not know whether there is any "Justice Department referral," as that term is defined by 26 U.S.C. § 7602(d)(2), in effect with respect to any unknown "John Doe" for the years under investigation.

13. All administrative steps required by the Internal Revenue Code for issuance of the summons have been followed.

I. THE SUMMONS SATISFIES THE POWELL REQUIREMENTS

A. The Internal Revenue Service Issued the Summons for a Legitimate Purpose

14. US taxpayers are required to file annual income tax returns with the IRS, disclosing the existence of, and reporting any income earned from, foreign financial accounts. Taxpayers who fail to make these disclosures on their income tax returns have failed to comply with internal revenue laws. Many US taxpayers have long employed offshore accounts in countries with strict banking secrecy laws (such as Switzerland) as a means to conceal assets and

income from the IRS. This conduct has deprived the United States Treasury of untold billions of dollars in unpaid taxes.

15. Thus far, my investigation has revealed that many US taxpayers concealed their assets in this manner by using secret UBS Swiss bank accounts. UBS describes the secret accounts maintained for its US customers as "undeclared accounts." By using such undeclared accounts, these US taxpayers have violated internal revenue laws requiring full disclosure of all foreign financial accounts and all income. These US taxpayers are the focus of my investigation.

16. UBS, the summoned party, is a Swiss bank that collaborated with many US taxpayers to establish offshore accounts, and actively conceal those accounts from the IRS. UBS has helped these US taxpayers violate US laws by failing to report the existence of foreign bank accounts under their ownership or control, and failing to report and pay US income taxes on income earned in those accounts. The IRS seeks documents from UBS that would identify and help the IRS to investigate these US taxpayers.

B. The Summoned Information May Be Relevant to the Internal Revenue Service's Legitimate Purpose for Issuing the Summons

17. The information sought by the summons may be relevant to the IRS's investigation of the "John Does." The summoned materials include:

- documents identifying each US taxpayer within the "John Doe" class, as well as any documents pertaining to any offshore entities used to hide the true beneficial owner of undeclared accounts. These documents are necessary to identify US taxpayers involved in this scheme, as well as any entities that may have been used to conceal the true owners' identities;

- documents reflecting any activity in the undeclared accounts. This information could aid in the determination of taxable income;

- documents identifying relationship managers for each US taxpayer. Relationship managers may be found within the United States and would be subject to questioning by the IRS. Relationship managers may know more about why and how the US taxpayers formed and concealed their Swiss accounts from the IRS;

- documents relating to the creation of the undeclared accounts and any foreign entities used to conceal such accounts. These documents will further reveal precisely how US taxpayers conducted their affairs to avoid compliance with internal revenue laws, and may reveal whether funds transferred to the accounts had previously been taxed;

- documents pertaining to the referral of each US taxpayer interested in offshore accounts from UBS offices in the United States to UBS offices in Switzerland. These documents will demonstrate the identity of the US taxpayers, the types of products and services provided by UBS, as well as UBS's referral process, and may reveal facts pertaining to the source of the funds in the offshore accounts and the potential liability of the US taxpayers for penalties; and,

- documents related to any domestic bank accounts held by US taxpayers in the "John Doe" class. This information may establish the existence of a related offshore account, may establish the taxability of funds in the offshore accounts, and may additionally uncover potential collection sources for any taxes that may be assessed.

C. <u>The Summoned Information Is Not Already in the Government's Possession</u>

18. UBS has provided to the IRS a list of 323 US accounts used to send or receive wire transfers to or from UBS Swiss accounts held in the same name, as well as related account statements for 57 of the 323 US accounts. UBS provided these names and account numbers after the United States requested that UBS search for wire transfers between accounts within the United States and accounts in Switzerland. UBS produced only US-based records, and did not produce any Swiss-based records for these accounts.

19. The IRS also has possession of the following documents:

- six client-specific binders, each relating to one particular member of the "John Doe" class. Those binders do not identify any of the clients to whom the accounts relate, as UBS redacted all client-identifying information from the documents before producing them to the IRS. UBS provided those binders to the IRS as examples of types of documents in its possession;

- documents provided by Bradley Birkenfeld, a former director in the private banking division of UBS, during an interview that I conducted on October 12, 2007; and

- documents provided by UBS through the Swiss Banking Commission, with client-identifying information redacted.

20. On July 16, 2008, the United States made a formal request to the Swiss Government for records pursuant to the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income ("Treaty Request"). Thus far no records have been produced in response to the Treaty Request. The Declaration of Barry Shott explains the present status of the Treaty Request.

D. The Summons Meets All Administrative Requirements

21. All procedures required by the Internal Revenue Code, as amended, were followed with respect to the summons.

II. UBS HAS ASSISTED ITS US CLIENTS IN THE "JOHN DOE" CLASS TO ESTABLISH AND MAINTAIN "UNDECLARED" ACCOUNTS, AND TO CONCEAL THOSE ACCOUNTS FROM US AUTHORITIES.

A. A Congressional Investigation Concluded UBS has Engaged in Conduct that Assisted US Taxpayers to Violate US Law With Impunity.

22. Following an investigation, in 2008 the Permanent Subcommittee on Investigations of the United States Senate Committee on Homeland Security and Governmental Affairs (PSI) issued a report entitled "Tax Havens and U.S. Tax Compliance" ("Tax Haven Report"). The portion of the Tax Haven Report dealing with UBS, pp. 80-110, is attached as Ex. 2. In the Tax Haven Report, the PSI concluded that, from at least 2000 to 2007, UBS directed its Swiss bankers to target US clients willing to open bank accounts in Switzerland. According to the Tax Haven Report, "In 2002, UBS assured its U.S. clients with undeclared accounts that U.S. authorities

would not learn of them, because the bank is not required to disclose them; UBS procedures, practices and services protect against disclosure; and the account information is further shielded by Swiss bank secrecy laws." (Ex. 2 at 83) The report also noted:

a. "Until recently, UBS encouraged its Swiss bankers to travel to the United States to recruit new U.S. clients, organized events to help them meet wealthy U.S. individuals, and set annual performance goals for obtaining new U.S. business." (Id.)

b. "[UBS] also encouraged its Swiss bankers to service U.S. client accounts in ways that would minimize notice to U.S. authorities. The evidence suggests that UBS Swiss bankers marketed securities and banking products and services in the United States without an appropriate license to do so and in apparent violation of U.S. law and the bank's own policies." (Id.)

c. Between 2000 and 2007, UBS opened "tens of thousands of accounts in Switzerland that are beneficially owned by U.S. clients, hold billions of dollars in assets, and have not been reported to U.S. tax authorities." The report notes that although these accounts were owned by US taxpayers, the account owners did not file Forms W-9 identifying themselves as the owners, and the bank did not file Forms 1099 reporting the earnings on those accounts to the IRS. The bank refers to these accounts as "undeclared accounts." (Ex. 2 at 83-84).

d. UBS officials told the PSI in 2008 that UBS maintains accounts in Switzerland for about 20,000 US clients, and that only about 1,000 of those accounts have been "declared" to the US authorities. According to UBS, the 19,000 US clients with undeclared accounts hold about $18 billion in undeclared assets. (Ex. 2 at 84).

e. UBS recognized that US taxpayers "may have a legal obligation to report a foreign trust, foreign bank account, or foreign income to the IRS." (Ex. 2 at 87).

B. UBS Internal Documents Show that UBS Systematically Maintained a Significant and Ongoing Presence in the United States.

23. In a December 2004 internal report, UBS estimated that in the "last year," 32 different UBS Client Advisors traveled to the United States on business. "On average, each Client Advisor visited the US for 30 days per year, seeing 4 clients per day. This means that approximately 3,800 clients are visited in the US per year by [Wealth Management and Business Banking] Client Advisors based in Switzerland." (Ex. 3 at U00006000)

24. In that same report, UBS estimated that it had approximately 52,000 undeclared "account relationships" with US taxpayers, containing assets valued at 17 billion CHF (Swiss Francs), the equivalent of about $14.8 billion at the time. (Ex. 3 at U00005994) About 32,940 of those undeclared accounts contain only cash, while the remaining 20,877 accounts contain at least some securities. Although there are more cash accounts than securities accounts, the securities accounts held approximately 39 times the amount of assets in the cash accounts. (Ex. 4 at U00006029).

C. UBS Assisted its US Customers in Avoiding their Reporting Obligations Under US Law, by Counseling Them to Sell their US Holdings and by Helping Them Establish Sham Offshore Ownership Entities to Avoid UBS's Obligations Under the QI Program.

25. US taxpayers who control cash-only accounts have a legal obligation to disclose the existence of those accounts to the IRS, and to report any income earned in those accounts on their annual income tax returns. US taxpayers who control securities accounts must also disclose to the IRS their accounts that contain securities. For accounts containing US securities, however,

UBS and the IRS entered into a Qualified Intermediary Agreement (QI Agreement, See Shott Declaration) that required UBS to procure Forms W-9 from its US clients. The Forms W-9 provided UBS with the information necessary for it to file Forms 1099 with the IRS reporting income paid on the offshore accounts. Thus, the QI Agreement should have enabled the IRS to learn directly from UBS the identities of US taxpayers holding US securities accounts at UBS. As explained in greater detail in the following section, this did not happen.

26. UBS and its US clients knew that it violated US law for US taxpayers to maintain undeclared accounts with UBS in Switzerland – whether the accounts held cash or securities. In fact, UBS had its undeclared account holders complete a boilerplate declaration swearing that they were aware that their relationship with UBS could have legal ramifications. In the declaration's original form, attached hereto as Ex. 5, a client was required to state that he is "liable to tax in the USA as a US person." (Ex. 5 at U00014257).

27. As originally presented to clients, the boilerplate declaration required the client to state, ***"I would like to avoid disclosure of my identity to the US Internal Revenue Service . . ."*** (Emphasis added) (Id.). According to a UBS internal e-mail, many US taxpayers refused to sign the declaration since it "fully incriminates a US person of criminal wrongdoing should this document fall into the wrong hands." As a result of those complaints from its US clients, UBS revised the form to state simply that the client "consent[s] to the new tax regulations." (Ex. 6)

28. As explained in greater detail in the Declaration of Barry Shott, in 2001 UBS entered into a Qualified Intermediary (QI) Agreement with the IRS. As described in greater detail below, UBS systematically violated and circumvented its obligations under the QI Agreement, all in order to help its US clients conceal from the IRS their Swiss accounts at UBS.

29. According to former UBS private banker, Bradley Birkenfeld, UBS recognized that its entry into the QI Agreement could damage its US business, as its responsibilities under the QI Agreement could defeat the purpose of many US taxpayers in opening their offshore accounts in the first place. (Ex. 7 at 3).

30. The Tax Haven Report concluded that soon after entering into the QI Agreement UBS, "took steps to assist its U.S. clients to structure their Swiss accounts in ways that avoided U.S. reporting rules under the QI Program." (Ex. 2 at 87)

31. One way that UBS proposed its US customers could avoid disclosing their Swiss accounts to the IRS was for the customer to liquidate all US securities from those accounts, and block the accounts from acquiring US securities in the future. (Ex. 5, p. U00014257) This would enable US customers to continue to trade non-US securities in their Swiss accounts, with the assurance that UBS would not disclose their accounts to the IRS.

32. Another option proposed by UBS was to make it appear as though non-US taxpayers were the actual beneficial owners of these accounts, thereby enabling UBS to forgo reporting any income from those accounts to the IRS. UBS and its clients achieved this result by helping their US clients to arrange for the undeclared accounts to be listed as owned by foreign corporations or other entities that were, in fact, shams. In truth, the accounts were owned and controlled by US taxpayers. These clients, with UBS's knowledge and active assistance, failed to prepare IRS Forms W-9 declaring themselves as US taxpayers and providing the information necessary for UBS to report their income to the IRS. Then, with UBS's knowledge and assistance, these US taxpayers prepared false and misleading IRS Forms W-8BEN ("Certificate of

Foreign Status of Beneficial Owner for United States Tax Withholding"), reporting that their sham entities actually owned the accounts.

33. UBS understood that this "structured solution" could violate US tax laws, as well as its obligations under the QI Agreement. In a memorandum discussing the effect of the QI Agreement on UBS's servicing of US taxpayers, a UBS official explained that:

> . . . we cannot recommend products (such as the use of offshore companies . . .) to our clients as an 'alternative' to filing a Form W-9. This could be viewed as actively helping our clients evade US tax, which is a U.S. criminal offence. Further, such recommendations could infringe upon our Qualified Intermediary status, if, on audit in 2003, it is determined that we have systematically helped US person (sic) to avoid the QI rules. What we can do is suggest that clients seek external professional advice and offer them a choice of approved service providers, if they request it.

(Ex. 8 at U00014262). Thus, UBS acknowledged that it could be helping its US clients to commit tax crimes, if its officials recommended that its US clients use offshore entities in order to prevent disclosure of their identity.

34. In effect, UBS made precisely that recommendation, when it gave its US customers a list of "approved service providers." UBS expected those providers to recommend how its US customers could avoid detection by US tax authorities, by having their UBS accounts held in the name of dummy offshore entities. To determine which service providers to recommend, on August 17, 2004, six UBS officials met to review presentations from competing service providers who were invited, "to make a short presentation on the structures/vehicles that you recommend to U.S. and Canadian clients who do not appear to declare income/capital gains to their respective tax authorities." (Ex. 9)

35. UBS went farther to advance this plan. In a document found on its website, "Qualified Intermediary System: US withholding tax on dividends and interest income from US

securities" (last visited June 18, 2008), UBS counsels clients who wish to hold their accounts through simple trusts:

> While the main issue concerning [offshore entities] is whether they really are companies and also whether they really are the beneficial owner of the assets as defined by US tax law (facts which can be confirmed using the appropriate forms), ***the basic problem with trusts and foundations is that US tax law tends to regard them as transparent intermediaries with corresponding disclosure obligations***. (Emphasis added).

(Ex. 10 at 3). For those clients who wish to continue holding their accounts through such trusts and foundations but who also wish to avoid the "corresponding disclosure obligations," the document suggests, in relevant part, as follows (emphasis added):

> [I]f there is no desire to disclose the identities of either the bank's contracting partner or the beneficial owner to the US tax authorities, the possible alternatives are for US securities to be excluded from the portfolio, for the beneficial owner to hold them directly, ***or for a structure to be put in place between the foundation/trust and the bank*** which itself serves as an independent, non-transparent beneficial owner (e.g. a legal entity/corporation/company) and ***submits documentation to the QI to this effect.***

(Ex. 10 at 3).

36. As noted above, UBS acknowledged that it would be illegal to recommend that its US customers use offshore entities to avoid their US reporting obligations. Nonetheless in 2004, on its own initiative, UBS planned to create approximately 900 offshore corporations for its largest US customers – those holding UBS accounts with asset balances exceeding 500,000 CHF. It intended to create 650 such dummy corporations for customers it could not contact by October 31, 2004, and another 250 dummy corporations for customers it could contact, and who UBS expected would employ these dummy corporations to hide their Swiss accounts from the IRS. (Ex. 11, U00005303)

37. Although UBS unabashedly recommended that its clients use nominee entities to circumvent the QI Agreement – and, accordingly, violate US tax laws – the bank remained concerned that US authorities would discover this scheme. At one point, UBS received word of a possible undercover IRS investigation into UBS's compliance with the QI Agreement. Though a UBS official expressed "doubts" as to the veracity of the report, he nevertheless admonished that the bank should "be on the safe side" and instructed client advisors "to be prudent in first time clients re QI, possible structures etc. mentioning of solutions only to clients which we already know since some time." (Ex. 12 at U00007530)

38. The documents compiled at Exhibit 13 demonstrate the precise way that UBS and its clients used to structure these accounts, in the following sequence:

a. A US taxpayer directly holds a "predecessor account" with UBS which, in this example, had been opened in 1985. (U00000816-817)

b. In 2000, shortly before the QI Agreement was to take effect, the US taxpayer formed an overseas nominee corporation, which formally resolved to open a new Swiss account with UBS. (U00000854 and 857)

c. Following its formation, the offshore entity opened a new, separate account with UBS. (U00000858-859)

d. As part of the account opening process, UBS had the US taxpayer complete an internal UBS form entitled "Verification of the beneficial owner's identity," for the newly-opened account. (Even though the new account was ostensibly opened by the overseas entity, this particular form confirmed for UBS's internal purposes that, in fact, the beneficial owner was the US taxpayer.) (U00000863)

e. The US taxpayer then executed a Form W-8BEN representing that the oversees entity was the beneficial owner for IRS purposes. In this important respect, the Form W-8BEN directly contradicted the UBS form "Verification of the beneficial owner's identity." Thus, UBS maintained its own form identifying the actual beneficial owner of the account – the US taxpayer – while simultaneously accepting a fraudulent Form W-8BEN. (U00000865)

f. UBS relied on the knowingly fraudulent Form W-8BEN to avoid reporting the true ownership of the account to the IRS.

39. UBS used this procedure to help Igor Olenicoff hide from the IRS his beneficial ownership of undeclared accounts, thereby helping him to evade approximately $7.2 million in US income taxes, as described more fully in ¶ 59 below.

D. UBS Took Affirmative Steps to Prevent the United States Government from Discovering its Violations of US Securities and Tax Laws.

40. Except for two subsidiaries that UBS established in London (UBS Investment Advisors Ltd., Ex. 14) and in Switzerland (UBS Swiss Financial Advisors, AG, Ex. 3 at U00005996) to provide investment advisory services to US customers who had submitted Forms W9, UBS's offices and affiliates located outside of the United States are not licensed by the Securities and Exchange Commission ("SEC") to provide broker/dealer services to US taxpayers. (Ex. 15 at U00013486).

41. According to an internal UBS document, because it is not an SEC-licensed broker, UBS may not establish or maintain "relationships for securities services" with US taxpayers if doing so requires communicating with the client by using US jurisdictional means, which UBS defined as "telephone, mail, e-mail, advertising, the internet or personal visits into the United States." (Ex. 15 at U00013487). As further explained in a UBS memo:

> Many of the core PB ["Private Banking"] services provided by UBS to U.S. persons out of Switzerland are problematic due to the very restrictive approach the U.S. regulatory regime takes with regard to permissible cross-border activities. (Ex. 16 at U00007121).

42. In the Tax Haven Report, the PSI concluded, "UBS Swiss bankers marketed securities and banking products and services in the United States without an appropriate license to do so and in apparent violation of U.S. law and the bank's own policies." (Ex. 2 at 83).

43. In its internal documents, UBS acknowledged that accepting cross-border trades with its US clients would violate US securities law. And yet, despite knowing such trading violated US law, UBS was committed in "exceptional circumstances" to accepting such cross-border trades (Ex. 17 at U00013755). Those cross-border services earned $200 million per year in profit for UBS. (Ex. 7 at 3, Ex. 28 at ¶ 4).

44. Not only did UBS Client Advisors conduct business in person within the United States. UBS also conducted its cross-border business through telephone, facsimile and e-mail.

45. In one case, a UBS Client Advisor went so far as to conceal UBS's cross-border securities trading through the use of an elaborate code. In one report, the Advisor recounts a "new code to facilitate discreet email contacts" created by his client, with the following translation key:

> EUR = orange
> USD = green
> GBP = blue
>
> 100K = C
> 250K = 1 nut
> 1 M = a swan

The meeting report then proceeds to use code as follows: "The [REDACTED] are all comfortable: about 2.5 orange nuts @13710 (3%) and about 2.05 green nuts @13270 (12%). All clear?"

Using the key, the client requested a purchase of 625,000 euros @13710(3%) and about 512,500 US dollars at @13270(12%). (Ex. 18)

46. UBS acknowledged that maintaining both an actual and a virtual presence in the United States was critical to building and sustaining its US business. One UBS study concluded that either discontinuing the use of telephone and e-mail to provide "investment advice," or banning US travel, would be tantamount to UBS's "virtual/real exit" from the US market. (Ex. 19 at U00005989).

47. UBS maintains a "Risk Committee" as part of its organizational structure. The Risk Committee identifies, assesses, and makes recommendations regarding the risks associated with the bank's various activities. In 2004, the Risk Committee concluded, "the key risk arises from UBS AG in Switzerland being a non-SEC registered entity communicating with such clients in (or into) the US concerning securities." (Ex. 3 U00005995).

48. In a 2004 training session, UBS acknowledged that its cross-border brokerage services could trigger the United States' "broad subpoena powers [or] long-arm jurisdiction rules." (Ex. 20 at U00006011). In another document. UBS noted that its actions could also mean the "[l]oss of QI status and of US banking license," and that it could also result in the imposition of fines or penalties. (Ex. 4 at U00006019).

49. As early as 1999, UBS recognized that its activities in the United States violated US law. In a 1999 memorandum to UBS "Legal PB" (Private Banking) in Basel, UBS "Legal PB" in New York advised,

> As outlined in this memo, the provision or soliciting the provision of certain services by Swiss offices of the Bank (in particular brokerage services and investment advise) entail considerable risks for the Bank, because the Bank lacks the necessary license to provide these services. The registration requirements

> come into play because such activity of the Bank has its effect on U.S. territory and is therefore subject to U.S. jurisdiction.

The memorandum concluded that the use of certain preventative measures could, "at least dramatically reduce the risk of the SEC becoming aware of the activities of the Bank in the U.S. market." (Ex. 21 at U00018275) In response to these identified risks, UBS took the following steps to mitigate the risk that US authorities would detect its illegal activities within the United States:

a. UBS first divided its US taxpayer clients into two groups: (1) those who were willing to submit Forms W-9 and have the bank file Forms 1099 reporting their earned income, and (2) those who wished to remained "undeclared."

b. UBS then created the "Cross-Border U.S. Centralization" initiative ("Centralization"). Through its Centralization, UBS consolidated the theretofore disparate administration of all undeclared accounts from the various UBS branches worldwide and transferred them to the Zurich, Geneva, and Lugano offices in Switzerland. As one UBS document described the strategy: "To comply with the US business model and to mitigate compliance, liability, and reputation risk, relations with US persons (i.e. 'W-9 and US domiciled non W-9 clients') with custody account or investment fund account **were centralized**." (Emphasis in original). (Ex. 4 at U00006025).

50. A UBS report explained it this way: "In general, US Resident Non-W9 clients are now centralised [in Switzerland] . . . The aim of the centralisation exercise was to concentrate handling of these particularly sensitive client relationships in the area with the highest expertise." (Ex. 3 at U00005998)

51. By centralizing the administration of the undeclared US accounts, UBS could better oversee the precautionary initiatives put in place to minimize the risk of detection by US authorities (Ex. 4 at U00006019).

52. As another step in its Centralization, UBS created Swiss Financial Advisors ("SFA"), an SEC-registered broker/dealer, to provide securities services within the United States for those US taxpayers who chose to disclose the existence of their accounts. SFA allowed UBS to provide services to its declared US clients through a separate, legally registered affiliate. UBS saw this as a risk-mitigating measure because, **at least with regard to its declared US accounts**, this brought UBS into compliance with the QI Agreement and with applicable US securities laws. (Ex. 4 at U00006019).

53. SFA achieved another important goal, purportedly removing its securities business from the United States. Before UBS created SFA, UBS was concerned that providing services to its US clients holding declared Swiss accounts could result in an "[i]ncreased chance that UBS AG is treated like any other U.S. provider, which means that there is higher litigation risk." (Ex. 22 at U00010833). Thus, UBS concluded that "a separate legal entity [to service the W-9 accounts] is the only way to achieve SEC compliance without having UBS AG under U.S. jurisdiction." (Id. at U00010845). Acknowledging that UBS is "not a U.S. licensed company," the report explained that "[i]n the many decades UBS AG has been serving U.S. clients this issue has not surfaced as UBS did not file with the IRS and has therefore not had any direct relationship to any U.S. official body." (Id. at U00010833). With declared clients, however, such contact with the IRS would be necessary, and UBS wanted to insulate its undeclared clients from the consequences of its forthcoming interaction with the IRS. In other words, the centralization plan

allowed UBS to provide services to all its US clients, without having its services for the declared account holders shed light on its services for the undeclared account holders. This enabled UBS to continue, with reduced risk, to conceal from the IRS the identities of its undeclared account holders.

54. At the conclusion of its Centralization, UBS had consolidated all of its undeclared accounts under the auspices of the Swiss offices, while placing the administration of its transparent, tax-compliant accounts with the new, SEC-registered affiliate, SFA.

55. After it had consolidated the administration of all of its undeclared accounts, UBS then took further precautionary measures designed to mitigate even further the risk that US authorities would learn of its illegal activities and its undeclared US account holders. These measures included:

a. UBS trained its Client Advisors who traveled to the United States, teaching them to take care when traveling to the United States on business:

- Client advisors were advised to have an explanation prepared for the purpose of their trip when entering the United States. (Ex. 23 at U00011454). Birkenfeld reports that UBS had actually encouraged its client advisors to lie on customs forms by representing that they were "traveling into the United States for pleasure and not business." (Ex. 7 at 2). In the Tax Haven Report, the PSI found that on about half of their business trips to the United States, UBS Client Advisors falsely reported on Forms I-94 that they were traveling to the United States for pleasure when, in fact, they were traveling to the United States to provide services to US holders of undeclared UBS accounts. (Ex. 2, pp. 103-104)

- Client advisors were advised to keep an irregular hotel rotation. (Ex. 23 at U00011454).

- Travel laptops were to have a generic UBS power point presentation to show to US authorities in the event of a border search. (Ex. 24 at U00011460).

- Client advisors were warned that the United States Government uses various systems to monitor telephone, facsimile, electronic mail, and other communications systems. (Ex. 24 at U00011460).

- Client advisors were not permitted to bring printers into the United States to prevent them from printing statements, which could prove that a sale was deemed to have occurred on US soil, or that the client advisor "gave investment instructions on US soil." (Id.).

- Client advisors were advised to maintain a "clear desk policy" while in hotel rooms. (Ex. 25 at 5).

- In the event that a client advisor was detained and interrogated, or in the event of any other emergency, the client advisor is to contact UBS hotline that was operated 24 hours a day, 7 days a week. (Id. at 4).

b. With the clients' consent, UBS would not mail regular banking statements or trade confirmations to US taxpayers within the United States. Instead, UBS would retain those documents for the US taxpayers to pick up in person in Switzerland. (Ex. 19 at U00005979).

c. UBS also attempted to maintain its client-identifying documents in Switzerland. (Ex. 23 at U00011451). In fact, part of the Centralization initiative required that all account-opening documents not be maintained in the United States. (Ex. 3 at U00006000).

d. According to Birkenfeld, UBS had advised its US clients to "destroy all off-shore banking records existing in the United States." (Ex. 7 at 3). Birkenfeld also told the PSI that UBS client advisors often completed account documents in the United States and that "instead of saying, 'I signed it in New York,' they brought the forms back to Geneva and they put in 'Geneva.'" (Ex. 2 at 101).

56. UBS knew that it was critical to keep its activities in the United States hidden from US law enforcement. In one e-mail exchange discussing risks associated with UBS's use of

US jurisdictional means, UBS executive Martin Liechti admonished, "I think we need to take the utmost care of this issue, ***that's why I think we need to be extremely carefull*** (sic) ***with any written statement on the subject***." (emphasis added) (Ex. 26 at U00009457). Similarly, in an e-mail exchange between UBS officials discussing the wording of minutes of a meeting between UBS Legal and UBS Compliance, one official suggested that language stating that UBS's visits to the United States are "not allowed under compliance" should be changed to say that such "behavior may however be problematic under SEC rules." (Ex. 27 at U00007587). UBS's legal counsel proceeded to note that the drafted minutes evidence, "how sensitive things get when you are writing them down." (Id. at U00007587).

57. After completing its Centralization initiative, and putting the other risk-mitigation steps in place, UBS continued to offer its products to wealthy, sophisticated US taxpayers who demanded confidentiality. A grand jury in Miami has charged that, in 2005, UBS actually set out to *increase* the volume of its cross-border services. (Ex. 28 at ¶ 38) As noted above, UBS reported that it had earned $200 million per year administering undeclared, offshore accounts for US taxpayers.

E. UBS Bankers and Customers Have Been Charged and Convicted of Crimes in Connection with Maintaining Undeclared Accounts.

58. The legal consequences of maintaining these undeclared accounts have recently resulted in criminal charges for a number of people associated with UBS's activities:

a. In 2008, a grand jury in the Southern District of Florida indicted Raoul Weil, former head of UBS's wealth management business, and since 2007 Chief Executive Officer of a division of UBS that oversaw UBS's cross-border business within the United States. The indictment charges that Weil and others conspired to defraud the United States and the

Internal Revenue Service in the ascertainment, computation, assessment and collection of federal income taxes. In particular, the indictment charges that Weil assisted some 20,000 US customers of UBS to knowingly conceal from the IRS $20 billion in assets that they held in secret accounts at UBS. (Ex. 28) The Court has declared him a fugitive from justice.

b. In 2007, former high-profile UBS client Igor Olenicoff, a California real estate developer, was charged in the Central District of California with filing false income tax returns by failing to disclose on his federal income tax returns the undeclared accounts he maintained at UBS in Switzerland. (Ex. 29). In 2007 Olenicoff pleaded guilty to one count of filing a false tax return for 2002. Olenicoff's Plea Agreement included a statement of facts which he admitted were true. Among other things, Olenicoff admitted that he had filed false income tax returns for each of the years 1998 through 2004, by failing to disclose his undeclared accounts at UBS. (Ex. 30)

c. In 2008 former UBS private banker Bradley Birkenfeld was indicted in the Southern District of Florida on one count of conspiracy to defraud the United States in violation of 18 USC § 371. The indictment charged Birkenfeld and co-conspirator Mario Staggl, a resident of Liechtenstein, with assisting UBS clients to open and maintain undisclosed accounts, and hide those accounts from the IRS, thereby enabling the US clients to evade millions of dollars in US income taxes. (Ex. 31) In June 2008, Birkenfeld pleaded guilty to conspiring to defraud the United States by helping at least one UBS client evade $7.2 million in taxes on income earned from about $200 million in assets that the client maintained in an undeclared UBS account. To support his plea of guilty, Birkenfeld agreed to a Statement of Facts, describing in detail how he and others at UBS conspired to assist thousands of US taxpayers to open, maintain, and conceal

undeclared Swiss accounts. (Ex. 7) In that Statement of Facts, among other things, Birkenfeld described in detail the steps that he, Staggl, and others at UBS took to help US taxpayers conceal the existence of undeclared accounts from the IRS. Among other things, they advised US clients to:

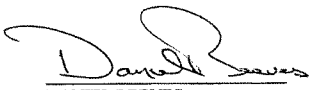
- place cash and valuables in Swiss safety deposit boxes;
- purchase jewels, artwork and luxury items from the UBS account while overseas;
- misrepresent the receipt of funds in the United States from their UBS account in Switzerland as loans from UBS;
- destroy all US-based records of their off-shore accounts;
- purchase goods and services with UBS-issued credit cards, which UBS officials claimed could not be discovered by US authorities.

In one instance, at the request of a US client of UBS, Birkenfeld purchased diamonds with funds from the client's undeclared UBS account, and smuggled the diamonds into the United States in a toothpaste tube. (Ex. 7, pp. 3-4)

59. Traditionally, taxpayers maintain undisclosed offshore accounts in order to conceal assets and income from the IRS. My investigation to date – and the Tax Haven Report discussed above – make clear that UBS has assisted tens of thousands of US taxpayers in the "John Doe" class to avoid the obligation to report all foreign financial accounts to the IRS, thereby helping the US taxpayers conceal from the IRS any income earned in those accounts.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 6th day of February 2009.



DANIEL REEVES
Revenue Agent
Internal Revenue Service

Reeves Declaration
Exhibit 1

Summons

In the matter of Tax Liability of John Does*

Internal Revenue Service (Division): Small Business/Self Employed Division

Industry/Area (name or number): South Atlantic Area

Periods: Years ending 12/31/2002, 12/31/2003, 12/31/2004, 12/31/2005, 12/31/2006, and 12/31/2007

The Commissioner of Internal Revenue

To: UBS AG

At: 701 Brickell Avenue, Suite 3250, Miami FL 33131

You are hereby summoned and required to appear before Daniel Reeves or Designee an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

See attachment

* "John Does" are United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates in Switzerland, and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all payments made to such United States taxpayers.

Do not write in this space

GOVERNMENT EXHIBIT 1

Business address and telephone number of IRS officer before whom you are to appear:

Telephone: (609) 625-7878

Place and time for appearance at IRS, 51 S.W. First Ave., Miami, Florida 33130-1608; Telephone: (305) 982-5269

on the 8th day of August 2008 (year) at 10:00 o'clock a m.

Issued under authority of the Internal Revenue Code this 21 **day of** July 2008 (year)

Signature of issuing officer — Revenue Agent (Title)

Signature of approving officer *(if applicable)* — Territory Manager (Title)

IRS

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 12-2001)
Catalog Number 21405J

Original — to be kept by IRS

Service of Summons, Notice and Recordkeeper Certificates

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	Time
7-21-08	11:00 AM

James Dow, Director & Head of Compliance

How Summons Was Served

1. ☒ I certify that I handed a copy of the summons, which contained the attestation required by § 7603, to the person to whom it was directed.
2. ☐ I certify that I left a copy of the summons, which contained the attestation required by § 7603, at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any): _____
3. ☐ I certify that I sent a copy of the summons, which contained the attestation required by § 7603, by certified or registered mail to the last known address of the person to whom it was directed, that person being a third-party recordkeeper within the meaning of § 7603(b). I sent the summons to the following address: _____
701 Brickell Avenue, Suite 3250, Miami FL 33131

Signature	Title
[signature]	Revenue Agent

4. This certificate is made to show compliance with IRC Section 7609. This certificate does not apply to summonses served on any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Part D of Form 2039) to the person named below on the date and in the manner indicated.

Date of giving Notice: _____ Time: _____

Name of Noticee: _____

Address of Noticee (if mailed): _____

How Notice Was Given

- ☐ I gave notice by certified or registered mail to the last known address of the noticee.
- ☐ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any).
- ☐ I gave notice by handing it to the noticee.
- ☐ In the absence of a last known address of the noticee, I left the notice with the person summoned.
- ☒ No notice is required.

Signature	Title
[signature]	Revenue Agent

I certify that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the noticee consents to the examination.

Signature	Title
	Revenue Agent

Attachment to "John Doe" Summons to UBS AG

1. For each financial account maintained at, monitored by or managed through any Switzerland office of UBS AG or its subsidiaries or affiliates, if, at any time during the years ended December 31, 2002 through December 31, 2007:

(A). any United States taxpayer had signature or other authority over such account;

(B). UBS AG did not have in its possession a Form W-9 executed by the United States taxpayer; and,

(C). UBS AG did not file a timely and accurate Form 1099 with United States taxing authorities;

(i). naming the United States taxpayer; and,

(ii). reporting all reportable payments made to the United States taxpayer;

please provide all account records for the period January 1, 2002, through the date of compliance with this summons, including but not limited to:

a. documents identifying each United States taxpayer by name, address, telephone number, date of birth, or taxpayer identification number;
b. documents pertaining to any foreign entities established or operated on behalf of each United States taxpayer;
c. documents identifying any relationship managers, domestic and foreign, for each United States taxpayer during the period;
d. documents pertaining to the opening of such financial accounts and/or the creation of foreign entities created for or on behalf of each United States taxpayer during the period, including, but not limited to, desk files or other records of the relationship manager, e-mails, facsimiles, memoranda of telephone conversations, memoranda of activity, and other correspondence;
e. documents, including but not limited to, monthly or other periodic statements and records of wire transactions, reflecting the activity of such financial accounts and of such financial accounts maintained in the names of any foreign entity

established or operated on behalf of each United States taxpayer; and,

f. documents pertaining to the referral of each United States taxpayer to UBS offices in Switzerland, including, but not limited to, desk files or other records of the relationship manager, e-mails, facsimiles, memoranda of telephone conversations, memoranda of activity, and other correspondence, and records of any UBS office processing such referrals, including specifically:

   i. documents identifying the UBS office in Switzerland to which the referral was directed and any accounts established;
   ii. documents reflecting annual or other periodic balances of accounts opened at the UBS office in Switzerland receiving the referral and any activity in such accounts; and,
   iii. documents reflecting the receipt of fees by a UBS office for referral of each United States taxpayer, a UBS office servicing the United States taxpayer, or a relationship manager with respect to the referral, documents reflecting how such fees were calculated, and documents reflecting bonuses paid or evaluations given to any UBS employee with reference to such referrals.

2. Please also provide, for the period January 1, 2002, through the date of compliance with this summons, records of wire transfers, and annual account summaries or other annual statements for each domestic financial account held by any United States taxpayer (or by any foreign entity established or operated on behalf of a United States taxpayer) who, at any time during the years ended December 31, 2002 through December 31, 2007, held a Swiss UBS branch financial account with the attributes listed in Part 1(A), (B), and (C), above; or by (2) any foreign financial entity established or operated on behalf of a United States taxpayer.

3. For purposes of this summons "United States taxpayer" means any person with an address in the United States or who is known to UBS or any of its employees or agents, through its business records, anti-money laundering due diligence, or know your customer practices, or through any other means, to be a United States citizen or resident.

4. For purposes of this summons, "UBS office" means any office bearing the name UBS in whole or in part, or holding itself out to the public as part of UBS, including any office controlled by UBS AG, including but not limited to the office of the parent bank, any UBS branch office, and any subsidiary or affiliate of UBS AG.

5. For purposes of this summons, "financial account" means a bank account, securities account or other financial account of any kind.

6. For purposes of this summons, "domestic financial account" means a financial account at a financial institution doing business inside the United States.

7. For purposes of this summons, "foreign entity" means a corporation, limited liability company, international business company, personal investment company, partnership, trust, anstalt, stiftung, or other legal entity created under the laws of a jurisdiction other than the United States.

8. For the purpose of this summons, the word "documents" refers to any electronic, written, printed, typed, graphically, visually or aurally reproduced materials of any kind or other means of preserving thought or expression, recording events or activities, and all tangible things from which information can be processed or transcribed, including, but not limited to:

(A). contracts, agreements, plans, summaries, opinions, reports, commentaries, communications, correspondence, memoranda, minutes, notes, comments, messages, telexes, telegrams, teletypes, cables, facsimiles, wire instructions and electronic mail; and,

(B). video and/or audio tapes, cassettes, films, microfilm, spreadsheets, databases, computer discs and other information which is stored or processed by means of data processing equipment and which can be retrieved in printed or graphic form.

9. For the purpose of this summons, you are required to produce all documents described in this attachment, whether located in the United States, Switzerland, or elsewhere, that are in your possession, custody, or control, or otherwise accessible or available to you either directly or through other entities, including but not limited to offices of UBS AG or its

subsidiaries or affiliates (such as UBS Private Bank) in Zurich, Geneva, or Lugano. Where documents are prepared, stored or maintained in electronic form, they are required to be produced in electronic form together with any instructions, record descriptions, data element definitions, or other information needed to process them in electronic form.

Reeves Declaration
Exhibit 2

United States Senate
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Committee on Homeland Security and Governmental Affairs

Carl Levin, Chairman
Norm Coleman, Ranking Minority Member

TAX HAVEN BANKS AND U. S. TAX COMPLIANCE

STAFF REPORT

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

UNITED STATES SENATE

GOVERNMENT EXHIBIT
2

RELEASED IN CONJUNCTION WITH THE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
JULY 17, 2008 HEARING

SENATOR CARL LEVIN
Chairman
SENATOR NORM COLEMAN
Ranking Minority Member

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

ELISE J. BEAN
Staff Director and Chief Counsel
ROBERT L. ROACH
Counsel and Chief Investigator
ZACHARY I. SCHRAM
Counsel
LAURA E. STUBER
Counsel
ROSS K. KIRSCHNER
Counsel

MARK L. GREENBLATT
Staff Director and Chief Counsel to the Minority
MICHAEL P. FLOWERS
Counsel to the Minority
ADAM PULLANO
Staff Assistant to the Minority

MARY D. ROBERTSON
Chief Clerk

TIMOTHY EVERETT
Intern
ALAN KAHN
Law Clerk
JONATHAN PORT
Intern
JEFFREY REZMOVIC
Law Clerk
LAUREN SARKESIAN
Intern
SPENCER WALTERS
Law Clerk

Permanent Subcommittee on Investigations
199 Russell Senate Office Building – Washington, D.C. 20510
Telephone: 202/224-9505 or 202/224-3721
Web Address: www.hsgac.senate.gov [Follow Link to "*Subcommittees*," to "*Investigations*"]

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
STAFF REPORT
TAX HAVEN BANKS AND U. S. TAX COMPLIANCE

TABLE OF CONTENTS

I. **EXECUTIVE SUMMARY** 4
A. Subcommittee Investigation 4
B. Overview of Case Histories 4
1. LGT Bank Case History 4
2. UBS AG Case History 8
C. Report Findings and Recommendations 15
Report Findings
1. Bank Secrecy 15
2. Bank Practices That Facilitate Tax Evasion 16
3. Billions in Undeclared U.S. Client Accounts 16
4. QI Structuring 16
Report Recommendations
1. Strengthen QI Reporting of Foreign Accounts Held by U.S. Persons 16
2. Strengthen 1099 Reporting 16
3. Strengthen QI Audits 16
4. Penalize Tax Haven Banks That Impede U.S. Tax Enforcement 17
5. Attribute Presumption of Control to U.S. Taxpayers Using Tax Havens 17
6. Allow More Time to Combat Offshore Tax Abuses 17
7. Enact Stop Tax Haven Abuse Act 17

II. **BACKGROUND** 17
A. The Problem of Offshore Tax Abuse 17
B. Initiatives To Combat Offshore Tax Abuse 18
C. Tax Haven Banks and Offshore Tax Abuse 32

III. **LGT BANK CASE HISTORY** 32
A. LGT Bank Profile 32
B. LGT Accounts With U.S. Clients 34
1. Marsh Accounts: Hiding $49 Million Over Twenty Years 37
2. Wu Accounts: Hiding Ownership of Assets 43
3. Lowy Accounts: Using a U.S. Corporation to Hide Ownership 49
4. Greenfield Accounts: Pitching a Transfer to Liechtenstein 56
5. Gonzalez Accounts: Inflating Prices and Frustrating Creditors 59
6. Chong Accounts: Moving Funds Through Hidden Accounts 64
7. Miskin Accounts: Hiding Assets from Courts and a Spouse 67
8. Other LGT Practices 74
C. Analysis 80

IV. UBS AG CASE HISTORY 80
A. UBS Bank Profile 81
B. UBS Swiss Accounts for U.S. Clients 83
1. Opening Undeclared Accounts with Billions in Assets 83
2. Ensuring Bank Secrecy 86
3. Targeting U.S. Clients 89
4. Servicing U.S. Clients with Swiss Accounts 97
5. Violating Restrictions on U.S. Activities 101
C. Olenicoff Accounts 104
D. Analysis 109

# # #

LGT, like all banks in Liechtenstein, were "not as diligent as we should have been."[350] He declined to disclose whether the LRAB Foundation or Panama corporation had been formed in response to the clients' request.

C. Analysis

The LGT information reviewed by the Subcommittee investigation indicates that, too often, LGT personnel viewed the bank's role to be, not just as a guardian of client assets or trusted financial advisor to investors, but also a willing partner to clients wishing to hide their assets from tax authorities, creditors, and courts. In that context, bank secrecy laws begin to serve as a cloak not only for client misconduct, but also for banks colluding with clients to evade taxes, dodge creditors, and defy court orders.

It is also instructive that when the LGT tax scandal broke in February 2008, the immediate reaction of the Liechtenstein government was not to condemn the taxpayers who misused the jurisdiction, promise tough action against LGT if it knowingly assisted tax fraud, or pledge to disclose relevant information. Instead, the Liechtenstein government deplored the breach of its secrecy laws, expressed indignation that any country would purchase Liechtenstein financial data from a private individual, and issued an arrest warrant for the former LGT employee who allegedly disclosed the information.[351] In June 2008, an Internet website offered a $7 million reward for information leading to the arrest of the former LGT employee; the Subcommittee traced this reward offer to a web hosting company in Liechtenstein.[352]

In July, the Liechtenstein government advised the Subcommittee that it had initiated a special investigation into the conduct of LGT Bank and Mario Staggl, and established a commission to examine Liechtenstein laws, including the question of whether it does or should violate Liechtenstein law if a Liechtenstein financial institution were to aid or abet tax evasion or tax fraud by a U.S. client. When the Subcommittee asked Mr. Klein about the status of this investigation, he replied that he was not aware of it, despite his position as head of compliance for LGT Group. Liechtenstein is also considering entering into a tax information exchange agreement with the United States to provide wider cooperation in tax enforcement matters.

IV. UBS AG CASE HISTORY

UBS AG of Switzerland is one of the largest financial institutions in the world, and has one of the world's largest private banks catering to wealthy individuals. From at least 2000 to 2007, UBS made a concerted effort to open accounts in Switzerland for wealthy U.S. clients, employing practices that could facilitate, and have resulted in, tax evasion by U.S. clients. These

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[350] Subcommittee interview of Ivo Klein, head of LGT Group Compliance (7/11/08).

[351] See "Press Release from the (Liechtenstein) Office of the Public Prosecutor," (2/27/08), available at www.liechtenstein.li/en/pdf-fl-med-aktuell-staatsanwaltschaft1.pdf (viewed 7/14/08); Press Release by the Liechtenstein Police, (3/11/08); "Liechtenstein Prince Defends Bank Secrecy as Scandal Threatens Country's Haven Status," Daily Tax Report, International Tax and Accounting (2/22/08), No. ISSN 0092-6884, at 1; Mark Landler, "Liechtenstein issues international arrest warrant for tax informant," (3/12/08), International Herald Tribune.

[352] See www.eugen-von-hoffen.com (viewed 7/13/08).

UBS practices included maintaining for an estimated 19,000 U.S. clients "undeclared" accounts in Switzerland with billions of dollars in assets that have not been disclosed to U.S. tax authorities; assisting U.S. clients in structuring their accounts to avoid QI reporting requirements; and allowing its Swiss bankers to market securities and banking services on U.S. soil without an appropriate license in apparent violation of U.S. law and UBS policy. In 2007, after its activities within the United States came to the attention of U.S. authorities, UBS banned its Swiss bankers from traveling to the United States and took action to revamp its practices. UBS is now under investigation by the IRS, SEC, and U.S. Department of Justice.

A. UBS Bank Profile

UBS AG (UBS) is one of the largest banks in the world, currently managing client assets in excess of $2.8 trillion.[353] UBS is the product of a 1998 merger between two leading Swiss banks, Union Bank of Switzerland and Swiss Bank Corporation. In 2000, it grew even larger after merging with PaineWebber Inc., a U.S. securities firm with more than 8,000 brokers, nearly $500 billion in client assets, and a substantial U.S. clientele.[354]

Today, UBS is incorporated and domiciled in Switzerland, but operates in 50 countries with more than 80,000 employees, of which about 38% work in the Americas, 33% in Switzerland, 17% in the rest of Europe, and 12% in Asia Pacific.[355] UBS shares are listed on the Swiss Exchange, New York Stock Exchange, and Tokyo Stock Exchange.[356]

UBS AG is the parent company of the UBS Group which includes numerous subsidiaries and affiliates.[357] UBS Group is managed by a Board of Directors, which oversees a Group Executive Board. The Chairman of the Board of Directors is Peter Kurer; the Group CEO is Marcel Rohner.[358]

UBS Group is organized into three major business lines: Global Wealth Management & Business Banking, Global Asset Management, and an Investment Bank. UBS has one of the largest private banking operations in the world, with hundreds of private bankers dedicated to providing financial services to wealthy individuals and their families around the world. UBS also maintains a Corporate Center that provides group-wide policies, financial reporting, marketing, information technology infrastructure, and service centers, and an Industrial Holdings segment which includes UBS' own holdings and non-financial businesses.[359]

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[353] "Facts&Figures," (undated) available at www.ubs.com (viewed 5/28/08).

[354] "The Making of UBS," (undated) at 16, available at www.ubs.com (viewed 5/28/08).

[355] "Facts&Figures," (undated) available at www.ubs.com (viewed 5/28/08).

[356] UBS Annual Report 2007, Financial Statements, at 167.

[357] Id. at 25, 96-99.

[358] "Organizational Structure," (undated) available at www.ubs.com (viewed 5/28/08).

[359] UBS Annual Report 2007, Financial Statements, at 41.

UBS' private banking operations are included within the Global Wealth Management & Business Banking division, whose Chairman and CEO is Raoul Weil. That division is further divided into five regional segments: Wealth Management Americas; Wealth Management Asia Pacific; Wealth Management & Business Banking Switzerland; Wealth Management North, East & Central Europe; and Wealth Management Western Europe, Mediterranean, Middle East & Africa.[360]

In the United States, UBS maintains a large banking and securities presence, operating dozens of subsidiaries and affiliates. Its operations include a UBS AG branch office headquartered in Stamford, Connecticut; UBS Bank USA, a federally regulated bank chartered in Utah; three broker-dealers registered with the SEC, UBS International Inc., UBS Financial Services, Inc., and UBS Services LLC; and a variety of other businesses including UBS Fiduciary Trust Company in New Jersey; UBS Real Estate Securities Inc. in Delaware; UBS Trust Company National Association in New York; and UBS Life Insurance Company USA in California.[361] In 2007, UBS described its U.S. banking operations as follows: "Wealth Management US is a US financial services firm providing sophisticated wealth management services to affluent US clients through a highly trained financial advisor network."[362]

In addition to its U.S.-based operations, UBS services U.S. clients through business units based in Switzerland and other countries. For example, beginning in about 2003, UBS established "U.S. International Desks" in three of its Swiss locations, Geneva, Lugano, and Zurich. These desks, staffed with private bankers known as Client Advisors, deal exclusively with U.S. clients.[363] The U.S. International Desks originally categorized their U.S. clients according to the U.S. region where they lived, but in 2004, re-classified them according to the magnitude of their assets. "Core Affluent" clients were defined as those with assets ranging from 250 to 2 million Swiss Francs; "High Net Worth Individuals" (HNWI) had assets ranging from 2 million to 50 million Swiss Francs; and "Key Clients" had assets worth more than 50 million Swiss Francs.[364] In 2005, UBS formed a new Swiss subsidiary, called "Swiss Financial Advisers," which is an investment adviser registered with the SEC. SFA is tasked with "serving US clients outside of Switzerland." All U.S. clients of SFA are required to file W-9 Forms. UBS AG's North American International Wealth Management Division also noted that "[a]ssets of clients [in SFA are] under Swiss law," meaning that creditors seeking to attach the assets would be required to file in Swiss courts.[365] U.S. clients who are unwilling to declare their accounts to

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[360] "Global Wealth Management & Business Banking," (undated), organizational chart available at www.ubs.com (viewed 5/28/08). These five regional segments were established in a reorganization that took effect in 2007. Prior to that reorganization, the Global Wealth Management & Business Banking division had just three segments: Wealth Management US, Wealth Management International & Switzerland, and Business Banking Switzerland. UBS Annual Report 2007, Financial Statements, at 41.

[361] UBS Annual Report 2007, Financial Statements, at 96-99; Strategy, Performance and Responsibility, at 104.

[362] UBS Annual Report 2007, Financial Statements, at 41. Wealth Management US is now included within Wealth Management Americas.

[363] Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

[364] Id.

[365] UBS Minutes of Geneva Wealth Management North America International Meeting (10/13/04), Bates No. UPSI 49952-54, at 49952.

the United States are not permitted by UBS to hold U.S. securities in their Swiss accounts, but can be serviced by Client Advisors in the Geneva, Lugano, and Zurich offices.[366]

B. UBS Swiss Accounts for U.S. Clients

Although UBS has extensive banking and securities operations in the United States that could accommodate its U.S. clients, from at least 2000 to 2007, UBS directed its Swiss bankers to target U.S. clients willing to open bank accounts in Switzerland. UBS told the Subcommittee it now has Swiss accounts for about 19,000 U.S. clients with in the range of $18 billion in undeclared assets. In 2002, UBS assured its U.S. clients with undeclared accounts that U.S. authorities would not learn of them, because the bank is not required to disclose them; UBS procedures, practices and services protect against disclosure; and the account information is further shielded by Swiss bank secrecy laws. Until recently, UBS encouraged its Swiss bankers to travel to the United States to recruit new U.S. clients, organized events to help them meet wealthy U.S. individuals, and set annual performance goals for obtaining new U.S. business. It also encouraged its Swiss bankers to service U.S. client accounts in ways that would minimize notice to U.S. authorities. The evidence suggest that UBS Swiss bankers marketed securities and banking products and services in the United States without an appropriate license to do so and in apparent violation of U.S. law and the bank's own policies.

Information obtained by the Subcommittee about UBS Swiss accounts opened for U.S. citizens came in part from former UBS employee, Bradley Birkenfeld. Mr. Birkenfeld is a U.S. citizen who worked as a private banker in Switzerland from 1996 until his arrest in the United States in 2008. He worked for UBS in its private banking operations in Geneva from 2001 to 2005, until he resigned from the bank.[367] In 2007, while in the United States, Mr. Birkenfeld was subpoenaed by the Subcommittee to provide documentation and testimony related to his employment as a private banker. In a sworn deposition before Subcommittee staff, Mr. Birkenfeld provided detailed information about a wide range of issues related to UBS business dealings with U.S. clients. In 2008, Mr. Birkenfeld was arrested, indicted, and pled guilty to conspiring with a U.S. taxpayer, Igor Olenicoff, to hide $200 million in assets in Switzerland and Liechtenstein, to evade $7.2 million in U.S. taxes.[368]

(1) Opening Undeclared Accounts with Billions in Assets

From at least 2000 to 2007, UBS has opened tens of thousands of accounts in Switzerland that are beneficially owned by U.S. clients, hold billions of dollars in assets, and have not been reported to U.S. tax authorities. These Swiss accounts were opened by U.S. clients, but, for a variety of reasons, the clients did not file W-9 Forms with UBS for the accounts. Because the clients did not file W-9 reports with the bank, UBS did not file 1099 Forms with the IRS

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[366] Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

[367] Birkenfeld deposition (10/11/07), at 14. Prior to UBS, he worked for private banking operations in Geneva at Credit Suisse and Barclays Bank.

[368] United States v. Birkenfeld.

reporting the account information. UBS refers to these accounts internally as "undeclared accounts."

In response to Subcommittee inquiries, UBS has estimated that it today has accounts in Switzerland for about 20,000 U.S. clients, of which roughly 1,000 have declared accounts and the remainder have undeclared accounts that have not been disclosed to the IRS.[369] UBS also estimated that those accounts contain assets with a combined value of about 18.2 billion in Swiss francs or about $17.9 billion. UBS was unable to specify the breakdown in assets between the undeclared and declared accounts, except to note that the amount of assets in the undeclared accounts would be much greater.

These figures suggest that the number of U.S. client accounts in Switzerland and the amount of assets contained in those accounts have nearly doubled since 2002, when a UBS document reported that the Swiss private banking operation then had more than 11,000 accounts for clients in "North America," meaning the United States and Canada, with combined assets in excess of 21 billion Swiss francs or about $13.3 billion.[370] The UBS document also calculates that, in 2002, these accounts had earned the bank "net revenues" of about 150 million Swiss francs.[371] Since then, the Swiss private banking operations have reported opening many more U.S. client accounts in Switzerland with additional billions of dollars in assets.[372]

The UBS figures for 2008 also appear consistent with internal UBS documents from 2004 and 2005, which suggest that a substantial portion of the UBS Swiss accounts opened for U.S. clients at that time were undeclared. This information is contained in a set of monthly reports for select months in 2004 and 2005, which tracked key information for Swiss accounts opened for North American clients, meaning clients from the United States and Canada.[373] These reports also break down the data for both declared and undeclared accounts.[374] The data

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[369] Subcommittee interview with UBS (7/14/08).

[370] Key Clients in NAM [North America]: Business Case 2003-2005, (undated), at 26 (chart entitled, "Assessment of Current KC [Key Client] Base").

[371] Id.

[372] See, e.g., email from Martin Liechti re "Happy New Year" (undated) (stating UBS Swiss client advisors had quadrupled their intake of net new money into Switzerland from 4 million Swiss francs per client advisor in 2004 to 16 million Swiss francs per client advisor in 2006).

[373] See "BS North America Report: Overview Figures North America," prepared in July, August, September, October, November, and December 2004, and January, February, March, August, September, and October 2005. These reports appear to be excerpts from larger reports. These documents, on their face, present data for Swiss accounts opened for U.S. and Canadian clients. According to UBS, however, it is possible that the data may include some Swiss accounts opened for persons from other countries.

[374] The 2004 monthly reports, for example, show data for "W9" accounts and "NON W9" accounts, which correspond to declared and undeclared accounts. The March 2005 report provides data for "W9" accounts and "SFA" accounts, which at that time corresponded to the declared accounts, as well as data for "NON W9" accounts, which corresponded to the undeclared accounts. "SFA" refers to Swiss Financial Advisers, the UBS subsidiary in Switzerland that is a registered U.S. investment adviser, opens securities accounts only for U.S. clients who submit W-9 Forms, and reports all such accounts to the IRS. Mr. Birkenfeld told the Subcommittee that SFA was referred to within UBS as "'the declared desk.'" Birkenfeld deposition at 84. He also explained that all Swiss bankers who formerly had declared accounts had been required to transfer them to SFA. Id. at 85. That meant U.S. clients in Switzerland with accounts outside of SFA were necessarily undeclared accounts. Reports later in 2005 use different

suggests that the undeclared accounts not only held more assets, but also brought in more new money and were more profitable for the bank than the declared accounts.

The first data element in the reports is the total amount of assets in the specified accounts. Each month shows substantially greater assets in the undeclared accounts for U.S. clients than in the declared accounts. In October 2005, for example, the data shows a total of about 18 billion Swiss francs of assets in the undeclared accounts for U.S. clients[375] and 2.6 billion Swiss francs in the declared accounts.[376] Clearly, the assets in the undeclared accounts vastly outweigh the assets in the declared accounts for U.S. clients.

The monthly reports also track the extent to which the accounts brought in new money to UBS, referred to as "net new money" or NNM. The October 2005 report appears to show that, for the year to date, the undeclared accounts for U.S. clients had brought in more than 1.3 billion Swiss francs in net new money for UBS,[377] while the declared accounts had collectively lost about 333 million Swiss francs over the same time period.[378] These figures indicate that, in 2004 and 2005, the undeclared account assets were growing, while the declared account assets were shrinking.

The last data element in the monthly reports tracks the revenue generated by the accounts for UBS. Each month shows that UBS earned significantly more in revenues from the undeclared accounts for U.S. clients than from the declared accounts. For example, the October 2005 report shows that UBS obtained year-to-date revenues of about 180.9 million Swiss francs from the undeclared accounts[379] versus 22.1 million Swiss francs from the declared accounts.[380] By every measure employed by UBS in these monthly reports, the undeclared U.S. client accounts were more popular and more lucrative for the bank.

Still another UBS document, prepared in 2004 for a meeting of Swiss private banking officials in Geneva, to reach an "Executive Board Decision" on several matters, shows the

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terminology again, providing data for "US International" accounts, which correspond to the undeclared accounts, and data for a "W9 Business Row" and SFA accounts, which correspond to the declared accounts.

[375] Id. The 18 billion figure is derived from the amount shown for "US International" (18.5 billion) after subtracting the amount shown for "W9 Business Row" (0.5 billion). The Subcommittee also asked UBS to produce similar data for 2006 and 2007, but has yet to receive it.

[376] Id. The 2.6 billion figure is derived from adding together the figures shown for "W9 Business Row" (0.5 billion) and "SFA" (2.1 billion).

[377] The 1 billion figure is derived from the amount shown for "US International" (1.054 billion) after eliminating the loss shown for "W9 Business Row" (loss of 309.8 million), resulting in NNM of about 1.364 billion.

[378] The 333 million figure is derived from adding together the figures shown for "W9 Business Row" (loss of 309.8 million) and "SFA" (loss of 23.8 million).

[379] The 180.9 million figure is derived from the amount shown for "US International" (194.3 million) after subtracting the amount shown for "W9 Business Row" (13.4 million).

[380] The 22.1 million figure is reached by adding together the figures shown for "W9 Business Row" (13.4 million) and "SFA" (8.7 million).

bank's awareness of the undeclared and declared accounts opened for U.S. clients.[381] About mid-way through, this document includes two flow charts showing how a UBS client advisor should handle an account with a "U.S. person." The first flow chart shows that accounts for U.S. persons domiciled in the United States should go to certain offices if a W-9 is filed, and to the North American desk in Zurich if "no W9 form" is filed. The second flow chart shows that, for U.S. persons domiciled outside of the United States, accounts with a W-9 form should go to WBS in Zurich to the "W9 Team," while accounts with "no W9 form signed" should go to the "Country team" in the country where the U.S. person was domiciled. These two flow charts provide additional evidence that the top management of UBS in Switzerland was well aware of the bank's practice of maintaining declared and undeclared accounts for U.S. clients, and had even institutionalized the administration of these accounts in different offices.

In his deposition before the Subcommittee, Mr. Birkenfeld indicated that, while he was employed at UBS from 2001 to 2005, it was his understanding that UBS had thousands of Swiss accounts opened by U.S. clients, the majority of which were undeclared and never disclosed to the IRS. He stated that, "I didn't see anyone declare any of those [Swiss] accounts in my entire career."[382]

In the recent U.S. criminal case involving Mr. Birkenfeld, the U.S. Government filed a Statement of Facts, signed by Mr. Birkenfeld, stating that UBS Switzerland had "$20 billion of assets under management in the United States undeclared business, which earned the bank approximately $200 million per year in revenues."[383]

(2) Ensuring Bank Secrecy

UBS has not only maintained undeclared Swiss accounts for U.S. clients containing billions of dollars in assets, it has also adopted practices to ensure that, in keeping with Swiss bank secrecy laws, those undeclared accounts would not be disclosed to U.S. authorities.

Promising Bank Secrecy. UBS has assured its U.S. clients in writing that UBS will take steps to protect their undeclared accounts from disclosure to U.S. tax authorities. In November 2002, for example, senior officials in the UBS private banking operations in Switzerland sent the following letter to its U.S. clients about their Swiss accounts:

> "Dear client:
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> "From our recent conversations we understand that you are concerned that UBS' stance on keeping its U.S. customers' information strictly confidential may have changed especially as a result of the acquisition of Paine Webber. We are writing to reassure you that your fear is unjustified and wish to outline only some of the reasons why the protection of client data can not possibly be compromised upon:

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[381] UBS presentation entitled, "North America Meeting[:] Update U.S. NewCo (W9)," (9/15/04), Bates Nos. UPSI 49907-27, at 17-18.

[382] Birkenfeld deposition (10/11/07), at 28.

[383] United States v. Birkenfeld, Statement of Facts, at 3.

"– The sharing of customer data with a UBS unit/affiliate located abroad without sufficient customer consent constitutes a violation of Swiss banking secrecy provisions and exposes the bank employee concerned to severe criminal sanctions. Further, we should like to underscore that a Swiss bank which runs afoul of Swiss privacy laws will face sanctions by its Swiss regulator ... up to the revocation of the bank's charter. Already against this background, it must be clear that information relative to your Swiss banking relationship is as safe as ever and that the possibility of putting pressure on our U.S. units does not change anything. Our bank has had offices in the United States as early as 1939 and has therefore been exposed to the risk of US authorities asserting jurisdiction over assets booked abroad since decades. Please note that our bank has a successful track record of challenging such attempts.

"– As you are aware of, UBS (as all other major Swiss banks) has asked for and obtained the status of a Qualified Intermediary under U.S. tax laws. The QI regime fully respects client confidentiality as customer information are only disclosed to U.S. tax authorities based on the provision of a W-9 form. Should a customer choose not to execute such a form, the client is barred from investments in US securities but under no circumstances will his/her identity be revealed. Consequently, UBS's entire compliance with its QI obligations does not create the risk that his/her identity be shared with U.S. authorities."[384]

This letter plainly asserts that UBS will not disclose to the IRS a Swiss account opened by a U.S. client, so long as that account contains no U.S. securities, even if UBS knows the accountholder is a U.S. taxpayer obligated under U.S. tax law to report the account and its contents to the U.S. Government.

UBS told the Subcommittee that it has no legal obligation to report such undeclared accounts to the IRS, provided that UBS ensures that the accounts do not contain U.S. securities and, thus, are not subject to reporting under the QI Program. UBS also told the Subcommittee that it recognizes that a U.S. accountholder may have a legal obligation to report a foreign trust, foreign bank account, or foreign income to the IRS. UBS pointed out, however, that those reporting obligations apply to the accountholder personally and not to UBS. UBS, thus, asserts that it has broken no law or QI obligation by allowing U.S. clients to open and maintain undeclared accounts in Switzerland, if those accounts do not contain U.S. securities.[385]

Helping U.S. Clients Avoid QI Disclosure. UBS has not only maintained undeclared accounts in Switzerland for numerous U.S. clients, it took steps to assist its U.S. clients to structure their Swiss accounts in ways that avoided U.S. reporting rules under the QI Program.

UBS informed the Subcommittee that, after it joined the QI Program in 2001, and informed its U.S. clients about its QI disclosure obligations, many of its U.S. clients elected to

[384] UBS letter addressed to "Dear client" (11/4/02).

[385] Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

sell U.S. securities or open new accounts to avoid the QI reporting obligations attached.[386] UBS told the Subcommittee, for example, that in 2001, hundreds of its U.S. clients sold their U.S. securities so that their Swiss accounts would not be covered by the QI Program. UBS told the Subcommittee that it estimates that, in 2001, its U.S. clients sold over $2 billion in U.S. securities from their Swiss accounts. UBS allowed these U.S. clients to continue to maintain accounts in Switzerland, and helped them reinvest in other types of securities that did not trigger reporting obligations to the IRS, despite evidence that these U.S. clients were using their Swiss accounts to hide assets from the IRS.

UBS also told the Subcommittee that, in 2001, about 250 of its U.S. clients with Swiss accounts took action to establish corporations, trusts, foundations, or other entities in non-U.S. countries, open new UBS accounts in the names of those foreign entities, and then, in a number of instances, transfer U.S. securities from the client's personal accounts to those new accounts. The offshore entities included corporations, trusts, and foundations set up in the British Virgin Islands, Hong Kong, Liechtenstein, Panama, and Switzerland.[387] UBS then accepted W-8BEN Forms from these offshore entities in which they claimed ownership of the assets had been transferred from the U.S. clients' personal accounts. UBS treated the new accounts as held by non-U.S. persons whose identities did not have to be disclosed to the IRS, even though UBS knew that the true beneficial owners were U.S. persons.

These facts indicate that, soon after it joined the QI Program, UBS helped its U.S. clients structure their Swiss accounts to avoid reporting billions of dollars in assets to the IRS. Among other actions, UBS allowed some of its U.S. clients to establish offshore structures to assume nominal ownership of assets, and allowed U.S. clients to continue to hold undisclosed accounts that were not reported to the IRS. Such actions, while not violations of the QI agreements per se, clearly undermined the program's effectiveness and led to the formation of offshore structures and undeclared accounts that could facilitate, and have resulted in, tax evasion by U.S. clients.

The actions taken by UBS, in many ways, matched LGT's response to the QI Program. Both UBS and LGT advised the Subcommittee that most of their U.S. clients engaged in a massive sell-off of U.S. securities after the banks signed QI agreements in 2001. In addition, both UBS and LGT allowed a number of U.S. clients to establish offshore corporations to hold U.S. securities. It appears that UBS exploited the gap between KYC rules and the QI Program in the same manner as LGT, by treating offshore corporations as non-U.S. persons for QI reporting purposes, despite knowing for KYC purposes that the offshore corporations and their assets were beneficially owned by U.S. persons. Both banks continued to maintain accounts for their U.S. clients, despite evidence that the clients were hiding their assets and accounts from the IRS. In this way, both UBS and LGT employed QI practices that kept the U.S. clients' accounts secret from the IRS and thereby facilitated tax evasion by the U.S. clients holding undeclared accounts.

The Statement of Facts in the Birkenfeld criminal case characterizes these actions as follows: "By concealing the U.S. clients' ownership and control in the assets held offshore,

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[386] Id.

[387] United States v. Birkenfeld, Statement of Facts, at 3.

defendant Birkenfeld, the Swiss Bank, its managers and bankers evaded the requirements of the Q.I. program, defrauded the IRS and evaded United States income taxes."[388]

(3) Targeting U.S. Clients

In addition to discovering that UBS maintained billions of dollars in undeclared accounts in Switzerland for U.S. clients and took steps to help U.S. client circumvent QI reporting requirements, the Subcommittee discovered that, from at least 2000 to 2007, UBS Swiss bankers engaged in an intensive effort to target U.S. clients to open Swiss accounts. UBS repeatedly sent its Swiss bankers onto U.S. soil to recruit new clients, expand existing accounts, and meet increasing business demands to bring new client money from the United States into Switzerland.

Legal and Policy Restrictions on U.S. Activities. U.S. securities law prohibits non-U.S. persons from advertising securities products or services or executing securities transactions within the United States, unless registered with the Securities and Exchange Commission (SEC).[389] In addition, securities products offered to U.S. persons must comply with U.S. securities laws, which generally means they must be registered with the SEC, a condition that may not be met by non-U.S. securities, mutual funds, and other investment products. In addition, although UBS AG is licensed to operate as a bank and broker-dealer in the United States, those licenses do not extend to its non-U.S. offices or affiliates providing banking or securities services to U.S. residents.[390] Similar prohibitions may appear in State securities and banking laws. Moreover, in provisions known as "deemed sales" rules, U.S. tax laws and the standard QI agreement require sales of non-U.S. securities to be reported by foreign financial institutions on 1099 Forms sent to the IRS, if those sales were effected in the United States, such as arranged by a broker physically in the United States or through telephone calls or emails originating in the United States.[391]

To avoid violating U.S. law, exceeding its SEC and banking licenses, or triggering 1099 reporting requirements for deemed sales, since at least 2002, UBS has maintained written policies restricting the marketing and client-related activities that may be undertaken in the United States by UBS employees from outside of the country.

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[388] Id.

[389] See, e.g., Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1):

> "(a) Registration of all persons utilizing exchange facilities to effect transactions; exemptions.
> (1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section."

[390] UBS makes this statement in its 2004 policy statement. See "Cross-Border Banking Activities into the United States (**version November 2004**)," prepared by UBS, Bates Nos. PSI-OPB 103-105, at 103 (emphasis in original).

[391] See, e.g., "U.S. Tax and Reporting Obligations for Foreign Intermediaries' Non-U.S. Securities," 47 Tax Notes Int'l 913 (9/3/07).

2002 UBS Restrictions on U.S. Activities. In 2002, for example, UBS issued a set of guidelines for its Swiss bankers administering securities accounts for U.S. clients.[392] These guidelines stated that, under U.S. tax regulations, securities trades in non-U.S. securities on behalf of a U.S. person trigger reporting requirements to the IRS under QI or IRS deemed sales rules, unless the trades are effected "by a UBS portfolio manager with discretion from a bank office of a non-US bank outside the territory of the US." To qualify for the exception and avoid reporting any securities trades or accounts to the IRS, the guidelines provide a long list of actions that UBS Swiss bankers cannot undertake with respect to their U.S. clients. Essentially, the guidelines instruct the Swiss bankers to persuade their U.S. clients to enter into a "discretionary asset management relationship" with the bank and then to "[c]ease to accept customer instructions from US territory" so that no securities trades are effected within the United States that might require reporting to the IRS.

The 2002 UBS guidelines tell the Swiss bankers, for example, to ensure that there is "no use of US mails, e-mail, courier delivery or facsimile regarding the client's securities portfolio;" "no use of telephone calls into the US regarding the client's securities portfolio;" "no account statements, confirmations, performance reports or any other communications" while in the United States; "no further instructions ... from ... clients while they are in the US;" "no marketing of advisory or brokerage services regarding securities;" "no discussion of or delivery of documents concerning the client's securities portfolio while on visits in the US;" "no discussion of performance, securities purchased or sold or changes in the investment mandate for the client" while in the United States; and "no delivery of documents regarding performance, securities purchased or sold or changes in the investment mandate for the client."

2004 Restatement of U.S. Restrictions. A 2004 UBS policy statement on "Cross-Border Banking Activities into the United States," replaced the 2002 guidelines, while repeating most of the prohibitions. This policy statement informed UBS non-U.S. bankers, for example, that U.S. Federal and State laws restrict the actions that they can take while in the United States.[393] It states:

> "UBS AG has several U.S. branches and agencies and various non-banking subsidiaries all properly licensed, but these licenses **do not** encompass cross-border services provided to U.S. residents by UBS AG offices or affiliates outside of the United States. ... Some state laws prohibit banks without a banking license from that state from soliciting deposits from that state's residents. States also may prohibit non-licensed lenders from making certain loans to consumers in such states. Any entity outside of the United States that is not registered with the SEC ... may not advertise securities services or products in the United States."[394]

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[392] See "Wealth Management and Business Banking Client Advisor's Guidelines for Implementation and Management of Discretionary Asset Management Relationship with U.S. Clients," (undated but likely late 2001). See also UBS letter to Mr. Birkenfeld (3/17/06), Bates Nos. PSI-OPB 84-85, at 1 ("[T]he rules which set forth UBS approach to servicing US resident clients have been posted on the UBS-intranet already since early 2002.").

[393] See "Cross-Border Banking Activities into the United States (**version November 2004**)," prepared by UBS, Bates Nos. PSI-OPB, at 103-105 (emphasis in original).

[394] Id.

The 2004 UBS policy statement goes on to list specific restrictions on activities that may be undertaken by its non-U.S. personnel while in the United States. These restrictions include the following:

> "UBS will not advertise and market for its services with material going beyond generic information relating to the image of UBS AG and its brand in the U.S. UBS AG may not organize, absent an opinion from Legal, events in the U.S.[395]
>
> "UBS AG may not establish relationships for securities products or services with new clients resident in the United States with the use of U.S. jurisdictional means. Thus, it must ensure that it does not contact securities clients in the United States through telephone, mail, e-mail, advertising, the internet or personal visits.[396]
>
> "UBS AG should ensure that:
> - No marketing or advertising activity targeted to U.S. persons takes place in the United States;
> - No solicitation of account opening takes place in the United States;
> - No cold calling or prospecting into the United States takes place;
> - No negotiating or concluding of contracts takes place in the United States;
> - No carrying or transmitting of cash or other valuables of whatever nature out of the United States takes place; ...
> - No routine certification of signatures, transmission of completed account documentation, or related administrative activity on behalf of UBS AG takes place;
> - Employees do not carry on substantial activities at fixed location(s) while in the United States thereby establishing on office or maintaining a place of business.[397]

In his deposition before the Subcommittee, Mr. Birkenfeld claimed to have been unaware of these types of restrictions on his conduct until a colleague brought them to his attention in May 2005, by showing him the 2004 policy statement on UBS' internal computer system.[398] He told the Subcommittee, "When I read it, I was very concerned about what was going on in the bank, because this contradicted entirely what my job description was."[399] UBS has countered that its Swiss personnel were informed about the restrictions shortly after they were re-issued, in training sessions held during September 2004, which Mr. Birkenfeld attended.[400]

Sponsoring Travel to the United States. Despite the explicit and extensive restrictions on allowable U.S. activities set out in its policy statements, in interviews with the Subcommittee,

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[395] Id.

[396] Id.

[397] Id. at 103-104.

[398] Birkenfeld deposition, (10/11/07), at 105.

[399] Id. at 106.

[400] See UBS letter to Mr. Birkenfeld (3/17/06), Bates Nos. PSI-OPB 84-85. at 84 (stating Mr. Birkenfeld had been informed of the restrictions during two training sessions in September 2004).

UBS confirmed that, from at least 2000 to 2007, it routinely authorized and paid for its Swiss bankers to travel to the United States to develop new business and service existing clients.[401] Documents obtained by the Subcommittee related to UBS Swiss bankers also frequently reference travel to the United States. A 2003 "Action Plan" for the UBS private banking operation in Switzerland, for example, called for increased client contact "through business trips" to the United States and directed Swiss private bankers to seek "active referrals from existing clients for new relationships."[402] A 2005 document called for "frequent travelling" and "selective travelling" by UBS Swiss bankers to the United States as part of the services to be provided to U.S. clientele.[403]

During his deposition, Mr. Birkenfeld told the Subcommittee that, during his years at UBS, the private bankers from Switzerland who dealt with U.S. clients typically traveled to the United States four to six times per year, using their trips to search for new clients and provide financial services to existing clients.

> "[W]e had a very large group of people in Lugano, Geneva, and Zurich that marketed directly into the U.S. market. The private bankers would travel anywhere between four and six times a year to the U.S., spend anywhere from one to two weeks in the U.S., prospecting, visiting existing clients, so on and so forth. ... As I remember, there [were] around 25 people in Geneva, 50 people in Zurich, and five to ten in Lugano. This is a formidable force."[404]

Mr. Birkenfeld testified that UBS not only authorized and paid for the business trips to the United States, but also provided the Swiss bankers with tickets and funds to go to events attended by wealthy U.S. individuals, so that they could solicit new business for the bank in Switzerland. He said that UBS sponsored U.S. events likely to attract wealthy clients, such as the Art Basel Air Fair in Miami; performances in major U.S. cities by the UBS Vervier Orchestra featuring talented young musicians; and U.S. yachting events attended by the elite Swiss yachting team, Alinghi, which was also sponsored by UBS. An internal UBS document laying out marketing strategies to attract U.S. and Canadian clients confirms that the bank "organized VIP events" and engaged in the "Sponsorship of Major Events" such as "Golf, Tennis Tournaments, Art, Special Events."[405] This document even identified the 25 most affluent housing areas in the United States to provide "targeted locations where to organize events."[406]

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[401] Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

[402] Chart entitled, "Action Plan 2003 for Country Team," (undated).

[403] "Organizational changes NAM," Powerpoint presentation by Michel Guignard of UBS private banking in Switzerland (5/10/05), at 7.

[404] Birkenfeld deposition (10/11/07), at 46, 47-48. Mr. Birkenfeld clarified during the deposition that the numbers he gave referred to "just the bankers" at the three Swiss offices.

[405] "KeyClients in NAM: Business Case 2003-2005," prepared by UBS Wealth Management (undated), at 38-39. "NAM" refers to UBS' North American division within its private banking operations in Switzerland.

[406] Id. at 40.

Mr. Birkenfeld described to the Subcommittee how Swiss private bankers used these events and other means to find new U.S. clients during their trips to the United States:

> "You might go to sporting events. You might go to car shows, wine tastings. You might deal with real estate agents. You might deal with attorneys. ... It's really where do the rich people hang out, go and talk to them. ... [I]t wasn't difficult to walk into a party with a ... business card, and then someone ask[s] you, 'What do you do?' and you say, 'Well, I work for a bank in Switzerland, and we manage money there and open accounts.' And people immediately would recognize, oh, this is someone who could open new business by opening accounts."[407]

While travel by Swiss bankers to the United States was generally not only allowed, but encouraged, UBS told the Subcommittee that, on four occasions since 2000, for a variety of reasons, it had imposed temporary bans on Swiss travel to the United States.[408] These short-term travel bans were imposed: (1) in 2001, following the 9/11 attack on the United States; (2) in 2003, coinciding with an IRS announcement of an Offshore Voluntary Compliance Initiative encouraging U.S. taxpayers with offshore credit cards to disclose their offshore accounts in exchange for avoiding certain penalties;[409] (3) in 2003 again, following the SARS epidemic outbreak; and (4) in September 2004, in response to the questioning of a UBS private banker by the IRS. Each of these travel bans was lifted shortly after it was imposed. In November 2007, however, UBS fundamentally changed its travel policy, instituting for the first time a prohibition on business travel by its Swiss private bankers to the United States, examined further below.[410]

To gain a better understanding of the extent to which UBS Swiss private bankers traveled to the United States in recent years, the Subcommittee conducted an analysis of over 500 travel records compiled by the Department of Homeland Security, at the Subcommittee's request, of persons traveling from Switzerland to the United States from 2001 to 2008, to identify UBS Swiss employees known to have provided banking and securities services to U.S. clients.[411] The Subcommittee determined that, from 2001 to 2008, roughly twenty UBS client advisors made an

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[407] Id. at 36-37.

[408] Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

[409] Id. See also Birkenfeld deposition before the Subcommittee (10/11/07), at 157. For more information about this IRS initiative, see the IRS website at www.irs.gov.

[410] See, e.g., UBS internal memorandum addressed to "Colleagues" regarding "Changes in business model for U.S. private clients," (11/15/08).

[411] To find likely UBS client advisors – as opposed to persons whose names coincidentally matched those persons identified to the Subcommittee as UBS personnel – the analysis eliminated all persons from the sample born after a given date who would be too young to be likely candidates. The data was then sorted by date traveled and the ports of entry used, to identify persons traveling at the same time to the same location. This data enabled the Subcommittee to identify UBS client advisors who, for example, made visits to Miami during the dates of the Art Basel event. The Subcommittee chose to eliminate from the analysis persons who did not appear to have a traveling correlation with other known UBS bankers or a link to a UBS event such as Art Basel, as well as persons with similar names to known UBS personnel but who reported different birthdays. The resulting figures, thus, represent a conservative analysis of the number of trips made by UBS Swiss personnel to the United States over the last seven years. The Subcommittee would like to express its appreciation for the assistance rendered by the U.S. Department of Homeland Security in securing, compiling, and analyzing this travel data.

aggregate total of over 300 visits to the United States. Only two of these visits took place from 2001 to 2002; the rest occurred from 2003 to 2008. On several occasions, the visits appear to have involved multiple UBS client advisors traveling together to UBS-sponsored events in the United States. Some of these client advisors designated their visits as travel for a non-business purpose on the I-94 Customs declaration forms that all visitors must complete prior to entry into the United States.[412] Closer analysis, however, reveals that the dates and ports of entry for such trips coincided with the UBS-sponsored events, suggesting the visits were, in fact, business-related.

For example, the Subcommittee found that at least five UBS Swiss client advisors travelled to the United States for trips coinciding with the Art Basel Art Fair, an annual UBS-sponsored event held in early December in Miami Beach since 2002. The data shows that, over the years, several UBS Swiss client advisors were in Miami during the art show, including three in 2007. On the customs forms completed over the years by UBS travelers prior to landing at Miami International airport, only one client advisor stated that the purpose of the trip was for business, while five described the visit as for pleasure. These client advisors' trips, however, coincided closely with the dates of the Art Basel event, including an invitation-only private showing. Moreover, the Subcommittee's analysis of the customs and travel records obtained from the Department of Homeland Security show that a Swiss-based UBS client advisor traveled to New England from June 20-25, 2004, a trip coinciding with the UBS Regatta Cup held in Newport, Rhode Island from June 19-26, 2004.

The Subcommittee's analysis also showed patterns of travel by Swiss-based UBS client advisors who made regular U.S. visits. One UBS employee, for example, travelled to the United States three times per year, at roughly four-month intervals, from 2003 to 2007. A senior UBS Swiss private bank official – Michel Guignard – visited the United States nearly every other month for a significant portion of the period examined by the Subcommittee. Martin Liechti, an even more senior Swiss private banking official, visited the United States up to eight times in a year.

This travel data provides additional evidence regarding the personnel and resources that have been dedicated by UBS to recruiting and servicing U.S. clients with Swiss accounts.

Assigning NNM Targets. UBS not only paid for its Swiss bankers to travel to the United States and helped them attend U.S. events to prospect for new U.S. clients, it also gave its Swiss bankers specific performance goals for bringing new money into the bank from the United States. These performance goals may have intensified the efforts of UBS Swiss bankers to recruit U.S. clients.

Mr. Birkenfeld told the Subcommittee that, during his tenure at UBS, his superiors at UBS gave him a specific, annual monetary goal, referred to as a "net new money" (NNM) target that he was expected to bring into the bank by the end of the year from U.S. clients. He said that it was his understanding that an NNM target was established for each Swiss client advisor who

[412] See Arrival-Departure Record, CBP Form I-94, for Nonimmigrant Visitors with a Visa for the United States, discussed in the website of the Customs and Border Patrol, at www.cbp.gov.

dealt with U.S. clients. He indicated that the amount varied according to the seniority and track record of the particular client advisor. He told the Subcommittee: "So my job as a private banker predominantly was to bring in net new money, and then on top of it create return on assets, ROA. ... A rough estimate would be probably to bring in probably $50 million a year or $40 million."[413]

Mr. Birkenfeld explained that the NNM target could be met by securing additional assets from existing clients or by securing one or more new clients.

> "[O]ne client could make your numbers or 10 or 25 could make your numbers. It's very hard to gauge that. And, again, when people aren't paying tax in the three areas I told you – inheritance, income, and capital gains – it's quite easy for people to bring money to you. They're very interested to bring as much money to the bank as possible."[414]

Internal UBS documents confirm that the bank carefully tracked annual figures for net new money and return on assets, among other performance measures for its Swiss private banking operations targeting clients in North America.[415] The documents also show that UBS took a variety of steps to encourage its bankers to meet their NNM goals. In 2003, for example, the head of the Wealth Management Americas division in Switzerland, Martin Liechti, sent a letter to his colleagues, urging each of them to refer at least five clients to Switzerland and promising to award the person with the most referrals with an expensive Swiss watch:

> "Net New Money is, as you know, a key element for our success. This means that we all have to work hard to achieve our NNM goals for 2003 and the years to come. In order to reach this goal, two main initiatives have been launched: The KeyClient initiative and the Referral Program within UBS. ...
>
> "Each Country Team making a referral will get 0.33% of the revenues generated by the Financial Advisor over a time period of four years. As you know, we set, at the beginning of the year, a target of 5 referrals per CA [Client Advisor] to be made. I am aware that it is a challenge to reach this goal. In acknowledgement of your effort and commitment, I would like to award the Client Advisor in each Country Team who achieves, until the 31st of December 2003, the most referrals (amount of money and number of referrals), but at least the 5 referrals set as target, with a Breitling wristwatch. The same will be valid for the Rep Officer (including all Rep Offices in Latin America) who achieves this goal. Since 2003 will be a unique 'brand year' in UBS' history, each Breitling watch we award will be 'customized' with the UBS logo."[416]

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[413] Birkenfeld deposition at 20, 23.

[414] Id. at 22.

[415] See, e.g., "BS North America Report: Overview Figures North America," prepared by UBS (July 2004) (providing data on NNM, ROA, and other performance measures for 2004 and 2005), Bates Nos. UPSI 00060246-257; "UBS Management Summary Report-Graphs" (YTD [Year To Date] October 2002), Bates No. PSI-OPB-137 (providing ROA and NNM data for Swiss offices dealing with U.S. clients).

[416] Letter entitled, "Referral Campain BU Americas," from UBS private banking head Martin Liechti to his "Colleagues," (6/2/03), apparently printed in an internal UBS publication, "PB Americas International News."

In early 2007, Mr. Liechti sent an email setting a new NNM goal for all of UBS Swiss bankers with clients in the "Americas," including the United States. His email states:

> "Welcome to the new year! I hope you enjoyed the holidays with your family and friends and took the opportunity to relax and 'recharge your batteries'.
>
> "We achieved much in 2006 and I thank you for your huge efforts and dedication to the Americas.
>
> "The markets are growing fast, and our competition is catching up. ... The answer to guarantee our future is GROWTH. We have grown from CHF 4 million per Client Advisor in 2004 to 17 million in 2006. We need to keep up with our ambitions and go to 60 million per Client Advisor! ...
>
> "Our ambitions:
>
> "100 RoA [Return on Assets]
> 60 NNM per CA [Client Advisor]
> 100% Satisfied Clients ...
>
> "In the Chinese Horoscope, 2007 is the year of the pig. In many cultures, the pig is a symbol for 'luck'. While it's always good to have [a] bit of luck, it is not luck that leads to success. Success is the result of vision and purpose, hard work and passion. ... Together as a team I am convinced we will succeed!"[417]

This email indicates that in two years, from 2004 to 2006, UBS Swiss bankers had quadrupled the amount of net new money being drawn into UBS from the "Americas," and that the bank's management sought to quadruple that figure again in a single year, 2007. This email helps to convey the pressure that UBS placed on its Swiss private bankers to bring in new money from the United States into Switzerland.

Another UBS document entitled, "KeyClients in NAM: Business Case 2003-2005," provides context for the Swiss private banking operations' focus on obtaining U.S. clients. This document observes that "31% of World's UHNWIs [Ultra High Net Worth Individuals] are in North America (USA + Canada)."[418] It also observes that the United States has 222 billionaires with a combined net worth of $706 billion.[419] This type of information helps explain why UBS dedicated significant resources to obtaining U.S. clients for its private banking operations in Switzerland.

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[417] Email from Martin Liechti re "Happy New Year" (undated).

[418] "KeyClients in NAM: Business Case 2003-2005," at 4.

[419] Id. at 5.

Massive Machine. Mr. Birkenfeld told the Subcommittee that the overall effort of the UBS Swiss private banking operation to secure U.S. clients was the most extensive he had observed in his 12 years working in Swiss private banking. He stated:

> "This was a massive machine. I had never seen such a large bank making such a dedicated effort to market to the U.S. market. And from my understanding and my work experience in Switzerland, it was the largest bank with the largest number of clients and assets under management of U.S. clients."[420]

He said that the Swiss bankers he worked with typically had an "existing book of business," that included numerous U.S. clients and had "a very regimented cycle of going out and acquiring new clients, taking care of your existing clients, make sure the revenue was there."[421] He described one private banker who saw as many as 30 or 40 existing clients on a single trip.[422] He estimated that the UBS Swiss bankers in the Geneva office where he worked maintained thousands of Swiss accounts for U.S. clients.[423]

When asked what motivated U.S. clients to open accounts in Switzerland instead of banking with UBS in their home country, Mr. Birkenfeld gave two reasons: "Tax evasion. ... And most of the time, people always liked the idea that they could hide some from their spouse or maybe a business partner or what have you, because the secrecy of having a bank account in Switzerland gave them anonymity and discretion."[424] When asked whether he ever said to his U.S. clients, "You don't have to pay taxes," or whether that was just understood, Mr. Birkenfeld responded, "It was clearly understood. Clearly understood."[425]

(4) Servicing U.S. Clients with Swiss Accounts

UBS not only allowed U.S. clients to open undeclared accounts in Switzerland and assured them it would not disclose these accounts unless compelled by law, UBS also took steps to ensure that its Swiss bankers serviced their U.S. clients in ways that minimized disclosure of information to U.S. authorities. These measures included refraining from mailing Swiss account information into the United States, ensuring Swiss bankers traveling to the United States carried minimal or encrypted client account information, and providing training to help its bankers avoid surveillance by U.S. authorities.

In his deposition, Mr. Birkenfeld indicated that, during his tenure at UBS from 2001 to 2005, he worked closely with Swiss bankers who were servicing U.S. clients in the United States. He said the Swiss bankers he worked with typically had an "existing book of business," with numerous U.S. clients, and had "a very regimented cycle of ... taking care of your existing

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[420] Birkenfeld deposition at 46.

[421] Id. at 76.

[422] Id. at 121.

[423] Id. at 71.

[424] Id. at 33.

[425] Id. at 151.

clients, mak[ing] sure the revenue was there."[426] He said: "So getting out into the field as we called it, was very, very important. You had to travel. Traveling was critical; otherwise the client would say, 'What do you mean you're not coming to visit me? What's wrong?' So, you know, you don't want to upset the client."[427]

Mr. Birkenfeld told the Subcommittee that, to his knowledge, almost all U.S. clients with Swiss accounts declined to have their account statements mailed to them in the United States.[428] Instead, UBS held client mail in Switzerland until the client was able to view the account documentation in person, after which the information was shredded. He explained:

> "You paid 500 francs a year to have all of the statements and all of the transactions held in their folder, sealed, so when they came to the bank, 6 months, a year later, they could come and look at it, go through it, and then we would shred it .... So I've had some clients who would sit there for an hour or two hours, and then they come back and say, 'Okay. Everything's fine.' And they'd give the documents and say, 'You can shred them.' And we'd go and take it in the big shredding room and just shred everything. And then you'd start from zero again."[429]

Mr. Birkenfeld said that, in between visits to Switzerland to review their account information, many U.S. clients expected their Swiss banker to visit them in the United States and provide updated information about their accounts. He said that, prior to a business trip in which they planned to meet with specific clients, UBS Swiss private bankers typically collected and reviewed the relevant client account information. He said that the Swiss bankers did not normally bring the actual account statements with them into the United States, but took elaborate measures to disguise or encrypt client information to prevent it from falling into the wrong hands. He said, for example, some bankers kept "cryptic notes" on each account and took only those notes into the United States.[430] He described one Swiss banker who directed his assistant to transcribe by hand the information in his clients' account statements onto spreadsheets, omitting any identifying information other than a code name, and then sent the handwritten spreadsheets by overnight mail to his hotel in the United States, after which he would provide the spreadsheets to his U.S. clients in individual meetings.[431] Mr. Birkenfeld described other Swiss private bankers who brought into the United States UBS-supplied laptop computers, referred to as TAS computers, programmed to receive only highly encrypted information that, allegedly, [e]ven if the [U.S.] Customs opened it, for instance, they wouldn't see anything."[432] He said

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[426] Birkenfeld deposition at 76.

[427] Id. at 76-77.

[428] Id. at 61.

[429] Id.

[430] Id. at 55.

[431] Id. at 121-122.

[432] Id. at 56-57.

that the TAS computers could be used to "access the client's private bank statements from America and print them out, as well as view and print out product offerings."[433]

UBS cautioned its bankers, when traveling to the United States, to take measures to safeguard client information and supplied the TAS computers that some Swiss bankers used. A 2004 UBS policy statement provides: "When traveling cross-border, UBS AG employees always must remember that all clients of UBS AG expect us to take all necessary steps to safeguard confidentiality. Client advisors are referred to separate guidance on the protection of confidential information and other available resources that may assist."[434] Mr. Birkenfeld told the Subcommittee that UBS also cautioned its Swiss bankers to keep a low profile during their business trips to the United States so they would not attract attention from U.S. authorities. He noted, for example, that UBS business cards did not include a reference to a private banker's involvement in "wealth management."[435] He also said that some UBS Swiss private bankers who visited the United States on business told U.S. customs officials that they were instead in the country for "pleasure."[436]

Documentation obtained by the Subcommittee indicates that UBS also provided training to its client advisors on how to detect – and avoid – surveillance by U.S. customs agents and law enforcement officers. An undated UBS training document entitled, "Case Studies Cross-Border Workshop NAM" provides a series of scenarios designed to train its personnel.[437] An excerpt from one of the scenarios is as follows:

> "After passing immigration desk during your trip to USA/Canada, you are intercepted by the authorities. By checking your Palm, they find all your client meetings. Fortunately you stored only very short remarks of the different meetings and no names.
>
> "As you spend around one week in the same hotel, the longer you stay there, the more you get the feeling of being observed. Sometimes you even doubt if all of the hotel employees are working for the hotel. A lot of client meetings are held in the suite of your hotel.
>
> "One morning you are intercepted by an FBI-agent. He looks for some information about one of your clients and explains to you, that your client is involved in illegal activities.

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[433] Id. at 55. See also reference to TAS in UBS Minutes of a May 2003 meeting of the Geneva Private Bank North America International group (5/14/03), Bates Nos. PSI-OPB-119-20 at 119.

[434] "Cross-Border Banking Activities into the United States (version November 2004)," prepared by UBS, Bates Nos. PSI-OPB, at 104 (emphasis in original).

[435] Birkenfeld deposition, at 158. See also UBS Minutes of a May 2003 meeting of the Geneva Private Bank North America International group (5/14/03) at 2 ("Do not indicate Wealth Management but only UBS AG on the new business cards").

[436] Birkenfeld deposition, at 166.

[437] Case Studies Cross-Border Workshop NAM, (undated) (emphasis in original). "NAM" refers to the North American division at UBS Switzerland.

"Question 1: What would you do in such a situation?

"Question 2: What are the signs indicating that something is going on?"

The document does not indicate UBS' preferred responses to these questions.

Mr. Birkenfeld told the Subcommittee that the UBS Swiss offices also employed techniques to help existing U.S. clients transfer money into and out of their accounts without identifying documentation. He noted, for example, that while he was at UBS, the bank typically wired funds and engaged in securities transactions without including client-specific information; instead the bank typically stated on the required documentation that the transaction was "on behalf of UBS for one of our clients."[438] He indicated that as the European Union tightened the rules for wire transfers, requiring the originating bank to identify the beneficial owner of the assets involved in a transaction, UBS increasingly restricted its Swiss bankers' use of wire transfers.[439] He said that UBS began to require clients to fly to Switzerland to withdraw cash from an account.

The Statement of Facts in the Birkenfeld criminal case describes additional actions taken by UBS bankers to help U.S. clients manage their Swiss accounts without alerting U.S. authorities. It states, for example, that UBS bankers advised U.S. clients to withdraw funds from their accounts using Swiss credit cards that "could not be discovered by United States authorities"; to "destroy all off-shore banking records existing in the United States"; and to "misrepresent the receipt of funds from the Swiss bank account in the United States as loans from the Swiss Bank."[440] The Statement of Facts also discloses that, on one occasion, "at the request of a U.S. client, defendant Birkenfeld purchased diamonds using that U.S. client's Swiss bank account funds and smuggled the diamonds into the United States in a toothpaste tube," presumably so that the U.S. client could obtain possession of his Swiss assets without alerting U.S. authorities.[441] It also states that Mr. Birkenfeld and his business associate Mario Staggl "accepted bundles of checks from U.S. clients and facilitated the deposit of those checks into accounts at the Swiss bank" and elsewhere, presumably to assist the clients in making transfers to their Swiss accounts, again without alerting U.S. authorities.[442]

Hold mail accounts, encrypted computers, wire transfers without client names, Swiss credit cards, requirements that clients travel outside of the United States to get information about their accounts – the consistent element in all of these UBS techniques is the effort to help U.S. clients hide assets sent to Switzerland. These UBS procedures, practices, and policies can also facilitate, and in some cases have resulted in, tax evasion by the bank's U.S. clients.

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[438] Birkenfeld deposition, at 247.

[439] Id. at 251.

[440] Birkenfeld Statement of Facts, at 3.

[441] Id. at 4.

[442] Id.

(5) Violating Restrictions on U.S. Activities

The UBS practices just described, related to Swiss banker activities undertaken in the United States to recruit and service U.S. clients, may have violated U.S. law as well as UBS policy. As explained earlier, U.S. securities and banking laws prohibit non-U.S. persons from advertising securities services or products, executing securities transactions, or performing banking services within the United States, without an appropriate license. Moreover, U.S. tax laws may require a foreign financial institution to report to the IRS on 1099 Forms sales of non-U.S. securities effected in the United States, such as by executing a transaction by a broker physically in the United States or ordering the completion of a transaction through telephone calls or emails originating from the United States.

It was to avoid violating U.S. law, exceeding its licensed activities, or triggering 1099 reporting requirements, that caused UBS to issue policy statements restricting the activities that its non-U.S. bankers could undertake while in the United States. Its 2002 and 2004 policy statements, for example, prohibited UBS Swiss bankers, while in the United States, from advertising securities products to their clients, informing clients of how their security portfolios were performing, providing copies of account statements, or using U.S. mails, faxes, telephone calls or email to discuss a client's securities portfolio.[443] UBS also prohibited its Swiss bankers from prospecting for new clients while in the United States, soliciting new accounts, or obtaining signatures on account opening documentation.

Despite these prohibitions, it appears that UBS Swiss bankers in the United States servicing U.S. clients routinely undertook actions that contravened the UBS restrictions. Mr. Birkenfeld described, for example, an art festival sponsored by UBS in Miami each year, which he attended with other Swiss bankers for the express purpose of soliciting new accounts. "We went to these events. We went to dinners, we went to art exhibitions, we went to private homes as private bankers, knowingly by management that they were paying for our hotel, paying for our airfare, paying us our salary, and getting us tickets to the UBS VIP tent to drink champagne with clients."[444] He testified that he witnessed Swiss bankers soliciting new accounts and completing account opening documentation while in the United States. He testified that in some cases, "instead of saying, 'I signed it in New York,' they brought the forms back to Geneva and they put in 'Geneva.'"[445] When asked whether he had promoted securities products during his trips to the United States, he responded, "We were promoting anything."[446]

Mr. Birkenfeld also told the Subcommittee that UBS Swiss bankers routinely communicated with their U.S. clients about the status of their accounts, including their securities portfolios. He said that some Swiss private bankers communicated with their U.S. clients by

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[443] See "Wealth Management and Business Banking Client Advisor's Guidelines for Implementation and Management of Discretionary Asset Management Relationship with U.S. Clients," (undated but likely late 2001); "Cross-Border Banking Activities into the United States (version November 2004)," prepared by UBS, Bates Nos. PSI-OPB, at 103-105 (emphasis in original).

[444] Birkenfeld deposition, at 114.

[445] Id. at 115, 125.

[446] Id. at 111.

telephone or fax, or by sending occasional documents to them in the United States by overnight mail.[447] He said the bankers sometimes used code names during the telephone calls, so that the U.S. client would not have to identify themselves by name, in case anyone was listening.[448] He said that U.S. clients generally did not like sending or receiving emails via computer, "because they didn't want that link, for obvious reasons."[449] Nevertheless, some clients did use email, as shown in the case involving Mr. Birkenfeld and Mr. Olenicoff, examined further below. Mr. Birkenfeld also described how Swiss bankers brought into the United States information about clients' accounts and securities portfolios. He told the Subcommittee that his day-to-day interactions with clients were in direct contradiction to the restrictions set out in UBS' policy statements. He indicated those policies simply were not enforced while he was at the bank.[450]

2007 UBS Restrictions on U.S. Activities. In June 2007, UBS issued a new version of its policy statement restricting activities in the United States by its non-U.S. bankers.[451] This document repeated the prohibitions in the 2004 policy statement, while adding extensive new restrictions. For example, the 2007 policy statement states that, while non-U.S. UBS bankers could continue to travel to the United States, "[t]ravels must be kept to a minimum," and each traveling officer must be trained in and sign a certificate confirming compliance with the travel restrictions, inform his or her superior prior to a trip of planned events and clients to be visited, and report after the trip to the supervisor about all trip developments.[452] The policy statement goes on to state that "UBS will abstain from any active prospecting of any U.S. based persons," although it would continue to accept referrals from existing clients or "U.S. Licensed Officers."[453] In addition, it states that non-U.S. UBS bankers "must abstain from any activity that could be construed as soliciting securities or banking business from persons located in the United States," and "must not give any advice to prospective or existing clients on how to evade taxes or circumvent any other relevant restrictions."[454]

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[447] Id. at 60.

[448] Id. at 63-64.

[449] Id. at 61.

[450] Mr. Birkenfeld told the Subcommittee that he was not even aware of the restrictions until May 2005, when a colleague showed him the 2004 policy statement on an internal UBS computer system. He said that after being shown the 2004 policy statement, he sent emails, in June 2005, to the UBS legal and compliance divisions asking about the contradiction between the policy statement and his day-to-day activities. He provided copies of these emails, which he said were never responded to in writing. Birkenfeld deposition, at 108-109, 125-26. He told the Subcommittee that he also brought the issue to the attention of his immediate supervisor whom he said, "yelled at me and said, 'Why are you getting everyone riled up?'" Id. at 126-27. He testified that he then brought the 2004 policy statement to two outside law firms, both of which advised him to resign. Id. at 127. Mr. Birkenfeld resigned from UBS in October 2005.

[451] See "Restrictions on Cross-Border Banking and Financial Services Activities: Country Paper USA (Effective Date June, 1st, 2007)," (otherwise undated).

[452] Id. at 4.

[453] Id. at 8.

[454] Id. at 5, 6 (emphasis in original).

2007 Travel Ban to the United States. In November 2007, UBS went further, essentially ending all travel by its Swiss bankers to the United States to solicit new business.[455] UBS stated in an internal memorandum that it had decided "to realign the business model for U.S. clients by focusing our resources on our wealth management operations based in the United States ... and UBS Swiss Financial Advisors in Zurich."[456] UBS materials stated that UBS would permit "new account opening for securities related services only within those units"[457] and would service existing U.S. clients only when those clients were outside of the United States and, for example, visiting Switzerland or utilizing telephone calls, faxes or other communication systems from outside the United States.[458] A document providing talking points to UBS bankers on how to inform their U.S. clients about the new policy suggests telling them: "Client advisors, including myself, will no longer be traveling outside of Switzerland to meet you. ... [W]e will not be able to communicate with you about your securities account when you are in the United States. ... [W]e will not be able to execute your securities instructions if we are not satisfied that you are outside the U.S. when giving such orders."[459]

The talking points also indicate that for a client who asked: "If I decide to transfer my assets to SFA [Swiss Financial Advisers], will Swiss client confidentiality still apply?," the recommended response was: "An SFA representative would be the best person to answer that question, but my understanding is that, although your information would be reported to the IRS and potentially available to the SEC, it otherwise generally would be covered by Swiss financial privacy protections."[460] For a client who asked: "What if I do not want U.S. tax reporting services or to supply a W-9?," the recommended response was: "Then you may retain your current account subject to the modifications I just described."[461] Those modifications included keeping all communications about the account outside of the United States.

According to UBS, the new policy, including the travel ban, became effective in November 2007, although a few previously planned business trips to the United States were allowed in December. UBS informed the Committee that, since January 2008, none of its Swiss private bankers has made a business trip to the United States.[462]

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[455] See, e.g., UBS internal memorandum addressed to "Colleagues" regarding "Changes in business model for U.S. private clients," (11/15/08).

[456] Id. at 1.

[457] Id.

[458] UBS prepared document with the heading, "Privileged and Confidential: Letters to Existing U.S. Clients with More than CHF 50,000 Who have Not been Informed Orally either to Retained Mail or Send to Non-U.S. Address," (undated but likely in or after November 2007) (heading using all capital letters converted to initial capital format) (apparent form letter providing guidance to U.S. clients on the November 2007 policy).

[459] UBS prepared document with the heading, "Talking Points for Informing U.S. Private Clients with Securities Holdings about the Realignment of our Business Model Plus Q&A," (undated but likely in or after November 2007) (heading using all capital letters converted to initial capital format).

[460] Id. at 3.

[461] Id. at 1-2.

[462] Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

Contrary to this representation by UBS, however, a Subcommittee review of the relevant travel data for the Swiss bankers determined that, from January to April 2008, UBS client advisors made twelve trips to the United States, travelling from Switzerland to New York, Miami, San Francisco, and Las Vegas. The Customs I-94 Forms indicate that, on half of these trips, the Swiss bankers indicated they were travelling for business purposes, while on the other half, the Swiss bankers indicated they were travelling to the United States for non-business purposes. With respect to Mr. Liechti, head of the UBS Wealth Management Americas division, the I-94 Form shows that he arrived in the United States on April 20, 2008, on business. There is no record of his departure to date.

The clear contrast between the UBS policy restrictions dating back to at least 2002, and the activities undertaken by UBS Swiss bankers while traveling in the United States, as described by Mr. Birkenfeld in his deposition, in connection with his recent indictment, and in internal UBS documents, suggests that until recently, the UBS restrictions were not being enforced. This lack of enforcement, in turn, raises concerns that UBS Swiss bankers with U.S. clients may have been routinely violating not only the bank's internal policies, but also U.S. law. UBS is currently under investigation by the SEC, IRS, and Department of Justice regarding the activities of its Swiss bankers in the United States.

C. Olenicoff Accounts

Concerns raised by the activities of UBS Swiss bankers servicing accounts for U.S. clients are further illustrated by the UBS accounts opened in Switzerland by Mr. Birkenfeld for Igor Olenicoff.

Mr. Olenicoff is a billionaire real estate developer, U.S. citizen, and resident of California and Florida.[463] He is President and owner of Olen Properties Corporation. From 1992 until 2005, Mr. Olenicoff opened multiple accounts at banks in the Bahamas, England, Liechtenstein, and Switzerland. These accounts were opened in the name of multiple offshore corporations he controlled, including Guardian Guarantee Co., Ltd., New Guardian Bancorp ApS, Continental Realty Funding Corp., National Depository Corp., Sovereign Bancorp Ltd., and Swiss Finance Corp.[464] Some of his accounts were opened at UBS in Switzerland, and for a time, Mr. Olenicoff was Mr. Birkenfeld's largest private banking client.

In 2007, Mr. Olenicoff pled guilty to one criminal count of filing a false income tax return by failing to disclose the foreign bank accounts he controlled.[465] He was sentenced to two years probation and 120 hours of community service, and paid about $52 million to the IRS for six years of back taxes, interest, and penalties owed on assets and income hidden in foreign bank

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[463] See pleadings in United States v. Olenicoff, Case No. SA CR No. 07-227-CJC (C.D. Cal.) (hereinafter "United States v. Olenicoff"); and United States v. Birkenfeld.

[464] United States v. Olenicoff, Plea Agreement for Defendant Igor M. Olenicoff (12/10/07) (hereinafter Olenicoff Plea Agreement), at 4.

[465] Id.

accounts.[466] In 2008, Mr. Birkenfeld pled guilty to conspiring with Mr. Olenicoff to defraud the IRS and avoid payment of taxes owed on about $200 million in assets transferred to accounts in Switzerland and Liechtenstein.[467]

The Subcommittee obtained a number of documents related to the Olenicoff and Birkenfeld matters which help illustrate the actions taken by UBS private bankers and others to help U.S. clients conceal their assets and evade U.S. taxes.

Account Opening. Mr. Birkenfeld told the Subcommittee that he first heard Mr. Olenicoff's name while working at Barclays Bank.[468] In 2001, soon after he began working for UBS, he contacted Mr. Olenicoff in California, flew to California for a meeting with Mr. Olenicoff and his son, and persuaded them to move their account to UBS in Switzerland.[469]

Mr. Olenicoff told Mr. Birkenfeld that he would like to open the UBS account in the name of Guardian Guarantee Corp. (GGC), one of the Bahamas corporations he controlled.[470] Mr. Birkenfeld provided the account opening documentation to Mr. Olenicoff in California, and to a Bahamas firm that administered GGC.[471] Mr. Olenicoff returned the completed forms.[472] On a UBS form that asked for the identity of the "beneficial owner of the assets" to be deposited into the account, Mr. Olenicoff identified GGC as the beneficial owner and listed himself and his son as the "contracting partners" who would inform UBS of any ownership change.[473] Mr. Olenicoff also made himself and other family members account signatories.[474] Mr. Birkenfeld agreed to open the account on those terms, even though he knew Mr. Olenicoff was the true beneficial owner of the assets, and the Bahamas corporation was being used to conceal that ownership.

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[466] See "California Real Estate Developer Sentenced for Filing a False Tax Return and Failure to Disclose Foreign Bank Accounts to IRS," in "Examples of General Tax Fraud Investigations FY2008," Internal Revenue Service, http://www.irs.gov/compliance/enforcement/article/0,,id=174630,00.html (viewed 7/14/08).

[467] Birkenfeld Statement of Facts.

[468] According to Mr. Birkenfeld, Mr. Olenicoff had been a client at Barclays Bank in the Bahamas. Mr. Birkenfeld was then working for Barclays Bank in Switzerland. He said that, after joining the QI Program in 2001, Barclays decided to close all of its Bahamas accounts with U.S. clients, including Mr. Olenicoff. Mr. Birkenfeld said that the Barclays account manager in the Bahamas telephoned him to see if the Swiss office could accept the Olenicoff account. Mr. Birkenfeld said that he was then in the process of changing jobs from Barclays to UBS. Birkenfeld Deposition at 206-209.

[469] Birkenfeld deposition at 206-209; email from Mr. Birkenld to Mr. Olenicoff and his son (7/26/01), Bates No. SW 67087.

[470] See, e.g., email from Mr. Olenicoff to Mr. Birkenfeld (10/11/01), Bates Nos. SW 66660-61.

[471] Olenicoff Plea Agreement, at 4; Birkenfeld Statement of Facts, at 5; handwritten note from Mr. Birkenfeld (undated), Bates No. SW 67527; letter from McKinney, Bancroft & Hughes of the Bahamas to Mr. Olenicoff (10/17/01), Bates No. SW 17013.

[472] Letter from Mr. Olenicoff to Mr. Birkenfeld, (10/23/01), Bates No. SW 66645.

[473] UBS Verification of the beneficial owner's identity, signed by Mr. Olenicoff and his son, (10/23/01), Bates No. SW66648. Another document identified Mr. Olenicoff as GGC's president and his son as GGC's secretary. UBS Authorized signatories (10/23/01), Bates No. SW 66649.

[474] UBS Authorized signatories (10/23/01), Bates No. SW 66649.

As part of the account opening process, Mr. Olenicoff and his son signed a UBS form that "instruct[ed] UBS AG with respect to the above mentioned account not to invest in or hold US securities within the meaning of the relevant Qualified Intermediary Agreement."[475] By ruling out U.S. security investments, the Olenicoffs ensured that the account would not be reported to the IRS under the QI Program. In December 2001, Mr. Olenicoff transferred about $89 million from Barclays Bank in the Bahamas to the new GGC account at UBS in Switzerland.[476]

Restructuring Olenicoff Assets. To help develop the Olenicoff account, Mr. Birkenfeld enlisted the services of Mario Staggl, part owner of a Liechtenstein trust company, New Haven Treuhand AG. In November 2001, Mr. Olenicoff and his son travelled to Liechtenstein and met with Mr. Staggl and his partner, Klaus Biedermann.[477] During that meeting and in subsequent discussions, Mr. Olenicoff sought advice on how to restructure his offshore assets, taking into consideration the twin goals of avoiding taxes and maintaining "anonymity."

The documents show that a number of proposals were considered. In one email, Mr. Staggl stated: "The shares in OLEN US are 'owned' by the Bahamian Company. In order to avoid any potential exposure in a tax point of view we would recommend to transfer the Bahamian company shares into a Danish Holding Company. The Danish Holding Company would be owned by the first of the Liechtenstein Trusts."[478] He also wrote:

> "The cash available for UBS and Neue Bank can basically be held by the second Liechtenstein Trust. ... There is an easy way to get around [VAT taxes] by interposing an 'off-shore' jurisdiction since services rendered and charged to non Swiss or non Liechtenstein entities are not liable to VAT. We would recommend the second Liechtenstein Trust being the shareholder of the investment 'off-shore' vehicle. The jurisdiction could be the British Virgin Islands (BVI), Panama, Gibraltar. ... The administration would be looked after by New Haven in Liechtenstein. The second advantage of interposing the 'off-shore' vehicle would lead to another 'saf[e]ty-break' in a tax and anonymity aspect."[479]

Mr. Olenicoff responded in part by stating: "It is the preference of the current holder of the stock, a Bahamian Corporation to move the ownership to an onshore entity, but one which provided complete anonymity as to the beneficial owners."[480] In a later email, Mr. Staggl observed: "Subsequent to our telephone discussion of last week your most recent e-mail made it

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[475] UBS waiver of right to invest in U.S. securities, signed by Mr. Olenicoff and his son (10/23/01), Bates No. SW 66652.

[476] Olenicoff Plea Agreement, at 4.

[477] See email from Mr. Olenicoff to Mr. Staggl, (12/1/01), Bates No. SW 65109 ("we all enjoyed our stay in your beautiful country").

[478] Email from Mr. Staggle to Mr. Olenicoff re "Various," (12/4/01), Bates No. SW 65110.

[479] Id. See also Birkenfeld Statement of Facts, at 5.

[480] Email from Mr. Olenicoff to Mr. Staggl re "Structure Discussion," (12/8/01), Bates No. SW 65111.

very clear to me – you want to become on-shore – but still maintain an off-shore status in tax and protection point of view."[481]

In late 2001, Mr. Olenicoff authorized Mr. Staggl's trust company, New Haven, to establish a Liechtenstein trust, The Landmark Settlement, and a Danish corporation, New Guardian Bancorp, on his behalf. Mr. Staggl caused to be executed a "Letter of Intent" which stated that New Haven would hold the trust property for the benefit of Mr. Olenicoff and, after his demise, for his children.[482] Mr. Staggl wrote to Mr. Olenicoff:

> "First, we will establish the Liechtenstein Trust to be known as 'The Landmark Settlement.' All the information we need in order to proceed are available at our offices. New Haven will be the trustee. Sheltons, our correspondent in Danemark, agreed to incorporate 'New Guardian Bancorp' wholly owned by the Liechtenstein 'The Landmark Settlement.'"[483]

At Mr. Olenicoff's direction, Mr. Birkenfeld arranged a transfer of $40,000 from the GGC account at UBS to finance the set up of the two new entities.[484] Mr. Olenicoff then opened accounts in the name of New Guardian Bancorp (NBG) at UBS in Switzerland and in the name of NBG and Landmark Settlement at Neue Bank in Liechtenstein.

In January 2002, Mr. Olenicoff's companion, Jeanette Bullington, opened a personal account at UBS in Switzerland.[485] As part of the account opening documentation, she signed one document instructing UBS not to invest her funds in U.S. securities "within the meaning of the relevant Qualified Intermediary Agreement."[486] She signed another stating: "I am aware of the new tax regulations. To this end, I declare that I expressly agree that my account shall be frozen for all investments in US securities."[487] These documents appear designed to ensure her account would not be disclosed to the IRS under the QI Program.

Transferring U.S. Securities Portfolio. In March 2002, Mr. Birkenfeld and Mr. Staggl helped Mr. Olenicoff transfer $60 million in U.S. securities from a "Smith Barney portfolio" to the NGB account at Neue Bank in Liechtenstein. Mr. Staggl explained that the transfer could go directly to NGB or, alternatively, to Landmark Settlement which owned NGB, but advised against sending the securities to an account opened in Mr. Olenicoff's personal name, since that could "jeopardize" the structure by exposing his association with the assets:

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[481] Email from Mr. Staggl to Mr. Olenicoff re "Structure," (Jan. 2002), Bates No. SW 67200.

[482] Birkenfeld Statement of Facts, at 5.

[483] Email from Mr. Olenicoff to Mr. Staggl re "Structure," (1/8/02), Bates No. SW 65103. See also Danish Commerce and Companies Agency Extract for New Guardian Bancorp ApS, (1/18/02), Bates No. SW 66922.

[484] See, e.g., email from Mr. Olenicoff to Mr. Birkenfeld authorizing transfer, (12/27/01), Bates No. SW 67081.

[485] UBS Verification of beneficial owner's Identity, (1/22/02), Bates No. SW 66974.

[486] UBS Waiver of right to invest in US securities, (1/22/02), Bates No. SW 66977.

[487] UBS Supplement for new Account US Status: Assets and Income/Declaration for US Taxable Persons, (undated but likely 1/22/02), Bates No. SW 66982.

"[T]he transfer of the Smith Barney portfolio to Neue Bank ... would be [in] no danger or exposure whatsoever. ... [T]o put your mind at rest, the portfolio arriving from Smith Barney will be put into Landmark Settlement account held with Neue Bank for the time being. ... I would not recommend to open a personal account in your name since this could potentially jeopardize the structure. For the time being you and Andrei are signatories on Landmark Settlement's bank account with Neue Bank. You may remember that you signed blank account signature cards for Neue Bank at the occasion of our meeting in Liechtenstein and one card has been used for New Guardian Bancorp and the other for Landmark Settlement."[488]

In April 2002, Mr. Staggl provided Mr. Olenicoff with wire transfer instructions to move the $60 million in U.S. securities directly to the NGB account at Neue Bank. The wire transfer instructions specified, however, that Smith Barney send the securities to "Neue Bank" without specifying the ultimate recipient of the securities. Mr. Staggl's email explained: "For secrecy purpose, there is no need to mention 'New Guardian Bancorp. Aps', but, if you prefer to do so the name of the beneficiary can be mentioned."[489] The transfer took place in April.[490] Although the Neue account afterwards contained substantial U.S. securities, the account was apparently never disclosed to the IRS under the QI Program.

Many other documents reviewed by the Subcommittee demonstrate Mr. Olenicoff's direct control of the UBS accounts opened in the names of GCC and NBC and the millions of dollars in assets held within those accounts. For example, on several occasions Mr. Olenicoff directed Mr. Birkenfeld to open new accounts for the corporate entities, move substantial funds from one UBS account to another, and close two of the accounts after a new one had been opened.[491] On another occasion, Mr. Olenicoff appears to have transferred substantial real estate assets in the United States from an entity he controlled in the Bahamas, National Depository Company, Ltd., to the Landmark Settlement in Liechtenstein.[492] On still another occasion, Mr. Olenicoff authorized Mr. Birkenfeld to issue five UBS credit cards for one of the UBS corporate accounts, and then appears to have cancelled those cards two weeks later.[493]

By 2005, Mr. Olenicoff had transferred a total of about $200 million in assets into the Swiss and Liechtenstein accounts opened in the name of entities that he controlled. Although

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[488] Email from Mr. Staggl to Mr. Birkenfeld and Mr. Olenicoff re "New Guardian – Status," (3/7/02), Bates No. SW 67196.

[489] Email from Mr. Staggl to Mr. Olenicoff re "Smith Barney Transfer," (4/23/02), Bates No. SW 65120; Email from Mr. Olenicoff to Mr. Staggle re "Smith Barney Transfer," (4/25/02); Bates No. SW 67331.

[490] Olenicoff Plea Agreement, at 4-5.

[491] See, e.g., letter from Mr. Olenicoff to Mr. Birkenfeld, (4/6/02), Bates No. SW 66782; Letter from Andrei Olenicoff to Mr. Birkenfeld, (9/3/02), Bates No. SW 67659.

[492] See, e.g., email from Mr. Staggl to Mr. Olenicoff, with copy to Mr. Birkenfeld, (6/8/04), Bates No. SW 16153; letter from Andrei Olenicoff to Mr. Staggl, (undated), Bates Nos. 67934-37).

[493] Birkenfeld Statement of Facts, at 5; Letter from Mr. Olenicoff to Mr. Birkenfeld, (3/25/02), Bates No. SW 66783 (authorizing $100,000 to be transferred to a new UBS account to allow "issuance of the five credit cards we discussed"); letter from Mr. Olenicoff to Mr. Birkenfeld, (4/6/02), Bates No. SW 66782 (cancelling the five credit cards two weeks later).

Mr. Olenicoff clearly exercised control over the UBS accounts and assets, Mr. Olenicoff never submitted a W-9 Form to UBS admitting he was the beneficial owner, and UBS never filed a 1099 Form with the IRS reporting the accounts. As Mr. Birkenfeld put it, when asked if the accounts were undeclared, he responded, "Yes. Every bit."[494]

In 2005, after Mr. Birkenfeld left UBS, he and Mr. Staggl met with Mr. Olenicoff in Liechtenstein and advised him to transfer his assets from UBS to Neue Bank in Liechtenstein, "because Liechtenstein had better bank secrecy laws than Switzerland." Mr. Olenicoff agreed, and transferred his assets from UBS to Neue Bank that year.[495]

By 2007, Mr. Olenicoff's offshore assets had been discovered by the IRS. By the end of the year, he had pled guilty; Mr. Birkenfeld pled guilty by mid-2008. Mr. Staggl, who is under indictment for his role in managing the Olenicoff assets, remains at large in Liechtenstein and has been declared by the U.S. Government to be a fugitive.

The Olenicoff accounts at UBS were open for about four years, from 2001 until 2005. During that time, Mr. Birkenfeld has admitted that he conspired with Mr. Olenicoff to help him evade U.S. taxes by hiding his assets in Switzerland and Liechtenstein. To accomplish that end, Mr. Birkenfeld assisted Mr. Olenicoff in forming a Liechtenstein trust and Danish corporation by directing him to a Liechtenstein trust company that offered formation services, opening UBS accounts in the names of those entities, allowing Mr. Olenicoff to omit his beneficial ownership of the account assets on internal UBS forms, and helping him circumvent disclosure of the accounts to the IRS under the QI Program by signing forms instructing UBS not to purchase U.S. securities for those accounts. Mr. Birkenfeld allowed Mr. Olenicoff to transfer tens of millions of dollars from other offshore accounts into the new UBS accounts, with no apparent questions about the source of the funds. He took instructions from Mr. Olenicoff about how to invest the funds in the UBS accounts, using email, letters, and faxes to and from the United States, even though Mr. Birkenfeld was not licensed to handle securities in the United States.

The Subcommittee does not know the extent to which Mr. Birkenfeld's actions were typical of UBS Swiss bankers; it has been unable to obtain internal UBS account documentation comparable to the documentation obtained from LGT. Mr. Birkenfeld told the Subcommittee that he did not view his actions as out of the ordinary. If true, the Olenicoff case history may be one of many within UBS Swiss operations that raise concerns.

D. Analysis

Unlike LGT, UBS did not generally refrain from conducting banking operations within the United States. UBS Swiss bankers targeted U.S. clients, traveled across the country in search of wealthy individuals, and aggressively marketed their services to U.S. taxpayers who might otherwise never have opened Swiss accounts. UBS practices resulted in its U.S. clients maintaining undeclared Swiss accounts that collectively held billions of dollars in assets that were not disclosed to the IRS. UBS serviced these accounts, in part, by offering banking and

[494] Birkenfeld Deposition, at 209.

[495] Birkenfeld Statement of Facts, at 6; Birkenfeld deposition, at 209-210.

securities products and services within the United States that UBS Swiss bankers were not licensed to provide. Swiss bank secrecy laws hid not only the misconduct of U.S. taxpayers hiding assets at UBS in Switzerland, but also the actions taken by UBS bankers to assist those U.S. clients.

UBS has now stopped all travel by its Swiss bankers to the United States, issued more restrictive policies, and is conducting an internal review to gauge the nature and extent of the problem. UBS also cooperated with this Subcommittee in its efforts to gain a full understanding of the facts and issues.

# # #

Reeves Declaration
Exhibit 3

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Review of US Resident Non-W9 Business

Legal and Compliance

Strictly Private, Privileged and Confidential
Document Created By In House Counsel For the Purpose of Legal Advice

To: Bernard Buchs, Chief Compliance Officer WM&BB;
Ursula Suter, General Counsel WM&BB;

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GOVERNMENT EXHIBIT
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Legal and Compliance

1. INTRODUCTION 3

1.1 Introduction and Background 3

1.2 Scope of the Review and Approach Applied 3

1.3 Key Findings / Conclusions 3

2. HISTORICAL INFORMATION 5

2.1 Analysis - 1999 to date 5
2.1.1 Background 5
2.1.2 Actions Taken 5

3. PRESENT STATUS 7

3.1 US Resident Non W9 Clients 7
3.1.1 Centralisation Process 7
3.1.2 Client Advisors Travelling to the US 9

3.2 US Resident Non-W9 Clients Dealing with WM&BB via Financial Intermediaries ("FIMs") 10

3.3 UBS Trusts, Foundations and Other UBS Administered Structures Involving US Residents 10

3.4 E-Banking Relationships with US Residents 11

4. HIGH-LEVEL RISK ASSESSMENT FOR VARIOUS CLIENT SEGMENTS 12

4.1 Risk Assessment 12
4.1.1 The Risk 12
4.1.2 The Business 12
4.1.3 Cross-Border Risk 12
4.1.4 Additional Specific Steps To Mitigate Risk 12

5. ANNEX 1 - CURRENT CROSS BORDER GUIDELINES 13

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1. Introduction

1.1 Introduction and Background

This report has been prepared by the Legal and Risk & Compliance functions of UBS Wealth Management and Business Banking ("WM&BB") and looks at the extent of business that WM&BB carries out with and for Non W9 US Persons. It was prepared with the help and input of Business Sector North America ("NAM"), headed by Michel Guignard and its content has been agreed with NAM.

1.2 Scope of the Review and Approach Applied

This report focuses on business in WM&BB's booking centre Switzerland (primarily within the Wealth Management International Business Area) with Non-W9 persons **resident** in the United States (note that WM&BB also services a significant number of Non-W9-customers who are currently not residing in the US. This segment should not trigger the concerns outlined in more detail in this report but it is understood that this population creates potential change management issues). WM&BB's booking centres abroad only service a limited number of US resident Non-W9 customers. (see overview on page 6) and are subject to the same rules as Swiss booked clients. This report does not therefore consider in detail WM&BB's locations abroad nor does it consider any other businesses servicing US persons within the UBS Group such as Investment Bank, Global Asset Management or those businesses physically located in the US such as WM (USA)'s business, WM&BB's business conducted through UBS AG, New York Branch etc.

This report also focuses primarily on the risk issues arising from Securities and Exchange Commission ("SEC") oversight and / or regulations affecting business with US Resident Non-W9s. In particular, it focuses on SEC rules governing marketing and communicating into the US and dealing with US customers. Only peripherally does this paper discuss the issues arising under the US Internal Revenue Services' ("IRS") Qualified Intermediary ("QI") regime and the UBS Group's arrangements for compliance therewith. These issues were and are dealt with by specialist working groups in WM&BB. Additionally, we do not address any [redacted] - though it bears mentioning that we have obtained legal advice from outside U.S counsel [redacted]

The approach we apply is to report on status by categorising client segments along risk-relevant factors i.e. cash only clients vs those holding securities in a custody account, arrangements for mail instructions, value of assets as these impact the communication issues etc..

We have also commented briefly on related service models as far as they deal with US residents, namely: exposures in our Financial Planning and Financial Intermediary ("FIM") businesses as well as e-banking relationships. We have also reviewed the banking process end to end over the full life span of the relationship i.e. prospecting, marketing, account opening and servicing.

1.3 Key Findings / Conclusions

The number of account relationships in WM&BB in Switzerland with US residents where the account holder has not provided a W-9 is approximately 52,000 (representing CHF 17 billion in assets). The business with US Resident Non-W9s generally raises the same types of risk as WM&BB's wider cross-border businesses raise. However, it is generally accepted that due to UBS AG's US listing, wider UBS Group exposure in the US and the particular regulatory environment existing there, the risks are higher. Consequently additional mitigating

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actions have been taken to further reduce the regulatory risk associated with the business with US Resident Non-W9s.

WM&BB has taken the view that the key risk arises from UBS AG in Switzerland being a non-SEC registered entity communicating with such clients in (or into) the US concerning securities. This risk has been mitigated by a number measures and factors as described in this report. These include:-

- 32,940 account relationships with US Resident non W-9 clients are cash accounts only. They are therefore not a factor in assessing risks regarding SEC compliance.
- The remaining account relationships (20,877) with US Resident non W9 clients have arrangements in place to the effect that UBS do not enter into postal or e-mail communication into the US regarding the portfolios (17,846 of these relationships have retained mail services and the rest provide addresses for correspondence outside the US). This obviously substantially limits the communications risks.
- The business has a mandate to strive hard to increase the number of relationships that require no (or little) communication into the US.

Guidelines are in place (and training has been and continues to be provided) for Client Advisors indicating the limits of what they can do with respect to communicating into the US and with Cross-Border Banking Activities into the US generally. These guidelines (and further relevant information) can be found under http://bw.ubs.com/page/0/36/0,1080,636-80482-1-0,00.shtml. Advertising and events in the US by or on behalf of non-us entities are prohibited. Cold calling / prospecting in the us and use of us jurisdictional means is similarly clearly prohibited. Guidance on conduct of existing relationships is then provided. The attention paid in training, support of BU Americas international management and virtually daily contact between Legal / Compliance and the NAM team strongly indicates that the business is well aware of the sensitiveness of its services to US clients.

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2. Historical Information

2.1 Analysis - 1999 to date

2.1.1 Background

The issue of the bank's cross-border business into the United States has been the subject of intense Legal / Compliance scrutiny for quite some time. In 1999, Legal prepared a memo outlining the US regulatory framework relevant for UBS's Wealth Management business conducted into the US from non-US offices. With UBS AG becoming a Qualified Intermediary under the IRS QI regime and the acquisition of the former PaineWebber business, such discussions were intensified and ultimately led to an in-depth analysis being undertaken at the beginning of 2001. The results of this analysis were presented to senior management in September 2001 and essentially entailed as principal recommendations:

- the establishment of an SEC-registered investment adviser subsidiary to deal with W9-customers who typically expect an active service model; and
- to curtail the bank's activities when servicing US Resident Non-W9 customers by refraining from use of US "jurisdictional means".

The first decision resulted in the creation of UBS Swiss Financial Advisers AG and the second decision in a change of the business model. It merits highlighting that the issue of the so-called "deemed sales" rules which - taking a risk based approach were ultimately regarded as being integral to UBS's compliance with its QI Agreement with the IRS - further galvanised the process to make adjustments to the then existing business models for dealing with US Resident Non-W9 clients.

2.1.2. Actions Taken

In January 2002, UBS implemented strict principles for servicing U.S customers under the heading "Deemed Sales Guidelines" (for full details see materials at http://bw.ubs.com/page/0/36/0,1080,636-80482-1-0,00.shtml). In essence, these boil down to a development of a "ring-fenced" service model for US Resident Non-W9 clients having securities accounts, i.e. retained mail instructions to be in place and no securities-related communications into the US. In addition, the business was asked to transfer as many advisory / non-discretionary clients as possible into discretionary mandates, primarily in order to address the deemed sales issue but also improve SEC / Securities Act compliance as a result of the mandatory "ring-fencing". In September 2004, Business Sector North America ("BS NAM") also established a "Competence Centre Deemed Sales" to further ensure implementation of agreed principles.

During Q2 2002, an IT-based tool was implemented in Switzerland to make sure that no securities related instructions could be given when the customer was on U.S. territory. In Q3 2002, a project was initiated to "centralise" all W9 US clients and all US Resident Non-W9 clients to designated desks with a view to creating an enhanced control environment (ensuring that those Client Advisors most familiar with the particular requirements related to dealings with such clients were involved in these relationships etc.). This project remains current and progress is tracked on an ongoing basis.

Legal / Compliance has been in constant contact with senior management BS NAM and has held various training sessions with Client Advisors on cross border banking activities into the US. Most recently, updates were provided in Q3 2004. Below is the standard presentation.

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WMABB Non W-9 Business
Legal and Compliance

NAbbordereducation.ppt

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Legal and Compliance

3. Present Status

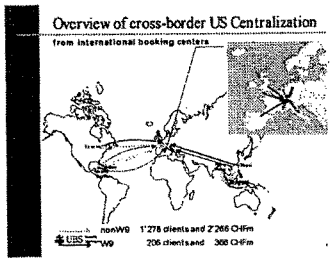
3.1 US Resident Non W9 Clients

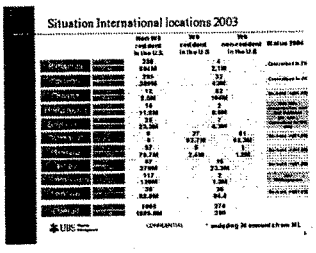
A presentation describing the breadth of the present business with US Resident Non W-9 clients has been prepared by M Guignard (Regional Market Manager BS NAM). The full presentation is embedded in this document at the end of this section and the following highlights the key aspects:

3.1.1 Centralisation Process

In general, US Resident Non-W9 clients are now centralised within WM&BB (excepting those with the Private Banks in SBC Wealth Management) in the Business Sector North Americas (Desks in Zurich, Geneva and Lugano). The centralisation process started in January 2003 and is over 90% complete. The aim of the centralisation exercise was to concentrate handling of these particularly sensitive client relationships in the area with the highest expertise.

The Centralisation Process started with the centralisation of all relevant clients to Booking Centre Switzerland from WM&BB's International booking centres as shown below.





In addition, within booking centre Switzerland, all clients were centralised to the Business Sector North Americas desks in Zurich, Geneva or Lugano:

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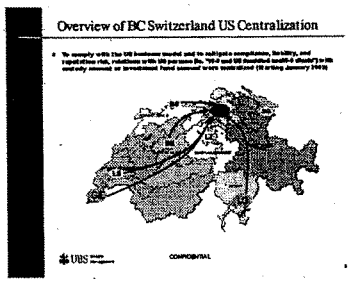
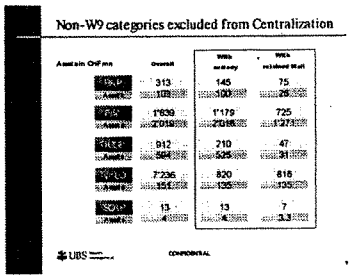


Certain categories of clients were excluded from the process as shown below. Largely these are specific client segments already handled in a distinct manner within WM&BB. BAP are employee accounts. FIM are Financial Intermediary relationships (see section 3.2 of this report). FK / GK are corporate clients (i.e. not individuals). NALO are dormant relationships and SCAP are clients designated as having a "sensitive country" connection under relevant WM&BB policy.:



The number of US Resident Non W-9 account relationships now handled by the Business Sector North Americas Desks in Switzerland is shown on the following slide (note that references in these slides to "clients" are actually to account relationships and in some cases, the same "client" may have more than one account relationship - however WM&BB systems do not allow to see the number of linked account relationships):

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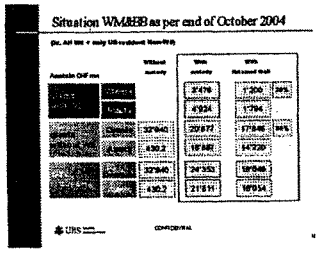
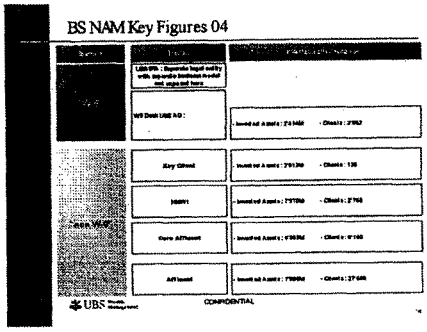


This breaks down as follows in terms of client segment:



As part of the centralization process, system restrictions are also in place to prevent any new accounts for US resident non-W9 clients being opened anywhere other than on the Business Sector North Americas Desks. Therefore going forward the centralization principles should be preserved.

3.1.2 Client Advisors Travelling to the US

In the last year, we are advised that 32 different Client Advisors from BS NAM have travelled to the US on business. On average, each Client Advisor visited the US for 30 days per year, seeing 4 clients per day. This means that approximately 3,800 clients are visited in the US per year by WM&BB Client Advisors based in Switzerland. Client visits are prioritised by asset size, and Affluent clients are not visited.

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No printed matter is taken into the US and as will be apparent from the above all clients have cash accounts or make use of other banking products that justify the Client Advisor visiting them. Guidelines have been established in relation to the conduct of cross border business generally into the US and a copy of the present text is set out in Annex 1 to this report. Training materials (case studies etc.) have also been developed and delivered to relevant Client Advisors to emphasise what is and what is not permissible activity.

Below is the full presentation produced by BS NAM on their business.

Risk_NAM_1.ppt

3.2 US Resident Non-W9 Clients Dealing with WM&BB via Financial Intermediaries ("FIMs")

The following table shows numbers of account relationships with US Resident Non-W9 clients dealing with WM&BB through a Swiss-based Financial Intermediary. The numbers will be included in the information shown in 3.1 above but it is not open to us to isolate the relationships which appear in both groups.

		US Resident Non W9	Non US-Resident (US persons) non W9
Relationships With Custody Account	Account Numbers	826	2,686
	Assets (CHF)	1,534,486,100	5,792,927,159
Relationships Without Custody Account	Account numbers	64	30
	Assets (CHF)	1,741,476	1,008,448

In these cases, under standard UBS FIM business models, day to day (and in most cases all) client contact is via the FIM and not directly between UBS and the underlying client. Further details on the specific FIM relationships can be provided if required. As an aside, note that WM&BB also engages in business with 9 US-based FIMs that do, however exclusively bank customers who are not subject to U.S. tax (i.e. US Non-Resident Aliens). This segment does not create SEC or QI / deemed sales issues as we only work with US FIMs that have the appropriate SEC registrations.

3.3 UBS Trusts, Foundations and Other UBS Administered Structures Involving US Residents

The following table gives information on UBS administered Trusts, Foundations or other structures involving US residents. Again, the numbers may, to some extent be included in the information shown in 3.1 above but it is not open to us to isolate the relationships which appear in both groups. No such "double counting" will occur where the nature of the connection to the US resident is "indirect" - e.g. there is a beneficiary of a trust structure that is resident in the US.

UBS Trusts, Foundations and Other UBS Administered Structures where the Settlor is a US Resident	16
UBS Trusts, Foundations and Other UBS Administered Structures where one or more of the Beneficiaries are resident in US (Number)	315
UBS Trusts, Foundations and Other UBS Administered Structures where the Settlor is a US National (Number) INCLUDING TAX DOMICILE	15

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UBS Trusts, Foundations and Other UBS Administered Structures where one or more of the Beneficiaries is a US national (Number) INCLUDING TAX DOMICILE	283
Total Sum of Total Assets in Structures (in CHF)	**4'132'826'804**

WM&BB Financial Planning policy is that generally we do not take on relationships with US resident settlors and a tax opinion is required in the context of any structure involving a US resident settlor or beneficiary. Accordingly, it can be seen that the number of structures in place is very small (total universe of FP structures is over 10,000 trusts and foundations under administration).

3.4 E-Banking Relationships with US Residents

The following table gives information on UBS E-banking relationships with US residents. Again, the numbers may, to some extent be included in the information shown in 3.1 above, but again it is not open to us to isolate the relationships which appear in both groups.

Client Account Numbers in Abacus with Domicile USA and E-Banking access	**2'605**
With Custody Account	975
Without Custody Account (i.e. cash only)	1'630
Total clients Assets (CHF)	**486'323'526**
Total Invested Assets (CHF)	**425'312'811**
Invested Assets in Depot Accounts (i.e. securities) (CHF)	333'059'377
Invested Assets in Cash Accounts (CHF)	92'253'434

E-banking for US resident customers is constantly monitored by Legal to ensure appropriate restrictions are put in place.

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4. High-Level Risk Assessment For Various Client Segments

4.1 Risk Assessment

As can be seen from the information above, WM&BB's business relationships with US Resident Non-W9's are material both in number of clients and value of assets. However, various measures have been put in place to mitigate the risks attendant to the business.

4.1.1 The Risk

UBS AG, Switzerland, is not licensed to conduct regulated activities within the US. The primary risk facing WM&BB therefore in dealing with US Residents generally (whether or not W9's), is that we are alleged by the SEC to have carried on securities related activities within the US for US persons against SEC regulation. Specifically this is the risk that WM&BB has communicated within or into the US to US Persons regarding securities.

4.1.2 The Business

There is no prospecting or marketing for WM&BB's services (other than for our US operations and in the future for our Swiss-based SEC-registered investment adviser entity) performed on U.S. territory. Additionally, as a matter of policy, WM&BB does not accept account openings through correspondence for US resident clients.

US Resident Non-W9 Clients who hold only cash do not expose UBS AG, Switzerland to the risk of communicating into the US regarding securities and can therefore be discounted for the purposes of assessing risk in this respect. Of the remaining US Resident Non-W9 account relationships, over 20,000 hold at least some securities (although this figure maybe in fact be lower due to fiduciary deposits (i.e. cash deposits) being reported on investment accounts). In our view these are the higher risk clients.

4.1.3 Cross-Border Risk

Conducting business on a "cross border" basis (i.e. with non-resident clients in any jurisdiction) carries a certain amount of risk due to the inherent difficulties in reconciling often conflicting laws and regulations. Whilst WM&BB seeks to comply with the laws and regulations of the countries into which it carries out business (e.g. through restrictions on the types of products offered to clients and the way in which those products are offered), it is not possible to reduce the risks arising from such business to zero.

4.1.4 Additional Specific Steps To Mitigate Risk

There is no doubt that the US has its own specific risks due to the extent of the UBS Group exposure and the virulent regulatory atmosphere. Therefore, further steps have been taken over and above those generally taken for the cross border businesses of the WM&BB. As described in this report, these include the centralisation of all US Resident Non-W9 business into the BS NAM Desks in Zurich, Geneva and Lugano; ensuring that all such clients are retained mail clients (i.e. no systemised communication by the Bank into the US); providing further guidelines to Client Advisors regarding communications with such clients, and lower levels of Client Advisor visits to such clients when compared to other business areas.

Reeves Declaration
Exhibit 4

UBS Wealth Management

U S Centralization Core Figures and Business Model NAM

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GOVERNMENT EXHIBIT 4

Regulation change and consequences on UBS's US business model

UBS Wealth Management

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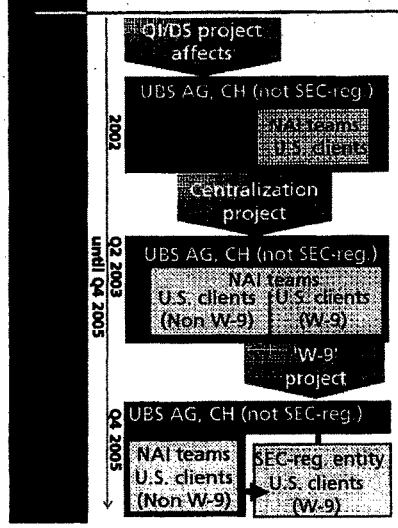
1

Overview of initiatives QI Deemed Sales / SEC



Measures (non-W9):
- QI: no U.S. securities
- DS: Retained mail; PM

Goal:
- Pass QI audit 03

Risks:
- Compliance Risk
- Liability Risk
- Reputation Risk

Worst consequence:
- Loss of QI status and of US banking license.
- Fines/penalties

Measures:
- Centralize U.S. clients to dedicated centers of expertise

Goal:
- Risk reduction through improved control environment

Risks:
- Limited service to W-9 clients
- Managed risks

Worst consequence:
- As above
- Further ad-hoc measures required

Measures (W-9):
- Move W-9 clients to SEC-reg. entity

Goal:
- SEC/QI compliance
- Retention / Sales

Risks mitigated:
- UBS AG and NewCo in compliance with QI/SEC
- Product/service compl. IRS tax reporting

Consequence:
- Active servicing of exist. and new clients
- reduced litigation risk

2

US Centralization

UBS Wealth Management

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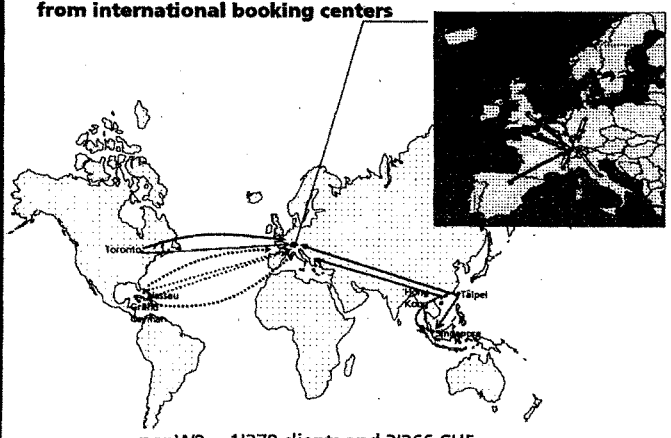
3

International locations

Overview of cross-border US Centralization

from international booking centers



nonW9 1'278 clients and 2'266 CHFm

UBS Wealth Management W9 206 clients and 366 CHFm

Situation International locations 2003

		Non W9 resident in the U.S.	W9 resident in the U.S.	W9 non-resident in the U.S.	Status 2004
Bahamas	Clients	358	4		[redacted]
	Assets	894M	2.1M		
Cayman	Clients	285	92		[redacted]
	Assets	389M	63M		
Canada	Clients	12	82		[redacted]
	Assets	8.5M	104M		
Hong Kong	Clients	14	2		[redacted]
	Assets	11.8M	0.6M		
Singapore	Clients	28	7		[redacted]
	Assets	23.3M	6.2M		
Germany*	Clients	0	27	61	[redacted]
	Assets	0	62.7M	68.3M	
Monaco	Clients	57	2	1	[redacted]
	Assets	79.7M	2.4M	1.2M	
Jersey	Clients	97	15		[redacted]
	Assets	270M	23.3M		
Luxembourg	Clients	117	2		[redacted]
	Assets	120M	1.2M		
London	Clients	36	36		[redacted]
	Assets	88.8M	64.4		
Overall	Clients	1004	274		
	Assets	1885.8M	380		

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* excluding 24 accounts from ML

6

Booking Center Switzerland

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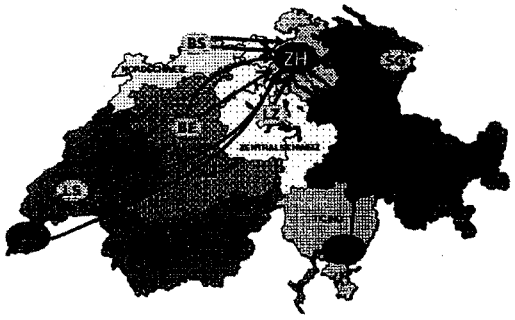
7

Overview of BC Switzerland US Centralization

- To comply with the US business model and to mitigate compliance, liability, and reputation risk, relations with US persons (ie. "W-8 and US domiciled nonW-9 clients") with custody account or investment fund account were centralized (Starting January 2003)



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Non-W9 categories excluded from Centralization

Assets in CHF mn	Overall	With custody	With retained Mail
BAP	[illegible]	[illegible]	[illegible]
FIM	[illegible]	[illegible]	[illegible]
FK/GK	[illegible]	[illegible]	[illegible]
NALO	[illegible]	[illegible]	[illegible]
SCAP	[illegible]	[illegible]	[illegible]

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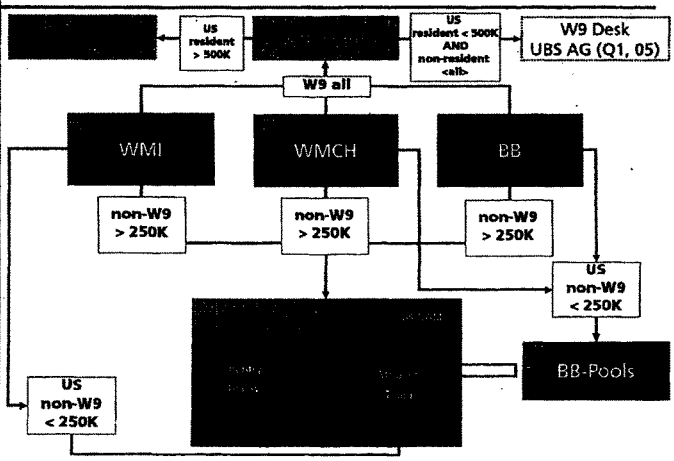
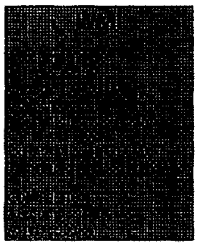
9

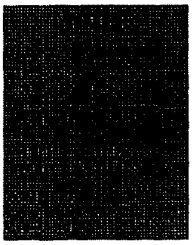
Centralization Streams

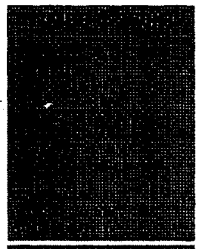


UBS Wealth Management CONFIDENTIAL 10

Centralization Status into NAM (September 04)







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11

Situation WM&BB as per end of October 2004

(ie. All W9 + only US resident Non-W9)

Assets in CHF mn		Without custody	With custody	With Retained Mail	
clients with W9	Clients		3'476	1'200	95%
	Assets		4'924	1'794	
[illegible]	[illegible]	32'940	20'877	17'846	85%
	[illegible]	430.2	16'887	14'220	
Total U.S. clients	Clients	32'940	24'353	19'046	
	Assets	430.2	21'811	16'014	

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12

BS NAM

BS NAM Key Figures 04

[redacted]	UBS SFA : Separate legal entity with separate business model not exposed here	
	W9 Dank UBS AG :	- Invested Assets : 2'414M - Clients : 3'052
[redacted]	Key Client	- Invested Assets : 2'813M - Clients : 136
	HNWI	- Invested Assets : 7'970M - Clients : 2'765
	Core Affluent	- Invested Assets : 4'069M - Clients : 8'100
	Affluent	- Invested Assets : 1'000M - Clients : 27'600

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14

BS NAM Key Figures (cash ratio)

UBS

Asset Book Report Wealth Management September 2004

WM NORTH AMERICA NON WP REPORT IN CHF

Cash, Fiduciaries and Money Market	3 479 271	22%
Bonds	3 020 857	19%
Equities	1 784 029	11%
UBS Money Market Funds	1 390 487	9%
UBS Bond Funds	1 389 265	9%
UBS Equity Funds	1 674 757	11%
UBS Strategy Funds	646 891	4%
3rd Party Investment Funds w. sales agreement	424 307	3%
Other Investment Funds	178 530	1%
Structured Products UBS and 3rd party w. sales agreement	854 505	5%
Structured Products 3rd party w/o sales agreement	46 014	0%
Alternative Investments UBS and 3rd party w. sales agreement	714 783	5%
Alternative Investments 3rd party w/o sales agreement	9 529	0%
Other Assets	186 468	1%
Total Invested Assets	**15 779 803**	**100%**
Additional (WP Desk/Canada Dom and Int / London)	**11 328 317**	
Invested Assets (%)	**27'108'120**	

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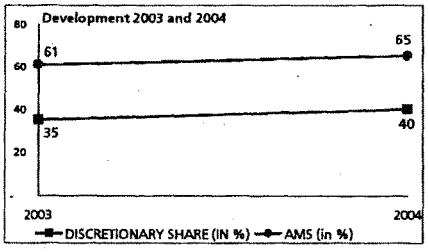
15

BS NAM Evolution 02-04

Development AMS and Discretionary Share Non W9 - 2003/2004

Non W9 Business	2003	2004
ACTIVELY MANAGED ASSETS (in CHFm)	9.0	10.3
AMS (IN %)	61%	65%
INVESTED ASSETS UNDER DISCRETIONARY (in CHFm)	5.1	6.2
DISCRETIONARY SHARE (IN %)	35%	40%



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16

New Openings of US Non-W9 Relationships

Opening of US relationships in Switzerland : average of ~25 per month in 2004

Traveling (Non-W9): an average of 30 days per year [31CA's]

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17

Overview implemented mesures since 2003

- Implementation of UBS AG, SFA
- WMBB&CH wide US-Centralization with establishment of a WMI-unique Affluent segment (0-250K) as single point of entry for US clients on Swiss soil
- QI Deemed Sales Intranet information portal
- NAM Center of Competence for QI Deemed Sales monitoring for WMBB&CH (since 09/04)
- NAM Center of Competence for functional information sharing to international locations still handling US relationships (Q1, 2005)
- SUBITOP restriction on opening US relationship outside of WMI BS NAM (Nov 04)

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18

Reeves Declaration
Exhibit 5

αβ

Master no.

Account no. _____

Rücksende-Adresse

← return to (please use return envelope)

Tax Form US Securities

Assets and Income
Declaration for US Taxable Persons[1]

account holder:[2] _____

_____

_____

_____

Nationality: _____

In accordance with the regulations applicable under US law relating to withholding tax, I declare, as the holder of the above-mentioned account, that I am liable to tax in the USA as a US person. I avail myself of the following right:

A) Waiver of right to invest in US securities

Option A1 (clients with investments in US securities)
I would like to avoid disclosure of my identity to the US Internal Revenue Service under the new tax regulations. To this end, I shall sell all my investments in US securities before 31 October 2000. If there should still be any investments in US securities in my account after this date, I authorize UBS AG to sell such investments at best market price at any time before the end of 2000. I take note that UBS AG shall not accept any further instructions for sale from me in November and December 2000 in order to avoid duplicate sales of the same investments. I expressly declare that I agree that my account shall be frozen for all new investments in US securities as from 1 November 2000.

_____ _____

Place/Date Signature[3]

[1] To be kept on file internally at the Bank only.
[2] Joint account holders need to fill out and sign separate forms.
[3] This form may only be signed in one place.

form code:

(for internal use only)

61393 E V0 please consider second page as well

GOVERNMENT EXHIBIT 5

αβ

Master no.

Account no. _____

account holder: _____

or

Barcode

For internal use only:

Signature verified/Signed in my presence: _____

OU-Ref.: Date:

Tax Form US Securities

Page 2/3

αβ

Master no.

Account no. _____

account holder: _____

Option A2 (clients without investments in US securities)
I would like to avoid disclosure of my identity to the US Internal Revenue Service under the new tax regulations. To this end, I declare that I expressly agree that my account shall be frozen for all new investments in US securities as from 1 November 2000.

Place/Date

Signature*

or

B) Declaration to the US Internal Revenue Service

I would (also) like to be permitted to make investments in US securities in the future. UBS AG shall send me form W-9 for this purpose. I authorize UBS AG to forward form W-9 completed and signed by me to the US depository. I am aware that my identity will thereby be disclosed to the US Internal Revenue Service.

Place/Date

Signature*

* This form may only be signed in one place.

For internal use only:
Signature verified/Signed in my presence:

OU-Ref.:

Date:

Reeves Declaration
Exhibit 6

From: Bovey, Christian
Sent: Friday, July 21, 2000 5:23 PM
To: [redacted]
Subject: FW: IRS 2001/form US-person

-----Original Message-----
From: Schumacher, Hansruedi
Sent: vendredi, 14. juillet 2000 15:16
To: Huethrich, Ralph z.z.w.u.o.; Winiger-Isler, Daniela z.g.w.i.n.; Zellweger, Rene; Zanelli, Sergio; Von-Arx, Anita; 'Bonalumi, Gianpaolo'; 'Bovey, Christian'; 'Grassi, Andreas'; 'Hug, Stefan'; 'Schmidiger, Benno'
Cc: Tagliente, Michael; Stankiewicz, Antoni z.h.s.s.t.; Grigioni, Carlo
Subject: IRS 2001/form US-person

dear all

UBS document 61393 form "declaration for US taxable persons"

has in all 3 waivers:

"I would like to avoid disclosure of my identity to the US IRS"

this sentence was refused by many clients, provoked angry outcries and we were beeing told, which if signed, fully incriminates a US person of criminal wrongdoing should this document fall into the wrong hands.

At todays Steering Committee IRS 2001 the decision was taken to cross this sentence from all 3 waivers and will be replaced by:
" I consent to the new tax regulations...."

Therefore the new forms will be changed. Existing ones where the clients crossed this sentence out, can be accepted.

regards
Hansruedi

1

GOVERNMENT EXHIBIT
6

Reeves Declaration
Exhibit 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 08-CR-60099-ZLOCH

UNITED STATES OF AMERICA
vs.
BRADLEY BIRKENFELD,
Defendant.

STATEMENT OF FACTS

The United States Attorneys Office for the Southern District of Florida, the United States Department of Justice, Tax Division, and the defendant, Bradley Birkenfeld (hereinafter referred to as the "defendant Birkenfeld") and his counsel agree that, had this case proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt, and that the following facts are true and correct and are sufficient to support a plea of guilty:

The Qualified Intermediary Program

Beginning in 2000, the Internal Revenue Services ("IRS") sought to increase the collection of tax revenues without raising tax rates. In furtherance of this mission, the IRS established the Qualified Intermediary ("Q.I.") Program. Pursuant to the Q.I. Program, foreign banks voluntarily entered into Qualified Intermediary agreements with the IRS pursuant to which these foreign banks agreed to identify and document any customers who held U.S. investments, which were generally marketable securities and bonds, or received United States source income into their off-shore accounts. In accordance with IRS requirements, foreign banks agreed to have their customers fill out IRS Forms W-8BEN, which required the beneficial owner of a bank account to be identified on the form, or IRS Forms W-9, which required United States beneficial owners of bank accounts to be identified.

Foreign banks further agreed to issue IRS Forms 1099 to United States customers for United States source payments of dividends, interest, rents, royalties and other fixed or determinable income paid into the United States customers' off-shore bank accounts. Alternatively, if a client refused to be identified under the Q.I. Agreement, foreign banks agreed to withhold and pay over a twenty-eight percent withholding tax on U.S. source payments and then bar the client from holding U.S. investments. In addition, the sales proceeds, interest and

GOVERNMENT EXHIBIT 7

dividends earned on non-United States investments, if the purchase or sale of the investment was made as a result of contact (in person, via email, telephone or fax) with the U.S. client in the United States, were subject to the Form 1099 reporting requirements or twenty-eight percent withholding. These transactions are referred to under the Q.I. Program as "deemed sales."

In January 2001, a large Swiss bank ("Swiss Bank"), entered into a Q.I. agreement with the IRS. Swiss Bank owns and operates banks, investment banks and stock brokerage businesses throughout the world, and has locations in the United States, with branch locations in the Southern District of Florida. This agreement was a major departure from historical Swiss bank secrecy laws under which Swiss banks concealed bank information for United States clients from the IRS. At all relevant times to this indictment, the Swiss bank represented to the IRS that it had continued to honor this Qualified Intermediary agreement.

Defendant Birkenfeld's Employment

During the entire period from 1998 through 2006, defendant Birkenfeld was employed by various banks in Switzerland as a private banker primarily servicing United States clients. From 1998 through July 2001, defendant Birkenfeld was employed by Barclays Bank in Geneva, Switzerland. In 2001, Barclays Bank entered into a Q.I. agreement with the IRS. In order to comply with the terms of the Q.I. agreement, Barclays Bank decided to terminate its off-shore private banking business for United States clients that refused to complete an IRS Form W-9. Accounts owned by United States clients that refused to fill out IRS Forms W-9 were known in the off-shore banking business as "undeclared" accounts.

From 2001 through 2006, defendant Birkenfeld was employed as a director in the private banking division of a large Swiss bank ("Swiss Bank"), which owns and operates banks, investments banks, and stock brokerage businesses throughout the world, including the United States, with offices in the Southern District of Florida. A manager at the Swiss Bank assured defendant Birkenfeld that even though the Swiss Bank signed a Q.I. Agreement, the Swiss Bank was committed to continue to provide private banking services to United States clients who wished for their accounts to remain undeclared. Swiss Bank managers authorized and encouraged defendant Birkenfeld and other private bankers to travel to the United States to solicit new clients and conduct banking for existing United States clients. The Swiss Bank sponsored events in the United States where Swiss bankers met with U.S. clients, including Art Basel in Miami and the NASDAQ 100 tennis tournament in Miami. The Swiss Bank trained bankers traveling to the United States in techniques to avoid detection by United States law enforcement authorities, including training bankers to falsely state on customs forms that they were traveling into the United States for pleasure and not business. Defendant Birkenfeld, Swiss Bank managers and bankers knew that they were not licensed to provide banking services, offer investment advice or solicit the purchase or sale of securities through contact with clients in the United States.

The Tax Fraud Scheme

When the Swiss Bank notified its U.S. clients of the requirements of the Q.I. agreement, many of the Swiss Bank's wealthy U.S. clients refused to be identified, to have taxes withheld from the income earned on their offshore assets, or to sell their U.S. investments. To these clients, the Q.I. reporting requirements defeated the purpose of opening a Swiss bank account; to conceal their accounts from the IRS and to evade U.S. income taxes. These accounts were known at the Swiss Bank as the United States undeclared business. Rather than risk losing the approximately $20 billion of assets under management in the United States undeclared business, which earned the bank approximately $200 million per year in revenues, managers and bankers at the Swiss Bank, including defendant Birkenfeld, assisted these wealthy U.S. clients in concealing their ownership of the assets held offshore by assisting these clients in creating nominee and sham entities. These entities were usually set up in tax haven jurisdictions, including Switzerland, Panama, British Virgin Islands, Hong Kong and Liechtenstein. Defendant Birkenfeld, Swiss Bank managers and bankers and U.S. clients prepared false and misleading IRS Forms W-8BEN that claimed that the owners of the accounts were sham off-shore entities and failed to prepare and file IRS Forms W-9 that should have identified the owner of the account, the U.S. client.

Managers and bankers at the Swiss Bank, including defendant Birkenfeld, maintained relationships with Swiss and Liechtenstein businessmen, such as Mario Staggl, who would set up these nominee and sham entities for the Swiss Bank's U.S. clients and pose as owners or directors of these entities. By concealing the U.S. clients' ownership and control in the assets held offshore, defendant Birkenfeld, the Swiss Bank, its managers and bankers evaded the requirements of the Q.I. program, defrauded the IRS and evaded United States income taxes.

In order to further assist U.S. clients in concealing their Swiss bank accounts, defendant Birkenfeld, Mario Staggl, other private bankers and managers at the Swiss Bank and others advised U.S. clients to:

place cash and valuables in Swiss safety deposit boxes;

purchase jewels, artwork and luxury items using the funds in their Swiss bank account while overseas;

misrepresent the receipt of funds from the Swiss bank account in the United States as loans from the Swiss Bank;

destroy all off-shore banking records existing in the United States, and;

utilize Swiss bank credit cards that they claimed could not be discovered by United States authorities.

On one occasion, at the request of a U.S. client, defendant Birkenfeld purchased

diamonds using that U.S. client's Swiss bank account funds and smuggled the diamonds into the United States in a toothpaste tube. Defendant Birkenfeld and Mario Staggl accepted bundles of checks from U.S. clients and facilitated the deposit of those checks into accounts at the Swiss Bank, Liechtenstein and Danish banks.

The Billionaire U.S. Real Estate Developer

Defendant Birkenfeld's largest client was a billionaire real estate developer whose initials are I.O. (hereinafter identified as "I.O."). I.O. had residences in Southern California and in Broward County, within the Southern District of Florida. On several occasions, defendant Birkenfeld, Mario Staggl and Swiss Bank managers met with I.O. in Switzerland and in the United States. It was well-known at the Swiss Bank that I.O. was a U.S. citizen, that the income earned on his accounts was subject to Q.I. withholding and reporting requirements, however, during the period from 2001 through 2005, the Swiss Bank issued no Forms 1099 to I.O., nor did the Swiss Bank report any Form 1099 information to the IRS or withhold or pay over any taxes to the IRS.

From at least 2001 through the date of the Indictment, defendant Birkenfeld conspired with Mario Staggl, an owner and operator of a Liechtenstein trust company, I.O., additional private bankers and mangers employed by the Swiss Bank, and others to defraud the United States by assisting I.O. in evading income tax on the income earned on $200 million of assets hidden offshore in Switzerland and Liechtenstein. In order to circumvent the requirements of the Q. I. Agreement, the defendant and others conspired to conceal I.O.'s ownership and control of the $200 million of assets hidden offshore by creating and utilizing nominee and sham entities.

Defendant Birkenfeld, Mario Staggl, I.O, additional private bankers and managers employed by the Swiss Bank, and others committed numerous overt acts in Broward County in the Southern District of Florida, Central District of California, Switzerland, Liechtenstein, and elsewhere in furtherance of the conspiracy, including the following:

On or about June 21, 2001, I.O. caused to be sent completed bank account opening documents for an account at the Swiss branch of a large bank based in London to defendant Birkenfeld, including a Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding that falsely and fraudulently claimed that the beneficial owner of the newly opened account was a shell corporation located in the Bahamas.

On or about July 26, 2001, defendant Birkenfeld caused to be sent an email to I.O. and others that the large bank based in London was terminating North American clients, travel and resources, and that his new employer, the Swiss Bank, had a superior network, product range and

management, and had recently acquired a large United States securities brokerage house in order to enhance United States investment expertise.

On or about October 19, 2001, defendant Birkenfeld caused to be sent via facsimile to I.O. at a United States facsimile number Swiss bank account opening documents from the Swiss Bank, including a form entitled "Verification of the beneficial owner's identity." This form, executed by I.O., falsely and fraudulently stated that I.O. was not the beneficial owner, and that a nominee Bahamian corporation was beneficial owner of the account. The application further listed I.O. as a signatory to the account.

On or about December 4, 2001, Mario Staggle recommended to I.O. that in order to further conceal I.O.'s ownership of off-shore assets, in addition to setting up Liechtenstein trusts and Dutch holding companies, I.O. should set up an entity in the British Virgin Islands, Panama or Gibraltar that "would lead to another 'safety break' in a tax and anonymity aspect."

On or about December 19, 2001, Mario Staggl caused to be executed a "Letter of Intent," which stated that New Haven Trust Company Limited, trustee of The Landmark Settlement, intended to hold the trust property for the benefit of I.O., and, after his demise, for his children.

On or about March 13, 2002, defendant Birkenfeld caused to be sent a facsimile to I.O. at a United States facsimile number listing $15 million of bonds that an investment manager at the Swiss Bank had purchased for I.O.

On or about March 25, 2002, I.O. caused to be sent a facsimile to defendant Birkenfeld authorizing defendant Birkenfeld to issue five credit cards from the Swiss Bank to I.O. and others.

On or about April 16, 2002, I.O. caused to be sent a letter to defendant Birkenfeld authorizing the wire transfer of $80 million from one account at the Swiss Bank to another account at the Swiss Bank.

On or about April 23, 2002, Mario Staggl caused to be sent an email to I.O. in the United States with instructions for I.O. to transfer a portfolio, worth approximately $60 million, containing United States securities from a brokerage house in London to an account in the name of a Danish shell corporation at a Liechtenstein bank.

On or about April 25, 2002, an unindicted co-conspirator caused to be sent an email to I.O., with a copy to Mario Staggl, that recommended that in addition to the Liechtenstein trusts

and Danish holding companies, I.O. should set up United Kingdom companies to act as nominee shareholders. As stated in the email, "... the partners appear to be U.K. companies and Liechtenstein does not appear to be connected.... The role of the U.K. companies is simply to act as nominee shareholders."

On March 25, 2002, I.O. caused to be sent a fax authorizing defendant Birkenfeld to wire transfer $39 million from one account at the Swiss Bank to another account at the Swiss Bank.

On or about May 7, 2002, Mario Staggl caused to be sent a reply email advising I.O. not to put his name on any Liechtenstein accounts because doing so could "jeopardize the structure," and reminded I.O. that he had executed blank account signature cards that Mario Staggl could use.

On or about April 15, 2003, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2002 tax year, listing his address as Sanctuary Cove, Florida that fraudulently omitted income earned on off-shore assets.

On or about May 19, 2003, Mario Staggl caused to be sent an email to I.O., with a copy to defendant Birkenfeld, that stated that Mario Staggl's lawyers in Gibraltar told him "that everything is now in order to proceed with the application to transfer ownership to Gibraltar" of I.O.'s 147 foot yacht.

On or about March 24 and March 25, 2004, defendant Birkenfeld traveled to the Southern District of Florida to meet with I.O. and a banker from the Swiss Bank's New York branch in order to solicit I.O. to take out real estate loans with the Swiss Bank using his undeclared off-shore assets as collateral.

On or about April 15, 2004, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2003 tax year, listing his address as Lighthouse Point, Florida that fraudulently omitted income earned on off-shore assets.

On or about April 15, 2004, I.O. filed his United States individual income tax return, Form 1040, for the 2003 tax year, listing his address as Lighthouse Point, Florida that fraudulently omitted income earned on off-shore assets.

On or about April 15, 2005, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2004 tax year, listing an address in Lighthouse Point, Florida that failed to report the income earned on off-shore assets.

On or about June 12, 2005, defendant Birkenfeld and Mario Staggl met with I.O. at a Liechtenstein bank and advised him to transfer all of his assets held by the Swiss Bank to a Liechtenstein bank because Liechtenstein had better bank secrecy laws than Switzerland.

The tax loss associated with the conspiracy involving the evasion of income taxes of the approximate $200 million I.O. concealed offshore is $7,261,387 million, exclusive of penalties and interest.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Date: 6/10/08 By: _____
KEVIN DOWNING
SENIOR TRIAL ATTORNEY
MICHAEL P. BEN'ARY
TRIAL ATTORNEY
UNITED STATES DEPARTMENT OF JUSTICE
TAX DIVISION

Date: 6/13/08 By: _____
JEFFREY A. NEIMAN
ASSISTANT UNITED STATES ATTORNEY

Date: 6/10/08 By: _____
DANNY ONORATO
PETER RABEN
ATTORNEYS FOR DEFENDANT

Date: 10/06/08 By: _____
BRADLEY BIRKENFELD
DEFENDANT

Reeves Declaration
Exhibit 8

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UBS AG
Private Banking
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Financial Planning & Wealth Management

Jonathan Bourne
E72 A22V BC3
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jonathan.bourne@ubs.com

www.ubs.com

Memorandum

4 July 2000

DRAFT

to: Business Committee, Private Banking

cc: Walter von Wyl, John Cusack, Hansruedi Schumacher

from: René Sonneveld and Jonathan Bourne, Financial Planning & Wealth Management.

subject: IRS 2000
FPWM policy for dealing with US persons under the QI agreement

Gentlemen,

The Bank's Qualified Intermediary Agreement with the IRS forces US persons who invest in US securities to disclose themselves to the IRS by completing an IRS form W-9.

This applies in particular to:-

1. US persons with accounts held directly;
2. The settlors of grantor trusts, as defined by US rules;
3. The beneficiaries of simple trusts, as defined by US rules;
4. The economic founders of foundations, treated as grantor trusts;
5. The beneficiaries of foundations, treated as simple trusts.
6. In the case of items 2-5 above, we will have to disclose non-US persons who are settlors or beneficiaries to the IRS, if the structures hold US securities.

Questionnaires will be sent to legal entities including trusts, foundations and underlying companies by the end of July 2000 to determine their status. The QI Project team (of which FPWM is not a part) is working on this questionnaire at the moment.

Certain other structures are not caught by these rules, and there is no need for the settlor/beneficiaries/individual owner to disclose themselves to the IRS, even though they are US persons. These structures are:-

- Offshore companies, with limited liability, which have not elected to be "flow-through" entities;
- Grantor, simple and complex trusts with underlying companies, holding the assets;
- Complex trusts;
- Foundations treated as complex trusts;
- Certain insurance products in which a non-US insurance company holds the assets underlying a deferred variable annuity policy or a life insurance policy.

We recommend the following FPWM policies for US persons in categories 1-6 above.

1. Change of investments

GOVERNMENT EXHIBIT 8

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Where the client agrees, direct investments in US securities should be sold and replaced with investments on the approved list shown on the Private Web. These include UBS investment funds and certain derivative products.

II. Change of structure
Where the client/settlor/beneficiaries wish to retain direct investments in US securities, this can be achieved by placing an underlying company beneath the trust/foundation.
This is a relatively minor structural change, which could be made without upsetting the IRS, if done prior to 2001.
The conversion of a simple or grantor trust/foundation into a complex trust, by changing the trust/foundation deeds is not recommended by Baker & McKenzie, as the advantages of the original structure can be destroyed.

III. No more "flow-through" entities as a matter of policy
Baker & McKenzie have recommended that we give active consideration to setting a new policy, by which the bank would not accept "flow-through" entities as account holders. By "flow-through" entities we mean simple and grantor trusts/foundations and other entities, eg partnerships, where IRS rules look through the structure to the ultimate beneficial owners. Such a policy would be justified on the grounds of administrative convenience and avoiding costly mistakes, where a structure is mis-analysed under all the complex rules, rather than tax avoidance. Baker & McKenzie would have the capacity, for example, to place BVIs under each of our foundations.

IV. Purchase of alternative structures
In the case where the US person holds his US investments directly, we have been advised by Baker & McKenzie that we cannot recommend products (such as the use of offshore companies, annuity or insurance products) to our clients as an "alternative" to filing a Form W-8. This could be viewed as actively helping our clients to evade US tax, which is a U.S. criminal offence. Further, such recommendations could infringe upon our Qualified Intermediary status, if, on audit in 2003, it is determined that we have systematically helped US person to avoid the QI rules.
What we can do is suggest that clients seek external professional advice and offer them a choice of approved service providers, if they request it. With this approach it seems clear that we would not be able to share fees with, for example, an insurance provider.

Conclusion
We would recommend that direct US investments are replaced by indirect investments as far as possible.
Where the client in relation to a trust or foundation with no underlying company is against this, then an underlying company should be placed under the trust/foundation with the purpose of holding the US investments.
Consideration should be given to requiring all flow-through entities to have an underlying company as a matter of policy.
Where clients want an external solution, we should only offer them a choice of approved service providers offering insurance products and offshore companies.

Yours truly,

UBS AG

Jonathan Bourne René Sonneveld

Enc. Foreign Trusts & Liechtenstein Foundations: Impact of new QI rules

Reeves Declaration
Exhibit 9

Subject:	Structures/vehicles for U.S./Canadian Clients
Location:	Palm Beach
Start:	Tue 8/17/2004 8:00 AM
End:	Tue 8/17/2004 12:30 PM
Recurrence:	(none)
Meeting Status:	Accepted
Required Attendees:	Maetzler, Claudia; Perron, Daniel; Bourne, Jonathan; La-Barre, Rene; Guignard, Michel; Marti, Georg

Dear colleagues,

You will meet at Bärengasse 16, 2nd floor, room Palm Beach:
8.00-9.00, Quadris
9.00-10.00, Sinco Treuhand AG
10.15.-11.15, Rickenbach & Partner
11.15-12.15, Panazur

Please see below the e-mail which was sent to the different service providers:

Dear .....,

We would like to conduct a review of the structures/vehicles that you offer to/have set up for our U.S. and Canadian clients. We invite you to make a short presentation on the structures/vehicles that you recommend to U.S. and Canadian clients who do not appear to declare income/capital gains to their respective tax authorities. Our meeting should be concluded in one hour. We kindly ask you to cover both types "simple" and "well managed" structures/vehicles. In your presentation please focus on the following issues for each structure/vehicle:

a) Filing requirements (e.g. accounts, tax returns)

b) Disclosure of BO info (e.g. locally under KYC rules or through tax information exchange)

c) Tax implications (e.g. inheritance tax or income tax in the relevant location)

d) Procedures for management (e.g. to ensure the company is well-managed)

e) QI status (e.g. whether the structure is flow-through or non-flow through)

f) Other issues that the provider believes are relevant to a complete risk assessment

We look forward to meeting with you soon.

Best regards,

Michel Guignard
Daniel Perron
Georg Marti
Rene La Barre
Jonathan Bourne

GOVERNMENT EXHIBIT 9

Reeves Declaration
Exhibit 10

UBS

Qualified Intermediary System: US withholding tax on dividends and interest income from US securities

1. Background

The USA levies a withholding tax of 30% on dividends and interest paid on US securities to foreign investors. Investors from countries with which the USA has concluded a double taxation agreement (DBA) can request full or partial relief from this tax. Relief of 15% is normally granted on *dividends*, which means investors are credited with a net 85% of the income.

By contrast, according to domestic US tax law, *interest payable* to foreign investors on the most common US (domestic) bonds issued after 1984 is already exempt from the withholding tax ("portfolio interest exemption rules"), subject to confirmation of the status and identity of the non-US investor. Relief from the withholding tax payable on interest income (usually 0%) as provided for in the DBAs is therefore only of secondary importance.

Interest income on those bonds issued by US borrowers that are most commonly traded on the Euromarket are already exempt from any withholding tax – provided that the bonds concerned are bearer securities – on the basis of the issuing process alone, i.e. without the need for any further proof and without any duty of disclosure.

2. Relief procedure since 2001 ("Qualified Intermediary System")

The Qualified Intermediary System, which came into effect in early 2001, allows foreign banks to obtain relief from withholding tax for their non-US clients (those not liable to US taxation) in accordance with the relevant DTA, directly and without having to file applications to reclaim the tax. Essentially, as long as its documentation on the clients concerned fulfils the accepted client identification rules, the foreign bank may credit these clients with interest and dividends as befits their tax status, having applied the correct withholding tax rate as defined in the relevant DTA, or having effected the relief in line with domestic US tax law. The simple address rule previously in force has been replaced by a "modified" address rule with additional documentation requirements. This makes it much easier than it was before for clients to buy US domestic interest-bearing paper (corporate bonds and government paper).

3. Implications for clients

It is, however, a necessary part of the procedure for the non-US bank concerned to acquire the status of 'Qualified Intermediary' (QI). UBS AG has this status and has entered into a contractual agreement with the US tax authority (the IRS) known as the "QI Agreement". It goes without saying that as well as the advantages associated with the continued or even extended ability to directly apply relief to US withholding tax, QI status also entails certain obligations.

3.1. Natural persons

Firstly, a QI has to ensure that *US Persons*, i.e. natural persons liable in full for taxes in the US (defined as US citizens and Greencard holders irrespective of their actual place of residence and persons resident in the USA for more than 183 days during the current year) either declare themselves to the US tax authorities (US form W-9, no deduction of withholding tax but reporting procedure 1099 must be followed) or are no longer permitted to invest in US securities.

In the case of persons who are *not* US persons as defined by US tax law, as long as statutory client identification procedures would appear to confirm entitlement pursuant to the DTA concluded with the USA, the QI can apply withholding tax relief on dividends and interest as conferred by the DTA, and/or directly apply the full relief to interest income as permitted by the US "portfolio interest exemption rules". In practice, most Swiss banks also seek internal confirmation of whether the client wishes to take advantage of the DTA relief before applying it. For persons resident in countries which do not have a DTA with the USA, the full withholding tax of 30% must still be deducted

GOVERNMENT EXHIBIT 10

UBS

from dividend payments. However, such investors do benefit from full relief on "portfolio interest exempt" earnings.
The main advantage of the QI system and the effect intended by the USA, is to enable investments to receive correct withholding tax treatment in the USA without the need to disclose any information on foreign investors to the US custodian bank, the US tax authorities or any other tax authority.
The client's current tax status is documented by the normal client identification procedures and also by means of the internal forms used by UBS AG.

3.2. Legal entities

The above rules also apply to bank clients that are legal entities.

Legal entities which are domiciled in the USA or which are incorporated in the USA qualify as US persons. These entities are not subject to the same restrictions and reporting procedures that apply to natural persons, but in order to avoid misunderstandings, the QI is also entitled to ask these persons to submit US form W-9.

Foreign legal entities that are not US persons, such as Swiss incorporated companies, GmbH's (companies with limited liability), cooperatives, foundations, associations autonomous public sector bodies and similar foreign legal forms benefit in the same way as natural persons from full relief on earnings from qualifying bonds pursuant to the "portfolio interest exemption rules"; they also benefit from a reduced withholding rate on dividends and interest income, provided that they are covered by a DTA concluded with the USA. As with natural persons, the general condition here is of course that the investor concerned is the beneficial owner of the earnings in question.

For legal entities, the QI Agreement additionally requires that before any relief under a DTA can be applied, the legal entity must expressly confirm to the QI that it fulfils the conditions for DTA entitlement pursuant to the applicable provisions in respect of the "Limitation on Benefits" (no such express confirmation is required for natural persons). These highly complex provisions are included in all the more recent DTA's concluded with the USA, including those concluded with the Netherlands, Germany, France and, nota bene, Switzerland. The DTA's in question, the withholding tax rates and the relevant "Limitation on Benefits" clauses can be called up via a link on the homepage of the Swiss Bankers Association (www.swissbanking.org).

In order to ensure compliance with the clauses of the QI Agreement, the affirmation of non-US person status obtained by UBS AG from the legal entity by way of an internal form includes express confirmation by the legal entity that it has taken note of the provisions of the "Limitation on Benefits" and that it fulfils the conditions for recourse to the DTA. In cases of uncertainty or where there are outstanding questions in respect of these conditions, we recommend consulting a professional tax advisor.

If there is no express confirmation that the "Limitation on Benefits" clauses have been fulfilled, the QI regulations dictate that UBS AG cannot apply the relief from withholding tax on dividends under a DTA, even if the legal entity is domiciled in a country that has a DTA with the USA. Instead, dividends (and DTA interest income) are taxed at the full US withholding rate of 30%. Of course the same applies if there is no DTA between the country of domicile and the USA.

This does not affect the grant of full relief in respect of interest income from qualifying (US domestic) bonds under the "portfolio interest exemption rules", which does not depend on the existence of a DTA or the fulfilment of any DTA criteria.

3.3. Special conditions for persons resident /domiciled in Switzerland (additional tax deduction USA)

Because the Swiss federal authorities have decided that the "additional tax deduction USA" will continue to apply to persons domiciled or resident in Switzerland, the QI must continue to levy a tax payment totaling 30% in respect of dividends, on all natural persons and legal entities resident or domiciled in Switzerland (i.e. the original 15% withholding tax due in the USA plus the 15% "additional tax deduction USA" in Switzerland). Taxpayers may continue to claim back the

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"additional tax deduction USA" from the relevant Swiss tax authority as part of the normal tax declaration process. It may be possible under the DTA to claim a flat-rate tax credit in Switzerland for the non-reclaimable original 15% withholding tax due in the USA.

If the Swiss legal entity does not supply the confirmation as detailed under 3.2 that it fulfils the conditions set out in the "Limitation on Benefits" clause, the full original US withholding tax deduction of 30% applies. The "additional tax deduction USA" does not apply in such a case and essentially there is no possibility of reclaiming the tax in Switzerland. The full deduction should be seen as a definitive charge.

According to the decision taken by the Swiss federal authorities, the organizational forms that are exempt from tax pursuant to Art. 56 of Switzerland's law on direct federal taxes are treated as special cases. The "additional tax deduction USA" does not apply to these organizational forms, i.e. they are only taxed at the original US withholding rate of 15%. In order to qualify for this special treatment, however, the required form must be submitted to UBS AG in good time.

The comments on the "additional tax deduction USA" do not apply to interest earnings that benefit from full tax relief under the US "portfolio interest exemption rules".

3.4. Not applicable to organizational forms that are not legal entities

The above comments apply exclusively to companies and organizations that qualify as legal entities under national law. They do not apply to companies or organizational forms that have no legal personality, such as unincorporated firms (collective companies, limited partnerships, limited partnership corporations, general partnerships, unlimited companies, etc.). These are subject to other regulations and, under US tax law, some of them may qualify as transparent intermediaries with a possible duty of disclosure. They also have to be treated differently in the matter of recourse to DTA benefits.

3.5. Special investment vehicles (domiciliary companies such as offshore companies, foundations, trusts, etc.)

(Non-US) organizational forms used as investment vehicles that could be classed as domiciliary companies as defined in the Swiss code of due diligence are subject to a special regulation. Such organizations will either be an offshore company or one of the wide range of foundations and trusts that are used in asset management business. While the main issue concerning domiciliary companies is whether they really are companies and also whether they really are the beneficial owner of the assets as defined by US tax law (facts which can be confirmed using the appropriate forms), the basic problem with trusts and foundations is that US tax law tends to regard them as transparent intermediaries with corresponding disclosure obligations.

Whereas there was originally a solution to this, whereby foreign investors could avoid having to disclose information for the sake of it, changes introduced in the relevant US regulations in fall 2003 largely made the continuation of this solution unworkable. Given this change in circumstances, if there is no desire to disclose the identities of either the bank's contracting partner or the beneficial owner to the US tax authorities, the possible alternatives are for US securities to be excluded from the portfolio, for the beneficial owner to hold them directly, or for a structure to be put in place between the foundation/trust and the bank which itself serves as an independent, non-transparent beneficial owner (e.g. a legal entity/corporation/company) and submits documentation to the QI to this effect.

4. Relevant US securities

The new regulations apply to securities issued by US companies and borrowers. In general terms, the securities involved are equities (of whatever form) of US companies traded on US or foreign stock markets or bonds (straights, zeros, etc.) from US issuers (companies, local authorities, government agencies, etc.) destined for the US domestic market. The equity certificates issued by these companies for trading outside the USA (depositary receipts, Swiss certificates, etc.) are subject to the QI regulations in the same way as are the underlying securities. Clearly, units in US

UBS

investment funds (regulated investment companies, mutual funds, etc.) also qualify as US securities, although units in foreign (non-US) investment funds do not, even if the funds themselves invest in US paper.

Different rules apply to Eurobonds that are issued by US borrowers specifically for foreign markets and/or foreign investors, provided that these qualify as bearer paper under the "portfolio interest exemption rules". Such bonds are not affected by the changes and are exempt from the QI procedure. However they are already subject to certain sales restrictions, at least in the primary market, that prevent or make difficult any sale to US persons.

Reeves Declaration
Exhibit 11

αβ Executive Board Wealth Management & Business Banking

Sponsor:	Anton Stadelmann	**Date:** 6 July 2004	
Presenter:	Aleidus Bosman P&S Financial Planning, Bernhard Buchs CFO Risk & Compliance		

Subject: GI Solutions for Simple and Grantor Trusts
"Swiss Solution" - Alternative to be applied / Thresholds

1. Purpose of the paper

To seek approval for the implementation of the proposed measures and thresholds with regard to alternative solutions for simple and grantor trusts previously documented under the GI "Swiss Solution".

2. Executive Summary

Background

The IRS has issued new rules (IRS Notice 2003-64) regarding the documentation of trusts and foundations previously documented under the "Swiss Solution". Simple and grantor trusts will have to provide new documentation including a US Tax Identification Number ("TIN"). In this regard the beneficial owners will have to be disclosed to the IRS. Whilst the Swiss Bankers Association has initiated discussions with the IRS on this subject, it remains unclear whether the TIN requirement will be removed. All Client Advisors have, therefore, been requested to contact their affected clients (grantors/BOs) before 31 July 2004 so that they could choose one of the alternative solutions: (i) the sale of US securities and the respective waiver not to invest in US securities going forward, (ii) the set-up of an underlying company or (iii) the grantor becoming the direct holder for the US securities. All structures documented under Swiss Solutions but not invested in US securities have been blocked for US investments since May 2004.

The Risk & Compliance Steering Committee proposes:

For any structure documented under the Swiss Solution holding US assets (2'500 clients), which could not be contacted by 31 July 2004, we propose the following:

- UBS will establish an underlying company in the Bahamas for UBS internal structures holding **US securities above a threshold of CHF 500'000.** This will result in ca. 550 underlying companies to be set up.
- UBS will establish an underlying company in the Bahamas for the remaining UBS internal structures where the **total invested assets are above a threshold of CHF 10m** and the total value of US securities above CHF10'000. This will result in an additional 100 underlying companies to be set up.
- It is assumed that 20% of those clients who could be contacted will wish to set up underlying companies rather than sign a waiver not to invest in US securities. This will result in an estimated 250 underlying companies.
- The fee for the underlying company (one off CHF 1'700; yearly CHF 2'100) will be charged to the client.
- All clients with external structures or internal structures below the above thresholds who cannot be contacted will be subject to forced sales.
- For the set up of 900 underlying companies before 31 October 2004, Financial Planning requests an additional 15 FTE temporarily for 3 months (8 in Switzerland and 7 in the Bahamas).
  The resulting one-off total direct costs are CHF 0.6mio vis-à-vis generated net revenues of CHF 1.0mio.
- For the ongoing administration of 900 additional underlying companies, Financial Planning

Please note that this cover sheet and additional documentation to be distributed to the EB members have to be send to the WM&BB Management Office no later than Thursday evening before the respective EB meeting. In case of questions please contact Cassienne Fierz (1923 - 4 25 21) or Flurin Durisch (1923 - 4 88 83).

GOVERNMENT EXHIBIT 11

requests an additional 5 FTE (3 in Switzerland and 2 in the Bahamas).
The total direct costs for these FTE are CHF 0.9mio vis-à-vis a yearly net revenue of CHF 1.3mio .

Reeves Declaration
Exhibit 12

From: Bovay, Christian
Sent: Wednesday, May 02, 2001 12:04 PM
To: 'Bertschi, Heinz'; 'Bovay, Christian'; 'Duboll, Christophe'; 'Furrer, Stephane'; 'Gianferrari, Denis'; 'Gomez, Angel'; 'Helm, Stephan'; 'Huber, Hanno'; 'Keller, Anita'; 'Kuhn, Yves'; 'Machalke, Christine'; 'Matherat, David'; 'Mundwiler, Stephane'; 'Pictet, Laurent'; 'Rizzetto-Alemanno, Aime'
Subject: FW: QI at clients potentiels
Importance: High

FYI
Ceci nous confirme qu'il faut agir avec grande prudence avec les potentiels.
Christian

-----Original Message-----
From: Schumacher, Hansruedi
Sent: mercredi, 2. mai 2001 10:56
To: 'Bonalumi, Gianpaolo'; 'Bovay, Christian'; 'Grassi, Andreas'; 'Guldimann, Beat'; 'Hug, Stefan'; 'Luetolf, Dieter'; 'Schmidiger, Benno'
Subject: FW:

to all CA's -> pls keep it confidential

I have my slight doubts about this report but to be on the safe side I instruct all client advisors to be prudent in first time clients re QI, possible structures etc.

mentioning of solutions only to clients which we already know since some time

thanks, regards
Hansruedi

-----Original Message-----
From: Rossetti, Gian z.h.r.o.p.
Sent: Mittwoch, 2. Mai 2001 10:24
To: Gagnebin, Georges; Adjadj, Michel; Capitelli, Rene z.h.c.p.e.; Decurtins, Arthur z.h.d.c.n.; Liechti, Martin; Rohner, Marcel; Sipes, Richard; Weil, Raoul; Sauer, Hans-Peter; Schumacher, Hansruedi; Von-Wyl, Walter
Subject: FW:

FYI

Gian Pietro Rossetti

-----Original Message-----
From: Odermatt, Franz z.h.o.d.r.
Sent: Freitag, 27. April 2001 16:47
To: Rossetti, Gian z.h.r.o.p.
Subject:

Sehr geehrter Herr Rossetti

Eine vertrauliche Info für Sie (falls sie stimmt):

GOVERNMENT EXHIBIT 12

Ich habe heute an einer Tagung u.a. den QI-Spezialisten von Baker & McKenzie getroffen. Marnin Michaels ist Amerikaner, operiert hier aus Zürich heraus und hilft Banken, den QI-Setup aufzusetzen.

Gemäss Michaels hat die IRS vor rund drei Wochen hier in der Schweiz eine Undercover-Aktion mit dem Ziel gestartet, die QI-Prozedere der Schweizbanken im Falle von US-Staatsbürger in einem Feldversuch 1 : 1 zu testen. Dabei ging es offenbar insbesondere auch um solche Problemstellungen, ob der Berater auch nichtdeklarierte Fonds von Amerikanern entgegennimmt, oder er Ratschläge zur Umgehung der QI-Problematik erteilt und wie er generell auf QI-Probleme reagiert.

Die IRS-Leute agierten hier in der Schweiz offenbar mit dem Einverständnis der Schweizer Steuerbehörden!

Michaels ist eher per Zufall auf diesen Sachverhalt gestossen, weil auch er von einem der Agenten über die QI-Situation in der Schweiz befragt wurde und er sich dann über die sehr detaillierten und gezielten Fragen gewundert hat. Nach seinem eigenen Bekunden hat er sich dann bei Kollegen in der IRS erkundigt, ob IRS-Leute hier "under cover" tätig seien, was ihm informell (und off the record) bestätigt wurde.

MfG

Franz Odermatt

FYI
Ceci nous confirme qu'il faut agir avec grande prudence avec les potentiels.

Christian

----Original Message----
From: Schumacher, Hansruedi
Sent: mercredi, 2 May 2001 10:56
Ton: "Bonalumi, Gianpaolo"; "Bovay, Christian"; "Grassi, Andreas"; "Guldimann, Beat"; "Hug, Stefan"; "Luetolf, Dieter"; "Schwidiger, Benno" Subject: L.G.:

ton all CA's - > pls keep it confidential

I have my slight doubts about this report but tons of fuel element on the safe side I instruct all client advisers tons of fuel element prudent in roofridge time clients NH QI, possible structures etc.

mentioning OF solutions only tons clients which incoming goods already know since some time

thanks, regards
Hansruedi

----Original Message----
From: Rossetti, Gian z.h.r.o.p.
Sent: Wednesday, 2 May 2001 10:24
Ton: Gagnebin, Georges; Adjadj, Michel; Capitelli, Rene z.h.c.p.e.; Decurtins, Arthur z.h.d.c.n.; Liechti, Martin; Rohner, Marcel; Sipes, Richard; Because, Raoul; Farmer, Hans Peter; Schumacher, Hansruedi; Of Wyl, walter
Subject: L.G.:

FYI

Gian Pietro Rossetti

----Original Message----
From: Odermatt, Franz z.h.o.d.r.
Sent: Friday, 27 April 2001 16:47
Ton: Rossetti, Gian z.h.r.o.p.
Subject:

Dear Mr. Rossetti

Confidential info. for it (if it is correct):

I among other things met the QI-specialist of Baker & McKenzie today at a conference. Marnin Michaels is American, operated here from Zurich and helps banks to put the QI-Setup on.

In accordance with Michaels the IR started an undercover action with the goal approximately three weeks ago here in Switzerland, the QI-procedures of the Switzerland banks in case of of US citizen in a field test 1: to test 1. It concerned obviously in particular also such problem definitions whether the adviser receives funds of Americans, also not-defined, upper he pieces of advice for the evasion of the QI-problem given and as he generally reacted to QI-problems.

The IRS people acted here in Switzerland obviously with the Einverständnis of Swiss revenue offices!

CONFIDENTIAL TREATMENT REQUESTED U00007532

Michaels is rather encountered by coincidence this circumstances, because also he was asked by one of the agents over the QI-situation in Switzerland and he at the very much detailed and purposeful questions was then surprised. About its own stating it inquired then with colleagues in the IR whether IRS people are here more under more cover active, which was confirmed informally (and off the records).

MfG

Franz Odermatt

CONFIDENTIAL TREATMENT REQUESTED U00007533

Reeves Declaration
Exhibit 13

13 JAN 86 - 7-8 · 197

Application for the opening of an account

gefilmt W Nr.

with Swiss Bank Corporation in Winterthur

Account-holder(s) Name and first names (Married women, please indicate maiden name)	Legal Domicile (exact address)	Nationality Date of birth	Profession
		FL	
	Vaduz		

References / Identity Papers

Correspondence (Language English)
— except in the case of special circumstances left at the bank's discretion —

☐ To be sent to the following address:

☒ To be retained, against remuneration, by the Bank which is hereby discharged of any liability for possible consequences. Mail not claimed by me/us can be destroyed after a period of 3 years.

Power of Attorney in favour of (as per separate document) (Please indicate name, first name and domicile) refer to "Authorized Signatures"

Account / Securities deposit / Precious metals

☐ Account in Swiss francs
☒ Current account in foreign currency US$ Current Account, Can$ Current Account
☒ Securities deposit
☐ Metal account
☐

Remittances received in a currency for which there is no corresponding account are to be credited at the Bank's discretion to an already existing account or to be maintained in the currency received.

If a Joint Account is opened, remittances received in the sole favour of one account holder only shall automatically be credited to the joint account, unless a separate account exists in the exclusive favour of the beneficiary or unless the Bank is in possession of instructions to the contrary.

Capital increases

☐ Please ask for instructions
☐ Exercise the rights
☐ Sell the rights
☐ The Bank is authorized to act at its discretion in the customer's interests

Special instructions

The Bank is discharged of all liability for decisions left to its discretion.

I/We acknowledge having taken note of the translation of the General Conditions reproduced on the reverse side and consider myself/ourselves bound by the official text in French and furthermore accept jurisdiction of the Courts in Winterthur

Metal accounts and the custody of precious metals and coins are subject to separate regulations.

As far as a married woman is by law required to obtain her husband's consent to maintain having been given.

TORONTO, Nov. 24, 1985

Place / Date

Signature(s)

COPY

GOVERNMENT EXHIBIT 13

6

Declaration on opening an account or deposit
(Form A according to Art. 4 and 5 ACB)

I/We the undersigned hereby declare

☐ that I am/we are acting for my/our own account

☒ that I am/we are acting for the account of the following person(s):

Name(s)/Company	Domicile, Country
USA Toronto	CAFT: 124 J

☐ that the domiciliary company I am/we are representing is controlled by the following individual(s):

Name(s)	First name(s)	Place of residence, Country

(cross where applicable)

Copy

I/We the undersigned am/are aware of the fact that banking secrecy, protected in accordance with Art. 47 of the Federal Law on Banks and Savings Banks of 8th November, 1934/11th March, 1971, is not unrestricted: The organs, employees and mandataries of the bank are liable to give evidence and information vis-à-vis the authorities where federal and cantonal stipulations require their so doing (e.g. in criminal proceedings). This obligation also exists vis-à-vis foreign authorities insofar as the Swiss Confederation grants judicial assistance to the country in question.
I/We the undersigned am/are also aware of the fact that the establishment of accounts and deposits maintained under numbers or passwords is a purely internal measure of the bank affecting in no way its obligation vis-à-vis the authorities to testify or to furnish information.

Name(s) First name(s)

Vaduz
Address of residence

TORONTO NOV. 24, 1985
Place, date

TERRITORY OF THE BRITISH VIRGIN ISLANDS

THE INTERNATIONAL BUSINESS COMPANIES ACT
(CAP. 291)

CERTIFICATE OF INCORPORATION (SECTIONS 14 AND 15)

No.

The Registrar of Companies of the British Virgin Islands HEREBY CERTIFIES pursuant to the International Business Companies Act, Cap. 291 that all the requirements of the Act in respect of incorporation having been satisfied,

[redacted]

is incorporated in the British Virgin Islands as an International Business Company this day of April, 2000.

Given under my hand and seal at Road Town, in the Territory of the British Virgin Islands

REGISTRAR OF COMPANIES

RESOLUTION OF THE DIRECTORS IN TERMS OF PARAGRAPH 77 OF THE ARTICLES OF ASSOCIATION

IT WAS RESOLVED

a bank account be opened with

UBS AG
Paradeplatz 6, CH-8098 Zürich

on a credit basis only, in accordance with the bank mandate form, a copy of which is hereto attached and forms a part of these minutes.

IT WAS FURTHER RESOLVED THAT

a bank account be operated by the sole signature of:

We the undersigned being the Directors of [redacted] being entitled to receive notice of a Meeting of Directors do hereby consent to the above resolution being adopted by the Company.

Dated this 17th November 2000

5/6

UBS

Blocker no.

Opening of an account/custody account (firms, corporations and other institutions)

with UBS AG (hereinafter UBS) in Zurich-Paradeplatz

☒ Name account ☐ Numbered account (Cpa)

Accountholder (please enter name; if the accountholder is acting as a trustee, please also provide the name and exact designation of the trust)

Legal form

Company Limited

Legal domicile (please provide exact address: street, postal code and city)

Tortola, British Virgin Islands

Entered in commercial register of (city): British Virgin Islands

Business sector and activities

Domicile of head office (only required if account is opened for a branch or agency)

Vaduz

Affiliate of

Correspondence instructions

Except in special circumstances, correspondence will

☒ be retained for a fee and held available at UBS which is hereby discharged of any liability for possible consequences. Any and all communications retained in this manner shall be deemed to have been duly received by the client. Unless otherwise specified, the date on UBS document concerned shall be regarded as the date of receipt by the client. Correspondence, which the client does not claim, may be destroyed after 3 years.

☒ be sent to the following address:

Vaduz

☐ be sent in duplicate to the following addressee:

Language for correspondence: ☐ German ☐ French ☐ Italian ☒ English ☐ Spanish

Telephone*: Telefax*:

*please provide you code

63037 E V1 01.2000 P3 27.11.2000 Page 1/2

UBS

Master no.

Account holder:

General authorization for fiduciary investments (if not desired, please cross out entire section).

I/We hereby authorize UBS to use all or part of the funds available at a given time in our account with UBS to make investments on a fiduciary basis in its name, but for our account and at our risk. Should UBS not receive or not receive in time (i.e. at least five days before maturity of the investment concerned) other instructions from us, UBS may choose debtor, amount, currency and maturity at its discretion. Any measures by the country in whose currency and in which the investment is made remain reserved. For sole proprietorships, this framework authorization remains valid after the death or incapacity of the proprietor.

Account/custody account instructions (please indicate the desired service)

Current account(s):	☐ Swiss franc (CHF)	☒ US dollar (USD)
	☐ German mark (DEM)	☐ Pound sterling (GBP)
	☐ French franc (FRF)	☐ Dutch guilder (NLG)
Other account(s):	☐	☐
Custody/metal account:	☐ securities account	☐ metal account
Reference currency:	US$	

Special instructions

General conditions and place of jurisdiction

UBS may credit remittances received in a currency for which there is no corresponding account to an already existing account or may maintain them in the currency received. UBS is also specifically entitled to open additional accounts in the name(s) of the accountholder(s) in order to credit remittances in foreign currencies.

The following regulations/conditions also apply to this account/custody account relationship:

General conditions, the BASIC CONDITIONS for the use of electronic aids, the SPECIAL TERMS AND CONDITIONS for the use of the UBS card with PIN code and the Regulations governing custody and metals accounts.

I/We have received and taken note of a copy of these conditions/regulations and agree to be bound by them.

I/We agree to give UBS prompt notification of every change of address. If UBS is not in possession of a valid mailing address for correspondence, I/we agree to bear the fees and charges according to the prevailing schedule.

The present Agreement and/or Declaration shall be exclusively governed by and construed in accordance with Swiss law. The place of performance of all obligations of both parties, the place of debt collection, the latter only for Customers domiciled outside Switzerland, as well as the exclusive place of jurisdiction for any disputes arising out of and in connection with the present Agreement and/or Declaration shall be Zurich.

UBS reserves the right, however, to take legal action against the Undersigned before the authority of his/her/its domicile or before any other competent authority, in which event exclusively Swiss law shall remain applicable.

I/We instruct UBS to open an account in our name according to the conditions specified above. The authority to sign is indicated on a separate list of Authorized signatures.

Vaduz, November 29, 2000

Place/Date

Firm and signature(s)

For internal bank use only

Account Opening: ☐ through correspondence ☒ in presence of the contracting partner

Customer Identification carried out as per regulation

OU-Ref./Customer Advisor's signature:

OU-Ref./Supervisor's sig. (as per directives PR1/005.

K3037 E V1 01.2000 F3 PB/DG/010

UBS

A

Verification of the beneficial owner's identity
(Form A as per Art. 3 and 4 CDB)

Account/Custody Account No.: Contracting partner:

Category:

The undersigned hereby declares:
(Mark with a cross where appropriate)

☐ that the contracting partner is the beneficial owner of the assets concerned.

☒ that the beneficial owner of the assets concerned is:

Last name/First name (or firm) Address/Domicile, Country

FL USA

The contracting partner undertakes to inform the bank immediately of any changes.

Vaduz, November 29, 2000

Place/Date Signature(s)

For internal bank use only

Customer identification carried out as per regulations
OU-Ref./Customer Advisor's signature:
63050 E VG 01.2000 P2 OU-Ref./Supervisor's sig. (as per directives PF/1/005):

AG - SUBSTITUTE W-8BEN FOR INTERNAL PURPOSES ONLY

W-8BEN
(Rev. December 2000)
Department of the Treasury
Internal Revenue Service

Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding

▶ Section references are to the Internal Revenue Code. ▶ See separate instructions.
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

Do not use this form for: Instead, use Form:

- A U.S. citizen or other U.S. person, including a resident alien individual W-9
- A person claiming an exemption from U.S. withholding on income effectively connected with the conduct of a trade or business in the United States W-8ECI
- A foreign partnership, a foreign simple trust, or a foreign grantor trust (see instructions for exceptions) . . . . . W-8ECI or W-8IMY
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (see instructions) . . . . . W-8ECI or W-8EXP

Note: *These entities should use Form W-8BEN if they are claiming treaty benefits or are providing the form only to claim they are a foreign person exempt from backup withholding.*

- A person acting as an intermediary W-8IMY

Note: *See instructions for additional exceptions.*

Part I Identification of Beneficial Owner (See instructions.)

1 Name of individual or organization that is the beneficial owner

2 Country of incorporation or organization: British Virgin Islands

3 Type of beneficial owner: ☐ Individual ☒ Corporation ☐ Disregarded entity ☐ Partnership ☐ Simple trust ☐ Grantor trust ☐ Complex trust ☐ Estate ☐ Government ☐ International organization ☐ Central bank of issue ☐ Tax-exempt organization ☐ Private foundation

4 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.
Portola, NVI

City or town, state or province. Include postal code where appropriate.
Portola

Country (do not abbreviate): British Virgin Islands

5 Mailing address (if different from above)
Vaduz, Liechtenstein

City or town, state or province. Include postal code where appropriate.
Vaduz

Country (do not abbreviate): Liechtenstein

6 U.S. taxpayer identification number, if required (see instructions) ☐ SSN or ITIN ☐ EIN

7 Foreign tax identifying number, if any (optional)

8 Reference number(s) (see instructions)

Part II Claim of Tax Treaty Benefits (if applicable)

9 I certify that (check all that apply):

a ☐ The beneficial owner is a resident of _____ within the meaning of the income tax treaty between the United States and that country.

b ☐ If required, the U.S. taxpayer identification number is stated on line 6 (see instructions).

c ☐ The beneficial owner is not an individual, derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits (see instructions).

d ☐ The beneficial owner is not an individual, is claiming treaty benefits for dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation, and meets qualified resident status (see instructions).

e ☐ The beneficial owner is related to the person obligated to pay the income within the meaning of section 267(b) or 707(b), and will file Form 8833 if the amount subject to withholding received during a calendar year exceeds, in the aggregate, $500,000.

10 Special rates and conditions (if applicable—see instructions): The beneficial owner is claiming the provisions of Article _____ of the treaty identified on line 9a above to claim a _____ % rate of withholding on (specify type of income): _____
Explain the reasons the beneficial owner meets the terms of the treaty article: _____

Part III Notional Principal Contracts

11 ☐ I have provided or will provide a statement that identifies those notional principal contracts from which the income is not effectively connected with the conduct of a trade or business in the United States. I agree to update this statement as required.

Part IV Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- I am the beneficial owner (or am authorized to sign for the beneficial owner) of all the income to which this form relates.
- The beneficial owner is not a U.S. person.
- The income to which this form relates is not effectively connected with the conduct of a trade or business in the United States or is effectively connected but is not subject to tax under an income tax treaty.
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disbursement the income of which I am the beneficial owner.

Sign Here ▶ _____ Signature of Individual or Authorized Person authorized to sign for beneficial owner | 28.12.2000 Date (MM-DD-YYYY) | DIR. SECRETARY Capacity in which acting

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 25047Z Form W-8BEN (Rev. 12-2000)

61520 E J2 Original (USE AG INTERNAL)

Reeves Declaration
Exhibit 14

From: Schumacher, Hansruedi
Sent: Friday, February 08, 2002 5:45 PM
To: Foellmi, Markus z.h.f.m.i.; Saunders, John; Zimmermann, Franz; Liechti, Martin; Von-Wyl, Walter
Cc: Topley, Abigail+; Skierka, Rainer; Elliott, Walter; Challis, Shaun; French, Andrew; Challis, Shaun; Webb, Jim; Huser, Martin; Landolt, Stefan; Morris, Thomas; Morris, Tom
Subject: RE: QI/US Compliance

Dear all

Following on from the recent exchanges of e-mails regarding the above topic, I would like to stress that there is a clear objective for our Business Area NorthAmericas to grow its investment Assets under Management and increase overall return on assets for tax-compliant US clients.
In London we have established a subsidiary (UBS Investment Advisors Ltd.) which is registered with the US SEC to provide investment Advisory Services to 'W9' US Resident Clients. This project received sign off from the Private Banking Business Committe, the Legal Structure Committee and the new Product Group.
The now to be apllied solution for Switzerland , i-e. PM only and no reporting to the USA, is not appropriate for the business in London. For the new UK Subsidiary, we must be able to undertake reporting of all Deemed Sales Income.
We should be grateful for your support in achieving this and enabling London to investigate further a solution for reporting, ie. Though a custodian (Citibank or other)or direct the IRS.
In the meantime, London will arrange for item (1)to (3) below to be achieved by the 28 February deadline.

Additionally UBS PB in CH must be able to have a relationship with tax-compliant US clients, to disclose and report accordingly.

If we cannot accept tax-compliant US clients, either in London and/or Switzerland, we will miss out on a huge opportunity.

As Markus is proposing, we all should have a tel conf/meeting in order to discuss this issue and to come forward with clear and definite instructions.

nice weekend
Hansruedi

-----Original Message-----
From: Foellmi, Markus z.h.f.m.i.
Sent: Freitag, 8. Februar 2002 16:30
To: Saunders, John; Zimmermann, Franz; Liechti, Martin
Cc: Topley, Abigail+; Skierka, Rainer; Schumacher, Hansruedi; Elliott, Walter; Challis, Shaun; Von-Wyl, Walter; French, Andrew; Challis, Shaun; Webb, Jim; Huser, Martin; Landolt, Stefan
Subject: RE: QI/US Compliance

Gentlemen
I think the following clarifications and differentiations are necessary in order to avoid misunderstandings, at least from a Swiss perspective and with regard to customers of booking center Switzerland and solely with regard to the tax aspects of the issue:
1. It is essential not to confuse the fundamental QI concept and the reporting requirements thereunder with the issues arising out of the "deemed sales rules".
2. Under the QI regime, a non-exempt US person should fundamentally file a W-9 with the QI, with which the US person also consents to be disclosed to the IRS.
US persons not consenting to disclosure will, in a jurisdiction which has strict banking secrecy, be penalized by fundamentally not being able to invest in US securities (and if nevertheless being invested therein being subjected to Backup

GOVERNMENT EXHIBIT 14

Reeves Declaration
Exhibit 15

Cross-Border Banking Activities into the United States (version November 2004)

1. Introduction; Regulated Activities in United States and Status of UBS Entities

The U.S. legal regulatory framework draws an important distinction between banking and securities activities:

Banking activities, most important cash and custody services, are governed by various federal and state laws and are regulated by various federal and state banking supervisors, including, in the case of UBS AG's branches, agencies, and bank depository subsidiaries, the Federal Reserve Board (the "Board"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC") and the Connecticut, Illinois and Utah state banking departments.

Securities related activities (i.e., broker-dealer, investment advisor) are governed by various federal and state laws and are regulated by the Securities and Exchange Commission ("SEC") and state securities supervisors. Broker-dealers who are members of, and governed by, a self-regulatory organization ("SRO") known as the National Association of Securities Dealers ("NASD"). There is a separate regulator and regulatory scheme for providers of commodities services.

UBS AG has several U.S. branches and agencies and various non-banking subsidiaries all properly licensed, but these licenses do not encompass cross-border services provided to U.S. residents by UBS AG offices or affiliates outside of the United States. (Unless otherwise specified, all references herein to "UBS AG" refer to offices located, or employees based, outside of the United States).

2. Advertising & Events

Advertising: Some state laws prohibit banks without a banking license from that state from soliciting deposits from that state's residents. States also may prohibit non-licensed lenders from making certain loans to consumers in such states. Any entity outside of the United States that is not registered with the SEC (and, in the case of brokerage activities, with the NASD) may not advertise securities services or products in the United States. Therefore, UBS AG will not advertise and market for its services with material going beyond generic information relating to the image of UBS AG and its brand in the U.S.

Events. UBS AG may not organize, absent an opinion from Legal, events in the U.S.

3. Establishing Relationships with New Clients Resident in the United States

Securities services/products. UBS AG may not establish relationships for securities products or services with new clients resident in the United States with the use of U.S. jurisdictional means. Thus, it must ensure that it does not contact securities clients in the United States through telephone, mail, e-mail, advertising, the Internet or personal visits.

Banking services/products. To avoid possible violations of state law and/or to avoid establishing and maintaining a place of business in the United States, UBS AG should ensure that:

- No marketing or advertising activity targeted to U.S. persons takes place in the United States;
- No solicitation of account opening takes place in the United States;
- No cold calling or prospecting into the United States takes place;

GOVERNMENT EXHIBIT 15

- No negotiating or concluding of contracts takes place in the United States;
- No carrying or transmitting of cash or other valuables of whatever nature out of the United States takes place; The same applies to actively organizing such transfers or attempting to circumvent this prohibition through other means.
- No routine certification of signatures, transmission of completed account documentation, or related administrative activity on behalf of UBS AG takes place;
- Employees do not carry on substantial activities at fixed location(s) while in the United States thereby establishing an office or sustaining a place of business.

Outside the United States. Soliciting and accepting banking business from U.S. residents while they are outside of the United States generally is not problematic.

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4. **Maintaining Relationships with Clients Resident in the United States**

Securities services/products. UBS AG may not maintain relationships for securities services or products with clients resident in the United States, unless the relationship is conducted without the use of U.S. means (e.g., telephone, mail, e-mail, advertising, the Internet or personal visits into the United States) and consistent with procedures UBS AG has established in this regard.

Banking services/products. If UBS AG obtains a U.S. resident client for banking services without violating the restrictions set forth in section 3 above, it may service the account:

- UBS AG may provide statements, account information and transaction confirmations to the client, provided it does so in accordance with the terms agreed by the client and in compliance with all applicable internal procedures.
- UBS AG may provide product and service information subject to the points mentioned in section 6 below.
- UBS AG may certify signatures, transmit account documentation and conduct related administrative activity for existing clients.

Under no circumstances will UBS AG be carrying or transporting cash and other valuables of whatever nature on behalf of clients into or out of the United States. The same applies to actively organizing such transfers or attempting to circumvent the prohibition.

When traveling cross-border, UBS AG employees always must remember that all clients of UBS AG expect us to take all necessary steps to safeguard confidentiality. Client advisors are referred to separate guidance on the protection of confidential information and other available resources that may assist.

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5. **Dealing with Financial Intermediaries and other Non-Private Clients Resident in the United States**

Securities services/products. UBS AG may not deal with financial intermediaries or other non-private clients resident in the United States in matters relating to securities services and products, except for registered broker-dealers and U.S. licensed banks, provided that it does not directly or indirectly deal with the private and non-private clients of such broker-dealers and banks.

Banking services/products. UBS AG may accept referrals from financial intermediaries in the United States, provided that the financial intermediaries (i) do not work for UBS AG, (ii) do not actively market UBS AG services and products, and (iii) make referrals only to accommodate client requests. In dealing with such intermediaries, UBS AG must comply with the restrictions set forth in sections 3 and 4 above.

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6. **Product Offering**

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Securities products. All securities products offered to U.S. persons must be compliant with U.S. laws, which generally means that they must be registered with the SEC. The purchase of securities may be exempt from registration if certain condition are met.

Lending products. It may be necessary to obtain a state license to offer lending products, depending on the purpose, amount, interest rate and borrower of the product. There is a reasonable argument that federal consumer protection laws do not apply to products offered by non-U.S. entities, but state consumer protection laws (e.g., anti-usury) may apply.

Research. UBS AG research may not be distributed to clients in the United States, except in very limited circumstances.

E-Banking. UBS AG has implemented specific restrictions for e-banking for U.S. customers.

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Reeves Declaration
Exhibit 16

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UBS AG
P.O. Box, CH-4002 Basel
Tel.+41-61-288 20 20

UBS Switzerland
Legal & Compliance International

Franz Zimmermann
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www.ubs.com

Fax

9 January, 2002

Urgent/ Strictly Private & Confidential

to Walter Stürzinger, CRO UBS Group — Fax +

cc Stephan Haeringer, Georges Gagnebin, Marcel Rohner, Martin Liechti, Hans-Peter Bauer, Hansruedi Schumacher, John Cusack, Markus Foellmi — Fax

pages 2 (including this page)

subject **US crossborder business model/ QI : Sales deemed to be effected in the United States**

Dear Walter:

I am following-up on your yesterday discussion with John Cusack and hasten to let you have a brief overview of the issues currently subject to intensive discussion:

A. U.S regulatory regime plus QI

Many of the core PB services provided by UBS to U.S. persons out of Switzerland are problematic due to the very restrictive approach the U.S regulatory regime takes with regard to permissible cross-border activities. As UBS's U.S. exposure has substantially increased with the acquisition of Paine Webber, PB senior management has asked to review this issue carefully and to submit proposals for the future business model. A memo dated September 13, 2001, outlined the issues.

While compliance with SEC rules is an old problem, the possible reporting/back-up withholding duties of QI banks under the so-called "sales deemed to be effected in the United States" is an issue that in relation with the QI first popped up back in December 2000 when CTX flagged it. This rule -if applicable in the QI regime - essentially says that a QI has to report gross sales proceeds on non US-securities held for a U.S person if the sale is deemed to be effected in the United States. The latter is the case if the customer has regularly transmitted instructions concerning this and other sales from within the United States. Since a Swiss QI is not in a position to disclose customer names, the QI has to alternatively levy back-up withholding tax on the sale proceeds. The key impact of the applicability of the said rule under the QI framework is that compliance will be checked within the QI audit 2003 for the year 2002.

B. The Process leading to the Current Situation

Bedienungsort / Disclaimer
[illegible].doc

GOVERNMENT EXHIBIT
16

ab

The issue of deemed sales has regularly been discussed at the QI Co-ordination Committee meetings. For a number of reasons, the final determination on this issue has not been reached. A major reason for this delay is that the bank had received two legal opinions during 2001 which state that the QI rules take precedent over general IRS-rules which are the basis for the deemed sales provisions with the result that a QI has no reporting obligations with regard to non-U.S. securities. On the other hand, there is apparently a tendency within the auditors world (this may hold true also for UBS's external auditor) to go for the applicability of the deemed sales rules within the QI regime. The IRS-audit guidelines are not yet finalised and none of the existing drafts specifically addresses the issue at hand.

C. The Problem and the Solution

Assuming that the deemed sales rules apply, the bank is potentially QI non-compliant for the U.S. customers concerned. (The bank currently reviews how many of the actual customers may qualify under the rule). It is important to note in this context that the QI has "only" to be in substantial compliance with the QI rules to receive a positive audit rating. As this QI audit will cover the year 2002, it has become crucially important to immediately address this question once and for all.

Since instructions coming from the United States territory trigger the deemed sales duties, the most likely solution is that the bank will, on shortest notice possible, stop to accept such instructions. In this sense, the relationships will be frozen (with a view to ultimately changing it into a PM mandate). Any course of action needs detailed analysis especially for three reasons.

- we must assess our legal risk arising out of such a "freeze" (respectively from an automatic transfer into PM accounts) from a Swiss contract law perspective
- from a U.S. SEC rules point of view need we make sure that the transition from now advisory into discretionary accounts does not undermine the bank's efforts to achieve Broker-Dealer and Investment Adviser compliance.
- the "automatic" transfer to discretionary relationships must hold water from a U.S. tax rules perspective as U.S tax authorities may perceive this to be a circumvention of QI obligations

A working group comprised of the markets, LCI, U.S.counsel and CTX will look into these issues to find appropriate solutions. Such detailed proposals should be ready by next Tuesday for the UBS Switzerland Executive Board meeting. You will of course receive copies of those recommendations.

We just finished an urgently set-up conference call amongst QI Co-ordination Committee members. At this call CTX reaffirmed its position that the deemed sales rules apply to QI banks. Against this background and taking into account the risks involved, the Committee agrees with the above outlined course of action.

I hope this is sufficient for your purposes.

00012586.doc

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Best regards,

Franz Zimmermann
Legal Counsel

Reeves Declaration
Exhibit 17

From: Tschirren, Eric
Sent: Thursday, February 28, 2002 7:22 PM
To: Zimmermann, Franz; McLaughlin, Mike; Buehrer, Oliver z.h.b.r.ß.
Cc: Schumacher, Hansruedi; Von-Wyl, Walter; Skierka, Rainer; Salzmann, Christoph
Subject: RE: Deemed sales

Dear Frank,
Many thanks indeed for your assistance we appreciate it.

Mike,
Good news!
Can you please issue an info in Nassau to that effect so that everyone is on the same page. I have discussed it with Thierry and Christoph and we are doing the talking to the clients and will make a few exceptions where it is necessary.
Thanks

Oliver,
We should make an exception for our mutual client and we will talk to him about this and confirm that his structure will be acceptable in Zurich so that we can start making the transfer of the account to you.
Thanks for comfirming your agreement.

Eric

-----Original Message-----
From: Zimmermann, Franz
Sent: Thursday, February 28, 2002 8:29 AM
To: McLoughlin, Mike
Cc: Tschirren, Eric; Schumacher, Hansruedi; Von-Wyl, Walter; Skierka, Rainer
Subject: RE: Deemed sales
Importance: High

Hi Mike,

Thanks for your mail requesting a ruling in this matter. After consultation
with Walter, I wish to confirm that we agree with your description of the
bank's position on non-US corporations with a US beneficial owner. Being a
lawyer, I have nevertheless two points:

- the bank must be properly documented (W-8BEN) signed by the directors of the
company) to be in a position to accept that the customer is an non-flow-through
entity

- I do not express any view on whether the tax treaty between USA and the
Bahamas calls for a different treatment of such structures in Nassau.

I hope this is of assistance.

Kind regards,

Franz

PS: Please do never assume that non-reaction from my side within a unilaterally
set deadline may be construed as agreement.

GOVERNMENT EXHIBIT 17

-----Original Message-----
From: McLoughlin, Mike
Sent: Mittwoch, 27. Februar 2002 17:22
To: Schumacher, Ramsruedi; Zimmermann, Franz
Cc: Tschirren, Eric; Salzmann, Christoph; Matthey, Thierry
Subject: Deemed sales
Importance: High

All

This is to confirm our understanding in relation to 'corporate' clients the BO of whom is a US resident following our telecon today. This understanding is applicable to accounts either in Nassau or in Switzerland i.e. a consistent approach is applied.

Our understanding:

1. For flow-through corporate US resident BO unable to issue orders.

2. For non-flow-through corporate (Bahamian IBC, Panamanian Cos, BVIs etc) it is possible for the US resident BO to issue orders from the US.

3. From an SEC perspective re non-flow-through corporate the US resident BO should NOT issue orders from the US.

Banks position:

1. Flow-through corporate to open FM account, no exceptions.

2. For non-flow-through corporate the Bank is looking to compliance with the SEC rules and US resident BOs should be encouraged NOT to issue orders (under a Power of Attorney) from the US. Only in exceptional circumstances should we agree to the US resident BO issuing orders from the US which equates to acceptability under deemed sales rules, but not to full SEC compliance.

Unless we hear to the contrary, within the next 24 hours, we will assume the above understanding is correct.

Thanks and regards

Mike

Reeves Declaration
Exhibit 18

[redacted]

CONTACT REPORT

Number		Currency	Value
[redacted]		USD	1'599'000
	Strategy	Since	Performance
	Advisory	2004 ytd	5.6%
Date	Where	City	Who
29.11.2004	[redacted]	New York	Client

Introduces a new code to facilitate discreet email contacts:
EUR = orange
USD = green
GBP = blue

100K = C
250K = 1 nut
1 M = a swan

DOCU=D

Place EUR cash in DOCU approx 3%
Place USD in DOCU more or less ATM

Buy forward accrual USD 1 mio ag. EUR (buying EUR!), lower level about 2.5 cents below spot. Call to confirm final price with him.

Email:

Took care of the [redacted] this morning, green @ 12 (about 13275), orange @ 3 (around 13720). I say about because I neglected to write down the exact numbers (too early in the morning), I can get them to you later.

I also booked the other trip, because as I was talking to the agent, it looked like it was moving away from us and I believe that you would be good with that. I got you [redacted]

We expect to move in a range at the moment.

I had not forgotten you, on the contrary. I sent you a mail the next day which you do not seem to have received, but which, interestingly enough, is not to be found in my sent items either.

The upper and lower levels are [redacted] First leg is December 7th. I was able to do it when the level was [redacted] but had to move fast because it was on the upswing. Later on in the day we would have been over [redacted] So I decided to move without first consulting you, since you had agreed in essence. That saved us some money.

The [redacted]s are all comfortable: about 2.5 orange nuts @13710 (3%) and about 2.05 green nuts @13270 (12%).

All clear?
Dieter

PS Just give me a short confirmation when you get this mail, to make sure things are working.
Follow-up: Next visit: Apr05

GOVERNMENT EXHIBIT
18

Reeves Declaration
Exhibit 19

UBS

CONFIDENTIAL

Project GLOBUS

February 22, 2006

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U00005976

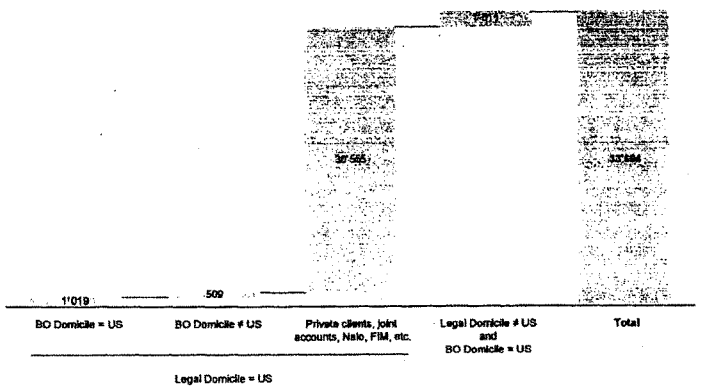
GOVERNMENT EXHIBIT 19

Definitions & disclaimer

- If not mentioned otherwise
  - Data comprise accounts where Legal Domicile and/or Beneficial Domicile is United States (= US client); the resulting scope of accounts includes several business types (e.g., clients with W9-form, clients without W9-form, US clients of non-US FIMs, "Nalo")
  - The scope of data includes all WMI Booking Centers, plus WMCH, plus BB, but within this scope excludes the W9-relevant Booking Centers (i.e., UBS Swiss Financial Advisers AG, UBS AG Stamford Branch, and UBS International, Inc.)
  - Data refers to full-year 2005 for flow figures and 31 December 2005 for stock figures
- All data used in the analyses are sourced from GMIS, which again draws on underlying local data sources. Although data output and analyses have been validated carefully, quality of the conclusions still depends on the quality of input data in the Booking Centers, which may vary across Booking Centers
- There is no systematic transparency on how the clients tax-declare their investments (e.g., clients without W9-form ordering income statement or capital gains/losses statement)

Size of US business

No. of accounts



Cornerstones of US service model

1. Booking Center Switzerland (BCCH)
   - Centralization of US-domiciled clients in WMI BS North America NAM (except FIM business and Nalo)
   - Cases that are not centralized need exemption approval
2. International Booking Centers
   - Not active in business with US-domiciled persons
   - Incidental relationships with US-domiciled persons need to be bundled within the Booking Center
3. No use of US means
   - Retained mail
   - Discretionary solutions (to prevent need for interaction and investment advice and to exclude broker/dealer risk)
4. Limited traveling to US
5. No UBS financial planning services

Key figures per segment

	No. of accounts (total)	Invested assets (CHF bn)	Net revenues (CHF m)	NNM* (CHF bn)
MassA	22'057	[illegible]	12.1	n.a.
CorA	7'045	5.1	[illegible]	n.a.
HNWI	1'569	[illegible]	[illegible]	n.a.
KC	23	2.1	2.6	n.a.
Total	23'694	[illegible]	[illegible]	[illegible]

Estimated profit contribution of CHF 150m**

* No allocation to segments possible
** Net Revenue minus Direct Cost, based on 7% C/I-ratio of Countryteam US International

1 2 Centralization of US clients

Accounts by Booking Center

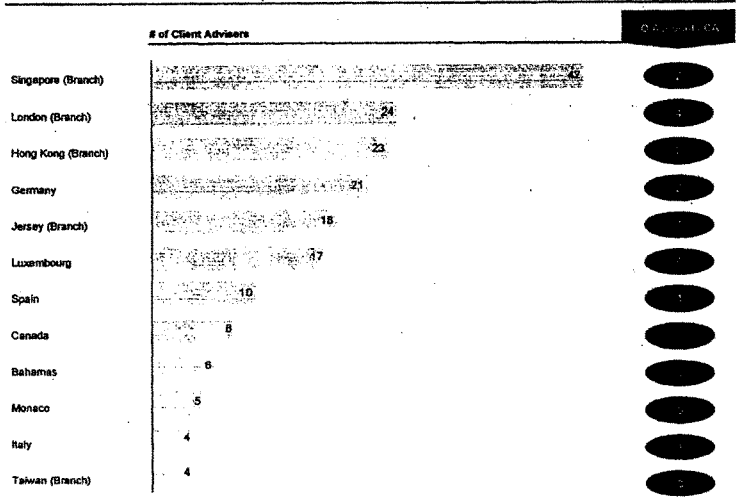
Switzerland	[redacted]
Luxembourg*	100
London*	99
Singapore*	96
Canada*	58
Other**	182

Accounts in BCCH by BA/BU/BS

NAM	[redacted]
Other AME	181
Other WMI	509
BB	3,569***
WMCH	1,298****

* Mostly/exclusively accounts with W8-form
** Hong Kong, Jersey, Germany, Monaco, Bahamas, Taiwan, Spain, Italy (mostly/exclusively accounts with W8-form)
*** Mainly "Hochvermögen"
**** Mainly FIM business

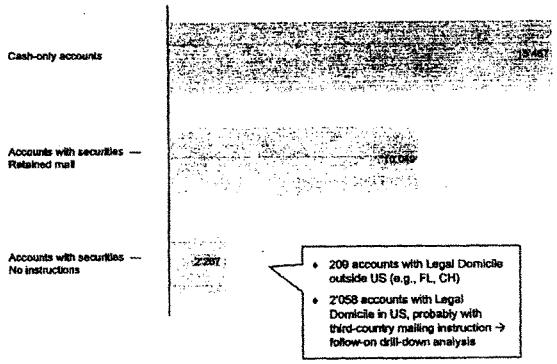
2 CAs in International BCs dealing with US clients*



* Mostly/exclusively accounts with W8-form

3 No use of US means (1)

Basis: BCCH BU Americas



- 209 accounts with Legal Domicile outside US (e.g., FL, CH)
- 2'058 accounts with Legal Domicile in US, probably with third-country mailing instruction → follow-on drill-down analysis

❸ No use of US means (2)

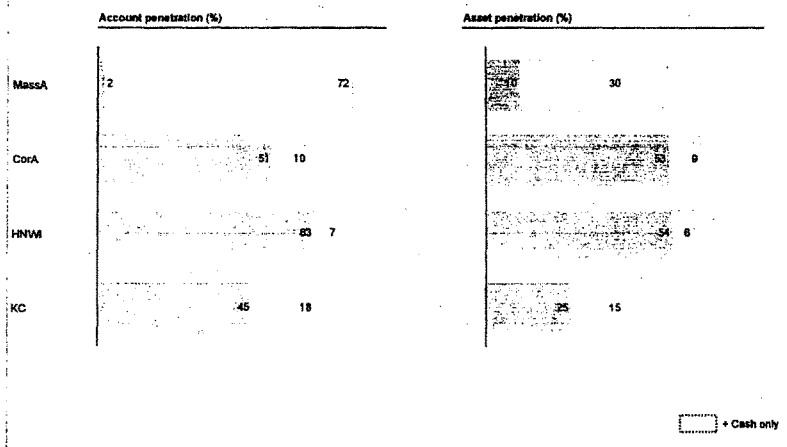
	Discretionary solutions				AMS products			
	Account penetration (%)		Asset penetration (%)		Account penetration (%)		Asset penetration (%)	
BCCH NAM	18	66	49	18	[redacted]		[redacted]	
BCCH other AME	14	52	15	45	[redacted]		[redacted]	
WMCH	8	n.a.	11	n.a.	[redacted]		[redacted]	

[redacted]

= Cash only

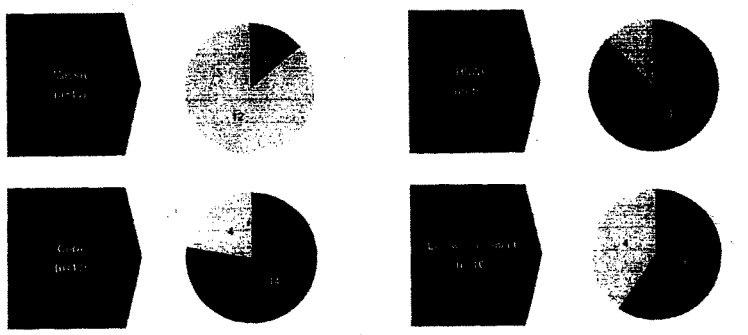
❸ No use of US means (2) — Discretionary share by client segment *BACKUP*

Basis: BS NAM



4 Traveling

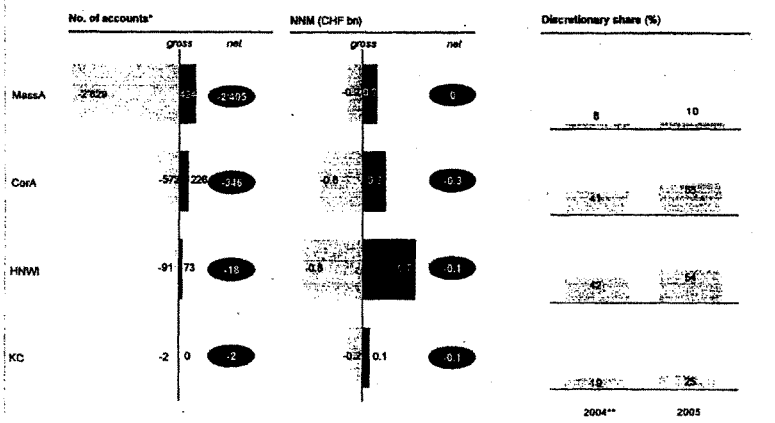
Number of CAs; Basis: BS NAM only



No travel Travel

Development 2004 — 2005

Basis: BS NAM



* Closings approximated by being based on technically existing accounts with zero balance at year-end and outflows during 2005
** Estimate based on 2005 level and development in Countryteam US International

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Current and planned control framework

Current framework

- All exemption requests to be signed by RMM North America
- Regular CA education (e.g., US country paper)
- Service model guidelines and instructions
  - Cash or discretionary
  - No US securities
  - No investment advice, no brokerage/ dealing
  - Retained mail

Planned extensions

- Build-up of US Center of Competence (2 initial FTEs)
  - Advising all client advisers with US clients, in e.g.,
    - Opening of custody account
    - Appropriate entity (AG vs. SFA)
  - Systematic monitoring of e.g.,
    - Exemption requests
    - Changes in domicile
    - Retained mail compliance
    - Products/solutions compliance
- Supervision of FIM business with US clients

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Potential enforcement measures

- 1 Further selective centralization to NAM (from WMI, WMCH and BB, excluding Nalo and FIM)
- Forced discontinuation of lower business segments (e.g., phasing out of MassA segment: 74% of accounts, 7% of revenues)
- 3 Enforced implementation of local bundling decisions
- Discontinuation of US business (i.e., 535 accounts, CHF 1.5bn invested assets)
- 5 Enforced check of retained mail policy
- 6 Accelerated transition to discretionary or cash-only solutions
- CAs' telephones blocked for outbound calling into the US
- CAs' e-mail accounts monitored by Compliance (to ensure no e-mails are sent to US)
- Regular CA compliance self-declaration ("no telephone", "no e-mail", "no investment advice")
- Traveling "light" (i.e., no TAS, no printer)
- Only HNWI and KC advisers traveling (partial US travel ban, lower segments)
- No more traveling (US travel ban)
- Business carve-out, e.g.,
  - Core element of a new FIM platform
  - Divestiture to third party within larger transaction

- No/little business impact
- Some reductions in business
- Significant business decrease
- Virtual/real exit

13

Competitor behavior (Credit Suisse)

- W9-business in separate legal entity (Credit Suisse Private Advisors), similar to UBS SFA
- Other business within parent bank
  - Centralized
  - Smaller in size than UBS business
  - Regular travel to US but less frequent
- Further US business with private banking subsidiaries ("private banks")
  - Centralized
  - Small
  - Some travel

Contact information

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Reeves Declaration
Exhibit 20

UBS Wealth Management

Cross-Border Business Training Workshop North America 2004

[illegible]
September 20, 2004

GOVERNMENT EXHIBIT 20

Agenda

- Goals of the workshop
- Overview of the relevant risks
- Cross-border regulations and permissible activities in the USA and Canada
- Discussion of Case studies

UBS Wealth Management

Goals of the Workshop

- Sharpen awareness of the legal (incl. tax)) and regulatory environment and related risks
- Adapting the behavior to the legal and regulatory framework and to the respective risk situations
- Sharing of knowledge with colleagues and risk specialists (particularly IT- security) as well as discussion of relevant issues important to you

UBS Wealth Management

The Battle Field

- Increase of business targets (acquisition of clients, NNM, sale of products etc.), change of client expectations, sophistication of services.

- Increased exposure in target country, change of regulators' attitude, shift of regulators' focus, expectations of the home regulator

UBS Wealth Management

Overview over the Relevant Risks

- Non-compliance with rules and regulations of the target country , in particular
  - supervisory rules (banking and securities activities)
  - tax regulations
- Infringements on Client Confidentiality (Booking Center Issue)
- Risks resulting from particularities of the US legal system, e.g. broad subpoena powers, long-arm jurisdiction rules

UBS Wealth Management

X-border USA: The regulatory framework is much too complex to understand but ...

- US Securities Laws:
  - SEC Exchange Act 1934/ Investment Advisers Act 1940
    - triggering event: Use of US jurisdictional means, e.g. telephone, fax, mail, e-mail or personal visits
    - issue: registration risk for UBS AG
- QI/Deemed sales:
  - QI Basic: Segregation of US W9 from Non-W9 customers and making sure that Non-W9 clients do not hold US securities
  - Deemed sales: Enlarges the scope to Non-US securities and restricts the execution of securities orders stemming from US soil

UBS Wealth Management

X-border USA: .... which makes the solution simple

- No active or concrete solicitation for UBS AG's services (neither banking nor securities) takes place in the US (other than for UBS AG's US offices)
  - discussion of *banking* services (cash and custody accounts) on a purely unsolicited basis is possible even when using US jurisdictional means
- Securities-related activities
  - provision of securities services and products without the use of US jurisdictional means only. In a nutshell: No securities-related communication from and to the US allowed
  - this ringfencing model essentially takes care of SEC and deemed sales-issues

UBS Wealth Management

X-border Canada:

- Taking a broad brush approach: Similar system as in the USA, i.e.
  - distinction between banking vs. securities activities
  - discussion of custody services and *reporting* in Canada on banking and securities-related activities permissible
- But UBS is not subject to any contractual obligations in relation to taxes!!

UBS Wealth Management

US Subpoenas

- Command to appear at a given time and place, issued by one of the parties of a litigation, with force of a court order
- Can force parties and non-parties to make witness statements
- May be served on UBS employee as soon as he/she is on US soil, even if on a leisure trip in the US
  - this creates jurisdictional conflicts, i.e. UBS employee is bound by Swiss banking secrecy (irrespective that he/she is abroad) but exposed to US judicial powers. Non-compliance with court order to respond may result in contempt of court

UBS Wealth Management

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Fax: +41-1-234-8280

www.ubs.com

UBS Wealth Management

Reeves Declaration
Exhibit 21

Memo

Privileged and Confidential
client/attorney work

To: Martin Wirz, Legal PB Basel

cc: Hansruedi Schumacher FINM U.S. International clients

From: Markus Allolter, Legal PB New York

Subject: Implications of services/products offered to U.S. clients by Swiss offices of UBS

Date: September 3, 1999

1. Background

The U.S. Securities Exchange Act of 1934 (the "Exchange Act"), and the Investment Advisors Act of 1940 (the "Advisors Act") impose important restrictions and requirements on the activities of a foreign broker and/or investment adviser with regard to customers who are U.S. persons. The provision of services that involve investment advice or brokerage and the means to engage in such activities are core Private Banking activities. Such activities however may trigger broker-dealer and/or investment adviser registration requirements of the above mentioned Acts, a registration which UBS' swiss offices fail to have.

In 1997 under the impact of the Holocaust claims and the pressure upon the Bank in the U.S. oldSBC considered various possibilities of reorganizing its global Private Banking activities insofar as those activities may affect U.S. persons with the aim of insuring full compliance with the applicable U.S. legal and regulatory requirements.

As a consequence of these profound considerations it became clear that to best meet the legal and regulatory requirements, the establishment of a U.S. based Limited Purpose Trust Company (LPTC) chartered under the New York State law would be a favorable solution. This subsidiary then had to register with the Securities and Exchange Commission (SEC) under the Exchange Act and the Advisors Act. The LPTC then would open a branch office in Switzerland and the U.S. customers of UBS in Switzerland would then be transferred to the Swiss Branch(es) of the Trust company. Furthermore, any new client relationships with U.S. customers would be established at this LPTC branch.

It's obvious that this solution would result in an organizational structure in Private Banking that operationally would be far from the most convenient. Furthermore private clients might not like to become customers of the Swiss branches of a U.S. Trust Company. In 1997 the Management decided to refrain from restructuring the PB business with U.S. resident clients as outlined above.

GOVERNMENT EXHIBIT
21

As a follow-up to this decision, this memo outlines the legal and regulatory risks of the present structure in UBS Private Banking, where different services are provided and many products are offered to U.S. clients through the Swiss offices of UBS. We further propose measures to reduce such risks. However it's important to note that if the Bank maintains its present organizational structure in serving U.S. clients in Switzerland these risk cannot totally be avoided.

2. Risk assessment of business transactions which trigger registration requirements

2.1. Brokerage

The SEC uses a territorial approach in applying the broker-dealer registration requirements to the international operations of broker-dealers. Under this approach all persons physically operating within the U.S. that effect, induce, or attempt to induce any securities transactions are required to register as broker-dealers with the SEC.

Nevertheless, the SEC also believes that registration should not be required when a foreign broker-dealer operating from outside the United States effects an unsolicited trade for an U.S. investor, if the investor has from within the U.S. sought out the foreign broker-dealer and initiated transactions in foreign securities markets entirely on his own request, without any type of solicitation by the broker-dealer in the U.S.. Thus the issue of solicitation is seminal to the question of whether a foreign broker-dealer must register under the Exchange Act. Recent rulings and other comments of the SEC suggest that the agency has moved toward a territorial approach to market regulation in which it recognises that when investors chose their markets, they would also choose the regulatory structure of those markets. On the other hand if a person is solicited in the U.S. the SEC believes that such a person could easily and rationally believe that the person was protected by the U.S. securities laws.

The key to the issue of solicitation is whether a foreign broker-dealer's activities in the United States may reasonably be viewed by the SEC as attempting to induce an investor's purchase or sale of a security. Solicitation includes efforts to induce a single transaction or to develop an ongoing business relationship. In the SEC's view, the deliberate transmission of information, opinions or recommendations to U.S. individual customers/prospects, whether directed at individuals or groups, could result in the conclusion that a foreign broker-dealer is soliciting and must register under the Exchange Act. This includes activities such as advertising in U.S. newspapers, running investment seminars for U.S. investors, publishing quotes of foreign stock prices in the U.S., providing research or advice about foreign securities, telephone calls to prospects or customers or any affirmative effort intended to induce transactional business. It has to be noted that the presence of UBS on the Internet with the overall presentation of services and products and its "UBS Quotes" service as well as publications of the Bank like "Optimus" might by recognized by the SEC as solicitation (See below section 6. and 7.).

Risk assessment: If a foreign broker-dealer failed to register where required, it could be subject to SEC enforcement action under Section 15(a) of the Exchange Act exposing the Bank and its directors to criminal and civil sanctions. Moreover a (permanent) injunction could be imposed against various types of services offered to U.S. clients while the Bank is not

registered with the SEC as broker-dealer where required. The SEC has in fact successfully enforced the Act against foreign broker dealers for unauthorized activity in the U.S. market.

In addition, the Bank potentially is exposed to customers' rescission actions brought under Section 29(b) of the Exchange Act. Moreover purchasers of securities, alleging that the seller was not registered as broker-dealer are even entitled to maintain a class action seeking rescission, or damages if rescission is not possible.

The engaging in impermissible broker-dealer activities in the U.S. furthermore bears a potential reputational risk for the Bank. An enforcement action by the SEC could jeopardize the Bank's ability of doing business in the U.S. or at least damage the Banks reputation and that of its U.S. affiliates with its supervisory authorities.

Preventive measures: (i) To avoid or minimize these legal risks, no solicitation of any kind for brokerage services should take place in the U.S. or to U.S. clients by the Swiss offices of the Bank or on behalf of these offices. (ii) Certain information provided on the Bank's internet sites (in particular UBS Quotes) could lead to the SEC's interpretation that the Bank is soliciting clients for brokerage services. Therefore it might be favourable for the Bank to let U.S. clients which intend to initiate transactions in securities markets through Swiss offices of the Bank sign a declaration, which can be part of the account opening documentation, where they represent that they were not solicited trough the internet or by other means for brokerage services.

2.2. Investment Advisory

Pursuant to the Advisers Act, solicitation of business in the United States by an unregistered investment adviser is prohibited. The Act applies to foreign entities including foreign banks which render investment advice to U.S. persons. Investment Adviser is any person who for (direct or indirect) compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who for compensation and as a part of regular business, issues or promulgates analyses or reports concerning securities. This definition includes in the opinion of the SEC the advising of clients or prospects concerning the relative advantages or disadvantages of investing in securities in general as compared to other investments. It is irrelevant whether it is a isolated advice or regular advice as part of a ongoing business relationship. Thus Swiss offices of UBS are legally not permitted to render advisory services to U.S. persons (the distribution of research reports in the U.S. by WDR is possible under certain circumstances).

It should be noted, that in contrast to brokerage services, the issue of solicitation does not have any impact on the registration requirements of investment advisors: There is no such thing as unsolicited investment advice and therefore the furnishing of investment advice or dissemination of research is not permissible, even when the U.S. customer had opened the banking relationship in Switzerland on his own initiative. The providing of investment recommendations on a regular basis to U.S clients would be deemed solicitation for future transactions especially brokerage.

Risk assessment: If a foreign investment adviser fails to register where required the SEC has broad powers to enforce the Act including civil money penalties. Moreover a (permanent) injunction could be released against various types of services offered to U.S. clients while the

Swiss offices of the Bank are not registered with the SEC as an investment adviser where required. Any willful violation of the Advisors Act are a crime punishable by fine or imprisonment.

In the last years the SEC has successfully enforced the Act against foreign investment advisers who were conducting investment counseling in the U.S. without being registered as advisor. Such an enforcement action would certainly damage the Bank's (and its U.S. affiliates) reputation with its supervisory authorities in particular when the Bank rendering investment advice with knowledge of the failure of registration.

Preventive measures: To avoid or minimize these legal risks, Swiss offices of the Bank should not render any advisory services to U.S. persons as outlined above. This includes telephone calls to clients or any other affirmative effort intended to initiate transactions in securities. However, when a client contacts the Bank on his own accord to discuss investment issues, his relationship manager is allowed to discuss these issues with the client in a general way, yet avoiding recommendations with respect to specific securities. Subsequently it must be up to the customer, to draw the correct conclusions from the discussion and to make an investment decision.

If the Bank provides information about its advisory services over the Internet measures have to be implemented designed to guard against holding itself out as an investment adviser in the U.S. (see below section 6).

If a publication of the Bank (like Optimus) contains investment advice, then it must include a U.S. persons sales restriction disclaimer and it should not be delivered to U.S. clients (see below section 7).

2.2. Asset Management

A personvenity who manages a portfolio, either of an investment company or of the discretionary accounts of individuals, is by definition of the Advisers Act an advisor required to register. The comments on investment advisory have therefore full validity for asset managers as well. Subject to the registration requirements is the Bank itself, irrespective of the fact, that the investment advice ultimately comes from Brinson Partners, a U.S. licensed advisor.

For unsolicited asset management mandates however, the Bank's risks of entering in such contracts are much smaller. The SEC's new territorial approach to market regulation as outlined above could provide a reasonable argument that the Swiss offices of UBS may accept unsolicited portfolio management mandates and perform those acts, which are necessary to carry out the obligations under the investment management arrangement where the customer initiates the relationship at such an office. In such a case there would seem to be little likelihood that the SEC would seek to bring an action against UBS, although the Advisers Act would provide a basis therefore. There are however risks involved when subsequent activities (like visits in the U.S. - see below section 5) concerning such accounts take place in the United States.

On the other hand if a person is solicited for asset management mandates in the U.S. the SEC believes that such a person could easily and rationally believe that the person was protected by the U.S. securities laws, what therefore triggers the registration requirements.

4

2.4. Legal Advice

Any kind of legal advice given to U.S. persons on U.S. law matters can only be given by a person who is admitted at the Bar of a U.S. state. This is an important restriction in particular in relation to services rendered by FP & WM.

2.5. Investment Funds

Foreign mutual funds, such as UBS's Swiss and Luxembourg funds, must comply with the U.S. Investment Company act and be registered for distribution in the U.S., Funds which don't have this registration may not be sold to U.S. customers. To avoid a possible reproach of solicitation, Brochures (Fund Guides) may not be delivered to U.S. persons, if they contain information about funds not registered in the U.S..

If a customer intends totally on his own accord to invest in such non U.S. registered funds he has to be informed that investing in these funds will entail considerable disadvantages with regard to interest and taxation. It is important that US citizens only decide to invest in UBS investment funds when they have been fully informed about the possible negative consequences for tax purposes. The information provided to the customer must be placed on record. (see Private Banking Manual)

2.6 Trust Services

Generally speaking the non U.S. offices of the Bank may not service as a corporate trustee of a trust established in the U.S. for U.S. persons.

2.7. Electronic Banking

Electronic Banking services are not available for U.S. clients concerning their accounts in Switzerland.

3. Services that do not trigger any registration requirements

Nevertheless it is important to realize, that certain services offered by banks, including foreign banks, to U.S. individual customers do not involve activities requiring registration under the Exchange Act or the Advisers Act (even without a statutory exclusion or exemption). I will highlight these business possibilities hereinafter.

3.1. Custody

Acting solely as custodian for the assets of U.S. individual customers does not involve activities requiring registration under the Exchange Act or the Advisers Act. For these purposes, a custodian only holds a customer's assets, including securities, in its own or a nominee's name or through a central depository facility, and need not provide securities brokerage services or investment advice to the customer. The custodian settles the customer's securities transactions on the instructions of its customer or the customer's agent

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through unaffiliated brokers or dealers selected by the customer or the custodian,[1] insures the safekeeping of the customer's assets and provides periodic reporting to the customer concerning the customer's account ("Custodial Services"). Since Custodial Services do not involve soliciting transactions in securities nor the provision of investment advice, the requirements of the Exchange Act and Advisers Act should not be triggered by the rendering of such services. The Bank should however be extremely careful that in the course of conducting its custody business, it does not inadvertently solicit brokerage transactions or give any investment advice. (The implications of the new withholding-tax regulation in the U.S. is not subject of this memo.)

3.2. Fiduciary deposits

Offerable to U.S. persons without any restriction.

3.3. Payment services

Offerable to U.S. persons without any restriction.

3.4. Banking accounts such as savings accounts

Offerable to U.S. persons without any restriction except Investment Fund accounts and Fiscalinvest accounts.

3.5. UBS Cards

Offerable to U.S. persons without any restriction.

4. Providing Services for clients of non-U.S. Offices by U.S. offices

Providing services for clients of non-U.S. Offices (i.e. Swiss offices) by U.S. offices involve considerable legal risks for the Bank and its clients since such activities deploy on U.S. territory and therefore create there a "jurisdictional hook". They should only be carried out on a limited basis and in line with the regulations in PB Manual 5.7.

Nevertheless we believe, that no major legal risks should be entailed, when U.S. offices provide to prospective clients upon request brochures briefly outlining the U.S. eligible services available. Persons not known by the Bank can be referred to UBS offices in Switzerland but without indicating a specific contact person (RM).

Swiss offices may not accept any new referrals of prospects (who are not already clients in the U.S.) unless the prospect comes to Switzerland to establish a relationship with UBS on his own accord.

[1] If the Bank, as custodian, were to place orders, at the request of its U.S. customer, with unaffiliated foreign brokers, and charge only normal transaction costs for such service rather than a fee that approximates a broker's commission or a dealer mark-up, that the Bank should not be required to register with the SEC as a broker or investment adviser. While it might be possible for the Bank as custodian to place orders through affiliated brokers on infrequent occasions, execution through affiliated brokers might be viewed by the SEC as the offering to U.S. persons of an integrated brokerage/custody service by the Bank.

If a customer already has a relationship with an U.S. office of the Bank, he may be referred to a specific contact person in Switzerland. Also U.S. offices may provide such clients the blank documents for the opening of accounts in Switzerland.

U.S offices would not however assist a prospect in completing the account opening documentation, guaranteeing signatures, forwarding account opening forms and making deposits to Switzerland or any other assistance in opening an account relationship. Further there shall be no contact with clients on behalf of their Switzerland booked accounts in any UBS U.S. offices, no support to such clients by any employee of U.S. Private Banking and no documents shall be sent to the U.S. to be given to clients or prospects by any UBS employee.

Concerning accounts/relationships with subsidiary banks of UBS no referrals or services of any kind may take place.

5. Visits to the U.S. by Swiss Relationship Managers

Visits by Swiss representatives of the Bank to the United States a[redacted]

[redacted] a representative of the Bank could bring to a customer resident in the U.S. account statements concerning a custody account which is managed only on the instructions of the customer, since pure custody is a service that can legally be provided by Swiss offices of the Bank to U.S. clients.

On the other hand, when the Swiss officer includes with such account statements any oral comments or written materials that could be considered as investment advice or any advertising materials concerning the Banks ability as a broker or dealer, such visiting activity then would immediately trigger registration requirements.

As shown above, Swiss offices of UBS may accept unsolicited portfolio management mandates (where the customer on his own initiates such a relationship at a Swiss office) and perform those acts, which are necessary to carry out the obligations under these contracts. This approach however can not be an argument for the Bank, that if the provision of such services is permissible, it should also be permissible that a representative of the Bank provides the customer on the occasion of a visit with the reporting and personally gives him the necessary interpretations and explanations about effected transactions or the management of the assets. Such activity would most probably be, in the SEC's opinion, subject the Bank to the applicable registration requirements with the argument, that such a visiting activity could support the conclusion of the visited client that she/he is protected by U.S. securities laws and/or could give (to third parties) the impression that UBS is engaged in the investment adviser business within the jurisdiction of the U.S...

If the Bank is explicitly requested by the client, to bring statements and reporting documentation into the U.S., the risk of such activity can be minimized (not avoided) if the respective officer acts only as a courier on behalf of the client and avoids giving the client further interpretations to the report.

In general, during visiting activities in the U.S. client advisors must not intend to gain U.S. residents as new clients for Swiss offices of the Bank neither should they try to sell services/products to existing clients, for which solicitation is not allowed in the U.S. Taking into consideration the expansive, fact-specific, and variable nature of the concept of

solicitation, it's simply not possible to avoid the consequence, that any kind of marketing activities might be deemed by the SEC to constitute the conduct of an advisory and/or brokerage business with such persons. Thus, visiting activities should be primarily of a social character and serve the establishment and strengthening of the client/client adviser relationship.

Telephone contact from Switzerland to U.S. based clients are governed by the same principles and should be held to the necessary minimum.

6. Implications of the global Internet appearance of the bank

The purpose of the Internet appearance of the bank is clearly solicitation. The key issue of solicitation is whether a foreign bank's activities in the United States reasonably may be viewed as attempting to induce some kind of business. Since the prospect is presumably reading UBS's webpages at his home in the U.S. there is a link to the U.S. territory. Therefore two key issues are met which may trigger the requirement of registration under the Exchange Act or the Advisers Act: (i) the attempt of the bank to induce business (marketing) and (ii) this activity has its effect on U.S. territory.

6.1. U.S. person responds directly to the UBS web sites
(using the UBS Internet Contact/Order Form)

Thus any contact between the Bank and the customer induced through the Internet could lead to an interpretation by the SEC, that the Bank has solicited those clients who respond to the webpages and for this reason must be registered under the Exchange and/or Advisers Act, whenever products or services are to be provided which need such registration. To avoid such consequences the SEC requests financial service providers of precautionary measures to prevent U.S. persons from participating in an offshore Internet offer:

- The web site must include a prominent disclaimer making it clear that the offer is not directed to U.S. persons.
- The Bank has to implement procedures reasonably designed to guard against sales of products or services which need such registration to U.S. persons. For this purpose the Bank must ascertain the senders residence by obtaining such information as mailing address or telephone/fax numbers. The measures must allow the Bank to avoid sending (even by the means of e-mail) or delivering of offering materials, services or products to a person at a U.S. address, or telephone/fax number.
- If a U.S. person responds falsely to residence questions to circumvent the sales restriction in place, the SEC guidance strongly suggests that while they understand that people can lie, they expect us to take remedial action if such a misrepresentation comes to our attention (terminating the relationship or limiting services to those permissible).

A policy has been put in place in July 1999 on how such contacts or requests of U.S. persons (sender's indicated address is in the U.S.) are to be handled correctly and what products/service can be offered to them.

6.2. U.S. person approaches the bank not via Internet

On the other hand many prospects approach the Bank not via the e-mail capability on the web site, they rather communicate with Switzerland using either means like telephone calls, letters, referrals from a local office or even visits at a Swiss office etc.. In these situations the allegation is always possible, that the prospect has been induced to do so by the UBS Internet web sites (at least, there is no evidence of the contrary). The mere Internet appearance of the Bank has therefore the consequence, that any contact of the Bank by a U.S. person could lead to the SEC's interpretation that the Bank has solicited those clients and therefore must meet the registration requirements whenever products or services are to be provided which need such registration.

Therefore the Bank must be able to ensure, that "unsolicited" customer's transactions are not in fact solicited, either directly or indirectly through customers accessing our web sites. In particular, the Bank could obtain as precaution measure an affirmative representation from a potential U.S. client (e.g. Bank form as part of the account opening documentation) that they deem unsolicited and have not previously accessed the Bank's web sites. This will provide some protection to the Bank in the case of an SEC inquiry or in a situation where a customer who becomes dissatisfied with the service attempts to invoke U.S. jurisdiction, or get the U.S. regulators involved, by claiming that they were solicited in the U.S. via the UBS website.

7. Optimus

As outlined above (2.2.) Swiss offices of UBS are legally not permitted to render advisory services to U.S. persons neither directly nor through publications. Therefore the Bank must ensure that publications like Optimus do not contain information which might trigger registration requirements in the U.S.. Optimus must not contain any articles encouraging a reader use of UBS to effect transactions in securities nor should it recommend the purchase or sale of particular securities. Research on specific companies/institutions or analyses or reports with respect to specific securities may not be published.

It has to be noted, that even if Optimus contains only general articles with reflections on broader financial, economic and investment issues, the magazine could still be deemed by the SEC as a "solicitation-tool" and thus its distribution in the U.S. could trigger the risks as outlined above (2.1 and 2.2). However, the likelihood of a SEC inquiry and enforcement is small if Optimus avoids evident solicitation for brokerage and/or investment advisory services does not contain advice or recommendations with respect to specific securities. As an additional measure to reduce the Bank's risks, the magazine should include a sales restriction, which is not limited to Optimus online. Finally Optimus should be used as a marketing tool only for customers, not for prospects.

Since Optimus is part of the Bank's overall activities with regard to U.S. customers it is also a factor that can bring evidence of the (foreign) Bank's activities with regard to U.S. clients.. Therefore the Bank should be careful and selective in distributing the magazine to U.S. clients of its Swiss offices.

Concerning "Optimus-online" I refer to section 4 of this memo.

8. Conclusion

As outlined in this memo, the provision or soliciting the provision of certain services to U.S. persons by Swiss offices of the Bank (in particular brokerage services and investment advise) entail considerable risks for the Bank, because the Bank lacks the necessary license to provide these services. The registration requirements come into play because such activity of the Bank has its effect on U.S. territory and is therefore subject to U.S. jurisdiction.

If the Bank maintains its present organizational structure in serving U.S. clients in Switzerland these risks cannot be avoided. By implementing restrictive procedures in serving U.S. clients, the Bank can however at least dramatically reduce the risk of the SEC becoming aware of the activities of the Bank in the U.S. market. Further, a written policy would, in case of inquiry by a U.S. authority, enable the Bank to evidence the measures taken to comply in good faith with the U.S. jurisdiction and so mitigate its position.

To reach this goal the "jurisdictional hooks" to the U.S. must be reduced to a possible minimum. Therefore the following fundamental principles should govern the serving of U.S. clients by Swiss offices of the Bank:

- The Bank's business conduct shall be governed by the principle, that U.S. clients are booked and served by U.S. domestic offices of the Bank. If a U.S. person chooses intentionally and entirely on his own accord the foreign market, the Bank will not prevent him/her from opening an account in a non-U.S. office.
- Swiss offices of the Bank should not actively solicit new U.S. clients and should be cautious and discreet in serving existing U.S. clients. U.S. authorities should not gain the impression that foreign offices of the Bank are actively marketing brokerage or investment advisory services in the U.S.
- No solicitation of any kind for brokerage or investment advisory services should take place in the U.S. or of U.S. clients by the Swiss offices of the Bank or on behalf of these offices. The provision of investment recommendations on a regular basis to U.S. clients should be avoided.
- The establishment of a new Swiss relationship with a U.S. customer should take place entirely on the initiative and accord of the client and not as a consequence of solicitation of the Bank in the U.S.. It must be the prospect who chooses entirely on his own accord the foreign market (and the foreign jurisdiction).
- In serving U.S. clients any (documentary) evidence present in the U.S. of the fact that a U.S. client has an account relationship in Switzerland should be reduced to a minimum, which includes such measures like retained mail, minimal telephone calls to clients and minimal visiting activities.
- Visiting activities of Swiss relationship managers in the U.S. should be kept to a minimum. If such visits are inevitable, they should not seek to gain U.S. residents as new clients for Swiss offices of the Bank neither should they include any attempt to sell services/products for which solicitation is not allowed in the U.S. to existing clients. Visiting activities should be primarily of a social character and serve the establishment and strengthening of the client/client adviser relationship.

- Since the purpose of the Internet appearance of the Bank is solicitation, the Bank has to implement precautionary measures to prevent U.S. persons from participating in an offshore Internet offer. Simple sales restrictions are not sufficient. Such measures must enable the Bank to represent (in the case of an SEC inquiry) that it is not targeting prospects in the U.S.

- To reduce the risk that Optimus is deemed by the SEC as a "solicitation-tool" and thus its distribution in the U.S. triggers registration requirements, the magazine should avoid evident solicitation for brokerage and/or investment advisory services nor should it contain advice or recommendations with respect to specific or research on specific companies/institutions.

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Reeves Declaration
Exhibit 22

UBS
Private Banking Americas International

Evaluation of business strategies for U.S. clients (W-9)

Zurich, September 27, 2002
Strictly Confidential
Version 3.2

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GOVERNMENT EXHIBIT
22

Table of Contents

1 EXECUTIVE SUMMARY 2
2 SERVICING U.S. CLIENTS - AN OVERVIEW 5
2.1 Regulatory environment 5
2.1.1 Securities Exchange Act / Investment Advisers Act 5
2.1.2 Tax - IRS Rules 5
2.2 Market size and trends 6
2.3 Present Positioning 7
3 STRATEGIC OPTIONS 8
3.1 Objectives 8
3.2 Evaluation of options 8
4 PROPOSED BUSINESS MODEL (NEWCO) 15
4.1 UBS Strategy 15
4.2 Competitors 15
4.3 Legal Setup 15
4.4 Key success factors 16
4.5 Target Clients and Marketing Approach 16
4.6 Products and Services 17
4.6.1 SEC/EBK restrictions 17
4.6.2 Products & Savings Offering 18
4.6.3 Tax and Client Reporting 20
5 LOGISTICS 21
5.1 Operations 21
5.2 IT 22
6 MANAGEMENT / STAFFING 25
7 FINANCIALS / CORE MODULE 26
8 IMPLEMENTATION 28

Private Banking Americas International
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Introduction

The situation for financial service providers for U.S. persons[1] has significantly changed in recent times. It has started with the QI regulation and has continued with deemed sales rules, all of which has led to a series of actions at UBS and its competitors[2]. The implementation of the QI, and deemed sales rules specifically has resulted in a differentiated treatment of W-9 and non-W-9 clients on the side of UBS AG.[3] Formerly they were dealt with the same approach. With the deemed sales rules put in place, clients were asked to be part of one of two possible segments, W-9 or non-W-9. Following this formal separation, UBS has now to decide on its service approach to W-9 clients[4].

In this document we analyze the situation, discuss strategic aspects and make recommendations to support the decision process of the BC, LSC, WMBB board and finally the GEB[5]. Although this document is written by Americas Intl., we are taking a neutral position, not considering the natural interest of Americas' employees and management to "continue business as is".

UBS' position

As soon as UBS deals with W-9 clients one has to discuss the fact that UBS AG parent bank is not a U.S. licensed company. In the many decades UBS AG has been serving U.S. clients this issue has not surfaced as UBS did not file with the IRS and has therefore not had any direct relationship to any U.S. official body.

Discussion points are now:

- Based on the deemed sales rulings, U.S. clients are not permitted to give instructions to UBS AG from the U.S. unless all sales proceeds (incl. those emanating from intl. security holdings) are reported to the IRS by the QI (which UBS is[6]. This means only U.S. clients filing a W-9 form can in practice give instructions to UBS from the U.S. as long as sales proceeds are reported to the IRS. To cater for the deemed sales rule, non-W-9 clients are now serviced under PM arrangements and U.S.-originated orders from Non-W-9 clients in non-U.S. securities are no longer allowed. W-9 clients are serviced as before. This means:
- W-9 clients have a fully disclosed relationship with UBS AG and are likely to treat UBS AG like any other prefixes provider. This in turns has consequences on the legal front as well as on the marketing/servicing side:
- It may become much more relevant that UBS AG is not registered with the SEC, which contradicts SEC rulings. Further, the service provision out of Switzerland is not orientated towards U.S. rules and customs, i.e. service provision is not always compliant, nor (tax-) efficient for U.S. clients under a fully disclosed relationship. This in turn means:
- We have to discuss the overall structure out of which U.S. clients are served as well as the product/service contents to U.S. clients. Both has to change to (1) comply and (2) have a service provision in place that is up to the standards of UBS, i.e. meets the high expectations of our clients and allows UBS to actively market its services in the U.S..

Risk assessment

As mentioned above there is an increased chance that UBS AG is treated like any other U.S. provider, which means that there is higher litigation risk. Not only that, the potential impact of litigation has increased. This is as UBS AG's exposure in the U.S. has gained in size over the last few years, underlined by the acquisition of PaineWebber. This means: UBS perhaps in contrast to other Swiss players, has to care about U.S. regulations.

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[1] U.S. persons are defined as U.S. citizens world-wide and resident aliens e.g. greencard holders or persons with a substantial physical presence in the U.S.

[2] At this point we refer to cross-border services provided to U.S. clients from non-U.S. firms

[3] W-9 clients are U.S. persons for whom UBS files a 1099 form with IRS; for non-W-9 clients UBS applies back up withholding tax (BUW), their identity is not disclosed to the IRS by UBS.

[4] Presently UBS has xyc W-9 clients on record (excluding UBS PaineWebber) with assets of CHF xyc

[5] The WMBB board has mandated Americas Intl. at May 28, 2002 to develop a business model to serve for W-9 clients in order to attain SEC and IRS compliance.

[6] For domestic securities 1099 reporting has to be done (or back up tax withheld) for all clients incl. PM clients

If one agrees with above assessment (i.e. doing nothing is not considered an option) it follows that the service model has to change. There are only two general directions possible. (1) Eliminate risk by proposing clients to transfer to "compliant" entities or terminate relationship with UBS. This means, we ask clients to transfer to UBS PaineWebber in the U.S.[7]. (2) Establish "compliant" environment in Switzerland (and possibly other places such as Singapore for Asian clients).

Client motivation

Without going into details here, (2) is proposed as a general direction. We argue that this strategy overall has a better risk-return profile than (1). Proposing a transfer to UBS PaineWebber would lead most likely in many cases to termination of the relationship with UBS, as clients would search for alternatives in Switzerland or put their assets with their U.S. broker which may not be UBS PaineWebber. It should be emphasized that clients have chosen UBS in Switzerland for particular reasons: each client may be characterized by a specific set of motivations, but it should be noted that UBS in Switzerland is an attractive partner for two reasons. It is UBS and it is in Switzerland. Tax was and perhaps still is one motivation, asset protection is another one, both reasons become less relevant in a fully disclosed relationship; asset protection, however, remains a valid argument as NewCo is an incorporated company in Switzerland. Additional arguments are certainly: tradition, confidentiality/asset protection, Swiss style banking and trust. International diversification in general, as well as products and services in particular are important, however, we do not think that these are the key drivers.

Strategic considerations

At first sight the set-up of a compliant entity in Switzerland ads costs and does not generate substantial additional revenues as of day one. However, this is only half of the story, as not only W-9 but also non-W-9 client population has to be considered in this decision. A SEC compliant entity becomes the back-up structure for non W-9 clients in the future. In addition, although the market with U.S. clients in Switzerland is arguably not gigantic in size (i.e. can be considered as a niche market[8]), it is likely to grow, especially due to the changed political global situation. We should keep in mind that the on-shore U.S. market is by far the biggest worldwide and that UBS (PaineWebber) has a strong market position (referral potential). I.e. we propose to position Switzerland as the "Centre of Competence" for U.S. clients outside the U.S.. The purpose of this Centre is twofold: help to retain existing client relationships and allow competitive and active marketing (acquisition) of UBS to U.S. clients outside the U.S..

Suggested option

Many alternative structures of a "Swiss Competence Centre" were discussed during the analysis stage of this project. Our thoughts and recommendations are as follows:

A separate legal entity (in this paper referred to as NewCo) should be either established or used to serve W-9 clients out of Switzerland. NewCo would be a subsidiary of UBS AG, be registered with EBK as an "Effektenhändler" and in the U.S. as an SEC registered "Investment Advisor" (IA). Out of NewCo, W-9 clients can actively be serviced in an SEC compliant fashion. On the products and services side the emphasis will be on "European or Swiss based investment services", i.e. discretionary and non-discretionary advisor services. Clearly the new entity should not and cannot operate as a Swiss UBS PaineWebber. The objective is in a nutshell, to provide UBS prospects and existing UBS W-9 clients with the opportunity to have their assets actively managed in Switzerland by skilled and experienced staff with a Swiss background in a fully compliant structure.

The following five alternatives of NewCo are considered (see chapter 7).

3a.1 NewCo (SEC IA[9] and custodian) with U.S. global sub-custodian

3a.2 NewCo (SEC IA and custodian) = branch of Bank Ehinger with U.S. primary global custodian

3c NewCo (SEC IA and custodian) with U.S. securities held with U.S. custodian and non-U.S. securities held with UBS AG

3b.1 NewCo (SEC IA w/o custody) = EAM of UBS AG

3b.2 NewCo (SEC IA w/o custody) = EAM of Bank Ehinger

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[7] UBSIA we do not consider here, as they have not fully established their operation.

[8] Current size is CHF XYC (Strategic Analysis and Bus. Development/BCG)

[9] SEC IA: SEC registered Investment Adviser

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The following table provides an overview of our assessment:

	2b-1	2b-2	3b	2b-1	2b-2
Economics/Contribution	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Compliance	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Value Proposition/ Client Convenience	+/- [illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Operational complexity	+/- [illegible]	[illegible]	[illegible]	[illegible]	+/- [illegible]
Migration (resources/costs)	+/-	[illegible]	[illegible]	[illegible]	[illegible]
RANKING	2	3	3	1	4

All options have their specific pro/con-profile. The main key evaluation aspects are compliance, client appeal, costs, operational complexity, and migration aspects.
Speaking from a BU Americas perspective, 3b would be the preferred solution as the most compelling solution for our clients.

2.1.1 Securities Exchange Act / Investment Advisers Act

U.S. regulation on the provision of financial services (securities brokerage, investment advice and asset management) is comprehensive. In addition to SEC registration requirements, financial services firms are subject to significant compliance, disclosure and operational requirements.

Given the types of activities conducted by UBS AG and its affiliates on behalf of U.S. W-9 customers the following definitions and regulations are relevant:

Securities Exchange Act

- The Securities Exchange Act of 1934 makes it unlawful for any broker (defined as "any person engaged in the business of effecting transactions in securities for the account of others") or dealer (defined as "any person engaged in the business of buying and selling securities for his own account") to make use of the "mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless such broker or dealer is registered" with the SEC.

Investment Advisers Act

- The Investment Advisers Act of 1940 defines an "investment adviser" as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." It is unlawful for "any investment adviser, unless registered with the SEC) to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser."

Conclusion/Risks of Status Quo

From this follows that SEC registration would be required if UBS continues to actively service its W-9 client segment.[10] Failure to strict adherence to SEC - rulings subjects UBS to the following types of exposure, all of which are obviously coupled with substantial reputational risks:

- (civil) liability towards a customer who sues an unregistered broker/dealer or investment adviser for any losses he/she incurred on products sold by the unregistered broker-dealer or recommended by the investment adviser
- criminal sanctions if fraud is involved
- regulatory ramifications consisting of enforcement of the pertinent laws plus the levying of fines[11]

2.1.2 Tax – IRS Rules

The U.S. regulatory environment concerning the provision of financial services to U.S. persons has changed significantly during the last year. As of January 1, 2001, the US Internal Revenue Service (IRS) implemented the new U.S. withholding regulations, this was in order to identify U.S. persons investing through non-U.S. financial intermediaries. Following these new regulations UBS AG signed an agreement with the IRS to become a Qualified Intermediary (QI).

QI agreement

A QI must under the QI-Agreement ensure that any clients who are liable to taxation in the

[10] For the sake of completeness, it should be mentioned that SEC-compliance could be improved by either only providing non-securities products to U.S. customers or ring-fencing securities accounts by way of abstaining from the use of U.S. jurisdictional means (no communication into the U.S. relative to securities business).

Redacted for Privilege

U.S. only hold U.S. securities if they are prepared to disclose their identity to the U.S. paying agent (W-9), and hence the US tax authorities. Each QI is contractually bound to pass relevant information on these U.S.-securities to IRS and client (so called 1099-Reporting). If such clients are not prepared for this disclosure and reporting, they may no longer hold any U.S. securities or are subject to backup withholding tax at 30% (for 2003/2003) on income and proceeds of sale. Presently, 1099 reporting to the IRS is done by BBH for UBS clients, based on detailed break-down information provided by UBS AG via SIS to BBH New York.

Deemed sales rules

The QI-Agreement as well as the backup withholding rules - although poorly drafted and confusing, as well as very difficult to monitor in practice - contain in addition to the basic rules regarding US securities several references to the terms "paid in the United States or "to an account maintained in the United States" and "sales effected within the United States" (so called "deemed sales rules"). The deemed sales rules, although not specifically treated in the QI Agreement but based on other US tax regulations, apply where there is

- a U.S. taxable person, resident in the U.S., as account holder and
- investment instructions emanate from the U.S. and/or transaction confirmations are sent to the U.S. and/or sales proceeds are remitted to the US.

Where an individual is involved, the application of this principle means: If a U.S. citizen, Green Card holder, or tax resident is physically present in the U.S. and communicates on investment matters with his client adviser outside of the U.S., the deemed sales rules become applicable. Applying this to trusts, foundations and offshore transparent companies, QI has to identify first whether he has a U.S. person as beneficial owner, for U.S. tax purposes, of the assets and income in the account. If the answer is yes, then QI has to see whether investment instructions are emanating from the U.S. or whether proceeds are being remitted to the U.S.

If non-US securities are deemed to be sold in the U.S. or per instruction out of the U.S., the implications are as follows:

- W-9 customers: QI has to report income and sales proceeds to the IRS including international securities;
- non-W-9 customers: QI has to apply backup withholding at 30% on income and proceeds of sale for U.S. and non-U.S. securities, as well as to provide for 1099 reporting to the IRS on an undisclosed basis.

Conclusion

As of today, UBS is not in a position to provide full IRS (1099) reporting. This is in contradiction to the requirement by W-9 clients who expect full IRS reporting like from any other U.S. firm, covering U.S. as well as International Investments[9]. Full IRS reporting includes: dividends, interest income, capital redemption proceeds, and sales proceeds, 1099 OID and 1099 MISC; it does however not include the reporting of capital gains.

[redacted]

U.S. wealth development

According to a recent study by PB Strategic Analysis, the number of U.S. core affluent households (defined as households with more than EUR 500'000 in liquid assets) is expected to grow from 5.8mn in 2002 to 6.6mn in 2005. Along goes an expected growth in core affluent liquid assets from USD 11'792 bn to USD 13'955 bn until 2005 with a compound annual growth rate of 5.8%.

Cross border share

At present U.S. investors have a domestic focus. It is estimated that only 2.5% of total wealth is invested outside of the U.S., this is roughly USD 250bn for 2002. Compared to the rest of the world with off-shore holdings ranging from 8% (Japan) to 36% (Italy), Americans can clearly be considered "under-invested abroad".

The present market size of Switzerland with U.S. clients is approx. USD xyc (or 17% of total U.S. offshore assets), of which USD 9 xyc is estimated to be declared.[10]

This percentage of declared assets is expected to rise as IRS, the U.S. tax authority,

[9] In practice, most U.S. onshore financial providers focus on U.S. securities and as such there is only a limited requirement to cover international securities in the IRS reporting.
[10] All figures are received from PB Strategic Analysis and Group Research

becomes more rigid in their approach with U.S. taxpayers.[14]

Although our PnL calculations are based on a stable offshore share it is likely that the international share of 2.5% will increase due to the following developments:

- U.S. investors have invested more heavily in Europe since the introduction of EURO
- The recent weakening of USD compared to EUR has supported this trend
- After Sep 11, U.S. investors have become more aware of political risks and are more inclined to diversify this risk

This means that the business with W-9 clients become more important in relative and absolute terms.

[redacted]

UBS (booking center Switzerland) has a leading market position in the business with U.S. clients with total assets of CHF xyc (ty W9 + xyc non-W9), which reflects a market share of approx.xyc.[15] As Private Banking business becomes more competitive, this strong position has to be defended carefully. It will be more expensive to regain market share than retain it.

Within UBS WMBB (documented) W9 U.S. clients are currently serviced out of several locations all over Switzerland + 9 international locations:

table xyc

As of July 1, 2002 the UBS WMBB W-9 client population (resident and non-resident in the U.S.) with booking centre Switzerland was distributed as follows :

Segment	no. of clients	assets (in CHF mn)	average size (in CHF/M)
P8 (>1 mn)			
AK2 (250'-1mn)			
AK1 (50'-250')			
BB (< 50')			
TOTAL			

Presently assets of W9-clients are invested as follows: 14%, Bonds 15%, Investment Funds 49%, Fiduciaries 17%, cash 1%, other investments/derivatives 4%, and loans 4%.

Presently there are 34 AP5 clients with assets of approximately CHF 200mn (8% AMS), and 269 PM clients with CHF 692mn (22% AMS).

An RoA of ca. 68 bp is estimated for 2002 for W-9 clients booked in Switzerland.

[14] There are no public estimates available, however, we see from our clients' behaviour that there is a tendency to use simple assets for consumption or to declare them; there are also lawyers in the market who specialize on voluntary disclosure process. It is difficult to predict timing and speed of the disclosure process; it is possible that the non-W9 business does not shrink at all, could also be that the shift from non-W-9 to W-9 business happens much more rapidly.

[15] Based on the following assumptions: offshore held U.S. wealth 2.5% of total U.S. wealth, thereof share complex xyc (share booking center CH thereof 10%), share simple xyc % (share booking center CH thereof 30%).

[redacted]

[redacted]

PB Americas International aims to remain a first class provider of comprehensive wealth management services for wealthy U.S. clients.

Primary objectives

This in turn means:

- establish a business structure that enables UBS to service existing clients in full compliance with U.S. regulations (SEC and IRS), in order
  - to retain U.S. business
  - to actively market and prospect on U.S. ground
- reduce litigation risk
- tailor products and services to U.S. clients and regulators needs
- contribute to UBS' franchise and net contribution

Secondary objectives

The following are secondary objectives whilst the primary objectives are pursued:

- minimize capital and tax exposure
- minimize regulatory risk for UBS AG, i.e. minimize the likelihood that business of UBS AG – the parent bank – is exposed to regulatory oversight from U.S. regulators
- minimize disruption for clients (minimize implementation risk)

[redacted]

Introduction

On May 28, 2002, the WMBB board (EB CH) mandated PB Americas International to evaluate options for servicing W-9 clients, if possible in an SEC and IRS compliant manner.

The basic elements of a strategic discussion are:

1. The regulatory environment has changed/tightened.
2. UBS AG has significant exposure in the U.S., i.e. after the acquisition of PaineWebber (the impact of UBS being non-compliant with U.S. regulations has potentially severe consequences for our operations in the U.S.).
3. UBS AG has a sizeable cross border business with U.S. clients and a strong market position.
4. Currently xyz % of PB Americas Intl. business or Invested Assets of CHF xyz is with non-W-9 clients - although and after strong growth rates in recent months, the share of W-9 is still relatively small; there is, positively speaking, a great chance that this share will increase; from a negative perspective there is a substantial risk that the non-W-9 business is not a sustainable business model in the long run, and that non-W-9 clients have to leave UBS or become W-9 clients. [10]
5. The cross-border market with U.S. customers is relatively small but there is a certain likelihood that it will grow substantially due to changed investment behaviour of U.S. customers:
   - The onshore U.S. market is the largest private client market worldwide - only a slight increase of the off-shore share has tremendous impact on the size of the market overall.
   - We doubt that tax reasons are the main drivers for U.S. customers to invest with a Swiss wealth adviser.
   - The recent uncertainty in the aftermath of Sep 11 and the political positioning of the U.S. to attack terror may well lead to increased off-shore investments to diversify political risk.
6. We take the position that Switzerland will remain an important and attractive cross-border market for U.S. customers; reasons for this are: Private Banking culture in Switzerland, long tradition, know how, confidential saving behaviour, international expertise.

[10] Becoming a W-9 client means to go trough a voluntary disclosure process which is guided by a specialised U.S. tax lawyer.

7. In order to meet SEC requirements the current W-9 business booked in Switzerland (PB and AIC) has to be segregated from the non-W-9 business as UBS AG cannot file for SEC registration.

It follows: the U.S. cross-border business is in a critical phase, actually has been for some time already. UBS AG has to decide on its long term approach in this business, what could be seen as a niche market but could become much more than that, i.e. the future for this business might be a fully compliant business that maintains close business relationships with the UBS presence in the U.S. (UBS PaineWebber) and can act as an alternative hub for U.S. customers outside the U.S.. One should also keep in mind that UBS can further improve its perception with U.S. authorities when setting up a fully transparent and compliant "Centre of Competence" in Switzerland.

UBS has basically three options:

1. Do nothing and run risks for being non-compliant (question of UBS' risk attitude).
2. Eliminate Switzerland in the medium term as service provider to U.S. clients (this implies the referral of existing relationships to the U.S. (UBS PaineWebber) or UK (UBS Investment Adviser).
3. Take a proactive approach and invest a one digit mn number to establish Switzerland as a SEC compliant "centre of competence" for U.S. customers.

Below the 3 basic options above (and related options) are discussed considering the following criteria:

- compliance with U.S. and local laws
- compliance with IRS and group tax aspects
- consequences on clients, required changes and migration aspects, client and IRS reporting
- costs and risks of 'changing the bank', costs and risks of 'running the bank'

1. Leave as is

Pros:

- no additional costs
- clients do not have to be migrated (no account opening)

Cons:

- risk in relation to SEC compliance
- limited IRS reporting (only U.S. securities)
- no active marketing - use of jurisdictional means prohibited
- no growth

Comments/conclusions:

If taking a risk-averse approach 'leave as is' is not a valid option.

2a. Migrate clients to UBS SA London

Pros:

- existing SEC license can be used
- cost efficient at first sight, as no additional SEC compliant unit has to be established - however, London is an expensive place for banking and is not fully established yet

Cons:

- clients may not be willing to migrate to London - risk of customer losses as London is not a true alternative to Switzerland
- London focuses on discretionary mandates, cash and passive clients
- Switzerland as a U.S. competence centre is given up if the decision is now to scale down the business in Switzerland, it will cost substantially more investments to build it up again later on should the decision be revised
- layoff of advisers in Switzerland - limited career potential for remaining advisers (this may not be a problem in itself, but again, decision cannot easily be reversed - if business is scaled down now, later build-up will be difficult due to negative market sentiments)
- U.K. is still in the process of being set up
- Small operation - currently limited resources to take Swiss clients over
- No IRS reporting tool yet
- London is a costly place for banking
- Access to management (decision takers, know how carrier) and control less easy than if operation is in Switzerland
- looser restrictions with regard to banking secrecy and information exchange.

Comments/conclusions:

We do not believe that the U.K. offers the same quality in terms of alternative booking centre for U.S. clients. Switzerland has its particular attractiveness as 'the capital' of 'Private Banking'. This leads to substantial risk of losing customers (and staff) which is why this option is not recommended. Further, we give up strategic flexibility if U.S. business is scaled down in Switzerland. It would mean a little bit awkward to migrate 2780 clients to London instead of 36 from London to Switzerland if the European hub were in Switzerland.

3b. Migrate clients to UBS PaineWebber in the U.S.

Pros:

- customers can benefit from truly domestic offering
- cost efficient - no additional SEC unit required

Cons:

- questionable whether customers will agree to transfer to UBS PaineWebber (clients will most likely check alternatives in Switzerland before transferring assets to UBS PaineWebber, clients are with other U.S. brokers and hence are likely to transfer their assets to this broker and not to UBS PaineWebber)
- exit of advisers in Switzerland (loss of know-how)
- UBS PaineWebber is a full service broker and as such is not fully comparable to a Swiss based unit
- less profitable as UBS PaineWebber operates at a higher CA ratio

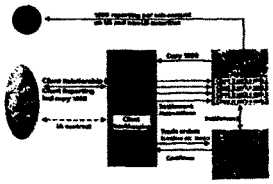
Comments/conclusions:

Transferring all clients to UBS PaineWebber is appealing as it uses UBS' infrastructure and UBS PaineWebber is without a doubt a first class brokerage house. At the same time, this will be demanding to existing clients. In addition it limits the clients' options to use UBS for cross border business. There is the risk to loose share of wallet, not only now, but also in the future, when synergies between UBS AG and UBS PaineWebber could further develop.

3a. NewCo Investment Adviser with custody - U.S. house will act as global custodian

This option is explained in more detail in the next chapter. In short, this option considers a separate legal entity in Switzerland as a subsidiary of UBS AG, registered as an SEC Investment Adviser with custody and an Effektenhändler (or bank) with EBK.

NewCo could either be a "new company" (option 3a.1) - or a Private Label Bank could be used [redacted] - option 3a.2). NewCo would work with a U.S. custodian as for global custody.[17]



Pros:

- It offers current UBS AG clients to benefit from UBS services in a fully compliant

[17] There are two operational options for 3a. 1) U.S. custodian would operate in an omnibus account mode requiring NewCo to be a QI "with" and to provide 1099 reporting directly to the IRS; 2) U.S. custodian would operate in sub-account mode which permits NewCo to go without QI "with" and to delegate 1099 reporting to the U.S. custodian.

environment

- enables UBS via NewCo to market actively in the U.S. - use of jurisdictional means is permitted
- the establishment of NewCo can have a positive impact on the relation of UBS with U.S. authorities (goes beyond IRS and SEC)
- this strategy has features of a call option:
  - can serve as back-up for non-W-9 business (assets of CHF 16bn) - retention of non-W-9 clients
  - can be the home for U.S. clients if they increase their off-shore share (not for tax reasons)
  - exploits synergies between UBS PaineWebber and UBS AG - position NewCo as Swiss hub and European "Centre of Competence" for U.S. clients - share of wallet; this also works in return: promote UBS PaineWebber to clients of NewCo

Cons:

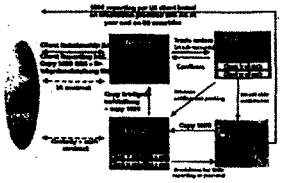
- The model needs good marketing and explanation to clients as NewCo has to work with a global U.S. sub-custodian - client might perceive this as dilution of "asset protection". This is more a perception than a real issue as the client contract would be with NewCo.
- requires investment of CHF 8.4mn to establish NewCo
- NPV adjusted pay-back period is 4 years

Comments/conclusions:

Substantial investments and the relatively small size of operation do not support economics, but, we have tried to show a realistic picture and do not forecast exaggerated growth rates, neither on the clients' asset side nor for RoA. The business case should be considered as conservative. Despite unattractive hard economic data, we believe the investments are not that dramatic, taking into account potential developments, such as, 'U.S. engaged in war', 'IRS extending deemed sales rules to Portfolio management accounts', events that either lead to substantial growth of the U.S. cross border market or the decline of the non-W-9 business (switch from non-W-9 to W-8). A more cost effective option would be to establish a W-9 branch of Bank Ehinger as significantly less investments would have to be made. Concerns for Bank Ehinger would be that their existing clients negatively perceive the registration with SEC.

3b. NewCo Investment Adviser without custody

This option is identical to above with the difference that NewCo does not hold custody for clients. The Investment Adviser would merely act as advisor/asset manager (EAM) and the client would have a separate relationship with UBS as custodian (option 3b.1). Here again, a co-operation with Bank Ehinger is an alternative. In option 3b.2, NewCo would be the EAM of Bank Ehinger.



Pros:

- better risk profile than "leave as is" - NewCo is permitted to use U.S. means (active marketing on U.S. ground)
- appealing to clients - argument of asset protection still very valid as clients keep

relation with UBS AG for custodial services. This is, however, not the case in the Ehinger option.

- easier migration - again, not valid in the Ehinger option
- more cost efficient both in terms of up-front investment and running costs
- less stringent SEC supervision for NewCo (as it does not have custody itself)
- from an EAM: NewCo operates like an EAM - NewCo needs more limited system capabilities (asset management system, order entry system, accounting system, reporting capability; EAM tools and services can be used (such as AssetLink for instance)
- no registration with EBK needed - however, it is still suggested to apply for an Effektenhändler status with EBK
- as relationship with UBS AG is maintained, other banking products can still be provided (for instance mortgage for clients who are resident in Switzerland)

Cons:

- Redacted for Privilege
- the only potential consequences are for UBS AG in its use of NewCo as agent to help solicit U.S. custodial and brokerage clients: there is a possibility that the SEC could view the entirety of UBS AG's activities as unregistered brokerage activity by US AG.
- Redacted for Privilege
- IRS reporting will be as today: BBH reports to IRS on U.S. securities - i.e. IRS rule is more pronounced as deemed sales rule is not applied as of day one; coverage of international securities is planned for 2005 the latest.
- Customers needs contract with two entities.

Comments/conclusions:

This option is lean: it can be set up very quickly and operates cost efficiently. The downside is that UBS AG is exposed to SEC jurisdiction. [redacted]

This option has several advantages: it is cost efficient and flexible, does not require to much change on the client side, enables a fully compliant advisory process and it gives us more time to act on the revised SEC custody rules.

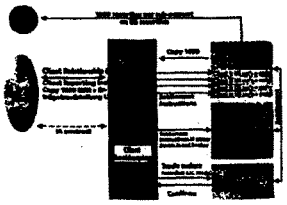
3c. NewCo with custody - Non U.S. securities held with UBS AG / U.S. securities held with U.S. custodian

NewCo has custody over clients' assets: NewCo would work with two sub-custodians differentiating between U.S. and non-U.S. securities. The U.S. custodian will provide for IRS reporting which will be limited to U.S. securities.

Pros in comparison to 3a:

- easier sell to clients: regarded by clients as better in terms of asset protection as non-U.S. securities are directly held with Swiss custodian (UBS AG)
- easier migration as there will be no reporting change in relation to IRS reporting – at

the beginning, international holdings are only reported to clients but not to IRS, which is in line with current procedures
- incurs less costs than 3a (only since BBH is not reporting on non-U.S. securities)
- this model is scalable - can be upgraded to 3a at a later stage



Cons:
- deemed sales rules will only be fully followed once international investments are reported to IRS as well
- is not in compliance with proposed (but not finalized) SEC custody rules, hence, this option bears the risk that and update to 3a is required as soon as proposed custody rules are becoming active. It is unknown right now at what point in time this will happen and what the final rules will be)

Comments/conclusions:

3c is a compromise of 3a and 3b in the sense that it shields UBS AG from SEC jurisdiction (better than 3b) and has more marketing appeal than 3a (asset protection). This alternative can be adjusted later to comply with new SEC custody rules. The main concern of option 3c is that it does not comply with proposed SEC custody rules. In case the rules take effect rather soon, this option will be invalid.

3d. Only migrate U.S. business of current clients to UBS PaineWebber

This option addresses the question why a U.S. client should want to be served by a Swiss unit on U.S. securities? Should NewCo concentrate on Swiss and European investments only? Hence, this option suggests to use UBS PaineWebber for U.S. securities and have NewCo managing and advising on non-U.S. securities

Pros:
- clear segregation of responsibilities and service provisions
- cost advantages to client on transactional business and slight cost advantages for UBS for execution

Cons:
- (unnecessary) limitation of service provided by NewCo
- this limitation will not easily be understood by clients
- the cost advantages to UBS are marginal - IRS forms have to be submitted anyway to customers covering European and Swiss securities

Comments/conclusions:

NewCo will not focus on plain transactional services. This is a very competitive business and there is little value for customers using NewCo as a broker for U.S. securities. NewCo is concentrating on managing wealth and is also paid for that, and not for executing transactions. It is evident that a Swiss unit is comparatively strong in advising on European securities and can provide added value in this respect. However, there is little gained if U.S. securities must be held in a separate account, i.e. at PaineWebber. The negative impact of such a "drastic" rule in respect of the perception generated on the client side is not compensated by marginal benefits on the cost side.

Recommendation

We recommend to establish a SEC registered unit in Switzerland, mainly for the following reasons:

1. From a strategic perspective there should be alternative booking centres for U.S. clients outside of the U.S. - a Swiss "Centre of competence" offers a real alternative - at the same time we envisage an Asian booking centre for U.S. clients as acceptance of Asian "located" U.S. clients for a Swiss centre is limited (whether it is economically justifiable is not assessed at this point)
2. a separate legal entity is the only way to achieve SEC compliance without having UBS AG under U.S. jurisdiction (the option of using an existing Private Label Bank was debated but not further pursued as the SEC registration of a PLB was viewed to have negative spillover effects to existing PLB clients, this option is being revisited right now for its expected cost savings)

In conclusion, options 3a-c are preferred. Our recommendation would be to go with 3b and upgrade to a long term solution like 3a if deemed necessary at a later stage. Option 3b is very attractive from a cost/time to implement viewpoint and is clearly a step forward compared to the current setup. This option should be regarded as a fast track solution with limited costs. At the same time we have to acknowledge that there are risks attached to option 3b (exposure of UBS to the SEC). Hence, the management has to decide whether comparative advantages of 3b outweigh the risks.

CONFIDENTIAL TREATMENT REQUESTED U00010845

The following is valid for both sub-options 3a and 3c, it is also valid in most aspects for option 3b. The primary focus of NewCo will be the provision of discretionary and non-discretionary asset management services. NewCo will provide a comprehensive, though focused range of financial services to meet the needs of W-9 clients, including custody and "state of the art" client reporting (incl. capital gains).

SEC registration will allow to actively market UBS services into the U.S.. The focus of asset gathering will be on HNWI, however the new unit shall be the home for all existing W-9 clients. The new entity is to be the main "Center of Competence" for U.S. clients outside the U.S. (a second competence centre in Asia should be considered despite low current client number). Besides retaining existing W-9 clients, NewCo will provide the basis for acquisition. It should be emphasized that retention is much more important than acquisition for this business case.[18]

The new entity will operate independent from UBS AG but use UBS AG in many aspects. Efficiencies are sought whenever permitted and useful.

In option 3a, an American firm is used as a global sub-custodian. If BBH is selected, UBS AG will continue to hold the Swiss securities in its present function as BBH's sub-custodian for Swiss securities. UBS Warburg will be mandated as executing broker-dealer.

In option 3c, UBS AG Zurich will act as direct sub-custodian of NewCo for non-U.S. securities. In this scenario international holdings would not be reported to IRS (no change from today), going forward an additional interface is built between UBS AG and BBH and BBH would report to IRS including international holdings.

In option 3b, UBS AG Zurich will act as global custodian of NewCo for all securities. The SEC custody is not applicable as NewCo does not have custody itself.

There is a trend of Swiss players either pulling out of the business with U.S. clients[19] or establishing compliant structures to service W-9 clients. Coutts for instance has a registered office in London to service U.S. clients, whereas Bär has moved their U.S. clients to New York. Listening to the street, we hear that players in general are reluctant to take new U.S. clients on board, due to regulatory complexity, compliance issues, difficult reporting requirements, and concerns of conflicts with U.S. authorities. In general only declared assets are accepted. CS on the other hand has established a separate entity in Switzerland to service W-9 clients [20]. The new entity became operational July 1, 2002.

It can be expected that competitors are further withdrawing from the market in the near future. Most likely CS and depending on the model chosen, UBS, will be dominant players in this segment reaching critical mass to run this business in a profitable manner.

NewCo should be a 100% subsidiary of UBS AG[21] located in Switzerland (Zurich) which will

[18] In figures: the objective is to retain 80% of the current W-9 assets (~ CHF xxx), as well as to retain 50% of Non-W-9 clients who are disclosing their assets and become W-9 clients (~ CHFxx after deduction of 40% cumulated tax and penalty on total assets). In addition, we expect every CA to acquire CHF xx p.a., which totals CHF xxx until 2006.

[19] this is due to increasing compliance and regulatory complexities and missing critical mass

[20] CS Private Advisors (CSPA) is a SEC-registered Broker-Dealer & Investment Advisor and registered "Effektenhändler" with EBK

[21] Generally, setting up a branch of an existing unit is always more straightforward, no separate board of directors is necessary, less reporting toward authorities is required, no additional capital is needed. However, such a set-up may trigger authorities, i.e. SEC, to look into the parent in detail. A subsidiary is as a legal entity in its own right more independent, but triggers more reporting duties toward authorities and needs own capital assigned.

be registered with SEC as an Investment Adviser (IA) with custody. An IA will not be permitted to charge for transactions. NewCo will be registered with EBK as an "Effektenhändler". The unit will act as contracting partner (investment advice and custody) to the client. NewCo is suggested to work under the brand of UBS. The W-9 unit of CS markets under the name CSPA – CS Private Advisors.

U.S. perspective

From a U.S. perspective, the leanest possible set up – also cost-wise, is to register the new entity with the SEC as an Investment Adviser providing advice, asset management and custody to clients.[11]

As SEC-registered investment adviser with custody, the new entity is required to adhere to the restrictions and requirements of the Adviser's Act and the "Custody Rule".

In taking and maintaining custody for client assets an Investment Adviser (IA) will be subject to Rule 206(4)-2 under the IA Act of 1940 establishing requirements regarding the custody of client assets (the "Custody Rule"). Under the current Custody Rule, client funds (cash) must be maintained in a U.S. domiciled and regulated bank in an account segregated from the Adviser's funds. The only requirement with respect to the maintenance of client securities is to maintain them in a safe place. SEC recently has proposed amendments to the Custody Rule. An investment adviser with custody of client assets is to maintain client funds and securities with a qualified custodian. A qualified custodian is defined as a U.S. financial institution, a foreign financial institution that holds custody of assets in its jurisdiction only with respect to securities and funds reasonably necessary to effect transactions in securities in that jurisdiction. An IA or custodian located in Switzerland could therefore only be a custodian for Swiss securities and cash necessary for trades in Switzerland. An IA that holds assets in multiple jurisdictions would therefore be required to work with a U.S. primary custodian or to work with a qualified custodian in each jurisdiction.

The segregation of W-9 clients should ensure that UBS AG does not fall under the jurisdiction of SEC. It is crucial in this respect that only NewCo "knows" the client (access to client data e.g. name, address) and to refrain from a direct relationship between UBS AG and the client.

It is proposed that NewCo obtains its own QI status to protect the existing QI umbrella agreement of UBS AG. If IRS Reporting responsibility can be transferred to a "US bank" (see chapter 3) NewCo will register as QI "without"[12]. (In case IRS Reporting responsibility remains with NewCo it will register as QI "with".)

Swiss perspective

From a Swiss regulatory point of view, it will be sufficient if NewCo will be registered with EBK as a securities dealer ("Effektenhändler") as this allows NewCo to act as "deposit taking unit" and to provide virtually the entire range of wealth management services/products (except mortgage loans and interest bearing current accounts).

This set-up is from a legal perspective - and also cost-wise - the leanest possible, which still grants complete segregation from the rest of the bank.

- Expertise/Know-How to service U.S. clients incl. product and operational expertise
- Acquisition capacity
- Availability of SEC-compliant products and services
- Reach critical mass in time
- Willingness of clients to move into NewCo

Segments (external view)

The new entity will service high-net worth U.S. persons, who invest internationally and want to (physically) split their wealth across countries e.g. book part of their wealth in Switzerland, to manage currency and political risk and/or seek out higher returns.

Geographically, the main target markets are East Coast (New York, Boston, Washington).

[11] Registration as broker-dealer was ruled out, as only few advantages (e.g. execution of trades, holding of cash) could be achieved compared to the IA registration, whereas on the cost-side significant additional costs (e.g. capital requirements, implementation time, reporting, examinations etc.) would be generated.

[12] QI with: legal entity with primary 1099 reporting and back-up withholding responsibilities; QI without: legal entity without primary 1099 reporting and back-up withholding responsibilities.

South East: (Miami), Midwest: (Chicago) and the West Coast: (Los Angeles, San Francisco, San Diego)

Client internal segmentation and offering

Clients will be segmented by assets as follows and will be targeted for the different IA products accordingly (X = sales focus)

	Advisory	PM	Custody	Strategy/Goal
AuM < CHF 1 mn	x	X	x	cost efficiency
AuM > CHF 1 mn	x	X	x	grow business/increase RoA
AuM > CHF 5 mn	X	x	x	grow business/build relationships

By servicing the existing W-9 client base and approaching prospects in a focused manner, NewCo is to grow by 10-15% p.a. through the following acquisition channels:

Acquisition channels

- leverage existing U.S. client base of UBS AG:
  - growth of share of wallet with existing U.S. clients
  - referrals from W-9 and non W-9 clients
- acquisition of new clients in the U.S. directly and via intermediaries
  - close co-operation with UBS PaineWebber to support introduction of clients to NewCo (to increase share of wallet)

In addition to above, there may be substantial growth coming from client switches from non-W-9 to W-9.

Team approach

It is envisaged to have three teams in Zurich, one (team 1) focusing on clients with limited asset potential - and two teams working on large clients and prospects, thereof one team concentrating on the West coast (team 2) and one team concentrating on the East cost (team 3).

Team 1 will be relatively small (2-3 staff) and only service existing (affluent) relationships with AuM < 1 mn.

Team 2 and 3 will service clients with AuM > 1 mn and acquire new clients and therefore consist of advisers skilled in acquisition and servicing.

The primary focus of NewCo will be on discretionary and non-discretionary advisory services, building on the strengths of the UBS Wealth Management approach. Contrary to UBS PaineWebber, NewCo is not a broker-dealer and has accordingly a different focus, again it is advice, which is also reflected in the fee structure: NewCo will not be permitted to be remunerated on a commission basis but will charge on an asset and product usage basis.

There are three main "programs" available to customers:

- custody
- non discretionary asset management and advisory
- portfolio management

Under the above programs equities, bonds, funds, structured products or derivatives can be held.

From a product viewpoint we will focus on the most important products (see below). The objective is to give U.S. customers an alternative to UBS PaineWebber's domestic service provision.

NewCo's selling proposition will be to provide independent advice out of a Swiss based entity that is governed not only by SEC but also by EBK and hence Swiss confidentiality rules apply. On the product side non-U.S. investments such as EURO and Swiss franc denominated fixed income and security strategies are the focus. In contrast to this UBS PaineWebber is positioned as a traditional U.S. full service brokerage house, whose financial advisers are remunerated on commission basis and have primarily good knowledge on U.S. securities and USD investment strategies.

Personalbank: Bullets and Numbering

4.6.1 SEC/EBK restrictions

The following activities are not allowed or pose difficulties for an IA with custody +

Effektenhändler:

- **Current Accounts (Cash accounts)** cannot be held at NewCo, as an IA is not allowed to hold funds/cash or to have direct access to clients' accounts. (Cash has to be held at a U.S. bank.) Interest bearing accounts are not allowed under EBK rules for Effektenhändler
- **Principal Trades** (that is 'buy or sell as principal - including affiliates). If consent of the client is received before settlement with respect to each individual trade, principal trades are permissible.
- **Mortgage loans** are not permissible to be offered by an "Effektenhändler" (EBK)
- **Trust activities** may trigger state fiduciary licensing laws (tbd)

4.6.2 Products & Services Offering

This chapter provides an overview on the availability of products and services. A product by product analysis was conducted by outside counsel. Further details incl. processes will be worked out during the realisation phase together with outside legal counsel and internal product specialists. Depending on the issuer, distribution channel or buyer different restrictions apply.

Products/Services which will be offered by NewCo (day 1):

- **Advisory services (APS/APA)**

Under SEC APA/APS are considered "non-discretionary" services, as the advisor cannot take any investment decision on behalf the customer. Investment restrictions for non-discretionary mandates are for some products more strict than for discretionary mandates and the recommendations need to be customized accordingly

- **Portfolio management/Investment Advice/Research**

NewCo is required to provide its own Portfolio Management services, to demonstrate its role as Independent advisor (meaning, UBS AG cannot provide PM services through NewCo without triggering IA registration). Also, NewCo needs to have its own (branded) investment view. The use of UBS AG research would trigger an SEC registration requirement.

From an efficiency viewpoint it is clearly an objective to use internal research material and not to duplicate internal processes. UBS PaineWebber and UBS-W NY research could be used, however, their scope is more on U.S. securities and non-US securities are covered to a limited extent only. Therefore UBS Research may need to be rebranded (and evtl. re-worded) for distribution to W-9 clients by NewCo. One should keep in mind that most of the research would be for internal use only in any case which will limit additional work in relation to research.

- **Custody**

To comply with the proposed Custody Rule – see chapter 4.3 – the global sub-custodian for securities and cash needs to be a U.S. custodian (such as BBH)

- **Securities**

The following elements are decisive whether a security can be offered:

- U.S. vs non U.S. issuer
- primary / secondary
- the way it is marketed: private placement, public offering
- discretionary/non-discretionary

U.S. government securities and commercial paper are exempt and hence can be offered without any restrictions.

U.S. securities, both in the primary and secondary market are generally permissible; private placements are only allowed for accredited investors and resale is restricted.

Non-U.S. securities - offshore primary offerings: allowed for discretionary accounts only as long as marketing efforts are limited. Private placements are only allowed for accredited investors and resale is restricted.

Non-U.S. securities - transactions in the secondary markets: allowed provided there is no extensive marketing in the U.S.

Securities/secondary market: seller has to be different from issuer, underwriter or dealer (to be checked in detail for new structure, as UBS-W will be B/D)

- **Certificate of deposits**

U.S. bank issued CD's are permissible without any restrictions. (Active marketing of CD's requires a licensed banking presence, which UBS has in most States.)

- **Structured products**

Each structured product has to be analyzed individually. Structured products have to be decomposed to assess their underlying nature. Based on this it is possible to determine under what jurisdiction the product falls. Most of the existing UBS structured products are defined as securities. For securities the following options exist:

- the product is issued in Switzerland and traded at SWX or at another exchange. WP clients can purchase from NewCo and sell to NewCo. A registration statement would not be necessary.
- offer it in a private placement, this option is more costly due to the required registration and documentation
- SEC registration: this is option is not recommended, due to cost and time involved and - even more important - SEC registration would pose SEC-jurisdiction over the issuer of the product

In the short term we only recommend structured products that are also distributed by UBS PainneWebber, i.e. that are already SEC registered. This is also for tax reasons.

- **Pooled investment vehicles**

U.S. based pooled investment vehicles (SEC registered) can generally be offered to U.S. clients if they are registered in Switzerland as well.

Non-U.S. domiciled funds (e.g. Lux) cannot be offered by NewCo. From a SEC viewpoint it would be possible to have non-US funds in discretionary accounts but it is not advisable from IRS perspective. This is different for money market funds (which are considered "securities" - see above for restrictions) as they do not pose a tax problem. Again, for SEC compliance reasons MMF are only permissible in discretionary accounts.

Non-U.S. domiciled private funds are allowed in non discretionary accounts if the fund is sold to less than 100 U.S. persons or if all of its U.S. investors are QP's (qualified purchasers: assets >$5mil and the shares are sold in a private placement. In practice this rule is hard to follow which makes it almost an impossibility to offer non-U.S. domiciled private funds.

U.S. domiciled private funds can be offered to discretionary and non-discretionary clients, but sales-restriction (e.g. QP) as for Non-U.S. domiciled private funds apply.

Considering the importance of the product, funds should be available to non-discretionary customers, hence, there are two options: either U.S. based UBS funds are registered in Switzerland or third party funds are chosen.

- **Loans**

Margin loans are permitted without any further restrictions. Non-margin loans are permitted in States where UBS PainneWebber or UBS AG is licensed.

Non purpose loans are governed by the FED Reg X rule. It is the clients' obligation to comply with this rule but the bank is free to follow it.

- **Financial Planning**

Can be provided by an IA without any restrictions.

The following products will not be available as per day 1 of NewCo but might be offered at some later date (depending on general availability and demand):

- **Options and Futures**

NewCo is allowed to provide U.S. traded futures and options if they are traded on a U.S. exchange through a U.S. registered futures commission merchant (FCM). NewCo is not permitted to execute options and futures trades through a non-FCM-registered entity. (Remark: UBS-W NY is an FCM.)

Futures on non-U.S. government debt securities and broad based stock indices are

permissible if they are approved by the CFTC. Foreign government debt products of most of the countries including Switzerland have been approved. Also a large number of index futures and options traded on non U.S. exchanges have been approved incl. EUREX futures.

Non U.S. futures on narrow indices and individual securities are not permitted.

Exchange traded non U.S. options are viewed as securities and can hence be offered with limited restrictions (see securities above).

- **OTC derivatives**

OTC options/swaps/forwards are generally permissible if they are offered by a non-U.S. bank or the customer is an "eligible contract participant" (either 5mn in assets and investment is risk management purposes, or 10mn of assets) or if they are offered in a offshore private placement.

- **Fiduciaries**

If fiduciaries are considered CDs (offshore primary offering of security) they can only be offered in discretionary accounts (to be confirmed by outside legal counsel).

Fiduciaries are an important short term investment vehicle in Switzerland and currently comprise 12% of W-9 client investments. This product is likely to be categorised as a security and not as a deposit especially if it is in form of a third party fiduciary deposit and hence can be offered.

- **Securities Lending**

To be conducted by the custodian (not the IA). It needs to be determined, if IA could accept a portion of the revenues received by the custodian/lender. (tbd)

- **Internet Banking**

Internet Banking is not planned for cost reasons.[24] The IT-infrastructure needs to be flexible to allow for later implementation.

4.6.3 Tax and Client Reporting

IRS reporting (1099)

In option 3b and 3c only U.S. securities will be covered by 1099 reporting. In option 3a all securities are comprised by the 1099 reporting. In all cases we foresee BBH to provide for IRS reporting on behalf of NewCo. The only exception would be the omnibus setup of 3a, in which case NewCo will report directly to IRS under the status of QI "with".

In order to comply with deemed sales rules, NewCo has to include international securities as well. This means for option 3b and 3c has to plan for an upgrade before the next audit takes place in 2007 for the year 2006. There will be basically three possibilities at that time, either BBH, UBS AG or NewCo could report to the IRS. Reporting via BBH is attractive in the short term, as UBS does not have to build new in-house systems and an intermediary is used to communicate to IRS (i.e. UBS AG itself is not in direct contact with IRS). However, Operations is estimating that it will be more cost-efficient to build own reporting capabilities in the medium to long term. In option 3b, although NewCo has no custody over clients' it is recommended that NewCo provides 1099 forms. Of course it is also an alternative in option 3a and 3c to build in-house capabilities for IRS reporting.

Client reporting

Client reporting will in any case cover international holdings and shall also contain capital gains.

[24] estimated costs for e-tools: CHF 1.2mn

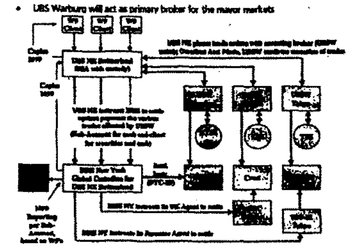
[redacted]

[redacted]

The operations model below is valid for option 3a and to a large extent for option 3b. In these options the new entity will act as advisement manager and custodian to W-9 clients. In order to provide the services described in Chapter 4 and remain as flexible as possible, the new set-up will have to install its own IT platform and have its own operations unit.[25] An IA with custody is required by the U.S. custody rule to hold client cash at a "U.S. bank" and have custody with a qualified custodian. Based on these requirements the following structure is recommended to comply with the proposed "custody rules" (see strategic options 3a):

Sub-account solution

- NewCo will appoint BBH New York (or alternatively Citibank, UBS NY could be used as well) as sub-account (global) custodian for securities and cash, and will delegate the full 1099 reporting to BBH. (NewCo will conduct double-accounting incl. daily (batch-) reconciliation with BBH.)
- NewCo only has to apply for the Status QI "without" as IRS reporting is provided by BBH. As mentioned before IRS reporting capabilities shall be envisaged in the medium term as a more cost-effective solution.
- UBS Warburg will act as primary broker for the mayor markets



Omnibus solution

If BBH cannot accommodate above-mentioned model, an omnibus solution could be pursued. In that case the tax reporting responsibility would lie with NewCo (to be registered as QI "with") and a tax module will have to be implemented based on Olympic. This could be done by the vendor, EB Bancaire, who would build an interface to the existing Tax Reporting tool "FITAX" from KPMG. As EN wants to expand in the U.S. we will get the tax module for a competitive fee. Moreover, UBS will be able to use the module not only in Switzerland but also in London and possibly in the U.S. in case Olympic is chosen as the new system at NY branch. Currently, a detailed analysis of our requirement is

[25] At the beginning of the analysis an outsourcing option was discussed, where the IT infrastructure and operations would have been outsourced to Banco di Lugano (BdL). As significant cost reductions could not be assumed from the analysis, and strategic dependencies, reduced flexibility in the product offering as well as management issues would result, outsourcing was finally ruled out.

undertaken.

The solutions outlined above need to be negotiated with IBM (or Citibank), once the Business Case has been approved.

As mentioned earlier option 3c in which UBS AG would act as direct sub-custodian (again via an omnibus account or via sub-accounts) could be an intermediary solution with the advantage that non-U.S. assets are still directly held by NewCo with UBS AG. This option is easier to communicate to clients and would entail less migration issues on the tax reporting and, as income and sales proceeds on international holdings are not reported to IRS but only to the client. This option would only work as long as the proposed custody rules are not implemented.

The systems which are to be installed shall be a solid platform to and on which the Bank can build on at least in the next 3-4 years.

The Application Architecture would be build in two phases. After the first phase a complete, operational IT platform for the Bank would be available. In this first phase a sub-project will be established targeting to set-up only the initial and minimum technological infrastructure to start-up production of the newly created bank. In a separate project (Phase II), which can be conducted partly in parallel, system components or satellite systems will be implemented that are not priority 1.

The target Application Architecture

It is assumed that the Olympic Banking System from ERI Bancaire will be the core system. Olympic was part of several detailed software evaluations within UBS and is used by UBS. Various key criteria speak for this particular system, so that no further in-depth system comparison with other solutions need to be conducted:

- Common technical platform (IBM AS/400)
- Swiss based provider and broad support infrastructure
- Best references on the market and international presence
- In the meanwhile UBS has built up experience and the market for experienced external resources is good compared to other vendor packages
- Very high functional coverage in terms of Private Banking
- Olympic is used as the strategic banking system for the EWM initiative and synergies might be utilised (e.g. special conditions for future enhancements)

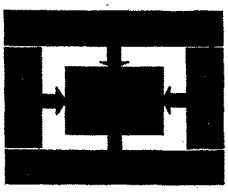
Around the core system various satellite systems will be required, such as price feeds, reconciliation programs, etc. Besides the implementation of Olympic, the project as well includes the implementation of the "must" satellite systems and the technical infrastructure, e.g. the installation of an IBM AS/400 computer.

Various systems are considered to be implemented. Modifications are possible though after the initial detailed IT assessment phase of the project has been completed. The following table describes the purpose of the system components considered:

Olympic	Core banking system from ERI Bancaire
Avenue	CRM, Prospect Management, Intermediary Management
Reuters	Market data (stand-alone)
VSA	Securities standing data and price feed
FIX	Apple FIX Engine and interface to UBSW
SWIFT	SWIFT messaging via central SWIFT hub Zurich
Print Machines	Client output
NTAX	US regulatory reporting
NRE	CH regulatory reporting

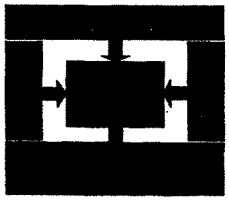
Keywair	Central Zurich reconciliation system
DeDemand	Archiving system
SAPPHIRE	International UBS data warehouse platform
RCS	International UBS Regional Collateral System
GMIS	UBS Global Management Information System
GEAR/GCR	UBS Global Control & Reporting system
Others	MADIS, KeyFinder, KeyLink, etc.

After Phase I the kernel of the Application Architecture would look as follows:



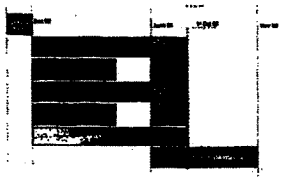
The SAPPHIRE data warehouse platform will merely be used to provide GCR with data.

In Phase II additional components will be added (i.e. Avenue) and reporting components will also be sourced via the SAPPHIRE data warehouse platform:



From a timing perspective Phase I of the IT set-up sub-project would take estimated nine months for completion. Phase II, which is not considered business critical, would be

planned in detail after Phase I is completed. The following picture outlines the major task blocks of Phase I:



IT and user training basically takes place during entire project duration, in form of courses, "on the job". A "fresh-up" for end-users should take place before live date.

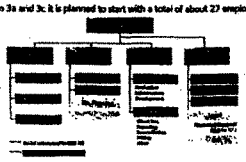
Migration of client portfolios will not be done in Phase I. Migration will be conducted step by step in Phase II of the IT Set-up Project. The number of steps will be determined in Phase II of the project:

[redacted]

Redacted for Privilege

A separate management structure to comply with regulatory requirements needs to be put in place, at the minimum consisting of a Board of Directors, Head of NewCo, and compliance officer.

In option 3a and 3c it is planned to start with a total of about 27 employees:



The Board of Directors will be staffed with NewCo directors and some UBS AG directors (due to SEC regulation, the majority of directors needs to be independent, so that only a minority of NewCo's BoD may be comprised of directors of UBS AG or any of its affiliates).

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in CHF '000	2002	2003	2004	2005	2006
Revenues	-	1'047	19'380	29'763	38'575
Costs	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
FTE advisor at year end	-	9	15	18	23
FTE other	-	18	31	31	32
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Cost/Income ratio	[illegible]	719%	[illegible]	[illegible]	80%

The Core Module (option 3a.1 - NewCo with BBH as global sub-custodian) was calculated based on the following assumptions:

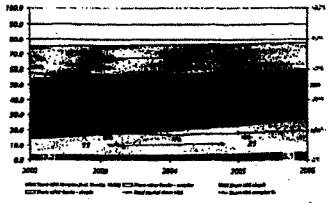
- NewCo is operational on September 30, 2003 (= ready for acquisition) – only clients of transferring advisors will migrate at this point
- step-by-step migration of current W-9 clients from UBS AG to NewCo, with asset transfers being proportionally spread over a period of 9 months starting in October, 2003 (we assume that 80% of current W-9 (booking center CH) clients will consent to be transferred to NewCo) → consequence: gradual build-up of revenues. [Other booking-centers to follow at later stages - depending on overall centralization project.]
- We have considered asset-growth from the acquisition of NWM of CHF 20 mn by client adviser.
- We have assumed CHF 500 mn p.a. transfers of non-W-9 to W-9.
- Migrated assets will remain at current RoA-levels (58bp); new assets will contribute on average 100bp.
- Project/Investment Costs (total CHF 8.4 mn) will be spread over the years 2002 & 2003. In option 3b.1, IT investments will be reduced by approx. CHF 2.4mn.
- Running costs on a fully loaded basis per headcount (CA/Central functions = CHF 420k, Support CHF 340k, Operations/IT CHF 413k). The cost distribution (%) over categories is based on PBI NAM current figures. In case of partial insourcing of internal logistics services there will result a shift from allocated to direct costs.
- NewCo would have to grow the asset-base by about 75% between 2003 and 2005 in order to keep the UBS market share with U.S. W-9 clients at current levels (~25%). To keep costs low for NewCo in the first years and due to the assumed asset-losses at transfer date, the market share W9 will even drop in the first years, but will start increasing around 2006 (see chart below). [Market development is based on the assumptions of a) constant share of U.S. offshore held wealth at 2.5% and b) an increase in the share of complex money from 40% (2002) to 80% (2006).]

page 26

Private Banking Americas International
Strictly Confidential

Development W8non-W9 business in booking center Switzerland

(NewCo starting 10/2003)



- Minimum capital requirement for an "Effektenhändler" is CHF 1.5 mn (Art 2 BEHV). Furthermore it has to fulfil as well the requirements stated in Art 29 BEHV, as it is not subject to banking law. Art 29 states that the available equity must be at least one fourth of prior years full costs. From this results a capital need + balance sheet coverage for NewCo of ca. CHF 4 mn - including a security margin and loan coverage. The form of this capital (e.g. shares, agio) will have to be discussed further with Group Treasury and taxes.
- Note that the tax impact has not yet been taken into account. Further, the non-financial benefits stemming from this unit relating to reputation risk and avoidance of cost for legal cases cannot be quantified and thus are not reflected in the core module.

The below embedded files show details of core module and NPV scenarios.

page 27

The goal is to open doors at October 1, 2003. Major deliverables/tasks of the project phase are:

Client Migration Process

To free UBS AG from the inherent risk issues surrounding the existing W-9 client base, it is planned to migrate all W-8 clients presently at UBS AG to NewCo. Clients will have to sign new contracts with NewCo.

Pre-migration

Before clients are opened at NewCo SEC compliance should be reached at product level, i.e. non-compliant products will be disposed before the transfer (non-US public funds). We have to go through every clients portfolio and decide on appropriate actions together with the client. This will clearly be a time consuming and delicate process as client losses have to minimized.

In conjunction with the "centralization project", W-9 clients will be assigned to new client advisers at Americas International. We are clearly striving towards assigning these clients to the client adviser who will later join NewCo. Appropriate advisers among current population have to be selected before year end 2002 and involved in the process and setup of the NewCo. If resources are insufficient inhouse, recruiting within UBS or outside UBS has to be done at this point.

Migration

We envisage a phased migration of clients. This will help to keep risks and potential negative impacts at a minimum, does not lead to a situation where operations is stretched too much with migration, and enables involved persons to learn from experience.

The concept will be to migrate clients together with their client adviser. In the first stage (October 1, 2003), a few advisers will transfer to NewCo together with their clients. These advisers should have free capacities to assign a fair proportion of their time to acquisition activities.

Migration of all W-9 clients inbound Switzerland should be completed mid of 2004.

Private Banking Americas International
Strictly Confidential

Resources

	Analysis Phase [illegible]	Implementation Phase [illegible]
Sponsor	Martin Liechti, Michel Guignard	Martin Liechti, Michel Guignard
Project Lead	René Stiefelmeyer	René Stiefelmeyer
Project Management	Sonja Bauer, Thomas Heller	[illegible]
Legal/Compliance	Franz Zimmermann	Franz Zimmermann
Tax	Walter van Wijl, Markus Fillmi	Markus Fillmi
Operations	Uni SIBNI + 1 full time resource tbd	[illegible]
IT/Systems	Purushothom Manni, Stefan Proach, Sigrid Unsold	[illegible]
AAT/PIB	Andreas Ankersold (AAT), Ernst Huber (PIB)	Andreas Ankersold (AAT), [illegible]
Credit	Reto Kunz, Jörg Nothnagel, Elio Keller	Reto Kunz, Jörg Nothnagel
Asset Management	M. Fourage, S. Landau	tbd
Controlling/Finance	Andreas Reber, Thomas Hasselbach, Michaela Kotz, Andrew Keller	Thomas Hasselbach, Andrew Keller
Client Reporting	Rolf Rosthall, Clarence Chin	Clarence Chin
HR	Jeanette Funk	[illegible]

Reeves Declaration
Exhibit 23

UBS

For Internal use only

US Training Sessions - US International NAM

25 September 2006

GOVERNMENT EXHIBIT 23

Agenda

09:15h - approx. 12:00h

♦ Introduction	Hansjörg Bless, US International
♦ Country Paper USA	Franz Zimmermann, Legal
♦ Impact of Country Paper on Business Model NAM	Hansjörg Bless, US International
♦ Security Aspects	Paul Herger, Security Risk Control
♦ Round table	all

10:30 – 10:45h Break

UBS

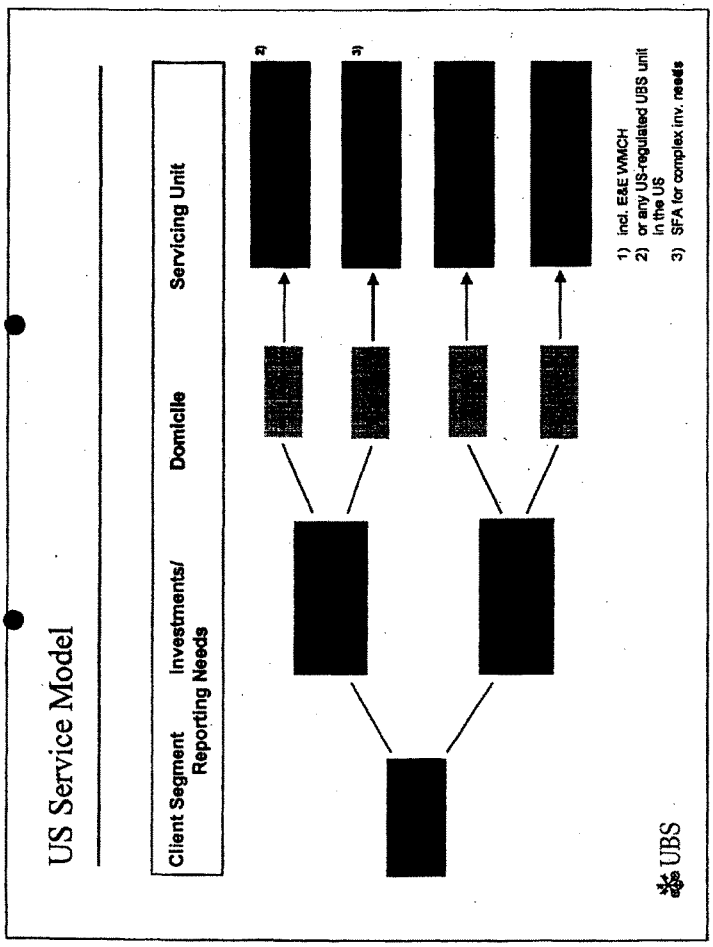
1

Introduction

- Scope of Training Sessions
- US Regulatory environment
- US Service Model
- New Country Paper USA
- Way forward

UBS

2


US Service Model
Client Segment
Investments/ Reporting Needs
Domicile
Servicing Unit
2)
3)
1) incl. E&E WMCH
2) or any US-regulated UBS unit in the US
3) SFA for complex inv. needs
UBS

Country Paper USA

- Purpose of Country Paper ('CP')
- Launch of amended CP targeted in Oct 2006

General Principles

- Travels to meet existing and prospective clients to be kept to a minimum
- Adequate training of Traveling Officers
- Specific approval for business travels required by supervisor
- Travel Plans and certification required from Traveling Officers
- No security-related communications to persons resident in the U.S. This includes in-person communication and communication by mail, telephone, e-mail, facsimile or telex.
- Distributing account opening documents is accepted within defined parameters
- No transport of assets (e.g. cash, checks, etc.) into or out of the U.S.
- Use of Travel notebook essential to safeguard client confidentiality

UBS

CONFIDENTIAL TREATMENT REQUESTED

Country Paper USA

Servicing Existing Clients

- Provision of statements and account information related to banking services is allowed
- In a meeting in the U.S. communication may not be related to securities products or services
- Exception: a security client (non-discr.) inquiring about optimal servicing structures may be informed about a discretionary mandate with UBS

Establishing Relationships with new Clients

- Contacting prospects regarding banking services on an unsolicited basis and discussions on non-security related topics are permitted
- Standard UBS account opening documentation may be distributed to banking services prospects. However, the prospective client must return the forms by mail.

UBS

CONFIDENTIAL TREATMENT REQUESTED

Impact of Country Paper on Business Model NAM

- Increase ring-fenced discretionary solutions further
- Strict adherence to Country Paper
- General traveling guidelines:
  - KC/HNWI: client retention/ switch to discretionary mandates
  - CORA: switch to discretionary mandates

Way forward

- Development of specific education sessions (e.g. for traveling purposes, for walk-in's, for telephone servicing)
- Future KPIs of US Int'l. business to be revised

UBS

Travel Security

General

- Thorough preparation of trip
- First travel accompanied by senior CA
- Employment of Using Best Practices in CH *and* abroad

Specific

- Explanation of Business Trip: be prepared for arising questions when crossing the border
- Travel habits:
  - Airlines, flight routes need not be altered from a security point of view
  - Strong recommendation to change hotels in rotation
- In case of **emergency (7 x 24h) : Tel. +41-44 234 24 24**
  Security Risk Governance will subsequently co-ordinate the next steps with Legal, Line Management and any other support function

UBS

CONFIDENTIAL TREATMENT REQUESTED

Travel Security

Specific (cont.)

- Observe Clients' Right to privacy at all times:
  - Always maintain 'Clear Desk Policy' in hotel rooms
  - Use secure infrastructure (Travel notebook, PDA)
  - Be aware that cell phones are prone to eavesdropping
  - Cross borders without client related documents

- Usage of courier and postal services by clients:
  - Regular mail may be used
  - Use courier service if tracking is needed
  - Address must not necessarily show 'UBS'
  - Passport/Id copies should be sent separately

UBS

Useful Links

- **US Service Model**
  link to be set-up
- **US Competence Center**
  http://bw.ubs.com/page/0/33/0,1080,4733-236103-1-208103,00.shtml
- **Country Paper USA**
  http://bw.ubs.com/page/0/33/0,1080,4733-236389-1-208104,00.shtml
- **Security Home page**
  http://bw.ubs.com/page/0/36/0,1080,636-128746-1-0,00.shtml
- **Travel Tips & Personal Security Tips**
  http://bw.ubs.com/page/0/36/0,1080,636-128746-1-0,00.shtml
- **Travel Risk Advisor**
  http://bw.ubs.com/page/0/25/0,1080,1625-0-0-0,00.shtml

UBS

Round table

- Comments
- Questions
- Discussion

UBS

Contacts

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UBS

Reeves Declaration
Exhibit 24

From: Veronese, Luca
Sent: Tuesday, October 03, 2006 11:44 AM
To: Blase, Hansjoerg; Eduah, Roland
Cc: Christen, Thomas
Subject: QA travel training session NAM

Dear Hansjoerg and Roland,

Attached you will find a one page QA rough document relating to the UB training sessions held in Geneva and Zurich. I have listed questions that Thomas and I have been able to pick up during the discussion. I would like to kindly ask you to add your questions and input to the document and return it me by Friday Oct. 13, 2006.

Thank you and kind regards

Luca

QA travel training session NAM...

GOVERNMENT EXHIBIT 24

US training sessions - Questions raised in the meetings (Geneva and Zurich)

- **Can NAM management provide point-of entry per location in the US?** To be discussed, Daniel Peron mentioned in the meeting that this solution is possible.
- **What are the right of a CA once taken into custody?** The CA has the right of us council, but has to be aware of the new regulations in the "patriot act" and the new "anti terrorism laws" where a person can be detained without any explanation.
- **Can the CA refuse to answer to the authorities?** To protect the Swiss banking secrecy act the CA can try not to answer any questions until a council is provided to him/her.
- **What are the consequences for a CA if he/she breaches the Swiss banking secrecy act in the US under interrogation?** To be discussed
- **What can be put on the STAS?** All STAS have to be empty while crossing the border. Suggestion is to have some kind of UBS general presentations to show to the authorities in case PC is checked.
- **Why no printer?** CA should not be able to print out statements in violation with the "deemed sales act". Also handing out statements proves that the CA gave investment instructions on US soil.
- **BVI companies with Inv. Advisor USA?** Open issue
- **Are phones, fax, email taped in the US?** Yes, US government uses various systems to monitor phones, fax, email and all other communications systems. Systems used are the kind of tools like "Echelon". Echelon collects data on a world wide base and filters it with key words from various languages.
- **Can CA discuss security-related MACRO issues?**
- **Is discretionary mandate considered a security?**
- **Opening PM's is a risk the bank is willing to take?**
- **Circumvention possible through companies?** To be discussed
- **Is promoting structured solutions possible?** No, certainly not proactive
- **Can we show a PM model template?** No, because this would represent an investment advice made on US soil, something which goes against US deemed sales.
- **What is ring-fenced?**
- **How does a CA show investment performance on a Business trip?**
- **Debriefing after Business trip?** Yes. It is requested that each CA returning from a B-trip does a detailed debriefing of his/her B-trip.
- **Could a CA meet client at onshore branches?** No.

Reeves Declaration
Exhibit 25

UBS

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US International Training

26 September 2006

Agenda

Introduction	Hansjörg Bless, US International
Country Paper USA	Franz Zimmermann, Legal
Impact of Country Paper on Business Model US Intl	Hansjörg Bless, US International
Security Aspects	Paul Herger, Security Risk Control
Round table	all

UBS

GOVERNMENT EXHIBIT 25

Introduction

- Scope of Training Sessions
- US Regulatory environment
- US Service Model
- New Country Paper USA
- Way forward

UBS

US Service Model

Client Segment	Investments/ Reporting Needs	Domicile	Servicing Unit
US Person	All securities (incl. US secs.) (W9)	[redacted]	UBS SFA [redacted]
		[redacted]	US Int'l. (W9) NAM [redacted]
	Securities (except US secs.) (non-W9)	[redacted]	US Int'l. NAM
		[redacted]	WMI, WMCH, PCC

UBS

Country Paper USA

- Purpose of Country Paper ('CP')
- Launch of amended CP targeted in Oct 2006

- Travels to meet existing and prospective clients to be kept to a minimum
- Adequate training of Traveling Officers
- Specific approval for business travels required by supervisor
- Travel Plans and certification required from Traveling Officers
- No security-related communications to persons resident in the U.S. This includes in-person communication and communication by mail, telephone, e-mail, facsimile or telex.
- Distributing account opening documents is accepted within defined parameters
- No transport of assets (e.g. cash, checks, etc.) into or out of the U.S.
- Use of Travel notebook essential to safeguard client confidentiality

UBS

Country Paper USA

- Provision of statements and account information related to banking services is allowed
- In a meeting in the U.S. communication may not be related to securities products or services
- Exception: a security client (non-discr.) inquiring about optimal servicing structures may be informed about a discretionary mandate with UBS

- Contacting prospects regarding banking services on an unsolicited basis and discussions on non-security related topics are permitted
- Standard UBS account opening documentation may be distributed to banking services prospects. However, the prospective client must return the forms by mail.

UBS

Impact of Country Paper on Business Model US Intl

- Increase ring-fenced discretionary solutions further
- Strict adherence to Country Paper
- General traveling guidelines:
  - HNWI: client retention & referrals / switch to discretionary mandates
  - CORA: referrals / switch to discretionary mandates

- Development of specific education sessions (e.g. for traveling purposes, for walk-in's, for telephone servicing, for referrals)
- Performance measurement with respect to KPI's to be reviewed

UBS

Travel Security

- Thorough preparation of trip
- First travel accompanied by senior CA
- Employment of Using Best Practices

- Reasoning of Business Trip: be prepared for arising questions when crossing the border
- Travel habits:
  - Airlines, flight routes need not be altered from a security point of view
  - Strong recommendation to change hotels in rotation

In case of emergency (7 x 24h) · Tel. +41-44 234 24 24
Security Risk Governance will subsequently co-ordinate the next steps with Legal, Line Management, Family and others

UBS

Travel Security

Observe Clients' Right to privacy at all times:
- Always maintain 'Clear Desk Policy' in hotel rooms
- Use secure infrastructure (Travel notebook, PDA)
- Be aware that cell phones are prone to eavesdropping
- Cross borders without client related documents

Usage of courier and postal services by clients:
- Regular mail may be used
- Use courier service if tracking is needed
- Address must not necessarily show 'UBS'
- Passport/Id copies should be sent separately

UBS

Lessons learned

Tel. +41-44 234 24 24

No further calls

In case of an interrogation by any authority;
- protect the banking secrecy
- no client respective communication / wait for assistance of a UBS lawyer

No panic / rush! we are not criminals!

"Yes, I am meeting with clients" (banking products)

Comply with e-mail policy

UBS

Traveling - way forward

- "Certification"
  - sign country paper
  - travel security training
- First trip together with a senior
- Written travel plan to be discussed / agreed with line manager prior to business trip
- Empty Travel notebook, no printer, blank forms only
- **NO** handover of asset statements
- Written debriefing / report with line manager
- Regular security training

UBS

Useful Links

US Service Model

US Competence Center

Country Paper USA

Security Home page

Travel Tips & Personal Security Tips

Travel Risk Advisor

UBS

Round table

- Comments
- Questions
- Discussion

UBS

Contacts

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Thomas Christen
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UBS

Reeves Declaration
Exhibit 26

From: Liechti, Martin
Sent: Wednesday, January 22, 2003 7:31 PM
To: Foellmi, Markus; Guignard, Michel
Subject: FW: IRS Amnesty - action plan for banks

Dear collegues,

Reading Jon's mail, we are right on the money, reading John's mail, I think we need to take the utmost care of this issue, that's why I think we need to be extremely carefull with any written statement on the subject.

regards

ML

-----Original Message-----
From: Bourne, Jonathan
Sent: mercredi, 22. janvier 2003 18:03
To: Chin, Clarence
Cc: Bosman, Aleidus; Foellmi, Markus; La-Barre, Rene; Liechti, Martin; Meyer, Werner; Stutz, Roger; Von-Wyl, Walter
Subject: IRS Amnesty - action plan for banks

Clarence,
I attended one of the B&M working lunches today. They had changed the topic in order to cover the "partial" amnesty, as they call it.

They had a lot of interesting information about the background and the IRS methodology. I have sent you a copy of the slides and 2 articles.

Their main message, however, was what might happen to the promoters of offshore schemes and what the banks affected should now do.

WHAT MIGHT HAPPEN TO THE PROMOTERS
Apparently the whole objective of the amnesty is not to bring money back onshore, but to bring criminal cases against the promoters of offshore solutions that have led to US tax evasion.

Before the IRS will accept an amnesty application, they will want details of financial arrangements - which encompasses not just offshore credit cards issued by banks in foreign jurisdictions (including CH), but also arrangements involving corporations, partnerships, trusts and other entities. Their main focus is on the time after 31.12.98, but they are also interested in arrangements set up earlier.

WHAT BANKS SHOULD DO NOW
Banks should review
* marketing materials sent to clients,
* letters sent to clients,
* credit card arrangements enabling a client to make purchases in the US out of offshore funds, and
* cases where offshore companies, trusts and foundations have been set up for US persons.

Banks should be aware that clients may make something up about the bank, in order to fit within the conditions of the application.

Banks should make sure that they have clear policies in place prohibiting the sale of "financial arrangements" to US persons, unless tax planned (as we do).

GOVERNMENT EXHIBIT 26

Where a bank acts as trustee or member of the Board of foundation, the trustee/Board should start doing the IRS reporting required by US law, where a US person is the settlor/founder. The reporting should not be sent to the IRS, but to the client.

The bank should be able to demonstrate that, where certain bank employees have been active in setting up offshore structures for US persons, these employees have been asked to leave.

B&M say that immediate action is required in order to build up a defence against a possible future criminal case against the bank.

Regards,
Jon

CONFIDENTIAL TREATMENT REQUESTED U00009458

Reeves Declaration
Exhibit 27

From: Zimmermann, Franz
Sent: Wednesday, October 30, 2002 3:03 PM
To: Lustolf, Dieter
Cc: Kaufmann, Carmen; Lulei, Gerald; Foelmi, Markus r.h.f.m.l.
Subject: RE: Minutes

Dear Dieter,

Many thanks for having run your draft minutes by us. While I agree that it accurately summarizes the gist of our discussion it evidences how sensitive things get when you are writing them down. In this vein, please find my comments directly in your text in Capital letters. Suggested deletions are in brackets.

I hope this further clarifies the situation.

Best regards,

Franz

Mark: I would appreciate if you could quickly do a sanity check on my statements. Please note that I am cognizant of the fact that handing account statements and executing amendments to a PM contract on US soil may be considered problematic by IRS people but I think my assessment follows our overall policy that we should not be more royal than the king. Thanks for your assistance keeping me out of trouble.

-----Original Message-----
From: Lustolf, Dieter
Sent: Dienstag, 29. Oktober 2002 10:45
To: Zimmermann, Franz; Lulei, Gerald
Cc: Kaufmann, Carmen
Subject: Minutes

Dear colleagues,

We have tried to outline the most important points of our discussions. Please confirm that you agree with these statements, or adjust accordingly.

Minutes of Meeting with Franz Zimmermann,Legal and Gerald Lulei,Compliance on October 25, 2002:

1. According to F. Zimmermann we are - from a QI Deemed Sales point of view - still allowed to visit clients in the US, hand out account statements, discuss Investment Strategy and even accept ("not frequant") (stock) SECURITIES orders IF THEY WERE DONE IN ISOLATED AND INFREQUENT CIRCUMSTANCES or decide on change of PM Strategies. This BEHAVIOR MAY however BE PROBLEMATIC UNDER (is not allowed under) SEC (compliance) RULES. UBS HAS FURTHER MADE THE POLICY DECISION NOT TO RELY ON THE "ONLY INFREQUENT" EXEMPTION.

2. F. Zimmermann considers it important THAT ANY CUSTOMER INSTRUCTIONS ARE PROPERLY AND ACCURATELY DOCUMENTED (for the bank to have a written agreement signed by the client when we), for instance change OF the PM Strategy,
--->even if this means SIGNING THE PM AMENDMENT) in the US. According to him, this -CONTRARY TO ACCEPTING SECURITIES INSTRUCTIONS STEMMING FROM US TERRITORY - does NOT raise any QI/deemed sales problems, but "only" SEC compliance.

3. Written information in Focus on the financial background of client is key to pass the Audit. "Inheritance" is not enough, especially if the

GOVERNMENT EXHIBIT 27

inheritance was recent. Moreover, for Numbered Accounts detailed information on the background of the client is required,
--->even if by providing this information anybody reading the Focus report might be able to guess who the account owner is numbered accounts]. Initials can be mentioned, birth year (not exact date) can be input.

Best regards,
Dieter Lütolf

2

Reeves Declaration
Exhibit 28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

08-60322 CASE NO. CR-COHN MAGISTRATE JUDGE BELTZER
18 U.S.C. § 371

UNITED STATES OF AMERICA

vs.

RAOUL WEIL,

Defendant.

_____/

2008 NOV -6 PM 3:08

INDICTMENT

The Grand Jury charges that:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

1. The Internal Revenue Service ("IRS") was an agency of the United States Department of Treasury responsible for administering and enforcing the tax laws of the United States and collecting the taxes owed to the Treasury of the United States.

2. An entity identified as "Swiss Bank" was one of Switzerland's largest banks. Swiss Bank owned and operated banks, investment banks, and stock brokerage businesses throughout the world, also operating in the Southern District of Florida and elsewhere in the United States. Because of Swiss Bank's ownership of banks and investment brokerages in the United States, United States tax laws applied to Swiss Bank and to its United States clients.

3. Swiss Bank operated a cross-border banking business with United States clients ("United States cross-border business"). The United States cross-border business employed

GOVERNMENT EXHIBIT 28

approximately 60 private bankers and had offices in Geneva, Zurich, and Lugano, Switzerland. These private bankers frequently traveled to the United States to meet with and to conduct business with their United States clients.

4. The United States cross-border business provided private banking services to approximately 20,000 United States clients with assets worth approximately $20 billion. Approximately 17,000 of the 20,000 cross-border clients concealed their identities and the existence of their Swiss Bank accounts from the IRS. Many of these clients willfully failed to pay tax to the IRS on income earned on their Swiss Bank accounts. Swiss Bank assisted these United States clients conceal the income earned on Swiss Bank accounts by failing to report IRS Form 1099 information to the IRS. From 2002 through 2007, the United States cross-border business generated approximately $200 million a year in revenue for Swiss Bank.

The Conspirators

5. From 2002 through 2007, defendant RAOUL WEIL was head of Swiss Bank's wealth management business, which included the United States cross-border business and other businsses. As such, defendant RAOUL WEIL and others had the authority to expand, maintain, or discontinue the United States cross-border business. In July 2007, defendant RAOUL WEIL was promoted and became the Chief Executive Officer of a division that oversaw the United States cross-border business and world-wide private banking.

6. Some Swiss Bank's executives ("Executives") are unindicted co-conspirators not named as defendants herein. These Executives occupied positions at the highest levels of management within Swiss Bank, including positions on the committees that oversaw legal, compliance, tax, risk, and regulatory issues related to the United States cross-border business.

7. Some Swiss Bank's employees who managed the United States cross-border business ("Managers") are unindicted co-conspirators not named as defendants herein. These Managers were responsible for overseeing the United States cross-border business operations. These Managers were responsible for regulatory and compliance issues, as well as issues related to bankers' incentives and compensation. These Managers were also responsible for traveling to the United States to meet with Swiss Bank's wealthiest United States clients. These Managers reported directly to Executives, including defendant RAOUL WEIL.

8. Swiss Bank's employees who managed the bankers servicing the United States cross-border business ("Desk Heads") are unindicted co-conspirators not named as defendants herein. These Desk Heads exercised direct management over the day-to-day operations of the business. In addition to having management duties, Desk Heads traveled to the United States to conduct unlicensed banking and investment advisory activity for Swiss Bank's United States clients. These Desk Heads reported directly to Managers.

9. Swiss Bank private bankers who serviced the United States clients ("Bankers") are unindicted co-conspirators not named as defendants herein. These Bankers were not licensed to engage in banking and investment advisory activity in the United States. However, these Bankers routinely traveled to the United States to conduct unlicensed banking and investment advisory activity for Swiss Bank's United States clients. While in Switzerland, these Bankers routinely communicated with their clients in the United States about banking and investment advice. These Bankers reported directly to the Desk Heads. Swiss Bank Executives and Managers authorized and encouraged through incentives Bankers' activities with respect to their United States clients.

10. Some of Swiss Bank's 20,000 United States clients are unindicted co-conspirators not named as defendants herein. These United States clients knowingly concealed from the United States government, including the IRS, approximately $20 billion in assets held at Swiss Bank and willfully evaded United States income taxes owed on the income earned on these secret Swiss Bank accounts. United States clients were required to report and pay taxes to the IRS on income they earned throughout the world, including income earned from the Swiss Bank account.

COUNT ONE
(18 U.S.C. § 371)

11. The allegations contained in paragraphs 1 through 10 of the Introduction are re-alleged and incorporated herein.

12. From in or a time unknown to the Grand Jury and continuing up to and including the date of the return of this Indictment, in the Southern District of Florida, and elsewhere, the defendant,

RAOUL WEIL

together with his co-conspirators, unlawfully, willfully and knowingly, did combine, conspire, confederate and agree together and with each other to defraud the United States and an agency thereof, to wit, the Internal Revenue Service of the United States Department of Treasury in the ascertainment, computation, assessment and collection of federal income taxes.

OBJECT OF THE CONSPIRACY

13. It was a part and an object of the conspiracy that defendant RAOUL WEIL and his co-conspirators, would and did increase the profits of Swiss Bank by providing unlicensed and unregistered banking services and investment advice in the United States and other activities intended to conceal from the IRS the identities of Swiss Bank's United States clients, who willfully evaded their income tax obligations by, among other things, filing false income tax returns and failing to disclose the existence of their Swiss Bank account to the IRS.

MEANS AND METHODS OF THE CONSPIRACY

Among the means and methods by which defendant RAOUL WEIL and his co-conspirators would and did carry out the conspiracy were the following:

14. It was part of the conspiracy that defendant RAOUL WEIL, Executives, Managers, Desk Heads, and Bankers utilized nominee entities, encrypted laptops, numbered accounts, and other counter surveillance techniques to conceal the identities and offshore assets of United States clients from authorities in the United States.

15. It was part of the conspiracy that Swiss Bank expanded their business beyond the borders of Switzerland by purchasing a large United States stock brokerage firm. Executives at Swiss Bank voluntarily entered into an agreement, known as the Qualified Intermediary Agreement ("QI Agreement") with the IRS that required Swiss Bank to report to the United States income and other identifying information for its United States clients who held an interest in United States securities in an account at Swiss Bank. Further, this agreement required Swiss Bank to withhold taxes from United States clients who directed investment activities in foreign securities from the United States.

16. It was part of the conspiracy that defendant RAOUL WEIL, Executives, and Managers entered into the QI Agreement and represented to the IRS that Swiss Bank was in compliance with the terms of the QI Agreement, while knowing that the United States cross-border business, was not conducted in a manner which complied with the terms of the QI Agreement.

17. It was part of the conspiracy that defendant RAOUL WEIL, Executives, and Managers mandated that Desk Heads and Bankers increase the United States cross-border business, knowing that this mandate would cause Bankers and Desk Heads to have increased unlicensed contacts with the United States, in violation of United States law and the QI Agreement.

18. It was further part of the conspiracy that defendant RAOUL WEIL, Executives, and Managers, who referred to the United States cross-border business as "toxic waste" because they knew that it was not being conducted in a manner that complied with United States law and the QI Agreement, put in place monetary incentives that rewarded Desk Heads and Bankers who increased the United States cross-border business.

19. It was further part of the conspiracy that Managers, Desk Heads, and Bankers solicited new investments in the United States cross-border business by marketing Swiss bank secrecy to United States clients interested in attempting to evade United States income taxes, in particular by claiming that Swiss bank secrecy was impenetrable.

20. It was further part of the conspiracy that Managers, Desk Heads, and Bankers provided unlicensed and unregistered banking services and investment advice to United States clients in person while on travel to the United States and by mailings, email, and telephone calls to and from the United States.

21. It was further part of the conspiracy that when approached about the continuous unregistered and unlicensed contacts with the United States associated with the United States cross-border business, defendant RAOUL WEIL and other Executives would not implement effective restrictions on the United States cross-border business because the business was too profitable for Swiss Bank.

22. It was further part of the conspiracy that Managers, Desk Heads, and Bankers assisted United States clients in preparing IRS Forms W-8BEN that falsely and fraudulently stated that nominee offshore structures, and not the United States clients, were the beneficial owners of offshore bank and financial accounts maintained in foreign countries, including accounts in Switzerland at Swiss Bank.

23. It was further part of the conspiracy that some United States clients prepared and filed with the IRS income tax returns that falsely and fraudulently omitted income earned on their undeclared Swiss Bank account and that falsely and fraudulently reported that United States citizens did not have an interest in, or a signature or other authority over, financial accounts located in a foreign country.

24. It was further part of the conspiracy that the United States clients failed to file with the Department of Treasury a Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1, which would have disclosed the existence of and their interest in, or signature or other authority over, a financial account located in a foreign country.

OVERT ACTS

In furtherance of the conspiracy and to achieve the object and purpose thereof, at least one of the co-conspirators committed at least one of the following overt acts, among others, in the Southern District of Florida and elsewhere:

25. On or about July 6, 2000, Manager # 1 authorized Bankers to refer United States clients to outside lawyers and accountants to create offshore structures to conceal from the IRS United States clients' Swiss Bank accounts, while knowing that creating these structures constituted helping the United States clients commit tax evasion.

26. On or about July 14, 2000, Managers changed the wording on Swiss Bank Document 61393, Declaration for US Taxable Persons, from "I would like to avoid disclosure of my identity to the US IRS" to "I consent to the new tax regulations . . . ." after United States clients expressed fears that the form as originally drafted could be used as evidence against them for tax evasion.

27. On or about July 11, 2002, Manager # 3 and others instructed Bankers to tell United States clients who were contemplating transferring their assets to another offshore bank that Swiss Bank has the largest number of United States clients among all banks outside the United States, creates jobs in the United States, has better lobbying possibilities in the United States than any other foreign bank and would not be pressured by United States authorities to disclose the clients' identities.

28. On or about September 19, 2002, defendant RAOUL WEIL and other Executives on Swiss Bank's executive board knowingly failed to disclose to the IRS deficiencies in implementing Swiss Bank's requirements to report and withhold taxes for clients of the United States cross-border business that were discovered after the completion of an internal audit.

29. On or about September 26, 2002, Desk Head # 1 instructed Bankers that if they have unauthorized contact with United States clients in the United States, that the Bankers should not report the contact in Swiss Bank's internal computer system.

30. In or about December. 2002, defendant RAOUL WEIL and other Executives authorized Manager # 2 and Manager # 3, to institute a temporary five month travel ban to the United States. The ban coincided with an IRS initiative relating to identifying holders of offshore credit cards.

31. On or about January 22, 2003, after being advised by outside lawyers to take immediate action in order to build a defense against a possible future criminal case brought against Swiss Bank, Manager # 2 instructed Manager # 3 to limit written communications relating to offshore structures created for United States clients and instructed Manager # 3 to begin issuing Form 1099 information to clients, but not to the IRS, for certain Swiss Bank accounts where Swiss Bank officials served as a manager for the offshore structures.

32. On or about January 24, 2003, Manager # 2 and Manager # 3 issued a form letter to United States clients reminding them that since at least 1939 Swiss Bank has been successful in concealing account holder identities from United States authorities and that even after Swiss Bank's presence in the United States recently increased after the purchase of a large United States brokerage firm, Swiss Bank was still dedicated to the protection of their identities.

33. On or about July 9, 2004, Swiss Bank represented to the IRS that its United States based operations had failed to provide Form 1099 information to the IRS, failed to withhold the appropriate tax when required to do so, and failed to properly document the owners of certain accounts, but failed to inform the IRS that the United States cross-border business continued to fail

to provide Form 1099 information to the IRS, continued to fail to withhold the appropriate tax when required to do so, and continued to fail to properly document the owners of certain accounts.

34. On or about August 17, 2004, Manager # 1 and Manager # 3, organized a meeting in Switzerland with outside lawyers and accountants to discuss the creation of structures and other vehicles for clients who wanted to conceal their Swiss Bank accounts and income derived therefrom tax authorities in the United States and Canada.

35. In or about September 2004, Desk Heads and Bankers received training in Switzerland on how to avoid detection by authorities when traveling in the United States on Swiss Bank business.

36. During calendar year 2004, approximately 32 Bankers traveled to the United States and met with United States clients approximately 3,800 times to provide unlicensed and unregistered banking services and investment advice relating to the clients' Swiss Bank account.

37. On or about April 15, 2005, United States client identified as I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2004 tax year, listing an address in Lighthouse Point, Florida that fraudulently omitted income earned from offshore assets and falsely represented that I.O. did not have an interest in, and signature and other authority over, financial accounts located in a foreign country.

38. On or about April 25, 2005, defendant RAOUL WEIL and other Executives instructed Managers, Desk Heads, and Bankers to grow the United States cross-border business.

39. In or about early December 2005, Desk Heads and Bankers solicited new business from existing and prospective United States clients at Art Basel Miami Beach in Miami Beach, Florida.

40. On or about March 31, 2006, Executive # 2 and other Executives, enacted restrictions that would have "little" or "some impact" on the profitability of the United States cross-border business.

41. In or about August 2006, defendant RAOUL WEIL and Executive # 1, refused to approve the recommendations of Managers # 2 and # 4 to wind down, sell, or spin off the United States cross-border business, as too costly and requiring public disclosures that would harm Swiss Bank.

42. On or about September 26, 2006, Desk Heads and Bankers were trained at Swiss Bank on how to conduct business discreetly by using mail that would not show Swiss Bank's name and address, by changing hotels while traveling, and by using encrypted laptop computers when traveling to the United States on Swiss Bank business and when meeting with United States clients.

All in violation of Title 18, United States Code, Section 371.

GRAND JURY FOREPERSON

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

KEVIN M. DOWNING
MICHAEL P. BEN'ARY
TRIAL ATTORNEYS

JEFFREY A. NEIMAN
ASSISTANT U.S. ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA **CASE NO.** _____

vs. **CERTIFICATE OF TRIAL ATTORNEY***

RAOUL WEIL

Superseding Case Information:
New Defendant(s) Yes ___ No ___
Number of New Defendants ___
Total number of counts ___

Court Division: (Select One)

___ Miami ___ Key West
_X_ FTL ___ WPB___ FTP

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

4. This case will take 7-10 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)			(Check only one)	
I	0 to 5 days	___	Petty	___
II	6 to 10 days	X	Minor	___
III	11 to 20 days	___	Misdem.	___
IV	21 to 60 days	___	Felony	X
V	61 days and over	___		

6. Has this case been previously filed in this District Court? (Yes or No) No
If yes:
Judge: _____ Case No. _____
(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No) No
If yes:
Magistrate Case No. _____
Related Miscellaneous numbers: U.S. v BIRKENFELD 08-60099-CR-Zloch
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? ___ Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? ___ Yes X No

Jeffrey A. Neiman
ASSISTANT UNITED STATES ATTORNEY
Court Bar No. 544469

*Penalty Sheet(s) attached

REV. 4/8/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET

Defendant's Name: RAOUL WEIL **No.:** _____

Count #1:
Conspiracy: in violation of 18 U.S.C. §371

*Max Penalty: Five years' imprisonment; $100 special assessment; and $250,000 fine

Count # :

*Max Penalty:

Count # :

*Max Penalty:

Count # :

*Max Penalty:

Count # :

*Max Penalty:

Count # :

*Max Penalty:

Count # :

*Max Penalty:

Count # :

*Max Penalty:

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms or forfeitures that may be applicable.**

REV 12/12/96

Reeves Declaration
Exhibit 29

ORIGINAL

FILED

2007 NOV -1 PM 4:07

CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

SA CR 07 - 0227

UNITED STATES OF AMERICA,	)	No. SA CR 07-
Plaintiff,	)	I N F O R M A T I O N
v.	)	[26 U.S.C. § 7206(1): Willful Filing of a False Tax Return]
IGOR M. OLENICOFF,	)	
Defendant.	)	

The United States Attorney charges:

COUNT ONE

[26 U.S.C. § 7206(1)]

On or about April 15, 2003, in the Central District of California and elsewhere, defendant IGOR M. OLENICOFF, a resident of Laguna Beach, California, did willfully make and subscribe a 2002 U.S. Individual Income Tax Return, Form 1040, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which defendant did not believe this 2002 U.S. Individual Income Tax Return to be true and correct as to every material matter in that Schedule B Part III, Foreign Accounts and

BAS:bas

GOVERNMENT EXHIBIT 29

Trusts, Line 7a asked "At any time during 2002, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account?" to which said return falsely stated "NO," whereas, as defendant then and there well knew and believed, it was a false statement, as defendant had ownership, control, and signatory authority over financial accounts in England, Switzerland, the Bahamas, and Lichtenstein.

THOMAS P. O'BRIEN
United States Attorney

CHRISTINE C. EWELL
Assistant United States Attorney
Chief, Criminal Division

ROBB C. ADKINS
Assistant United States Attorney
Chief, Santa Ana Branch Office

Reeves Declaration
Exhibit 30

THOMAS P. O'BRIEN
United States Attorney
WAYNE R. GROSS
Assistant United States Attorney
Chief, Santa Ana Branch Office
BRETT A. SAGEL (CBN: 243918)
Assistant United States Attorney
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Santa Ana, California 92701
Telephone: (714) 338-3598
Facsimile: (714) 338-3708
Email: Brett.Sagel@usdoj.gov

Attorney for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. IGOR M. OLENICOFF, Defendant.	SA CR No. 07-227-CJC PLEA AGREEMENT FOR DEFENDANT IGOR M. OLENICOFF

1. This constitutes the plea agreement between IGOR M. OLENICOFF ("defendant") and the United States Attorney's Office for the Central District of California ("the USAO") in the investigation of into tax violations regarding defendant and numerous entities related to defendant. This agreement is limited to the USAO and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities.

PLEA

2. Defendant gives up the right to indictment by a grand jury, waives venue, and agrees to plead guilty to the one-count

GOVERNMENT EXHIBIT 30

information in the form attached to this agreement or a substantially similar form.

NATURE OF THE OFFENSE

3. In order for defendant to be guilty of count one, which charges a violation of Title 26, United States Code, Section 7206(1), the following must be true: (1) The defendant made and subscribed a return, statement, or other document which was false as to a material matter; (2) The return, statement, or other document contained a written declaration that it was made under the penalties of perjury; (3) The defendant did not believe the return, statement, or other document to be true and correct as to every material matter; and (4) The defendant falsely subscribed to the return, statement, or other document willfully, with the specific intent to violate the law. Defendant admits that defendant is, in fact, guilty of this offense as described in count one of the information.

PENALTIES

4. The statutory maximum sentence that the Court can impose for a violation of Title 26, United States Code, Section 7206(1) is: 3 years imprisonment; a 3-year period of supervised release; a fine of $100,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; and a mandatory special assessment of $100. The Court may order defendant to pay any additional taxes, interest and penalties that defendant owes to the United States. Also, the Court must order defendant to pay the costs of prosecution, which may be in

addition to the statutory maximum fine stated above.

5. Supervised release is a period of time following imprisonment during which defendant will be subject to various restrictions and requirements. Defendant understands that if defendant violates one or more of the conditions of any supervised release imposed, defendant may be returned to prison for all or part of the term of supervised release, which could result in defendant serving a total term of imprisonment greater than the statutory maximum stated above.

6. Defendant also understands that, by pleading guilty, defendant may be giving up valuable government benefits and valuable civic rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the right to serve on a jury.

7. Defendant further understands that the conviction in this case may subject defendant to various collateral consequences, including but not limited to, deportation, revocation of probation, parole, or supervised release in another case, and suspension or revocation of a professional license. Defendant understands that unanticipated collateral consequences will not serve as grounds to withdraw defendant's guilty plea.

FACTUAL BASIS

8. Defendant and the USAO agree and stipulate to the statement of facts provided below. This statement of facts includes facts sufficient to support a plea of guilty to the charge described in this agreement and to establish the

sentencing guideline factors set forth in paragraph 12 below. It is not meant to be a complete recitation of all facts relevant to the underlying criminal conduct or all facts known to defendant that relate to that conduct.

Defendant is the President and Owner of Olen Properties Corporation (hereinafter "OPC"). During the years 1992 through 2004, defendant owned, controlled, and had signatory authority over financial accounts outside of the United States. At least as early as August 1997, defendant listed himself as chairman of Sovereign Bancorp Ltd. (hereinafter "SBL") and President and Director of National Depository Corporation, Ltd. (hereinafter "NDC") on signature cards for Barclays Bank in the Bahamas, which also listed defendant as an authorized signatory on these accounts. Defendant also had signatory authority and controlled several financial accounts with Solomon Smith Barney, which were held in Solomon Smith Barney's office in London, England. Defendant's accounts in Solomon Smith Barney's England offices included accounts in the names of SBL, NDC, Guardian Guarantee Company, Ltd. (hereinafter "GGCL"), Continental Realty Funding Corporation (hereinafter "CRFC"), and Swiss Finance Corporation. Defendant opened several accounts at UBS, formerly known as Union Bank of Switzerland (hereinafter "UBS") in Switzerland, in which defendant had signatory authority and listed himself as Vice President and Director of accounts under the name of GGCL and New Guardian Bancorp APS (hereinafter "NGB"). In addition, defendant also had signatory authority and control over several financial accounts at Neue Bank in Liechtenstein, including an account in the name of NGB.

Defendant directed and authorized transactions from his off-shore financial accounts, including, but not limited to the following transactions. On or about March 9, 1992, defendant transferred approximately $61,000,000 from an OPC account at First Interstate Bank in Newport Beach, California, to a Bank of Montreal account in Canada under the name of NDC. On or about October 5, 1998, defendant directed Solomon Smith Barney to transfer approximately $40,000,000 from an SBL account at Solomon Smith Barney (England) to an SBL account at Barclay's Bank (Bahamas). On or about June 4, 2001, defendant directed Solomon Smith Barney to transfer approximately $17,000,000, $43,000,000, and $58,000,000 from CRFC, NDC, and SBL accounts, respectively, at Solomon Smith Barney (England) to NDC and SBL accounts at Barclay's Bank (Bahamas). On or about December 10, 2001, defendant directed Barclay's Bank to transfer approximately $89,000,000 from a GGCL account at Barclay's Bank (Bahamas) to open the GGCL account at UBS (Switzerland). On or about February 27, 2002, defendant directed Solomon Smith Barney to transfer approximately $38,000,000 from CRFC, NDC, and CRFC accounts at

Solomon Smith Barney (England) to an GGCL account at Barclay's Bank (Bahamas).

For the calendar years 1998 through 2004, defendant filed his United States Individual Income Tax Returns (hereinafter "Form 1040") with the Internal Revenue Service for the respective tax years. Defendant signed his 1998, 1999, 2000, 2001, 2002, 2003, and 2004 Form 1040s under penalties of perjury. Defendant attached a Schedule B, Interest and Ordinary Dividends, to each of his Form 1040s for tax years 1998 through 2004. Each of the Form 1040s that defendant filed included Part III of Schedule B, Foreign Accounts and Trusts, whereby the Internal Revenue Service asked on Line 7a, "At any time during [calendar year], did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account?" Line 7b stated, "If 'yes,' enter the name of the foreign country." Lines 7a and 7b of Part III of Schedule B attached to the Form 1040s called for material information in that the requested information is necessary for a correct computation of the tax due and owing and has a natural tendency to influence or impede the Internal Revenue Service in ascertaining the correctness of the tax due and owing of the taxpayer. On each of the 1998 through 2004 Form 1040s, defendant falsely answered "No" to line 7a and left the space blank next to line 7b, even though, as he then well knew and understood, he had an interest in, signatory authority, and other authority over financial accounts in foreign countries during these years.

On or about April 15, 2003, in the Central District of California and elsewhere, defendant, a resident of Laguna Beach, California, did willfully make and subscribe a 2002 U.S. Individual Income Tax Return, Form 1040, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which defendant did not believe this 2002 U.S. Individual Income Tax Return to be true and correct as to every material matter in that Schedule B Part III, Foreign Accounts and Trusts, Line 7a asked "At any time during 2002, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account?" to which said return falsely stated "NO," whereas, as defendant then and there well knew and believed, was a false statement, as defendant had ownership, control, and signatory authority over financial accounts in England, Switzerland, the Bahamas, and Liechtenstein. When defendant signed his 2002 Form 1040, defendant knew that it contained false information as to a material matter, and in filing the false 2002 Form 1040, defendant acted willfully.

WAIVER OF CONSTITUTIONAL RIGHTS

9. By pleading guilty, defendant gives up the following rights:

a) The right to persist in a plea of not guilty.

b) The right to a speedy and public trial by jury.

c) The right to the assistance of legal counsel at trial, including the right to have the Court appoint counsel for defendant for the purpose of representation at trial. (In this regard, defendant understands that, despite his plea of guilty, he retains the right to be represented by counsel - and, if necessary, to have the court appoint counsel if defendant cannot afford counsel - at every other stage of the proceedings.)

d) The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

e) The right to confront and cross-examine witnesses against defendant.

f) The right, if defendant wished, to testify on defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

g) The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

By pleading guilty, defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or

Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

WAIVER OF DNA TESTING

10. Defendant has been advised that the government has in its possession the following items of physical evidence that could be subjected to DNA testing:

Documents obtained via search warrants

Defendant understands that the government does not intend to conduct DNA testing of any of these items. Defendant understands that, before entering a guilty plea pursuant to this agreement, defendant could request DNA testing of evidence in this case. Defendant further understands that, with respect to the offense to which defendant is pleading guilty pursuant to this agreement, defendant would have the right to request DNA testing of evidence after conviction under the conditions specified in 18 U.S.C. § 3600. Knowing and understanding defendant's right to request DNA testing, defendant knowingly and voluntarily gives up that right with respect to both the specific items listed above and any other items of evidence there may be in this case that might be amenable to DNA testing. Defendant understands and acknowledges that by giving up this right, defendant is giving up any ability to request DNA testing of evidence in this case in the current proceeding, in any proceeding after conviction under 18 U.S.C. § 3600, and in any other proceeding of any type. Defendant further understands and acknowledges that by giving up this right, defendant will never have another opportunity to have the

evidence in this case, whether or not listed above, submitted for DNA testing, or to employ the results of DNA testing to support a claim that defendant is innocent of the offense to which defendant is pleading guilty.

SENTENCING FACTORS

11. Defendant understands that the Court is required to consider the United States Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") among other factors in determining defendant's sentence. Defendant understands, however, that the Sentencing Guidelines are only advisory, and that after considering the Sentencing Guidelines, the Court may be free to exercise its discretion to impose any reasonable sentence up to the maximum set by statute for the crimes of conviction.

12. Defendant and the USAO agree and stipulate to the following applicable sentencing guideline factors:

Base Offense Level :	6	[U.S.S.G. § 2T1.1(a)(2)]
Acceptance of Responsibility:	-2	[U.S.S.G. § 3E1.1(a)]

Defendant and the USAO agree not to seek, argue, or suggest in any way, either orally or in writing, that any other specific offense characteristics, adjustments or departures, from either the applicable Offense Level or Criminal History Category, be imposed. If, however, after signing this agreement but prior to sentencing, defendant were to commit an act, or the USAO were to discover a previously undiscovered act committed by defendant prior to signing this agreement, which act, in the judgment of

the USAO, constituted obstruction of justice within the meaning of U.S.S.G. § 3C1.1, the USAO would be free to seek the enhancement set forth in that section.

13. There is no agreement as to defendant's criminal history or criminal history category.

14. The stipulations in this agreement do not bind either the United States Probation Office or the Court. Both defendant and the USAO are free to: (a) supplement the facts by supplying relevant information to the United States Probation Office and the Court; (b) correct any and all factual misstatements relating to the calculation of the sentence; and (c) argue on appeal and collateral review that the Court's sentencing guidelines calculations are not error, although each party agrees to maintain its view that the calculations in paragraph 12 are consistent with the facts of this case.

DEFENDANT'S OBLIGATIONS

15. Defendant agrees that he will:

a) Waive Indictment by Grand Jury, waive venue, and Plead guilty as set forth in this agreement.

b) Not knowingly and willfully fail to abide by all sentencing stipulations contained in this agreement.

c) Not knowingly and willfully fail to: (i) appear as ordered for all court appearances; (ii) surrender as ordered for service of sentence; (iii) obey all conditions of any bond; and (iv) obey any other ongoing court order in this matter.

d) Not commit any crime; however, offenses which would be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are not within the scope of this agreement.

e) Not knowingly and willfully fail to be truthful at all times with Pretrial Services, the U.S. Probation Office, and the Court.

f) To fill out and deliver to the USAO, prior to sentencing, a completed financial statement listing defendant's assets on a form provided by the United States Attorney's Office.

g) Prior to sentencing, abandon his claim for a refund on the 1999 Corporate Return for Olen Properties Corporation ("OPC") seeking a refund based on interest income "paid" from OPC to Sovereign Bancorp Ltd. ("SBL"), another corporation controlled by defendant.

h) Prior to sentencing, defendant will move all money held in foreign financial accounts, including bank and securities accounts, which defendant has an interest in, signature authority, or any other authority, to financial accounts within the United States. Defendant further agrees that during the period of supervised release or probation, that defendant will not have any interest in, signature authority, or any other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account.

i) Cooperate with the Internal Revenue Service in the determination of defendant's civil tax liability and the tax liability of corporations owned and/or controlled by defendant

for the Tax Years 1998-2004. Defendant agrees:

1) That defendant will, prior to the time of sentencing, enter into closing agreements for the years 1998 through 2004 for his Individual Income Tax Returns, correctly reporting unreported income and/or correcting improper deductions and credits, and will, if requested to do so by the Internal Revenue Service, provide the Internal Revenue Service with information regarding the years covered by the returns, and will pay at sentencing all additional taxes, and will pay promptly all penalties and interest assessed by the Internal Revenue Service to be owing as a result of any computational errors.

2) That nothing in this agreement forecloses or limits the ability of the Internal Revenue Service to examine and make adjustments to defendant's closing agreements.

3) That defendant will not, after entering into the closing agreements, file any claim for refund of taxes, penalties, or interest for amounts attributable to the closing agreements filed in connection with this plea agreement.

4) That defendant is liable for the fraud penalty imposed by the Internal Revenue Code, 26 U.S.C. § 6663, on the understatement of civil tax liability for Tax Years 1998-2004.

5) To give up any and all objections that could be asserted to the Examination Division of the Internal Revenue Service receiving materials or information obtained during the criminal investigation of this matter, including materials and information obtained through the execution of search warrants or

through grand jury subpoenas.

THE USAO'S OBLIGATIONS

16. If defendant complies fully with all defendant's obligations under this agreement, the USAO agrees:

a) To abide by all sentencing stipulations contained in this agreement.

b) At the time of sentencing, provided that defendant demonstrates an acceptance of responsibility for the offense up to and including the time of sentencing, to recommend a two-level reduction in the applicable sentencing guideline offense level, pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary, move for an additional one-level reduction if available under that section.

c) Not to further prosecute defendant for violations arising out of defendant's conduct described in the stipulated factual basis set forth in paragraph 8 above or tax violations associated with moneys transferred to and held in foreign bank accounts from 1998 through 2004, or any other conduct known to the Government at the time this agreement is signed by defendant. Defendant understands that the USAO is free to prosecute defendant for any other unlawful past conduct or any unlawful conduct that occurs after the date of this agreement. Defendant agrees that at the time of sentencing the Court may consider the uncharged conduct in determining the applicable Sentencing Guidelines range, where the sentence should fall within that range, the propriety and extent of any departure from that range,

and the determination of the sentence to be imposed after consideration of the sentencing guidelines and all other relevant factors.

BREACH OF AGREEMENT

17. If defendant, at any time between the execution of this agreement and defendant's sentencing on a non-custodial sentence or surrender for service on a custodial sentence, knowingly violates or fails to perform any of defendant's obligations under this agreement ("a breach"), the USAO may declare this agreement breached. If the USAO declares this agreement breached, and the Court finds such a breach to have occurred, defendant will not be able to withdraw defendant's guilty plea, and the USAO will be relieved of all of its obligations under this agreement.

18. Following a knowing and willful breach of this agreement by defendant, should the USAO elect to pursue any charge or any civil or administrative action that was either dismissed or not filed as a result of this agreement, then:

a) Defendant agrees that any applicable statute of limitations is tolled between the date of defendant's signing of this agreement and the commencement of any such prosecution or action.

b) Defendant gives up all defenses based on the statute of limitations, any claim of preindictment delay, or any speedy trial claim with respect to any such prosecution or action, except to the extent that such defenses existed as of the date of defendant's signing of this agreement.

c) Defendant agrees that: i) any statements made by defendant, under oath, at the guilty plea hearing; ii) the stipulated factual basis statement in this agreement; and iii) any evidence derived from such statements, are admissible against defendant in any future prosecution of defendant, and defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that the statements or any evidence derived from any statements should be suppressed or are inadmissible.

LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

19. Defendant gives up the right to appeal any sentence imposed by the Court, and the manner in which the sentence is determined, provided that (a) the sentence is within the statutory maximum specified above and is constitutional, (b) the Court in determining the applicable guideline range does not depart upward in offense level or criminal history category and determines that the total offense level is 4 or below, and (c) the Court imposes a sentence within or below the range corresponding to the determined total offense level and criminal history category. Defendant also gives up any right to bring a post-conviction collateral attack on the conviction or sentence, except a post-conviction collateral attack based on a claim of ineffective assistance of counsel, a claim of newly discovered evidence, or an explicitly retroactive change in the applicable Sentencing Guidelines, sentencing statutes, or statutes of

conviction. Notwithstanding the foregoing, defendant retains the ability to appeal the conditions of probation or supervised release imposed by the court, with the exception of the following: standard conditions set forth in district court General Orders 318 and 01-05; the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

20. The USAO gives up its right to appeal the sentence, provided that (a) the Court in determining the applicable guideline range does not depart downward in offense level or criminal history category, (b) the Court determines that the total offense level is 4 or above, and (c) the Court imposes a sentence within or above the range corresponding to the determined total offense level and criminal history category.

COURT NOT A PARTY

21. The Court is not a party to this agreement and need not accept any of the USAO's sentencing recommendations or the parties' stipulations. Even if the Court ignores any sentencing recommendation, finds facts or reaches conclusions different from any stipulation, and/or imposes any sentence up to the maximum established by statute, defendant cannot, for that reason, withdraw defendant's guilty plea, and defendant will remain bound to fulfill all defendant's obligations under this agreement. No one - not the prosecutor, defendant's attorney, or the Court - can make a binding prediction or promise regarding the sentence defendant will receive, except that it will be within the

statutory maximum.

NO ADDITIONAL AGREEMENTS

22. Except as set forth herein, there are no promises, understandings or agreements between the USAO and defendant or defendant's counsel. Nor may any additional agreement, understanding or condition be entered into unless in a writing signed by all parties or on the record in court.

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

23. The parties agree and stipulate that this Agreement will be considered part of the record of defendant's guilty plea hearing as if the entire Agreement had been read into the record of the proceeding.

This agreement is effective upon signature by defendant and an Assistant United States Attorney.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

THOMAS P. O'BRIEN
United States Attorney

BRETT A. SAGEL
Assistant United States Attorney

10/29/07
Date

I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the

Sentencing Guideline provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

IGOR M. OLENICOFF
Defendant

10/17/07
Date

I am IGOR M. OLENICOFF's attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his/her rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

EDWARD M. ROBBINS, JR.
Counsel for Defendant
IGOR M. OLENICOFF

10/17/07
Date

Reeves Declaration
Exhibit 31

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-60099
18 U.S.C. § 371

UNITED STATES OF AMERICA

CR-ZLOCH

vs.

MAGISTRATE JUDGE
SNOW

BRADLEY BIRKENFELD and
MARIO STAGGL,

Defendants.

FILED BY ... D.C.
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INDICTMENT

The Grand Jury charges that:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

1. The Internal Revenue Service ("IRS") was an agency of the United States Department of Treasury responsible for administering and enforcing the tax laws of the United States and collecting the taxes owed to the Treasury of the United States by its citizens.

The Conspirators

2. Defendant BRADLEY BIRKENFELD is a United States citizen born and educated in the United States. Defendant BRADLEY BIRKENFELD has resided in Switzerland since 1996, and worked for two of the largest Swiss banks and the Swiss branch of a large bank based in London, England. From 2001 through 2006, defendant BRADLEY BIRKENFELD worked as a director in the private banking division of a Swiss bank ("the Swiss Bank"), which also owns and operates banks, investment banks and stock brokerage business throughout the

GOVERNMENT
EXHIBIT
31

United States. Defendant BRADLEY BIRKENFELD marketed Swiss banking services to wealthy United States clients. After leaving the Swiss Bank in 2006, defendant BRADLEY BIRKENFELD continued to provide off-shore banking services to United States clients through a Swiss corporation that has offices in Miami, Florida.

3. Defendant MARIO STAGGL resides in Liechtenstein, where he owns and operates a trust company, New Haven Trust Company Ltd. During the period 2001 through the present, defendant MARIO STAGGL devised, marketed and implemented tax evasion schemes for United States clients. Defendant MARIO STAGGL's United States tax evasion schemes utilized Liechtenstein nominee entities, Liechtenstein banks, and Danish shell companies.

4. One of the clients that defendants BRADLEY BIRKENFELD and MARIO STAGGL provided services to was a billionaire United States real estate developer (hereinafter identified as "I.O."), an unindicted co-conspirator not named as a defendant herein, who maintained residences and operated his business in Southern Florida and in Southern California. As described below, I.O. utilized the services of defendants BRADLEY BIRKENFELD and MARIO STAGGL to evade United States income taxes on the income earned on approximately $200,000,000 of assets maintained in secret bank accounts in Switzerland and Lichtenstein.

The Tax Fraud Scheme

5. In 2001 the Swiss Bank voluntarily entered into a Qualified Intermediary agreement with the Internal Revenue Service pursuant to which the Swiss Bank agreed to identify and document any customers who received reportable United States source income. In accordance with IRS requirements, the Swiss Bank agreed to have its customers fill out IRS Forms W-8BEN, which require foreign beneficial owners of bank accounts to be identified, and

IRS Forms W-9, which require United States beneficial owners of bank accounts to be identified. This Qualified Intermediary agreement was a major departure from historical Swiss bank secrecy laws under which Swiss banks concealed bank information for United States clients from the IRS. The Swiss Bank further agreed to issue IRS Forms 1099 to United States customers for United States source payments of dividends, interest, rents, royalties and other fixed or determinable income paid into the United States customers' off-shore bank accounts and file the Form 1099 information with the IRS. As a result of this agreement, the Swiss Bank was able to hold itself out as a Qualified Intermediary and claim benefits as a Qualified Intermediary. At all relevant times to this indictment, the Swiss Bank represented to the IRS that it had continued to honor this Qualified Intermediary agreement.

6. During the period from at least in or about 2001 through the date of this indictment, defendants BRADLEY BIRKENFELD and MARIO STAGGL, and others known and unknown to the Grand Jury participated in a scheme to defraud the IRS by falsifying Swiss bank documents, by falsifying IRS Forms W-8BEN, by failing to prepare IRS Forms W-9, by setting up nominee entities, by failing to issue IRS Forms 1099, and by failing to comply with the terms of the Qualified Intermediary Agreement with the IRS in order to conceal from the IRS United States source income paid into Swiss bank accounts beneficially owned by United States taxpayers.

COUNT ONE
(18 U.S.C. § 371)

7. The allegations contained in paragraphs 1 through 6 of the Introduction are realleged and incorporated herein.

8. From in or about 2001, the exact date being unknown to the Grand Jury, and continuing up to and including the date of this indictment, in the Southern District of Florida and elsewhere, the defendants,

BRADLEY BIRKENFELD, and
MARIO STAGGL,

together with others, known and unknown to the Grand Jury, including I.O., who is not named as a defendant herein, unlawfully, willfully and knowingly, did combine, conspire, confederate and agree together and with each other to defraud the United States and an agency thereof, to wit, the Internal Revenue Service of the United States Department of Treasury, in violation of Title 18, United States Code, Section 371.

OBJECT OF THE CONSPIRACY

9. It was a part and an object of the conspiracy that defendants BRADLEY BIRKENFELD and MARIO STAGGL and their co-conspirators, including I.O., would and did defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful governmental functions of the IRS in the ascertainment, computation, assessment and collection of United States income taxes.

MEANS AND METHODS OF THE CONSPIRACY

Among the means and methods by which defendants BRADLEY BIRKENFELD and MARIO STAGGL and their co-conspirators would and did carry out the conspiracy were the following:

10. It was part of the conspiracy that defendants BRADLEY BIRKENFELD, MARIO STAGGL and others would and did market the advantages of Swiss and Liechtenstein bank secrecy to wealthy United States clients interested in attempting to evade United States income taxes, in particular by claiming that Swiss and Liechtenstein bank secrecy was impenetrable.

11. It was further part of the conspiracy that defendants BRADLEY BIRKENFELD, MARIO STAGGL, and others would and did travel to the United States to market investments including United States securities to United States clients which they were not licensed to market. The defendants BRADLEY BIRKENFELD, MARIO STAGGL, and others would and did market these same investments to United States clients from Switzerland, Liechtenstein, and elsewhere via mailing, emails, and telephone calls to and from the United States.

12. It was further part of the conspiracy that defendants BRADLEY BIRKENFELD, MARIO STAGGL and others would and did travel to the United States to conduct banking with United States clients. The defendants BRADLEY BIRKENFELD, MARIO STAGGL, and others would and did conduct banking with United States clients from Switzerland, Liechtenstein, and elsewhere via mailings, emails, and telephone calls to and from the United States.

13. It was further part of the conspiracy that defendants BRADLEY BIRKENFELD, MARIO STAGGL and others would and did travel to the United States to solicit United States

clients to utilize Swiss bank credit cards that they claimed could not be discovered by United States authorities to United States clients. The defendants BRADLEY BIRKENFELD, MARIO STAGGL, and others would and did solicit and sell these same credit cards to United States clients from Switzerland, Liechtenstein, and elsewhere via mailings, email and telephone calls to and from the United States.

14. It was further part of the conspiracy that defendants BRADLEY BIRKENFELD, MARIO STAGGL and others would and did prepare Swiss and Liechtenstein bank account applications, and IRS Forms W-8BEN, which falsely and fraudulently concealed that United States Taxpayers were the beneficial owners of offshore bank and financial accounts maintained in foreign countries, including Switzerland and Lichtenstein.

15. It was further part of the conspiracy that defendants BRADLEY BIRKENFELD, MARIO STAGGL and others would and did cause shell companies to be set up and used as the nominee owners for the Swiss Bank and Liechtenstein bank accounts in order to conceal the United States citizen's beneficial ownership of the bank accounts.

16. It was further part of the conspiracy that defendants BRADLEY BIRKENFELD, MARIO STAGGL and others would and did advise United States clients to destroy all offshore banking records existing in the United States.

17. It was further part of the conspiracy that defendants BRADLEY BIRKENFELD, MARIO STAGGL and others would and did cause to be prepared and filed with the IRS income tax returns that falsely and fraudulently omitted income earned by United States clients from their Swiss bank and Liechtenstein bank accounts.

18. It was further part of the conspiracy that defendants BRADLEY BIRKENFELD,

MARIO STAGGL and others would and did cause to be prepared and filed with the IRS income tax returns that falsely and fraudulently reported that United States clients did not have an interest in, and a signature and other authority over, financial accounts located in a foreign country.

OVERT ACTS

In furtherance of the conspiracy and to effect the illegal objects thereof, defendants BRADLEY BIRKENFELD, MARIO STAGGL and their co-conspirators, including I.O., committed the following overt acts, among others, in the Southern District of Florida and elsewhere:

19. On or about June 18, 2001, defendant BRADLEY BIRKENFELD caused to be sent bank account opening documents from the Swiss branch of a large bank based in London via Federal Express from Geneva, Switzerland to the California corporate headquarters of I.O., including an IRS Form W-9, Request for Taxpayer Identification Number and Certification.

20. On or about June 21, 2001, I.O. caused to be sent completed bank account opening documents for an account at the Swiss branch of a large bank based in London to defendant BRADLEY BIRKENFELD, including a Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding that falsely and fraudulently claimed that the beneficial owner of the newly opened account was a shell corporation located in the Bahamas.

21. On or about July 26, 2001, defendant BRADLEY BIRKENFELD caused to be sent an email to I.O. and others that the large bank based in London was terminating North American clients, travel and resources, and that his new employer, the Swiss Bank, had a superior network,

product range and management, and had recently acquired a large United States securities brokerage house in order to enhance United States investment expertise.

22. On or about September 13, 2001, defendant MARIO STAGGL caused to be sent from Vaduz, Liechtenstein to I.O. at an address in the United States promotional materials that marketed the use of Liechtenstein trusts, foundations and other entities to evade United States and Swiss tax.

23. On or about October 19, 2001, defendant BRADLEY BIRKENFELD caused to be sent via facsimile to I.O. at a United States facsimile number Swiss bank account opening documents from the Swiss Bank, including a form entitled "Verification of the beneficial owner's identity." This form, executed by I.O., falsely and fraudulently stated that I.O. was not the beneficial owner, and that a nominee Bahamian corporation was beneficial owner of the account. The application further listed I.O. as a signatory to the account.

24. In or about November 2001, I.O. traveled from the United States to Geneva, Switzerland to meet with defendant MARIO STAGGL regarding setting up Denmark and Liechtenstein entities to conceal I.O's ownership of his off-shore assets.

25. On or about December 4, 2001, defendant MARIO STAGGL recommended to I.O. that in order to further conceal I.O.'s ownership of off-shore assets, I.O. should set up an entity in the British Virgin Islands, Panama or Gibraltar that "would lead to another 'safety break' in a tax and anonymity aspect."

26. On or about December 19, 2001, defendant MARIO STAGGL caused to be executed a "Letter of Intent," which stated that New Haven Trust Company Limited, trustee of The Landmark Settlement, intended to hold the trust property for the benefit of I.O., and, after his

demise, for his children.

27. On December 19, 2001, in response to a request from I.O. for the address, fax and telephone number of the Danish holding companies, defendant MARIO STAGGL caused to be sent an email to I.O. that stated there was no need for an address, fax, and telephone number for the Danish holding companies because, "...we do not anticipate any contact from third parties what so ever."

28. On or about December 17, 2001, I.O. caused to be wire transferred approximately $89.4 million from the Bahamas branch of the large bank based in London bank account to an account at the Swiss Bank.

29. On or about March 13, 2002, defendant BRADLEY BIRKENFELD caused to be sent a facsimile to I.O. at a United States facsimile number listing $15 million of bonds that an investment manager at the Swiss Bank had purchased for I.O.

30. On or about March 25, 2002, I.O. caused to be sent a facsimile from the United States to defendant BRADLEY BIRKENFELD in Switzerland, authorizing defendant BRADLEY BIRKENFELD to issue five credit cards from the Swiss Bank to I.O. and others.

31. On or about April 6, 2002, I.O. caused to be sent a letter from the United States to defendant BRADLEY BIRKENFELD in Switzerland authorizing the wire transfer of $80 million from one account at the Swiss Bank to another account at the Swiss Bank.

32. On or about April 15, 2002, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2001 tax year, listing his address as Southern California that fraudulently omitted income earned from off-shore assets and falsely represented that I.O did not have an interest in, and a signature and other authority over, financial accounts located in a

foreign country.

33. On or about April 23, 2002, defendant MARIO STAGGL caused to be sent an email to I.O. in the United States with instructions for I.O. to transfer a portfolio, worth approximately $60 million, containing United States securities from a brokerage house in London to an account in the name of a Danish shell corporation at a Liechtenstein bank.

34. On or about April 25, 2002, an unindicted co-conspirator caused to be sent an email to I.O. in the United States, with a copy to defendant MARIO STAGGL, that recommended that I.O. should set up United Kingdom companies to act as nominee shareholders. As stated in the email, "... the partners appear to be U.K. companies and Liechtenstein does not appear to be connected.... The role of the U.K. companies is simply to act as nominee shareholders."

35. On March 25, 2002, I.O. caused to be sent a facsimile from the United States authorizing defendant BRADLEY BIRKENFELD in Switzerland to wire transfer $39 million from one account at the Swiss Bank to another account at the Swiss Bank.

36. On or about May 5, 2002, I.O. caused to be sent an email from the United States to defendant BRADLEY BIRKENFELD and MARIO STAGGL stating that he was concerned about the security of some of his Liechtenstein accounts and was considering becoming a signatory to these accounts.

37. On or about May 7, 2002, defendant MARIO STAGGL caused to be sent a reply email to the United States advising I.O. not to put his name on any Liechtenstein accounts because doing so could "jeopardize the structure," and reminded I.O. that he had executed blank

account signature cards that defendant MARIO STAGGL could use.

38. On or about April 15, 2003, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2002 tax year, listing his address as Sanctuary Cove, Florida that fraudulently omitted income earned from off-shore assets and falsely represented that I.O. did not have an interest in, and a signature and other authority over, financial accounts located in a foreign country.

39. On or about May 19, 2003, defendant MARIO STAGGL caused to be sent an email to I.O. in the United States, with a copy to defendant BRADLEY BIRKENFELD, that stated that defendant MARIO STAGGL's lawyers in Gibraltar told him "that everthing is now in order to proceed with the application to transfer ownership"of I.O.'s 147 foot yacht to a holding company in Gibraltar..

40. On or about March 24 and March 25, 2004, defendant BRADLEY BIRKENFELD traveled to the Southern District of Florida to meet with I.O. and a banker from the Swiss Bank's New York branch in order to solicit I.O. to take out real estate loans with the Swiss Bank using his undeclared off-shore assets as collateral.

41. On or about April 15, 2004, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2003 tax year, listing his address as Lighthouse Point, Florida that fraudulently omitted income earned from off-shore assets and falsely represented that I.O. did not have an interest in, and a signature and other authority over, financial accounts located in a foreign country.

42. On or about April 15, 2005, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2004 tax year, listing an address in Lighthouse Point, Florida that

fraudulently omitted income earned from off-shore assets and falsely represented that I.O. did not have an interest in, and a signature and other authority over, financial accounts located in a foreign country.

43. On or about June 12, 2005, defendants BRADLEY BIRKENFELD and MARIO STAGGL met with I.O. at a Liechtenstein bank and advised him to transfer all of his assets held by the Swiss Bank to a Liechtenstein bank because Liechtenstein had better bank secrecy laws than Switzerland.

All in violation of Title 18, United States Code, Section 371.

A TRUE BILL

FOREPERSON

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

KEVIN DOWNING, SENIOR TRIAL ATTORNEY
MICHAEL P. BEN'ARY, TRIAL ATTORNEY
UNITED STATES DEPARTMENT OF JUSTICE, TAX DIVISION

JEFFREY A. NEIMAN
ASSISTANT UNITED STATES ATTORNEYS

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil No. 09-20423 MC-GOLD

UNITED STATES OF AMERICA,	)
Petitioner,	)
v.	)
UBS AG,	)
Respondent.	)

McALILEY

DECLARATION OF BARRY B. SHOTT

Barry B. Shott, pursuant to 28 U.S.C. § 1746, declares:

1. I am the duly commissioned Deputy Commissioner (International) with the Large & MidSize Business (LMSB) Division of the Internal Revenue Service. I am employed in the office of the Commissioner, LMSB, and I am the United States Competent Authority. As the Competent Authority, I oversee the international exchange of information between the United States and foreign countries pursuant to tax treaties. Before I was appointed to my present position, I was a Director of Field Operations, and then the Financial Services Industry Director, in the LMSB Division. While with the Financial Services Industry, I was directly responsible for oversight of the Qualified Intermediary Program.

The Qualified Intermediary Program

2. Effective in 2001, the Secretary of the Treasury issued regulations requiring foreign banks to withhold taxes and pay over to the IRS 30% of income earned with respect to US investments maintained in foreign financial accounts. Foreign banks could avoid this

Permanent Subcommittee on Investigations
EXHIBIT #19

requirement if they identified the beneficial owner of each such account to a US withholding agent.

3. In order to simplify the documentation procedure, the IRS created the Qualified Intermediary Program (QI Program). Under the QI Program, foreign banks that agree to follow certain procedures can – by entering into a QI Agreement – assume the responsibilities of a US withholding agent. Those responsibilities may include determining which customers qualify for treaty benefits (such as reduced or eliminated withholdings, based on documents establishing the identity of the account's beneficial owner), without disclosing to US authorities the identities of non-US taxpayers. The QI program provided a valuable benefit to foreign banks in maintaining their business with respect to the holdings of US investments by non-US taxpayers.

4. The QI Program governs the responsibilities of foreign banks only as to accounts that contain securities. The QI Program does not apply to cash-only accounts.

5. The purpose of the QI program is to make it easier for the IRS to obtain foreign banks' compliance with US tax laws, in respect of securities accounts maintained for both US and non-US taxpayers. The QI program was not, however, intended to assist US taxpayers in finding clever ways to avoid their obligations to comply with US tax laws.

6. The QI Program does **not** relieve US taxpayers of their obligation to report all income to the IRS, wherever that income is earned. And the QI Program does **not** relieve US taxpayers of their obligation to disclose to the IRS the existence of all foreign financial accounts over which they exercise signatory or other authority.

7. In order for the QI Program to function as intended, foreign banks must correctly and truthfully ascertain the identity and citizenship/residence of their clients. Thus, the QI

Program requires foreign banks to obtain and maintain IRS Forms W-8BEN, which report the identities of non-US account holders, and IRS Forms W-9, which report the identities of US account holders. Model copies of Forms W-8BEN and W-9 are attached as Exhibits A and B, respectively.

8. Under the QI program, foreign banks must examine formal identification, citizenship, and residency documentation. Clients claiming non-US residence/citizenship must document their status. Because of the potential for abuse, it is especially important that foreign bankers verify the non-US residence/citizenship of customers whom they contact within the United States – such as by meetings in person and contacts via telephone, mail, e-mail and facsimile. Foreign banks may not assist US taxpayers to conceal from the IRS their identities, or the true beneficial ownership of foreign securities accounts.

9. Foreign banks that participate in the QI Program and maintain accounts for US clients must prepare and transmit to the IRS Forms 1099 reporting payments on US investments. Although US taxpayers must report and pay US income tax on all income, regardless of where in the world it is earned, the Forms 1099 issued by foreign banks in the QI Program report only interest, dividends and sales proceeds on US investments. Under the QI Program, the bank must issue the Form 1099 to the US taxpayer, and report to the IRS the information contained on the Form 1099.

10. When a US taxpayer refuses to submit the proper documentation, a foreign bank that is party to a QI Agreement must make backup withholding at 28% of all US-source income. This is the same backup withholding obligation that is imposed on US banks.

11. If a foreign bank that is party to a QI Agreement, (1) knows that an account holder is a US taxpayer who must provide documentation, and (2) is prohibited by law – whether by statute or by contract – from disclosing the identity of the account holder, the foreign bank must request from the account holder the authority either to disclose that person's identity to the IRS, or to exclude US securities from that account. If, within 60 days, the foreign bank does not receive authority to disclose the owner's identity or exclude US securities, it must sell the US securities in the account.

12. Even where the foreign account does not contain US securities, the bank must make backup withholdings on all "deemed sales" for those US taxpayers who refuse to submit the proper documentation. "Deemed sales" are sales effected through the use of US jurisdictional means and are, therefore, "deemed" to have occurred within the United States.

13. UBS entered into a QI Agreement with the IRS in 2001. That QI Agreement remained in effect throughout the period covered by the IRS investigation in which the John Doe summons was issued to UBS in 2008.

Access to Swiss Bank Records Is Not Available Through Alternative Means

14. One of my current responsibilities is to engage in exchanges of information under tax conventions (treaties), including the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (the "Swiss Treaty"). Article 26 of the Swiss Treaty (signed in Washington, DC on October 2, 1996) provides for the exchange of information as is necessary, "for the prevention of tax fraud or the like."

15. In the experience of the IRS, the Swiss Treaty does not provide an alternative way to obtain the information sought in the John Doe summons at issue in this case. Based upon my conversations with the Swiss competent authority, this is because the Swiss government will not exchange information about a taxpayer unless the taxpayer committed an affirmative act of deception (such as falsifying a document), above and beyond a mere failure to report the existence of an account, or income earned in that account. The IRS may ultimately determine that at least some of the "John Does" have engaged in acts that would enable the IRS to obtain information under the Swiss Treaty. But for now, the IRS is investigating US taxpayers who failed to report the existence of Swiss bank accounts – or income earned on those accounts. Absent additional facts, those failures do not enable the IRS to obtain from the Swiss government the information demanded in the John Doe summons issued to UBS.

16. Until recently, with regard to this current matter, Article 26 of the Swiss Treaty had been strictly applied by the Swiss Competent Authority to provide the IRS assistance only in response to specific requests that name a particular taxpayer. As a consequence, it had also been the IRS's experience that the Swiss Competent Authority would only provide the IRS with information for an examination or investigation that concerns a specifically identified taxpayer. The current IRS investigation is focused on learning the identities of US taxpayers not known to the IRS.

17. Recently, representatives of the Swiss government have indicated to me that, under limited circumstances, they might be willing to consider a request under the Swiss Treaty that did not specifically identify taxpayers whose records are sought. As a consequence, on July 16, 2008, the United States made a formal request under the Swiss Treaty ("Treaty Request").

Thus far, however, the Swiss government has not produced any documents in response to the Treaty Request.

18. According to the declaration of Daniel Reeves (which I have read), the United States has learned that UBS maintained as many as 52,000 undeclared accounts for US taxpayers, all of which are subject to the summons. Based on the best information presently available to me, it appears that the Treaty Request may only result in the production of records for, at most, about 300 of those 52,000 accounts. According to my conversations with officials of the Swiss Government, this is because (as noted in ¶ 15 above) the Swiss Government interprets the Treaty to require a taxpayer to have committed affirmative acts of fraud or deception, in order to trigger Switzerland's obligation to provide information about that taxpayer to the IRS.

19. I last spoke with officials of the Swiss Government about the Treaty Request on January 21, 2009. During that conversation, I learned that the Swiss Government had made final determinations to provide the requested records for only twelve accounts. The Swiss Government will not, however, provide records to the IRS about those twelve accounts until after the account holders have been given an opportunity to litigate in a Swiss court the Swiss Government's decision to turn their records over to the IRS. During our January 21, 2009, conversation, I learned that the twelve account holders are either exercising their appeal rights, or contemplating exercising their appeal rights. I have also learned from my subordinates that the Swiss Government has determined there is insufficient evidence of "fraud and the like" with respect to two other accounts, and accordingly will not provide information about those two accounts. In sum, the Swiss Government has not provided any records sought under the Treaty Request, and it is not clear when, if ever, it will.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 6th day of February 2009 in Washington, DC.

BARRY B. SHOTT
Deputy Commissioner, LMSB
Internal Revenue Service

Shott Declaration
Exhibit A

GOVERNMENT EXHIBIT A

Form **W-8BEN**
(Rev. February 2006)
Department of the Treasury
Internal Revenue Service

Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding

▶ Section references are to the Internal Revenue Code. ▶ See separate instructions.
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

Do not use this form for:	Instead, use Form:
• A U.S. citizen or other U.S. person, including a resident alien individual	W-9
• A person claiming that income is effectively connected with the conduct of a trade or business in the United States	W-8ECI
• A foreign partnership, a foreign simple trust, or a foreign grantor trust (see instructions for exceptions)	W-8ECI or W-8IMY
• A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (see instructions)	W-8ECI or W-8EXP
Note: *These entities should use Form W-8BEN if they are claiming treaty benefits or are providing the form only to claim they are a foreign person exempt from backup withholding.*	
• A person acting as an intermediary	W-8IMY

Note: *See instructions for additional exceptions.*

Part I Identification of Beneficial Owner (See instructions.)

1 Name of individual or organization that is the beneficial owner

2 Country of incorporation or organization

3 Type of beneficial owner: ☐ Individual ☐ Corporation ☐ Disregarded entity ☐ Partnership ☐ Simple trust ☐ Grantor trust ☐ Complex trust ☐ Estate ☐ Government ☐ International organization ☐ Central bank of issue ☐ Tax-exempt organization ☐ Private foundation

4 Permanent residence address (street, apt. or suite no., or rural route). **Do not use a P.O. box or in-care-of address.**

City or town, state or province. Include postal code where appropriate.

Country (do not abbreviate)

5 Mailing address (if different from above)

City or town, state or province. Include postal code where appropriate.

Country (do not abbreviate)

6 U.S. taxpayer identification number, if required (see instructions) ☐ SSN or ITIN ☐ EIN

7 Foreign tax identifying number, if any (optional)

8 Reference number(s) (see instructions)

Part II Claim of Tax Treaty Benefits (if applicable)

9 **I certify that (check all that apply):**

a ☐ The beneficial owner is a resident of ..... within the meaning of the income tax treaty between the United States and that country.

b ☐ If required, the U.S. taxpayer identification number is stated on line 6 (see instructions).

c ☐ The beneficial owner is not an individual, derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits (see instructions).

d ☐ The beneficial owner is not an individual, is claiming treaty benefits for dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation, and meets qualified resident status (see instructions).

e ☐ The beneficial owner is related to the person obligated to pay the income within the meaning of section 267(b) or 707(b), and will file Form 8833 if the amount subject to withholding received during a calendar year exceeds, in the aggregate, $500,000.

10 **Special rates and conditions** (if applicable—see instructions): The beneficial owner is claiming the provisions of Article ..... of the treaty identified on line 9a above to claim a ..... % rate of withholding on (specify type of income): .....

Explain the reasons the beneficial owner meets the terms of the treaty article: .....

Part III Notional Principal Contracts

11 ☐ I have provided or will provide a statement that identifies those notional principal contracts from which the income is **not** effectively connected with the conduct of a trade or business in the United States. I agree to update this statement as required.

Part IV Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

1 I am the beneficial owner (or am authorized to sign for the beneficial owner) of all the income to which this form relates,

2 The beneficial owner is not a U.S. person,

3 The income to which this form relates is (a) not effectively connected with the conduct of a trade or business in the United States, (b) effectively connected but is not subject to tax under an income tax treaty, or (c) the partner's share of a partnership's effectively connected income, and

4 For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner.

Sign Here ▶ ..... Signature of beneficial owner (or individual authorized to sign for beneficial owner) ..... Date (MM-DD-YYYY) ..... Capacity in which acting

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 25047Z Form **W-8BEN** (Rev. 2-2006)

Shott Declaration
Exhibit B

Form **W-9**
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....
☐ Other (see instructions) ▶

☐ Exempt payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

GOVERNMENT EXHIBIT B

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person ▶ Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

08-60322 CASE NO. CR-COHN MAGISTRATE JUDGE SELTZER
18 U.S.C. § 371

UNITED STATES OF AMERICA

vs.

RAOUL WEIL,

Defendant.
_____/

2008 NOV -5 PM 3:08

INDICTMENT

The Grand Jury charges that:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

1. The Internal Revenue Service ("IRS") was an agency of the United States Department of Treasury responsible for administering and enforcing the tax laws of the United States and collecting the taxes owed to the Treasury of the United States.

2. An entity identified as "Swiss Bank" was one of Switzerland's largest banks. Swiss Bank owned and operated banks, investment banks, and stock brokerage businesses throughout the world, also operating in the Southern District of Florida and elsewhere in the United States. Because of Swiss Bank's ownership of banks and investment brokerages in the United States, United States tax laws applied to Swiss Bank and to its United States clients.

3. Swiss Bank operated a cross-border banking business with United States clients ("United States cross-border business"). The United States cross-border business employed

Permanent Subcommittee on Investigations
EXHIBIT #20

approximately 60 private bankers and had offices in Geneva, Zurich, and Lugano, Switzerland. These private bankers frequently traveled to the United States to meet with and to conduct business with their United States clients.

4. The United States cross-border business provided private banking services to approximately 20,000 United States clients with assets worth approximately $20 billion. Approximately 17,000 of the 20,000 cross-border clients concealed their identities and the existence of their Swiss Bank accounts from the IRS. Many of these clients willfully failed to pay tax to the IRS on income earned on their Swiss Bank accounts. Swiss Bank assisted these United States clients conceal the income earned on Swiss Bank accounts by failing to report IRS Form 1099 information to the IRS. From 2002 through 2007, the United States cross-border business generated approximately $200 million a year in revenue for Swiss Bank.

The Conspirators

5. From 2002 through 2007, defendant RAOUL WEIL was head of Swiss Bank's wealth management business, which included the United States cross-border business and other businsses. As such, defendant RAOUL WEIL and others had the authority to expand, maintain, or discontinue the United States cross-border business. In July 2007, defendant RAOUL WEIL was promoted and became the Chief Executive Officer of a division that oversaw the United States cross-border business and world-wide private banking.

6. Some Swiss Bank's executives ("Executives") are unindicted co-conspirators not named as defendants herein. These Executives occupied positions at the highest levels of management within Swiss Bank, including positions on the committees that oversaw legal, compliance, tax, risk, and regulatory issues related to the United States cross-border business.

7. Some Swiss Bank's employees who managed the United States cross-border business ("Managers") are unindicted co-conspirators not named as defendants herein. These Managers were responsible for overseeing the United States cross-border business operations. These Managers were responsible for regulatory and compliance issues, as well as issues related to bankers' incentives and compensation. These Managers were also responsible for traveling to the United States to meet with Swiss Bank's wealthiest United States clients. These Managers reported directly to Executives, including defendant RAOUL WEIL.

8. Swiss Bank's employees who managed the bankers servicing the United States cross-border business ("Desk Heads") are unindicted co-conspirators not named as defendants herein. These Desk Heads exercised direct management over the day-to-day operations of the business. In addition to having management duties, Desk Heads traveled to the United States to conduct unlicensed banking and investment advisory activity for Swiss Bank's United States clients. These Desk Heads reported directly to Managers.

9. Swiss Bank private bankers who serviced the United States clients ("Bankers") are unindicted co-conspirators not named as defendants herein. These Bankers were not licensed to engage in banking and investment advisory activity in the United States. However, these Bankers routinely traveled to the United States to conduct unlicensed banking and investment advisory activity for Swiss Bank's United States clients. While in Switzerland, these Bankers routinely communicated with their clients in the United States about banking and investment advice. These Bankers reported directly to the Desk Heads. Swiss Bank Executives and Managers authorized and encouraged through incentives Bankers' activities with respect to their United States clients.

10. Some of Swiss Bank's 20,000 United States clients are unindicted co-conspirators not named as defendants herein. These United States clients knowingly concealed from the United States government, including the IRS, approximately $20 billion in assets held at Swiss Bank and willfully evaded United States income taxes owed on the income earned on these secret Swiss Bank accounts. United States clients were required to report and pay taxes to the IRS on income they earned throughout the world, including income earned from the Swiss Bank account.

COUNT ONE
(18 U.S.C. § 371)

11. The allegations contained in paragraphs 1 through 10 of the Introduction are re-alleged and incorporated herein.

12. From in or a time unknown to the Grand Jury and continuing up to and including the date of the return of this Indictment, in the Southern District of Florida, and elsewhere, the defendant,

RAOUL WEIL

together with his co-conspirators, unlawfully, willfully and knowingly, did combine, conspire, confederate and agree together and with each other to defraud the United States and an agency thereof, to wit, the Internal Revenue Service of the United States Department of Treasury in the ascertainment, computation, assessment and collection of federal income taxes.

OBJECT OF THE CONSPIRACY

13. It was a part and an object of the conspiracy that defendant RAOUL WEIL and his co-conspirators, would and did increase the profits of Swiss Bank by providing unlicensed and unregistered banking services and investment advice in the United States and other activities intended to conceal from the IRS the identities of Swiss Bank's United States clients, who willfully evaded their income tax obligations by, among other things, filing false income tax returns and failing to disclose the existence of their Swiss Bank account to the IRS.

MEANS AND METHODS OF THE CONSPIRACY

Among the means and methods by which defendant RAOUL WEIL and his co-conspirators would and did carry out the conspiracy were the following:

14. It was part of the conspiracy that defendant RAOUL WEIL, Executives, Managers, Desk Heads, and Bankers utilized nominee entities, encrypted laptops, numbered accounts, and other counter surveillance techniques to conceal the identities and offshore assets of United States clients from authorities in the United States.

15. It was part of the conspiracy that Swiss Bank expanded their business beyond the borders of Switzerland by purchasing a large United States stock brokerage firm. Executives at Swiss Bank voluntarily entered into an agreement, known as the Qualified Intermediary Agreement ("QI Agreement") with the IRS that required Swiss Bank to report to the United States income and other identifying information for its United States clients who held an interest in United States securities in an account at Swiss Bank. Further, this agreement required Swiss Bank to withhold taxes from United States clients who directed investment activities in foreign securities from the United States.

16. It was part of the conspiracy that defendant RAOUL WEIL, Executives, and Managers entered into the QI Agreement and represented to the IRS that Swiss Bank was in compliance with the terms of the QI Agreement, while knowing that the United States cross-border business, was not conducted in a manner which complied with the terms of the QI Agreement.

17. It was part of the conspiracy that defendant RAOUL WEIL, Executives, and Managers mandated that Desk Heads and Bankers increase the United States cross-border business, knowing that this mandate would cause Bankers and Desk Heads to have increased unlicensed contacts with the United States, in violation of United States law and the QI Agreement.

18. It was further part of the conspiracy that defendant RAOUL WEIL, Executives, and Managers, who referred to the United States cross-border business as "toxic waste" because they knew that it was not being conducted in a manner that complied with United States law and the QI Agreement, put in place monetary incentives that rewarded Desk Heads and Bankers who increased the United States cross-border business.

19. It was further part of the conspiracy that Managers, Desk Heads, and Bankers solicited new investments in the United States cross-border business by marketing Swiss bank secrecy to United States clients interested in attempting to evade United States income taxes, in particular by claiming that Swiss bank secrecy was impenetrable.

20. It was further part of the conspiracy that Managers, Desk Heads, and Bankers provided unlicensed and unregistered banking services and investment advice to United States clients in person while on travel to the United States and by mailings, email, and telephone calls to and from the United States.

21. It was further part of the conspiracy that when approached about the continuous unregistered and unlicensed contacts with the United States associated with the United States cross-border business, defendant RAOUL WEIL and other Executives would not implement effective restrictions on the United States cross-border business because the business was too profitable for Swiss Bank.

22. It was further part of the conspiracy that Managers, Desk Heads, and Bankers assisted United States clients in preparing IRS Forms W-8BEN that falsely and fraudulently stated that nominee offshore structures, and not the United States clients, were the beneficial owners of offshore bank and financial accounts maintained in foreign countries, including accounts in Switzerland at Swiss Bank.

23. It was further part of the conspiracy that some United States clients prepared and filed with the IRS income tax returns that falsely and fraudulently omitted income earned on their undeclared Swiss Bank account and that falsely and fraudulently reported that United States citizens did not have an interest in, or a signature or other authority over, financial accounts located in a foreign country.

24. It was further part of the conspiracy that the United States clients failed to file with the Department of Treasury a Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1, which would have disclosed the existence of and their interest in, or signature or other authority over, a financial account located in a foreign country.

OVERT ACTS

In furtherance of the conspiracy and to achieve the object and purpose thereof, at least one of the co-conspirators committed at least one of the following overt acts, among others, in the Southern District of Florida and elsewhere:

25. On or about July 6, 2000, Manager # 1 authorized Bankers to refer United States clients to outside lawyers and accountants to create offshore structures to conceal from the IRS United States clients' Swiss Bank accounts, while knowing that creating these structures constituted helping the United States clients commit tax evasion.

26. On or about July 14, 2000, Managers changed the wording on Swiss Bank Document 61393, Declaration for US Taxable Persons, from "I would like to avoid disclosure of my identity to the US IRS" to "I consent to the new tax regulations . . . ." after United States clients expressed fears that the form as originally drafted could be used as evidence against them for tax evasion.

27. On or about July 11, 2002, Manager # 3 and others instructed Bankers to tell United States clients who were contemplating transferring their assets to another offshore bank that Swiss Bank has the largest number of United States clients among all banks outside the United States, creates jobs in the United States, has better lobbying possibilities in the United States than any other foreign bank and would not be pressured by United States authorities to disclose the clients' identities.

28. On or about September 19, 2002, defendant RAOUL WEIL and other Executives on Swiss Bank's executive board knowingly failed to disclose to the IRS deficiencies in implementing Swiss Bank's requirements to report and withhold taxes for clients of the United States cross-border business that were discovered after the completion of an internal audit.

29. On or about September 26, 2002, Desk Head # 1 instructed Bankers that if they have unauthorized contact with United States clients in the United States, that the Bankers should not report the contact in Swiss Bank's internal computer system.

30. In or about December 2002, defendant RAOUL WEIL and other Executives authorized Manager # 2 and Manager # 3, to institute a temporary five month travel ban to the United States. The ban coincided with an IRS initiative relating to identifying holders of offshore credit cards.

31. On or about January 22, 2003, after being advised by outside lawyers to take immediate action in order to build a defense against a possible future criminal case brought against Swiss Bank, Manager # 2 instructed Manager # 3 to limit written communications relating to offshore structures created for United States clients and instructed Manager # 3 to begin issuing Form 1099 information to clients, but not to the IRS, for certain Swiss Bank accounts where Swiss Bank officials served as a manager for the offshore structures.

32. On or about January 24, 2003, Manager # 2 and Manager # 3 issued a form letter to United States clients reminding them that since at least 1939 Swiss Bank has been successful in concealing account holder identities from United States authorities and that even after Swiss Bank's presence in the United States recently increased after the purchase of a large United States brokerage firm, Swiss Bank was still dedicated to the protection of their identities.

33. On or about July 9, 2004, Swiss Bank represented to the IRS that its United States based operations had failed to provide Form 1099 information to the IRS, failed to withhold the appropriate tax when required to do so, and failed to properly document the owners of certain accounts, but failed to inform the IRS that the United States cross-border business continued to fail

to provide Form 1099 information to the IRS, continued to fail to withhold the appropriate tax when required to do so, and continued to fail to properly document the owners of certain accounts.

34. On or about August 17, 2004, Manager # 1 and Manager # 3, organized a meeting in Switzerland with outside lawyers and accountants to discuss the creation of structures and other vehicles for clients who wanted to conceal their Swiss Bank accounts and income derived therefrom tax authorities in the United States and Canada.

35. In or about September 2004, Desk Heads and Bankers received training in Switzerland on how to avoid detection by authorities when traveling in the United States on Swiss Bank business.

36. During calendar year 2004, approximately 32 Bankers traveled to the United States and met with United States clients approximately 3,800 times to provide unlicensed and unregistered banking services and investment advice relating to the clients' Swiss Bank account.

37. On or about April 15, 2005, United States client identified as I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2004 tax year, listing an address in Lighthouse Point, Florida that fraudulently omitted income earned from offshore assets and falsely represented that I.O. did not have an interest in, and signature and other authority over, financial accounts located in a foreign country.

38. On or about April 25, 2005, defendant RAOUL WEIL and other Executives instructed Managers, Desk Heads, and Bankers to grow the United States cross-border business.

39. In or about early December 2005, Desk Heads and Bankers solicited new business from existing and prospective United States clients at Art Basel Miami Beach in Miami Beach, Florida.

40. On or about March 31, 2006, Executive # 2 and other Executives, enacted restrictions that would have "little" or "some impact" on the profitability of the United States cross-border business.

41. In or about August 2006, defendant RAOUL WEIL and Executive # 1, refused to approve the recommendations of Managers # 2 and # 4 to wind down, sell, or spin off the United States cross-border business, as too costly and requiring public disclosures that would harm Swiss Bank.

42. On or about September 26, 2006, Desk Heads and Bankers were trained at Swiss Bank on how to conduct business discreetly by using mail that would not show Swiss Bank's name and address, by changing hotels while traveling, and by using encrypted laptop computers when traveling to the United States on Swiss Bank business and when meeting with United States clients.

All in violation of Title 18, United States Code, Section 371.

GRAND JURY FOREPERSON

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

KEVIN M. DOWNING
MICHAEL P. BEN'ARY
TRIAL ATTORNEYS

JEFFREY A. NEIMAN
ASSISTANT U.S. ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

vs.

RAOUL WEIL

Court Division: (Select One)

___ Miami ___ Key West
_X_ FTL ___ WPB___ FTP

CASE NO. _____

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:
New Defendant(s) Yes ___ No ___
Number of New Defendants ___
Total number of counts ___

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

4. This case will take 7-10 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)			(Check only one)	
I	0 to 5 days	___	Petty	___
II	6 to 10 days	X	Minor	___
III	11 to 20 days	___	Misdem.	___
IV	21 to 60 days	___	Felony	X
V	61 days and over	___		

6. Has this case been previously filed in this District Court? (Yes or No) No
If yes:
Judge: _____ Case No. _____
(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No) No
If yes:
Magistrate Case No. _____
Related Miscellaneous numbers: U.S. v BIRKENFELD 08-60099-CR-Zloch
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? ___ Yes _X_ No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? ___ Yes _X_ No

Jeffrey A. Neiman
ASSISTANT UNITED STATES ATTORNEY
Court Bar No. 544469

*Penalty Sheet(s) attached

REV. 4/8/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET

Defendant's Name: RAOUL WEIL No.: _____

Count #1:
Conspiracy; in violation of 18 U.S.C. §371

*Max Penalty: Five years' imprisonment; $100 special assessment; and $250,000 fine

Count # :

*Max Penalty:

Count # :

*Max Penalty:

Count # :

*Max Penalty:

Count # :

*Max Penalty:

Count # :

*Max Penalty:

Count # :

*Max Penalty:

Count # :

*Max Penalty:

Count # :

*Max Penalty:

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms or forfeitures that may be applicable.**

REV. 12/12/96

SWISS CONFEDERATION
KASPAR VILLIGER
FEDERAL COUNCILLOR
HEAD OF THE FEDERAL
DEPARTMENT OF FINANCE

Berne, January 24, 2003

Mr. Kenneth W. Dam
Acting Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue
Washington, D.C. 20220
USA

Dear Mr. Secretary

I am very pleased with the report that the technical discussions held between representatives of the Federal Tax Administration and of the United States Treasury, respectively, regarding the application of Article 26 on Exchange of In formation of the Income Tax Convention between the Swiss Confederation and the United States of America, signed on October 2, 1996, have led to the successful conclusion of a mutual agreement, signed on January 23, 2003. This arrangement is important to the administration and enforcement of the tax laws of each of our countries, and complements the substantial cooperation between our two countries to combat criminal activities in other fields such as money laundering and terrorism financing.

It is important to build upon this success and we must maintain a dialogue with a view to monitoring and improving the functioning of the present version of the Convention. In addition we will continue to explore ways to improve the cooperation between our two countrie s. Successful renegotiation of the Convention could enhance the economic relationship between our two countries.

We look forward to continuing to work together to improve the cooperation between our two countries.

Sincerely,

Kaspar Villiger

Permanent Subcommittee on Investigations
EXHIBIT #21

TAX CONVENTION WITH SWISS CONFEDERATION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON, OCTOBER 2, 1996, TOGETHER WITH A PROTOCOL TO THE CONVENTION

GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 1998

TABLE OF ARTICLES

Article 1---------- Personal Scope
Article 2---------- Taxes Covered
Article 3---------- General Definitions
Article 4---------- Resident
Article 5---------- Permanent Establishment
Article 6---------- Income from Real Property
Article 7---------- Business Profits
Article 8---------- Shipping and Air Transport
Article 9----------Associated Enterprises
Article 10----------Dividends
Article 11 ---------- Interest
Article 12----------Royalties
Article 13----------Gains
Article 14----------Independent Personal Services
Article 15----------Dependent Personal Services
Article 16----------Director's Fees.
Article 17----------Artistes and Sportsmen
Article 18----------Pensions and Annuities
Article 19----------Government Service and Social Security
Article 20----------Students and Trainees
Article 21 ----------Other Income
Article 22----------Limitation on Benefits
Article 23----------Relief from Double Taxation
Article 24----------Non-Discrimination
Article 25----------Mutual Agreement Procedure

Article 26----------Exchange of Information
Article 27 ----------Members of Diplomatic Missions and Consular Posts
Article 28 ----------Miscellaneous
Article 29----------Entry into Force
Article 30----------Termination
Protocol ----------of 2 October, 1996
Letter of Submittal----------of 29 May, 1997
Letter of Transmittal----------of 25 June, 1997
Notes of Exchange----------of 2 October, 1996
Memorandum of Understanding----of 2 October, 1996
The "Saving Clause"----------Paragraph 2 of Article 1

LETTER OF SUBMITTAL

DEPARTMENT OF *STATE,*
Washington, May 29, 1997.

The PRESIDENT,
The White House.

The PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Washington on October 2, 1996, ("the Convention") together with a Protocol. Also enclosed for the information of the Senate is an exchange of notes with an attached Memorandum of Understanding, which provides clarification with respect to the application of the Convention in specified cases.

This Convention will replace the existing Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income signed at Washington on May 24, 1951. The new Convention maintains many provisions of the existing convention, but it also provides certain additional benefits and updates the text to reflect current tax treaty policies.

This Convention is similar to the tax treaties between the United States and other OECD nations. It provides for maximum rates of tax to be applied to various types of income, protection from double taxation of income, exchange of information, and rules to limit the benefits of the Convention to persons that are not engaged in treaty shopping.

Like other U.S. tax conventions, this Convention provides rules specifying when income that arises in one of the countries and is attributable to residents of the other country may be taxed by the country in which the income arises (the "source" country). In most respects, the rates under the new Convention are the same as those in many recent U.S. tax treaties with OECD countries.

Consistent with U.S. treaty policy, Article 8 of the new Convention permits only the country of residence to tax profits from international carriage by ships or airplanes. This reciprocal exemption also extends to income from the rental of ships and aircraft if the rental income is incidental to income from the operation of ships or aircraft in international traffic. Other income from the rental of ships or aircraft and income from the use or rental of containers, however, is treated as business profits.

The taxation of income from the performance of personal services under Articles 14 through 17 of the new Convention is essentially the same as that under other recent U.S. treaties with OECD countries. Unlike many U.S. treaties, however, the new Convention, at Article 28, provides for the deductibility of cross-border contributions by temporary residents of one State to pension plans registered in the other State under limited circumstances.

Article 22 of the new Convention contains significant anti-treaty-shopping rules making its benefits unavailable to persons engaged in treaty shopping. The current convention contains no such anti-treaty-shopping rules.

The proposed Convention also contains rules necessary for administering the Convention, including rules for the resolution of disputes under the Convention (Article 25) and for exchange of information (Article 26). The proposed Convention significantly expands the scope of the exchange of information between the United States and Switzerland. For example, as elaborated in the Protocol and Memorandum of Understanding, U.S. tax authorities will be given access to Swiss bank information in cases of tax fraud. The Protocol contains a broad definition of tax fraud that should ensure that more information will be made available to U.S. authorities. Furthermore, the new Convention provides for information to be provided in a form acceptable for use in court proceedings (Article 26, Section 1).

The Convention would permit the General Accounting Office and the tax-writing committees of Congress to obtain access to certain tax information exchanged under the Convention for use in their oversight of the administration of U.S. tax laws and treaties.

This Convention is subject to ratification. In accordance with Article 29, it will enter into force upon the exchange of instruments of ratification and will have effect for payments made or credited on or after the first day of the second month following entry into force with respect to taxes withheld by the source country; with respect to other taxes, the Convention will take effect for taxable periods beginning on or after the first day of January following the date on which the Convention enters into force. When the present convention affords a more favorable result for a taxpayer than the proposed Convention, the taxpayer may elect to continue to apply the provisions of the present convention, in its entirety, for one additional year.

This Convention will remain in force indefinitely unless terminated by one of the Contracting States, pursuant to Article 30. Either State may terminate the Convention by giving at least six months of prior notice through diplomatic channels.

A Protocol and an exchange of notes with an attached Memorandum of Understanding accompany the Convention and provide clarification with respect to the application of the Convention in specified cases. The Protocol, which is an integral part of the Convention, elaborates on the meaning of certain terms used in the Convention. The exchange of notes, with its attached Memorandum of Understanding, provides clarification and is submitted for the information of the Senate. It includes examples of the application of various provisions of the Convention, particularly those concerning the limitation of benefits.

A technical memorandum explaining in detail the provisions of the Convention will be prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Convention It has the full approval of both Departments.

Respectfully submitted,

(s) LYNN E. DAVIS.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 25, 1997.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Washington, October 2, 1996, together with a Protocol to the Convention. An enclosed exchange of notes with an attached Memorandum of Understanding, transmitted for the information of the Senate, provides clarification with respect to the application of the Convention in specified cases. Also transmitted is the report of the Department of State concerning the Convention.

This Convention, which is similar to tax treaties between the United States and other Organization for Economic Cooperation and Development (OECD) nations, provides maximum rates of tax to be applied to various types of income and protection from double taxation of income. The Convention also provides for exchange of information and sets forth rules to limit the benefits of the Convention so that they are available only to residents that are not engaged in treaty shopping.

I recommend that the Senate give early and favorable consideration to this Convention and give its advice and consent to ratification.

(s) WILLIAM J. CLINTON.

NOTES OF EXCHANGE

DEPARTMENT OF STATE
WASHINGTON
October 2, 1996

Excellency:

I have the honor to refer to the Convention signed today between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income and to the Protocol also signed today which forms an integral part of the Convention and to propose on behalf of the Government of the United States the following:

In the course of the negotiations leading to the conclusion of the Convention and the Protocol signed today, the negotiators developed and agreed upon the Memorandum of Understanding that is attached to this note. The Memorandum of Understanding is a statement of intent setting forth a common understanding and interpretation of certain provisions of the Convention reached by the delegations of the Swiss Confederation and the United States acting on behalf of their respective governments. These understandings and interpretations are intended to give guidance both to the taxpayers and the tax authorities of our two countries in interpreting these provisions.

If the understandings and interpretations in the Memorandum of Understanding are acceptable, this note and your note reflecting such acceptance will memorialize the understandings and interpretations that the parties have reached.

Accept, Excellency, renewed assurances of my highest consideration.

For the Secretary of State:
(s) Alan Larson

Attachment:
As stated.

The Ambassador of Switzerland

Washington, October 2, 1996

Dear Mr. Secretary,

I have the honor to confirm the receipt of your Note of today's date which reads as follows:

"Excellency:

I have the honor to refer to the Convention signed today between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income and to the Protocol also signed today which forms an integral part of the Convention and to propose on behalf of the Government of the United States the following:

In the course of the negotiations leading to the conclusion of the Convention and the Protocol signed today, the negotiators developed and agreed upon the Memorandum of Understanding that is attached to this note. The Memorandum of Understanding is a statement of intent setting forth a common understanding and interpretation of certain provisions of the Convention reached by the delegations of the Swiss Confederation and the United States acting on behalf of their respective governments. These understandings and interpretations are intended to give guidance both to the taxpayers and the tax authorities of our two countries in interpreting these provisions.

If the understandings and interpretations in the Memorandum of Understanding are acceptable, this note and your note reflecting such acceptance will memorialize the understandings and interpretations that the parties have reached.

Accept, Excellency, renewed assurances of my highest consideration.

For the Secretary of State:"

Attachment:

The Honorable
Warren Christopher
Secretary of State
United States Department of State
Washington, D.C.

I have the honor to inform you that the understandings and interpretations in the Memorandum of Understanding are acceptable.

Accept, Mr. Secretary, renewed assurances of my highest consideration.

(s) Carlo Jagmetti

MEMORANDUM OF UNDERSTANDING

1. In reference to subparagraph 1 b) of Article 4 (Resident)

It is understood that the term "government" includes any body, however designated, including agencies, bureaus, funds, or organizations, that constitute a governing authority of the Contracting State, Cantons, States, Municipalities, or political subdivisions. The net earnings of

the governing authority must be credited to its own account or to other accounts of the Contracting State, Canton, State, Municipality, or political subdivision with no portion inuring to the benefit of any private person.

The term "government" also includes a corporation (other than a corporation engaged in commercial activities), that is wholly owned, directly or indirectly, by a Contracting State, Canton, State, Municipality or a political subdivision, provided (A) it is organized under the laws of the Contracting State, Canton, State, Municipality, or political subdivision, (B) its earnings are credited to its own account or to other accounts of the Contracting State, Canton, State, Municipality or political subdivision with no portion of its income inuring to the benefit of any private person and (C) its assets vest in the Contracting State, Canton, State, Municipality, or political subdivision upon dissolution.

The term "government" also includes a pension trust of a Contracting State, Canton, State, Municipality, or a political subdivision that is established and operated exclusively to provide pension benefits to employees or former employees of the Contracting State, Canton, State, Municipality, or a political subdivision provided that the pension trust does not engage in commercial activities.

2. In reference to Article 7 (Business Profits)

It is understood that, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits attributable to such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined on the basis only of that part of the contract that is effectively carried out by the permanent establishment. The profits related to that part of the contract that is carried out by the head office of the enterprise shall not be taxable in the State in which the permanent establishment is situated.

3. In reference to paragraph 2 of Article 15 (Dependent Personal Services) and to Article 17 (Artistes and Sportsmen)

It is understood that nothing shall preclude a Contracting State from withholding tax from such payments according to its domestic laws. However, if according to the provisions of these Articles, such remuneration or income may only be taxed in the other Contracting State, the first-mentioned Contracting State shall make a refund of the tax so withheld upon a duly filed claim. Such claim must be filed with the tax authorities that have collected the withholding tax within five years after the close of the calendar year in which the tax was withheld.

4. In reference to subparagraph 1 c) of Article 22 (Limitation on Benefits)

This paragraph provides a test for eligibility for benefits for residents of one of the Contracting States that do not qualify for benefits under the other tests of paragraph 1 (because, for example, a company is not publicly traded, and cannot pass the "predominant interest" test). This is the "active trade or business" test. In general, it is expected that if a person qualifies for benefits under one of the other tests of the paragraph, no inquiry will be made into the person's

qualification for benefits under subparagraph c). Upon satisfaction of any of the other tests of paragraph 1, all income derived by the beneficial owner from the other Contracting State is entitled to treaty benefits. Under subparagraph c), however, the test is applied separately for each item of income. Under this provision, therefore, a person may receive benefits with respect to one item of income and not with respect to another.

Under the active trade or business test, a resident of a Contracting State deriving an item of income from the other Contracting State is entitled to benefits with respect to that income if that person (or a person related to that person) is engaged in an active trade or business, as defined in paragraph 7 of the Protocol, in the first-mentioned State and the income in question is derived from the other State in connection with, or is incidental to, that trade or business.

The active conduct of a trade or business need not involve manufacturing or sales activities but may instead involve services. However, income that is derived in connection with, or is incidental to, the business of making, managing or simply holding investments for the resident's own account generally will not qualify for benefits under this provision, whether or not those activities would otherwise constitute an active trade or business. Therefore, a company the business of which consists solely of managing investments (including group financing) will not be considered to be engaged in an active trade or business. However, if such company also engages in activities such as active licensing or leasing that would otherwise qualify under subparagraph 1 c), it will be entitled to the benefits to the extent provided therein. The limitation relating to investments does not apply to banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer in the ordinary course of business. Of course, this rule does not affect the status of investment advisors or others who are actively conducting the business of managing investments that are beneficially owned by others.

Income is considered derived "in connection" with an active trade or business in a Contracting State if the income-generating activity in the other Contracting State is a line of business which forms a part of, or is complementary to, the trade or business conducted in the first-mentioned State. The line of business in the first-mentioned State may be "upstream" to that going on in the other State (e.g., providing inputs to a manufacturing process that occurs in that other State), "downstream" (e.g., selling the output of the manufacturer resident in the other State) or "parallel" (e.g., selling in one Contracting State the same sorts of products that are being sold by the trade or business carried on in the other Contracting State).

Income derived from a Contracting State would be considered "incidental" to the trade or business carried on in the other Contracting State if the income is not produced by a line of business which forms a part of, or is complementary to, the trade or business conducted in that other Contracting State by the recipient of the income, but the production of such income facilitates the conduct of the trade or business in that other Contracting State. An example of such "incidental" income is interest income earned from the short-term investment of working capital of a resident of a Contracting State in securities issued by persons in the other Contracting State.

An item of income will be considered to be earned in connection with or to be incidental to an active trade or business in a Contracting State if the resident claiming the benefits is itself engaged in business, or it is deemed to be so engaged through the activities of related persons that are residents of one of the Contracting States. Thus, for example, a resident in a Contracting State could claim benefits with respect to an item of income earned by an operating subsidiary in the other Contracting State but derived by the resident indirectly through a wholly-owned holding company resident in the other Contracting State and interposed between it and the operating subsidiary.

Income that is derived from a related party in connection with an active trade or business in a Contracting State must pass an additional test to qualify for benefits granted by the other Contracting State. The trade or business in the first-mentioned State must be substantial in relation to the activity carried on by the related party in the other Contracting State that gave rise to the income in respect of which treaty benefits are being claimed. The substantiality requirement is intended to prevent a narrow case of treaty-shopping abuses in which a company attempts to qualify for benefits by engaging in de minimis connected business activities that have little economic cost or effect with respect to the company's business as a whole.

The application of the substantiality test only to income from related parties focuses only on potential abuse cases, and does not hamper certain other kinds of non-abusive activities, even though the income recipient resident in a Contracting State may be very small in relation to the entity generating the income in the other Contracting State. For example, if a small U.S. research firm develops a process that it licenses to a very large, unrelated, Swiss pharmaceutical manufacturer, the size of the U.S. research firm would not have to be tested against the size of the Swiss manufacturer. Similarly, a small U.S. bank that makes a loan to a very large unrelated Swiss business would not have to pass a substantiality test to receive treaty benefits under subparagraph c).

The following examples are intended to help clarify how the rules of subparagraph c) are intended to operate:

Example 1

Facts: P, a holding corporation resident in Switzerland, is owned by three persons that are residents of third countries. P has a participation of 50 percent in the Swiss resident P-1, which performs all of the principal economic functions related to the manufacture and sale of widgets and nidgets in Switzerland. P, which does not conduct any business activities, also owns all of the stock and debt issued by R-1, a United States corporation. R-1 performs all of the principal economic functions in the manufacture and sale of widgets in the United States. R-1 purchases nidgets from P-1. R-1 performs all of the economic functions for the sale and distribution of nidgets in the United States and neighboring countries. P-1's activities are substantial in comparison to the activities of R-1.

Analysis: Treaty benefits may be obtained by P on the payment of dividends or interest from R-1. The income received by P from R-1 is derived in connection with P's active and substantial business (through P-1) in Switzerland. For this purpose, 50 percent of P-1's activities may be attributed to P since P owns a 50 percent participation in P-1. The same result would occur if R, a wholly owned United States subsidiary of P, owned all of the stock and debt of R-1.

Example II

Facts: T, a corporation resident in the United States, is owned by U (10 percent), a U.S. resident, and V, W, and X (90 percent), residents of other countries. T owns the rights to various international franchises that it has acquired, and through its staff in the United States performs all of the principal economic functions and technical support in the licensing of the franchises to regional corporations. T owns all of the stock and debt of T-1, a subsidiary resident in Switzerland, that owns the right to use related franchises within Switzerland and neighboring countries. T-1 licenses the franchises to Swiss and regional corporations. T also owns all of the stock and debt of T-2, a subsidiary resident in Switzerland that it acquired several years ago, that owns only the patent right for the manufacture of a major pharmaceutical product licensed to a corporation resident in Switzerland. T's activities are substantial in comparison to the activities of T-1.

Analysis: Treaty benefits may be obtained by T on the payment of dividends or interest from T-1. The income received by T from T-1 is derived in connection with T's active and substantial business of licensing franchises. However, treaty benefits may not be obtained by T on payments from T-2. Although T has a substantial business for the licensing of franchises, the income received by T from T-2's licensing of a pharmaceutical product is not derived in connection with and is not incidental to T's franchise licensing business.

Example III

Facts: G is a corporation resident in Switzerland, the stock and debt of which is wholly owned by F, a major corporation resident in a third country. F, directly and through various subsidiaries located worldwide, manufactures electronic products. G, through its staff and facilities in Switzerland, performs all of the principal economic functions for the worldwide distribution and marketing of products manufactured by F. G owns all of the stock and debt of H, a subsidiary resident in the United States. H purchases the electronic products manufactured by F and its subsidiaries from G, F or other F subsidiaries and distributes those products in the United States and neighboring countries. H also arranges in the United States advertisements and warranty coverage for products manufactured by F and its subsidiaries. G also owns all of the stock and debt of I and J, subsidiaries resident in the United States that are engaged in the manufacturing of electronic products

(I) and the ownership and development of residential housing (J). G's activities are substantial in comparison to the activities of H.

Analysis: Treaty benefits may be obtained by G on the payment of dividends or interest from H and I. The income received by G from H is derived in connection with G's active and substantial distribution business because H's business forms a part of G's business. The income received by G from I is derived in connection with G's active and substantial distribution business because the manufacturing business of I is complementary to G's distribution business. However, treaty benefits may not be obtained by G on the payments of dividends or interest from J because any income received by G from J is not derived in connection with or incidental to G's distribution business.

Example IV

Facts: V, a resident of a country that does not have a treaty with Switzerland, wants to acquire a Swiss financial institution. However, since its country of residence has no tax treaty with Switzerland, any dividends generated by the investment would be subject to a Swiss withholding tax of 35 percent. V establishes a U.S. corporation with one office in a small town to provide investment advice to local residents. That U.S. corporation acquires the Swiss financial institution with capital provided by V.

Analysis: The Swiss source income is generated from business activities in Switzerland related to the investment advisory business conducted by the U.S. parent. However, the substantiality test would not be met in this example, so the dividends would remain subject to withholding in Switzerland at a rate of 35 percent rather than the 5 percent rate provided by Article 10 of the Convention.

Example V

Facts: United States, United Kingdom and French corporations create a joint venture to make a market in over-the-counter derivative instruments, which is in the form of a Delaware limited liability company that is treated as a partnership for U.S. tax purposes. The joint venture establishes a Swiss financial institution in order to market derivative financial instruments to Swiss customers. The Swiss institution pays dividends to the joint venture.

Analysis: Under Article 4, only the U.S. partner is a resident of the United States for purposes of the treaty. The question arises under this treaty, therefore, only with respect to the U.S. partner's share of the dividends. If the U.S. partner meets the predominant interest or the public trading tests of subparagraph 1 e) or f) it is entitled to benefits without reference to subparagraph 1 c) . If not, the U.S. partner's share of the dividends would be eligible for benefits under subparagraph 1 c). The determination of treaty benefits available to the United Kingdom and

French partners will be made under the Swiss treaties with the United Kingdom and France.

Example VI

Facts: A Swiss corporation, a German corporation and a Belgian corporation create a joint venture in the form of a Swiss resident corporation in which they take equal shareholdings. The joint venture corporation engages in an active manufacturing business in Switzerland. Income derived from that business that is retained as working capital is invested in short-term U.S. debt instruments so that it is available when needed for use in the business.

Analysis: The interest would be eligible for treaty benefits. Interest income earned from short-term investment of working capital is incidental to the business in Switzerland of the Swiss joint venture corporation.

5. In reference to subparagraph 1 e) of Article 22 (Limitation on Benefits

It is understood that a company is described in clause i) of subparagraph 1 e) of Article 22 within the meaning of clause ii) of subparagraph 1 e) of Article 22 only if that company is a resident of one of the Contracting States that is entitled to the benefits of the Convention by reason of clause i) of subparagraph 1 e) of Article 22.

6. In reference to subparagraph 1 f) of Article 22 (Limitation on Benefits)

The following examples demonstrate the manner in which Article 22, subparagraph 1 f) may be applied:

Example I

Facts: All of the stock of a U.S. resident company is owned by a U.S. individual. The stock is worth 100x and the company pays a dividend each year of approximately 10x. The company has outstanding debt of 1000x, all of which is held by three members of a single family, none of which is resident in the United States. The debt pays interest each year of 100x.

Analysis: The U.S. company would not satisfy the requirements of subparagraph 1 f) of Article 22 of the Convention because the debt represents a predominant interest in the company, the ultimate beneficial owners of which are persons who are not residents of the United States Therefore, the U.S. company will be entitled to the benefits of the Convention only if it qualifies under some other provision of Article 22.

Example II

Facts: An individual who is not a resident of the United States owns 49% of the stock of a U.S. company that holds passive investments in other companies; the other 51% of the stock in the company is owned by several unrelated U.S. individuals. The non-resident individual also has a contract to provide investment advice to the company under which the individual is to receive l0x each year, regardless of the profits of the company. The company's gross profits are approximately 60x each year.

Analysis: Whether the non-resident individual has a predominant interest in the U.S. company will depend on whether l0x is an arm's length remuneration for the services. If l0x is arm's length remuneration, then the payments are not taken into account for purposes of determining whether the individual has a predominant interest in the company. As a result, because U.S. individuals own a majority of the stock in the company, the company would qualify for benefits under Article 22, subparagraph 1 f). If the remuneration is not arm's length, then the non-resident individual would have a predominant interest in the company when the service payments are combined with his equity interest and the company would not be entitled to benefits under Article 22, subparagraph 1 f).

Example III

Facts: Assume the same facts as in Example II, except that the individual does not have an investment contract with the U.S. company and performs only nominal, if any, service. Nevertheless, each year the company sends the individual a check equal to 50% of the company's gross profits as a "bonus" for "services rendered".

Analysis: The U.S. company would not satisfy the requirements of subparagraph 1 f) of Article 22 of the Convention because the facts indicate that, even though the individual owns less than 50% of the stock of the company and does not have a contract to provide services, he in fact is the ultimate beneficial owner of a predominant interest in the company. Therefore, the U.S. company will be entitled to the benefits of the Convention only if it qualifies under some other provision of Article 22.

Example IV

Facts: A single Swiss resident individual owns 100% of the stock of a Swiss company. The stock of the Swiss company is worth l00x. The Swiss company's only asset is a license for the worldwide rights to a product developed by a corporation organized in a jurisdiction that does not have a tax treaty with the United States. The Swiss company licenses those rights to companies throughout the world, including to a U.S. corporation. The Swiss company receives 100x each year in royalties. It pays 95x in royalties, which is an arm's length rate, to the licensor.

Analysis: The Swiss company would not satisfy the requirements of subparagraph 1 f) of Article 22 of the Convention because the license represents a predominant interest in the company, the ultimate beneficial owners of which are persons who are not residents of Switzerland. Therefore, the Swiss company will be entitled to the benefits of the Convention only if it qualifies under some other provision of Article 22.

Example V

Facts: A Swiss individual and a corporation organized in a jurisdiction that does not have a tax treaty with the United States create a joint venture in the form of a partnership organized in Switzerland. The partnership provides management consulting services to unrelated companies. The Swiss individual owns 60 percent of the joint venture and the corporation owns 40 percent of the joint venture. The joint venture's debt is held by Swiss banks and its only significant contract is with the Swiss individual who is to provide the consulting services. The Swiss partnership receives fees from the United States for providing management consulting services as well as interest and dividends that are unrelated to the consulting business.

Analysis: Under Article 4, the Swiss partnership is a resident of Switzerland for purposes of the treaty because the worldwide income of the partnership is subject to tax in Switzerland (albeit in the hands of the partners). Accordingly, the predominant interest test is applied at the level of the partnership. Because the Swiss individual is the ultimate beneficial owner of a predominant interest in the partnership as a result of its 60% ownership interest, the income earned by the partnership is entitled to treaty benefits pursuant to paragraph 1 f).

7. In reference to paragraph 6 of Article 22 (Limitation on Benefits)

a) It is understood that a company resident in one of the Contracting States will be granted the benefits of the Convention under paragraph 6 of Article 22 with respect to the income it derives from the other Contracting State if:

i) the ultimate beneficial owners of 95 percent or more of the aggregate vote and value of all of its shares are seven or fewer persons that are residents of a member State of the European Union or of the European Economic Area or a party to the North American Free Trade Agreement that meet the requirements of subparagraph 3 b) of Article 22; and

ii) the amount of the expenses (including payments for interest or royalties, but not payments at arm's length for the purchase or use of or the right to use tangible property in the ordinary course of business or remuneration at arm's length for services) deductible from gross income that are paid or payable by the company for its preceding fiscal period (or, in the case of its first fiscal period, that period) to persons that are neither U.S. citizens nor residents of a member state of the European Union or of the European Economic Area or a party to the North American Free Trade Agreement that meet the requirements of

subparagraph 3 b) of Article 22 is less than 50 percent of the gross income of the company for that period.

b) However, a company otherwise entitled to benefits under subparagraph a) shall not be entitled to the benefits of the Convention if that company, or a company that controls such company, has outstanding a class of shares:

i) the terms of which, or which is subject to other arrangements that entitle its holders to a portion of the income of the company derived from the other Contracting State that is larger than the portion such holders would receive absent such terms or arrangements; and

ii) 50 percent or more of the vote or value of which is owned by persons who are neither U.S. citizens nor residents of a member state of the European Union or of the European Economic Area or a Party to the North American Free Trade Agreement that meet the requirements of subparagraph 3 b) of Article 22.

Thus, for example, if 100% of the common stock of a U.S. company (representing 100 percent of the voting power in, and 95 percent of the value of, the company) was owned by a Canadian company, it generally would be entitled to benefits under subparagraph a) with respect to its Swiss source income, assuming that it met the base erosion test of clause a) ii). However, if the remaining five percent of the value of the company consisted of a class of stock that paid dividends determined by reference to the income derived from the U.S. company's Swiss subsidiary (sometimes known as "tracking" or "alphabet" stock) and 50 percent or more of the value (or vote, if relevant) of the class of stock were held by resident of a third country that does not have a double tax treaty with Switzerland, the U.S. company would not be entitled to benefits under this paragraph as a result of the application of subparagraph b).

8. In reference to Article 26 (Exchange of Information)

a) The definition of tax fraud applicable for purposes of Article 26 of this Convention shall apply in cases where a Contracting State may need to resort to other legal means applicable to mutual assistance between the Contracting States in matters involving tax fraud, such as the Swiss Federal Law on International Mutual Assistance in Criminal Matters of 20 March, 1981, in order to obtain certain types of assistance, such as the deposition of witnesses.

b) The term "records or documents" used in Article 26 is an all-inclusive term covering all forms of recorded information whether held by public or private individuals or entities.

c) Persons or authorities to whom information is disclosed in accordance with paragraph 1 of Article 26 may disclose the information in public court proceedings or in judicial decisions.

d) It is understood that in cases of tax fraud Swiss banking secrecy does not hinder the gathering of documentary evidence from banks or its being forwarded under the Convention to the competent authority of the United States of America.

CONVENTION

BETWEEN THE UNITED STATES OF AMERICA

AND
THE SWISS CONFEDERATION FOR THE AVOIDANCE OF
DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The United States of America and the Swiss Confederation, desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income, have agreed as follows:

ARTICLE 1
Personal Scope

1. Except as otherwise provided in this Convention, this Convention shall apply to persons who are residents of one or both of the Contracting States.

2 Notwithstanding any provision of this Convention except paragraph 3 of this Article, the United States may tax a person who is treated as a resident under its taxation laws (except where such person is determined to be a resident of Switzerland under the provisions of paragraphs 3 or 4 of Article 4 (Resident)) and its citizens (including its former citizens) as if this Convention had not come into effect.

3. The provisions of paragraph 2 shall not affect:

a) the benefits conferred by the United States under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 6 and 7 of Article 13 (Gains), Articles 23 (Relief from Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement procedure); and

b) the benefits conferred by the United States under paragraphs 1 and 2 of Article 19 (Government Service and Social Security), and under Articles 20 (Students and Trainees) and 27 (Members of Diplomatic Missions and Consular Posts) and paragraph 4 of Article 28 (Miscellaneous), upon individuals who are neither citizens of, nor have immigrant status in, the United States.

ARTICLE 2
Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State.

2. The existing taxes to which the Convention shall apply are:

a) in Switzerland: the federal, cantonal and communal taxes on income (total income, earned income, income from property, business profits, etc.);

b) in the United States: the Federal income taxes imposed by the Internal Revenue Code and the excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations. The Convention shall, however, apply to the excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the

risks covered by such premiums are not reinsured with a person not entitled to the benefits of this or any other Convention which provides exemption from these taxes.

3. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3
General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "person" includes an individual, a partnership, a company, an estate, a trust and any other body of persons;

b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes under the laws of the Contracting State in which it is organized;

c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

d) the term "nationals" means:

i) all individuals possessing the nationality (i.e., citizenship, in the case of the United States) of a Contracting State; and

ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

e) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in the other Contracting State;

f) the term "competent authority" means:

i) in Switzerland: the Director of the Federal Tax Administration or his authorized representative; and

ii) in the United States: the Secretary of the Treasury or his delegate;

g) the term "Switzerland" means the Swiss Confederation;

h) the term "United States" means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning according to the provisions of Article 25 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4
Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means:

a) any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, nationality, place of management, place of incorporation, or any other criterion of a similar nature, except that a United States citizen or alien lawfully admitted for permanent residence (a "green card" holder) who is not a resident of Switzerland by virtue of this paragraph or paragraph 5 shall be considered to be a resident of the United States only if such person has a substantial presence, permanent home or habitual abode in the United States; if, however, such person is also a resident of Switzerland under this paragraph, such person also will be treated as a United States resident under this paragraph and such person's status shall be determined under paragraph 3;

b) the Government of that State or a political subdivision or local authority thereof or any agency or instrumentality of any such Government, subdivision or authority;

c) i) a pension trust and any other organization established in that State and maintained exclusively to administer or provide pensions, retirement or employee benefits, that is established or sponsored by a person resident in that State under this Article; and

ii) a not-for-profit organization established and maintained in that State for religious, charitable, educational, scientific, cultural or other public purposes;

that by reason of its nature as such is generally exempt from income taxation in that State; or

d) a partnership, estate, or trust, but only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State in the same manner as the income of a resident of that State, either in its hands or in the hands of its partners or beneficiaries.

2. Notwithstanding paragraph 1, the term "resident of a Contracting State" does not include any person who is liable to tax in that State in respect only of income from sources in that State.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

b) if the State in which he has his center of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

4 Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, such person shall be treated as a resident only if and to the extent that the competent authorities of the Contracting States so agree pursuant to Article 25 (Mutual Agreement Procedure), including paragraph 6 thereof.

5. An individual who would be a resident of Switzerland by reason of the provisions of paragraphs 1 and 3, but who elects not to be subject to the generally imposed income taxes in Switzerland with respect to all income from sources in the United States, shall not be considered a resident of Switzerland for the purposes of this Convention.

ARTICLE 5
Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

a) a place of management;
b) a branch;
c) an office;
d) a factory;
e) a workshop; and
f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration or development of natural resources, constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise;
e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, advertising, the supply of information, scientific research, or other activities which have a preparatory or auxiliary character;
f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs a) to e) of this paragraph, provided that the overall

activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraph 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6
Income from Real Property

1. Income derived by a resident of a Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

5. A resident of a Contracting State who is subject to tax in the other Contracting State on income from real property situated in the other Contracting State may, subject to the procedures of the domestic law of the other Contracting State, elect to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment or a fixed base in such other State. Any such election shall be binding for taxable years as provided by the domestic law of the Contracting State in which the property is situated.

ARTICLE 7
Business Profits

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions and which shall include only those profits derived from the assets or activities of the permanent establishment.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the business profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in the other paragraphs of this Article.

5. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the business profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where business profits include items of income which are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

8. For the purposes of this Convention, the term "business profits" includes income derived from the rental of tangible movable property and the rental or licensing of cinematographic films or works on film, tape, or other means of reproduction for use in radio or television broadcasting.

ARTICLE 8
Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived from the rental of ships or aircraft if such rental profits are incidental to other profits described in paragraph 1.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9
Associated Enterprises

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. a) Where a Contracting State proposes to include in the profits of an enterprise of that State, and to tax accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, the competent authorities of the Contracting States may consult pursuant to Article 25 (Mutual Agreement Procedure).

b) If pursuant to Article 25 the Contracting States agree on adjustments to the profits of each such enterprise that reflect the conditions which would have been made

between independent enterprises, then each State shall make the agreed adjustment to the amounts charged on the profits of each such enterprise.

ARTICLE 10
Dividends

1. Dividends derived and beneficially owned by a resident of a Contracting State may be taxed in that State.

2 However, such dividends may also be taxed in the Contracting State in which the dividends arise according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed

a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 percent of the voting stock of the company paying the dividends;

b) 15 percent of the gross amount of the dividends in all other cases.

Subparagraph b) and not subparagraph a) shall apply in the case of dividends paid by a person which is a resident of the United States and which is a Regulated Investment Company. Subparagraph a) shall not apply to dividends paid by a person which is a resident of the United States and which is a Real Estate Investment Trust, and subparagraph b) shall only apply if the dividend is beneficially owned by an individual holding an interest of less than 10 percent in the Real Estate Investment Trust.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding paragraph 2, dividends may not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a resident of the other Contracting State described in subparagraph 4 b) of Article 28 (Miscellaneous) that does not control the company paying the dividend.

4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares under the law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services) shall apply.

6. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as

a) such dividends are paid to a resident of that other State, or

b) the dividends are attributable to a permanent establishment or a fixed base situated in that State.

7. A company that is a resident of Switzerland and that has a permanent establishment in the United States, or that is subject to tax on a net basis in the United States on items of income described in Article 6 (Income from Real Property) or Article 13 (Gains), may be subject in the United States to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may be imposed only on

a) the portion of the business profits of the company attributable to the permanent establishment under this Convention, and

b) the portion of the income referred to in the preceding sentence that is described in Article 6 (Income from Real Property) or paragraphs 1 or 3 of Article 13 (Gains),

that represents the "dividend equivalent amount" of those profits and income; the term "dividend equivalent amount" shall, for the purposes of this paragraph, have the meaning that it has under the law of the United States as it may be amended from time to time without changing the general principle thereof.

8. The tax referred to in paragraph 7 shall not be imposed at a rate exceeding the rate specified in subparagraph 2 a).

ARTICLE 11
Interest

1. Interest derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

2. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, and including an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit. However, the term "interest" does not include income dealt with in Article 10 (Dividends). Penalty charges for late payment shall not be regarded as interest for the purpose of this Convention.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services) shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

5. Except as otherwise provided in paragraphs 1 or 3, interest paid by a company that is a resident of a Contracting State may be subject to tax by the other Contracting State only insofar as such interest is paid by a permanent establishment of such company located in that other State, or out of income described in Article 6 (Income from Real Property) or paragraph 1 of Article 13 (Gains) that is subject to tax on a net basis in that other State.

6. The provisions of paragraph 1 shall not apply to

a) interest arising in the United States if the amount of such interest is determined by reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person, but only to the extent that the interest does not qualify as portfolio interest under United States law, and

b) an excess inclusion with respect to a residual interest in an entity that is treated as a real estate mortgage investment conduit under the law of the United States,

which may be taxed in the United States according to its laws.

ARTICLE 12
Royalties

1. Royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

2. The term "royalties" as used in this Convention means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work (but not including motion pictures, or films, tapes or other means of reproduction for use in radio or television broadcasting), any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial, or scientific experience. The term "royalties" also includes gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent

establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services) shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the person deriving the royalties in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13
Gains

1. Gains derived by a resident of a Contracting State that are attributable to the alienation of real property situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Article, the term "real property situated in the other Contracting State" shall include

a) real property referred to in Article 6 (Income from Real Property); and

b) shares or other comparable rights in a company that is a resident of that other State, the assets of which consist wholly or principally of real property situated in that other State, or an interest in a partnership, trust, or estate, to the extent attributable to real property situated in that other State.

In the United States, the term includes a "United States real property interest" as defined in the Internal Revenue Code as it may be amended from time to time without changing the general principles thereof.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or such fixed base, may be taxed in that other State in accordance with its law.

4. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic shall be taxable only in that State. Gains described in Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12.

5. Gains from the alienation of any property other than that referred to in paragraphs 1 through 4 shall be taxable only in the Contracting State of which the alienator is a resident.

6. Where a resident of a Contracting State alienates property in the course of an organization, reorganization, merger or similar transaction and profit, gain or income with respect to such

alienation is not recognized for the purpose of taxation in that State, if requested to do so by the person who acquires the property, the competent authority of the other Contracting State may agree, subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain or income with respect to such property for the purpose of taxation in that other State until such time and in such manner as may be stipulated in the agreement.

7. If a resident of a Contracting State who is subject to income taxation in both Contracting States on a disposition of property is treated for the purposes of taxation by a Contracting State as having alienated property and is taxed in that State by reason thereof, and the domestic law of the other Contracting State at such time does not require or allow the resident to recognize gain or loss or otherwise permits the deferral of the gain or loss, then the resident may elect in his annual return of income for the year of such alienation to be liable to tax in the other Contracting State in that year as if he had, immediately before that time, sold and repurchased such property for an amount equal to its fair market value at that time. Such an election shall apply to all property described in this paragraph that is alienated by the resident in the taxable year for which the election is made or at any time thereafter.

ARTICLE 14
Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of the performance of personal services of an independent character shall be taxable only in that State, unless the individual has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, that portion of the income attributable to the fixed base that is derived in respect of services performed in that other State also may be taxed by that other State.

2. In determining the income described in paragraph 1 that is taxable in the other Contracting State the principles of Article 7 (Business Profits} shall apply.

ARTICLE 15
Dependent Personal Services

1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions and Annuities) and 19 (Government Service and Social Security), salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable year concerned;

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

c) the remuneration is not borne by a permanent establishment or a fixed base that the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration described in paragraph 1 that is derived by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic shall be taxable only in that State.

ARTICLE 16
Director's Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company that is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 17
Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed ten thousand United States dollars ($10,000) or its equivalent in Swiss francs for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or a sportsman who is a resident of a Contracting State in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Independent Personal Services), unless it is established that neither the entertainer or sportsman nor persons related thereto (whether or not residents of that State) participate directly or indirectly in the receipts or profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

ARTICLE 18

Pensions and Annuities

1. Subject to the provisions of Article 19 (Government Service and Social Security), pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Subject to the provisions of Article 19 (Government Service and Social Security), annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated tines during a specified number of years or for life under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

ARTICLE 19
Government Service and Social Security

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

i) is a national of that State; or

ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15 (Dependent Personal Services), 16 (Directors' Fees) and 18 (Pensions and Annuities) shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

4. Notwithstanding paragraph 2, social security payments and other public pensions paid by a Contracting State to an individual who is a resident of the other Contracting State may be taxed in that other State. However, such payments may also be taxed in the first Contracting State according to the laws of that State, but the tax so charged shall not exceed 15 percent of the gross amount of the payment.

ARTICLE 20

Students and Trainees

Payments which a student, apprentice, or business trainee, who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who is present in the first-mentioned State for the purpose of his full-time education or training, receives for the purpose of his maintenance, education or training shall not be taxed in that State provided that such payments arise from sources outside that State.

ARTICLE 21
Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income other than income from real property as defined in paragraph 2 of Article 6 (Income from Real Property), if the person deriving the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services) as the case may be, shall apply.

3. The provisions of this Article shall not apply to income subject to tax by either Contracting State on wagering, gambling or lottery winnings.

ARTICLE 22

Limitation on Benefits

1. Subject to the succeeding provisions of this Article, a person that is a resident of a Contracting State and that derives income from the other Contracting State may only claim the benefits provided for in this Convention where such person:

a) is an individual;

b) is a Contracting State, a political subdivision or local authority thereof, or an agency or instrumentality of such State, political subdivision or authority;

c) is engaged in the active conduct of a trade or business in the first-mentioned Contracting State (other than the business of making, managing or simply holding investments for the persons own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer) and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business;

d) is a recognized headquarters company for a multinational corporate group;

e) is a company

i) whose principal class of shares is primarily and regularly traded on a recognized stock exchange; or

ii) if one or more companies described in clause i) are the ultimate beneficial owners of a predominant interest in such company;

f) is a company, trust or estate, unless one or more persons who are not entitled to the benefits of this Convention under subparagraphs a), b), d), e) or g) are, in the aggregate, the ultimate beneficial owners of a predominant interest in the form of a participation, or otherwise, in such company, trust or estate; or

g) is a family foundation resident in Switzerland, unless the founder, or the majority of the beneficiaries, are persons who are not entitled to the benefits of this Convention under subparagraph a), or 50 percent or more of the income of the family foundation could benefit persons who are not entitled to the benefits of this Convention under subparagraph a).

2. Notwithstanding the preceding paragraph, an entity described in paragraph 1 c) of Article 4 (Resident) may claim the benefits of this Convention, provided that more than half of the beneficiaries, members or participants, if any, in such organization are persons that are entitled, under this Article, to the benefits of this Convention.

3. a) A company that is a resident of a Contracting State shall also be entitled to the benefits of Articles 10 (Dividends), 11 (Interest) and 12 (Royalties} if:

i) the ultimate beneficial owners of more than 30 percent of the aggregate vote and value of all of its shares are persons that are resident in that Contracting State, and that would qualify for benefits under subparagraphs a), b), d), e), f) or g) of paragraph 1;

ii) the ultimate beneficial owners of more than 70 percent of all such shares are persons described in subparagraph i) and persons that are residents of member states of the European Union or of the European Economic Area or parties to the North American Free Trade Agreement that are described in subparagraph b); and

iii) the amount of the expenses deductible from gross income that are paid or payable by the company for its preceding fiscal period (or; in the case of its first fiscal period, that period) to persons that would not qualify for benefits under subparagraphs a), b), d), e), f) or g) of paragraph 1, is less than 50 percent of the gross income of the company for that period.

b) For purposes of subparagraph a) ii) shares whose ultimate beneficial owner is a person that is a resident of a member state of the European Union or of the European Economic Area or a party to the North American Free Trade Agreement will be taken into account only if such person:

i) is a resident of a country with which the other Contracting State has a comprehensive income tax convention and that person is entitled to all of the benefits provided by the other Contracting State under that convention;

ii) would qualify for benefits under paragraph 1 if that person were a resident of the first-mentioned Contracting State and if references in such

paragraph to the first-mentioned Contracting State were references to that person's state of residence; and

iii) would be entitled to a rate of tax in the other Contracting State under the convention between that person's country of residence and the other Contracting State in respect of the particular class of income for which benefits are being claimed under this Convention, that is at least as low as the rate applicable under this Convention.

4. Notwithstanding the provisions of paragraphs 1 through 3, where an enterprise of a Contracting State derives income from the other Contracting State, and that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction, the tax benefits that would otherwise apply under the other provisions of the Convention will not apply to any item of income if the combined tax that is actually paid with respect to such income in the first-mentioned State and in the third jurisdiction is less than 60 percent of the tax that would have been payable in the first-mentioned State if the income were earned in that State by the enterprise and were not attributable to the permanent establishment in the third jurisdiction. Any dividends, interest or royalties to which the provisions of this paragraph apply shall be subject to tax at a rate that shall not exceed 15 percent of the gross amount thereof. Any other income to which the provisions of this paragraph apply will be subject to tax under the provisions of the domestic law of the other Contracting State, notwithstanding any other provision of the Convention. The provisions of this paragraph shall not apply if:

a) in the case of royalties, the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment itself; or

b) in the case of any other income, the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (other than the business of making, managing or simply holding investments for the person's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer).

5. The competent authorities of the Contracting States shall consult together with a view to developing a commonly agreed application of the provisions of this Article. The competent authorities shall, in accordance with the provisions of Article 26 (Exchange of Information), exchange such information as is necessary for carrying out the provisions of this Article.

6. A person that is not entitled to the benefits of this Convention pursuant to the provisions of the preceding paragraphs may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income arises so determines after consultation with the competent authority of the other Contracting State.

7. a) For the purposes of paragraph 1, the term "recognized stock exchange" means:

i) any Swiss stock exchange on which registered dealings in shares take place;

ii) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934;

iii) the stock exchanges of Amsterdam, Frankfurt, London, Milan, Paris, Tokyo and Vienna; and

iv) any other stock exchange agreed upon by the competent authorities of the Contracting States.

b) For purposes of subparagraph d) of paragraph 1, a person shall be considered a recognized headquarters company if:

i) it provides in its state of residence a substantial portion of the overall supervision and administration of a group of companies, (which may be part of a larger group of companies), which may include, but cannot be principally, group financing;

ii) the group of companies consists of corporations resident in, and engaged in an active business in, at least five countries, and the business activities carried on in each of the five countries (or five groupings of countries) generate at least 10 percent of the gross income of the group;

iii) the business activities carried on in any one country other than the Contracting State of residence of the headquarters company generate less than 50 percent of the gross income of the group;

iv) no more than 25 percent of its gross income is derived from the other Contracting State;

v) it has, and exercises, independent discretionary authority to carry out the functions referred to in subparagraph i)

vi) it is subject to generally applicable rules of taxation in its country of residence; and

vii) the income derived in the other Contracting State either is derived in connection with, or is incidental to, the active business referred to in subparagraph ii).

If the income requirements for being considered a recognized headquarters company (subparagraphs ii), iii), or iv)) are not fulfilled, they will be deemed to be fulfilled if the required ratios are met when averaging the gross income of the preceding four years.

ARTICLE 23

Relief from Double Taxation

1. In the case of Switzerland, double taxation shall be avoided as follows:

a) Where a resident of Switzerland derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, Switzerland shall; subject to the provisions of subparagraphs b), c) and d) and paragraph 3, exempt such income from tax; provided, however, that such exemption shall apply to gains referred to in paragraph 1 of Article 13 (Gains) only if actual taxation of such gains in the United

States is demonstrated. Switzerland may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted.

b) Where a resident of Switzerland derives dividends which, in accordance with the provisions of Article 10 (Dividends), may be taxed in the United States, Switzerland shall allow, upon request, and subject to the provisions of subparagraph c), a relief to such resident. The relief may consist of

i) a deduction from the Swiss tax on the income of that resident of an amount equal to the tax levied in the United States in accordance with the provisions of Article 10 (Dividends); such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in the United States; or

ii) a lump sum reduction of the Swiss tax; or

iii) a partial exemption of such dividends from Swiss tax, in any case consisting at least of the deduction of the tax levied in the United States from the gross amount of the dividends.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

c) Where a resident of Switzerland derives income

i) described in paragraph 2 of Article 10 (Dividends) or paragraph 6 of Article 11 (Interest) which is not entitled to any reduction in U.S. withholding tax pursuant to those provisions; or

ii) which may be taxed in the United States in accordance with the provisions of Article 22 (Limitation on Benefits)

Switzerland shall allow the deduction of the tax levied in the United States from the gross amount of such income.

d) Where a resident of Switzerland derives payments that may be taxed by the United States pursuant to paragraph 4 of Article 19 (Government Service and Social Security), Switzerland shall provide a relief to such resident consisting of a deduction equal to the tax levied in the United States, plus an exemption equal to one-third (1/3) of the net amount of such payment from Swiss tax.

2. In the case of the United States, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income the appropriate amount of tax paid to Switzerland; and, in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of Switzerland from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of tax paid to Switzerland by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid to Switzerland. For purposes of applying the United States credit in relation to tax paid to Switzerland the taxes

referred to in subparagraph 2 a) and paragraph 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

3. Where a resident of Switzerland is also a citizen of the United States and is subject to United States income tax in respect of profits, income or gains which arise in the United States, the following rules apply:

a) Switzerland will apply paragraph 1 as if the amount of tax paid to the United States in respect of such profits, income or gains were the amount that would have been paid if the resident were not a citizen of the United States; and

b) for the purpose of computing the United States tax on such profits, income or gains, the United States shall allow as a credit against United States tax the income tax paid or accrued to Switzerland after the application of subparagraph a), provided that the credit so allowed shall not reduce the amount of the United States tax below the amount that is taken into account in applying subparagraph a); and

c) for the purpose of subparagraph b), profits, income or gains described in this paragraph shall be deemed to arise in Switzerland to the extent necessary to avoid double taxation of such income; however, the rules of this subparagraph shall not apply in determining credits against United States tax for foreign taxes other than the taxes referred to in subparagraph 2 a) and paragraph 3 of Article 2 (Taxes Covered).

ARTICLE 24
Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. For purposes of United States taxation of income, United States nationals not resident in the United States are not in the same circumstances as Swiss nationals not resident in the United States. This provision shall, notwithstanding the provisions of Article 1 (Personal Scope), also apply to persons who are not residents of one or both of the Contracting States.

2. a) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities

b) The provisions of this paragraph shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 4 of Article 11 (Interest), or paragraph 4 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the

other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding paragraph 2 of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

6. Nothing in this Article shall prevent the United States from imposing the tax described in paragraph 7 of Article 10 (Dividends).

ARTICLE 25
Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may consult together to endeavor to agree:

a) to the same attribution of income, deductions, credits or allowances to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

b) to the same allocation of income, deductions, credits or allowances between a resident of a Contracting State and any associated person provided for in Article 9 (Associated Enterprises);

c) to the same characterization of particular items of income;

The maximum rates of tax that may be imposed on dividend and royalty income are generally the same as in the current U.S. - Switzerland treaty. Pursuant to Article 10, dividends from direct investments are subject to tax by the source country at a rate of five percent. The threshold criterion for direct investment has been reduced from 95 percent ownership of the equity of a firm to ten percent consistent with other modern U.S. treaties, in order to facilitate direct investment. Other dividends are generally taxable at 15 percent. Under Article 12, royalties derived and beneficially owned by a resident of a Contracting State are generally taxable only in that State.

The current convention, at Article 11, provides for a five percent rate of tax by the source country on most interest payments. Interest is exempt from taxation by the country in which the interest arises under the new Convention. The restrictions on the taxation of royalty and interest income do not apply, however, if the beneficial owner of the income is a resident of one Contracting State who carries on business in the other Contracting State in which the income arises and the income is attributable to a permanent establishment in that State. In that situation, the income is to be considered either business profit or income from independent personal services.

The maximum rates of withholding tax described in the preceding paragraphs are subject to the standard anti- abuse rules for certain classes of investment income found in other U.S. tax treaties and agreements.

The taxation of capital gains, described in Article 13 of the Convention, generally follows the rule of recent U.S. tax treaties as well as the OECD model. Gains on real property are taxable in the country in which the property is located, and gains from the sale of personal property are taxed only in the State of residence of the seller, unless attributable to a permanent establishment or fixed base in the other State. The Convention, at Sections 6 and 7 of Article 13, also contains rules, found in a few other U.S. tax treaties, that allow for adjustments to the timing of the taxation of certain classes of capital gains. These rules serve to minimize possible double taxation that could otherwise result.

Article 7 of the new Convention generally follows the standard rules for taxation by one country of the business profits of a resident of the other. The non-residence country's right to tax such profits is generally limited to cases in which the profits are attributable to a permanent establishment located in that country.

As do all recent U.S. treaties, this Convention preserves the right of the United States to impose its branch profits tax in addition to the basic corporate tax on a branch's business (Article 7). This tax, which was introduced in 1986, is not imposed under the present treaty. The new Convention, at Article 28, also accommodates a provision of the 1986 Tax Reform Act that attributes to a permanent establishment income that is earned during the life of the permanent establishment but is deferred and not received until after the permanent establishment no longer exists.

d) to the same characterization of persons;

e) to the same application of source rules with respect to particular items of income;

f) to a common meaning of a term;

g) to the application of the provisions of domestic law regarding penalties, fines, and interest in a manner consistent with the purposes of the Convention.

The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. The competent authorities of the Contracting States may prescribe procedures to carry out the purposes of this Convention.

6. If any difficulty or doubt arising as to the interpretation or application of this Convention cannot he resolved by the competent authorities in a mutual agreement procedure pursuant to the previous paragraphs of this Article, the case may, if both competent authorities and all affected taxpayers agree, be submitted for arbitration, provided the taxpayers agree in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both Contracting States with respect to that case. The procedures shall be established in an exchange of notes between the Contracting States. The provisions of this paragraph shall have effect after the Contracting States have so agreed through the exchange of diplomatic notes.

ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of tax fraud or the like in relation to the taxes which are the subject of the present Convention. In cases of tax fraud,

(a) the exchange of information is not restricted by Article 1 (Personal Scope) and

(b) if specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of authenticated copies of unedited original records or documents.

Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the

information only for such purposes. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

2. Each of the Contracting States may collect such taxes imposed by the other Contracting State as though such taxes were the taxes of the former State as will ensure that the exemption or reduced rate of tax granted under Articles 10 (Dividends), 11 (Interest), 12 (Royalties) and 18 (Pensions and Annuities) of the present Convention by such other State shall not be enjoyed by persons not entitled to such benefits.

3. In no case shall the provisions of this Article be construed so as to impose upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

4. The competent authorities may release to an arbitration board established pursuant to paragraph 6 of Article 25 (Mutual Agreement Procedure) such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations on disclosure described in this Article.

ARTICLE 27
Members of Diplomatic Missions and Consular Posts

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

2. Insofar as, due to fiscal privileges granted to diplomatic agents or consular officers under the general rules of international law or under the provisions of special international agreements, income is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.

3. Notwithstanding the provisions of Article 4 (Resident), an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if:

a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State, and

b) he is liable in the sending State to the same obligations in relation to tax on his total income as are residents of that State.

4. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of

a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

ARTICLE 28
Miscellaneous

1. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded

a) by the laws of either Contracting State; or

b) by any other agreement between the Contracting States.

2. Notwithstanding the provisions of subparagraph 1 b):

a) Notwithstanding any other agreement to which the Contracting States may be parties, a dispute concerning whether a measure is within the scope of this Convention shall be considered only by the competent authorities of the Contracting States, as defined in subparagraph 1 f) of Article 3 (General Definitions) of this Convention, and the procedures under this Convention exclusively shall apply to the dispute.

b) Unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the nondiscrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favored-nation obligation under any other agreement shall apply with respect to that measure.

c) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any other form of measure.

3. For the implementation of paragraphs 1 and 2 of Article 7 (Business Profits), paragraph 5 of Article 10 (Dividends), paragraph 3 of Article 11 (Interest), paragraph 3 of Article 12 (Royalties), paragraph 3 of Article 13 (Gains), paragraph 2 of Article 14 (Independent Personal Services), and paragraph 2 of Article 21 (Other Income), any income, gain or expense attributable to a permanent establishment during its existence is taxable or deductible (under otherwise applicable principles) in the Contracting State where such permanent establishment is situated even if the payments are deferred until such permanent establishment has ceased to exist.

4. In determining the taxable income for purposes of taxation in a Contracting State of an individual who renders personal services and who is a resident, but not a national, of that State, contributions paid by, or on behalf of, such individual to a pension or other retirement arrangement that is established and maintained and recognized for tax purposes in the other Contracting State shall be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension or other retirement arrangement that is established and maintained and recognized for tax purposes in that first-mentioned State, provided that:

a) the individual was not a resident of that State, and was contributing to that pension or other retirement arrangement immediately before he began to exercise employment in that State; and

b) the competent authority of that State agrees that the pension or other retirement arrangement in the other Contracting State generally corresponds to a pension or other retirement arrangement recognized for tax purposes by that first-mentioned State.

The benefits of this paragraph shall extend for a period not exceeding five taxable years beginning with the individual's first taxable year during which the individual rendered personal services in the first-mentioned Contracting State. For purposes of this paragraph, a pension or other retirement arrangement is recognized for tax purposes in a Contracting State if the contributions to, or earnings of, the arrangement would qualify for tax relief in that State.

5. The appropriate authority of either Contracting State may request consultations with the appropriate authority of the other Contracting State to determine whether amendment to the Convention is appropriate to respond to changes in the law or policy of either Contracting State. If these consultations determine that the effect of the Convention or its application have been unilaterally changed by reason of domestic legislation enacted by a Contracting State such that the balance of benefits provided by the Convention has been significantly altered, the authorities shall consult with each other with a view to amending the Convention to restore an appropriate balance of benefits.

ARTICLE 29
Entry into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of the second month next following the date on which this Convention enters into force;

b) in respect of other taxes, to taxable periods beginning on or after the first day of January next following the date on which this Convention enters into force.

3. Notwithstanding paragraph 2, where any greater relief from tax would have been afforded to a person entitled to the benefits of the Convention between the Swiss Confederation and the United States of America for the avoidance of double taxation with respect to taxes on income, signed at Washington on May 24, 1951 ("prior Convention"), under that Convention than under this Convention, the prior Convention shall, at the election of such person, continue to have effect in its entirety for a twelve-month period from the date on which the provisions of this Convention otherwise would have effect under paragraph 2.

4. The prior Convention shall cease to have effect when the provisions of this Convention take effect in accordance with paragraphs 2 and 3.

ARTICLE 30
Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate this Convention at any time provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period;

b) in respect of other taxes, to taxable periods beginning on or after the first day of January next following the expiration of the 6 months' period.

DONE at Washington, in duplicate, in the English and German languages, the two texts having equal authenticity, this 2nd day of October, 1996.

FOR THE UNITED STATES OF AMERICA:
(s) Lawrence H. Summers

FOR THE SWIS CONFEDERATION:
(s) Kasper Villiger

PROTOCOL

At the signing today of the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, the undersigned have agreed upon the following provisions, which shall form an integral part of the Convention:

1. With reference to paragraph 2 of Article 2 Taxes Covered
The reference to "Federal income taxes imposed by the Internal Revenue Code" in subparagraph b) does not include social security taxes. Income taxes on social security benefits, however, are covered.

2. With reference to paragraph 1 of Article 4 Resident)
Residents of Switzerland who make a spousal election under I.R.C. section 6013 will continue to be treated as residents of Switzerland and will also be subject to U.S. taxation as residents.

3. With reference to Article 7 (Business profits)
The United States tax on insurance premiums paid to foreign insurers shall not be imposed on insurance or reinsurance premiums which are the receipts of a business of insurance carried on by an enterprise of Switzerland, whether or not that business is carried on through a permanent establishment in the United States, except to the extent that the risks covered by such premiums are reinsured with a person not entitled to the benefits of this or any other Convention which provides a similar exemption from U.S. tax.

4. With reference to paragraph 4 of Article 10 (Dividends) and paragraph 2 of Article 11 (Interest)

It is understood that participation in the profits of the obligor is a factor in determining whether an instrument nominally characterized as a debt-claim should be treated for purposes of the Convention as equity.

5. With reference to paragraph 7 of Article 10 (Dividends)

The general principle of the "dividend equivalent amount", as used in United States law, is to approximate that portion of the income mentioned in paragraph 7 of Article 10 that is comparable to the amount that would be distributed as a dividend if such income were earned by a subsidiary incorporated in the United States. For any year, a foreign corporation's dividend equivalent amount is equal to the after-tax earnings attributable to the foreign corporation's (i) income attributable to a permanent establishment in the United States, (ii) income from real property in the United States that is taxed on a net basis under Article 6, and (iii) gain from a real property interest taxable by the United States under paragraph 1 of Article 13, reduced by any increase in the foreign corporation's net investment in U.S. assets or increased by any reduction in the foreign corporation's net investment in U.S. assets.

6. With reference to paragraph 4 of Article 19 (Government Service and Social Security)

It is understood that the term "other public pensions" as used in this paragraph is intended to refer to United States tier 1 Railroad Retirement benefits.

7. With reference to subparagraph 1 c) of Article 22 (Limitation on Benefits)

a) The parties agree that whether the activities of a foreign corporation constitute an active trade or business must be determined under all the facts and circumstances. In general, a trade or business comprises activities that constitute (or could constitute) an independent economic enterprise carried on for profit. To constitute a trade or business, the activities conducted by the resident ordinarily must include every operation which forms a part of, or a step in, a process by which an enterprise may earn income or profit. A resident of a Contracting State actively conducts a trade or business if it regularly performs active and substantial management and operational functions through its own officers or staff of employees. In this regard, one or more of such activities may be carried out by independent contractors under the direct control of the resident. However, in determining whether the corporation actively conducts a trade or business, the activities of independent contractors shall be disregarded.

b) A payment between related parties is to be treated as derived in connection with a trade or business only if the trade or business carried on in the first-mentioned Contracting State is substantial in relation to the activity carried on in the Contracting State that gives rise to the income in respect of which treaty benefits are being claimed. For these purposes, the recipient of income is related to the payor of the item of income if it owns, directly or indirectly, 10 percent or more of the shares (or other comparable rights) in the payor.

Whether a trade or business is substantial will be determined on the basis of all the facts and circumstances. Such determination will take into account the comparative sizes of the trades or businesses in each Contracting State (measured by reference to asset values, income and payroll expenses), the nature of the activities performed in each Contracting State, and, in cases where a trade or business is conducted in both Contracting States, the relative contributions made to that trade or business in each Contracting State. In making each determination or comparison, due regard will be given to the relative sizes of the U.S. and Swiss economies.

8. With reference to paragraph 1 f) of Article 22 (Limitation on Benefits)

The parties agree that, in determining whether one or more persons who are not entitled to the benefits of the Convention under subparagraphs a), b), d), e) or g) of paragraph 1 of Article 22 are, in the aggregate, the ultimate beneficial owners of a predominant interest in such company, trust or estate, a Contracting State shall take into account, in addition to equity interests that such persons may hold in the company, trust or estate, other contractual interests that the person or persons may have in the company, trust or estate and the extent to which such person or persons receive, or have the right to receive, directly or indirectly, payments from that company, estate or trust (including payments for interest or royalties, but not payments at arm's length for the purchase or use of or the right to use tangible property in the ordinary course of business or remuneration at arm's length for services) that reduce the amount of the taxable income of the company, trust or estate, in order to deny benefits to a person that would otherwise qualify for benefits under subparagraph 1 f).

9. With reference to Article 24 (Non-Discrimination)

Nothing in this Article shall prevent the United States from applying I.R.C. section 367(e) (1) or (e) (2) or section 1446.

10. With reference to Article 26 (Exchange of Information)

The parties agree that the term "tax fraud" means fraudulent conduct that causes or is intended to cause an illegal and substantial reduction in the amount of the tax paid to a Contracting State.

Fraudulent conduct is assumed in situations when a taxpayer uses, or has the intention to use, a forged or falsified document such as a double set of books, a false invoice, an incorrect balance sheet or profit and loss statement, or a fictitious order or, in general, a false piece of documentary evidence, and in situations where the taxpayer uses, or has the intention to use a scheme of lies ("Lügengebäude") to deceive the tax authority. It is understood that the acts described in the preceding sentence are by way of illustration, not by way of limitation. The term "tax fraud" may in addition include acts that, at the time of the request, constitute fraudulent conduct with respect to which the requested Contracting State may obtain information under its laws or practices.

It is understood that, in determining whether tax fraud exists in a case involving the active conduct of a profession or business (including a profession or business conducted through a sole proprietorship, partnership or similar enterprise), the requested State shall assume that the record-keeping requirements applicable under the laws of the requesting State are the record-keeping requirements of the requested State.

DONE at Washington, in duplicate, in the English and German languages, the two texts having equal authenticity, this 2nd day of October, 1996.

FOR THE UNITED STATES
OF AMERICA:
(s) Lawrence H. Summers

FOR THE SWISS
CONFEDERATION:
(s) Kasper Villiger

Mutual Agreement of January 23, 2003,
Regarding the Administration of Article 26 (Exchange of Information)
of the Swiss-U.S. Income Tax Convention of October 2, 1996

Whereas Article 26 (Exchange of Information) of the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Washington on October 2, 1996, ("the Convention"), provides that the competent authorities of the Contracting States shall exchange such information as is necessary "for the prevention of tax fraud or the like in relation to the taxes which are the subject of" the Convention;

Whereas paragraph 10 of the Protocol accompanying and forming an integral part of the Convention ("the Protocol") provides that "tax fraud" means "fraudulent conduct that causes or is intended to cause an illegal and substantial reduction in the amount of tax paid to a Contracting State," and provides illustrative descriptions of situations in which fraudulent conduct is assumed;

Whereas the Contracting States have memorialized certain understandings with respect to Article 26 of the Convention;

Whereas the competent authorities of the Contracting States have had several years of experience in implementing and administering the Convention, including the information exchange provisions thereof;

Whereas the exchange of information for the prevention of tax fraud or the like under Article 26 of the Convention is very important to the adequate administration and enforcement of the tax laws of each Contracting State;

Now, therefore, the competent authorities of the Contracting States wish to memorialize the following additional understandings in reference to Article 26 of the Convention and paragraph 10.of the Protocol:

1. It is understood that Article 26 of the Convention and paragraph 10 of the Protocol will be interpreted to support the tax administration and enforcement efforts of each Contracting State to the greatest extent possible.

2. It is understood that, in determining whether information may be provided in response to a request, the requested State shall apply the statute of limitations applicable under the laws of the requesting State instead of the statute of limitations of the requested State.

3. It is understood that, in response to a request, the requested State shall exchange information with respect to matters that the requesting State is pursuing, or may pursue, on a civil or criminal basis.

4. It is understood that the following conduct constitutes "tax fraud or the like" under paragraph 1 of Article 26 of the Convention, which is also illustrated in paragraph 10 of the Protocol:

a) Conduct that is established to defraud individuals or companies, even though the aim of the behavior may not be to commit tax fraud;

b) Conduct that involves the destruction or non-production of records, or the failure to prepare or maintain correct and complete records, that a person is under a legal duty (tax or otherwise) to prepare and keep as sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any tax return, if the person has not properly reported such amounts in any such tax return; or

c) Conduct by a person subject to tax in the requesting State that involves the failure to file a tax return that such person is under a legal duty to file and an affirmative act that

has the effect of deceiving the tax authorities making it difficult to uncover or pursue the failure to file, including the concealment of assets or covering up of sources of income or the handling of one's affairs to avoid making the records that are usual in transactions of the kind.

It is understood that these examples are by way of illustration, and not by way of limitation.

5. It is understood that, in response to a request, the requested State shall exchange information where the requesting State has a reasonable suspicion that the conduct would constitute tax fraud or the like. The requesting State's suspicion of tax fraud or the like may be based on:

a) Documents, whether authenticated or not, and including but not limited to business records, books of account, or bank account information;

b) Testimonial information from the taxpayer;

c) Information obtained from an informant or other third person that has been independently corroborated or otherwise is likely to be credible; or

d) Circumstantial evidence.

It is understood that these examples are by way of illustration, and not by way of limitation.

6. It is understood that each of the hypothetical examples in the Appendix below involves conduct constituting "tax fraud or the like" under paragraph 1 of Article 26 of the Convention and paragraph 10 of the Protocol. It is understood that these examples are by way of illustration, and not by way of limitation.

Department of Treasury
United States of America

By: _____
Carol A. Dunahoo
Director, International
Large and Mid-Size Business Division
Internal Revenue Service

Date: _____

By: _____
Barbara M. Angus
International Tax Counsel
Department of the Treasury

Date: _____

Federal Tax Administration
Swiss Confederation

By: _____
Robert Waldburger
Vice-Director
Delegate for International Tax Agreements

Date: _____

Appendix

HYPOTHETICAL 1

An individual subject to the requesting State's income tax operates a business with substantial cash sales. He keeps one set of books and records in which he records all business expenses; however, he causes a substantial portion of the cash sales of the business to be omitted from this set of books. The individual keeps a second set of books and records that includes the total amount of cash sales, including the cash sales not recorded on the first set of books and records. Because the first set of business books and records are used to prepare the individual's income tax return, a substantial portion of his taxable income is not reported on the tax return. Specifically, the individual's income tax return, and the component to that return on which the individual reports business receipts, expenses, and other items related to the business, understates the gross business receipts and other income related entries.

The individual maintains a bank account in the requested State in his own name into which he deposits the portion of his business income that is not reported on his tax return. Based on information provided by an informant, including a copy of the second set of books and records that the informant secretively took from the business premises, tax officials of the requesting State commence an investigation of the individual for possible tax violations under the laws of the requesting State. The taxpayer provides the first set of books and records to these officials to support the false information on his tax return.

The requested State would obtain and provide information relating to the bank account in the requested State of the individual in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 2

An individual subject to the requesting State's income tax operates a business with substantial cash sales. He keeps one set of books and records in which he records all business expenses; however, he causes a substantial portion of the cash sales of the business to be omitted from this set of books. The individual keeps a second set of books and records that includes the total amount of cash sales, including the cash sales not recorded on the first set of books and records. Because the first set of business books and records are used to prepare the individual's income tax return, a substantial portion of his taxable income is not reported on the tax return. Specifically, the individual's income tax return, and the component to that return on which the individual reports business receipts, expenses, and other items related to the business, understates the gross business receipts and other income related entries.

The individual maintains a bank account in the requested State in his own name into which he deposits the portion of his business income that is not reported on his tax return. Based on information provided by an informant, authorities of the requesting State conduct a search of the business premises and seize both sets of books and records.

The requested State would obtain and provide information relating to the bank account in the requested State of the individual in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 3

An individual subject to the requesting State's income tax operates a business which provides a service on a "cash only" basis. He regularly skims a substantial portion of these cash receipts and

deposits these skimmed receipts in a bank account in the requested State maintained in his own name. He deposits the remainder of his cash receipts in a bank account in the requesting State maintained in his business name. He pays his business expenses by drafting checks against the bank account in the requesting State.

He files an income tax return, understating his gross income, taxable income, and tax due, to the extent that he skimmed from his business receipts. Specifically, the individual's income tax return, and the component to that return on which the individual reports business receipts, expenses, and other items related to the business, understates the gross business receipts and other income related entries.

An informant tells the tax officials of the requesting State about the business, including the skimming activities, and the bank account in the requested State, specifically stating that the individual told him that he skimmed no less than 30 per cent of his gross receipts every week and deposited these skimmed receipts in an account under his name in the X Bank located in the requested State. Based on this information tax officials of the requesting State commence an investigation of the individual for possible tax violations under the laws of the requesting State. In response to a request by the tax officials of the requesting State for substantiation of the tax return, the individual provides incomplete books and records that omit the skimmed receipts and therefore support the tax return.

The requested State would obtain and provide information relating to the bank account in the requested State of the individual in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 4

An individual subject to the requesting State's income tax operates a business which provides a service on a "cash only" basis. He regularly skims a substantial portion of these cash receipts and deposits these skimmed receipts in a bank account in the requested State maintained in his own name. He deposits the remainder of his cash receipts in a bank account in the requesting State maintained in his business name. He pays his business expenses by drafting checks against the bank account in the requesting State.

He files an income tax return, understating his gross income, taxable income, and tax due, to the extent that he skimmed from his business receipts. Specifically, the individual's income tax return, and the component to that return on which the individual reports business receipts, expenses, and other items related to the business, understates the gross business receipts and other income related entries.

A former employee of the business tells the tax officials of the requesting State about the business, including the skimming activities, and the bank account in the requested State, specifically stating that the individual told him that he skimmed no less than 30 per cent of his gross receipts every week and deposited these skimmed receipts in an account under his name in the X Bank located in the requested State. Based on this information tax officials of the requesting State commence an investigation of the individual for possible tax violations under the laws of the requesting State. In response to a request by the tax officials of the requesting State for the required substantiation of the tax return, the individual does not provide any books and records.

The requested State would obtain and provide information relating to the bank account in the requested State of the individual in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 5

An individual subject to the requesting State's income tax operates a business which provides a service on a "cash only" basis. He regularly skims a substantial portion of these cash receipts and deposits these skimmed receipts in a bank account in the requested State maintained in his own name. He deposits the remainder of his cash receipts in a bank account in the requesting State maintained in his business name. He pays his business expenses by drafting checks against the latter bank account. He keeps no record of business receipts or expenses other than his bank account records in the requesting and requested State.

He files an income tax return, understating his gross income, taxable income, and tax due, to the extent that he skimmed from his business receipts. Specifically, the individual's income tax return, and the component to that return on which the individual reports business receipts, expenses, and other items related to the business, understates the gross business receipts and other income related entries.

An informant tells tax officials of the requesting State about the business, including the skimming activities, and the bank account in the requested State, specifically stating that the individual told him that he skimmed no less than 30 per cent of his gross receipts every week and deposited these skimmed receipts in an account under his name in the X Bank located in the requested State. The informant also tells tax officials of the requesting State that the individual has used proceeds from the bank account in the requested State to purchase assets, formal legal ownership of which has been placed in the names of other persons.

Based on this information tax officials of the requesting State commence an investigation of the individual. Among other things, these officials learn that the individual used cash to buy particular assets, and has with documentation placed legal ownership to these assets in the name of other persons. These officials observe that these assets are always used by the individual.

The requested State would obtain and provide information relating to the bank account in the requested State of the individual in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 6

An individual subject to the requesting State's income tax operates a business. Although the business functions primarily within the territory of the requesting State, it does have some international sales. The individual forms a bearer share corporation in a third country and confidentially maintains possession of all the shares. The corporation maintains a bank account in the requested State in the corporate name with the individual as the sole authorized signature authority. The business enters into a contract with the corporation under which the corporation agrees to perform "market research." No market research is performed. The business pays substantial fees for this service which are deposited into the bank account in the requested State. The business records the fees as expenses on the business books and records. As a result, business income is substantially reduced. Because the business books and records are used to prepare the individual's income tax return, his reported gross income, taxable income, and tax due are substantially understated. Specifically, the individual's income tax return, and the component to that return on which the individual reports business receipts, expenses, and other items related to the business, understates the gross business receipts and other income related entries.

Tax officials of the requesting State randomly select the individual for a tax audit. When these officials observe that substantial payments were made to a foreign corporation and claimed as business expenses on the individual's tax return, these officials ask the individual whether he or someone else owns the foreign corporation. The individual denies any ownership interest in the

foreign corporation and claims that it is owned by a third party who has actually conducted market research for the business. Tax officials of the requesting State then initiate an investigation of the individual. Subsequently, an ex-spouse tells these officials that the individual maintains a bank account in the requested State under the name of the foreign corporation and that the payments to the corporation for market research were deposited in this bank account.

The requested State would obtain and provide information relating to the bank account in the requested State of the foreign corporation in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 7

An individual controls a corporation that is subject to the requesting State's income tax and that operates a business which provides a service on a "cash only" basis. The individual regularly skims a substantial portion of these cash receipts and deposits these skimmed receipts in a bank account in the requested State maintained in his own name. The remainder of the cash receipts are deposited in a bank account in the requesting State maintained in the corporation's name. The corporation pays its business expenses with checks drafted against this latter bank account. No record of business receipts or expenses are kept other than the bank account records in the requesting and requested State.

A corporate income tax return is filed, understating gross income, taxable income, and tax due, to the extent of the skimmed business receipts. Specifically, the corporation's income tax return, on which the corporation reports gross receipts, cost of goods sold, dividends, compensation of officers, balance sheet information, and other items related to the corporation, understates gross receipts and other items mentioned above.

An informant tells the tax officials of the requesting State about the corporate business, including the skimming activities, and the bank account in the requested State, specifically stating that the individual told him that he skimmed no less than 30 per cent of the gross receipts every week and deposited these skimmed receipts in an account under his name in the X Bank located in the requested State. Based on this information tax officials of the requesting State commence an investigation of the corporation and the individual for possible tax violations under the requesting State's law.

The requested State would obtain and provide information relating to the bank account in the requested State of the individual in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 8

An individual subject to the requesting State's income tax is employed as the chief executive officer of a publicly held corporation of the requesting State that does subcontract work for other corporations of the requesting State. To ensure that the corporation keeps certain existing contracts and secures new ones, it pays bribes to employees of a major contractor. The funds from which the bribes are paid come from random diverted corporate gross receipts. The chief executive officer instructs the corporate accountant (1) not to report diverted receipts on the corporate books and records and (2) to destroy all documentation of those receipts held by the corporation. The books and records understating gross receipts are used to prepare the corporate income tax return, and, thus, the corporate income tax return understates the gross receipts and other income related entries. (The same books and records are used to prepare inaccurate income statements upon which shareholders and potential investors rely.)

The chief executive officer deposits the diverted funds into a bank account in the requested State over which he has sole signature authority. He periodically authorizes payments from that account to other accounts at the same bank over which the respective bribe recipients have signature authority. Based on information, which includes all the details stated above, provided by a staff accountant that works for the corporate accountant, tax officials of the requesting State initiate an investigation of the chief executive officer and the corporate accountant for their role in assisting in the preparation of a false corporate income tax return, and the bribe recipients for omitting the bribe payments from their individual income tax returns.

The requested State would obtain and provide information relating to the bank account in the requested State over which the chief executive officer has signature authority and the bank accounts in the requested State over which the respective bribe recipients have signature authority in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 9

An individual subject to the requesting State's income tax is a tax shelter promoter. Several tax shelter partnerships in which he sells limited partnership interests involve research and development companies incorporated and ostensibly operating in the requested State. The prospectus issued to investors for each shelter offers "investment opportunities by providing highly leveraged tax deductions." The investment per limited partnership share required for each shelter is $50,000, which includes a cash payment of $10,000 and a promissory note for $40,000 due in 30 years with interest accrued and payable at the end of that period.

Tax officials of the requesting State initiate an investigation of the promoter to determine whether he aided and assisted in the preparation of false individual income tax returns filed by the investors, as well as whether the promoter failed to report the income he made from the promotion of the tax shelter on his individual income tax return. During the course of the investigation, these officials interview numerous investors in each shelter who claim the promoter stated that (1) the only payment ever required from an investor was the $10,000 and (2) the note was only for tax purposes and would never be collected. During audits of several investors, tax officials of the requesting State discover that all $10,000 payment checks were deposited to an identifiable bank account in the requested State.

The requested State would obtain and provide information relating to the bank account in the requested State into which the payment checks were deposited in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 10

An individual subject to the requesting State's income tax is a tax shelter promoter. He promotes and sells a movie tax shelter in which a corporation of the requested State ostensibly intends to produce feature films for profit. Limited partnership shares in movies to be produced are sold to investors in the requesting State for $25,000 per share with assurances that deductions can be taken against income in the amounts of $100,000 per share (a leverage of 4 to 1). In fact, the corporation in the requested State is a shell and the movie shelter scheme is a fraud. All monies received in the scheme inure to the personal benefit of the promoter. Upon receipt of investors' $25,000 payments, the promoter deposits the funds into a bank account in the requested State over which he has sole signature authority. The promoter then prepares documentation based upon complete fabrication which he submits to the investors.

The investors, in reliance on such documentation, prepare and file false individual income tax returns claiming tax benefits derived from the movie shelter. Upon audit by the tax officials of the requesting State, these benefits are denied. A tax official of the requesting State initiates an investigation to determine whether the promoter aided and assisted in the preparation of the investors' false tax returns, as well as whether the promoter failed to report income made from the tax shelter promotion on his individual income tax return.

The requested State would obtain and provide information relating to the bank account in the requested State over which the promoter has signature authority in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 11

An individual has income as a salaried employee and earns income by conducting promotional events in which he encourages taxpayers to violate the requesting State's tax laws. Although the individual is subject to the requesting State's income tax, he does not file a tax return. The individual earns income at the promotional events by selling pamphlets in which he illustrates methods of evading income tax that he knows to be unlawful but that he represents to attendees of his promotional events to be lawful. He sells numerous pamphlets, each for a significant price.

Tax officials of the requesting State initiate an investigation of the individual to determine whether he aided and assisted in the preparation of the false individual income tax returns of those attending the promotional events, as well as willfully evaded his individual income taxes. These officials interview several promotional event attendees and purchasers of the pamphlets and discover that numerous checks in payment for the pamphlets were deposited into a bank account in the requested State.

The requested State would obtain and provide information relating to the bank account in the requested State into which the checks for payment were deposited in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 12

An individual maintains a bank account in the requested State into which he deposits income that is subject to the income tax in the requesting State. He makes substantial withdrawals from this bank account, through the use of a credit card tied to such account and issued in the name of a corporation, to pay for his living expenses for the year. The individual does not file an income tax return.

Tax officials of the requesting State commence an investigation of the individual based on information received from a credit card company related to credit cards tied to bank accounts in the requested State, and from various merchants. The tax officials determine that a credit card tied to a bank account in the requested State and issued in the name of a corporation was used throughout the year to purchase numerous personal items that were delivered to the individual. When these officials ask the individual whether he owns or controls the bank account, the individual does not acknowledge any interest in the corporation or the bank account, and provides no explanation regarding the source of the funds in the bank account.

The requested State would obtain and provide information relating to the bank account in the requested State in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 13

An individual operates a business which provides a service on a "cash only" basis. He regularly deposits a substantial portion of these cash receipts in a bank account in the requested State maintained in his own name. He deposits the remainder of his cash receipts in a bank account in the requesting State maintained in his business name. He pays his business expenses by drafting checks against the latter bank account. He keeps no record of business receipts or expenses other than his bank account records in the requesting and requested State. Although the individual is subject to the requesting State's income tax, he does not file a return.

An informant tells tax officials of the requesting State about the business, specifically stating that the individual told him that he deposited no less than 30 per cent of his gross receipts in an account under his name in the X Bank located in the requested State. The informant also tells tax officials of the requesting State that the individual has used proceeds from the bank account in the requested State to purchase assets, formal legal ownership of which has been placed in the names of other persons.

Based on this information tax officials of the requesting State commence an investigation of the individual. Among other things, these officials learn that the individual used cash to buy particular assets, and has with documentation placed legal ownership to these assets in the name of other persons. These officials observe that these assets are always used by the individual.

The requested State would obtain and provide information relating to the bank account in the requested State of the individual in response to a specific request by the requesting State under Article 26 of the Convention.

HYPOTHETICAL 14

An individual instructs his employer to make his salary checks payable to a corporation purporting to provide services as an independent contractor. The employer does not provide the documentation as required under the requesting State's tax law in the case of compensation provided to an employee. The individual opens a bank account in the X Bank located in the requested State in the name of that corporation, and deposits checks from his employer in that account. Although the individual is subject to the requesting State's income tax, he does not file a tax return.

Based on information provided by an informant, tax officials of the requesting State initiate an investigation of the individual. The tax officials contact the individual's employer, and obtain cancelled salary checks payable to the corporation and deposited in the bank account in the X Bank located in the requested State.

The requested State would obtain and provide information relating to the bank account in the requested State in the name of the corporation in response to a specific request by the requesting State under Article 26 of the Convention.

SWITZERLAND

Mutual Assistance in Criminal Matters

Treaty signed at Bern May 25, 1973
And interpretative letters signed at Bern May 25, 1973 and December 23, 1975;
Ratification advised by the Senate of the United States of America June 21, 1976;
Ratified by the President of the United States of America July 10, 1976;
Ratified by Switzerland July 7, 1976;
Ratifications exchanged at Washington July 27, 1976;
Proclaimed by the President of the United States of America August 9, 1976;
Date of entry into force January 23, 1977.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters was signed at Bern on May 25, 1973, along with six exchanges of interpretative letters of the same date, and an exchange of interpretative letters dated December 23, 1975, the texts of which Treaty and the interpretative letters, are hereto annexed;

The Senate of the United States of America by its resolution of June 21, 1976, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Treaty and the interpretative letters;

The Treaty and the interpretative letters were ratified by the President of the United States of America on July 10, 1976, in pursuance of the advice and consent of the Senate, and were duly ratified on the part of Switzerland;

It is provided in Article 41 of the Treaty that the Treaty shall enter into force 180 days after the date of the exchange of the instruments of ratification;

The instruments of ratification of the Treaty were exchanged at Washington on July 27, 1976; and accordingly the Treaty and the interpretative letters enter into force on January 23, 1977;

Permanent Subcommittee on Investigations
EXHIBIT #22

NOW, THEREFORE, I, Gerald R. Ford, President of the United States of America, proclaim and make public the Treaty and the interpretative letters, to the end that they shall be observed and fulfilled with good faith on and after January 23, 1977, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this ninth day of August in the year of our Lord one thousand nine hundred seventy-six
[SEAL] and of the Independence of the United States of America the two hundred first.

GERALD R. FORD

By the President:
CHARLES W ROBINSON
Acting Secretary of State

TIAS 8302

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TREATY BETWEEN THE UNITED STATES OF AMERICA
AND THE SWISS CONFEDERATION
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The President of the United States of America
and
the Swiss Federal Council,

Desiring to conclude a treaty on mutual assistance in criminal matters,

Having appointed for that purpose as their Plenipotentiaries:

The President of the United States of America:

Walter J. Stoessel, Jr.
Assistant Secretary of State for European Affairs

Shelby Cullom Davis
Ambassador Extraordinary and Plenipotentiary
of the United States of America to Switzerland

The Swiss Federal Council:

Dr. Albert Weitnauer
Swiss Ambassador to Great Britain

who, having exchanged their respective full powers, which were found in good and due form, have agreed as follows:

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INDEX

Chapter I
Applicability

Article 1 Obligation to Furnish Assistance
Article 2 Non-Applicability
Article 3 Discretionary Assistance
Article 4 Compulsory Measures
Article 5 Limitations on Use of Information

Chapter II
Special Provisions Concerning Organized Crime

Article 6 General Requirements
Article 7 Extent of Assistance
Article 8 Applicable Procedure

Chapter III
Obligations of Requested State in Executing Requests

Article 9 General Provisions for Executing Requests
Article 10 Duty to Testify in Requested State
Article 11 Locating Persons
Article 12 Special Procedural Provisions

Chapter IV
Obligations of Requesting State

Article 13 Restrictions on Use of Testimony
Article 14 Exclusion of Sanctions
Article 15 Protection of Secrecy

HeinOnline -- 27.2 U.S.T. 2022 1976

Chapter V

Documents, Records and Articles of Evidence

Article 16 Court and Investigative Documents
Article 17 Completeness of Documents
Article 18 Business Records
Article 19 Official Records
Article 20 Testimony to Authenticate Documents
Article 21 Rights in Articles of Evidence

Chapter VI

Service for Requesting State and Related Provisions

Article 22 Service of Documents
Article 23 Personal Appearance
Article 24 Effect of Service
Article 25 Compelling Testimony in Requesting State
Article 26 Transfer of Arrested Persons
Article 27 Safe Conduct

Chapter VII

General Procedures

Article 28 Central Authority
Article 29 Content of Requests
Article 30 Language
Article 31 Execution of Requests
Article 32 Return of Completed Requests
Article 33 Inability to Comply
Article 34 Costs of Assistance
Article 35 Return of Articles of Evidence

HeinOnline -- 27.2 U.S.T. 2023 1976

Chapter VIII
Notice and Review of Determinations

Article 36 Notice
Article 37 Review of Determinations

Chapter IX
Final Provisions

Article 38 Effect on Other Treaties and Municipal Laws
Article 39 Consultation and Arbitration
Article 40 Definition of Terms
Article 41 Entry into Force and Termination

Schedule
Offenses for Which Compulsory Measures are Available

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Chapter I
APPLICABILITY

Article 1

Obligation to Furnish Assistance

1. The Contracting Parties undertake to afford each other, in accordance with provisions of this Treaty, mutual assistance in:

a. investigations or court proceedings in respect of offenses the punishment of which falls or would fall within the jurisdiction of the judicial authorities of the requesting State or a state or canton thereof;

b. effecting the return to the requesting State, or a state or canton thereof, of any objects, articles or other property or assets belonging to it and obtained through such offenses;

c. proceedings concerning compensation for damages suffered by a person through unjustified detention as a result of action taken pursuant to this Treaty.

2. For the purposes of this Treaty, an offense in the requesting State is deemed to have been committed if there exists in that State a reasonable suspicion that acts have been committed which constitute the elements of that offense.

3. The competent authorities of the Contracting Parties may agree that assistance as provided by this Treaty will also be granted in certain ancillary administrative proceedings in respect of measures which may be taken against the perpetrator of an offense falling within the purview of this Treaty. Agreements to this effect shall be concluded by exchange of diplomatic notes.

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4. Assistance shall include, but not be limited to:

a. ascertaining the whereabouts and addresses of persons;

b. taking the testimony or statements of persons;

c. effecting the production or preservation of judicial and other documents, records, or articles of evidence;

d. service of judicial and administrative documents; and

e. authentication of documents.

Article 2

Non-Applicability

1. This Treaty shall not apply to:

a. extradition or arrests of persons accused or convicted of having committed an offense;

b. execution of judgments in criminal matters;

c. investigations or proceedings:

(1) concerning an offense which the requested State considers a political offense or an offense connected with a political offense;

(2) concerning offenses in violation of the laws relating to military obligations;

(3) concerning acts by a person subject to military law in the requesting State which constitute an offense under military law in that State but which would not constitute an offense in the requested State if committed by a person not subject to military law in the requested State;

(4) for the purpose of enforcing cartel or anti-trust laws; or

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(5) concerning violations with respect to taxes, customs duties, governmental monopoly charges or exchange control regulations other than the offenses listed in items 26 and 30 of the Schedule to this Treaty (Schedule) and the related offenses in items 34 and 35 of the Schedule.

2. Nevertheless, assistance shall be granted if a request concerns an investigation or proceeding referred to in subparagraphs c. (1), (4) and (5) of paragraph 1, if made for the purpose of investigating or prosecuting a person described in paragraph 2 of Article 6 and

a. in the case of subparagraphs c. (1) and (4), the request relates to an offense committed in furtherance of the purposes of an organized criminal group described in paragraph 3 of Article 6, or

b. in the case of subparagraph c. (5), any applicable conditions of Article 7 are satisfied.

3. Contributions to social security and governmental health plans, even if levied as taxes, shall not be considered as taxes for the purpose of this Treaty.

4. If the acts described in the request contain all the elements of an offense for the investigation or prosecution of which assistance is required to be or may be granted as well as all the elements of an offense for which such assistance cannot be granted, assistance shall not be granted if under the law of the requested State punishment could be imposed only for the latter offense unless it is listed in the Schedule.

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Article 3

Discretionary Assistance

1. Assistance may be refused to the extent that:

a. the requested State considers that the execution of the request is likely to prejudice its sovereignty, security or similar essential interests;

b. the request is made for the purpose of prosecuting a person, other than a person described in paragraph 2 of Article 6, for acts on the basis of which he has been acquitted or convicted by a final judgment of a court in the requested State for a substantially similar offense and any sentence has been or is being carried out.

2. Before refusing any request pursuant to paragraph 1, the requested State shall determine whether assistance can be given subject to such conditions as it deems necessary. If it so determines, any conditions so imposed shall be observed in the requesting State.

Article 4 [1]

Compulsory Measures

1. In executing a request, there shall be employed in the requested State only such compulsory measures as are provided in that State for investigations or proceedings in respect of offenses committed within its jurisdiction.

2. Such measures shall be employed, even if this is not explicitly mentioned in the request, but only if the acts described in the request contain the elements, other than intent or negligence, of an offense:

[1] In a letter dated Oct. 19, 1973, Switzerland informed the United States that in the context of art. 4 the use of the German word "soll" has the same meaning as the English word "shall".

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a. which would be punishable under the law in the requested State if committed within its jurisdiction and is listed in the Schedule; or

b. which is described in item 26 of the Schedule.

3. In the case of such an offense not listed in the Schedule, the Central Authority of the requested State shall determine whether the importance of the offense justifies the use of compulsory measures.

4. A decision as to whether the conditions of paragraph 2 have been met shall be made by the requested State only on the basis of its own law. Differences in technical designation and constituent elements added to establish jurisdiction shall be ignored. The Central Authority of the requested State may ignore other differences in constituent elements which do not affect the general character of the offense in that State.

5. In those cases where the conditions of paragraph 2 or 3 have not been met, assistance shall be granted to the extent that it can be furnished without the use of compulsory measures.

Article 5

Limitations on Use of Information

1. Any testimony or statements, documents, records or articles of evidence or other items, or any information contained therein, which were obtained by the requesting State from the requested State pursuant to the Treaty shall not be used for investigative purposes nor be introduced into evidence in the requesting State in any proceeding relating to an offense other than the offense for which assistance has been granted.

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2. Nevertheless, the materials described in paragraph 1 may, after the requested State has been so advised and given an opportunity to make its views known as to the applicability of subparagraphs a, b and c of this paragraph, be used in the requesting State for the investigation or prosecution of persons who:

a. are or were suspects in an investigation or defendants in a proceeding for which assistance was granted and who are suspected or accused of having committed another offense for which assistance is required to be granted;

b. are suspected or accused of being participants in, or accessories before or after the fact to, an offense for which assistance was granted; or

c. are described in paragraph 2 of Article 6.

3. Nothing in this Treaty shall be deemed to prohibit governmental authorities in the requesting State from:

a. using the materials referred to in paragraph 1 in any investigation or proceeding concerning the civil damages connected with an investigation or proceeding for which assistance has been granted; or

b. using information or knowledge educed from the materials referred to in paragraph 1 in continuing any criminal investigation or proceeding, provided that:

(1) for such investigation or proceeding assistance may be given;

(2) prior to the date of the request for assistance referred to in paragraph 1 inquiries have already been carried out for the purpose of establishing an offense; and

(3) the materials referred to in paragraph 1 are not introduced into evidence.

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Chapter II

SPECIAL PROVISIONS CONCERNING ORGANIZED CRIME

Article 6

General Requirements

1. The Contracting Parties agree to assist each other in the fight against organized crime as provided in this Chapter and with all means otherwise available under this Treaty and other provisions of law.

2. This Chapter shall apply only to investigations and proceedings involving a person who, according to the request, is or is reasonably suspected to be:

a. knowingly involved in the illegal activities of an organized criminal group, described in paragraph 3, and who is:
   (1) a member of such a group; or
   (2) an affiliate of such a group performing supervisory or managerial functions or regularly supporting it or its members by performing other important services; or
   (3) a participant in any important activity of such a group; or

b. a public official who has violated his official responsibilities in order to knowingly accomodate the desires of such a group or its members.

3. For the purposes of this Chapter the term "organized criminal group" refers to an association or group of persons combined together for a substantial or indefinite period for the purposes of obtaining monetary or commercial gains or profits for itself or for others, wholly or in part by

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illegal means, and of protecting its illegal activities against criminal prosecution and which, in carrying out its purposes, in a methodical and systematic manner:

a. at least in part of its activities, commits or threatens to commit acts of violence or other acts which are likely to intimidate and are punishable in both States; and

b. either:

(1) strives to obtain influence in politics or commerce, especially in political bodies or organizations, public administrations, the judiciary, in commercial enterprises, employers' associations or trade unions or other employees' associations; or

(2) associates itself formally or informally with one or more similar associations or groups, at least one of which engages in the activities described under subparagraph b (1).

Article 7

Extent of Assistance

1. Compulsory measures referred to in Article 4 shall also be employed in the requested State even if the investigation or proceeding in the requesting State concerns acts which would not be punishable under the law in the requested State, or which are not listed in the Schedule, or neither. This paragraph is subject to the limitations of paragraph 2.

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2. Assistance under this Chapter shall be rendered in investigations or proceedings involving violations of provisions on taxes on income referred to in Article I of the Convention of May 24, 1951, for the Avoidance of Double Taxation with Respect to Taxes on Income [1] only if, according to the information furnished by the requesting State:

a. the person involved in the investigation or proceeding is reasonably suspected by it of belonging to an upper echelon of an organized criminal group or of participating significantly, as a member, affiliate or otherwise, in any important activity of such a group;

b. the available evidence is in its opinion insufficient, for the purpose of a prosecution which has a reasonable prospect of success, to link such person with the crimes committed by the organized criminal group with which he is connected in the sense of paragraph 2 of Article 6; and

c. it has been reasonably concluded by it that the requested assistance will substantially facilitate the successful prosecution of such person and should result in his imprisonment for a sufficient period of time so as to have a significant adverse effect on the organized criminal group.

3. Paragraphs 1 and 2 apply only if the requesting State reasonably concludes that the securing of the information or evidence is not possible without the cooperation of the authorities in the requested State, or that it would place unreasonable burdens on the requesting State or a state or canton thereof.

[1] TIAS 2316; 2 UST 1753.

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Article 8

Applicable Procedure

1. In all cases where this Chapter requires a reasonable suspicion or a reasonable conclusion, or the opinion of the requesting State, that State shall furnish to the requested State information in its possession on the basis of which such suspicion, conclusion, or opinion has been arrived at. However, this shall not oblige the requesting State to identify the persons who have provided such information. Upon application of the requesting State, the Central Authority of the requested State shall treat any information furnished in the request as confidential.

2. The Central Authority of the requested State shall have the right to review the determination of the requesting State as to the applicability of this Chapter. It need not accept such determination where the suspicion, conclusion or opinion underlying such determination has not been made credible.

3. In rendering assistance pursuant to paragraph 2 of Article 7, all courts and authorities in the requested State shall apply such investigative measures as are provided for in its rules of criminal procedure.

4. Provisions in municipal law which impose restrictions on tax authorities concerning the disclosure of information shall not apply to disclosure to all authorities engaged in the execution of a request under paragraph 2 of Article 7. This paragraph shall not limit the applicability of provisions for disclosure otherwise provided by municipal laws in the Contracting States.

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Chapter III

OBLIGATIONS OF REQUESTED STATE IN EXECUTING REQUESTS

Article 9

General Provisions for Executing Requests

1. Except as otherwise provided in this Treaty, a request shall be executed in accordance with the usual procedure under the laws applicable for investigations or proceedings in the requested State with respect to offenses committed within its jurisdiction.

2. The requested State may, upon application by the requesting State, consent to apply the procedures applicable in that State for:

a. investigations or proceedings; and

b. certification and transmission of documents, records or articles of evidence;

to the extent that such procedures are not incompatible with the laws in the requested State. A search or seizure may only be made in accordance with the law of the place where the request is executed.

3. The appropriate judicial officers and other officials in each of the two States shall, by all legal means within their power, assist in the execution of requests from the other State.

Article 10

Duty to Testify in Requested State

1. A person whose testimony or statement is requested under this Treaty shall be compelled to appear, testify and produce documents, records and articles of evidence in the same manner and to the same extent as in criminal investigations or proceedings in the requested State. Such person may not be so compelled if under the law in either State he has a right to refuse. If any person claims that such a right is applicable in

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the requesting State, the requested State shall, with respect thereto, rely on a certificate of the Central Authority of the requesting State.

2. The Swiss Central Authority shall, to the extent that a right to refuse to give testimony or produce evidence is not established, provide evidence or information which would disclose facts which a bank is required to keep secret or are manufacturing or business secrets, and which affect a person who, according to the request, appears not to be connected in any way with the offense which is the basis of the request, only under the following conditions:

a. the request concerns the investigation or prosecution of a serious offense;

b. the disclosure is of importance for obtaining or proving facts which are of substantial significance for the investigation or proceeding; and

c. reasonable but unsuccessful efforts have been made in the United States to obtain the evidence or information in other ways.

3. Whenever the Swiss Central Authority determines that facts of the nature referred to in paragraph 2 would have to be disclosed in order to comply with the request, it shall request from the United States information indicating why it believes that paragraph 2 does not prevent such disclosure. Where, in the opinion of the Swiss Central Authority, such belief has not been made credible, it need not accept the determination of the United States.

4. Any acts of a witness or other person, in connection with the execution of a request, which would be punishable if committed against the administration of justice in the requested State shall be prosecuted in that State in accordance with the laws and enforcement policies therein, regardless of the procedure applied in executing the request.

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Article 11

Locating Persons

If in the opinion of the requesting State information as to the location of persons who are believed to be within the territory of the requested State is of importance in an investigation or proceeding pending in the requesting State, the requested State shall make every effort to ascertain the whereabouts and addresses of such persons in its territory.

Article 12

Special Procedural Provisions

1. Upon express application of the requesting State that the testimony or statement of a person be under oath or affirmation, the requested State shall comply with such request even in the event no provisions therefor exist in its procedural laws. In that event, the time and form of the oath or affirmation shall be governed by the procedural provisions applicable in the requesting State. Where an oath is incompatible with law, an affirmation may be substituted, even though an oath has been requested, and testimony or a statement so obtained shall be admitted in the requesting State as though given under oath.

2. The presence of the suspect or defendant, his counsel or both, at the execution of a request will be permitted whenever the requesting State so requests.

3. (a) Where the presence of representatives of an authority in the requesting State at the execution of a request is required by its law in order to obtain admissible evidence, the requested State shall permit such presence.

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(b) Where the requested State agrees that the complexity of the matter involved or other special factors described in the request for assistance indicate that such presence is likely to substantially facilitate a successful prosecution, it shall also permit such presence.

(c) In other cases the requested State may also permit such presence upon application by the requesting State.

(d) Nevertheless, if such presence would result in providing to the United States facts which in Switzerland a bank is required to keep secret, or facts which are manufacturing or business secrets therein, Switzerland shall permit such presence only where the requirements for disclosure in paragraph 2 of Article 10 have been met.

(e) Switzerland may, furthermore, at any time in the course of the execution of a request, exclude such representatives until it has been determined whether such requirements for disclosure are met.

4. Any person whose presence is permitted under paragraph 2 or 3 shall have, in accordance with the procedures in the requested State, the right to ask questions which are not improper under the laws of either State.

5. If in the requested State testimony or statements are sought in accordance with the procedures in the requesting State, persons giving such testimony or statements shall be entitled to retain counsel who may assist them during the proceeding. Such persons shall be expressly advised at the beginning of the proceeding of their right to counsel. After consent has been given by the Central Authority of the requesting State, counsel may be appointed, if necessary.

6. If the requesting State expressly requests that a verbatim transcript be taken, the executing authority shall make every effort to comply.

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Chapter IV

OBLIGATIONS OF REQUESTING STATE

Article 13

Restrictions on Use of Testimony

Any testimony obtained pursuant to this Treaty from a citizen of the requested State, interrogated as a witness and not advised of his right to refuse testimony under paragraph 1 of Article 10, may not be introduced as evidence against such witness in a criminal proceeding in the requesting State unless the prosecution is for an offense against the administration of justice.

Article 14

Exclusion of Sanctions

No citizen of the requested State who has refused to give non-compulsory testimony or information or against whom compulsory measures had to be applied in the requested State pursuant to this Treaty shall be subjected to any legal sanction in the requesting State solely because he has exercised such rights as permitted under this Treaty.

Article 15

Protection of Secrecy

Evidence or information disclosed by the requested State pursuant to paragraph 2 of Article 10 shall, if in the opinion of that State its importance so requires and an application to that effect is made, be kept from public disclosure to the fullest extent compatible with constitutional requirements in the requesting State.

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Chapter V

DOCUMENTS, RECORDS AND ARTICLES OF EVIDENCE

Article 16

Court and Investigative Documents

1. Upon request, the requested State shall make available to the requesting State on the same conditions and to the same extent as they would be available to authorities performing comparable functions in the requested State the following documents and articles:

a. judgments and decisions of courts; and

b. documents, records, and articles of evidence, including transcripts and official summaries of testimony, contained in the files of a court or an investigative authority, whether or not obtained by grand juries.

2. Items specified in subparagraph b of paragraph 1 shall be furnished only if they relate solely to a closed case, or to the extent determined by the Central Authority of the requested State in its discretion.

Article 17

Completeness of Documents

All documents and records to be furnished, whether originals or copies thereof or extracts therefrom, shall be complete and in unedited form except to the extent paragraph 1 of Article 3 applies or the documents or records would disclose facts described in paragraph 2 of Article 10 and the requirements of subparagraphs a, b and c thereof are not met. Upon application of the requesting State, the requested State shall make every effort to furnish original documents and records.

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Article 18

Business Records

1. If the production of a document, including a book, paper, statement, record, account or writing, or extract therefrom, other than an official document provided for in Article 19, of whatever character and in whatever form is requested, the official executing the request shall, upon specific request of the requesting State, require the production of such document pursuant to a procedural document. The official shall interrogate under oath or affirmation the person producing such document and examine it in order to determine if it is genuine and if it was made as a memorandum or record of an act, transaction, occurrence, or event, if it was made in the regular course of business and if it was the regular course of such business to make such document at the time of the act, transaction, occurrence or event recorded therein or within a reasonable time thereafter.

2. The official shall cause a record of the testimony taken to be prepared and shall annex it to the document.

3. If the official is satisfied as to the matters set forth in paragraph 1, he shall certify as to the procedure followed and his determinations and shall authenticate by his attestation the document, or a copy thereof or extract therefrom, and the record of the testimony taken. Such certification and attestation shall be signed by the official and state his official position. The seal of the authority executing the request shall be affixed.

4. Any person subsequently transmitting the authenticated document shall certify as to the genuineness of the signature and the official position of the attesting person or, if there are any prior certifications, of the last certifying person. the final certification may be made by:

88-313 O - 77 - 61

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a. an official of the Central Authority of the requested State;

b. a diplomatic or consular official of the requesting State stationed in the requested State; or

c. a diplomatic or consular official of the requested State stationed in the requesting State.

5. Where a request under this Article pertains to a pending court proceeding, the defendant, upon his application, may be present or represented by counsel or both, and may examine the person producing the document as to its genuineness and admissibility. In the event the defendant elects to be present or represented, a representative of the requesting State or a state or canton thereof may also be present and put such questions to the witness.

6. Any document, copy thereof, entry therein or extract therefrom authenticated in accordance with this Article, and not otherwise inadmissible, shall be admissible as evidence of the act, transaction, occurrence or event in any court in the requesting State without any additional foundation or authentication.

7. In the event that the genuineness of any document authenticated in accordance with this Article is denied by any party to a proceeding, he shall have the burden of establishing to the satisfaction of the court before which the proceeding is pending that such document is not genuine in order for the document to be excluded from evidence on such ground.

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Article 19

Official Records

1. Upon request, the requested State shall obtain a copy of an official record, or an entry therein, and shall have it authenticated by the attestation of an authorized person. Such attestation shall be signed by, and state the official position of, the attesting person. The seal of the authority executing the request shall be affixed thereto. The procedures for certification set forth in paragraph 4 of Article 18 shall be followed.

2. In addition to any provision therefor in the municipal law of the requesting State, a copy of any official record in the requested State, or entry therein, shall be admissible in evidence without any additional foundation or authentication if authenticated and certified as provided in paragraph 1 and otherwise admissible.

Article 20

Testimony to Authenticate Documents

1. The Central Authority of the requested State shall have the authority to summon persons to appear in that State before representatives of the requesting State or a state or canton thereof in order to produce documents, records or articles of evidence supplied or to be supplied by the requested State and give testimony with respect thereto, whenever, under the applicable law in the requesting State, that is necessary for their admissibility in evidence in a criminal proceeding and such State makes a request to that effect.

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2. The Central Authority of the requested State shall have the right to designate a representative to be present at the proceeding under paragraph 1. He shall be entitled to object to questions which either:

a. are incompatible with the law and practices in the requested State; or

b. go beyond the scope of paragraph 1.

Article 21

Rights in Articles of Evidence

If the requested State, a state or canton thereof, or a third party claims title or other rights in documents, records or articles of evidence, the production of which was requested or effected, such rights shall be governed by the law of the place where they have been acquired. An obligation for production or surrender under this Treaty shall take precedence over the rights referred to in the preceding sentence. These rights, however, remain otherwise unaffected.

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Chapter VI
SERVICE FOR REQUESTING STATE
AND RELATED PROVISIONS

Article 22

Service of Documents

1. The competent authority in the requested State shall effect service of any procedural document, including a court judgment, decision or similar document, which is transmitted to it for this purpose by the requesting State. Unless service in a particular form is requested, it may be effected by registered mail. The requested State shall, upon application, effect personal service or, if consistent with the law in the requested State, service in any other form.

2. The requested State may refuse to effect service of legal process on a person, other than a national of the requesting State, calling for his appearance as a witness in that State if the person to be served is a defendant in the criminal proceeding to which the request relates.

3. A request must be received by the Central Authority of the requested State not later than 30 days before the date set for any appearance. This time limit must be taken into consideration when setting the date for the appearance and forwarding the request. This period may be shortened by the Central Authority of the requested State in very urgent cases.

4. Proof of service shall be made by a receipt dated and signed by the person served or by a declaration specifying the form and date of service and signed by the person effecting it.

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Article 23

Personal Appearance

1. When the personal appearance of a person, other than a defendant in the criminal proceeding to which the request relates, is considered especially necessary in the requesting State, such State shall so indicate in its request for service and shall state the subject matter of the interrogation. It will also indicate the kind and amount of allowances and expenses payable.

2. The executing authority shall invite the person served to appear before the appropriate authority in the requesting State and ask whether he agrees to the appearance. The requested State shall promptly notify the requesting State of the answer.

3. If requested by the requesting State, the requested State may grant an advance payment to the person agreeing to appear. This shall be recorded on the document calling for his appearance and taken into consideration by the requesting State when making payment.

Article 24

Effect of Service

1. A person, other than a national of the requesting State, who has been served with legal process calling for his appearance in the requesting State, pursuant to Article 22, shall not be subjected to any civil or criminal forfeiture, other legal sanction or measure of restraint because of his failure to comply therewith, even if the document contains a notice of penalty.

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2. The effect in the proceeding to which any procedural document served pursuant to Article 22 relates, arising from a refusal to accept it or comply therewith, shall be governed by the law in the requesting State.

3. Service of a procedural document pursuant to Article 22 on a person, other than a national of the requesting State, does not confer jurisdiction in the requesting State.

Article 25

Compelling Testimony in Requesting State

1. A person appearing before an authority in the requesting State pursuant to a legal process served under this Treaty may not be compelled to give testimony, make a statement or produce a document, record or article of evidence if under the law in either State he has a right to refuse, or if paragraph 2 below is applicable. Such a right shall be deemed to exist in the requested State to the extent that it could be invoked there if the acts which are the subject of the investigation or proceeding had been committed within its jurisdiction.

2. Such a person appearing before an authority in the United States may only be compelled to give testimony, make a statement or produce a document, record or article of evidence which would disclose facts described in paragraph 2 of Article 10 to the extent that the requirements of subparagraphs a, b and c thereof are met.

3. If any person claims that a right to refuse, pursuant to paragraph 1, exists in the requested State, or invokes the restrictions of paragraph 2, the requesting State shall in that regard rely on a certificate of the Central Authority

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of the requested State except that, after due consideration of the certificate, the requesting State may make its own determination as to the applicability of subparagraphs a, b and c of paragraph 2 of Article 10.

Article 26

Transfer of Arrested Persons

1. A request pursuant to Article 22 may also be made if a person held in custody by an authority in the requested State is needed as a witness or for purposes of confrontation before an authority in the requesting State.

2. The person in custody shall be made available to the requesting State if:

a. he consents;
b. no substantial extension of his custody is anticipated; and
c. the Central Authority of the requested State determines that there are no other important reasons against the transfer.

3. Execution of the request may be postponed for as long as the presence of the person is necessary for a criminal investigation or proceeding in the requested State.

4. The requesting State shall have authority, and be obligated, to keep the person in custody unless the requested State authorizes his release. The requesting State shall return the person to the custody of the requested State as soon as circumstances permit or as otherwise agreed. That person, however, shall have the right to use such remedies and recourses as are provided by the law in the requesting State to assure that his custody or return is consistent with this Article and the Constitution of that State.

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5. The requesting State shall not decline to return a person transferred solely because such person is a national of that State.

Article 27

Safe Conduct

1. A person appearing before an authority in the requesting State pursuant to legal process served under this Treaty shall not be prosecuted or, except as provided in paragraph 4 of Article 26, be detained or subjected to any other restriction of his personal liberty in that State with respect to any act or conviction which preceded his departure from the requested State.

2. The restrictions of paragraph 1 shall not apply as to a person of whatever nationality appearing for the purpose of answering a criminal charge with respect to any act or conviction which is mentioned in the document calling for his appearance, or a lesser included offense.

3. The safe conduct provided in this Article shall cease if ten days after the person appearing has been officially notified that his appearance is no longer required he has not used the opportunity to leave the requesting State or, after having left it, has returned.

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Chapter VII
GENERAL PROCEDURES

Article 28

Central Authority

1. Requests for assistance shall be handled by a Central Authority. For the United States, the Central Authority shall be the Attorney General or his designee. For Switzerland, the Central Authority shall be the Division of Police of the Federal Department of Justice and Police in Bern.

2. Such requests which are approved by the Central Authority of the requesting State shall be made by that Authority on behalf of federal, state or cantonal courts or authorities which by law have been authorized to investigate or prosecute offenses.

3. The Central Authorities of the two States may communicate with each other directly for the purpose of carrying out the provisions of this Treaty.

Article 29

Content of Requests

1. A request for assistance shall indicate the name of the authority conducting the investigation or proceeding to which the request relates and insofar as possible shall also indicate:

a. the subject matter and nature of the investigation or proceeding and, except in cases of requests for service, a description of the essential acts alleged or sought to be ascertained;

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b. the principal need for the evidence or information sought; and

c. the full name, place and date of birth, address and any other information which may aid in the identification of the person or persons who are at the time of the request the subject of the investigation or proceeding.

2. Such requests, to the extent necessary and insofar as possible, shall include:

a. information described under subparagraph c of paragraph 1 concerning any witness or other person who is affected by the request;

b. a description of the particular procedure to be followed;

c. a statement as to whether sworn or affirmed testimony or statements are required;

d. a description of the information, statement or testimony sought;

e. a description of the documents, records or articles of evidence to be produced or preserved as well as a description of the appropriate person to be asked to produce them and the form in which they should be reproduced and authenticated; and

f. information as to the allowances and expenses to which a person appearing in the requesting State will be entitled.

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Article 30

Language

1. Requests for assistance and all accompanying documents shall be accompanied by a translation into French in the case of a request to Switzerland, and into English in the case of a request to the United States. The Swiss Central Authority may, whenever necessary, request a translation into German or Italian instead of French.

2. The translation of all transcripts, statements, or documents made, or documents or records obtained, in executing the request shall be incumbent upon the requesting State.

Article 31

Execution of Requests

1. If, in the opinion of the Central Authority of the requested State, a request does not comply with the provisions of this Treaty, it shall immediately so advise the Central Authority of the requesting State, giving the reasons therefor. The Central Authority of the requested State may take such preliminary action as it may deem advisable.

2. If the request complies with the Treaty, the Central Authority of the requested State shall transmit the request for execution to the federal, state or cantonal court or authority having jurisdiction or selected by the Central Authority as appropriate. The court or authority to which a request is transmitted shall have all of the jurisdiction, authority and power in executing the request which it has in investigations or proceedings with respect to an offense committed within its jurisdiction. In the case of a request by

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Switzerland, this paragraph shall authorize the use of grand juries to compel the attendance and testimony of witnesses and the production of documents, records and articles of evidence.

3. The court or authority to which a request is transmitted pursuant to paragraph 2 shall, when necessary, issue a procedural document in accordance with its own procedural law to require the attendance and statement or testimony of persons, or the production or preservation of documents, records or articles of evidence.

4. With the consent of the Central Authority of the requesting State, execution of a request may be entrusted to an appropriate private party, if circumstances so require.

5. A request shall be executed as promptly as circumstances permit.

Article 32

Return of Completed Requests

1. Upon completion of a request, the executing authority shall return the original request together with all information and evidence obtained, indicating place and time of execution, to the Central Authority of the requested State. The latter shall forward it to the Central Authority of the requesting State.

2. The delivery of documents, records or articles of evidence may be postponed if they are needed in an official action pending in the requested State and, in case of documents or records, copies have been offered to the requesting State.

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Article 33

Inability to Comply

The requested State shall promptly inform the requesting State with a brief statement of the reasons when a request cannot be fully complied with because:

a. of the limitations of this Treaty;
b. after diligent search, the person whose testimony or statement is sought or who is to be served cannot be located or is believed to be dead;
c. after diligent search, the evidence cannot be located; or
d. of other physical impediments.

Article 34

Costs of Assistance

1. The following expenses incurred by an authority in the requested State in carrying out a request shall, upon application, be paid or reimbursed by the requesting State: travel expenses; fees of experts; costs of stenographic reporting by other than salaried government employees; costs of interpreters; costs of translation; and fees of private counsel appointed with the approval of the requesting State for a person giving testimony or for a defendant.

2. No reimbursement shall be claimed for any other expenses.

3. All expenses incurred in relation to a request pursuant to Article 26 shall be borne by the requesting State.

4. No bond, guarantee, or other security for the expected costs shall be required.

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Article 35

Return of Articles of Evidence

Any original documents, records or articles of evidence, delivered in execution of a request, shall be returned by the requesting State as soon as possible, unless the requested State declares that return will not be required. However, an authority in the requesting State shall be entitled to retain articles for disposition in accordance with its law if such articles belong to persons in that State and if no title or other rights are claimed in such articles by a person in the requested State, or if any claims with respect to such rights have been secured.

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Chapter VIII
NOTICE AND REVIEW OF DETERMINATIONS

Article 36

Notice

Upon receipt of a request for assistance, the requested State shall notify:

a. any person from whom a statement or testimony or documents, records, or articles of evidence are sought;

b. any suspect or defendant in a criminal investigation or proceeding in the requesting State who resides in the requested State if the municipal law in the requesting State generally or for admissibility of evidence so requires, and that State so requests; and

c. any defendant in a criminal proceeding in the requesting State, where the law in the requested State requires such notice.

Article 37

Review of Determinations

1. The existence of restrictions in this Treaty shall not give rise to a right on the part of any person to take any action in the United States to suppress or exclude any evidence or to obtain other judicial relief in connection with requests under this Treaty, except with respect to paragraph 2 of Article 9; paragraph 1 of Article 10; Article 13; paragraph 7 of Article 18; paragraph 1 of Article 25; and Articles 26 and 27.

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2. The right to and procedures for appeal in Switzerland against decisions of Swiss authorities in connection with requests under this Treaty shall be regulated in accordance with this Treaty by domestic legislation.

3. In the case of any claim that a State, either as the requesting State or the requested State, has failed to comply with obligations imposed by this Treaty and as to such claim a remedy is not provided by paragraph 1 or 2, the claimant may inform the Central Authority of the other State. Where such claim is deemed by that other State to require explanation, an inquiry shall be put to the first-mentioned State; if necessary, the matter shall be resolved under Article 39.

88-313 O - 77 - 62

HeinOnline -- 27.2 U.S.T. 2057 1976

Chapter IX
FINAL PROVISIONS

Article 38

Effect on Other Treaties and Municipal Laws

1. Whenever the procedures provided by this Treaty would facilitate assistance in criminal matters between the Contracting Parties provided under any other convention or under the law in the requested State, the procedure provided by this Treaty shall be used to furnish such assistance. Assistance and procedures provided by this Treaty shall be without prejudice to, and shall not prevent or restrict, any available under any other international convention or arrangement or under the municipal laws in the Contracting States.

2. This Treaty shall not prevent the Contracting Parties from conducting investigations and proceedings in criminal matters in accordance with their respective municipal laws.

3. The provisions of this Treaty shall take precedence over any inconsistent provisions of the municipal laws in the Contracting States.

4. The furnishing of information for use in cases concerning taxes which come under the Convention of May 24, 1951, for the Avoidance of Double Taxation with Respect to Taxes on Income, shall be governed exclusively by the provisions thereof, except for investigations or proceedings described in Chapter II of this Treaty to the extent that the conditions in paragraph 2 of Article 7 are satisfied.

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Article 39

Consultation and Arbitration

1. When it appears advisable, representatives of the Central Authorities may exchange views in writing or meet together for an oral exchange of opinions on the interpretation, application or operation of this Treaty generally or as to a specific case.

2. The Central Authorities shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Treaty. Any dispute between the Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily resolved by the Central Authorities or through diplomatic negotiation between the Contracting Parties, shall, unless they agree to settlement by some other means, be submitted, upon request of either Contracting Party, to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator who shall be a national of that State and these two arbitrators shall nominate a chairman who shall be a national and resident of a third State.

3. If either Contracting Party fails to appoint its arbitrator within three months from the date of the request for the submission of the dispute to arbitration, he shall be appointed, at the request of either Party, by the President of the International Court of Justice.

4. If both arbitrators cannot agree upon the choice of a chairman within two months following their appointment, he shall be appointed, at the request of either Contracting Party, by the President of the International Court of Justice.

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5. If, in the cases specified under paragraphs 3 and 4, the President of the International Court of Justice is prevented from acting or is a national of one of the Parties, the appointments shall be made by the Vice-President. If the Vice-President is prevented from acting or is a national of one of the Parties, the appointments shall be made by the next senior Judge of the Court who is not a national of either Party.

6. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

7. The decisions of the tribunal shall be binding on the Contracting Parties.

Article 40

Definition of Terms

1. In this Treaty:

a. the terms "requesting State" and "requested State" shall be deemed to mean the United States of America or the Swiss Confederation, as the context requires;

b. the term "state" or "states" shall be deemed to mean any one or more of the states of the United States of America, its territories and possessions, the District of Columbia and the Commonwealth of Puerto Rico, as the context requires;

c. the term "canton" or "cantons" shall be deemed to mean any one or more of the cantons of the Swiss Confederation;

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d. in any place where the word "in" precedes "requesting State" or "requested State", the phrase is used to refer to all of the territory under the jurisdiction of the United States including its states as defined in subparagraph b, and subdivisions thereof, or to the territory of Switzerland, including its cantons, as, and to the extent, the context requires; and

e. references to law or procedure in the requesting State or law or procedure to be used in executing requests, are, respectively, intended to refer to the law or procedure which is applicable to the investigation or proceeding being conducted or which would ordinarily be used in comparable investigations or proceedings by the authority executing the request.

2. Where a provision of this Treaty requires the use of a seal by an authority, other than the Central Authority, that authority may employ a hand stamp in lieu thereof, if that authority customarily uses such a stamp in connection with its own matters of like importance. The imprint of such stamp shall be treated as a seal for the purposes of this Treaty and the admissibility of evidence.

3. The expression "articles of evidence" shall not be construed to exclude items which may not be admissible in evidence.

4. Provisions in this Treaty as to admissibility of evidence shall not affect the principle of free consideration of evidence insofar as the courts of Switzerland are concerned.

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5. References to assistance required to be, or which may be, furnished pursuant to this Treaty shall be deemed to include assistance of a compulsory as well as noncompulsory nature.

6. References to a "request" or "request for assistance" shall be deemed to include any attachments and supplements thereto.

7. References to "acts" in connection with offenses shall be deemed to include omissions.

8. The term "defendant" shall, unless the context otherwise indicates, be deemed to include a suspect who is a subject of an investigation.

9. The term "counsel" shall be deemed to mean counsel admitted in either State.

10. The term "antitrust laws", as applied to laws in the United States, refers to those provisions compiled in Chapter 1, Title 15, United States Code, and Chapter 2 of the same Title up to but not including Section 77a, et seq.

Article 41

Entry into Force and Termination

1. This Treaty shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

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2. This Treaty shall enter into force 180 days after the date of the exchange of the instruments of ratification [1] and apply with respect to acts committed before or after entry into force of this Treaty.

3. This Treaty may be terminated by either Contracting Party at any time after five years from entry into force, provided that at least six months prior notice of termination has been given in writing.

IN WITNESS WHEREOF the Plenipotentiaries have signed this Treaty.

DONE at Bern, in duplicate, in the English and German languages, the two texts being equally authoritative, this 25th of May, 1973.

For the President of the United States of America:

Walter J. Stoessel, [2]
Shelby Cullom Davis [3]

For the Swiss Federal Council:

A. Weitnauer [4]

[SEAL]

[1] Jan. 23, 1977.
[2] Walter J. Stoessel
[3] Shelby Cullom Davis
[4] A. Weitnauer

HeinOnline -- 27.2 U.S.T. 2063 1976

SCHEDULE

OFFENSES FOR WHICH COMPULSORY MEASURES ARE AVAILABLE

1. Murder
2. Voluntary manslaughter
3. Involuntary manslaughter
4. Malicious wounding, inflicting grievous bodily harm intentionally or through gross negligence.
5. Threat to commit murder; threat to inflict grievous bodily harm.
6. Unlawful throwing or application of any corrosive or injurious substances upon the person of another.
7. Kidnaping; false imprisonment or other unlawful deprivation of the freedom of an individual.
8. Willful nonsupport or willful abandonment of a minor or other dependent person when the life of that minor or other dependent person is or is likely to be injured or endangered.
9. Rape, indecent assault
10. Unlawful sexual acts with or upon children under the age of sixteen years.
11. Illegal abortion.
12. Traffic in women and children.
13. Bigamy.
14. Robbery.
15. Larceny; burglary; house-breaking or shop-breaking.
16. Embezzlement, misapplication or misuse of funds.

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17. Extortion; blackmail.

18. Receiving or transporting money, securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained.

19. Fraud, including:
    a. obtaining property, services, money or securities by false pretenses or by defrauding by means of deceit, falsehood or any fraudulent means;
    b. fraud against the requesting State, its states or cantons or municipalities thereof;
    c. fraud or breach of trust committed by any person;
    d. use of the mails or other means of communication with intent to defraud or deceive, as punishable under the laws of the requesting State.

20. Fraudulent bankruptcy.

21. False business declarations regarding companies and cooperative associations, inducing speculation, unfaithful management, suppression of documents.

22. Bribery, including soliciting, offering and accepting.

23. Forgery and counterfeiting, including:
    a. the counterfeiting or forgery of public or private securities, obligations, instructions to make payment, invoices, instruments of credit or other instruments;
    b. the counterfeiting or alteration of coin or money;
    c. the counterfeiting or forgery of public seals, stamps or marks;
    d. the fraudulent use of the foregoing counterfeited or forged articles;
    e. knowingly and without lawful authority, making or having in possession any instrument, instrumentality, tool or machine adapted or intended for the counterfeiting of money, whether coin or paper.

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24. Knowingly and willfully making, directly or through another, a false, fictitious or fraudulent statement or representation in a matter within the jurisdiction of any department or agency in the requesting State, and relating to an offense mentioned in this Schedule or otherwise falling under this Treaty.

25. Perjury, subornation of perjury and other false statements under oath.

26. Offenses against the laws relating to bookmaking, lotteries and gambling when conducted as a business.

27. Arson.

28. Willful and unlawful destruction or obstruction of a railroad, aircraft, vessel or other means of transportation or any malicious act done with intent to endanger the safety of any person travelling upon a railroad, or in any aircraft, vessel or other means of transportation.

29. Piracy; mutiny or revolt on board an aircraft or vessel against the authority of the captain or commander of such aircraft or vessel; any seizure or exercise of control, by force or violence or threat of force or violence, of an aircraft or vessel.

30. Offenses against laws (whether in the form of tax laws or other laws) prohibiting, restricting or controlling the traffic in, importation or exportation, possession, concealment, manufacture, production or use of:
    a. narcotic drugs, cannabis sativa-L, psychotropic drugs, cocaine and its derivatives;
    b. poisonous chemicals and substances injurious to health;
    c. firearms, other weapons, explosive and incendiary devices;

    when violation of such laws causes the violator to be liable to criminal prosecution and imprisonment.

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31. Unlawful obstruction of court proceedings or proceedings before governmental bodies or interference with an investigation of a violation of a criminal statute by the influencing, bribing, impeding, threatening, or injuring of any officer of the court, juror, witness, or duly authorized criminal investigator.

32. Unlawful abuse of official authority which results in deprivation of the life, liberty or property of any person.

33. Unlawful injury, intimidation or interference with voting or candidacy for public office, jury service, government employment, or the receipt or enjoyment of benefits provided by government agencies.

34. Attempts to commit, conspiracy to commit, or participation in, any of the offenses enumerated in the preceding paragraphs of this Schedule; accessory after the fact to the commission of any of the offenses enumerated in this Schedule.

35. Any offense of which one of the above listed offenses is a substantial element, even if, for purposes of jurisdiction of the United States Governement, elements such as transporting, transportation, the use of the mails or interstate facilities are also included.

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STAATSVERTRAG ZWISCHEN DEN VEREINIGTEN STAATEN VON AMERIKA UND DER SCHWEIZERISCHEN EIDGENOSSENSCHAFT UEBER GEGENSEITIGE RECHTSHILFE IN STRAFSACHEN

TIAS 8302

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INHALTSVERZEICHNIS

Kapitel I

Anwendungsbereich

Artikel 1 Verpflichtung zur Rechtshilfe
Artikel 2 Unanwendbarkeit des Vertrags
Artikel 3 Rechtshilfe nach Ermessen
Artikel 4 Zwangsmassnahmen
Artikel 5 Beschränkung der Verwendung von Informationen

Kapitel II

Besondere Vorschriften über das organisierte Verbrechen

Artikel 6 Allgemeine Voraussetzungen
Artikel 7 Umfang der Rechtshilfe
Artikel 8 Verfahren

Kapitel III

Pflichten des ersuchten Staats bei der Ausführung von Ersuchen

Artikel 9 Allgemeine Vorschriften über die Ausführung von Ersuchen
Artikel 10 Aussagepflicht im ersuchten Staat
Artikel 11 Aufenthaltsermittlung
Artikel 12 Besondere Verfahrensvorschriften

Kapitel IV

Pflichten des ersuchenden Staats

Artikel 13 Beschränkung der Verwendung von Zeugenaussagen
Artikel 14 Ausschluss von Sanktionen
Artikel 15 Geheimnisschutz

HeinOnline -- 27.2 U.S.T. 2069 1976

Kapitel V

Schriftstücke, Akten und Beweisstücke

Artikel 16 Gerichts- und Untersuchungsakten
Artikel 17 Vollständigkeit der Schriftstücke
Artikel 18 Geschäftspapiere
Artikel 19 Oeffentliche Urkunden
Artikel 20 Zeugenbeweis zur Beglaubigung von Schriftstücken
Artikel 21 Rechte an Beweisstücken

Kapitel VI

Zustellungen für den ersuchenden Staat und verwandte Bestimmungen

Artikel 22 Zustellung von Schriftstücken
Artikel 23 Persönliches Erscheinen
Artikel 24 Wirkungen der Zustellung
Artikel 25 Erzwingung der Aussage im ersuchenden Staat
Artikel 26 Zuführung von Häftlingen
Artikel 27 Freies Geleit

Kapitel VII

Allgemeine Verfahrensvorschriften

Artikel 28 Zentralstelle
Artikel 29 Inhalt der Ersuchen
Artikel 30 Sprache
Artikel 31 Ausführung der Ersuchen
Artikel 32 Rücksendung des vollzogenen Ersuchens
Artikel 33 Unmöglichkeit der Ausführung
Artikel 34 Kosten der Rechtshilfe
Artikel 35 Rückgabe übermittelter Beweismittel

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Kapitel VIII

Benachrichtigung. Ueberprüfung von Entscheiden

Artikel 36 Benachrichtigung

Artikel 37 Ueberprüfung von Entscheiden

Kapitel IX

Schlussbestimmungen

Artikel 38 Verhältnis zu anderen Verträgen und zum Landesrecht

Artikel 39 Meinungsaustausch. Schiedsgericht

Artikel 40 Bedeutung von Begriffen

Artikel 41 Inkrafttreten und Kündigung

Anhang

Liste der Straftaten, wofür bei der Rechtshilfe Zwangsmassnahmen zulässig sind.

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STAATSVERTRAG ZWISCHEN DEN VEREINIGTEN STAATEN VON AMERIKA
UND DER SCHWEIZERISCHEN EIDGENOSSENSCHAFT
UEBER GEGENSEITIGE RECHTSHILFE IN STRAFSACHEN

Der Präsident der Vereinigten Staaten von Amerika
und
der Schweizerische Bundesrat,

vom Wunsche geleitet, einen Staatsvertrag über gegenseitige Rechtshilfe in Strafsachen abzuschliessen, haben zu diesem Zwecke zu ihren Bevollmächtigten ernannt:

Der Präsident der Vereinigten Staaten von Amerika:

Herrn Walter J. Stoessel jun.
Assistant Secretary of State for European Affairs

Herrn Shelby Cullom Davis
Ausserordentlicher und bevollmächtigter Botschafter der Vereinigten Staaten von Amerika in der Schweiz

Der Schweizerische Bundesrat:

Herrn Dr. Albert Weitnauer
Schweizerischer Botschafter in Grossbritannien

die, nach Austausch ihrer in guter und gehöriger Form befundenen Vollmachten, folgendes vereinbart haben:

HeinOnline -- 27.2 U.S.T. 2072 1976

Kapitel I
ANWENDUNGSBEREICH

Artikel 1

Verpflichtung zur Rechtshilfe

1. Die Vertragsparteien verpflichten sich, gemäss den Bestimmungen dieses Vertrags einander Rechtshilfe zu leisten

a. in Ermittlungs- oder Gerichtsverfahren wegen strafbarer Handlungen, deren Ahndung unter die Gerichtsbarkeit des ersuchenden Staats oder eines seiner Gliedstaaten fällt;

b. durch Rückgabe an den ersuchenden Staat oder einen seiner Gliedstaaten von Gegenständen oder Vermögenswerten, welche ihnen gehören und durch solche Handlungen erlangt worden sind;

c. in Verfahren über Entschädigung für ungerechtfertigte Haft infolge einer gemäss diesem Vertrag getroffenen Massnahme.

2. Eine im ersuchenden Staat strafbare Handlung im Sinne dieses Vertrags liegt vor, wenn in diesem Staat begründeter Verdacht besteht, dass Handlungen verübt worden sind, die einen Straftatbestand erfüllen.

3. Die zuständigen Behörden der Vertragsparteien können vereinbaren, dass Rechtshilfe nach diesem Vertrag auch geleistet wird in ergänzenden Verwaltungsverfahren über Massnahmen, die gegen den Täter einer unter diesen Vertrag fallenden strafbaren Handlung getroffen werden können. Solche Vereinbarungen erfolgen durch Austausch diplomatischer Noten.

88-313 O - 77 - 63

HeinOnline -- 27.2 U.S.T. 2073 1976

4. Die Rechtshilfe umfasst, ist jedoch nicht beschränkt auf:

   a. die Feststellung des Aufenthaltes und der Adresse von Personen;
   b. die Abnahme von Zeugenaussagen oder anderen Erklärungen;
   c. die Herausgabe oder Sicherstellung von Gerichtsakten, Schriftstücken oder sonstigen Beweisstücken;
   d. die Zustellung von Gerichts- oder Verwaltungsschriftstücken; und
   e. die Beglaubigung von Schriftstücken.

Artikel 2

Unanwendbarkeit des Vertrags

1. Dieser Vertrag ist nicht anwendbar auf:

   a. Auslieferung oder Verhaftung strafrechtlich verfolgter oder verurteilter Personen;
   b. Vollstreckung von Strafentscheiden;
   c. Ermittlungen oder Verfahren
      (1) wegen einer strafbaren Handlung, die vom ersuchten Staat als eine politische oder als eine mit einer solchen zusammenhängende strafbare Handlung angesehen wird;
      (2) wegen einer strafbaren Handlung, die eine Verletzung militärischer Pflichten darstellt;
      (3) wegen Handlungen einer im ersuchenden Staat unter Militärgerichtsbarkeit stehenden Person, welche in diesem Staat eine Straftat nach dem Militärstrafgesetz darstellen, im ersuchten Staat aber nicht strafbar sind, falls sie von einer in diesem Staat nicht unter Militärgerichtsbarkeit stehenden Person begangen werden;

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(4) zum Vollzug von Kartell- oder Antitrustgesetzen; oder

(5) wegen Verletzung von Vorschriften über Steuern sowie über Zollabgaben, staatliche Monopolgebühren und den Zahlungsverkehr mit dem Ausland, ausgenommen für Straftaten, die unter Nummer 26 und 30 in der dem Vertrag beigefügten Liste (Liste) aufgeführt sind, sowie für damit zusammenhängende Straftaten nach Nummer 34 und 35 dieser Liste.

2. Ersuchen, die der Strafverfolgung einer in Artikel 6 Absatz 2 beschriebenen Person dienen, wird jedoch entsprochen, wenn sie sich auf Ermittlungen und Verfahren der in Absatz 1 Buchstabe c Ziffern (1), (4) und (5) erwähnten Art beziehen und

a. im Falle der Ziffern (1) und (4) eine Tat betreffen, die zur Unterstützung der Zwecke einer in Artikel 6 Absatz 3 beschriebenen organisierten Verbrechergruppe begangen worden ist, oder

b. im Falle der Ziffer (5) die einschlägigen Voraussetzungen nach Artikel 7 erfüllt sind.

3. Beiträge zur Sozialversicherung und öffentlichen Krankenversicherung gelten, auch wenn sie als Steuern erhoben werden, für die Zwecke dieses Vertrags nicht als Steuern.

4. Erfüllen die in einem Ersuchen beschriebenen Handlungen die gesetzlichen Merkmale eines Straftatbestandes, für dessen Verfolgung Rechtshilfe geleistet werden muss oder kann, wie auch eines Tatbestandes, wofür keine Rechtshilfe geleistet wird, so wird dem Ersuchen nicht entsprochen, wenn nach dem Recht des ersuchten Staats eine Strafe nur wegen des letzteren Tatbestandes verhängt werden könnte, es sei denn, dass dieser in der Liste aufgeführt ist.

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Artikel 3

Rechtshilfe nach Ermessen

1. Die Rechtshilfe kann verweigert werden, soweit:

a. der ersuchte Staat der Ansicht ist, dass die Erledigung des Ersuchens geeignet wäre, die Souveränität, Sicherheit oder ähnliche wesentliche Interessen seines Landes zu beeinträchtigen;

b. das Ersuchen sich auf die Strafverfolgung einer anderen, als einer unter Artikel 6 Absatz 2 fallenden Person bezieht und Handlungen betrifft, aufgrund derer sie im ersuchten Staat wegen einer im wesentlichen entsprechenden Straftat rechtskräftig freigesprochen oder verurteilt wurde, und eine allfällig verhängte Sanktion noch vollzogen wird oder bereits vollzogen ist.

2. Vor Ablehnung eines Ersuchens nach Absatz 1 prüft der ersuchte Staat, ob die Rechtshilfe unter Auflage der ihm erforderlich erscheinenden Bedingungen bewilligt werden kann. Beschliesst er dies, so müssen die auferlegten Bedingungen im ersuchenden Staat eingehalten werden.

Artikel 4 [1]

Zwangsmassnahmen

1. Im ersuchten Staat dürfen bei Ausführung eines Ersuchens nur Zwangsmassnahmen angewendet werden, die sein Recht für Ermittlungs- oder Gerichtsverfahren wegen einer seiner Gerichtsbarkeit unterworfenen Handlung vorsieht.

[1] See footnote on p. 2028.

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2. Solche Massnahmen sollen, selbst wenn das nicht ausdrücklich verlangt wird, angewendet werden, aber nur dann, wenn die Handlung, die das Ersuchen betrifft, die objektiven Merkmale eines Straftatbestandes erfüllt und entweder

a. nach dem Recht des ersuchten Staats, falls dort verübt, strafbar wäre und sich als einen auf der Liste aufgeführten Tatbestand darstellt; oder

b. von Nummer 26 der Liste erfasst ist.

3. Handelt es sich um einen Tatbestand, der nicht auf der Liste aufgeführt ist, so entscheidet die Zentralstelle des ersuchten Staats, ob die Bedeutung der Tat Zwangsmassnahmen rechtfertigt.

4. Der Entscheid darüber, ob die Voraussetzungen nach Absatz 2 erfüllt sind, soll vom ersuchten Staat nur aufgrund seines eigenen Rechts getroffen werden. Verschiedenheiten in der technischen Bezeichnung und gesetzliche Merkmale eines Tatbestands, die zur Begründung der Gerichtsbarkeit hinzugefügt sind, sollen unbeachtet bleiben. Die Zentralstelle des ersuchten Staats kann andere Unterschiede in den gesetzlichen Merkmalen eines Tatbestands, die dessen wesentlichen Charakter in diesem Staat nicht berühren, unberücksichtigt lassen.

5. In Fällen, in welchen die Bedingungen von Absatz 2 oder 3 nicht erfüllt sind, soll Rechtshilfe geleistet werden, soweit dies ohne Anwendung von Zwangsmassnahmen möglich ist.

Artikel 5

Beschränkung der Verwendung von Informationen

1. Zeugenaussagen, Erklärungen, Schriftstücke, Akten, Beweisstücke oder andere Gegenstände sowie die darin enthal-

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tenen Auskünfte, welche der ersuchende Staat vom ersuchten Staat aufgrund dieses Vertrags erhalten hat, dürfen im ersuchenden Staat in einem Verfahren wegen einer andern strafbaren Handlung als der, wegen welcher die Rechtshilfe bewilligt worden ist, nicht für Ermittlungen benutzt oder als Beweismittel vorgelegt werden.

2. Jedoch darf, wenn der ersuchte Staat davon benachrichtigt und ihm Gelegenheit zur Stellungnahme hinsichtlich der Anwendbarkeit von Buchstaben a, b und c dieses Absatzes gegeben worden ist, im ersuchenden Staat das in Absatz 1 beschriebene Material für die Durchführung von Ermittlungs- oder Strafverfahren gegen Personen verwendet werden, die

a. Verdächtigte in einer Untersuchung oder Angeklagte in einem Verfahren sind oder waren, wofür Rechtshilfe bewilligt worden ist, und die unter Verdacht stehen oder angeklagt sind, eine andere Tat begangen zu haben, wegen welcher die Rechtshilfe gewährt werden muss;
b. der Teilnahme oder Begünstigung verdächtigt oder angeklagt sind hinsichtlich einer Tat, wegen welcher Rechtshilfe bewilligt worden ist; oder
c. in Artikel 6 Absatz 2 beschrieben sind.

3. Die Vorschriften dieses Vertrags hindern keine Behörde im ersuchenden Staat daran,

a. das in Absatz 1 erwähnte Material zu verwenden in einem Ermittlungs- oder Gerichtsverfahren über die Leistung von Schadenersatz im Zusammenhang mit einem Verfahren, für das Rechtshilfe gewährt worden ist; oder
b. aufgrund von Hinweisen, die sich aus dem in Absatz 1 erwähnten Material ergeben, weitere Ermittlungen in einem Strafverfahren vorzunehmen, sofern

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(1) für dieses Verfahren Rechtshilfe zulässig ist;

(2) vor dem Datum des Ersuchens, auf das sich Absatz 1 bezieht, schon Ermittlungen zur Abklärung einer strafbaren Handlung durchgeführt worden sind; und

(3) das in Absatz 1 erwähnte Material nicht als Beweismittel verwendet wird.

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Kapitel II

BESONDERE VORSCHRIFTEN UEBER DAS ORGANISIERTE VERBRECHEN

Artikel 6

Allgemeine Voraussetzungen

1. Die Vertragsparteien verpflichten sich, einander bei der Bekämpfung des organisierten Verbrechens Rechtshilfe nach diesem Kapitel mit allen Mitteln zu leisten, die nach den übrigen Vorschriften dieses Vertrags und andern Rechtsvorschriften zulässig sind.

2. Dieses Kapitel findet nur Anwendung auf Ermittlungs- oder Gerichtsverfahren gegen eine Person, die gemäss dem Ersuchen zu den nachstehend beschriebenen Personen gehört oder unter einem glaubhaften Verdacht steht, dazu zu gehören:

a. eine Person, die wissentlich an der rechtswidrigen Tätigkeit einer in Absatz 3 beschriebenen organisierten Verbrechergruppe mitwirkt und
   (1) Mitglied einer solchen Gruppe ist, oder
   (2) mit einer solchen Gruppe eng verbunden ist und entweder überwachende oder leitende Funktionen ausübt oder regelmässig durch andere wichtige Dienste die Organisation oder deren Mitglieder unterstützt, oder
   (3) bei irgendeinem wichtigen Unternehmen einer solchen Gruppe beteiligt ist; oder

b. ein öffentlicher Beamter, der seine Amtspflichten verletzt hat, um wissentlich den Wünschen einer solchen Gruppe oder ihrer Mitglieder nachzukommen.

3. Als "organisierte Verbrechergruppe" im Sinne dieses Kapitels gilt eine Vereinigung oder Gruppe von Personen, die sich

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auf längere oder unbestimmte Zeit zusammengetan hat, um ganz oder zum Teil mit rechtswidrigen Mitteln Einkünfte oder andere Geldwerte oder wirtschaftliche Gewinne für sich oder andere zu erzielen und ihre rechtswidrige Tätigkeit gegen strafrechtliche Verfolgung abzuschirmen, und die zur Erreichung ihrer Zwecke in methodischer und systematischer Weise:

a. wenigstens bei einem Teil ihrer Tätigkeit Gewaltakte oder andere zur Einschüchterung geeignete beidseitig strafbare Handlungen begeht oder zu begehen droht; und

b. entweder

(1) einen Einfluss auf Politik oder Wirtschaft anstrebt, insbesondere auf politische Körperschaften oder Organisationen, öffentliche Verwaltungen, die Justiz, auf Geschäftsunternehmungen, Arbeitgebervereinigungen oder Gewerkschaften oder andere Arbeitnehmervereinigungen; oder

(2) sich formell oder formlos einer oder mehreren ähnlichen Vereinigungen oder Gruppen anschliesst, von denen mindestens eine die in Ziffer 1 hievor beschriebene Tätigkeit ausübt.

Artikel 7

Umfang der Rechtshilfe

1. Im ersuchten Staat werden Zwangsmassnahmen, auf die sich Artikel 4 bezieht, in bezug auf Ermittlungs- oder Gerichtsverfahren im ersuchenden Staat selbst dann angewendet, wenn die Handlung nach dem im ersuchten Staat geltenden Recht nicht strafbar wäre oder nicht in der Liste erwähnt ist. Vorbehalten bleiben die Einschränkungen nach Absatz 2.

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2. Bei Ermittlungen und Verfahren wegen Verletzung von Vorschriften über die in Artikel I des Abkommens vom 24. Mai 1951 zur Vermeidung der Doppelbesteuerung erwähnten Steuern vom persönlichen Einkommen wird Rechtshilfe nach diesem Kapitel ausschliesslich dann geleistet, wenn aufgrund der vom ersuchenden Staat erteilten Auskünfte:

a. die in die Untersuchung oder das Verfahren verwickelte Person begründeterweise verdächtigt ist, zur oberen Schicht einer organisierten Verbrechergruppe zu gehören, oder als Mitglied, enger Verbündeter oder in anderer Eigenschaft an irgendeiner wichtigen Betätigung einer solchen Gruppe wesentlich beteiligt zu sein;

b. die Beweise, die erforderlich sind, um diese Person für eine Strafverfolgung mit Aussicht auf Erfolg mit Straftaten der organisierten Verbrechergruppe in Verbindung zu bringen, mit der die Person im Sinne von Artikel 6 Absatz 2 verbunden ist, nach seiner Auffassung nicht ausreichen; und

c. seine Annahme begründet ist, dass die nachgesuchte Rechtshilfe die erfolgreiche Strafverfolgung dieser Person erheblich erleichtern und zu einer genügend langen Freiheitsstrafe führen dürfte, um schwerwiegende nachteilige Folgen für die organisierte Verbrechergruppe zu bewirken.

3. Die Absätze 1 und 2 sind nur anwendbar, wenn nach begründeter Auffassung des ersuchenden Staats die verlangten Auskünfte oder Beweismittel ohne die Mitwirkung der Behörden des ersuchten Staats nicht erlangt werden können, oder deren Beschaffung ohne diese Mitwirkung für den ersuchenden Staat oder seine Gliedstaaten eine unzumutbare Belastung bedeuten würde.

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Artikel 8

Verfahren

1. In allen Fällen, in denen in diesem Kapitel ein glaubhafter Verdacht oder eine begründete Annahme oder Auffassung des ersuchenden Staats verlangt wird, übermittelt dieser dem ersuchten Staat die in seinem Besitz befindlichen Auskünfte, auf die ein solcher Verdacht oder eine solche Annahme oder Auffassung gestützt ist. Jedoch ist der ersuchende Staat nicht verpflichtet, die Personen bekannt zu geben, von denen er diese Auskünfte erhalten hat. Auf Verlangen des ersuchenden Staats werden die im Ersuchen enthaltenen Auskünfte von der Zentralstelle des ersuchten Staats als vertraulich behandelt.

2. Die Zentralstelle des ersuchten Staats hat das Recht, die Beurteilung des ersuchenden Staats hinsichtlich der Anwendbarkeit dieses Kapitels zu überprüfen. Sie braucht seine Beurteilung nicht zu übernehmen, falls der Verdacht, die Annahme oder Auffassung, worauf die Beurteilung gestützt ist, ihr nicht glaubhaft erscheint.

3. Bei der Ausführung eines Rechtshilfeersuchens gemäss Artikel 7 Absatz 2 haben alle Behörden im ersuchten Staat die nach der Strafprozessordnung vorgesehenen Ermittlungsmassnahmen anzuwenden.

4. Vorschriften im innerstaatlichen Recht über die Geheimhaltungspflicht von Steuerbehörden sind auf deren Auskünfte an alle Behörden, die an der Ausführung eines unter Artikel 7 Absatz 2 fallenden Ersuchens beteiligt sind, nicht anwendbar. Dieser Absatz soll die sonst im innerstaatlichen Recht der Vertragsstaaten enthaltenen Vorschriften über die Auskunftspflicht nicht einschränken.

HeinOnline -- 27.2 U.S.T. 2083 1976

Kapitel III

PFLICHTEN DES ERSUCHTEN STAATS
BEI DER AUSFUEHRUNG VON ERSUCHEN

Artikel 9

Allgemeine Vorschriften über die
Ausführung von Ersuchen

1. Soweit der vorliegende Vertrag nichts anderes bestimmt, werden Ersuchen nach den üblichen Vorschriften ausgeführt, die für Ermittlungen oder Verfahren im ersuchten Staat hinsichtlich einer unter seine Gerichtsbarkeit fallenden Straftat anzuwenden sind.

2. Der ersuchte Staat kann auf Verlangen des ersuchenden Staats die Anwendung von Verfahrensvorschriften bewilligen, welche in diesem Staat für

a. Ermittlungs- oder Strafverfahren und
b. Zertifizierung und Uebermittlung von Schriftstücken, Akten oder Beweisstücken gelten,

soweit solche Vorschriften nicht mit dem Recht des ersuchten Staats unvereinbar sind. Eine Durchsuchung oder Beschlagnahme kann nur nach dem Recht des Ortes erfolgen, an welchem das Ersuchen ausgeführt wird.

3. Die zuständigen Gerichts- und anderen Beamten in jedem der beiden Staaten werden mit allen ihnen nach ihrem Recht zur Verfügung stehenden Mitteln bei der Ausführung von Ersuchen des anderen Staats behilflich sein.

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Artikel 10

Aussagepflicht im ersuchten Staat

1. Eine Person, deren Zeugenaussage oder Erklärung aufgrund dieses Vertrags verlangt wird, soll in gleichem Masse und in gleichem Umfang gezwungen werden zu erscheinen, auszusagen und Schriftstücke, Akten und Beweisstücke vorzulegen, wie in Ermittlungs- oder Strafverfahren im ersuchten Staat. Sie kann dazu nicht gezwungen werden, falls ihr nach dem Recht eines der beiden Vertragsstaaten ein Verweigerungsrecht zusteht. Beruft sich eine Person darauf, ein solches Recht stehe ihr im ersuchenden Staat zu, so ist dafür im ersuchten Staat eine Bescheinigung der Zentralstelle des ersuchenden Staats massgebend.

2. Soweit ein Recht zur Verweigerung des Zeugnisses oder der Herausgabe von Beweismitteln nicht feststeht und Tatsachen, die eine Bank geheimhalten muss oder die ein Fabrikations- oder Geschäftsgeheimnis darstellen, eine Person betreffen, die nach dem Ersuchen in keiner Weise mit der ihm zugrunde liegenden Straftat verbunden zu sein scheint, übermittelt die schweizerische Zentralstelle Beweismittel oder Auskünfte, die solche Tatsachen offenbaren, nur unter folgenden Bedingungen:

a. das Ersuchen muss die Untersuchung oder Verfolgung einer schweren Straftat betreffen;

b. die Offenbarung des Geheimnisses muss für die Ermittlung oder den Beweis einer für die Untersuchung oder das Verfahren wesentlichen Tatsache wichtig sein; und

c. in den Vereinigten Staaten müssen angemessene, aber erfolglos gebliebene Bemühungen unternommen worden sein, um die Beweise oder Auskünfte auf anderem Wege zu beschaffen.

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3. Wenn die schweizerische Zentralstelle feststellt, dass in Absatz 2 erwähnte Tatsachen offenbart werden müssten, um das Ersuchen auszuführen, soll sie von den Vereinigten Staaten Auskunft darüber verlangen, aus welchen Gründen sie annehmen, dass Absatz 2 der Offenbarung nicht entgegenstent. Wo nach Ansicht der schweizerischen Zentralstelle diese Auffassung nicht glaubhaft gemacht worden ist, braucht sie die Beurteilung der Vereinigten Staaten nicht zu akzeptieren.

4. Begeht ein Zeuge oder eine andere Person bei der Ausführung eines Ersuchens Handlungen, die im Falle ihrer Begehung gegen die Rechtspflege des ersuchten Staats strafbar wären, so werden diese ungeachtet des bei der Ausführung des Ersuchens angewendeten Verfahrensrechts im ersuchten Staat nach dessen Recht und Praxis verfolgt.

Artikel 11

Aufenthaltsermittlung

Wenn nach Auffassung des ersuchenden Staats Auskünfte über den Aufenthalt von Personen, die sich vermutlich im Hoheitsgebiet des ersuchten Staats aufhalten, für eine Untersuchung oder ein Verfahren im ersuchenden Staat von Bedeutung sind, wird sich der ersuchte Staat nach Kräften bemühen, Aufenthalt und Adresse dieser Personen in seinem Hoheitsgebiet zu ermitteln.

Artikel 12

Besondere Verfahrensvorschriften

1. Wenn der ersuchende Staat ausdrücklich verlangt, dass die Aussage einer Person durch Eid oder Wahrheitsversprechen be-

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kräftigt wird, so entspricht der ersuchte Staat diesem Ersuchen auch dann, wenn sein Verfahrensrecht darüber keine Vorschriften hat. In diesem Fall richten sich Zeitpunkt und Form des Eides oder des Wahrheitsversprechens nach den im ersuchenden Staat geltenden Verfahrensvorschriften. Wo ein Eid mit dem geltenden Recht unvereinbar ist, kann er durch ein Wahrheitsversprechen ersetzt werden, auch wenn ein Eid verlangt worden ist; eine solche Aussage wird im ersuchenden Staat als beeidet behandelt.

2. Die Anwesenheit des Beschuldigten oder Angeklagten, seines Rechtsbeistandes oder beider, bei der Ausführung eines Ersuchens wird gestattet, wenn es der ersuchende Staat verlangt.

3. a. Ist die Anwesenheit eines Vertreters einer Behörde im ersuchenden Staat bei der Ausführung eines Ersuchens gesetzliche Voraussetzung für die Zulassung eines Beweismittels, so gestattet der ersuchte Staat die Anwesenheit.

b. Sollten auch nach Auffassung des ersuchten Staats die Kompliziertheit des Verfahrensgegenstandes oder andere im Rechtshilfeersuchen beschriebene Umstände darauf hindeuten, dass die Anwesenheit eine erfolgreiche Strafverfolgung erheblich erleichtern würde, wird der ersuchte Staat sie ebenfalls bewilligen.

c. In andern Fällen kann der ersuchte Staat auf Verlangen des ersuchenden Staats die Anwesenheit ebenfalls gestatten.

d. Würden infolge einer solchen Anwesenheit den Vereinigten Staaten Tatsachen zugänglich gemacht, die eine Bank in der Schweiz geheimhalten muss oder die dort ein Fabrikations- oder Geschäftsgeheimnis darstellen, so wird die Schweiz die Anwesenheit nur gestatten, wenn die Voraussetzungen für die Offenbarung nach Artikel 10 Absatz 2 gegeben sind.

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e. Die Schweiz kann überdies jederzeit während der Ausführung eines Ersuchens die erwähnten Vertreter ausschliessen bis festgestellt ist, ob diese Voraussetzungen für die Offenbarung gegeben sind.

4. Personen, deren Anwesenheit nach Absatz 2 oder 3 bewilligt ist, haben das Recht, gemäss den im ersuchten Staat geltenden Verfahrensvorschriften Fragen zu stellen, soweit diese nach dem Recht eines der beiden Staaten nicht unstatthaft sind.

5. Werden im ersuchten Staat Zeugenaussagen und Erklärungen nach den Verfahrensvorschriften des ersuchenden Staats verlangt, so sind Personen, welche solche Zeugenaussagen oder Erklärungen abgeben, berechtigt, sich während des Verfahrens verbeiständen zu lassen. Solche Personen sind zu Beginn des Verfahrens über ihr Recht auf einen Rechtsbeistand ausdrücklich zu belehren. Mit Bewilligung der Zentralstelle des ersuchenden Staats kann, wenn nötig, ein Beistand ernannt werden.

6. Verlangt der ersuchende Staat ausdrücklich die Aufnahme eines wörtlichen Protokolls, so wird sich die ausführende Behörde nach Kräften bemühen, diesem Verlangen zu entsprechen.

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Kapitel IV

PFLICHTEN DES ERSUCHENDEN STAATS

Artikel 13

Beschränkung der Verwendung von Zeugenaussagen

Aussagen eines Angehörigen des ersuchten Staats, der gemäss diesem Vertrag als Zeuge befragt wurde und auf sein Zeugnisverweigerungsrecht nach Artikel 10 Absatz 1 nicht hingewiesen worden ist, dürfen in einem im ersuchenden Staat gegen ihn gerichteten Strafverfahren nicht zu seinem Nachteil verwendet werden, es sei denn, es handle sich um die Verfolgung einer strafbaren Handlung gegen die Rechtspflege.

Artikel 14

Ausschluss von Sanktionen

Kein Angehöriger des ersuchten Staats, der sich weigerte, nicht erzwingbare Auskünfte zu erteilen, oder gegen den im ersuchten Staat gemäss den Vorschriften dieses Vertrags Zwangsmassnahmen angewendet werden mussten, darf im ersuchenden Staat nur deswegen irgendwelchen gesetzlich vorgesehenen Sanktionen ausgesetzt werden, weil er von seinem vertraglich vorgesehenen Weigerungsrecht Gebrauch gemacht hat.

Artikel 15

Geheimnisschutz

Der ersuchende Staat wird die öffentliche Zugänglichkeit von Beweismitteln und Informationen, die der ersuchte Staat

88-313 O - 77 - 64

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nach Artikel 10 Absatz 2 bekannt gegeben hat, und deren Bedeutung es nach dessen Auffassung erfordert, auf Verlangen im höchstmöglichen mit den rechtlichen Erfordernissen seiner Verfassung vereinbaren Mass ausschliessen.

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Kapitel V

SCHRIFTSTUECKE, AKTEN UND BEWEISSTUECKE

Artikel 16

Gerichts- und Untersuchungsakten

1. Auf Verlangen macht der ersuchte Staat dem ersuchenden Staat die nachstehend erwähnten Dokumente und Gegenstände unter den gleichen Voraussetzungen und im gleichen Umfang zugänglich, wie den Behörden, die im ersuchten Staat vergleichbare Funktionen ausüben:

a. Urteile und Entscheide der Gerichte; sowie

b. Schriftstücke, Akten und Beweisstücke, einschliesslich Protokolle und amtliche Zusammenfassungen von Zeugenaussagen, welche sich in den Akten eines Gerichts oder einer Untersuchungsbehörde befinden, auch wenn sie durch eine "Grand Jury" erlangt wurden.

2. Die in Absatz 1 Buchstabe b erwähnten Dokumente werden nur herausgegeben, falls sie sich ausschliesslich auf einen erledigten Fall beziehen, oder soweit die Zentralstelle des ersuchten Staats dies nach ihrem Ermessen bewilligt.

Artikel 17

Vollständigkeit der Schriftstücke

Alle zu übergebenden Schriftstücke und Akten, gleichgültig ob es sich um Originale oder Kopien oder um Auszüge daraus handelt, müssen vollständig und unverändert sein, es sei denn, dass Artikel 3 Absatz 1 zur Anwendung kommt oder

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die Schriftstücke oder Akten eine in Artikel 10 Absatz 2 erwähnten Tatsache offenbaren würden und die dort unter Buchstaben a, b und c aufgeführten Erfordernisse nicht erfüllt sind. Der ersuchte Staat wird sich nach Kräften bemühen, auf Verlangen des ersuchenden Staats Schriftstücke und Akten im Original zu übermitteln.

Artikel 18

Geschäftspapiere

1. Wird die Herausgabe von Urkunden, gleichgültig welcher Art und in welcher Form, verlangt, einschliesslich Bücher, Papiere, Erklärungen, Protokolle, Konten oder Schriftstücke, oder von Auszügen daraus, ausgenommen die in Artikel 19 vorgesehenen öffentlichen Urkunden, so ordnet auf ausdrückliches Verlangen des ersuchenden Staats der das Ersuchen ausführende Beamte die Herausgabe solcher Urkunden aufgrund einer Verfahrensurkunde an. Der Beamte befragt die Person, die eine solche Urkunde herausgibt, unter Eid oder Wahrheitsversprechen. Er prüft die Urkunde auf ihre Echtheit hin und stellt fest, ob es sich um ein Memorandum oder Protokoll einer Handlung, einer Transaktion, eines Vorfalls oder eines Ereignisses handelt, ob die Urkunde im regulären Geschäftsgang hergestellt worden ist, und ob es dem regulären Geschäftsgang entsprach, eine solche Urkunde zur Zeit der Handlung, der Transaktion, des Vorfalls oder des Ereignisses, oder innerhalb einer angemessenen Frist danach anzufertigen.

2. Der Beamte ist für ein Protokoll der Zeugenaussage besorgt und fügt dieses der Urkunde bei.

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3. Wenn der Beamte sich von den in Absatz 1 erwähnten Tatsachen überzeugt hat, so bescheinigt er, was für ein Verfahren beobachtet worden ist, ferner was für Entscheidungen er getroffen hat, und beglaubigt durch sein Zeugnis die Urkunde, oder eine Kopie davon, oder einen Auszug daraus und das Protokoll der Zeugeneinvernahme. Bescheinigung und Zeugnis sind von dem Beamten unter Bezeichnung seiner Amtsfunktion zu unterzeichnen und mit dem Amtssiegel der das Ersuchen ausführenden Behörde zu versehen.

4. Jede Person, die die beglaubigte Urkunde weiter übermittelt, bescheinigt die Echtheit der Unterschrift und die amtliche Funktion des attestierenden Beamten oder im Falle früherer Zertifizierungen der zuletzt zertifizierenden Person. Die abschliessende Zertifizierung kann erfolgen durch:

a. einen Beamten der Zentralstelle des ersuchten Staats;

b. einen im ersuchten Staat amtierenden diplomatischen oder konsularischen Beamten des ersuchenden Staats; oder

c. einen im ersuchenden Staat amtierenden diplomatischen oder konsularischen Beamten des ersuchten Staats.

5. Betrifft ein Ersuchen nach diesem Artikel ein anhängiges Gerichtsverfahren, so kann der Angeklagte, falls er es verlangt, anwesend und von einem Rechtsbeistand vertreten sein und die Person, die die Urkunde herausgibt, über deren Echtheit und Zulässigkeit als Beweismittel befragen. Falls der Angeklagte verlangt, anwesend oder vertreten zu sein, kann ein Vertreter des ersuchenden Staats oder eines seiner Gliedstaaten ebenfalls anwesend sein und an den Zeugen solche Fragen stellen.

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6. Urkunden, Kopien davon, Eintragungen darin oder Auszüge daraus, die diesem Artikel gemäss beglaubigt worden sind und nicht aus anderen Gründen als Beweismittel unzulässig sind, sind ohne weitere Grundlage oder Beglaubigung von jedem Gericht im ersuchenden Staat als Beweis der Handlung, der Transaktion, des Vorfalls, oder des Ereignisses zuzulassen.

7. Wird die Echtheit einer nach Massgabe dieses Artikel beglaubigten Urkunde von einer Partei in irgendeinem Verfahren bestritten, so hat diese die Unechtheit der Urkunde zur Zufriedenheit des Gerichts, vor dem das Verfahren anhängig ist, darzutun, wenn sie aus diesem Grund als Beweismittel ausgeschlossen sein soll.

Artikel 19

Oeffentliche Urkunden

1. Auf Ersuchen beschafft der ersuchte Staat eine Kopie einer öffentlichen Urkunde oder eines Auszugs daraus und lässt diese Kopie durch das Zeugnis einer dazu befugten Person beglaubigen. Ein solches Zeugnis ist von der Person, die es ausstellt, unter Bezeichnung ihrer Amtsfunktion zu unterzeichnen und mit dem Amtssiegel der das Ersuchen ausführenden Behörde zu versehen. Das in Artikel 18 beschriebene Zertifizierungsverfahren ist zu befolgen.

2. Ausser nach den anwendbaren innerstaatlichen Vorschriften des ersuchenden Staats ist die Kopie einer öffentlichen Urkunde des ersuchten Staats oder einer Eintragung darin ohne zusätzliche Grundlage oder Beglaubigung als Beweismittel zulässig, wenn sie gemäss Absatz 1 beglaubigt und zertifiziert worden und auch anderweitig als Beweismittel zulässig ist.

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Artikel 20

Zeugenbeweis zur Beglaubigung von Schriftstücken

1. Die Zentralstelle des ersuchten Staats ist befugt, Personen zum Erscheinen in diesem Staat vor Vertretern des ersuchenden Staats oder eines seiner Gliedstaaten vorzuladen, damit sie Schriftstücke, Akten oder Beweisstücke, die vom ersuchten Staat herausgegeben werden, vorlegen und darüber Zeugnis ablegen, wenn dies nach dem im ersuchenden Staat anwendbaren Recht Voraussetzung ist für deren Zulässigkeit als Beweismittel in einem Strafverfahren und dieser Staat darum ersucht.

2. Die Zentralstelle des ersuchten Staats hat das Recht, einen Vertreter zu bestellen, der dem Verfahren nach Absatz 1 beiwohnen darf. Er ist berechtigt, gegen Fragen Einspruch zu erheben, welche entweder

a. mit dem Recht oder der Uebung des ersuchten Staats unvereinbar sind; oder
b. über den Rahmen von Absatz 1 hinausgehen.

Artikel 21

Rechte an Beweisstücken

Machen der ersuchte Staat, einer seiner Gliedstaaten oder eine Drittperson an Schriftstücken, Akten oder Beweisstücken, deren Herausgabe verlangt oder bewirkt wurde, Eigentum oder sonstige Rechte geltend, so richten sich diese nach dem Recht des Ortes, an dem sie erworben wurden. Eine Vorlage- oder Herausgabepflicht nach diesem Vertrag geht den im vorstehenden Satz erwähnten Rechten vor. Diese Rechte bleiben jedoch anderweitig unberührt.

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Kapitel VI

ZUSTELLUNG FUER DEN ERSUCHENDEN STAAT UND VERWANDTE BESTIMMUNGEN

Artikel 22

Zustellung von Schriftstücken

1. Die zuständigen Behörden des ersuchten Staats bewirken die Zustellung jeder Verfahrensurkunde, einschliesslich Gerichtsurteile, Entscheide oder gleichartige Schriftstücke, die ihnen zu diesem Zweck vom ersuchenden Staat übermittelt werden. Sofern nicht Zustellung in einer besonderen Form verlangt wird, kann sie durch eingeschriebenen Brief bewirkt werden. Auf Verlangen bewirkt der ersuchte Staat die Zustellung durch persönliche Uebergabe an den Empfänger oder, falls dies mit dem Recht des ersuchten Staats vereinbar ist, in irgendeiner anderen Form.

2. Die Zustellung einer Vorladung, im ersuchenden Staat als Zeuge zu erscheinen, an Personen, die nicht Angehörige des ersuchenden Staats sind, kann der ersuchte Staat ablehnen, sofern sie sich im Strafverfahren, worauf sich das Ersuchen bezieht, zu verantworten haben.

3. Ein Ersuchen muss mindestens 30 Tage vor dem für das Erscheinen festgesetzten Termin bei der Zentralstelle des ersuchten Staats eingehen. Diese Frist ist bei der Festsetzung des Zeitpunktes für das Erscheinen und bei der Uebermittlung des Ersuchens zu berücksichtigen. Sie kann in sehr dringlichen Fällen von der Zentralstelle des ersuchten Staats gekürzt werden.

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4. Die Zustellung wird durch eine vom Empfänger datierte und unterschriebene Bestätigung nachgewiesen oder durch eine Bescheinigung, welche Form und Datum der Zustellung beurkundet und von der sie ausführenden Person unterschrieben ist.

Artikel 23

Persönliches Erscheinen

1. Wird das persönliche Erscheinen einer Person, die in dem Gegenstand des Ersuchens bildenden Strafverfahren nicht angeklagt ist, im ersuchenden Staat für besonders notwendig erachtet, so weist dieser Staat im Ersuchen um Zustellung der Vorladung darauf hin und bezeichnet den Gegenstand der Befragung. Er gibt Art und Höhe der zu zahlenden Entschädigung und der zu erstattenden Auslagen an.

2. Bei der Zustellung der Vorladung fordert die ausführende Behörde den Empfänger auf, vor der zuständigen Behörde des ersuchenden Staats zu erscheinen und fragt ihn, ob er damit einverstanden ist. Der ersuchte Staat gibt dem ersuchenden Staat die Antwort unverzüglich bekannt.

3. Willigt der Adressat ein zu erscheinen, so kann der ersuchte Staat ihm auf Verlangen des ersuchenden Staats einen Vorschuss gewähren. Dieser wird auf der Vorladung vermerkt und vom ersuchenden Staat bei der Abrechnung berücksichtigt.

Artikel 24

Wirkungen der Zustellung

1. Leistet eine andere Person als ein Staatsangehöriger des ersuchenden Staats einer ihr gemäss Artikel 22 zugestellten

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Vorladung zum Erscheinen im ersuchenden Staat nicht Folge, so darf sie weder irgendwelchen Nachteilen zivil- oder strafrechtlicher Art, noch anderen Sanktionen oder sonstigem Zwang unterworfen werden, selbst wenn die Vorladung diesbezügliche Androhungen enthält.

2. In dem Verfahren, auf das sich das Ersuchen bezieht, richten sich die Wirkungen der Weigerung, eine nach Artikel 22 zugestellte Verfahrensurkunde anzunehmen oder ihr Folge zu leisten, nach dem Recht des ersuchenden Staats.

3. Die Zustellung einer Verfahrensurkunde nach Artikel 22 an andere Personen als Staatsangehörige des ersuchenden Staats begründet keine Gerichtsbarkeit im ersuchenden Staat.

Artikel 25

Erzwingung der Aussage im ersuchenden Staat

1. Eine Person, die aufgrund einer ihr nach diesem Vertrag zugestellten Vorladung vor einer Behörde im ersuchenden Staat erscheint, darf nicht zu einer Zeugenaussage oder Erklärung oder zur Herausgabe von Schriftstücken oder Beweisstücken gezwungen werden, wenn ihr nach dem Recht eines der beiden Staaten ein Verweigerungsrecht zusteht oder der nachfolgende Absatz 2 zur Anwendung kommt. Ein solches Verweigerungsrecht im ersuchten Staat wird angenommen, soweit dort davon Gebrauch gemacht werden könnte, wenn die Handlungen, die Gegenstand der Ermittlungen oder des Verfahrens sind, in dessen Hoheitsgebiet begangen worden wären.

2. Erscheint eine solche Person vor einer Behörde in den Vereinigten Staaten, so darf sie nur insoweit gezwungen werden, Zeugenaussagen zu machen, Erklärungen abzugeben oder Schriftstücke

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oder Beweisstücke herauszugeben, welche in Artikel 10 Absatz 2 erwähnte Tatsachen offenbaren würden, als die dort unter Buchstaben a, b und c aufgeführten Voraussetzungen gegeben sind.

3. Beruft sich jemand darauf, dass im ersuchten Staat ein Verweigerungsrecht nach Absatz 1 oder eine Beschränkung nach Absatz 2 bestehe, so ist dafür im ersuchenden Staat eine Bescheinigung der Zentralstelle des ersuchten Staats massgebend; der ersuchende Staat kann jedoch nach deren gebührender Würdigung bezüglich der Anwendbarkeit von Artikel 10 Absatz 2 Buchstabe a, b und c seine eigene Entscheidung treffen.

Artikel 26

Zuführung von Häftlingen

1. Ein Ersuchen nach Artikel 22 kann auch gestellt werden, wenn eine im ersuchten Staat in Haft gehaltene Person als Zeuge oder zur Gegenüberstellung vor einer Behörde im ersuchenden Staat benötigt wird.

2. Ein Häftling wird dem ersuchenden Staat zur Verfügung gestellt, wenn

a. er einwilligt;
b. keine wesentliche Verlängerung der Haft zu erwarten ist; und
c. die Zentralstelle des ersuchten Staats feststellt, dass der Zuführung keine anderen wichtigen Gründe entgegenstehen.

3. Die Ausführung des Ersuchens kann verschoben werden, solange die Anwesenheit des Häftlings für ein Ermittlungs- oder Strafverfahren im ersuchten Staat notwendig ist.

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4. Der ersuchende Staat hat das Recht und die Verpflichtung, den Zugeführten in Haft zu halten, sofern nicht der ersuchte Staat seine Freilassung gestattet. Der Häftling wird vom ersuchenden in den ersuchten Staat zurückgeführt, sobald die Umstände es erlauben oder gemäss den getroffenen Abmachungen. Der Häftling verfügt über alle Mittel nach dem Recht im ersuchenden Staat um sicherzustellen, dass seine Haft oder Rückführung mit diesem Artikel und der Verfassung dieses Staats in Uebereinstimmung steht.

5. Der ersuchende Staat kann die Rückführung nicht allein deshalb verweigern, weil der Häftling Angehöriger dieses Staats ist.

Artikel 27

Freies Geleit

1. Eine Person, die aufgrund einer ihr nach diesem Vertrag zugestellten Vorladung vor einer Behörde im ersuchenden Staat erscheint, darf in diesem Staat wegen einer Handlung oder Verurteilung aus der Zeit vor ihrer Abreise aus dem ersuchten Staat weder verfolgt, noch, ausgenommen im Falle des Artikels 26 Absatz 4, in Haft gehalten, oder einer sonstigen Beschränkung ihrer persönlichen Freiheit unterworfen werden.

2. Für eine Person, gleich welcher Staatsangehörigkeit, die auf solche Weise erscheint, um sich wegen einer strafbaren Handlung zu verantworten, gelten die Beschränkungen des Absatzes 1 nicht hinsichtlich einer in der Vorladung vermerkten

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Handlung oder Verurteilung oder einer darin inbegriffenen geringeren Straftat.

3. Das in diesem Artikel vorgesehene freie Geleit endet, wenn die erschienene Person 10 Tage nach Empfang der amtlichen Mitteilung, dass ihre Anwesenheit nicht länger erforderlich ist, von der Gelegenheit, den ersuchenden Staat zu verlassen, keinen Gebrauch gemacht hat, oder wenn sie nach Verlassen dieses Gebietes dorthin zurückkehrt.

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Kapitel VII
ALLGEMEINE VERFAHRENSVORSCHRIFTEN

Artikel 28

Zentralstelle

1. Für die Behandlung von Ersuchen um Rechtshilfe ist eine Zentralstelle zuständig. Zentralstelle für die Vereinigten Staaten ist der Chef des Justizdepartements oder ein von ihm Bevollmächtigter. Zentralstelle für die Schweiz ist die Polizeiabteilung des Eidgenössischen Justiz- und Polizeidepartementes.

2. Solche Ersuchen werden von der Zentralstelle des ersuchenden Staats aufgrund eines entsprechenden und von ihr genehmigten Antrages für Gerichte oder Behörden des Bundes oder der Gliedstaaten gestellt, die nach Gesetz mit der Untersuchung oder der Verfolgung strafbarer Handlungen beauftragt sind.

3. Die Zentralstellen der beiden Staaten können zur Ausführung dieses Vertrages unmittelbar miteinander verkehren.

Artikel 29

Inhalt der Ersuchen

1. Ein Ersuchen um Rechtshilfe soll den Namen der Behörde bezeichnen, die das Ermittlungs- oder Strafverfahren führt, auf welches sich das Ersuchen bezieht, und soweit wie möglich angeben:

a. Gegenstand und Art von Untersuchung oder Verfahren und, mit Ausnahme der Ersuchen um Zustellung, eine

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Beschreibung der wesentlichen behaupteten oder festzustellenden Handlungen;

b. den Hauptgrund für die Erforderlichkeit der gewünschten Beweise oder Auskünfte; und

c. den vollen Namen, Ort und Datum der Geburt und Adresse der Personen, welche im Zeitpunkt des Ersuchens Gegenstand der Untersuchung oder des Verfahrens sind, und alle sonstigen Angaben, die zu ihrer Identifizierung beitragen können.

2. Soweit erforderlich und möglich, soll das Ersuchen enthalten:

a. die unter Absatz 1 Buchstabe c erwähnten Angaben hinsichtlich eines Zeugen oder jeder andern durch das Ersuchen betroffenen Person;

b. eine Beschreibung des anzuwendenden Verfahrens;

c. eine Erklärung, ob die Bekräftigung von Zeugenaussagen oder Erklärungen durch Eid oder Wahrheitsversprechen verlangt wird;

d. eine Beschreibung der verlangten Auskünfte, Erklärungen oder Zeugenaussagen;

e. eine Beschreibung der Schriftstücke, Akten oder Beweisstücke, deren Herausgabe oder Sicherstellung verlangt wird, sowie eine Beschreibung der Person, die sie herausgeben soll, und der Form, in der sie reproduziert und beglaubigt werden sollen; und

f. Angaben über die Entschädigungen und Auslagen, auf die eine im ersuchenden Staat erscheinende Person Anspruch hat.

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Artikel 30

Sprache

1. Ersuchen und alle angefügten Unterlagen sollen im Fall eines Ersuchens an die Schweiz mit einer französischen, und im Fall eines Ersuchens an die Vereinigten Staaten mit einer englischen Uebersetzung versehen sein. Wenn nötig, kann die schweizerische Zentralstelle anstelle der französischen Uebersetzung eine deutsche oder italienische Uebersetzung verlangen.

2. Die Uebersetzung aller bei der Ausführung des Ersuchens angefertigten oder erhobenen Protokolle, Erklärungen, Schriftstücke oder Akten ist Sache des ersuchenden Staats.

Artikel 31

Ausführung der Ersuchen

1. Entspricht ein Ersuchen nach Auffassung der Zentralstelle des ersuchten Staats nicht den Bestimmungen dieses Vertrages, so teilt sie dies unverzüglich der Zentralstelle des ersuchenden Staats unter Darlegung der Gründe mit. Die Zentralstelle des ersuchten Staats kann die ihr zweckmässig erscheinenden vorläufigen Massnahmen anordnen.

2. Entspricht ein Ersuchen dem Vertrag, so leitet es die Zentralstelle des ersuchten Staats an die zuständige oder die von ihr bestimmte Behörde des Bundes oder eines seiner Gliedstaaten zur Ausführung weiter. Die Behörde, der ein Ersuchen zugeleitet wird, verfügt bei seiner Ausführung über alle Befugnisse und die Zwangsgewalt, die ihr in einem Ermittlungs- oder Gerichtsverfahren bezüglich einer unter ihre Gerichtsbarkeit fallenden

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Tat zustent. Stellt die Schweiz das Ersuchen, so ermächtigt dieser Absatz, das Erscheinen und die Aussage eines Zeugen, die Vorlage von Schriftstücken, Akten und Beweisstücken durch eine "Grand Jury" erzwingen zu lassen.

3. Die Behörde, an die ein Ersuchen gemäss Absatz 2 weitergeleitet wird, erlässt, wenn nötig, nach ihrem eigenen Verfahrensrecht die erforderlichen Verfahrensurkunden, um das Erscheinen und eine Erklärung oder Zeugenaussage von Personen oder die Herausgabe oder Sicherstellung von Schriftstücken, Akten oder Beweisstücken zu verlangen.

4. Die Ausführung eines Ersuchens kann mit Zustimmung der Zentralstelle des ersuchenden Staats einer dafür geeigneten Privatperson übertragen werden, wenn die Umstände dies erfordern.

5. Ein Ersuchen wird so schnell ausgeführt, wie es die Umstände gestatten.

Artikel 32

Rücksendung des vollzogenen Ersuchens

1. Nach Ausführung eines Ersuchens übermittelt die ausführende Behörde das Original und die erhaltenen Auskünfte und Beweise unter Angabe von Ort und Zeit der Ausführung der Zentralstelle des ersuchten Staats. Diese leitet sie an die Zentralstelle des ersuchenden Staats weiter.

2. Die Uebergabe von Schriftstücken, Akten oder Beweisstücken kann aufgeschoben werden, wenn sie im ersuchten Staat für ein anhängiges amtliches Verfahren benötigt werden und, im Fall von Schriftstücken oder Akten, dem ersuchenden Staat Kopien angeboten wurden.

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Artikel 33

Unmöglichkeit der Ausführung

Der ersuchte Staat benachrichtigt den ersuchenden Staat unverzüglich unter kurzer Angabe der Gründe, wenn einem Ersuchen nicht voll entsprochen werden kann:

a. wegen der Beschränkungen dieses Vertrages;
b. weil nach sorgfältiger Nachforschung der Aufenthalt der Person, deren Zeugenaussage oder Erklärung verlangt wird, oder an die eine Zustellung bewirkt werden soll, nicht festgestellt werden kann, oder weil ihr Tod wahrscheinlich ist;
c. weil nach sorgfältiger Nachforschung die Beweismittel nicht gefunden werden konnten; oder
d. wegen anderer physischer Hindernisse.

Artikel 34

Kosten der Rechtshilfe

1. Der ersuchende Staat vergütet auf Verlangen die folgenden Auslagen, die einer Behörde im ersuchten Staat durch die Ausführung eines Ersuchens entstanden sind: Reisekosten; Vergütungen an Sachverständige; Kosten für die Protokollierung, falls diese von nicht im öffentlichen Dienst stehenden Personen vorgenommen wurde; Kosten für Dolmetscher, Uebersetzungskosten; und Vergütungen an einen mit Zustimmung des ersuchenden Staats für einen Zeugen oder Angeklagten bestellten Rechtsbeistand.

2. Für irgendwelche andere Kosten kann keine Vergütung verlangt werden.

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3. Alle in Verbindung mit einem Ersuchen nach Artikel 26 entstandenen Kosten werden vom ersuchenden Staat getragen.

4. Gutsprachen oder Sicherheiten für die zu gewärtigenden Kosten werden nicht verlangt.

Artikel 35

Rückgabe übermittelter Beweismittel

Originale von Schriftstücken, Akten oder Beweisstücken, die in Ausführung eines Ersuchens übermittelt worden sind, werden vom ersuchenden Staat so bald wie möglich zurückgegeben, sofern der ersuchte Staat nicht darauf verzichtet. Eine Behörde im ersuchenden Staat ist jedoch berechtigt, von der Rückgabe von Gegenständen abzusehen und darüber gemäss ihrer Rechtsordnung zu verfügen, sofern solche Gegenstände Personen in diesem Staat gehören und wenn im ersuchten Staat weder Eigentum noch sonstige Rechte an diesen Gegenständen geltend gemacht werden oder die auf solchen Rechten beruhenden Forderungen sichergestellt sind.

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Kapitel VIII

BENACHRICHTIGUNG. UEBERPRUEFUNG VON ENTSCHEIDEN

Artikel 36

Benachrichtigung

Nach Erhalt eines Ersuchens benachrichtigt der ersuchte Staat:

a. Personen, von denen die Abgabe einer Erklärung oder Zeugenaussage, oder die Herausgabe von Schriftstücken, Akten oder Beweisstücken verlangt wird;

b. Personen, die im ersuchenden Staat Verdächtigte in einem Ermittlungsverfahren oder Angeklagte in einem Strafverfahren sind und im ersuchten Staat wohnen, wenn das Recht im ersuchenden Staat es allgemein oder für die Zulassung von Beweismitteln verlangt und dieser Staat darum ersucht; und

c. Angeklagte in einem Strafverfahren im ersuchenden Staat, wenn das Recht im ersuchten Staat eine solche Benachrichtigung vorschreibt.

Artikel 37

Ueberprüfung von Entscheiden

1. Die in diesem Vertrag vorgesehenen Beschränkungen berechtigen niemanden, in den Vereinigten Staaten eine Klage wegen Nichtzulassung oder nachträglichen Ausschlusses von Beweismitteln anzustrengen oder andere Rechtsmittel in Verbindung mit Ersuchen nach diesem Vertrag zu ergreifen, ausgenommen mit Bezug auf Artikel 9 Absatz 2, Artikel 10 Absatz 1, Artikel 13, Artikel 18 Absatz 7, Artikel 25 Absatz 1, Artikel 26 und 27.

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2. In der Schweiz werden das Recht, Rechtsmittel gegen Entscheide von schweizerischen Behörden in Verbindung mit Ersuchen nach diesem Vertrag zu ergreifen und das anwendbare Verfahren in Uebereinstimmung mit diesem Vertrag durch Landesrecht geregelt.

3. Im Falle irgendeiner Beschwerde, ein Staat, sei es der ersuchende, sei es der ersuchte Staat, habe es unterlassen, den ihm durch diesen Vertrag auferlegten Verpflichtungen zu entsprechen, kann der Betroffene, wenn bezüglich dieser Beschwerde nicht ein Rechtsbehelf nach Absatz 1 oder 2 vorgesehen ist, die Zentralstelle des anderen Staats unterrichten. Wenn dieser andere Staat der Auffassung ist, diese Beschwerde sei noch weiter abzuklären, wird der erstgenannte Staat um Stellungnahme ersucht werden; nötigenfalls ist die Angelegenheit gemäss Artikel 39 zu erledigen.

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Kapitel IX
SCHLUSSBESTIMMUNGEN

Artikel 38

Verhältnis zu anderen Verträgen
und zum Landesrecht

1. Wenn ein in diesem Vertrag vorgesehenes Verfahren die Rechtshilfe in Strafsachen zwischen den Vertragsparteien nach einem anderen Abkommen oder nach dem Recht im ersuchten Staat erleichtern würde, so wird für die Leistung solcher Rechtshilfe das Verfahren nach diesem Vertrag angewendet. Rechtshilfe und Verfahren nach irgendeinem anderen internationalen Vertrag oder Uebereinkommen oder nach dem innerstaatlichen Recht in den Vertragsstaaten bleiben von diesem Vertrag unberührt und werden dadurch weder ausgeschlossen noch eingeschränkt.

2. Dieser Vertrag hindert die Vertragsparteien nicht, Ermittlungen und Strafverfahren gemäss ihrem innerstaatlichen Recht zu führen.

3. Die Bestimmungen dieses Vertrags gehen abweichenden Vorschriften des innerstaatlichen Rechts in den Vertragsstaaten vor.

4. Die Erteilung von Auskünften zur Verwendung in Fällen betreffend Steuern, die unter das Abkommen vom 24. Mai 1951 zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen fallen, richtet sich ausschliesslich nach dessen Vorschriften; dies gilt nicht für Verfahren nach Kapitel II des vorliegenden Vertrages, soweit die Bedingungen in Artikel 7 Absatz 2 erfüllt sind.

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Artikel 39

Meinungsaustausch. Schiedsgericht

1. Vertreter der Zentralstellen können, wenn es ratsam erscheint, Ihre Meinungen über Auslegung, Anwendung oder Durchführung dieses Vertrages im allgemeinen oder in bezug auf besondere Fälle schriftlich austauschen oder sich für einen mündlichen Meinungsaustausch treffen.

2. Die Zentralstellen werden sich bemühen, Schwierigkeiten oder Zweifel, die über Auslegung oder Anwendung dieses Vertrages entstehen, im gegenseitigen Einverständnis zu lösen. Streitigkeiten zwischen den Vertragsparteien über Auslegung oder Anwendung dieses Vertrages, welche nicht von den Zentralstellen oder durch diplomatische Verhandlungen zwischen den Vertragsparteien zur Zufriedenheit beigelegt werden können, sind, sofern die Parteien nicht ein anderes Einigungsverfahren vereinbaren, auf Ersuchen einer der beiden Vertragsparteien einem aus drei Mitgliedern bestehenden Schiedsgericht zu unterbreiten. Jede Vertragspartei ernennt einen Schiedsrichter, der ein Angehöriger des betreffenden Staats sein muss, und diese beiden Schiedsrichter ernennen einen Vorsitzenden, der ein Angehöriger und Einwohner eines Drittstaats sein muss.

3. Unterlässt es eine Vertragspartei, innert drei Monaten seit dem Datum des Ersuchens um schiedsgerichtliche Entscheidung eines Streites, einen Schiedsrichter zu ernennen, so wird dieser auf Ersuchen einer der beiden Parteien vom Präsidenten des Internationalen Gerichtshofes ernannt.

4. Können die beiden Schiedsrichter sich innerhalb von zwei Monaten nach ihrer Ernennung nicht auf einen Vorsitzenden einigen, so wird dieser auf Ersuchen einer der beiden Vertragsparteien vom Präsidenten des Internationalen Gerichtshofes ernannt.

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5. Ist in den in Absatz 3 und 4 angeführten Fällen der Präsident des Internationalen Gerichtshofes am Handeln verhindert oder ist er ein Angehöriger einer der beiden Vertragsparteien, so wird die Ernennung vom Vizepräsidenten vorgenommen. Ist der Vizepräsident am Handeln verhindert oder ist er ein Angehöriger einer der beiden Vertragsparteien, so wird die Ernennung vom rangältesten Richter vorgenommen, der nicht Angehöriger einer der beiden Vertragsparteien ist.

6. Das Schiedsgericht bestimmt sein eigenes Verfahren, sofern nicht die Vertragsparteien etwas anderes vereinbaren.

7. Die Entscheide des Schiedsgerichts sind für die Vertragsparteien verbindlich.

Artikel 40

Bedeutung von Begriffen

1. In diesem Vertrag bedeutet:

a. der Ausdruck "ersuchender Staat" und "ersuchter Staat" je nach Zusammenhang die Vereinigten Staaten von Amerika oder die Schweizerische Eidgenossenschaft;

b. der Ausdruck "Staat" oder "Staaten" je nach Zusammenhang einen oder mehrere Gliedstaaten der Vereinigten Staaten von Amerika, ihre Territorien und Besitzungen, den District of Columbia und das Commonwealth of Puerto Rico;

c. der Ausdruck "Kanton" oder "Kantone" einen oder mehrere Kantone der Schweizerischen Eidgenossenschaft;

d. der Gebrauch des Wortes "im" vor "ersuchenden Staat" oder "ersuchten Staat" je nach Zusammenhang und soweit erforderlich eine Bezugnahme auf das gesamte Gebiet unter der Hoheit der Vereinigten Staaten, ihre Gliedstaaten im Sinne von Buchstabe b und untergeordneten

HeinOnline -- 27.2 U.S.T. 2112 1976

Gebietskörperschaften, oder auf das Gebiet der Schweiz einschliesslich ihrer Kantone.

e. Mit Verweisungen auf das Recht oder das Verfahren im ersuchenden Staat oder auf das Recht oder das Verfahren, das bei der Ausführung von Ersuchen anzuwenden ist, sind Verweisungen auf das Recht oder das Verfahren gemeint, das von der das Ersuchen ausführenden Behörde für ein von ihr geführtes Ermittlungs- oder Gerichtsverfahren anzuwenden ist, oder das in vergleichbaren Ermittlungen oder Verfahren gewöhnlich anzuwenden wäre.

2. Verlangt eine Bestimmung dieses Vertrages von einer anderen Behörde als der Zentralstelle die Benutzung eines Amtssiegels, so darf diese Behörde einen Handstempel benutzen, sofern sie einen solchen üblicherweise in ihren eigenen Angelegenheiten von ähnlicher Wichtigkeit gebraucht. Ein solcher Stempel wird für die Zwecke dieses Vertrages und die Zulassung von Beweismitteln wie ein Amtssiegel behandelt.

3. Der Ausdruck "Beweisstücke" darf nicht dahin ausgelegt werden, dass er Gegenstände ausschliesst, deren Zulassung als Beweismittel fraglich ist.

4. Der Grundsatz der freien Beweiswürdigung bleibt für die Gerichte der Schweiz von den Bestimmungen dieses Vertrages über die Zulässigkeit von Beweismitteln unberührt.

5. Verweisungen auf Rechtshilfe, welche nach diesem Vertrag geleistet werden muss oder geleistet werden kann, umfassen sowohl Rechtshilfe mit als auch solche ohne Anwendung von Zwangsmassnahmen.

6. Verweisungen auf "Ersuchen" oder "Ersuchen um Rechtshilfe" beziehen sich auf alle Beilagen und Ergänzungen.

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7. Der Ausdruck "Handlungen", soweit die Verübung von Straftaten gemeint ist, umfasst auch Unterlassungen.

8. Der Ausdruck "Beschuldigter" umfasst, sofern sich aus dem Zusammenhang nichts anderes ergibt, den Verdächtigten in einem hängigen Ermittlungsverfahren.

9. Der Ausdruck "Rechtsbeistand" bedeutet den im einen oder andern Staat zur Ausübung des Anwaltsberufes Zugelassenen.

10. Der Ausdruck "Antitrust-Gesetzgebung" umfasst, auf die Gesetzgebung der Vereinigten Staaten angewendet, alle diejenigen Vorschriften, die im 15. Titel des United States Code, Kapitel 1 und in Kapitel 2 dieses Titels bis einschliesslich Artikel 77 enthalten sind, unter Ausschluss der Artikel 77a ff.

Artikel 41

Inkrafttreten und Kündigung

1. Dieser Vertrag soll ratifiziert und die Ratifikationsurkunden sollen so bald wie möglich in Washington ausgetauscht werden.

2. Dieser Vertrag tritt 180 Tage nach dem Datum des Austausches der Ratifikationsurkunden in Kraft und findet auf vor oder nach dem Inkrafttreten dieses Vertrages begangene Handlungen Anwendung.

3. Dieser Vertrag kann nach Ablauf von fünf Jahren nach seinem Inkrafttreten jederzeit von jeder der beiden Vertragsparteien unter Einhaltung einer Frist von mindestens sechs Monaten schriftlich gekündigt werden.

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ZU URKUND DESSEN haben die Bevollmächtigten diesen Vertrag unterzeichnet.

GEFERTIGT in Bern, im Doppel in englischer und deutscher Sprache, wobei beide Texte gleicherweise authentisch sind, am 25. Mai 1973.

Für den Präsidenten der Vereinigten Staaten von Amerika:

Für den Schweizerischen Bundesrat:

A. Weitnauer

[SEAL]

TIAS 8302

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LISTE

Straftaten, für welche Zwangsmassnahmen angewendet werden können

1. Mord.
2. Vorsätzliche Tötung und Totschlag.
3. Fahrlässige Tötung.
4. Böswillige Verwundung; vorsätzliche oder grobfahrlässige schwere Körperverletzung.
5. Drohung mit dem Tode oder einer schweren Körperverletzung.
6. Widerrechtliches Werfen oder Auflegen einer ätzenden oder schädigenden Substanz auf die Person eines andern.
7. Entführung; unrechtmässiges Gefangenhalten oder andere rechtswidrige Freiheitsberaubung.
8. Böswilliges Nichterfüllen von Unterhaltspflichten oder böswilliges Verlassen eines Minderjährigen oder einer anderen abhängigen Person, wenn das Leben oder die Gesundheit des Minderjährigen oder der abhängigen Person gefährdet ist oder mit grosser Wahrscheinlichkeit gefährdet werden kann.
9. Notzucht; Vornahme unzüchtiger Handlungen.
10. Unzüchtige Handlungen mit Kindern unter 16 Jahren.
11. Widerrechtliche Abtreibung.
12. Frauen- und Kinderhandel.
13. Bigamie.
14. Raub.
15. Diebstahl; Einbruch; Eindringen in ein Haus oder Geschäft.
16. Veruntreuung; Unterschlagung.
17. Erpressung.

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18. Annahme oder Transport von Geld, Wertpapieren oder anderen Vermögenswerten mit Wissen, dass diese durch Unterschlagung, Diebstahl oder Betrug erlangt worden sind.

19. Betrug, einschliesslich:

    a. Erlangung von Vermögenswerten, Leistungen, Geld oder Wertpapieren durch Vorspiegelung falscher Tatsachen oder durch betrügerische Täuschung oder durch andere betrügerische Mittel;
    b. Betrug gegen den ersuchenden Staat oder seine Gliedstaaten, Bezirke oder Gemeinden;
    c. Untreue oder Vertrauensmissbrauch begangen durch irgendwelche Personen;
    d. Benutzung der Post oder anderer Verkehrsmittel mit der Absicht zu betrügen oder zu täuschen, soweit dies nach den Gesetzen des ersuchenden Staats strafbar ist.

20. Betrügerischer Bankrott.

21. Unwahre Angaben über Handelsgesellschaften und Genossenschaften, Verleitung zur Spekulation, ungetreue Geschäftsführung, Unterdrückung von Urkunden.

22. Bestechung, einschliesslich Verleitung zur, Anbieten oder Annehmen von Bestechung.

23. Fälschung oder Verfälschung, einschliesslich:

    a. Fälschung oder Verfälschung von öffentlichen oder privaten Wertpapieren, Obligationen, Zahlungsanweisungen, Warenrechnungen (Fakturen), Kreditbriefen oder anderen Dokumenten;
    b. Fälschung oder Verfälschung von Münzen oder Geld;
    c. Fälschung oder Verfälschung von amtlichen Siegeln, Stempeln oder Marken;
    d. betrügerischer Gebrauch der obengenannten gefälschten oder verfälschten Gegenstände;
    e. wissentliches und widerrechtliches Anfertigen oder Besitzen irgendwelcher Geräte, Vorrichtungen, Werkzeuge oder Maschinen, die zum Fälschen von Geld, gleichgültig ob Metall- oder Papiergeld, geeignet oder bestimmt sind.

24. Wissentliche und vorsätzliche, unmittelbar oder durch einen anderen abgegebene falsche, fiktive oder betrügerische Erklärung oder Darstellung in einer Angelegenheit, für die eine Verwaltungsbehörde im ersuchenden Staat zuständig ist, und die eine in dieser Liste erwähnte oder sonst unter den Vertrag fallende strafbare Handlung betrifft.

HeinOnline -- 27.2 U.S.T. 2117 1976

25. Meineid, Verleitung zum Meineid und andere falsche und beeidigte Erklärungen.

26. Zuwiderhandlungen gegen die Vorschriften über gewerbsmässige Wetten, Lotterien und Glücksspiele.

27. Brandstiftung.

28. Vorsätzliche und rechtswidrige Zerstörung oder Behinderung von Eisenbahnen, Luftfahrzeugen, Schiffen oder anderen Transportmitteln, oder irgendeine böswillige Handlung in der Absicht, die Sicherheit einer in einem Zuge oder Luftfahrzeug, Schiff oder anderen Transportmittel reisenden Person zu gefährden.

29. Seeräuberei; Meuterei oder Aufruhr an Bord eines Luftfahrzeuges oder Schiffes gegen die Autorität des Kapitäns oder Befehlshabers; jede Besitzergreifung oder Ausübung der Befehlsgewalt über ein Luftfahrzeug oder Schiff durch Anwendung von Zwang oder Gewalt oder durch Drohung mit Zwang oder Gewalt.

30. Zuwiderhandlungen gegen Vorschriften (gleichgültig ob in Form von Steuervorschriften oder anderen Gesetzen) betreffend Verbot, Beschränkung oder Kontrolle von Handel, Einfuhr oder Ausfuhr, Besitz, Verheimlichung, Fabrikation, Herstellung oder Gebrauch von:

    a. Rauschgiften, Cannabis sativa-L, psychotropischen Substanzen, Kokain und seinen Derivaten;
    b. giftigen chemischen Substanzen und gesundheitsschädlichen Stoffen;
    c. Feuerwaffen, anderen Waffen, Sprengstoffen und Vorrichtungen zur Brandstiftung;

    wenn der Täter sich durch die Verletzung solcher Gesetze einer Strafverfolgung und Gefängnisstrafe aussetzt.

31. Rechtswidrige Behinderung von Verfahren vor Gerichten oder Verwaltungsbehörden oder Störung einer Strafuntersuchung durch Einschüchterung, Bestechen, Hindern, Bedrohen oder Verletzen von Gerichtsbeamten, Geschworenen, Zeugen oder Untersuchungsbeamten.

32. Rechtswidriger Missbrauch der Amtsgewalt, welcher Verlust von Leben, Freiheit oder Eigentum einer Person zur Folge hat.

33. Rechtswidrige Beeinträchtigung, Einschüchterung oder Störung bei einer Wahl oder Kandidatur für ein öffentliches Amt, der Tätigkeit als Geschworener oder öffentlicher Angestellter oder beim Empfang oder Genuss von Leistungen einer öffentlichen Dienststelle.

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34. Versuch oder Komplott (conspiracy), eine der in den vorangehenden Abschnitten dieser Liste aufgezählten Straftaten zu begehen; Teilnahme an solchen Straftaten oder deren Begünstigung.

35. Jede Straftat, bei der eine der in dieser Liste angeführten Rechtsverletzungen ein wesentlicher Bestandteil des Sachverhaltes ist, selbst wenn zur Begründung der Bundesgerichtsbarkeit der Vereinigten Staaten das Versenden, der Transport, die Benutzung der Post oder von zwischenstaatlichen Verkehrsmitteln auch Tatbestandmerkmale der besonderen Straftat sind.

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[INTERPRETATIVE LETTERS][1]

EMBASSY OF THE
UNITED STATES OF AMERICA

Bern, May 25, 1973

Excellency:

I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters signed on May 25, 1973, and in particular to Articles 18 and 20 thereof.

It is the understanding of the United States Government that questions which may be asked by representatives of the requesting State under Article 20 do not go beyond the scope of paragraph 1 of that Article insofar as they relate to genuineness and the admissibility of the documents or records. Such questions would include those relating to (1) the responsibility of the witness with respect to the making and maintaining of the documents or records; (2) whether the documents or records were made as memoranda or records of the acts, transactions, occurrences or events they purport to record; (3) whether the documents or records were made in the regular course of business; (4) whether it was the regular course of business to make the documents or records at the time of the act, transaction, occurrence or event recorded therein or within a reasonable time thereafter; (5) the meaning of the entries in the documents or records; and (6) the

His Excellency
Dr. Albert Weitnauer,
Ambassador of Switzerland,
Bern.

[1] Each letter was signed in both the English and German languages.

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2120 1976

procedure for making and maintaining the documents or records and obtaining the information recorded therein.

The above also applies to the scope of questions under paragraph 5 of Article 18.

I would appreciate a letter from Your Excellency confirming that the understanding described above is also the understanding of the Swiss Federal Council.

Accept, Excellency, the renewed assurances of my highest consideration.

Shelby Cullom Davis

Shelby Cullom Davis
Ambassador of the
United States of America

88-313 O - 77 - 68

HeinOnline -- 27.2 U.S.T. 2121 1976

EMBASSY OF THE
UNITED STATES OF AMERICA

Bern, den 25. Mai 1973

Exzellenz,

Ich habe die Ehre, auf den Staatsvertrag über gegenseitige Rechtshilfe in Strafsachen zwischen den Vereinigten Staaten von Amerika und der Schweizerischen Eidgenossenschaft, unterzeichnet am 25. Mai 1973, Bezug zu nehmen, insbesondere auf dessen Artikel 18 und 20.

Die Regierung der Vereinigten Staaten ist der Auffassung, dass Fragen, die von Vertretern des ersuchenden Staats nach Artikel 20 gestellt werden können, nicht über den Rahmen von Absatz 1 dieses Artikels hinausgehen, soweit sie sich auf die Echtheit und die Zulässigkeit als Beweismittel von Schriftstücken oder Akten beziehen. Solche Fragen würden diejenigen umfassen:

1. nach der Verantwortung des Zeugen für die Herstellung und die Nachführung von Schriftstücken und Akten;
2. ob die Schriftstücke oder Akten als Memoranda oder Protokolle zur Aufzeichnung von Handlungen, Transaktionen, Vorfällen oder Ereignissen ausgefertigt wurden;

Seiner Exzellenz
Herrn Dr. Albert Weitnauer
Schweizerischer Botschafter

Bern

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2122 1976

3. ob die Schriftstücke oder Akten im ordentlichen Geschäftsgang hergestellt wurden;
4. ob es dem ordentlichen Geschäftsgang entsprach, solche Schriftstücke oder Akten entweder zur Zeit der Handlung, der Transaktion, des Vorfalles oder des Ereignisses, oder innerhalb einer angemessenen Frist danach, herzustellen;
5. nach der Bedeutung einer Eintragung in den Schriftstücken oder Akten; und
6. nach dem Verfahren, das bei der Herstellung und Nachführung der Schriftstücke oder Akten sowie bei der Erlangung der darin vermerkten Auskünfte angewendet wurde.

Das gleiche gilt hinsichtlich von Fragen nach Artikel 18 Absatz 5.

Ich wäre Ihnen dankbar, wenn Sie mir in einem Brief bestätigen, dass die vorstehenden Ausführungen auch der Auffassung des Schweizerischen Bundesrates entsprechen.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

Shelby Cullom Davis

Shelby Cullom Davis

Botschafter der
Vereinigten Staaten von Amerika

TIAS 8302

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EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, den 25. Mai 1973

Exzellenz,

Ich beehre mich, den Empfang Ihres Schreibens folgenden Wortlautes vom 25. Mai 1973 anzuzeigen:

" Ich habe die Ehre, auf den Staatsvertrag über gegenseitige Rechtshilfe in Strafsachen zwischen den Vereinigten Staaten von Amerika und der Schweizerischen Eidgenossenschaft, unterzeichnet am 25. Mai 1973, Bezug zu nehmen, insbesondere auf dessen Artikel 18 und 20.

Die Regierung der Vereinigten Staaten ist der Auffassung, dass Fragen, die von Vertretern des ersuchenden Staats nach Artikel 20 gestellt werden können, nicht über den Rahmen von Absatz 1 dieses Artikels hinausgehen, soweit sie sich auf die Echtheit und die Zulässigkeit als Beweismittel von Schriftstücken oder Akten beziehen. Solche Fragen würden diejenigen umfassen:

1. nach der Verantwortung des Zeugen für die Herstellung und die Nachführung von Schriftstücken und Akten;
2. ob die Schriftstücke oder Akten als Memoranda oder Protokolle zur Aufzeichnung von Handlungen, Transaktionen, Vorfällen oder Ereignissen ausgefertigt wurden;

Seiner Exzellenz
Herrn Shelby Cullom Davis
Botschafter der
Vereinigten Staaten von Amerika

Bern

TIAS 8302

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3. ob die Schriftstücke oder Akten im ordentlichen Geschäftsgang hergestellt wurden;

4. ob es dem ordentlichen Geschäftsgang entsprach, solche Schriftstücke oder Akten entweder zur Zeit der Handlung, der Transaktion, des Vorfalles oder des Ereignisses, oder innerhalb einer angemessenen Frist danach, herzustellen;

5. nach der Bedeutung einer Eintragung in den Schriftstücken oder Akten; und

6. nach dem Verfahren, das bei der Herstellung und Nachführung der Schriftstücke oder Akten sowie bei der Erlangung der darin vermerkten Auskünfte angewendet wurde.

Das gleiche gilt hinsichtlich von Fragen nach Artikel 18 Absatz 5.

Ich wäre Ihnen dankbar, wenn Sie mir in einem Brief bestätigten, dass die vorstehenden Ausführungen auch der Auffassung des Schweizerischen Bundesrates entsprechen."

Ich habe die Ehre zu bestätigen, dass die in Ihrem Brief dargelegte Auffassung mit derjenigen des Schweizerischen Bundesrates übereinstimmt.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

A. Weitnauer

Dr. Albert Weitnauer
Schweizerischer Botschafter

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2125 1976

EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, May 25, 1973.

Excellency:

I have the honor to acknowledge receipt of your letter of May 25, 1973, which reads as follows:

"I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance on Criminal Matters signed on May 25, 1973, and in particular to Articles 18 and 20 thereof.

It is the understanding of the United States Government that questions which may be asked by representatives of the requesting State under Article 20 do not go beyond the scope of paragraph 1 of that Article insofar as they relate to the genuineness and admissibility of the documents or records. Such questions would include those relating to (1) the responsibility of the witness with respect to the making and maintaining of the documents or records; (2) whether the documents or records were made as memoranda or records of the acts, transactions, occurrences or events they purport to record; (3) whether the documents or records were made in the regular course of business; (4) whether it was the regular course of business to make the documents or records at the time of the act, transaction, occurrence or event recorded therein or within a reasonable time thereafter; (5) the meaning of the entries in the documents or records; and (6) the procedure for making and maintaining the documents or records and obtaining the information recorded therein.

His Excellency
Shelby Cullom Davis
Ambassador of the United States
of America

Bern

TIAS 8302

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The above also applies to the scope of questions under paragraph 5 of Article 18.

I would appreciate a letter from your Excellency confirming that the understanding described above is also the understanding of the Swiss Federal Council."

I have the honor to confirm that the understanding set forth in your letter accords with that of the Swiss Federal Council.

Accept, Excellency, the renewed assurances of my highest consideration.

A. Weitnauer

Dr. Albert Weitnauer
Ambassador of Switzerland

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2127 1976

EMBASSY OF THE
UNITED STATES OF AMERICA

Bern, May 25, 1973

Excellency:

I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters signed on May 25, 1973, and in particular to Article 5 thereof, and to bring to your attention the understanding of the United States Government with respect to that Article:

(A) The limitations on use set forth in Article 5 are intended only as an agreement between Governments and, as provided in paragraph 1 of Article 37, do not give rise to a right on the part of any person to take any action in the United States to suppress or exclude any evidence or to obtain other judicial relief. Where any person alleges that any authority in the United States has used materials obtained from Switzerland in a manner inconsistent with the limitations of Article 5, his recourse would be for him to inform the Central Authority of Switzerland for consideration only as a matter between Governments and he has no standing to have such allegations considered in any

His Excellency
Dr. Albert Weitnauer,
Ambassador of Switzerland,
Bern.

TIAS 8302

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proceeding in the United States. Where such allegations are deemed by the requested State to require explanation, an inquiry may be put to the requesting State. The response of that State may, as appropriate, be in writing or an oral exchange pursuant to the consultation procedure of paragraph 1 of Article 39.

(B) The reference in subparagraph b of paragraph 3 of Article 5 to any criminal investigation or proceeding for which assistance may be given includes investigations or proceedings for which assistance is required to be or may be granted under the Treaty, whether or not compulsory measures would or could be utilized.

(C) The limitations on use set forth in Article 5 are not intended to restrict the use of information which has become public any more than the use of information which has become public would be restricted in the requested State.

(D) The limitations on use set forth in Article 5 are not intended to apply to the submission of additional requests for assistance under the Treaty where the requests relate to offenses which are either listed in the Schedule or which are serious in the sense of paragraph 2 of Article 10.

(E) The limitations on use set forth in Article 5 are not intended to apply to any use to which the requested State specifically consents.

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I would appreciate a letter from Your Excellency confirming that the understanding described above is also the understanding of the Swiss Federal Council.

Accept, Excellency, the renewed assurances of my highest consideration.

Shelby Cullom Davis

Shelby Cullom Davis
Ambassador of the
United States of America

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2130 1976

EMBASSY OF THE
UNITED STATES OF AMERICA

Bern, den 25. Mai 1973

Exzellenz,

Ich habe die Ehre, auf den Staatsvertrag über gegenseitige Rechtshilfe in Strafsachen zwischen den Vereinigten Staaten von Amerika und der Schweizerischen Eidgenossenschaft, unterzeichnet am 25. Mai 1973, Bezug zu nehmen, insbesondere auf dessen Artikel 5, und Ihnen die Auffassung der Regierung der Vereinigten Staaten hinsichtlich dieses Artikels zur Kenntnis zu bringen:

(A) Die in Artikel 5 festgesetzten Verwendungsbeschränkungen haben lediglich den Sinn einer Vereinbarung zwischen Regierungen und berechtigen gemäss Artikel 37 Absatz 1 niemanden, in den Vereinigten Staaten ein Beweismittel ausschliessen oder aus dem Recht weisen zu lassen oder irgend eine andere gerichtliche Verfügung zu erwirken. Behauptet jemand, eine Behörde in den Vereinigten Staaten von Amerika habe von der Schweiz erhaltenes Material in einer mit den Beschränkungen des Artikels 5 nicht vereinbarten Art verwendet, so steht als Rechtsbehelf aus-

Seiner Exzellenz
Herrn Dr. Albert Weitnauer
Schweizerischer Botschafter

Bern

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2131 1976

schliesslich die Möglichkeit zur Verfügung, die schweizerische Zentralstelle zu benachrichtigen, die sich damit nur im Sinne einer Angelegenheit zwischen Regierungen zu befassen hat; es besteht keine Legitimation zur Veranlassung der Ueberprüfung solcher Behauptungen in irgend einem Verfahren in den Vereinigten Staaten von Amerika. Der ersuchte Staat verlangt, wenn diese Behauptungen nach seiner Auffassung eine Abklärung erfordern, vom ersuchenden Staat Auskunft. Dieser Staat kann seine Antwort, je nach Lage der Dinge, schriftlich erteilen oder bei einem mündlichen Meinungsaustausch nach Artikel 39 Absatz 1.

(B) Die Bezugnahme in Absatz 3 Buchstabe b des Artikels 5 auf ein Strafverfahren, für das Rechtshilfe zulässig ist, schliesst alle Verfahren ein, für die nach dem Vertrag Rechtshilfe zu leisten ist oder gewährt werden kann, gleichgültig, ob dabei im ersuchten Staat Zwangsmassnahmen angewendet werden müssten oder nicht.

(C) Die Verwendungsbeschränkungen nach Artikel 5 haben nicht den Sinn, die Verwendung öffentlich bekannt gewordener Informationen mehr zu beschränken, als dies der Fall wäre hinsichtlich Informationen, die im ersuchten Staat öffentlich bekannt geworden sind.

(D) Die Verwendungsbeschränkungen nach Artikel 5 sollen nicht angewendet werden auf die Einreichung zusätz-

HeinOnline -- 27.2 U.S.T. 2132 1976

licher Rechtshilfeersuchen auf Grund des Vertrags, soweit diese sich auf strafbare Handlungen beziehen, die entweder in der Liste erwähnt oder als schwer zu qualifizieren sind im Sinne von Artikel 10 Absatz 2.

(E) Die Verwendungsbeschränkungen nach Artikel 5 beziehen sich nicht auf eine Verwendung, welcher der ersuchte Staat besonders zugestimmt hat.

Ich wäre Ihnen dankbar, wenn Sie mir in einem Brief bestätigen, dass die vorstehenden Ausführungen auch der Auffassung des Schweizerischen Bundesrates entsprechen.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

Shelby Cullom Davis

Shelby Cullom Davis

Botschafter der
Vereinigten Staaten von Amerika

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EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, den 25. Mai 1973

Exzellenz,

Ich beehre mich, den Empfang Ihres Schreibens folgenden Wortlautes vom 25. Mai 1973 anzuzeigen:

" Ich habe die Ehre, auf den Staatsvertrag über gegenseitige Rechtshilfe in Strafsachen zwischen den Vereinigten Staaten von Amerika und der Schweizerischen Eidgenossenschaft, unterzeichnet am 25. Mai 1973, Bezug zu nehmen, insbesondere auf dessen Artikel 5, und Ihnen die Auffassung der Regierung der Vereinigten Staaten hinsichtlich dieses Artikels zur Kenntnis zu bringen:

(A) Die in Artikel 5 festgesetzten Verwendungsbeschränkungen haben lediglich den Sinn einer Vereinbarung zwischen Regierungen und berechtigen gemäss Artikel 37 Absatz 1 niemanden, in den Vereinigten Staaten ein Beweismittel ausschliessen oder aus dem Recht weisen zu lassen oder irgend eine andere gerichtliche Verfügung zu erwirken. Behauptet jemand, eine Behörde in den Vereinigten Staaten von Amerika habe von der Schweiz erhaltenes Material in einer mit den Beschränkungen des Artikels 5 nicht vereinbaren Art verwendet, so steht als Rechtsbehelf ausschliesslich die Möglichkeit zur Verfügung, die schweizerische Zentralstelle zu benachrichtigen, die sich damit nur im Sinne einer Angelegenheit zwischen Regierungen zu

Seiner Exzellenz
Herrn Shelby Cullom Davis
Botschafter der
Vereinigten Staaten von Amerika

Bern

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2134 1976

befassen hat; es besteht keine Legitimation zur Veranlassung der Ueberprüfung solcher Behauptungen in irgend einem Verfahren in den Vereinigten Staaten von Amerika. Der ersuchte Staat verlangt, wenn diese Behauptungen nach seiner Auffassung eine Abklärung erfordern, vom ersuchenden Staat Auskunft. Dieser Staat kann seine Antwort, je nach Lage der Dinge, schriftlich erteilen oder bei einem mündlichen Meinungsaustausch nach Artikel 39 Absatz 1.

(B) Die Bezugnahme in Absatz 3 Buchstabe b des Artikels 5 auf ein Strafverfahren, für das Rechtshilfe zulässig ist, schliesst alle Verfahren ein, für die nach dem Vertrag Rechtshilfe zu leisten ist oder gewährt werden kann, gleichgültig, ob dabei im ersuchten Staat Zwangsmassnahmen angewendet werden müssten oder nicht.

(C) Die Verwendungsbeschränkungen nach Artikel 5 haben nicht den Sinn, die Verwendung öffentlich bekannt gewordener Informationen mehr zu beschränken, als dies der Fall wäre hinsichtlich Informationen, die im ersuchten Staat öffentlich bekannt geworden sind.

(D) Die Verwendungsbeschränkungen nach Artikel 5 sollen nicht angewendet werden auf die Einreichung zusätzlicher Rechtshilfeersuchen auf Grund des Vertrags, soweit diese sich auf strafbare Handlungen beziehen, die entweder in der Liste erwähnt oder als schwer zu qualifizieren sind im Sinne von Artikel 10 Absatz 2.

(E) Die Verwendungsbeschränkungen nach Artikel 5 beziehen sich nicht auf eine Verwendung, welcher der ersuchte Staat besonders zugestimmt hat.

Ich wäre Ihnen dankbar, wenn Sie mir in einem Brief bestätigten, dass die vorstehenden Ausführungen auch der Auffassung des Schweizerischen Bundesrates entsprechen."

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2135 1976

Ich habe die Ehre zu bestätigen, dass die in Ihrem Brief dargelegte Auffassung mit derjenigen des Schweizerischen Bundesrates übereinstimmt.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

A. Weitnauer

Dr. Albert Weitnauer
Schweizerischer Botschafter

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2136 1976

EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, May 25, 1973.

Excellency,

I have the honor to acknowledge receipt of your letter of May 25, 1973, which reads as follows:

"I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters signed on May 25, 1973, and in particular to Article 5 thereof, and to bring to your attention the understanding of the United States Government with respect to that Article:

(A) The limitations on use set forth in Article 5 are intended only as an agreement between Governments and, as provided in paragraph 1 of Article 37, do not give rise to a right on the part of any person to take any action in the United States to suppress or exclude any evidence or to obtain other judicial relief. Where any person alleges that any authority in the United States has used materials obtained from Switzerland in a manner inconsistent with the limitations of Article 5, his recourse would be for him to inform the Central Authority of Switzerland for consideration only as a matter between Governments and he has no standing to have such allegations considered in any proceeding in the United States. Where such allegations are deemed by the requested State to require explanation, an inquiry may be put to the requesting State. The response of that State may, as appropriate, be in writing or an oral exchange pursuant to the consultation procedure of paragraph 1 of Article 39.

His Excellency
Shelby Cullom Davis
Ambassador of the United States
of America

Bern

TIAS 8302

88-313 O - 77 -67

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(B) The reference in subparagraph b. of paragraph 3 of Article 5 to any criminal investigation or proceeding for which assistance may be given includes investigations or proceedings for which assistance is required to be or may be granted under the Treaty, whether or not compulsory measures would or could be utilized.

(C) The limitations on use set forth in Article 5 are not intended to restrict the use of information which has become public any more than the use of information which has become public would be restricted in the requested State.

(D) The limitations on use set forth in Article 5 are not intended to apply to the submission of additional requests for assistance under the Treaty where the requests relate to offenses which are either listed in the Schedule or which are serious in the sense of paragraph 2 of Article 10.

(E) The limitations on use set forth in Article 5 are not intended to apply to any use to which the requested State specifically consents.

I would appreciate a letter from your excellency confirming that the understanding described above is also the understanding of the Swiss Federal Council."

I have the honor to confirm that the understanding set forth in your letter accords with that of the Swiss Federal Council.

Accept, Excellency, the renewed assurances of my highest Consideration.

A. Weitnauer

Dr. Albert Weitnauer
Ambassador of Switzerland

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2138 1976

EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, den 25. Mai 1973

Exzellenz,

Ich habe die Ehre, auf den Staatsvertrag über gegenseitige Rechtshilfe in Strafsachen zwischen der Schweizerischen Eidgenossenschaft und den Vereinigten Staaten von Amerika, unterzeichnet am 25. Mai 1973, Bezug zu nehmen, insbesondere auf dessen Artikel 10 Absatz 2.

Der Schweizerische Bundesrat ist bezüglich des in Buchstabe a dieser Bestimmung verwendeten Ausdrucks "schwere Straftat" der Auffassung, dass diese Anforderung erfüllt ist, wenn die Tat objektiv schwer ist, es sei denn, dass wesentliche Tatsachen oder andere Umstände, wie die Verwerflichkeit der Absicht oder die Art und Weise der Begehung, sie als "schwer" qualifizieren. Ob ein in der Liste erwähnter Tatbestand das Erfordernis der "objektiven Schwere" erfüllt, beurteilt sich nach folgenden Kriterien:

1. Mangels klarer Hinweise auf das Gegenteil wird angenommen, dass eine Straftat "schwer" ist, wenn sie

   a. eine unter den Nummern 1, 2, 5, 7, 9, 10, 12, 14, 17, 22, 25, 28-30, 32 und 33 erwähnte Tat ist. Hinsichtlich der unter Nummer 30 aufgeführten Taten wird jedoch im Einzelfall zu prüfen sein, ob Natur und Menge des

Seiner Exzellenz
Herrn Shelby Cullom Davis
Botschafter der
Vereinigten Staaten von Amerika

Bern

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2139 1976

Stoffes, das vorgeworfene Verhalten und die weitere Tätigkeit des Verdächtigten oder Angeklagten die Qualifikation "schwer" rechtfertigen;

b. unter Anwendung von Gewalt oder Waffen begangen wurde;

c. durch eine Bande begangen wurde;oder

d. schwere Folgen für das Opfer hatte.

2. Straftaten gegen das Vermögen, zum Beispiel Nummer 15, 16, 18-21, 23 und 27 der Liste, gelten als "schwer", wenn der bezifferbare Deliktsbetrag $ 1'000.-- übersteigt. Im Falle einer erheblichen Aenderung der Wechselkurse in einem der beiden Staaten oder in beiden soll der Deliktsbetrag im Verfahren nach Artikel 39 Absatz 1 und 2 geprüft und nötigenfalls neu festgesetzt werden.

3. Ob die unter Nummern 34 und 35 erwähnten Straftaten "schwer" sind, wird anhand der ihnen zugrundeliegenden Taten bestimmt.

In bezug auf Ersuchen, die der Verfolgung einer in Artikel 6 Absatz 2 beschriebenen Person dienen, werden beim Entscheid darüber, ob die Bedingung gemäss Artikel 10 Absatz 2 Buchstabe a erfüllt sei, Gewaltakte oder andere, von der organisierten Verbrechergruppe begangene schwere Straftaten berücksichtigt.

Ich wäre Ihnen dankbar, wenn Sie mir in einem Brief bestätigten, dass die vorstehenden Ausführungen auch der Auffassung der Regierung der Vereinigten Staaten von Amerika entsprechen.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

A. Weitnauer

Dr. Albert Weitnauer
Schweizerischer Botschafter

TIAS 8302

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EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, May 25, 1973.

Excellency:

I have the honor to refer to the Treaty between the Swiss Confederation and the United States of America on Mutual Assistance in Criminal Matters signed on May 25, 1973, and in particular to paragraph 2 of Article 10 thereof.

With respect to the expression "serious offense" used in that provision, it is the understanding of the Swiss Federal Council that this standard is based on the objective gravity of the offense, unless the pertinent facts and other circumstances, such as the degree of malice and mode of perpetration, justify such characterization. In applying the objective gravity standard to certain of the offenses listed in the Schedule, the following criteria are applicable:

1. In the absence of clear indication to the contrary, an offense will be presumed to be "serious" if:
   a. It is specified in items 1, 2, 5, 7, 9, 10, 12, 14, 17, 22, 25, 28-30, 32 and 33. However, with respect to the offenses specified in item 30, each case will be examined individually to determine whether the nature and quantity of the materials, the conduct charged, and the other activities of the suspect or defendant warrant characterization as serious;
   b. violence or weapons are used;
   c. it is committed by a gang; or
   d. it results in serious harm to the victim.

His Excellency
Shelby Cullom Davis
Ambassador of the
United States of America

Bern

TIAS 8302

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2. In the case of property offenses, for example, items 15, 16, 18-21, 23, and 27 of the Schedule, an offense will be considered "serious" if the measurable amount involved in the offense is in excess of $1000. In the event that monetary values should undergo a material change in either country or both, the determinate amount of the offense shall, in procedures pursuant to paragraphs 1 and 2 of Article 33, be reexamined and, if necessary, be redetermined.

3. Whether the offenses referred to in items 34 and 35 of the Schedule are "serious" will be determined by considering the underlying offenses.

As to requests made for the purpose of prosecuting a person described in paragraph 2 of Article 6, in determining whether the condition of paragraph 2.a of Article 10 has been met, the acts of violence or other serious offenses committed by the organized criminal group shall be taken into account.

I would appreciate a letter from your Excellency confirming that the understanding described above is also the understanding of the United States Government.

Accept, Excellency, the renewed assurances of my highest consideration.

A. Weitnauer

Dr. Albert Weitnauer
Ambassador of Switzerland

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2142 1976

EMBASSY OF THE
UNITED STATES OF AMERICA

Bern, May 25, 1973

Excellency:

I have the honor to acknowledge receipt of your letter of May 25, 1973, which reads as follows:

"I have the honor to refer to the Treaty between the Swiss Confederation and the United States of America on Mutual Assistance in Criminal Matters signed on May 25, 1973, and in particular to paragraph 2 of Article 10 thereof.

"With respect to the expression 'serious offense' used in that provision, it is the understanding of the Swiss Federal Council that this standard is based on the objective gravity of the offense, unless the pertinent facts and other circumstances, such as the degree of malice and mode of perpetration, justify such characterization. In applying the objective gravity standard to certain of the offenses listed in the Schedule, the following criteria are applicable:

"1. In the absence of clear indication to the contrary, an offense will be presumed to be 'serious' if:

His Excellency
Dr. Albert Weitnauer,
Ambassador of Switzerland,
Bern.

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"a. It is specified in items 1, 2, 5, 7, 9, 10, 12, 14, 17, 22, 25, 28-30, 32 and 33. However, with respect to the offenses specified in item 30, each case will be examined individually to determine whether the nature and quantity of the materials, the conduct charged, and the other activities of the suspect or defendant warrant characterization as serious;

"b. violence or weapons are used;

"c. it is committed by a gang; or

"d. it results in serious harm to the victim.

"2. In the case of property offenses, for example, items 15, 16, 18-21, 23, and 27 of the Schedule, an offense will be considered 'serious' if the measurable amount involved in the offense is in excess of $1,000. In the event that monetary values should undergo a material change in either country or both, the determinate amount of the offense shall, in procedures pursuant to paragraphs 1 and 2 of Article 39, be reexamined and, if necessary, be redetermined.

"3. Whether the offenses referred to in items 34 and 35 of the Schedule are 'serious' will be determined by considering the underlying offenses.

"As to requests made for the purpose of prosecuting a person described in paragraph 2 of Article 6, in determining whether the condition of

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paragraph 2.a of Article 10 has been met, the acts of violence or other serious offenses committed by the organized criminal group shall be taken into account.

"I would appreciate a letter from your Excellency confirming that the understanding described above is also the understanding of the United States Government."

I have the honor to confirm that the understanding set forth in your letter accords to that of the Government of the United States of America.

Accept, Excellency, the renewed assurances of my highest consideration.

Shelby Cullom Davis

Shelby Cullom Davis
Ambassador of the
United States of America

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EMBASSY OF THE
UNITED STATES OF AMERICA

Bern, den 25. Mai 1973

Exzellenz,

Ich beehre mich, den Empfang Ihres Schreibens folgenden Wortlautes vom 25. Mai 1973 anzuzeigen:

" Ich habe die Ehre, auf den Staatsvertrag über gegenseitige Rechtshilfe in Strafsachen zwischen der Schweizerischen Eidgenossenschaft und den Vereinigten Staaten von Amerika, unterzeichnet am 25. Mai 1973, Bezug zu nehmen, inbesondere auf dessen Artikel 10 Absatz 2.

Der Schweizerische Bundesrat ist bezüglich des in Buchstabe a dieser Bestimmung verwendeten Ausdrucks "schwere Straftat" der Auffassung, dass diese Anforderung erfüllt ist, wenn die Tat objektiv schwer ist, es sei denn, dass wesentliche Tatsachen oder andere Umstände, wie die Verwerflichkeit der Absicht oder die Art und Weise der Begehung, sie als "schwer" qualifizieren. Ob ein in der Liste erwähnter Tatbestand das Erfordernis der "objektiven Schwere" erfüllt, beurteilt sich nach folgenden Kriterien:

Seiner Exzellenz
Herrn Dr. Albert Weitnauer
Schweizerischer Botschafter

Bern

TIAS 8302

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1. Mangels klarer Hinweise auf das Gegenteil wird angenommen, dass eine Straftat "schwer" ist, wenn sie

   a. eine unter den Nummern 1, 2, 5, 7, 9, 10, 12, 14, 17, 22, 25, 28-30, 32 und 33 erwähnte Tat ist. Hinsichtlich der unter Nummer 30 aufgeführten Taten wird jedoch im Einzelfall zu prüfen sein, ob Natur und Menge des Stoffes, das vorgeworfene Verhalten und die weitere Tätigkeit des Verdächtigen oder Angeklagten die Qualifikation "schwer" rechtfertigen;

   b. unter Anwendung von Gewalt oder Waffen begangen wurde;

   c. durch eine Bande begangen wurde; oder

   d. schwere Folgen für das Opfer hatte.

2. Straftaten gegen das Vermögen, zum Beispiel Nummer 15, 16, 18-21, 23 und 27 der Liste, gelten als "schwer", wenn der bezifferbare Deliktsbetrag $ 1'000.-- übersteigt. Im Falle einer erheblichen Aenderung der Wechselkurse in einem der beiden Staaten oder in beiden soll der Deliktsbetrag im Verfahren nach Artikel 39 Absatz 1 und 2 geprüft und nötigenfalls neu festgesetzt werden.

3. Ob die unter Nummern 34 und 35 erwähnten Straftaten "schwer" sind, wird anhand der ihnen zugrundeliegenden Taten bestimmt.

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In bezug auf Ersuchen, die der Verfolgung einer in Artikel 6 Absatz 2 beschriebenen Person dienen, werden beim Entscheid darüber, ob die Bedingung gemäss Artikel 10 Absatz 2 Buchstabe a erfüllt sei, Gewaltsakte oder andere, von der organisierten Verbrechergruppe begangene schwere Straftaten berücksichtigt.

Ich wäre Ihnen dankbar, wenn Sie mir in einem Brief bestätigen, dass die vorstehenden Ausführungen auch der Auffassung der Regierung der Vereinigten Staaten von Amerika entsprechen."

Ich habe die Ehre zu bestätigen, dass die in Ihrem Brief dargelegte Auffassung mit derjenigen der Regierung der Vereinigten Staaten von Amerika übereinstimmt.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

Shelby Cullom Davis

Shelby Cullom Davis

Botschafter der
Vereinigten Staaten von Amerika

TIAS 8302

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EMBASSY OF THE
UNITED STATES OF AMERICA

Bern, May 25, 1973

Excellency·

I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters signed on May 25, 1973, and particularly Articles 3, 9, 10, 12, and 25 thereof

It is the understanding of the United States Government that Swiss bank secrecy and Article 273 of the Swiss Penal Code shall not serve to limit the assistance provided for by this Treaty, except as provided by paragraph 2 of Article 10

It is nevertheless understood that the disclosure of facts which a bank is ordinarily required to keep secret could in exceptional circumstances also constitute facts the transmission of which to the requesting State would be likely to result in prejudice to "similar essential interests" of the requested State. Similarly, the disclosure of facts which are manufacturing or business secrets could in exceptional circumstances be of such significant importance that it would result in prejudice to "similar essential interests" of the requested State. In either case the requested State would have the right under paragraph 1 of Article 3 to refuse assistance.

His Excellency
Dr. Albert Weitnauer,
Ambassador of Switzerland,
Bern.

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2149 1976

I would appreciate a letter from Your Excellency confirming that the foregoing also represents the understanding of the Swiss Federal Council.

Accept, Excellency, the renewed assurances of my highest consideration.

Shelby Cullom Davis

Shelby Cullom Davis
Ambassador of the
United States of America

TIAS 8302

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EMBASSY OF THE
UNITED STATES OF AMERICA

Bern, den 25. Mai 1973

Exzellenz,

Ich habe die Ehre, auf den Staatsvertrag über gegenseitige Rechtshilfe in Strafsachen zwischen den Vereinigten Staaten von Amerika und der Schweizerischen Eidgenossenschaft, unterzeichnet am 25. Mai 1973, Bezug zu nehmen, insbesondere auf dessen Artikel 3, 9, 10, 12 und 25.

Die Regierung der Vereinigten Staaten ist der Auffassung, dass das schweizerische Bankgeheimnis und Artikel 273 des Schweizerischen Strafgesetzbuches die in diesem Vertrag vorgesehene Rechtshilfe nicht einschränken, soweit nicht Artikel 10 Absatz 2 Ausnahmen vorsieht.

Es wird jedoch verstanden, dass die Offenbarung von Tatsachen, welche eine Bank üblicherweise geheimhalten muss, unter aussergewöhnlichen Umständen auch Tatsachen sein können, deren Uebermittlung an den ersuchenden Staat geeignet sein könnte, "ähnliche wesentliche Interessen" des ersuchten Staats zu beeinträchtigen. Gleicherweise

Seiner Exzellenz
Herrn Dr. Albert Weitnauer
Schweizerischer Botschafter

Bern

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2151 1976

könnte auch die Offenbarung von Tatsachen, die ein Fabrikations- oder Geschäftsgeheimnis darstellen, unter aussergewöhnlichen Umständen von solch bedeutsamer Wichtigkeit sein, dass sie "ähnliche wesentliche Interessen" des ersuchten Staats beeinträchtigen würde. In beiden Fällen wäre der ersuchte Staat nach Artikel 3 Absatz 1 berechtigt, die Rechtshilfe abzulehnen.

Ich wäre Ihnen dankbar, wenn Sie mir in einem Brief bestätigen, dass die vorstehenden Ausführungen auch der Auffassung des Schweizerischen Bundesrates entsprechen.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

Shelby Cullom Davis

Shelby Cullom Davis
Botschafter der
Vereinigten Staaten von Amerika

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EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, den 25. Mai 1973

Exzellenz,

Ich beehre mich, den Empfang Ihres Schreibens folgenden Wortlautes vom 25. Mai 1973 anzuzeigen:

" Ich habe die Ehre, auf den Staatsvertrag über gegenseitige Rechtshilfe in Strafsachen zwischen den Vereinigten Staaten von Amerika und der Schweizerischen Eidgenossenschaft, unterzeichnet am 25. Mai 1973, Bezug zu nehmen, insbesondere auf dessen Artikel 3, 9, 10, 12 und 25.

Die Regierung der Vereinigten Staaten ist der Auffassung, dass das schweizerische Bankgeheimnis und Artikel 273 des Schweizerischen Strafgesetzbuches die in diesem Vertrag vorgesehene Rechtshilfe nicht einschränken, soweit nicht Artikel 10 Absatz 2 Ausnahmen vorsieht.

Es wird jedoch verstanden, dass die Offenbarung von Tatsachen, welche eine Bank üblicherweise geheimhalten muss, unter aussergewöhnlichen Umständen auch Tatsachen sein können, deren Uebermittlung an den ersuchenden Staat geeignet sein könnte, "ähnliche wesentliche Interessen" des ersuchten Staats zu beeinträchtigen. Gleicherweise könnte auch die Offenbarung von Tatsachen, die ein Fabrikations- oder Geschäftsgeheimnis darstellen, unter aussergewöhnlichen Umständen von solch bedeutsamer Wichtigkeit

Seiner Exzellenz
Herrn Shelby Cullom Davis
Botschafter der
Vereinigten Staaten von Amerika

Bern

TIAS 8302

88-313 O - 77 - 68

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sein, dass sie "ähnliche wesentliche Interessen" des ersuchten Staats beeinträchtigen würde. In beiden Fällen wäre der ersuchte Staat nach Artikel 3 Absatz 1 berechtigt, die Rechtshilfe abzulehnen.

Ich wäre Ihnen dankbar, wenn Sie mir in einem Brief bestätigten, dass die vorstehenden Ausführungen auch der Auffassung des Schweizerischen Bundesrates entsprechen."

Ich habe die Ehre zu bestätigen, dass die in Ihrem Brief dargelegte Auffassung mit derjenigen des Schweizerischen Bundesrates übereinstimmt.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

A. Weitnauer

Dr. Albert Weitnauer
Schweizerischer Botschafter

TIAS 8302

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EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, May 25, 1973.

Excellency,

I have the honor to acknowledge receipt of your letter of May 25, 1973, which reads as follows:

"I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters signed on May 25, 1973, and particularly Articles 3, 9, 10, 12, and 25 thereof.

It is the understanding of the United States Government that Swiss bank secrecy and Article 273 of the Swiss Penal Code shall not serve to limit the assistance provided for by this Treaty, except as provided by paragraph 2 of Article 10.

It is nevertheless understood that the disclosure of facts which a bank is ordinarily required to keep secret could in exceptional circumstances also constitute facts the transmission of which to the requesting State would be likely to result in prejudice to 'similar essential interests' of the requested State. Similarly, the disclosure of facts which are manufacturing or business secrets could in exceptional circumstances be of such significant importance that it would result in prejudice to 'similar essential interests' of the requested State. In either case the requested State would have the right under paragraph 1 of Article 3 to refuse assistance.

I would appreciate a letter from your Excellency confirming that the foregoing also represents the understanding of the Swiss Federal Council."

His Excellency
Shelby Cullom Davis
Ambassador of the
United States of America

Bern

TIAS 8302

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I have the honor to confirm that the understanding set forth in your letter accords with that of the Swiss Federal Council.

Accept, Excellency, the renewed assurances of my highest consideration.

A. Weitnauer

Dr. Albert Weitnauer
Ambassador of Switzerland

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EMBASSY OF THE
UNITED STATES OF AMERICA

Bern, May 25, 1973

Excellency:

I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters signed on May 25, 1973, and in particular to paragraph 1 of Article 22 thereof.

It is the understanding of the United States Government that the term "procedural documents" when used in that paragraph and elsewhere in this Treaty includes, but is not limited to, such documents as subpoenas and summonses to appear or to appear and produce documents, and summonses to appear and answer charges, in the requesting State.

I would appreciate a letter from Your Excellency confirming that the understanding described above is also the understanding of the Swiss Federal Council.

Accept, Excellency, the renewed assurances of my highest consideration.

Shelby Cullom Davis

Shelby Cullom Davis
Ambassador of the
United States of America

His Excellency
Dr. Albert Weitnauer,
Ambassador of Switzerland,
Bern.

TIAS 8302

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EMBASSY OF THE
UNITED STATES OF AMERICA

Bern, den 25. Mai 1973

Exzellenz,

Ich habe die Ehre, auf den Staatsvertrag über gegenseitige Rechtshilfe in Strafsachen zwischen den Vereinigten Staaten von Amerika und der Schweizerischen Eidgenossenschaft, unterzeichnet am 25. Mai 1973, Bezug zu nehmen, insbesondere auf dessen Artikel 22 Absatz 1.

Die Regierung der Vereinigten Staaten von Amerika ist der Auffassung, dass der im angeführten Absatz und sonstwo in diesem Vertrag angewendete Ausdruck "Verfahrensurkunde" die folgenden Schriftstücke umfasst, wobei die Aufzählung nicht abschliessed ist: gewöhnliche und subpoena Aufforderungen, zu erscheinen, oder zu erscheinen und Dokumente herauszugeben, sowie Aufforderungen, zu erscheinen und sich wegen einer Anklage im ersuchenden Staat zu verantworten.

Ich wäre Ihnen dankbar, wenn Sie mir in einem Brief bestätigen, dass die vorstehenden Ausführungen auch der Auffassung des Schweizerischen Bundesrates entsprechen.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

Shelby Cullom Davis
Shelby Cullom Davis
Botschafter der
Vereinigten Staaten von Amerika

Seiner Exzellenz
Herrn Dr. Albert Weitnauer
Schweizerischer Botschafter

Bern

TIAS 8302

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EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, den 25. Mai 1973

Exzellenz,

Ich beehre mich, den Empfang Ihres Schreibens folgenden Wortlautes vom 25. Mai 1973 anzuzeigen:

" Ich habe die Ehre, auf den Staatsvertrag über gegenseitige Rechtshilfe in Strafsachen zwischen den Vereinigten Staaten von Amerika und der Schweizerischen Eidgenossenschaft, unterzeichnet am 25. Mai 1973, Bezug zu nehmen, insbesondere auf dessen Artikel 22 Absatz 1.

Die Regierung der Vereinigten Staaten von Amerika ist der Auffassung, dass der im angeführten Absatz und sonstwo in diesem Vertrag angewendete Ausdruck "Verfahrensurkunde" die folgenden Schriftstücke umfasst, wobei die Aufzählung nicht abschliessend ist: gewöhnliche und subpoena Aufforderungen, zu erscheinen, oder zu erscheinen und Dokumente herauszugeben, sowie Aufforderungen, zu erscheinen und sich wegen einer Anklag im ersuchenden Staat zu verantworten.

Ich wäre Ihnen dankbar, wenn Sie mir in einem Brief bestätigten, dass die vorstehenden Ausführungen auch der Auffassung des Schweizerischen Bundesrates entsprechen."

Ich habe die Ehre zu bestätigen, dass die in Ihrem Brief dargelegte Auffassung mit derjenigen des Schweizerischen Bundesrates übereinstimmt.

Seiner Exzellenz
Herrn Shelby Cullom Davis
Botschafter der
Vereinigten Staaten von Amerika

Bern

TIAS 8302

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Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

A. Weitnauer

Dr. Albert Weitnauer
Schweizerischer Botschafter

TIAS 8302

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EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, May 25, 1973.

Excellency:

I have the honor to acknowledge receipt of your letter of May 25, 1973, which reads as follows:

"I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters signed on May 25, 1973, and in particular to paragraph 1 of Article 22 thereof.

It is the understanding of the United States Government that the term 'procedural documents' when used in that paragraph and elsewhere in the Treaty includes, but is not limited to, such documents as subpoenas and summonses to appear or to appear and produce documents, and summonses to appear and answer charges, in the requesting State.

I would appreciate a letter from your Excellency confirming that the understanding described above is also the understanding of the Swiss Federal Council."

I have the honor to confirm that the understanding set forth in your letter accords with that of the Swiss Federal Council.

Accept, Excellency, the renewed assurances of my highest consideration.

A. Weitnauer

Dr. Albert Weitnauer
Ambassador of Switzerland

His Excellency
Shelby Cullom Davis
Ambassador of the United States
of America
Bern

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2161 1976

EMBASSY OF THE
UNITED STATES OF AMERICA

Bern, May 25, 1973

Excellency:

I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters signed on May 25, 1973, and in particular to Article 15 thereof.

With respect to the obligation under Article 15 to limit the disclosure of evidence or information furnished by Switzerland, your attention is directed to the Sixth Amendment to the United States Constitution which provides that:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." (emphasis supplied)

His Excellency
Dr. Albert Weitnauer,
Ambassador of Switzerland,
Bern.

TIAS 8302

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From interpretations of this Amendment by Federal courts in the United States, it would appear that any attempt to restrict public access to testimony relating to the guilt or innocence of an individual being prosecuted would be violative of the public trial provision. This would apply to testimony taken in Switzerland pursuant to this Treaty and offered in evidence in a criminal trial in the United States.

Interpretations of this Amendment also indicate that public access cannot be denied to documents introduced in evidence which relate to the guilt or innocence of the defendant without violating the public trial provision of the Constitution. However, since the question of denying public access to documents is not entirely free from doubt, the United States Government will seek to obtain a protective order, where appropriate, in an early case in which documentary evidence is furnished by Switzerland. Such protective order would seek to confine access to the documentary evidence itself to the court, jury, prosecution, defendant, and his counsel at the trial and appellate stages. To the extent that the use of a protective order is upheld by our courts, the United States Government will apply for such orders in handling documentary evidence furnished by Switzerland pursuant to the Treaty as to which Switzerland makes a request pursuant to Article 15.

Moreover, a defendant in a criminal proceeding, should he voluntarily choose to do so, is not prohibited from seeking to waive his constitutional right to a public trial which, if granted, would result in limiting public access to evidence and information obtained from Switzerland.

Regardless of the extent to which secrecy is permitted during the trial or appeal, the United States Government will, after completion of the trial or appeal, seek to have the court seal those parts of the official

HeinOnline -- 27.2 U.S.T. 2163 1976

file which consist of materials obtained by the United States from Switzerland under this Treaty and are the subject of an application by Switzerland pursuant to Article 15 of this Treaty.

I would appreciate a letter from Your Excellency acknowledging this communication.

Accept, Excellency, the renewed assurances of my highest consideration.

Shelby Cullom Davis

Shelby Cullom Davis
Ambassador of the
United States of America

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2164 1976

EMBASSY OF THE
UNITED STATES OF AMERICA

Bern, den 25. Mai 1973

Exzellenz,

Ich habe die Ehre, auf den Staatsvertrag über gegenseitige Rechtshilfe in Strafsachen zwischen den Vereinigten Staaten von Amerika und der Schweizerischen Eidgenossenschaft, unterzeichnet am 25. Mai 1973, Bezug zu nehmen, insbesondere auf dessen Artikel 15.

Im Zusammenhang mit der nach Artikel 15 bestehenden Verpflichtung, die öffentliche Zugänglichkeit von Auskünften, Schriftstücken und Beweismitteln, die von der Schweiz übermittelt worden sind, zu beschränken, wird auf den Zusatzartikel VI der Verfassung der Vereinigten Staaten von Amerika hingewiesen, welcher folgenden Wortlaut hat:

> In allen Strafverfahren hat der Angeklagte Anspruch auf einen ohne Verzögerung durchzuführenden und öffentlichen Prozess vor einem unparteiischen Geschworenengericht desjenigen Staats und Bezirks, in welchem die Straftat begangen wurde, wobei der zuständige Bezirk vorher auf gesetzlichem Wege zu ermitteln ist. Er hat weiterhin Anspruch darauf, über die Art und Gründe der Anklage unterrichtet und den Belastungszeugen gegenübergestellt zu werden, sowie auf Zwangsvorladung von Entlastungszeugen und einen Rechtsbeistand zu seiner Verteidigung.

Seiner Exzellenz
Herrn Dr. Albert Weitnauer
Schweizerischer Botschafter

Bern

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Aus der Auslegung dieses Zusatzartikels durch Bundesgerichte der Vereinigten Staaten von Amerika ergibt sich, dass jeder Versuch der Beschränkung der öffentlichen Zugänglichkeit von Zeugenaussagen, die sich auf Schuld oder Unschuld einer verfolgten Person beziehen, die "public trial-Vorschrift" verletzen würde. Unter diese Vorschrift würden auch Zeugenaussagen fallen, die nach diesem Vertrag in der Schweiz erhoben worden sind und in einem gerichtlichen Strafverfahren von den Vereinigten Staaten von Amerika als Beweismittel verwendet werden sollen.

Es gibt sich daraus ferner, dass die öffentliche Zugänglichkeit von Schriftstücken, die sich auf Schuld oder Unschuld des Angeklagten beziehen, nicht aufgehoben werden kann, ohne dass dadurch die "public trial-Vorschrift" verletzt wird. Da jedoch nicht zweifellos feststeht, ob die öffentliche Zugänglichkeit von Schriftstücken aufgehoben werden kann, wird die Regierung der Vereinigten Staaten von Amerika, sobald von der Schweiz übermittelte Schriftstücke dazu eine geeignete Gelegenheit bieten, den Erlass einer gerichtlichen Schutzverfügung (protective order) beantragen. Eine solche Verfügung hätte den Zweck, die Zugänglichkeit schriftlicher Beweismittel auf das Gericht, die Geschworenen, den Vertreter der Anklage, den Angeklagten und seinen Verteidiger zu beschränken, und zwar vor erster Instanz wie auch in den Rechtsmittelverfahren. In dem Umfang, in dem eine Verwendung der "protective order" von unseren Gerichten geschützt würde, wird die Regierung der Vereinigten Staaten von Amerika in den Fällen, in denen von der Schweiz auf Grund des Vertrages übermittelte schriftliche Be-

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weismittel nach Artikel 15 zu behandeln sind, solche Verfügungen beantragen.

Ueberdies ist es dem in einem Strafverfahren Angeklagten, sofern er aus freiem Willen darum ersucht, nicht verwehrt, die Entbindung von seinem verfassungsmässigen Recht auf ein öffentliches Verfahren zu beantragen, was, falls diesem Antrag entsprochen wird, dazu führt, die Oeffentlichkeit bezüglich der von der Schweiz übermittelten Beweismittel und Informationen zu beschränken.

Ohne Rücksicht auf das Ausmass, in dem das Geheimnis während der Hauptverhandlung oder des Rechtsmittelverfahrens zu wahren möglich war, wird sich die Regierung der Vereinigten Staaten von Amerika bemühen, nach Abschluss der Hauptverhandlung oder des Rechtsmittelverfahrens diejenigen Teile des amtlichen Dossiers mit dem Gerichtssiegel versehen zu lassen, welche die Vereinigten Staaten von Amerika von der Schweiz gemäss diesem Vertrag erhalten haben und worauf sich das nach Artikel 15 dieses Vertrages gestellte Ersuchen der Schweiz bezieht.

Ich wäre Ihnen dankbar, wenn Sie mir den Empfang dieses Briefes bestätigen.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

Shelby Cullom Davis

Shelby Cullom Davis
Botschafter der
Vereinigten Staaten von Amerika

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2167 1976

EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, den 25. Mai 1973

Exzellenz,

Von Ihrem Schreiben vom 25. Mai 1973, mit dem Sie die Bedeutung von Artikel 15 einlässlich erläutern, habe ich gebührend Kenntnis genommen. Ich möchte Ihnen für Ihre Erklärungen danken.

Sie haben mich darauf hingewiesen, dass es aus verfassungsrechtlichen Gründen wahrscheinlich nicht möglich ist, im Masse, in dem es die schweizerische Regierung als wünschbar erachtet, Beweismittel oder Informationen, welche in Artikel 10 Absatz 2 beschrieben und von der Schweiz auf Grund dieser Bestimmung übermittelt worden sind, geheim zu halten, wenn sie in den Vereinigten Staaten von Amerika im Zusammenhang mit einem Strafverfahren als Beweismittel vorgelegt werden oder anderweitig Verwendung finden.

Die schweizerische Regierung hofft sehr auf den Erfolg der gemäss Ihrem Brief von der Regierung der Vereinigten Staaten von Amerika zu unternehmenden und auf eine Verstärkung des Schutzes solcher Beweismittel oder Informationen gerichteten Bemühungen sowie - unter Berücksichtigung der Entwicklung ihrer Rechtsordnung - auf die Ausweitung dieser Bemühungen über die von Ihnen erwähnten Grenzen hinaus.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

Seiner Exzellenz
Herrn Shelby Cullom Davis
Botschafter der
Vereinigten Staaten von Amerika

Bern

A. Weitnauer

Dr. Albert Weitnauer
Schweizerischer Botschafter

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2168 1976

EIDGENÖSSISCHES POLITISCHES DEPARTEMENT

Bern, May 25, 1973.

Excellency:

I have taken due note of your letter of May 25, 1973, setting out what Article 15 means in some more detail. I should like to thank you for your explanation.

You have advised me that for constitutional reasons evidence or information described in paragraph 2 of Article 10 and provided by Switzerland pursuant to that paragraph, probably cannot be kept secret if it is introduced into evidence or otherwise used in a criminal trial in the United States to the extent the Swiss Government would consider appropriate.

The Swiss Government very much hopes that the efforts to be made by the Government of the United States according to your letter to obtain a higher degree of protection for such evidence or information will be successful and - as your legal system evolves - go beyond the limits you indicated.

Accept, Excellency, the renewed assurances of my highest consideration.

A. Weitnauer

Dr. Albert Weitnauer
Ambassador of Switzerland

His Excellency
Shelby Cullom Davis
Ambassador of the United States
of America

Bern

TIAS 8302

89-313 O - 77 - 69

HeinOnline -- 27.2 U.S.T. 2169 1976

Bern, December 23, 1975

Excellency,

I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, signed at Bern, May 25, 1973, and the Swiss Federal Law of October 3, 1975, Relating to the Treaty with the United States of America on Mutual Assistance in Criminal Matters.

In view of the provisions of Paragraph 2 of Article 26 of the above mentioned Swiss Federal Law, the Government of the United States is concerned that evidentiary materials obtained by the appropriate Swiss authorities pursuant to the application of Paragraph 1 of Article 12 of the Treaty may not be admitted into evidence in the courts in the United States of America. This concern is based upon the understanding that certain cantons do not have provisions for taking testimony under either oath or affirmation. Where those circumstances exist, it is the understanding of my Government that a witness nonetheless will be urged to agree to give his testimony pursuant to formal oath or affirmation.

I have been requested to ascertain the procedures which would be invoked upon receipt of an application from the central authority of the United States pursuant to the provisions of Paragraph 1 of Article 12 of the Treaty, should an oath or affirmation be refused in the relevant canton. It is the understanding of my Government that the penal sanctions provided by Article 307 of the Swiss Criminal Code are applicable in all cantons of the Swiss Confederation for willfully giving false testimony, even where an oath or affirmation is not provided for in the procedural law of the particular canton. Based on this understanding it is agreed that, in the event a witness declines to give testimony under a formal oath or affirmation and there is no specific procedural provision for an oath or affirmation in the applicable procedural law, the witness will be admonished to tell the truth prior to giving testimony and will be advised of the consequences, under the Swiss Criminal Code, of his failure to tell the truth and of the fact that the transcript will reflect such instructions.

His Excellency
Pierre Graber
Federal Councilor
Head of the Federal Political Department
Bern

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2170 1976

In addition to the procedure outlined above, after the testimony has been taken, it would be desirable that the witness sign the transcript affirming that his testimony is true, and it is the understanding of my Government that the witness will be urged to sign such a statement.

If the foregoing understanding is likewise the understanding of the Swiss Federal Council, I would appreciate a confirmation from Your Excellency to that effect.

Accept, Excellency, the renewed assurances of my highest consideration.

Harry I. Odell, Chargé d'Affaires
of the United States of America

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2171 1976

Bern, 23. Dezember 1975

Exzellenz,

ich habe die Ehre, auf den Staatsvertrag zwischen den Vereinigten Staaten von Amerika und der Schweizerischen Eidgenossenschaft über gegenseitige Rechtshilfe in Strafsachen, unterzeichnet in Bern am 25. Mai 1973, und das schweizerische Bundesgesetz vom 3. Oktober 1975 zum Staatsvertrag mit den Vereinigten Staaten von Amerika über gegenseitige Rechtshilfe in Strafsachen Bezug zu nehmen.

Angesichts der Bestimmungen des Artikels 26 Absatz 2 des erwähnten schweizerischen Bundesgesetzes ist die Regierung der Vereinigten Staaten darüber beunruhigt, dass Beweismaterial, welches die zuständigen schweizerischen Behörden in Anwendung von Artikel 12 Absatz 1 des Staatsvertrages erhoben haben, von den Gerichten der Vereinigten Staaten als Beweismittel nicht zugelassen werden könnte. Diese Bedenken beruhen auf der Auffassung, dass in gewissen Kantonen keine Bestimmungen über die Bekräftigung einer Zeugeneinvernahme durch Eid oder Wahrheitsversprechen bestehen. Wo diese Sachlage gegeben ist, wird nach Auffassung meiner Regierung einem Zeugen dennoch nachdrücklich empfohlen, sein Zeugnis freiwillig durch Eid oder Wahrheitsversprechen formell zu bekräftigen.

Ich bin ersucht worden festzustellen, welches Verfahren eingeschlagen wird, wenn die Zentralstelle der Vereinigten Staaten einen Antrag gemäss Artikel 12 Absatz 1 des Staatsvertrags stellt und ein Eid oder ein Wahrheitsversprechen in dem in Betracht fallenden Kanton abgelehnt wird. Nach Auffassung meiner Regierung gelten die Strafandrohungen von Artikel 307 des Schweizerischen Strafgesetzbuchès wegen vorsätzlichen falschen Zeugnisses in allen Kantonen der Schweizerischen Eidgenossenschaft, selbst wenn der Eid oder das Wahrheitsversprechen im Prozessrecht des in Frage kommenden Kantons nicht vorgesehen ist. Gestützt auf diese Auffassung besteht gegenseitiges Einverständnis darüber, dass im Falle der Weigerung eines Zeugen, sein Zeugnis formell durch Eid oder Wahrheitsversprechen zu bekräftigen, und bei Fehlen besonderer Bestimmungen über den Eid oder das Wahrheitsversprechen im anwendbaren Prozessrecht der Zeuge vor der Ablegung des Zeugnisses zur Wahrheit ermahnt und auf die Folgen hingewiesen wird, die das Schweizerische Strafgesetzbuch an die nicht wahrheitsgemässe Aussage knüpft, sowie auf die Tatsache, dass diese Unterrichtung im Verhandlungsprotokoll festgehalten wird.

Seiner Exzellenz
Herrn Bundesrat Pierre Graber
Vorsteher des Eidgenössischen Politischen Departements
Bern

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2172 1976

Zusätzlich zu dem oben beschriebenen Verfahren wäre es wünschbar, dass der Zeuge nach seiner Abhörung dieses Protokoll unterzeichnet und dabei bestätigt, dass sein Zeugnis der Wahrheit entspricht, und nach Auffassung meiner Regierung wird dem Zeugen die Unterzeichnung einer solchen Erklärung nachdrücklich empfohlen.

Wenn der Schweizerische Bundesrat die vorstehende Auffassung teilt, wäre ich Ihnen dankbar, wenn Sie mir dies in einem Brief bestätigten.

Genehmigen Sie, Exzellenz, die erneute Versicherung meiner ausgezeichneten Hochachtung.

Harry I. Odell,
Geschäftsträger
der Vereinigten Staaten von Amerika

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2173 1976

DER VORSTEHER
DES
EIDG. POLITISCHEN DEPARTEMENTES

Bern, den 23. Dezember 1975

Herr Geschäftsträger,

Ich beehre mich, den Empfang Ihres Schreibens folgenden Wortlautes vom 23. Dezember 1975 anzuzeigen :

"Ich habe die Ehre, auf den Staatsvertrag zwischen den Vereinigten Staaten von Amerika und der Schweizerischen Eidgenossenschaft über gegenseitige Rechtshilfe in Strafsachen, unterzeichnet in Bern am 25. Mai 1973, und das schweizerische Bundesgesetz vom 3. Oktober 1975 zum Staatsvertrag mit den Vereinigten Staaten von Amerika über gegenseitige Rechtshilfe in Strafsachen Bezug zu nehmen.

Angesichts der Bestimmungen des Artikels 26 Absatz 2 des erwähnten schweizerischen Bundesgesetzes ist die Regierung der Vereinigten Staaten darüber beunruhigt, dass Beweismaterial, welches die zuständigen schweizerischen Behörden in Anwendung von Artikel 12 Absatz 1 des Staatsvertrags erhoben haben, von den Gerichten der Vereinigten Staaten als Beweismittel nicht zugelassen werden könnte. Diese Bedenken beruhen auf der Auffassung, dass in gewissen Kantonen keine Bestimmungen über die Bekräftigung einer Zeugeneinvernahme durch Eid oder Wahrheitsversprechen bestehen. Wo diese Sachlage gegeben ist, wird nach Auffassung meiner Regierung einem Zeugen dennoch nachdrücklich empfohlen, sein Zeugnis freiwillig durch Eid oder Wahrheitsversprechen formell zu bekräftigen.

Herrn Harry I. Odell
Geschäftsträger der
Vereinigten Staaten von Amerika
B e r n

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2174 1976

Ich bin ersucht worden festzustellen, welches Verfahren eingeschlagen wird, wenn die Zentralstelle der Vereinigten Staaten einen Antrag gemäss Artikel 12 Absatz 1 des Staatsvertrags stellt und ein Eid oder ein Wahrheitsversprechen in dem in Betracht fallenden Kanton abgelehnt wird. Nach Auffassung meiner Regierung gelten die Strafandrohungen von Artikel 307 des Schweizerischen Strafgesetzbuches wegen vorsätzlichen falschen Zeugnisses in allen Kantonen der Schweizerischen Eidgenossenschaft, selbst wenn der Eid oder das Wahrheitsversprechen im Prozessrecht des in Frage kommenden Kantons nicht vorgesehen ist. Gestützt auf diese Auffassung besteht gegenseitiges Einverständnis darüber, dass im Falle der Weigerung eines Zeugen, sein Zeugnis formell durch Eid oder Wahrheitsversprechen zu bekräftigen, und bei Fehlen besonderer Bestimmungen über den Eid oder das Wahrheitsversprechen im anwendbaren Prozessrecht der Zeuge vor der Ablegung des Zeugnisses zur Wahrheit ermahnt und auf die Folgen hingewiesen wird, die das Schweizerische Strafgesetzbuch an die nicht wahrheitsgemässe Aussage knüpft, sowie auf die Tatsache, dass diese Unterrichtung im Verhandlungsprotokoll festgehalten wird.

Zusätzlich zu dem oben beschriebenen Verfahren wäre es wünschbar, dass der Zeuge nach seiner Abhörung dieses Protokoll unterzeichnet und dabei bestätigt, dass sein Zeugnis der Wahrheit entspricht, und nach Auffassung meiner Regierung wird dem Zeugen die Unterzeichnung einer solchen Erklärung nachdrücklich empfohlen.

Wenn der Schweizerische Bundesrat die vorstehende Auffassung teilt, wäre ich Ihnen dankbar, wenn Sie mir dies in einem Brief bestätigten."

Ich habe die Ehre zu bestätigen, dass die in Ihrem Brief dargelegte Auffassung mit derjenigen des Schweizerischen Bundesrates übereinstimmt.

TIAS 8302

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Genehmigen Sie, Herr Geschäftsträger, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

Graber,[1]

[1] Graber

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LE CHEF
DU DÉPARTEMENT POLITIQUE FÉDÉRAL

Berne, December 23, 1975

Sir,

I have the honour to acknowledge receipt of your letter of December 23, 1975, which reads as follows :

"I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, signed at Bern, May 25, 1973, and the Swiss Federal Law of October 3, 1975, Relating to the Treaty with the United States of America on Mutual Assistance in Criminal Matters.

In view of the provisions of Paragraph 2 of Article 26 of the above mentioned Swiss Federal Law, the Government of the United States is concerned that evidentiary materials obtained by the appropriate Swiss authorities pursuant to the application of Paragraph 1 of Article 12 of the Treaty may not be admitted into evidence in the courts in the United States of America. This concern is based upon the understanding that certain cantons do not have provisions for taking testimony under either oath or affirmation. Where those circumstances exist, it is the understanding of my Government that a witness nonetheless will be urged to agree to give his testimony pursuant to formal oath or affirmation.

I have been requested to ascertain the procedures which would be invoked upon receipt of an application from the central authority of the United States pursuant to the provisions of Paragraph 1 of Article 12 of the Treaty, should an oath or affirmation be refused in the relevant canton. It is the under-

Harry I. Odell
Chargé d'Affaires of the
United States of America
B e r n e

TIAS 8302

HeinOnline -- 27.2 U.S.T. 2177 1976

standing of my Government that the penal sanctions provided by Article 307 of the Swiss Criminal Code are applicable in all cantons of the Swiss Confederation for willfully giving false testimony, even where an oath or affirmation is not provided for in the procedural law of the particular canton. Based on this understanding it is agreed that, in the event a witness declines to give testimony under a formal oath or affirmation and there is no specific procedural provision for an oath or affirmation in the applicable procedural law, the witness will be admonished to tell the truth prior to giving testimony and will be advised of the consequences, under the Swiss Criminal Code, of his failure to tell the truth and of the fact that the transcript will reflect such instructions.

In addition to the procedure outlined above, after the testimony has been taken, it would be desirable that the witness sign the transcript affirming that his testimony is true, and it is the understanding of my Government that the witness will be urged to sign such a statement.

If the foregoing understanding is likewise the understanding of the Swiss Federal Council, I would appreciate a confirmation from Your Excellency to that effect."

I have the honour to confirm that the understanding set forth in your letter accords with that of the Swiss Federal Council.

Accept, Sir, the renewed assurances of my highest consideration.

Gradey

TIAS 8302

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BY HAND DELIVERY

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Permanent Subcommittee on Investigations
Homeland Security & Governmental Affairs Committee
United States Senate
199 Russell Senate Office Building
Washington, D.C. 20510-6200

Timothy R. Terry, Esq.
Minority Counsel
Permanent Subcommittee on Investigations
Homeland Security & Governmental Affairs Committee
United States Senate
199 Russell Senate Office Building
Washington, D.C. 20510-6200

Re: *PSI Requests to UBS for Information*

Dear Messrs. Roach & Terry:

We are writing on behalf of our client, UBS AG ("UBS"), in response to the pending requests for information from the staff of the U.S. Senate's Permanent Subcommittee on Investigations ("Subcommittee"). The Subcommittee has asked UBS for information regarding the number and types of accounts that UBS maintained for U.S. clients as part of the U.S. cross-border business.

UBS has requested that we respond on its behalf. The aggregate account information that we are producing today is derived from and consistent with account data that UBS provided to the Department of Justice. This aggregate account data represent our client's best estimates of the information at the time they were submitted to the Justice Department, but the data are preliminary and thus remain subject to correction, amendment, and supplementation.

Permanent Subcommittee on Investigations
EXHIBIT #23

UBS estimates that, as of July 31, 2008, its program to exit accounts of U.S. resident clients serviced by the U.S. cross-border business (the "Exit Program") included approximately 14,000 banking-only accounts (*i.e.*, accounts without securities) with CHF 200 million in assets, and approximately 16,500 custody accounts (*i.e.*, accounts that usually, but do not always, hold securities) with CHF 16.74 billion in assets, including in each case the accounts of both individuals and non-operating companies. Thus, as of July 31, 2008, the total population of the Exit Program was approximately 30,500 accounts with CHF 16.94 billion in assets.

For the period July 31, 2008 through January 31, 2009, approximately 14,400 accounts were exited, representing approximately CHF 3.9 billion in assets. Of those exited accounts, approximately 4,600, representing approximately CHF 434 million in assets, were transferred (or their assets or proceeds were transferred) to U.S. financial institutions. Approximately 600 accounts, representing roughly CHF 122 million in assets, were exited and transferred (or their assets or proceeds were transferred) to UBS SEC-registered entities. The remaining accounts were generally transferred to other non-U.S. financial institutions.

In addition, we are producing to the Subcommittee the enclosed chart which contains our client's best estimates of the total number of banking-only and custody accounts in Booking Center Switzerland held by U.S. clients, regardless of domicile, as of September 30, 2008, and the amount of assets in those accounts. As explained above, this is data that UBS previously provided to the Justice Department. To the extent the data set forth in the enclosed chart differ from the data set forth above with respect to the Exit Program, it is because the chart includes additional data with respect to customers who are not domiciled in the United States.

Moreover, the estimates of accounts held by U.S. clients that were provided to the Subcommittee Staff in July 2008 (*i.e.*, approximately 20,000 clients regardless of domicile holding approximately CHF 18 billion in assets) were clearly identified in our responses to the Subcommittee staff as accounts for U.S. clients, regardless of domicile, holding securities in Booking Center Switzerland. The enclosed estimates are generally consistent with that information because the larger numbers for total accounts reflect the fact that the attached data also include approximately 24,000 banking-only accounts and approximately 4,000 custody accounts that did not hold securities. Individual U.S. client accounts, regardless of domicile, did not hold U.S. securities unless the U.S. client had provided an IRS Form W-9 to UBS.

As noted above, the information provided in this letter and the enclosed documents are subject to change and/or supplementation as UBS continues its examination of these issues. Moreover, UBS continues to review its files for information responsive to the staff's other pending requests and, to the extent it is appropriate to do so, expects to produce that information in due course.

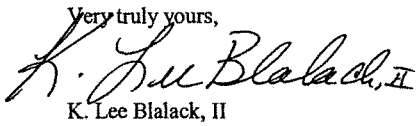
* * *

The information requested by the Subcommittee includes confidential internal information and proprietary business records that UBS does not make available to the general

public. UBS is producing these materials pursuant to Senate Rule XXVI and formally requests that this letter and the enclosed documents be treated as confidential business records. Accordingly, should you wish to publicly release this letter or any of these documents, UBS respectfully requests reasonable notice of your intent to do so and the opportunity to object to such a release.

Should you have any questions regarding this matter, please contact me at your earliest convenience.

Very truly yours,



K. Lee Blalack, II
for O'Melveny & Myers LLP

cc: Lou Barash, Esq. (via electronic delivery w/enclosures)
Thomas J. Delaney, Esq. (via electronic delivery w/enclosures)

UBS AG

U.S. Client Accounts All Domiciles

Booking Center Switzerland

As of September 30, 2008

Account Type	Number of Accounts	Assets in CHF
Banking Only Accounts		
Assets less than 50,000 CHF	21,282	174,000,000
Assets more than 50,000 CHF	3,339	1,162,000,000
Total	24,621	1,336,000,000
Custody Accounts with Securities		
Accounts with Form W-9	685	1,643,000,000
Accounts without Form W-9	18,491	14,143,000,000
Total	19,176	15,786,000,000
Custody Accounts with No Securities		
Accounts with Form W-9	342	179,000,000
Accounts without Form W-9	3,625	1,580,000,000
Total	3,967	1,759,000,000
Total of all accounts	47,764	18,881,000,000

Subject to description in attached letter dated March 3, 2009.

2009-02436

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SWITZERLAND

TRANSLATION

This is a translation of a press release of the Swiss Administrative Court:

Federal Administrative Court
[Bundesverwaltungsgericht
Tribunal administratif fédéral
Tribunale amministrativo federale
Tribunal administrativ federal]

Media release

Bern, March 6, 2009

Appellate Proceeding in the Matter of Administrative Assistance of the Confederate Tax Administration to the United States of America for Tax Fraud and Related Matters.

On March 5, 2009, the Federal Administrative Court decided the first two appeals of November 18/19, 2008 concerning instructions of the Swiss Tax Administration (ESTV, Eidgenössische Steuerverwaltung) ordering the disclosure of banking records of an American citizen and his company in the Virgin Islands to the American Tax Administration (IRS). The legal basis for the ESTV decision was the double taxation treaty with the United States that provides for administrative assistance by the ESTV to prevent fraud "or the like."[1]

The Federal Administrative Court held that the IRS request was suitable for the granting of administrative assistance. It is true that the IRS could only indicate in which manner and through which specific schemes the American citizens might have committed tax fraud. Moreover, the IRS could not provide the names of suspected American taxpayers. Nevertheless, the Federal Administrative Court determined that the request for administrative assistance was specific enough; it did not constitute an inadmissible fishing expedition for evidence.

In addition, the Federal Constitutional Court examined whether there was sufficient suspicion that the appellant American citizen and his company had committed tax fraud or the

[1] Translators note: "or the like" is the exact wording of the Treaty. Convention between the United States of America and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income, Oct. 2, 1996, TIAS, *reprinted in* 4 TAX TREATIES 185,001(CCH,2005).

Permanent Subcommittee on Investigations
EXHIBIT #24

like.[2] The Court had to carry out this examination in the specific case exclusively on the basis of the submitted files. Until the year 2000, the appellant had maintained a Liechtenstein foundation, and one of its purposes was to defray his living expenses and those of his family. In view of the introduction of the so-called "qualified intermediary system" through the American fiscal authorities, the assets of this foundation were transferred to a newly founded company in the British Virgin Islands. UBS AG maintained the bank accounts of the company and functioned as a "qualified intermediary" in relationship to the American tax authorities. The company declared to UBS AG that it was the beneficiary of the assets administered by UBS AG on its behalf.

The Federal Administrative Court explained that there would have been a simple tax evasion, if the Virgin Island Company had in fact acted as a legally independent person and the American owner of the participatory rights had only failed to declare to the American fiscal authority the income from this company and his participation therein. For such a simple tax evasion, no administrative assistance could have been granted according to the Double Taxation Treaty. In the case at issue, however, the American taxpayer practically ignored the existence of his company in the Virgin Islands and acted as though he himself was the owner of the assets, in particular, he himself made investment decisions. The Federal Administrative Court concluded, therefore, that there was enough of a suspicion of tax fraud: the decisive criteria were the actions of the American taxpayer together with the inconsistent declaration of the company that it was the beneficiary of the assets. For this reason, administrative assistance could have been rendered in this individual adjudged case and the bank records of the company and of the American taxpayer could have been handed over to the American tax authorities.

The Federal Administrative Court continued by stating that the records in question had already been transferred by UBS AG to the U.S. authorities on February 18, 2009, on the basis of an instruction of the Swiss Financial Markets Supervisory Agency (FINMA, Eidgenössische Finanzmarktaufsicht) of the same date. This eliminated the legally protected interest of the appellants in obtaining a decision on the disclosure of the records within the framework of an administrative assistance proceeding. The Federal Administrative Court concluded that, under these circumstances, the Court could not decide the appeal, and that, instead, the appeal had to be denied for lack of substantiality. Possibly an exception might have been made if there had been reason to fear that the same question could be posed again at any time, and that again it might not be possible to decide the question in a timely way. The Federal Constitutional Court, however, held that this was not the case. It could be assumed that the competent authorities would

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[2] *See* translators note, *id.*

undertake all measures in a timely way so that, in the future, under similar circumstances, it would be possible to employ the proceedings that have been agreed upon by treaty and that conform to the rule of law.

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Translated by Edith Palmer
Senior Foreign Law Specialist
March 2009

Bundesverwaltungsgericht
Tribunal administratif fédéral
Tribunale amministrativo federale
Tribunal administrativ federal

Medienmitteilung – Communiqué aux médias – Comunicato per la stampa – Media release

Bern, 6. März 2009

Beschwerdeverfahren in Sachen Amtshilfe der Eidgenössischen Steuerverwaltung wegen Steuerbetrug und dergleichen an die USA

Das Bundesverwaltungsgericht hat am 5. März 2009 die ersten beiden Beschwerden vom 18./19. November 2008 gegen Verfügungen der Eidgenössischen Steuerverwaltung (ESTV) beurteilt, in denen diese die Herausgabe von Bankakten eines amerikanischen Staatsbürgers und dessen Gesellschaft auf den British Virgin Islands an die amerikanische Steuerverwaltung (IRS) verfügt hatte. Rechtliche Grundlage für den Entscheid der ESTV bildete das Doppelbesteuerungsabkommen mit den USA, welches die Amtshilfe durch die ESTV für die Verhütung von Betrugsdelikten „und dergleichen" vorsieht.

Das Bundesverwaltungsgericht beurteilte das Gesuch des IRS als amtshilfefähig. Zwar konnte der IRS nur angeben, in welcher Weise und mit welchen konkreten Konstruktionen die amerikanischen Staatsbürger allenfalls Steuerbetrug begannen haben. Er konnte keine Namen von verdächtigten amerikanischen Steuerpflichtigen nennen. Das Bundesverwaltungsgericht hielt fest, dass das Amtshilfegesuch dennoch genügend bestimmt sei; es stelle keine unzulässige Beweisausforschungsmassnahme dar.

Das Bundesverwaltungsgericht prüfte im Weiteren, ob ein hinreichender Verdacht dafür bestanden habe, dass der beschwerdeführende amerikanische Staatsbürger und seine Gesellschaft Abgabebetrug oder dergleichen verübt hatten. Es hatte diese Prüfung ausschliesslich aufgrund der ihm vorgelegten Akten im konkreten Fall vorzunehmen. Der Beschwerdeführer hatte bis zum Jahre 2000 eine liechtensteinische Stiftung unterhalten, welche unter anderem bezweckte, die Kosten des Lebensunterhalts von ihm und seiner Familie zu bestreiten. Im Hinblick auf die Einführung des sogenannten „Qualified Intermediary Systems" durch den amerikanischen Fiskus wurden die Vermögenswerte dieser Stiftung auf eine neu gegründete Gesellschaft auf den British Virgin Islands übertragen. Die UBS AG führte die Bankkonti der Gesellschaft und hatte gegenüber den amerikanischen Steuerbehörden die Funktion als „Qualified Intermediary". Gegenüber der UBS AG erklärte die Gesellschaft, sie sei wirtschaftlich Berechtigte der von der UBS AG für sie verwalteten Vermögenswerte.

Das Bundesverwaltungsgericht hielt fest, es würde dann eine einfache Steuerhinterziehung vorliegen, falls die Gesellschaft auf den British Virgin Islands tatsächlich als rechtlich selbständige Person gehandelt und lediglich der amerikanische Eigentümer der Beteiligungsrechte die Einkünfte aus dieser Gesellschaft und seine Beteiligung daran gegenüber dem amerikanischen Fiskus nicht deklariert hätte. Für eine solche einfache Steuerhinterziehung hätte nach dem Doppelbesteuerungsabkommen mit den USA keine Amtshilfe geleistet werden können. Im konkreten Fall habe jedoch der amerikanische Steuerpflichtige die Existenz seiner Gesellschaft auf den British Virgin Islands praktisch ignoriert und gehandelt, wie wenn er selber Eigentümer der Vermögenswerte sei, insbesondere habe er selber Anlageentscheide getätigt. Das Bundesverwaltungsgericht kam zum Schluss, es bestehe damit ein hinreichender Verdacht auf Vorliegen eines Abgabebetrugs: Entscheidend war das Verhalten des amerikanischen Steuerpflichtigen und die damit im Widerspruch stehende Erklärung der Gesellschaft, dass sie die wirtschaftliche Berechtigte an den Vermögenswerten sei. Aus diesem Grunde müsste daher im beurteilten Einzelfall Amtshilfe geleistet und die Bankakten der Gesellschaft und des amerikanischen Steuerpflichtigen der amerikanischen Steuerbehörden herausgegeben werden.

Das Bundesverwaltungsgericht stellte sodann fest, die fraglichen Akten seien von der UBS AG den US-Behörden bereits am 18. Februar 2009, aufgrund einer Verfügung der Eidgenössischen Finanzmarktaufsicht FINMA vom gleichen Tag, übergeben worden. Damit sei das rechtlich geschützte Interesse der Beschwerdeführenden an einem Entscheid über die Aktenherausgabe im Rahmen des Amtshilfeverfahrens weggefallen. Das Bundesverwaltungsgericht kam zum Schluss, bei dieser Sachlage könne es über die Beschwerde nicht entscheiden, sondern die Beschwerden müssten wegen Gegenstandslosigkeit abgeschrieben werden. Eine Ausnahme hätte allenfalls dann gemacht werden können, wenn zu befürchten wäre, dass sich die gleiche Frage jederzeit wieder stellen könne und wiederum aufgrund zeitlicher Abläufe über die Frage nicht entschieden werden könne. Das Bundesverwaltungsgericht hielt indessen fest, diese Konstellation liege hier nicht vor: Es könne davon ausgegangen werden, dass die zuständigen Instanzen rechtzeitig sämtliche Massnahmen ergreifen würden, dass in Zukunft bei ähnlichen Verhältnissen die staatsvertraglich vereinbarten rechtsstaatlichen Verfahren tatsächlich eingehalten werden könnten.

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2009-02304

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SWITZERLAND

TRANSLATION OF A COURT DECISION

The following is a translation of an interlocutory order of the Swiss Bundesverwaltungsgericht (Federal Administrative Court), issued on February 20, 2009:

Federal Administrative Court [Bundesverwaltungsgericht]

Division II
Post Office Box
CH-3000 Bern 14
Telephone +41 (0) 58 705 25 60
Fax 41 (0) 58 705 29 80
www.bundesverwaltungsgericht.ch

Docket No. B-1092/2009
Brf/flr/sce/lua
{T 0/2}

Interlocutory Order of
February 20, 2009

In the appellate matter

of the parties:

W.
H.
J.
S.
K.
B.
A.
C.,
All represented by Attorney X. X.
Attorneys

Permanent Subcommittee on Investigations
EXHIBIT #25

Appellants

Versus

Y.

Respondent

Lower instance:
Eidg. Finanzmarktaufsicht
(Swiss Financial Markets Supervisory Agency) FINMA,

Subject Matter: Supervision of banks and stock exchanges, possibly international administrative assistance.

It is being determined and taken into consideration,

that the appellants, with a facsimile transmission of February 20, 2009, appealed to the Administrative Court against an order of the Swiss Financial Markets Supervisory Agency, FINMA (as the previous [deciding body]) of February 18, 2009 that had not as yet been served to them and that orders the transfer of banking data of the appellants as account holders in Y. (Appellee) to the U.S. tax agency Internal Revenue Service, IRS;

that they submit the substantive motion that the order of February 18, 2009 be rescinded;

that they submit procedural motions, to wit: that suspensory effects be granted to the appeal; that the respondent be enjoined, under threat of a penalty according to article 292 of the Criminal Code in case of contravention,[1] from delivering banking documents or other documents concerning the appellants to third parties, in particular, the American authorities; that the suspensory effect of the appeal and the injunction be pronounced without a hearing and that no suspensory effects be granted to any objections of the lower instance;

that appellants substantiate their substantive motion and their procedural motions with the reasoning that the appealed order would prejudice the end result of the proceeding and have the most egregious effects for the appellants, thus resulting in the preponderance of their private interests in the granting of immediate suspensory effects and the imposition of cautionary measures, over any possibly occurring other private or public interests; and

[1] Translator's note: Article 292 of the Swiss Criminal Code calls for imposition of a fine for the contravention of an order issued by a competent authority. Schweizerisches Strafgesetzbuch, Dec. 21, 1937, *as amended*, SYSTEMATISCHE SAMMLUNG DES BUNDESRECHTS [SR] 311.0.

that they argue, in particular, that the appealed order, by relying on article 25f of the Banking Act,[2] lacks a sufficient statutory basis;

that, upon petition of a party, the instructing judge or the President of the Chamber who is instructing, for the time being, may re-establish the suspensory effects, if they had been denied, or impose other precautionary measures, in order to maintain the *status quo* or to temporarily safeguard endangered interests (Federal Administrative Procedure Act [VwVG], December 20, 1968, SYSTEMATISCHE SAMMLUNG DES BUNDESRECHTS [SR] no. 172.021);

that the appealed order is not as yet available to the Federal Administrative Court, thus making various circumstances uncertain, among them, whether or to what extent the lower instance has withdrawn the suspensory effect [of its decision];

that the wording of the information on the webpage of the lower instance appears to indicate that the customer data of the appellants that are at issue had already been delivered to the foreign authorities;

that this assumption, however, has not as yet been verified;

that the delivery of these customer data obviously would prejudice a decision on its legality.

Thereupon the Federal Administrative Court orders, without having granted a hearing to the other party:

1.

The lower instance and the respondent (the latter under threat of sanctions according to Criminal Code article 292) are enjoined from delivering to third parties, in particular the American authorities, any banking documents or other documents relating to the appellants.

2.

The lower instance and the respondent are invited to comment on the procedural motions of the appellants (submission of comments in quadruplicate). The lower instance is requested to submit the appealed order by the same date.

3.

This order is served to:

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[2] Translator's note: The Banking Act, Bankengesetz, Nov. 8, 1934, *as amended*, SR 952.0, does not have an art. 25f. Possibly, this citation was meant to refer to art. 23f of the Banking Act, which deals with the parameters for granting administrative assistance to the banking supervisory agencies of other countries.

- The appellants (by certified mail, advance copy per facsimile)
- The Respondent (by certified mail, advance copy per facsimile; enclosure: appeal including its table of content)
- The lower instance (by certified mail, advance copy per facsimile; enclosure: appeal including its table of content)

The President of the Chamber

Francesco Brentani

Mailed: February 20, 2009

Translated by Edith Palmer
Senior Foreign Law Specialist
March 2009

Bundesverwaltungsgericht
Tribunal administratif fédéral
Tribunale amministrativo federale
Tribunal administrativ federal

Abteilung II

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CH-3000 Bern 14
Telefon +41 (0)58 705 25 60
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Geschäfts-Nr. B-1092/2009
brf/flr/sce/ lua
{T 0/2}

Zwischenverfügung vom 20. Februar 2009

In der Beschwerdesache

Parteien

W._____,
H._____,
J._____,
S._____,
K._____,
B._____,
A._____,
C._____,
alle vertreten durch Rechtsanwalt X._____, X._____
Rechtsanwälte,
Beschwerdeführende,

gegen

Y._____,
Beschwerdegegnerin,

Eidg. Finanzmarktaufsicht FINMA,
Vorinstanz,

Gegenstand	Aufsicht über Kreditinstitute und Börsen, evtl. internationale Amtshilfe,

wird festgestellt und in Erwägung gezogen,

dass die Beschwerdeführenden mit Faxeingabe vom 20. Februar 2009 Verwaltungsgerichtsbeschwerde gegen eine ihnen noch nicht zugestellte Verfügung der Eidgenössischen Finanzmarktaufsicht FINMA (Vorinstanz) vom 18. Februar 2009, welche die Übermittlung von Bankdaten der Beschwerdeführenden als Kontoinhaber bei der Y._____ (Beschwerdegegnerin) an die US-amerikanische Steuerbehörde Internal Revenue Service IRS anordnet, erhoben haben;

dass sie das Rechtsbegehren stellen, die Verfügung vom 18. Februar 2009 sei aufzuheben;

dass sie die Verfahrensanträge stellen, der Beschwerde sei die aufschiebende Wirkung zu gewähren; der Beschwerdegegnerin sei unter Androhung von Strafe nach Art. 292 StGB im Unterlassungsfall zu verbieten, Bankunterlagen sowie weitere Dokumente welche die Beschwerdeführenden betreffen, an Dritte, insbesondere an die amerikanischen Behörden, herauszugeben; die aufschiebende Wirkung sowie das Verbot seien ohne Anhörung der Vorinstanz auszusprechen und allfälligen Einsprachen derselben sei keinerlei suspensive Wirkung einzuräumen;

dass die Beschwerdeführenden ihre Begehren und Verfahrensanträge insbesondere damit begründeten, die angefochtene Verfügung präjudiziere das Endergebnis des Verfahrens und habe gravierendste Auswirkungen auf die Beschwerdeführenden, weshalb deren private Interessen an der superprovisorischen Gewährung der aufschiebenden Wirkung sowie der Anordnung vorsorglicher Massnahmen allfällige andere private und öffentliche Interessen überwiege, zumal sich die angefochtene Verfügung unter Anwendung von Art. 25 f BankG nicht auf eine genügende gesetzliche Grundlage stütze;

dass der Instruktionsrichter bzw. der vorläufig instruierende Kammerpräsident auf Begehren einer Partei eine allenfalls entzogene aufschiebende Wirkung wiederherstellen oder andere vorsorgliche Massnahmen verfügen kann, um den bestehenden Zustand zu erhalten oder bedrohte Interessen einstweilen sicherzustellen (Art. 55 f. des Bundesgesetzes vom 20. Dezember 1968 über das Verwaltungsverfahren [VwVG, SR 172.021]);

dass die angefochtene Verfügung dem Bundesverwaltungsgericht zur Zeit noch nicht vorliegt, weshalb unter anderem unklar ist, ob bzw. allenfalls inwieweit die Vorinstanz die aufschiebende Wirkung entzogen hat;

dass die sprachliche Formulierung der Information auf der Website der Vorinstanz an sich indiziert, dass die fraglichen Kundendaten der Beschwerdeführenden bereits durch die Vorinstanz den ausländischen Behörden übergeben wurden;

dass diese Annahme zur Zeit jedoch nicht gesichert ist;

dass die Übergabe dieser Kundendaten einen Entscheid darüber, ob dies rechtmässig sei oder nicht, offensichtlich präjudizieren würde.

Demnach verfügt das Bundesverwaltungsgericht superprovisorisch:

1.
Der Vorinstanz und der Beschwerdegegnerin (der Beschwerdegegnerin unter Androhung von Strafe nach Art. 292 StGB im Unterlassungsfall) wird verboten, die Beschwerdeführenden betreffende Bankunterlagen oder Dokumente an Dritte, insbesondere an die amerikanischen Behörden, herauszugeben.

2.
Die Vorinstanz und die Beschwerdegegnerin werden eingeladen, bis zum 24. Februar 2009 zu den prozessualen Anträgen der Beschwerdeführenden Stellung zu nehmen (Eingabe in vierfacher Ausfertigung). Die Vorinstanz wird aufgefordert, innert gleicher Frist die angefochtene Verfügung einzureichen.

3.
Diese Verfügung geht an:

- die Beschwerdeführenden (Einschreiben; vorab per Fax)
- die Beschwerdegegnerin (Einschreiben; vorab per Fax; Beilage: Beschwerde inkl. Beilagenverzeichnis)
- die Vorinstanz (Einschreiben; vorab per Fax; Beilage: Beschwerde inkl. Beilagenverzeichnis)

Der Kammerpräsident:

Francesco Brentani

Versand: 20. Februar 2009

London Summit – Leaders' Statement
2 April 2009

1. We, the Leaders of the Group of Twenty, met in London on 2 April 2009.

2. We face the greatest challenge to the world economy in modern times; a crisis which has deepened since we last met, which affects the lives of women, men, and children in every country, and which all countries must join together to resolve. A global crisis requires a global solution.

3. We start from the belief that prosperity is indivisible; that growth, to be sustained, has to be shared; and that our global plan for recovery must have at its heart the needs and jobs of hard-working families, not just in developed countries but in emerging markets and the poorest countries of the world too; and must reflect the interests, not just of today's population, but of future generations too. We believe that the only sure foundation for sustainable globalisation and rising prosperity for all is an open world economy based on market principles, effective regulation, and strong global institutions.

4. We have today therefore pledged to do whatever is necessary to:

   - restore confidence, growth, and jobs;
   - repair the financial system to restore lending;
   - strengthen financial regulation to rebuild trust;
   - fund and reform our international financial institutions to overcome this crisis and prevent future ones;
   - promote global trade and investment and reject protectionism, to underpin prosperity; and
   - build an inclusive, green, and sustainable recovery.

   By acting together to fulfil these pledges we will bring the world economy out of recession and prevent a crisis like this from recurring in the future.

5. The agreements we have reached today, to treble resources available to the IMF to $750 billion, to support a new SDR allocation of $250 billion, to support at least $100 billion of additional lending by the MDBs, to ensure $250 billion of support for trade finance, and to use the additional resources from agreed IMF gold sales for concessional finance for the poorest countries, constitute an additional $1.1 trillion programme of support to restore credit, growth and jobs in the world economy. Together with the measures we have each taken nationally, this constitutes a global plan for recovery on an unprecedented scale.

Permanent Subcommittee on Investigations
EXHIBIT #26a

Restoring growth and jobs

6. We are undertaking an unprecedented and concerted fiscal expansion, which will save or create millions of jobs which would otherwise have been destroyed, and that will, by the end of next year, amount to $5 trillion, raise output by 4 per cent, and accelerate the transition to a green economy. We are committed to deliver the scale of sustained fiscal effort necessary to restore growth.

7. Our central banks have also taken exceptional action. Interest rates have been cut aggressively in most countries, and our central banks have pledged to maintain expansionary policies for as long as needed and to use the full range of monetary policy instruments, including unconventional instruments, consistent with price stability.

8. Our actions to restore growth cannot be effective until we restore domestic lending and international capital flows. We have provided significant and comprehensive support to our banking systems to provide liquidity, recapitalise financial institutions, and address decisively the problem of impaired assets. We are committed to take all necessary actions to restore the normal flow of credit through the financial system and ensure the soundness of systemically important institutions, implementing our policies in line with the agreed G20 framework for restoring lending and repairing the financial sector.

9. Taken together, these actions will constitute the largest fiscal and monetary stimulus and the most comprehensive support programme for the financial sector in modern times. Acting together strengthens the impact and the exceptional policy actions announced so far must be implemented without delay. Today, we have further agreed over $1 trillion of additional resources for the world economy through our international financial institutions and trade finance.

10. Last month the IMF estimated that world growth in real terms would resume and rise to over 2 percent by the end of 2010. We are confident that the actions we have agreed today, and our unshakeable commitment to work together to restore growth and jobs, while preserving long-term fiscal sustainability, will accelerate the return to trend growth. We commit today to taking whatever action is necessary to secure that outcome, and we call on the IMF to assess regularly the actions taken and the global actions required.

11. We are resolved to ensure long-term fiscal sustainability and price stability and will put in place credible exit strategies from the measures that need to be taken now to support the financial sector and restore global demand. We are convinced that by implementing our agreed policies we will limit the longer-term costs to

our economies, thereby reducing the scale of the fiscal consolidation necessary over the longer term.

12. We will conduct all our economic policies cooperatively and responsibly with regard to the impact on other countries and will refrain from competitive devaluation of our currencies and promote a stable and well-functioning international monetary system. We will support, now and in the future, to candid, even-handed, and independent IMF surveillance of our economies and financial sectors, of the impact of our policies on others, and of risks facing the global economy.

Strengthening financial supervision and regulation

13. Major failures in the financial sector and in financial regulation and supervision were fundamental causes of the crisis. Confidence will not be restored until we rebuild trust in our financial system. We will take action to build a stronger, more globally consistent, supervisory and regulatory framework for the future financial sector, which will support sustainable global growth and serve the needs of business and citizens.

14. We each agree to ensure our domestic regulatory systems are strong. But we also agree to establish the much greater consistency and systematic cooperation between countries, and the framework of internationally agreed high standards, that a global financial system requires. Strengthened regulation and supervision must promote propriety, integrity and transparency; guard against risk across the financial system; dampen rather than amplify the financial and economic cycle; reduce reliance on inappropriately risky sources of financing; and discourage excessive risk-taking. Regulators and supervisors must protect consumers and investors, support market discipline, avoid adverse impacts on other countries, reduce the scope for regulatory arbitrage, support competition and dynamism, and keep pace with innovation in the marketplace.

15. To this end we are implementing the Action Plan agreed at our last meeting, as set out in the attached progress report. We have today also issued a Declaration, *Strengthening the Financial System*. In particular we agree:

    - to establish a new Financial Stability Board (FSB) with a strengthened mandate, as a successor to the Financial Stability Forum (FSF), including all G20 countries, FSF members, Spain, and the European Commission;

    - that the FSB should collaborate with the IMF to provide early warning of macroeconomic and financial risks and the actions needed to address them;

- to reshape our regulatory systems so that our authorities are able to identify and take account of macro-prudential risks;

- to extend regulation and oversight to all systemically important financial institutions, instruments and markets. This will include, for the first time, systemically important hedge funds;

- to endorse and implement the FSF's tough new principles on pay and compensation and to support sustainable compensation schemes and the corporate social responsibility of all firms;

- to take action, once recovery is assured, to improve the quality, quantity, and international consistency of capital in the banking system. In future, regulation must prevent excessive leverage and require buffers of resources to be built up in good times;

- to take action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over. We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of tax information;

- to call on the accounting standard setters to work urgently with supervisors and regulators to improve standards on valuation and provisioning and achieve a single set of high-quality global accounting standards; and

- to extend regulatory oversight and registration to Credit Rating Agencies to ensure they meet the international code of good practice, particularly to prevent unacceptable conflicts of interest.

16. We instruct our Finance Ministers to complete the implementation of these decisions in line with the timetable set out in the Action Plan. We have asked the FSB and the IMF to monitor progress, working with the Financial Action Taskforce and other relevant bodies, and to provide a report to the next meeting of our Finance Ministers in Scotland in November.

Strengthening our global financial institutions

17. Emerging markets and developing countries, which have been the engine of recent world growth, are also now facing challenges which are adding to the current downturn in the global economy. It is imperative for global confidence and economic recovery that capital continues to flow to them. This will require a substantial strengthening of the international financial institutions, particularly the

IMF. We have therefore agreed today to make available an additional $850 billion of resources through the global financial institutions to support growth in emerging market and developing countries by helping to finance counter-cyclical spending, bank recapitalisation, infrastructure, trade finance, balance of payments support, debt rollover, and social support. To this end:

- we have agreed to increase the resources available to the IMF through immediate financing from members of $250 billion, subsequently incorporated into an expanded and more flexible New Arrangements to Borrow, increased by up to $500 billion, and to consider market borrowing if necessary; and

- we support a substantial increase in lending of at least $100 billion by the Multilateral Development Banks (MDBs), including to low income countries, and ensure that all MDBs, including have the appropriate capital.

18. It is essential that these resources can be used effectively and flexibly to support growth. We welcome in this respect the progress made by the IMF with its new Flexible Credit Line (FCL) and its reformed lending and conditionality framework which will enable the IMF to ensure that its facilities address effectively the underlying causes of countries' balance of payments financing needs, particularly the withdrawal of external capital flows to the banking and corporate sectors. We support Mexico's decision to seek an FCL arrangement.

19. We have agreed to support a general SDR allocation which will inject $250 billion into the world economy and increase global liquidity, and urgent ratification of the Fourth Amendment.

20. In order for our financial institutions to help manage the crisis and prevent future crises we must strengthen their longer term relevance, effectiveness and legitimacy. So alongside the significant increase in resources agreed today we are determined to reform and modernise the international financial institutions to ensure they can assist members and shareholders effectively in the new challenges they face. We will reform their mandates, scope and governance to reflect changes in the world economy and the new challenges of globalisation, and that emerging and developing economies, including the poorest, must have greater voice and representation. This must be accompanied by action to increase the credibility and accountability of the institutions through better strategic oversight and decision making. To this end:

- we commit to implementing the package of IMF quota and voice reforms agreed in April 2008 and call on the IMF to complete the next review of quotas by January 2011;

- we agree that, alongside this, consideration should be given to greater involvement of the Fund's Governors in providing strategic direction to the IMF and increasing its accountability;

- we commit to implementing the World Bank reforms agreed in October 2008. We look forward to further recommendations, at the next meetings, on voice and representation reforms on an accelerated timescale, to be agreed by the 2010 Spring Meetings;

- we agree that the heads and senior leadership of the international financial institutions should be appointed through an open, transparent, and merit-based selection process; and

- building on the current reviews of the IMF and World Bank we asked the Chairman, working with the G20 Finance Ministers, to consult widely in an inclusive process and report back to the next meeting with proposals for further reforms to improve the responsiveness and adaptability of the IFIs.

21. In addition to reforming our international financial institutions for the new challenges of globalisation we agreed on the desirability of a new global consensus on the key values and principles that will promote sustainable economic activity. We support discussion on such a charter for sustainable economic activity with a view to further discussion at our next meeting. We take note of the work started in other fora in this regard and look forward to further discussion of this charter for sustainable economic activity.

Resisting protectionism and promoting global trade and investment

22. World trade growth has underpinned rising prosperity for half a century. But it is now falling for the first time in 25 years. Falling demand is exacerbated by growing protectionist pressures and a withdrawal of trade credit. Reinvigorating world trade and investment is essential for restoring global growth. We will not repeat the historic mistakes of protectionism of previous eras. To this end:

    - we reaffirm the commitment made in Washington: to refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organisation (WTO)

inconsistent measures to stimulate exports. In addition we will rectify promptly any such measures. We extend this pledge to the end of 2010;

- we will minimise any negative impact on trade and investment of our domestic policy actions including fiscal policy and action in support of the financial sector. We will not retreat into financial protectionism, particularly measures that constrain worldwide capital flows, especially to developing countries;

- we will notify promptly the WTO of any such measures and we call on the WTO, together with other international bodies, within their respective mandates, to monitor and report publicly on our adherence to these undertakings on a quarterly basis;

- we will take, at the same time, whatever steps we can to promote and facilitate trade and investment; and

- we will ensure availability of at least $250 billion over the next two years to support trade finance through our export credit and investment agencies and through the MDBs. We also ask our regulators to make use of available flexibility in capital requirements for trade finance.

23. We remain committed to reaching an ambitious and balanced conclusion to the Doha Development Round, which is urgently needed. This could boost the global economy by at least $150 billion per annum. To achieve this we are committed to building on the progress already made, including with regard to modalities.

24. We will give renewed focus and political attention to this critical issue in the coming period and will use our continuing work and all international meetings that are relevant to drive progress.

Ensuring a fair and sustainable recovery for all

25. We are determined not only to restore growth but to lay the foundation for a fair and sustainable world economy. We recognise that the current crisis has a disproportionate impact on the vulnerable in the poorest countries and recognise our collective responsibility to mitigate the social impact of the crisis to minimise long-lasting damage to global potential. To this end:

    - we reaffirm our historic commitment to meeting the Millennium Development Goals and to achieving our respective ODA pledges, including commitments on Aid for Trade, debt relief, and the Gleneagles commitments, especially to sub-Saharan Africa;

- the actions and decisions we have taken today will provide $50 billion to support social protection, boost trade and safeguard development in low income countries, as part of the significant increase in crisis support for these and other developing countries and emerging markets;

- we are making available resources for social protection for the poorest countries, including through investing in long-term food security and through voluntary bilateral contributions to the World Bank's Vulnerability Framework, including the Infrastructure Crisis Facility, and the Rapid Social Response Fund;

- we have committed, consistent with the new income model, that additional resources from agreed sales of IMF gold will be used, together with surplus income, to provide $6 billion additional concessional and flexible finance for the poorest countries over the next 2 to 3 years. We call on the IMF to come forward with concrete proposals at the Spring Meetings;

- we have agreed to review the flexibility of the Debt Sustainability Framework and call on the IMF and World Bank to report to the IMFC and Development Committee at the Annual Meetings; and

- we call on the UN, working with other global institutions, to establish an effective mechanism to monitor the impact of the crisis on the poorest and most vulnerable.

26. We recognise the human dimension to the crisis. We commit to support those affected by the crisis by creating employment opportunities and through income support measures. We will build a fair and family-friendly labour market for both women and men. We therefore welcome the reports of the London Jobs Conference and the Rome Social Summit and the key principles they proposed. We will support employment by stimulating growth, investing in education and training, and through active labour market policies, focusing on the most vulnerable. We call upon the ILO, working with other relevant organisations, to assess the actions taken and those required for the future.

27. We agreed to make the best possible use of investment funded by fiscal stimulus programmes towards the goal of building a resilient, sustainable, and green recovery. We will make the transition towards clean, innovative, resource efficient, low carbon technologies and infrastructure. We encourage the MDBs to contribute fully to the achievement of this objective. We will identify and work together on further measures to build sustainable economies.

28. We reaffirm our commitment to address the threat of irreversible climate change, based on the principle of common but differentiated responsibilities, and to reach agreement at the UN Climate Change conference in Copenhagen in December 2009.

Delivering our commitments

29. We have committed ourselves to work together with urgency and determination to translate these words into action. We agreed to meet again before the end of this year to review progress on our commitments.

DECLARATION ON STRENGTHENING THE FINANCIAL SYSTEM – LONDON, 2 APRIL 2009

We, the Leaders of the G20, have taken, and will continue to take, action to strengthen regulation and supervision in line with the commitments we made in Washington to reform the regulation of the financial sector. Our principles are strengthening transparency and accountability, enhancing sound regulation, promoting integrity in financial markets and reinforcing international cooperation. The material in this declaration expands and provides further detail on the commitments in our statement. We published today a full progress report against each of the 47 actions set out in the Washington Action Plan. In particular, we have agreed the following major reforms.

Financial Stability Board

We have agreed that the Financial Stability Forum should be expanded, given a broadened mandate to promote financial stability, and re-established with a stronger institutional basis and enhanced capacity as the Financial Stability Board (FSB).
The FSB will:

- assess vulnerabilities affecting the financial system, identify and oversee action needed to address them;
- promote co-ordination and information exchange among authorities responsible for financial stability;
- monitor and advise on market developments and their implications for regulatory policy;
- advise on and monitor best practice in meeting regulatory standards;
- undertake joint strategic reviews of the policy development work of the international Standard Setting Bodies to ensure their work is timely, coordinated, focused on priorities, and addressing gaps;
- set guidelines for, and support the establishment, functioning of, and participation in, supervisory colleges, including through ongoing identification of the most systemically important cross-border firms;
- support contingency planning for cross-border crisis management, particularly with respect to systemically important firms; and
- collaborate with the IMF to conduct Early Warning Exercises to identify and report to the IMFC and the G20 Finance Ministers and Central Bank Governors on the build up of macroeconomic and financial risks and the actions needed to address them.

Members of the FSB commit to pursue the maintenance of financial stability, enhance the openness and transparency of the financial sector, and implement international financial standards (including the 12 key International Standards and Codes), and agree to undergo periodic peer reviews, using among other evidence IMF / World Bank public Financial Sector Assessment Program reports. The FSB will elaborate and report on these commitments and the evaluation process.

Permanent Subcommittee on Investigations
EXHIBIT #26b

We welcome the FSB's and IMF's commitment to intensify their collaboration, each complementing the other's role and mandate.

International cooperation

To strengthen international cooperation we have agreed:

- to establish the remaining supervisory colleges for significant cross-border firms by June 2009, building on the 28 already in place;
- to implement the FSF principles for cross-border crisis management immediately, and that home authorities of each major international financial institution should ensure that the group of authorities with a common interest in that financial institution meet at least annually;
- to support continued efforts by the IMF, FSB, World Bank, and BCBS to develop an international framework for cross-border bank resolution arrangements;
- the importance of further work and international cooperation on the subject of exit strategies;
- that the IMF and FSB should together launch an Early Warning Exercise at the 2009 Spring Meetings.

Prudential regulation

We have agreed to strengthen international frameworks for prudential regulation:

- until recovery is assured the international standard for the minimum level of capital should remained unchanged;
- where appropriate, capital buffers above the required minima should be allowed to decline to facilitate lending in deteriorating economic conditions;
- once recovery is assured, prudential regulatory standards should be strengthened. Buffers above regulatory minima should be increased and the quality of capital should be enhanced. Guidelines for harmonisation of the definition of capital should be produced by end 2009. The BCBS should review minimum levels of capital and develop recommendations in 2010;
- the FSB, BCBS, and CGFS, working with accounting standard setters, should take forward, with a deadline of end 2009, implementation of the recommendations published today to mitigate procyclicality, including a requirement for banks to build buffers of resources in good times that they can draw down when conditions deteriorate;
- risk-based capital requirements should be supplemented with a simple, transparent, non-risk based measure which is internationally comparable, properly takes into account off-balance sheet exposures, and can help contain the build-up of leverage in the banking system;
- the BCBS and authorities should take forward work on improving incentives for risk management of securitisation, including considering due diligence and quantitative retention requirements, by 2010;
- all G20 countries should progressively adopt the Basel II capital framework; and

- the BCBS and national authorities should develop and agree by 2010 a global framework for promoting stronger liquidity buffers at financial institutions, including cross-border institutions.

The scope of regulation

We have agreed that all systemically important financial institutions, markets, and instruments should be subject to an appropriate degree of regulation and oversight. In particular:

- we will amend our regulatory systems to ensure authorities are able to identify and take account of macro-prudential risks across the financial system including in the case of regulated banks, shadow banks, and private pools of capital to limit the build up of systemic risk. We call on the FSB to work with the BIS and international standard setters to develop macro-prudential tools and provide a report by autumn 2009;
- large and complex financial institutions require particularly careful oversight given their systemic importance;
- we will ensure that our national regulators possess the powers for gathering relevant information on all material financial institutions, markets, and instruments in order to assess the potential for their failure or severe stress to contribute to systemic risk. This will be done in close coordination at international level in order to achieve as much consistency as possible across jurisdictions;
- in order to prevent regulatory arbitrage, the IMF and the FSB will produce guidelines for national authorities to assess whether a financial institution, market, or an instrument is systemically important by the next meeting of our Finance Ministers and Central Bank Governors. These guidelines should focus on what institutions do rather than their legal form;
- hedge funds or their managers will be registered and will be required to disclose appropriate information on an ongoing basis to supervisors or regulators, including on their leverage, necessary for assessment of the systemic risks that they pose individually or collectively. Where appropriate, registration should be subject to a minimum size. They will be subject to oversight to ensure that they have adequate risk management. We ask the FSB to develop mechanisms for cooperation and information sharing between relevant authorities in order to ensure that effective oversight is maintained where a fund is located in a different jurisdiction from the manager. We will, cooperating through the FSB, develop measures that implement these principles by the end of 2009. We call on the FSB to report to the next meeting of our Finance Ministers and Central Bank Governors;
- supervisors should require that institutions which have hedge funds as their counterparties have effective risk management. This should include mechanisms to monitor the funds' leverage and set limits for single counterparty exposures;
- we will promote the standardisation and resilience of credit derivatives markets, in particular through the establishment of central clearing counterparties subject to effective regulation and supervision. We call on the industry to develop an action plan on standardisation by autumn 2009; and

- we will each review and adapt the boundaries of the regulatory framework regularly to keep pace with developments in the financial system and promote good practices and consistent approaches at the international level.

Compensation

We have endorsed the principles on pay and compensation in significant financial institutions developed by the FSF to ensure compensation structures are consistent with firms' long-term goals and prudent risk taking. We have agreed that our national supervisors should ensure significant progress in the implementation of these principles by the 2009 remuneration round. The BCBS should integrate these principles into their risk management guidance by autumn 2009. The principles, which have today been published, require:

- firms' boards of directors to play an active role in the design, operation, and evaluation of compensation schemes;
- compensation arrangements, including bonuses, to properly reflect risk and the timing and composition of payments to be sensitive to the time horizon of risks. Payments should not be finalised over short periods where risks are realised over long periods; and
- firms to publicly disclose clear, comprehensive, and timely information about compensation. Stakeholders, including shareholders, should be adequately informed on a timely basis on compensation policies to exercise effective monitoring.

Supervisors will assess firms' compensation policies as part of their overall assessment of their soundness. Where necessary they will intervene with responses that can include increased capital requirements.

Tax havens and non-cooperative jurisdictions

It is essential to protect public finances and international standards against the risks posed by non-cooperative jurisdictions. We call on all jurisdictions to adhere to the international standards in the prudential, tax, and AML/CFT areas. To this end, we call on the appropriate bodies to conduct and strengthen objective peer reviews, based on existing processes, including through the FSAP process.

We call on countries to adopt the international standard for information exchange endorsed by the G20 in 2004 and reflected in the UN Model Tax Convention. We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of information. We welcome the new commitments made by a number of jurisdictions and encourage them to proceed swiftly with implementation.

We stand ready to take agreed action against those jurisdictions which do not meet international standards in relation to tax transparency. To this end we have agreed to develop a toolbox of effective counter measures for countries to consider, such as:

- increased disclosure requirements on the part of taxpayers and financial institutions to report transactions involving non-cooperative jurisdictions;
- withholding taxes in respect of a wide variety of payments;
- denying deductions in respect of expense payments to payees resident in a non-cooperative jurisdiction;
- reviewing tax treaty policy;
- asking international institutions and regional development banks to review their investment policies; and,
- giving extra weight to the principles of tax transparency and information exchange when designing bilateral aid programs.

We also agreed that consideration should be given to further options relating to financial relations with these jurisdictions

We are committed to developing proposals, by end 2009, to make it easier for developing countries to secure the benefits of a new cooperative tax environment.

We are also committed to strengthened adherence to international prudential regulatory and supervisory standards. The IMF and the FSB in cooperation with international standard-setters will provide an assessment of implementation by relevant jurisdictions, building on existing FSAPs where they exist. We call on the FSB to develop a toolbox of measures to promote adherence to prudential standards and cooperation with jurisdictions.

We agreed that the FATF should revise and reinvigorate the review process for assessing compliance by jurisdictions with AML/CFT standards, using agreed evaluation reports where available.

We call upon the FSB and the FATF to report to the next G20 Finance Ministers and Central Bank Governors' meeting on adoption and implementation by countries.

Accounting standards

We have agreed that the accounting standard setters should improve standards for the valuation of financial instruments based on their liquidity and investors' holding horizons, while reaffirming the framework of fair value accounting.

We also welcome the FSF recommendations on procyclicality that address accounting issues. We have agreed that accounting standard setters should take action by the end of 2009 to:

- reduce the complexity of accounting standards for financial instruments;
- strengthen accounting recognition of loan-loss provisions by incorporating a broader range of credit information;
- improve accounting standards for provisioning, off-balance sheet exposures and valuation uncertainty;

- achieve clarity and consistency in the application of valuation standards internationally, working with supervisors;
- make significant progress towards a single set of high quality global accounting standards; and,
- within the framework of the independent accounting standard setting process, improve involvement of stakeholders, including prudential regulators and emerging markets, through the IASB's constitutional review.

Credit Rating Agencies

We have agreed on more effective oversight of the activities of Credit Rating Agencies, as they are essential market participants. In particular, we have agreed that:

- all Credit Rating Agencies whose ratings are used for regulatory purposes should be subject to a regulatory oversight regime that includes registration. The regulatory oversight regime should be established by end 2009 and should be consistent with the IOSCO Code of Conduct Fundamentals. IOSCO should coordinate full compliance;
- national authorities will enforce compliance and require changes to a rating agency's practices and procedures for managing conflicts of interest and assuring the transparency and quality of the rating process. In particular, Credit Rating Agencies should differentiate ratings for structured products and provide full disclosure of their ratings track record and the information and assumptions that underpin the ratings process. The oversight framework should be consistent across jurisdictions with appropriate sharing of information between national authorities, including through IOSCO; and,
- the Basel Committee should take forward its review on the role of external ratings in prudential regulation and determine whether there are any adverse incentives that need to be addressed.

Next Steps

We instruct our Finance Ministers to complete the implementation of these decisions and the attached action plan. We have asked the FSB and the IMF to monitor progress, working with the FATF and the Global Forum, and to provide a report to the next meeting of our Finance Ministers and Central Bank Governors.

A PROGRESS REPORT ON THE JURISDICTIONS SURVEYED BY THE OECD GLOBAL FORUM IN IMPLEMENTING THE INTERNATIONALLY AGREED TAX STANDARD[1]

Progress made as at 2nd April 2009

Jurisdictions that have substantially implemented the internationally agreed tax standard			
Argentina	Germany	Korea	Seychelles
Australia	Greece	Malta	Slovak Republic
Barbados	Guernsey	Mauritius	South Africa
Canada	Hungary	Mexico	Spain
China[2]	Iceland	Netherlands	Sweden
Cyprus	Ireland	New Zealand	Turkey
Czech Republic	Isle of Man	Norway	United Arab Emirates
Denmark	Italy	Poland	United Kingdom
Finland	Japan	Portugal	United States
France	Jersey	Russian Federation	US Virgin Islands

Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented					
Jurisdiction	Year of Commitment	Number of Agreements	Jurisdiction	Year of Commitment	Number of Agreements
Tax Havens[3]					
Andorra	2009	(0)	Marshall Islands	2007	(1)
Anguilla	2002	(0)	Monaco	2009	(1)
Antigua and Barbuda	2002	(7)	Montserrat	2002	(0)
			Nauru	2003	(0)
Aruba	2002	(4)	Netherlands Antilles	2000	(7)
Bahamas	2002	(1)			
Bahrain	2001	(6)	Niue	2002	(0)
Belize	2002	(0)	Panama	2002	(0)
Bermuda	2000	(3)	St Kitts and Nevis	2002	(0)
British Virgin Islands	2002	(3)	St Lucia	2002	(0)
Cayman Islands[4]	2000	(8)	St Vincent & Grenadines	2002	(0)
Cook Islands	2002	(0)			
Dominica	2002	(1)	Samoa	2002	(0)
Gibraltar	2002	(1)	San Marino	2000	(0)
Grenada	2002	(1)	Turks and Caicos Islands	2002	(0)
Liberia	2007	(0)			
Liechtenstein	2009	(1)	Vanuatu	2003	(0)
Other Financial Centres					
Austria[5]	2009	(0)	Guatemala	2009	(0)
Belgium[5]	2009	(1)	Luxembourg[5]	2009	(0)
Brunei	2009	(5)	Singapore	2009	(0)
Chile	2009	(0)	Switzerland[5]	2009	(0)

Jurisdictions that have not committed to the internationally agreed tax standard			
Jurisdiction	Number of Agreements	Jurisdiction	Number of Agreements
Costa Rica	(0)	Philippines	(0)
Malaysia (Labuan)	(0)	Uruguay	(0)

1. The internationally agreed tax standard, which was developed by the OECD in co-operation with non-OECD countries and which was endorsed by G20 Finance Ministers at their Berlin Meeting in 2004 and by the UN Committee of Experts on International Cooperation in Tax Matters at its October 2008 Meeting, requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. It also provides for extensive safeguards to protect the confidentiality of the information exchanged.
2. Excluding the Special Administrative Regions, which have committed to implement the internationally agreed tax standard.
3. These jurisdictions were identified in 2000 as meeting the tax haven criteria as described in the 1998 OECD report.
4. The Cayman Islands has enacted legislation that allows it to exchange information unilaterally and has identified 11 countries with which it is prepared to do so. This legislation is being reviewed by the OECD.
5. Austria, Belgium, Luxembourg and Switzerland withdrew their reservations to Article 26 of the OECD Model Tax Convention. Belgium has already written to 48 countries to propose the conclusion of protocols to update Article 26 of their existing treaties. Austria, Luxembourg and Switzerland announced that they have started to write to their treaty partners to indicate that they are now willing to enter into renegotiations of their treaties to include the new Article 26.

Permanent Subcommittee on Investigations

EXHIBIT #26c

Following G20 OECD delivers on tax pledge

April 2, 2009 - Following the G20 meeting and communiqué, the OECD Secretariat has provided a detailed report on progress by financial centres around the world towards implementation of an internationally agreed standard on exchange of information for tax purposes. The report available here consists of four parts:

• jurisdictions that have substantially implemented the internationally agreed tax standard.

• tax havens that have committed to the internationally agreed tax standard but have not yet substantially implemented it.

• other financial centres that have committed to the internationally agreed tax standard but have not yet substantially implemented it.

• jurisdictions that have not committed to implement the internationally agreed tax standard.

Welcoming the outcome of the G20 meeting, OECD Secretary General Angel Gurria said "recent developments reinforce the status of the OECD standard as the international benchmark and represent significant steps towards a level playing field. We now have an ambitious agenda, that the OECD is well placed to deliver on. I am confident that we can turn these new commitments into concrete actions to strengthen the integrity and transparency of the financial system".

OECD's Future Challenges:

1. **Achieving a rapid and effective implementation of standard:** Many of these commitments will require legislative changes and the negotiation of specific bilateral agreements in order to become effective, and the OECD stands ready to assist jurisdictions in their implementation.

2. **Speeding up the negotiations of tax information exchange agreements (TIEAs)**. Small tax havens lack the resources to enter into negotiations with a large number of countries. The OECD's 2002 Model Agreement on Exchange of Information on Tax Matters sets out an option for multilateral rather than bilateral TIEAs that the OECD intends to explore over the coming weeks. The OECD is also examining how the Nordic experience of multilateral negotiations leading to simultaneous bilateral agreements could be adopted more widely.

3. **Extending the scope and role of the OECD's action:** The OECD Global Forum currently encompasses more than 80 jurisdictions and carries out self reviews and peer reviews to assess progress in implementation of the standard.

The time has now come to re-examine the membership, the architecture and the role of the Global Forum in setting standards and evaluating progress. The Global Forum will undertake more robust reviews, to strengthen the implementation of the standard.

Background

The report produced following the G20 meeting, reflects the results of more than a decade of OECD work to bring greater openness and transparency to cross-border financial services.

The internationally agreed standard, developed by OECD and non-OECD countries in the context of the OECD's Global Forum on Taxation and endorsed by G20 Finance Ministers in 2004 and by the UN Committee of Experts on International Co-operation in Tax Matters in October 2008, requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. It also provides for extensive safeguards to protect the confidentiality of the information exchanged.

The OECD works with its 30 member countries and with others to develop sound policy frameworks for the governance of the world economy. It plays a leading role in such areas as tax policy, competition policy, cross-border investment, corporate governance and the fight against corruption.

The OECD's work on the issues of transparency and exchange of information in tax matters was given new impetus by the G20 process begun at the November 2008 summit meeting in Washington, D.C.

Switzerland to adopt OECD standard on administrative assistance in fiscal matters

Bern, 13.03.2009 - The Federal Council has announced today that Switzerland intends to adopt the OECD standard on administrative assistance in tax matters in accordance with Art. 26 of the OECD Model Tax Convention. The decision will permit the exchange of information with other countries in individual cases where a specific and justified request has been made. The Federal Council has decided to withdraw the corresponding reservation to the OECD Model Tax Convention and to enter into negotiations on revising double taxation agreements. Swiss banking secrecy remains intact.

The adoption of the OECD standard on administrative assistance in taxation matters in accordance with Art. 26 of the OECD Model Tax Convention will have no impact on the situation for taxpayers resident in Switzerland. The right of the Swiss tax authorities to access bank data under Swiss domestic law is not affected by the decision.

The Federal Council acknowledges that the wish of the people of Switzerland for appropriate protection of personal privacy is still firmly entrenched. For this reason, it fully endorses banking secrecy and resolutely rejects any form of automatic exchange of information. The privacy of customers will continue to be protected from unauthorised access to information concerning private assets.

Banking secrecy, however, does not protect any form of tax offence. With the globalisation of financial markets and in particular the current financial crisis, international cooperation in tax matters has become increasingly important. The Federal Council will actively continue to support efforts in this regard.

The decision that the Federal Council made today will be implemented within the framework of bilateral double taxation agreements. The greater scope for exchange of information will only have practical effects when the renegotiated agreements come into force. In addition, adjustments must be made to the agreement with the EU on the taxation of savings income . Furthermore, Switzerland regards improved market access for international financial services and equal treatment with regard to the supply and quality of information as matters of great importance.

For the Federal Council, the following aspects are indispensable for its future policy on administrative assistance in tax matters:

- Respect for established administrative assistance procedures
- Restriction of administrative assistance to individual cases (no fishing expeditions)
- Fair transitional solutions
- Limitation to taxes covered by the OECD Model Tax Convention
- The principle of subsidiarity in accordance with the Model Tax Convention
- Willingness to eliminate discrimination.

In the future, the Federal Council will endeavour to ensure that international cooperation in tax matters is carried out exclusively within the framework of contractually agreed channels.

The Federal Council is convinced that its decision to adopt the OECD standard on administrative assistance in tax matters will both lead to greater acceptance of the legal framework conditions of the Swiss financial centre among Switzerland's most important partners and increase legal certainty for customers of Swiss banks. This step will help safeguard the competitiveness and the international importance of the Swiss financial centre. It will also strengthen Switzerland as a workplace and safeguard jobs.

Permanent Subcommittee on Investigations
EXHIBIT #27

STABSTELLE FÜR KOMMUNIKATION
UND ÖFFENTLICHKEITSARBEIT
FÜRSTENTUM LIECHTENSTEIN

Liechtenstein commits to the OECD standard in tax matters and seeks to conclude bilateral tax agreements with individual States

- **Liechtenstein commits to the global OECD standard on transparency and information exchange in tax matters**
- **The Government has begun discussions with interested States and Liechtenstein offers bilateral tax agreements for effective cooperation in cases of tax fraud and tax evasion and has already engaged in concrete talks with individual states**
- **Liechtenstein wants to ensure legal certainty and conformity while at the same time preserving privacy and bank client confidentiality**
- **Liechtenstein will fulfill its responsibility towards the clients of its financial center and meet the legitimate tax claims of its treaty partners**

Vaduz, 12 March 2009 – The Liechtenstein Government accepts the OECD standards on transparency and information exchange in tax matters and supports the international measures against non-compliance with tax laws. Today, Thursday, the Government made public a Declaration to that effect in Vaduz.

Liechtenstein offers interested States the negotiation of bilateral agreements for cooperation in cases of tax fraud and tax evasion. In this context, the Government also offers the possibility of agreements going beyond the OECD standard. Provided that there is a common understanding on how to regulate any former, ongoing and future tax compliance obligations may be met and on how clients of the financial center, if need be, can be provided with an orderly transition to tax legitimacy.

"We are aware of our responsibility as part of a globally integrated economic area. With today's Declaration, we are making our contribution to a joint solution that will make an effective

Permanent Subcommittee on Investigations
EXHIBIT #28

enforcement of foreign tax claims possible and takes account of the legitimate interests of the clients of our financial center at the same time," said Prime Minister Otmar Hasler.

Of the utmost importance for the Government is that by entering into relevant agreements, Liechtenstein fulfils its responsibility towards the clients of the financial center and meets the legitimate tax claims of its treaty partners. For this purpose, the Government has engaged in detailed discussions with various States and multinational organisations over the last few months. The goal of said discussions has been not to jeopardize the enforcement of any foreign tax claims, while retaining the protection of privacy, including the bank client confidentiality, for the future. "Our bank secrecy has always served to ensure the legitimate protection of the privacy of the citizen, which we will continue to retain. With this Declaration, however, we want to make clear that bank client confidentiality in future cannot be misused to facilitate tax crime," said Prime Minister Otmar Hasler.

The Government Declaration is supported by all important representatives of Liechtenstein politics and business. Prime Minister-designate and current Deputy Prime Minister, Dr. Klaus Tschütscher, declares that the pro-active policies formulated in the Government Declaration are the only right path for Liechtenstein and, after assuming office as Prime Minister at the end of March, he pledges to implement it with concrete measures. "With the new agreements, the partner State concerned will receive more efficient tax application with respect to foreign assets, the clients of the Liechtenstein financial center will receive a sustainable legal framework for meeting their tax obligations, and our financial center will enhance its attractiveness and reputation for tax-compliant clients," said Dr. Klaus Tschütscher.

During the current financial and economic crisis, the Liechtenstein financial center has proven to be very reliable, with a stable banking system that has so far done well without State support. The goal of the Government is to create a sustainable development perspective for the financial center.

"We are currently experiencing a fundamental and rapid change at the global level in the direction of stronger cross-border cooperation and international regulation," said H.S.H. Hereditary Prince Alois von und zu Liechtenstein. "With today's Declaration, the Liechtenstein Government is sending a signal that it is participating actively in the regulatory dialogue of financial centers without giving up Liechtenstein's identity or the advantages of a reliable and well-regulated small State. I am convinced that this will help us strengthen the trust of our clients in our financial center."

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Note to editors:

Today, Thursday, 12 March at 11:00 a.m. in the Government Building in Vaduz, the Government welcomes you to a media briefing on the Government Declaration.

The speakers will be H.S.H. Hereditary Prince Alois von und zu Liechtenstein, Prime Minister Otmar Hasler and Prime Minister-designate Dr. Klaus Tschütscher.

The media briefing will also be transmitted live in German and English as a webcast (**http://gaia.world-television.com/llv/20090312**).

The Liechtenstein Declaration

Through this Declaration, Liechtenstein commits to, and will implement, global standards of transparency and exchange of information as developed by the OECD and will advance its participation in international efforts in order to counteract non-compliance with foreign tax laws.

With this Declaration, Liechtenstein clarifies its position regarding privacy and banking secrecy and confirms its readiness to speed up the negotiation of tax information exchange and other agreements with a view to having a network of such arrangements in place as soon as reasonably possible in order to address the global issue of tax fraud and tax evasion as well as double taxation. In this process, Liechtenstein will emphasise its responsibilities to address both the tax claims of other jurisdictions and the trust of its clients.

A Commitment to be a responsible and reliable partner also in difficult times

The Government and the Liechtenstein business community recognise that we are living in a time of fundamental and rapid development and change and that every country is obliged to act in a proactive and forward looking way, not least to support efforts of the global community to meet unparalleled challenges in many areas. Leaders around the world are calling for immediate action designed to stabilise the global economy and financial system. The necessity of such action is widely accepted and is also acknowledged by Liechtenstein.

Liechtenstein has always had a diversified economy and is home to a number of companies in all sectors that are highly respected in the international business community. While the industrial sector is still the economy's main pillar, Liechtenstein's financial sector has developed well and has helped to diversify Liechtenstein's economy. Thus, the financial centre plays an important role in the prosperity of Liechtenstein, as clients from around the world have placed their trust in Liechtenstein, in some cases for generations.

Liechtenstein is a Member State of the European Economic Area and also takes part in the European single market for financial services. Liechtenstein and its internationally integrated financial centre have a strong desire to continue to be recognised and accepted within the global community as a leading location for investment and wealth management according to its high standards of regulation and its high quality of services. Liechtenstein has undertaken numerous initiatives to combat illicit activities and has legislation and an administrative practice that have been evaluated positively by the FATF, the IMF and others.

Moreover, Liechtenstein has ratified and implemented an agreement with the EU on the taxation of savings. Recently, it has concluded a tax agreement with the US following globally accepted OECD standards. Currently, it is in negotiations with the EU in relation to an anti-fraud agreement and is in discussions with certain OECD and EU Member States regarding closer cooperation in tax matters.

As with other financial centres, Liechtenstein will continue to protect the legitimate privacy rights of its clients from around the world. To this end, the Government is ensuring that Liechtenstein maintains solid and modern bank secrecy laws.

A Commitment to global standards of transparency and exchange of information as developed by the OECD

Liechtenstein is committed to act as a responsible member of the global community and wishes to contribute to the global effort to help foster long-term economic prosperity and the social well-being of everybody. Liechtenstein's central location in Europe, its integration in the European Economic Area and the global community as well as the openness of markets, not just in the financial area, encourage Liechtenstein to strive towards far-reaching cooperation in tax matters according to OECD standards and

beyond in order to better meet the concerns of other states, investors and its financial centre.

Liechtenstein is prepared to enhance its participation in international efforts to counteract non-compliance with foreign tax laws in a globally integrated financial community and to strengthen its cooperation with other countries by means of bilateral agreements on exchange of information for tax purposes or, as the case may be, by means of double taxation agreements.

Liechtenstein commits to and will implement the global standards of transparency and exchange of information as developed by the OECD and plans to go beyond these standards in order to better meet the concerns and tax claims of other jurisdictions. The Government's objective is to reflect the legitimate needs of investors, to encourage the financial centre's role as a tax-compliant destination and to strengthen its transparency and accountability. In addition, Liechtenstein is prepared to continue the negotiations with the EU on an anti-fraud agreement and to renegotiate the agreement on the taxation of savings concerning the extension of its scope of application.

Having the legitimate needs of its clients and its industrial sector in mind, Liechtenstein is prepared to negotiate bilateral tax information exchange and other agreements that may go beyond OECD standards so as to provide particularly for effective exchange of information to address the global issue of tax fraud and tax evasion as well as double taxation. In parallel, the Government of Liechtenstein will be encouraging its treaty partners to establish procedures designed to help investors, if necessary, to regularise any former, ongoing and future tax compliance obligations in their countries of residence. For the benefit of the investors, foreign jurisdictions and Liechtenstein's financial centre, voluntary disclosure procedures should ideally provide adequate legal certainty to clients and financial institutions guiding them through this process.

Furthermore, Liechtenstein is prepared to develop comprehensive solutions to protect the legitimate tax claims of other jurisdictions according to their fiscal sovereignty and to balance legitimate interests of jurisdictions. Additionally, clear and detailed guidelines and technical assistance will be sought from Liechtenstein's treaty partners with regard to the application of the law of taxation of the residency state to assets held in or via Liechtenstein in order to ensure an effective approach to the exchange of information, to inform taxpayers and financial service providers about their obligations and to provide legal certainty. The Liechtenstein Government believes that this will help develop Liechtenstein's role as a tax-compliant international financial centre.

During the past months, Liechtenstein has greatly benefited from discussions with several Governments of EU Member States as well as government associations to better understand the needs of the global community. These discussions have been most valuable in developing this Declaration. Liechtenstein appreciates the guidance it has received, and is looking forward to participating in further discussions on transparency and exchange of information.

Government of the Principality of Liechtenstein, March 12, 2009

Press conference, 12 March 2009, 11:00 CET

„Information by the Liechtenstein Government on international tax conformity and banking secrecy"

Statement of H.S.H. Heriditary Prince Alois of Liechtenstein

The spoken word applies

Ladies and Gentlemen,

Half a year ago, in my speech to mark Liechtenstein's National Holiday, I said that the time had come to put our system of legal and administrative assistance in the field of taxation on a new footing.

We should offer comprehensive assistance to all states that are interested in fair and constructive cooperation with Liechtenstein and are prepared to work in a concerted effort to find sensible solutions for customer relations that have evolved over the years.

Today I have the pleasure of telling you

- that all important decision-makers in the government, administration and trade and industry share my opinion,
- that Liechtenstein has taken decisive steps in this direction over the past few months, and
- that foreign countries have shown understanding and will provide assistance with the implementation of our solutions.

We are in agreement that we must cooperate on tax matters in the future to ensure

- that our trade partners do not miss out on funds due to a lack of inter-state cooperation,
- that customers of our financial centre in Liechtenstein have a safe future and that their privacy is suitably protected, and
- that our financial centre in Liechtenstein remains attractive for its customers.

International cooperation in tax matters is a field in which structures that have evolved through history clash with legal traditions. I believe it is our responsibility to point out solutions that are in keeping with inter-state solidarity and with the interests of all those concerned.

The solution that we are presenting to you today could serve as a model for others. It will eliminate any problems within the framework of inter-state cooperation regarding the investigation of tax fraud and tax evasion and will allocate missing tax revenues quickly and efficiently – funds that are sorely needed in these times [of crisis]. At the same time, it will give the customers of our financial centre the guarantee that their privacy will continue to be respected in the future.

At this point I would like to thank those responsible for this solution in Liechtenstein's government, administration, trade and industry for their great commitment over the last few months. In particular my thanks go to the Prime Minister and his Deputy who are here today.

I now request the Prime Minister and the Deputy Prime Minister to present the government declaration in detail.

Press conference, 12 March 2009, 11:00 CET

„Information by the Liechtenstein Government on international tax conformity and banking secrecy"

Statement of Otmar Hasler, Prime Minister

The spoken word applies

Ladies and Gentlemen,

Global society finds itself facing numerous political, economic and social challenges of unusual magnitude. The community of nations needs to face these challenges collectively. In this conjunction, worldwide economic stimulus measures are being implemented to an extent which until very recently would have been thought inconceivable. State resources are being put under huge pressure, and as a result international co-operation in tax matters is increasingly being pushed to the fore.

The Government of the Principality of Liechtenstein supports the worldwide measures to combat financial criminality, and recognises the global OECD standards for transparency and stepping up the exchange of information in tax matters. The strategy, which was drafted in the year 2008, aims to ensure that Liechtenstein makes a specific contribution towards the objectification of the escalating international tax debate. Liechtenstein finds itself in a strong starting position in this conjunction:

The Liechtenstein financial centre has proven to be very dependable during the current financial and economic crisis, with a stable banking system which has demonstrated its strength without the need for state support.

In recent years the Government has taken a number of important steps in the field of tax co-operation:

Liechtenstein has established an extremely effective regime, both in respect of the combating of money laundering as well as the fight against terrorism finance.

Both the IMF as well as the FATF have commented favourably on these matters.

The Agreement on Mutual Legal Assistance with the USA from the year 2002 is working very well. The Tax Information Agreement signed with the USA last year, based on the OECD model, is set to come into force on 1 January 2010. The domestic implementation measures are already well-advanced.

As a member of the European Economic Area, Liechtenstein has close links with the European Union. The Schengen Agreement and the Savings Taxation Agreement both contain questions of tax co-operation. Negotiations on an agreement to combat fraud have largely been completed, and the agreement is likely to be signed before long.

In recent months the Government has held wide-ranging discussions with OECD representatives. During the course of these discussions the Government endeavoured to identify the best solutions which would enable the clients of the financial centre to comply with the tax regulations in their home countries.

For us, the decisive aspect is the need to safeguard the private sphere and consequently the core elements of banking secrecy. This is possible, particularly if there is effective co-operation in tax matters. Bank secrecy serves to protect the financial private sphere; its purpose is not to protect tax offences. For undeclared money is an international problem, and not just a problem for states with banking secrecy rules.

In the official declaration published today, the Government of the Principality of Liechtenstein declares its determination to support the international measures to combat financial criminality and non-adherence to tax laws. Liechtenstein accepts the OECD standards for transparency and stepping up the exchange of information in tax matters.

We are willing to establish effective exchange of information solutions in bilateral negotiations, and take seriously our responsibilities vis-à-vis established client relationships. In this conjunction we are keen to apply solutions which facilitate a transition to fiscal conformity, and which are of benefit both to the state of origin as well as to the owners of the assets. We are firmly convinced that we will best be able to exercise our responsibility vis-à-vis the clients who have placed their trust in our legal system by creating operating conditions within the context of bilateral negotiations which guarantee legal certainty and the opportunity to achieve fiscal conformity through clearly-defined rules.

Discussions with individual states have already taken place, and bilateral negotiations are due to be initiated in the near future.

Press conference, 12 March 2009, 11:00 CET

„Information by the Liechtenstein Government on international tax conformity and banking secrecy"

Statement of Dr. Klaus Tschütscher, Prime Minister elect

The spoken word applies

Ladies and Gentlemen,

I am very pleased to speak to you today. My government and I are also looking forward to implementing the principles that are set out in our declaration.

The financial centre of Liechtenstein is undergoing rapid change. We have the unique opportunity to learn from our experiences and mistakes of the past and to put the financial centre on a new footing so that it is well equipped for the future.

Following the elections, I announced as early as 18 February that I would consistently continue the government's policy regarding cooperation on tax matters. I am convinced that the proactive policy defined in our government declaration is the only right avenue for Liechtenstein. For our small state, it would be negligent not to take a proactive approach.

We need stable basic conditions and lasting legal certainty for the existing and potential customers of our financial centre. As is already the case with the Financial Market Authority, the basic conditions here in Liechtenstein will sooner or later orientate themselves towards international regulations. And we can only play a part in shaping these regulations if we face up to the discussion, if we actively present our position and make it transparent to others in a credible manner.

For the new government, it is therefore important to translate the announced tax policy into concrete offers. We accept the OECD standards of transparency and information exchange on tax matters. And we are even prepared to go a step further than the OECD standards. We will not only negotiate bilateral agreements to promote cooperation on tax fraud and tax evasion with states who are interested in cooperation, but also want to define procedures which would help investors meet any past, current and future tax liabilities in their home countries. We are talking mainly about double taxation agreements or agreements on the exchange of tax information, so-called Tax Information Exchange Agreements or TIEAs.

The TIEA that was successfully concluded with the USA last year is a good example of how the legitimate demands of the USA have been taken into account whilst maintaining the tax sovereignty of Liechtenstein. A balance of interests can be best achieved through bilateral agreements. I am convinced that we have been able to further consolidate our longstanding and good relations with the USA as a consequence of this agreement, particularly in view of the new administration.

We want to help other countries claim the taxes due to them by means of an efficient, cross-border application of taxes, whilst taking the interests of the Liechtenstein financial centre and its customers into account. We want to take a cooperative approach which means that the relevant partner state will help to normalize customer relations and will not discriminate against Liechtenstein in the form of tax competition.

The new agreement will give the partner state a more efficient means to apply taxes on foreign capital; it will give the customers of Liechtenstein financial centre a sound legal framework to meet their tax liabilities; and it will also make our financial centre more attractive and enhance its

reputation for having customers that abide by tax regulations. This means that all three parties, the partner state, Liechtenstein and customers will profit from such an agreement.

I am glad that this government declaration is a basis for Liechtenstein to take the initiative and actively approach other countries. I also hope that many countries will take up our offer of negotiations and that we, as a result, will be able to conclude and implement bilateral agreements as quickly as possible. The government declaration has created the prerequisite for us to quickly enter into contractual negotiations and talks.

We have to see the discussion about bank customer secrecy in a larger context. The protection of the customer's privacy is at the centre of bank secrecy. This privacy must be maintained. As far as discussions with other countries are concerned, we can no longer and no longer want to refuse the legitimate call for an exchange of information. Liechtenstein needs a consistent and modern system of bank customer secrecy which guarantees the legitimate protection of the individual's privacy but also takes into account the demands of partner states.

At the same time, the government wants to encourage banks and trust companies to support customers with the voluntary disclosure of capital that has possibly not been declared for tax purposes. Many Liechtenstein trust companies and banks, like myself, see this as a strategic opportunity for Liechtenstein to develop into a financial centre that protects the privacy of the customer whose capital is to be managed and guarantees the long-term security of the capital in keeping with the tax laws in the customer's home country.

Trade associations, headed by the Liechtenstein Bank Association, the Liechtenstein Association of Trust Companies and the Liechtenstein Chamber of Industry and Commerce, all back today's government declaration. I am convinced that we have created the best prerequisites to equip Liechtenstein for the future and to position the financial centre as a top-notch, innovative financial centre of integrity.

Response provided for the record by IRS Commissioner Douglas H. Shulman to a question posed at the hearing by Senator Claire McCaskill regarding the whistleblower award program.

Section 7623(b) was created by section 406 of the Tax Relief and Health Care Act of 2006 (the Act) (PL 109-432). Section 7623(b) established a mandatory whistleblower award program that included a new Whistleblower Office. The Whistleblower Office operates at the direction of the Commissioner of Internal Revenue. It coordinates and consults with other divisions of the IRS as directed by the Commissioner, analyzes information submitted, and makes award determinations. The Whistleblower Office may investigate the matter itself, or assign it to the appropriate IRS office for investigation. In certain cases, determinations by the Whistleblower Office may be appealed to the US Tax Court.

A whistleblower must meet several conditions to qualify for the mandatory award program. In order to qualify for a whistleblower award, the information must:

- relate to a tax noncompliance matter in which the tax, penalties, interest, additions to tax and additional amounts in dispute exceed $2,000,000;
- relate to a taxpayer, and in the case of an individual taxpayer, one whose gross income exceeds $200,000 for at least one of the tax years in question; and
- substantially contribute to a decision to take administrative or judicial action that results in the collection of tax, penalties, interest, additions to tax and additional amounts.

If the above conditions are met, the whistleblower must receive an award of at least 15 percent but not more than 30 percent of the collected proceeds resulting from administrative or judicial actions (including related actions) or from any settlement in response to an administrative or judicial action. The maximum award percentage is reduced to 10 percent for cases based principally on specific allegations disclosed in listed information sources (such as government audit reports), and may also be reduced if the whistleblower planned and initiated the actions that led to the underpayment of tax.

Permanent Subcommittee on Investigations
EXHIBIT #29

RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD
FROM
SENATOR CARL LEVIN
to
THE HON. DOUGLAS H. SHULMAN
Commissioner – Internal Revenue Service
U.S. Department of the Treasury

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON
TAX HAVEN BANKS AND U. S. TAX COMPLIANCE - OBTAINING THE NAMES OF U.S. CLIENTS WITH SWISS ACCOUNTS
March 4, 2009

1. **In your testimony, you identified some changes to the Qualified Intermediary Program that the IRS considering. One of the changes that you mentioned was expanding information reporting requirements to include more sources of income for U.S. persons with accounts at QI banks. Will the IRS amend the QI program to require participating financial institutions to identify and report to the IRS all accounts held by U.S. persons, and all accounts held in the name of foreign entities with U.S. persons as beneficiaries or beneficial owners? If not, why not?**

   RESPONSE: The IRS is working with the Treasury Department to develop proposals to address abuses by U.S. individual taxpayers with offshore accounts. Some of these proposals were discussed in a recent press conference where the Administration set forth its legislative priorities for curbing offshore tax abuses. The proposals included amending the QI rules to expand current reporting and strengthen documentation requirements. The Fact Sheet addressing these proposals is enclosed.

2. **The Swiss Government recently committed to adopting the tax information exchange standards promulgated by the Organization for Economic Cooperation and Development (OECD). Despite this commitment, the Swiss Government has sometimes indicated that it would be unwilling to renegotiate its tax treaty with the United States to incorporate the OECD standards, unless the United States also agreed to abandon the pending John Doe summons proceeding seeking the names of approximately 47,000 U.S. clients with $18 billion in Swiss accounts at UBS AG. Under a renegotiated U.S.-Swiss tax treaty that incorporated OECD standards, would Switzerland be permitted to refuse to provide information for an unnamed U.S. taxpayer? Has Switzerland already indicated its intent not to provide information about unnamed taxpayers? If so, would**

Permanent Subcommittee on Investigations
EXHIBIT #30

a successful renegotiation of the U.S.-Swiss tax treaty likely result in UBS' providing the 47,000 names to the United States?

RESPONSE: As was the case during the recent hearing we must defer to the Department of Justice on questions concerning pending litigation in the John Doe summons proceedings, and to the Office of Tax Policy at the Department of Treasury on questions concerning the negotiation of specific income tax treaties.

3. **You informed the Subcommittee that in the past 5 years, there has been a 70% increase in foreign tax credits claimed by corporations in the United States and a 170% increase in the foreign tax credits claimed by individuals in the United States. Please describe the general types of practices or transactions identified by the IRS that have served as the basis for those foreign tax credit claims, and whether any of those are abusive.**

RESPONSE: The increase in foreign tax credit claims may result from one or more of a number of factors, such as: (i) increased foreign investment and business activity by both individuals and corporations; (ii) increased use of structured transactions such as foreign tax credit generators, and (iii) statutory changes such as those relaxing the limitations on the foreign tax credit that took effect in 2003 and 2007, and the temporary repatriation incentive for 2004-05 included in the American Jobs Creation Act. Further analysis of filed returns is necessary to determine the extent that the increase in claimed credits is attributable to potentially abusive transactions as opposed to other possible causes.

RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD
FROM
SENATOR TOM COBURN, MD
to
THE HON. DOUGLAS H. SHULMAN
Commissioner – Internal Revenue Service
U.S. Department of the Treasury

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON
TAX HAVEN BANKS AND U. S. TAX COMPLIANCE - OBTAINING THE NAMES OF U.S. CLIENTS WITH SWISS ACCOUNTS
March 4, 2009

1. **I'm encouraged to hear that the IRS is "entering a time of unprecedented focus on offshore tax evasion." Can you provide us with some data on the approximate scope of the problem of offshore tax evasion?**

   I've heard $100 billion a year, $200 billion; can you give us an estimate as to the scale?

   RESPONSE: Estimating offshore tax evasion is very complicated because it requires a determination of the extent of both individual and corporate evasion, and a judgment about what constitutes tax evasion, as distinguished from tax avoidance. For example, individuals who fail to report taxable income related to offshore accounts have likely committed tax evasion. However, corporations that are taking positions where there exist uncertainties in the tax law may or may not be committing evasion. Given these complexities, it is very difficult to make a reliable estimate of the amount of offshore tax evasion.

2. **In your written testimony you state that the problems of offshore tax abuse cannot be solved by any single "silver bullet," and that only a network of "separate but complementary programs will tighten the net around these tax cheats." Of the legal and regulatory tools that you have to combat this activity, which requires the most immediate reform?**

   RESPONSE: The Administration has announced a set of legislative proposals to address offshore tax abuses. Some of these include increased information reporting, improving the QI audit procedures, and extending the statute of limitations. Attached is the Fact Sheet detailing these proposals.

3. **What changes would you propose to make to the Qualified Intermediary Program at the IRS?**
   a. **Would any of these changes require legislation, or could they be implemented immediately?**
   b. **If the IRS can do this without additional statutory authority, how long must we wait to see meaningful changes put in place?**

   RESPONSE: The QI program is implemented through agreements with financial institutions, so the IRS can make most changes administratively. However, some of the potential changes needed are so significant that new regulations or legislation may be necessary. As referenced above, the attached Fact Sheet details several proposals intended to improve the QI reporting system.

4. **Could you please describe for us some of the legitimate reasons an individual American might want to hold an off-shore account?**

   RESPONSE: A U.S. person might have an offshore account because the person lives in a foreign country and needs an account to transact personal business or because the person does business in a foreign country and needs to pay vendors or customers in that country. There could be other reasons such as investing in offshore assets; in many cases, however, that could also be done from a U.S.-based account.

5. **It seems to me that we're not going to audit our way out of this problem, that wealthy Americans need to pay their fair share and, if they cheat on their taxes, they need to know that we're coming for them. Is that what you're getting at when you urge "the creation of an environment in which offshore tax evaders fear detection and prosecution?"**

   RESPONSE: Yes. Our goal is to be as proactive and preventative as possible.

6. **While not excusing law-breakers, is there anything in particular about our tax code that encourages people to place their money overseas rather than keeping it in our country?**

   RESPONSE: The United States taxes the income of its citizens and residents regardless of where they live and where they earn their income. Although U.S. payees of income are subject to extensive U.S. tax information reporting requirements, many foreign payees of income are not. Therefore, a likely factor encouraging people to place their money overseas to avoid taxes is the belief that they can hide this money, along with the income it generates, from the IRS.

RESPONSE TO SUPPLEMENTAL QUESTION FOR THE RECORD
FROM
SENATOR CLAIRE McCASKILL
to
THE HON. DOUGLAS H. SHULMAN
Commissioner – Internal Revenue Service
U.S. Department of the Treasury

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON
TAX HAVEN BANKS AND U. S. TAX COMPLIANCE - OBTAINING THE NAMES OF U.S. CLIENTS WITH SWISS ACCOUNTS
March 4, 2009

Q. Please provide more details about the IRS's whistleblower program, including what rewards and protections are available to whistleblowers, and your efforts to publicize this program.

RESPONSE: Rewards available: Section 7623(b) was created by section 406 of the Tax Relief and Health Care Act of 2006 (the Act) (PL 109-432). Section 7623(b) set a new framework for consideration of submissions meeting criteria, described below, that will be administered by the Whistleblower Office. The Whistleblower Office coordinates and consults with other divisions of the IRS as directed by the Commissioner of Internal Revenue, analyzes information submitted, and makes award determinations.

A whistleblower must meet several conditions to qualify for the 7623(b) award program. In order to qualify for a whistleblower award, the information must:

- Relate to a tax noncompliance matter in which the tax, penalties, interest, additions to tax and additional amounts in dispute exceed $2,000,000;
- Relate to a taxpayer, and in the case of an individual taxpayer, one whose gross income exceeds $200,000 for at least one of the tax years in question; and
- Substantially contribute to a decision to take administrative or judicial action that results in the collection of tax, penalties, interest, additions to tax and additional amounts.

If the above conditions are met, the IRS shall pay an award of at least 15 percent but not more than 30 percent of the collected proceeds resulting from administrative or judicial actions (including related actions) or from any settlement in response to an administrative or judicial action. The maximum award percentage is reduced to 10 percent for cases based principally on specific allegations disclosed in listed information sources (such as

government audit reports), and may also be reduced by the Whistleblower Office if the whistleblower planned and initiated the actions that led to the underpayment of tax. If the submission does not meet the criteria for 7623(b) consideration, it may be considered for an award under the pre-Act discretionary authority (what is now section 7623(a)). The current rules for 7623(a) cases provide for lower award percentages (up to 15% of collected proceeds), and Whistleblower Office decisions may not be appealed to the US Tax Court.

Protections: Section 7623 provides no explicit protection for whistleblowers, other than the right to appeal Whistleblower Office determinations under 7623(b) to the US Tax Court. The IRS has taken steps to protect against disclosure the identity of a whistleblower, through internal guidance providing special handling rules for whistleblower information and the publication of a Privacy Act exemption notice for whistleblower information. However, the public notice on procedures for submitting information to the IRS warns that we cannot guarantee that taxpayer will not learn the whistleblower's identity.

Outreach and Communications: A dedicated page on the IRS.GOV website contains information for the public about the purpose of the Whistleblower Program, how to make a submission, and what the whistleblower should expect after making a submission, as well as links to relevant notices, forms and other information. The Whistleblower Office makes presentations to professional groups involved in representation of taxpayers and whistleblowers, both to describe program developments and to obtain outside perspectives on the program. The Whistleblower Office also has a page on the IRS intranet to make information available to IRS personnel, and provides articles for internal newsletters and speakers for professional education events to reach employees who are most likely to deal with a whistleblower case.

THE WHITE HOUSE

Office of the Press Secretary

FOR IMMEDIATE RELEASE May 4, 2009

Leveling the Playing Field: Curbing Tax Havens and Removing Tax Incentives For Shifting Jobs Overseas

There is no higher economic priority for President Obama than creating new, well-paying jobs in the United States. Yet today, our tax code actually provides a competitive advantage to companies that invest and create jobs overseas compared to those that invest and create those same jobs in the U.S. In addition, our tax system is rife with opportunities to evade and avoid taxes through offshore tax havens:

o In 2004, the most recent year for which data is available, U.S. multinational corporations paid about $16 billion of U.S. tax on approximately $700 billion of foreign active earnings - an effective U.S. tax rate of about 2.3%.

o A January 2009 GAO report found that of the 100 largest U.S. corporations, 83 have subsidiaries in tax havens.

o In the Cayman Islands, one address alone houses 18,857 corporations, very few of which have a physical presence in the islands.

Leveling the Playing Field: Curbing Tax Havens and Removing Tax Incentives For Shifting Jobs Overseas

1) Replacing Tax Advantages for Creating Jobs Overseas With Incentives to Create Them at Home

- Reforming Deferral Rules to Curb A Tax Advantage for Investing and Reinvesting Overseas
- Closing Foreign Tax Credit Loopholes
- Using Savings To Make Permanent The Tax Credit for Investing in Research and Experimentation at Home

2) Getting Tough on Overseas Tax Havens

- Eliminating Loopholes for "Disappearing" Offshore Subsidiaries
- Cracking Down on the Abuse of Tax Havens by Individuals
- Devoting New Resources for IRS Enforcement to Help Close the International Tax Gap

Today, President Obama and Secretary Geithner are unveiling two components of the Administration's plan to reform our international tax laws and improve their enforcement. First, they are calling for reforms to ensure that our tax code does not stack the deck against job creation here on our shores. Second, they seek to reduce the amount of taxes lost to tax havens - either through unintended loopholes that allow companies to legally avoid paying billions in taxes, or through the illegal use of hidden accounts by well-off individuals. Combined with further international tax reforms that will be unveiled in the Administration's full budget later in May, these initiatives would raise $210 billion over the next 10 years. The Obama Administration hopes to build on proposals by Senate Finance Committee Chairman Max Baucus and House Ways and Means Chairman Charles Rangel - as well as other leaders on this issue like Senator Carl Levin and Congressman Lloyd Doggett - to pass bipartisan legislation over the coming months.

1. ***Replacing Tax Advantages for Creating Jobs Overseas With Incentives to Create Them at Home:*** The Administration would raise $103.1 billion by removing tax advantages for investing overseas, and would use a portion of those resources to make permanent a tax credit for investment in research and innovation within the United States.

- ***Reforming Deferral Rules to Curb A Tax Advantage for Investing and Reinvesting Overseas:*** Currently, businesses that invest overseas can take immediate deductions on their U.S. tax returns for expenses supporting their overseas investments but nevertheless "defer" paying U.S. taxes on the profits they make from those investments. As a result, U.S. taxpayer dollars are used to provide a significant tax advantage to companies who invest overseas relative to those who invest and create jobs at home. The Obama Administration would reform the rules surrounding deferral so that - with the exception of research and experimentation expenses - companies cannot receive deductions on their U.S. tax returns supporting their offshore investments until they pay taxes on their offshore profits. This provision would take effect in 2011, raising $60.1 billion from 2011 to 2019.

- ***Closing Foreign Tax Credit Loopholes:*** Current law allows U.S. businesses that pay foreign taxes on overseas profits to claim a credit against their U.S. taxes for the foreign taxes paid. Some U.S. businesses use loopholes to artificially inflate or accelerate these credits. The Administration would close these loopholes, raising $43.0 billion from 2011 to 2019.

- ***Using Savings from Ending Unfair Overseas Tax Breaks to Permanently Extend the Research and Experimentation Tax Credit for Investment in the United States:*** The Research and Experimentation Tax Credit - which provides an incentive for businesses to invest in innovation in the United States - is currently set to expire at the end of 2009. To provide businesses with the certainty they need to make long-term investments in research and innovation, the Administration proposes making the R&E tax credit permanent, providing a tax cut of $74.5 billion over 10 years to businesses that invest in the United States.

2. ***Getting Tough on Overseas Tax Havens:*** The Administration's proposal would raise a total of $95.2 billion over the next 10 years through efforts to get tough on overseas tax havens by:

- ***Eliminating Loopholes for "Disappearing" Offshore Subsidiaries:*** Traditionally, U.S. companies have been required to report certain income shifted from one foreign subsidiary to another as passive income subject to U.S. tax. But over the past decade, so-called "check-the-box" rules have allowed companies to make their foreign subsidiaries "disappear" for tax purposes - permitting them to legally shift income to tax havens and make the taxes they owe the United States disappear as well. The Obama administration proposes to reform these rules to require certain foreign subsidiaries to be considered as separate corporations for U.S. tax purposes. This provision would take effect in 2011, raising $86.5 billion from 2011 to 2019.

- ***Cracking Down on the Abuse of Tax Havens by Individuals:*** Currently, wealthy Americans can evade paying taxes by hiding their money in offshore accounts with little fear that either the financial institution or the country that houses their money will report them to the IRS. In addition to initiatives taken within the G-20 to impose sanctions on countries judged by their peers not to be adequately implementing information exchange standards, the Obama Administration proposes a comprehensive package of disclosure and enforcement measures to make it more difficult for financial institutions and wealthy individuals to evade taxes. The Administration conservatively estimates this package would raise $8.7 billion over 10 years by:

o ***Withholding Taxes From Accounts At Institutions That Don't Share Information With The United States:*** This proposal requires foreign financial institutions that have dealings with the United States to sign an agreement with the IRS to become a "Qualified Intermediary" and share as much information about their U.S. customers as U.S. financial institutions do, or else face the presumption that they may be facilitating tax evasion and have taxes withheld on payments to their customers. In addition, it would shut down loopholes that allow QIs to claim they are complying with the law even as they help wealthy U.S. citizens avoid paying their fair share of taxes.

o ***Shifting the Burden of Proof and Increasing Penalties for Well-Off Individuals Who Seek to Abuse Tax Havens:*** In addition, the Obama Administration proposes tightening the reporting standards for overseas investments, increasing penalties and imposing negative presumptions on individuals who fail to report foreign accounts, and extending the statute of limitations for enforcement.

- ***Devoting New Resources for IRS Enforcement to Help Close the International Tax Gap:*** As part of the Obama Administration's budget, the IRS will hire nearly 800 new employees devoted to international enforcement, increasing its ability to crack down on offshore tax avoidance.

Leveling the Playing Field: Removing Tax Incentives For Moving Jobs Overseas and Curbing Tax Havens

Backgrounder

I. Replacing Tax Advantages to Create Jobs Overseas with Incentives to Create Jobs at Home

As the first plank of its international tax reform package, the Obama Administration intends to repeal the ability of American companies to take deductions against their U.S. taxable income for expenses supporting profits in low-tax jurisdictions on which they defer paying taxes on for years and perhaps indefinitely. Combined with closing loopholes in the foreign tax credit program, the revenues saved will be used to make permanent the tax credit for research and experimentation in the United States. This will be accomplished through:

1. ***Reforming Deferral Rules to Curb A Tax Advantage for Investing and Reinvesting Overseas***

Current Law

- ***Companies Can Defer Paying Taxes on Overseas Profits Until Later, While Taking Tax Deductions on Their Foreign Expenses Now:*** Currently, a company that invests in America has to pay immediate U.S. taxes on its profits from that investment. But if the company instead invests and creates jobs overseas through a foreign subsidiary, it does not have to pay U.S. taxes on its overseas profits until those profits are brought back to the United States, if they ever are. Yet even though companies do not have to pay U.S. taxes on their overseas profits today, they still get to take deductions today on their U.S. tax returns for all of the expenses that support their overseas investment.

- ***Deferral Rules Use U.S. Taxpayer Dollars to Create A Tax Advantage for Companies That Invest Abroad:*** As a result, this preferential treatment uses U.S. taxpayer dollars to provide companies with an incentive to invest overseas, giving them a tax advantage over competitors who make the same investments to create jobs in the United States.

Example Under Current Law:

- Suppose that two U.S. companies decided to borrow to invest in a new factory. Company A invests that money to build its plant in the U.S., while Company B invests overseas in a jurisdiction with a tax rate of only 10 percent.

- Company A will be able to deduct its interest expense, reducing its overall U.S. tax liability by 35 cents for every dollar it pays in interest. But it will also pay a 35 percent tax rate on its corporate profits.

- Company B will also be able to deduct its interest expense from its U.S. tax liabilities at a 35 percent rate. But it will only face a tax of 10 percent on its profits.

- Thus, our current tax code uses U.S. taxpayer dollars to put companies that invest in the United States at a competitive advantage with companies who invest overseas.

The Administration's Proposal

- ***Level the Playing Field:*** The Administration's commonsense proposal, similar to an earlier measure proposed by House Ways and Means Chairman Charles Rangel, would level the playing field by requiring a company to defer any deductions - such as for interest expenses associated with untaxed overseas investment - until the company

repatriates its earnings back home. In other words, companies would only be able to take a deduction on their U.S. taxes for foreign expenses when they also pay taxes on their foreign profits in the United States. This proposal makes an exception for deductions for research and experimentation because of the positive spillover impacts of those investments on the U.S. economy.

- ***Raise $60.1 Billion From 2011 to 2019:*** This proposal goes into effect in 2011, and would raise $60.1 billion between 2011 and 2019.

2. ***Closing Foreign Tax Credit Loopholes***

Current Law

- ***Companies Can Take Advantage Of Foreign Tax Credit Loopholes:*** When a U.S. taxpayer has overseas income, taxes paid to the foreign jurisdiction can generally be credited against U.S. tax liabilities. In general, this "foreign tax credit" is available only for taxes paid on income that is taxable in the U.S. The intended result is that U.S. taxpayers with overseas income should pay no more tax on their U.S. taxable income than they would if it was all from U.S. sources. However, current rules and tax planning strategies make it possible to claim foreign tax credits for taxes paid on foreign income that is not subject to current U.S. tax. As a result, companies are able to use such credits to pay less tax on their U.S. taxable income than they would if it was all from U.S. sources - providing them with a competitive advantage over companies that invest in the United States.

The Administration's Proposal

- ***Reform the Foreign Tax Credit to Remove Unfair Tax Advantages for Overseas Investment:*** The Administration's proposal would take two steps to rein in foreign tax credit schemes. First, a taxpayer's foreign tax credit would be determined based on the amount of total foreign tax the taxpayer actually pays on its total foreign earnings. Second, a foreign tax credit would no longer be allowed for foreign taxes paid on income not subject to U.S. tax. These reforms would go into effect in 2011, raising $43.0 billion from 2011 to 2019.

3. ***Making R&E Tax Credit Permanent to Encourage Investment in Innovation in the United States:*** The resources saved by curbing tax incentives for jobs overseas and limiting losses to tax havens would be used to strengthen incentives to invest in jobs in the United States by making permanent the R&E tax credit.

Current Law

- ***R&E Credit Is Set to Expire At End of 2009:*** Under current law, companies are eligible for a tax credit equal to 20 percent of qualified research expenses above a base amount. But the research and experimentation tax credit has never been made permanent -

instead, it has been extended on a temporary basis 13 times since it was first created in 1981 - and is set to expire on December 31, 2009.

How It Works

- Through the research and experimentation tax credit, companies receive a credit valued at 20 percent of qualified research expenses in the United States above a base amount. Taxpayers can also elect to take an alternative simplified research credit that provides an incentive for increasing research expenses above the level of the previous three years. Taxpayers may also take a credit based on spending on basic research and certain energy research.

- Any uncertainty about whether the R&E credit will be extended reduces its effectiveness in stimulating investments in new innovation, as it becomes more difficult for taxpayers to factor the credit into decisions to invest in research projects that will not be initiated or completed prior to the credit's expiration.

The Administration's Proposal

- ***Create Certainty to Encourage New Investment and Innovation at Home By Making the Research and Experimentation Tax Credit Permanent:*** To give companies the certainty they need to make long-term research and experimentation investment in the U.S., the Administration's budget includes the full cost of making the R&E credit permanent in future years. By making this tax credit permanent, businesses would be provided with the greater confidence they need to initiate new research projects that will improve productivity, raise standards of living, and increase our competitiveness. And with over 75 percent of credit dollars attributed to wages, the credit would provide an important incentive for businesses to create new jobs.

- ***Paid For With Provisions That Make the Tax Code More Efficient and Fair***: This change would cost $74.5 billion over 10 years, which will be paid for by reforming the treatment of deferred income and the use of the foreign tax credit.

II. Getting Tough on Overseas Tax Havens

Some countries make it easy for U.S. taxpayers to evade or avoid U.S. taxes by withholding information about U.S.-held accounts or giving favorable tax treatment to shell corporations created just to avoid taxes. In certain cases, companies are taking advantage of currently legal loopholes to avoid paying taxes by shifting their profits to tax havens. In other cases, Americans break the law by hiding their income in hidden overseas accounts, and these tax havens refuse to provide the information the IRS needs to enforce U.S. law. Either way, these tax havens make our tax system less fair and harm the U.S. economy. President Obama proposes to address tax havens by:

1. ***Eliminating Loopholes that Allow "Disappearing" Offshore Subsidiaries***: Current law allows U.S. businesses to establish foreign subsidiary corporations, but then to "check a box" to pretend that the subsidiaries do not exist for U.S. tax purposes. This practice allows taxes that

would otherwise be paid in the U.S. on passive income to be avoided, at great cost to U.S. taxpayers.

Current Law

- ***Disappearing Subsidiaries Allow Corporations to Shift Income Tax-Free:*** Traditionally, if a U.S. company sets up a foreign subsidiary in a tax haven and one in another country, income shifted between the two subsidiaries (for example, through interest on loans) would be considered "passive income" for the U.S. company and subject to U.S. tax. Over the last decade, so-called "check-the box" rules have allowed U.S. firms to make these subsidiaries disappear for U.S. tax purposes. With the separate subsidiaries disregarded, the firm can shift income among them without reporting any passive income or paying any U.S. tax. As a result, U.S. firms that invest overseas are able to shift their income to tax havens. It is clear that this loophole, while legal, has become a reason to shift billions of dollars in investments from the U.S. to other counties.

Example under Current Law

- Suppose that a U.S. company invests $10 million to build a new factory in Germany. At the same time, it sets up three new corporations. The first is a wholly owned Cayman Islands holding company. The second is a corporation in Germany, which is owned by the holding company and owns the factory. The third is a Cayman Islands subsidiary, also owned by the Cayman Islands holding company.

- The Cayman subsidiary makes a loan to the German subsidiary. The interest on the loan is income to the Cayman subsidiary and a deductible expense for the German subsidiary. In this way, income is shifted from higher-tax Germany to the no-tax Cayman Islands.

- Under traditional U.S. tax law, this income shift would count as passive income for the U.S. parent - which would have to pay taxes on it. But "check the box" rules allow the firm to make the two subsidiaries disappear — and the income shift with them. As a result, the firm is able to avoid both U.S. taxes and German taxes on its profits.

The Administration's Proposal

- ***Require U.S. Businesses That Establish Certain Foreign Corporations To Treat Them As Corporations For U.S. Tax Purposes:*** The Administration's proposal seeks to abolish a range of tax-avoidance techniques by requiring U.S. businesses that establish certain corporations overseas to report them as corporations on their U.S. tax returns. As a result, U.S. firms that invest overseas would no longer be able to make their subsidiaries — or their income shifts to tax havens — disappear for tax purposes. This would level the playing field between firms that invest overseas and those that invest at home.

- ***Raise $86.5 Billion from 2011 to 2019:*** This loophole would be closed beginning in 2011, raising $86.5 billion from 2011 to 2019.

2. ***Cracking Down on the Abuse of Tax Havens by Individuals:*** The IRS is already engaged in significant efforts to track down and collect taxes from individuals illegally hiding income overseas. But to fully follow through on this effort, it will need new legal authorities. Current law makes it difficult for the IRS to collect the information it needs to determine that the holder of a foreign bank account is a U.S. citizen evading taxation. The Obama administration proposes changes that will enhance information reporting, increase tax withholding, strengthen penalties, and shift the burden of proof to make it harder for foreign account-holders to evade U.S. taxes, while also providing the enforcement tools necessary to crack down on tax haven abuse.

Current Law

- ***A Free Ride for Financial Institutions that Flout Reporting Rules:*** A centerpiece of the current U.S. regime to combat international tax evasion is the Qualified Intermediary (QI) program, under which financial institutions sign an agreement to share information about their U.S. customers with the IRS. Unfortunately, this regime, while effective, has become subject to abuse:

o ***At Non-Qualifying Institutions, Withholding Requirements Are Easy to Escape:*** Currently, an investor can escape withholding requirements by simply attesting to being a non-U.S. person. That leaves it to the IRS to show that the investor is actually a U.S. citizen evading the law.

o ***Loopholes Allow Qualifying Institutions to Still Serve as Conduits for Evasion:*** Moreover, financial institutions can qualify as QIs even if they are affiliated with non-QIs. As a result, a financial institution need not give up its business as a conduit for tax evasion in order to enjoy the benefits of being a QI. In addition, QIs are not currently required to report the foreign income of their U.S. customers, so U.S. customers may hide behind foreign entities to evade taxes through QIs.

o ***Legal Presumptions Favor Tax Evaders Who Conceal Transactions:*** U.S. investors overseas are required to file the Foreign Bank and Financial Account Report, or FBAR, disclosing ownership of financial accounts in a foreign country containing over $10,000. The FBAR is particularly important in the case of investors who employ non-QIs, because their transactions are less likely to be disclosed otherwise. Unfortunately, current rules make it difficult to catch those who are supposed to file the FBAR but do not. And even when the IRS has evidence that a U.S. taxpayer has a foreign account, legal presumptions currently favor the tax evader — without specific evidence that the U.S person has an account that requires an FBAR, the IRS cannot compel an investor to provide the report or impose penalties for the failure to do so. This specific evidence may be almost impossible for the IRS to get.

- ***The IRS Lacks the Tools It Needs to Enforce International Tax Laws:*** In addition to the shortcomings of the QI program, current law features inadequate tools to crack down on wealthy taxpayers who evade taxation. Investors who withhold information about overseas investments face penalties limited to 20 percent of the amount of the understatement. The statute of limitations for enforcement is typically only three years - which is often too short a time period for the IRS to get the information it needs to determine whether a taxpayer with an offshore account paid the right amount of tax. And there are no requirements that U.S. individuals or third parties report transfers to and

from foreign accounts, limiting the ability of the IRS to determine whether taxpayers are paying what they owe.

Example Under Current Law

- Through a U.S. broker, a U.S. account-holder at a non-qualified intermediary sells $50 million worth of securities.

- If the seller self-certifies that he is not a U.S. citizen and the non-qualified intermediary simply passes that information along to the U.S. broker, the broker may rely on that statement and does not need to withhold money from the transaction.

- As a result, a U.S. taxpayer who provides a false self-certification can easily avoid paying taxes, since the non-QI has not signed an agreement with the IRS, and the IRS may have limited tools to detect any wrongdoing.

Proposal

In addition to initiatives taken within the G-20 to impose sanctions on countries judged by their peers not to be adequately implementing information exchange standards, the Obama administration proposes to make it more difficult to shelter foreign investments from taxation by cracking down on financial institutions that enable and profit from international tax evasion. These measures - expected to raise $8.7 billion over 10 years - would:

- ***Strengthen the "Qualified Intermediary" System to Crack Down on Tax Evaders:*** The core of the Obama Administration's proposals is a tough new stance on investors who use financial institutions that do not agree to be Qualifying Intermediaries. Under this proposal, the assumption will be that these institutions are facilitating tax evasion, and the burden of proof will be shifted to the institutions and their account-holders to prove they are not sheltering income from U.S. taxation. As a result, the Administration proposes to:

- ***Impose Significant Tax Withholding On Transactions Involving Non-Qualifying Intermediaries:*** The Administration's plan would require U.S. financial institutions to withhold 20 percent to 30 percent of U.S. payments to individuals who use non-QIs. To get a refund for the amount withheld, investors must disclose their identities and demonstrate that they're obeying the law.

- ***Create A Legal Presumption Against Users Of Non-Qualifying Intermediaries:*** The Administration's plan would create rebuttable evidentiary presumptions that any foreign bank, brokerage, or other financial account held by a U.S. citizen at a non-QI contains enough funds to require that an FBAR be filed, and that any failure to file an FBAR is willful if an account at a non-QI has a balance of greater than $200,000 at any point during the calendar year. These presumptions will make it easier for the IRS to demand information and pursue cases against international tax evaders. This shifting of legal presumptions is a key component of the anti-tax haven legislation long championed by Senator Carl Levin.

- ***Limit QI Affiliations With Non-QIs:*** The Administration's plan would give the Treasury Department authority to issue regulations requiring that a financial institution may be a QI only if all commonly-controlled financial institutions are also QIs. As a result, financial firms couldn't benefit from siphoning business from their legitimate QI operations to illegitimate non-QI affiliates.

- ***Provide the IRS With The Legal Tools Necessary to Prosecute International Tax Evasion:*** The Obama administration proposes to improve the ability of the IRS to successfully prosecute international tax evasion through the following steps:

- ***Increase Penalties for Failing to Report Overseas Investments:*** The Administration's plan would double certain penalties when a taxpayer fails to make a required disclosure of foreign financial accounts.

- ***Extend the Statute of Limitations for International Tax Enforcement***: The Administration's plan would set the statute of limitations on international tax enforcement at six years after the taxpayer submits required information.

- ***Tighten Lax Reporting Requirements:*** The Administration's plan would increase the reporting requirement on international investors and financial institutions, especially QIs. QIs would be required to report information on their U.S. customers to the same extent that U.S. financial intermediaries must. And U.S. customers at QIs would no longer be allowed to hide behind foreign entities. U.S. investors would be required to report transfers of money or property made to or from non-QI foreign financial institutions on their income tax returns. Financial institutions would face enhanced information reporting requirements for transactions that establish a foreign business entity or transfer assets to and from foreign financial accounts on behalf of U.S. individuals.

3. ***Hire Nearly 800 New IRS Staff to Increase International Enforcement:*** As part of the President's budget, the IRS would be provided with funds to support the hiring of nearly 800 new employees devoted specifically to international enforcement. The funding would allow the IRS to hire new agents, economists, lawyers and specialists, increasing the IRS' ability to crack down on offshore tax avoidance and evasion, including through transfer pricing and financial products and transactions such as purported securities loans. According to estimates by the IRS, every additional dollar invested in enforcement in recent years has yielded about four dollars in added tax revenues.

###

**"Tax Haven Banks and U.S. Tax Compliance –
Obtaining the Names of U.S. Clients with Swiss Accounts"**

March 4, 2009

**Questions for the Hearing Record
for
John DiCicco
Former Acting Assistant Attorney General
Tax Division
United States Department of Justice**

QUESTIONS FOR THE RECORD FROM SENATOR COBURN

1. **Instead of a lawsuit against UBS, I have heard that a more appropriate way to resolve this dispute would be for our government and the Swiss government to sit down and negotiate a diplomatic resolution. What's you opinion?**

RESPONSE:

The Department of Justice's (the Department) investigation of UBS arose from conduct committed by UBS and its bankers in the United States that was designed to assist United States taxpayers in evading United States income taxes. Under the terms of the Deferred Prosecution Agreement accepted by the United States District Court for the Southern District of Florida on February 19, 2009, UBS waived indictment and consented to the filing of a one-count criminal information charging UBS in a conspiracy to defraud the United States and the Internal Revenue Service, in violation of U.S. criminal law. UBS's responsibility to provide U.S. client names pursuant to a John Doe summons is currently the subject of federal civil litigation. We believe that it is inappropriate to comment on the outcome of the matter while it is subject to litigation.

It is important to acknowledge that throughout our investigation the Government of Switzerland has endeavored to provide significant assistance and cooperation. We appreciate the Swiss Government's efforts and those of its Finance and Banking regulator, who assisted in expediting the production of the records that we have secured.

2. **Doesn't the IRS have similar Qualified Intermediary agreements with many other foreign banks located in jurisdictions that, like Switzerland, have laws governing protection of financial information and personal data?**

RESPONSE:

The Qualified Intermediary Program is administered by the Department of Treasury and the Internal Revenue Service, and they would have that information. The Department's Tax Division only becomes involved in matters referred to it. Additional information regarding the Qualified Intermediary program may be obtained on the IRS web cite at http://www.irs.gov/ businesses/corporations/article/0,,id=150934,00.html.

Permanent Subcommittee on Investigations
EXHIBIT #31

a. Will the IRS serve John Does Summons on all of those foreign banks as well? If not, why not?

RESPONSE:

The Department is not at liberty to discuss cases that may be under investigation. In appropriate cases, and at the request of the Internal Revenue Service, the Department's Tax Division will seek judicial approval to serve a John Doe summons to obtain account holder names. To the extent necessary, the Department's Tax Division will also seek judicial enforcement of the summons.

3. **What are the most effective legal and regulatory tools that our Federal prosecutors and investigators have in combating off-shore banking abuse?**

RESPONSE:

Offshore tax investigations are by definition costly and time-consuming. International investigations often raise complex legal issues involving, for example, national sovereignty and bank secrecy laws of foreign countries in which evidence we seek is located. Depending upon the foreign country involved, information can be requested through tax treaties or tax information agreements in civil and criminal cases. In criminal cases, Mutual Legal Assistance Treaties can also be an effective tool in obtaining evidence overseas. Unfortunately, we do not currently have cooperative agreements with every country, and in certain instances the agreements are limited in scope. Recent efforts by the Administration and a number of foreign governments to develop and enhance information sharing among nations would streamline our efforts to obtain information in offshore tax cases.

Although international information sharing agreements can be useful tools, the Department can and does rely on other formal and informal methods for gathering evidence. For example, grand jury subpoenas can be sought in appropriate criminal cases. Moreover, the summons procedures provided by Congress in the Internal Revenue Code may also be used to obtain foreign evidence in appropriate cases.

4. **Can you describe with a little more detail some of the shortcomings of these treaties with nations like Switzerland when it comes to banking?**

RESPONSE:

Mutual Legal Assistance Treaties are designed to cover a wide array of issues of interest to each treaty partner. In the area of tax law, some treaties, such as the Swiss treaty, narrowly define the types of tax offenses that are subject to the information sharing provisions of the treaty. For example, tax evasion is considered a fiscal or administrative matter, rather than a criminal offense under Swiss law. As such, in order for information to be provided under the Swiss treaty an individual must have done more than simply fail to report and pay United States taxes. The individual must have engaged in an "affirmative act of deception."

5. **By my reading of the Qualified Intermediary Agreement a bank may open and maintain accounts without obtaining a Form W-9 for U.S. citizens-as long as those accounts do not hold U.S. securities. Is that your understanding as well?**

RESPONSE:

Yes. The Qualified Intermediary Program, which as noted above is administered by the Department of the Treasury and the Internal Revenue Service, governs the responsibilities of foreign banks as to accounts containing United States securities. However, the Qualified Intermediary program does not absolve United States taxpayers of their obligations under United States law to identify their ownership of foreign accounts whether or not they contain United States securities, and to report the income earned in those accounts on their tax returns.

6. **UBS has told this Subcommittee that, of the thousands of Swiss accounts held by U.S. citizens that are subject to the John Doe Summons, virtually none held U.S. securities. Does the IRS or DOJ contest this assertion and, if so, what is the basis for doing so?**

RESPONSE:

The purpose of a John Doe summons is to obtain information as part of an investigation to determine whether United States taxpayers have violated the law. Congress has provided this tool to enable the government to conduct a full and fair investigation, and has provided for judicial oversight of the process. On February 19, 2009, the government filed a petition to enforce the summons with the United States District Court in Miami. In paragraph 24 of the Declaration of Internal Revenue Agent Daniel Reeves filed in support of that petition, we note that we believe at this time that almost 21,000 of the subject accounts contain at least some securities. The parties are in the process of litigating the issue, and the court has scheduled oral argument in the case in July, 2009. Further comment would not be appropriate.

7. **What I'm trying to understand is: what's the solution, especially given that UBS cannot comply with the John Doe Summons without subjecting the bank and its personnel to criminal charges in Switzerland?**

RESPONSE:

Whether UBS would be subject to criminal charges in Switzerland is unknown. As previously noted, the issue of UBS's compliance with the John Doe summons is currently before the district court in Miami. This proceeding will allow both UBS and the government to fully litigate issues relevant to compliance with the summons request.

RESPONSES OF MARK BRANSON
Chief Financial Officer
Wealth Management & Swiss Bank, UBS
to
SUPPLEMENTAL QUESTIONS FOR THE RECORD
FROM
SENATOR CARL LEVIN

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON
TAX HAVEN BANKS AND U. S. TAX COMPLIANCE - OBTAINING THE NAMES OF U.S. CLIENTS WITH SWISS ACCOUNTS
March 4, 2009

1. In material submitted to the Subcommittee on March 3, 2009, UBS reported that as part of its effort to exit the U.S. cross-border business, it has closed approximately 14,400 accounts with 3.9 billion Swiss francs in assets between July 31, 2008 and January 31, 2009. Based upon the figures supplied by UBS, approximately 9,200 of those accounts with 3.344 billion Swiss francs in assets were generally transferred to non-U.S. financial institutions. Approximately how many U.S. persons were associated with the accounts that were transferred to non-U.S. financial institutions?

RESPONSE: There are approximately 12,000 U.S. persons associated with the approximately 9,200 accounts transferred to non-U.S. financial institutions. There are a variety of reasons why more than one U.S. person may be associated with an account, including, for example, that an account owner and spouse may have a beneficial interest in the same account.

2. You testified that as part of its exit plan, UBS communicated with affected clients, encouraging them to disclose their accounts to the IRS if they had not already done so. Please provide the Subcommittee with sample copies of such communications.

RESPONSE: A copy of the form letter that UBS recently sent to U.S. customers is enclosed, bearing production numbers UPSI00060402 to UPSI00060408.

3. How many accounts has UBS identified that were in the name of non-U.S. entities and have U.S. persons as beneficiaries or beneficial owners? How many U.S. persons are associated with those accounts, what is the aggregate amount of assets associated with those accounts, how many of those accounts have been closed by UBS, and how many does UBS intend to close?

RESPONSE: In connection with the Subcommittee's hearing in March 2009, the U.S. Department of Justice asked that UBS not publicly disclose information that is responsive to this request.

Permanent Subcommittee on Investigations
EXHIBIT #32

4. Based on figures in material submitted to the Subcommittee on March 3, 2009, UBS had, as of September 2008, 46,737 U.S. client accounts in Switzerland with 17.059 billion Swiss francs in assets for which no Form W-9 was filed. Has that estimate changed? If so, what are the new numbers? What is the total number of U.S. clients associated with those accounts?

RESPONSE: As of March 31, 2009, UBS had approximately 32,400 U.S. client accounts in Booking Center Switzerland with approximately CHF 9.520 billion in assets for which no Form W-9 was filed with UBS. Approximately 42,100 U.S. persons were associated with these accounts. As noted in response to Question No. 1, there are a variety of reasons why more than one U.S. person may be associated with an account, including, for example, that an account owner and spouse may have a beneficial interest in the same account or a non operating company may be beneficially owned by multiple U.S. persons. While there is no single reason for the reduction in the number and value of assets in such accounts, the reduction in the number of such accounts in Booking Center Switzerland since September 2008is primarily due to account closures and that, in addition, general market factors have contributed to the reduction in the value of assets in the accounts.

5. You testified before the Subcommittee that it is now UBS' policy that "[g]oing forward, U.S. residents will only be permitted to maintain accounts that are fully disclosed to the IRS, with UBS affiliates that are SEC registered." However, you also stated that UBS will continue to provide bank accounts for U.S. persons who are non-residents of the United States if those accounts do not contain securities. Based on figures in material submitted to the Subcommittee on March 3, 2009, UBS had, as of September 2008, 17,264 accounts with 1.941 billion Swiss francs in assets that fell into that category.

Has that estimate changed? If so, what are the new numbers?

RESPONSE: UBS has consistently stated that U.S. persons will only be able to maintain securities accounts with UBS entities regulated in the U.S., which are tax transparent. UBS has never stated that as part of the Exit Program it would exit banking-only accounts maintained by non-resident, U.S. persons in UBS offices in Switzerland or elsewhere.

UBS does not recognize the derived figure of 17,264 accounts stated above. However, as of March 31, 2009, UBS had, across all UBS booking centers outside of the U.S., approximately 13,300 accounts held by U.S. persons who are not resident in the U.S. Those accounts held approximately CHF 1.360 billion in assets. As noted above, none of those accounts held U.S. securities.

a. Of those 17,264 accounts, how many have filed a W-9 Form with UBS?

RESPONSE: Of the approximately 13,300 accounts described in the response to Question No. 5 above, UBS received a Form W-9 for approximately 130 of those accounts. None of those 13,300 accounts hold securities (U.S. securities or otherwise) and thus under the Qualified Intermediary Agreement, are not required to provide UBS with a Form W-9. UBS

believes that the 130 accounts with respect to which a Form W-9 was provided to UBS previously held but no longer hold U.S. securities.

b. Approximately how many U.S. persons are associated with those accounts?

RESPONSE: Approximately 16,300 U.S. persons are associated with the approximately 13,300 accounts in all booking centers outside of the U.S., as described in response to Question No. 5(a). As explained in response to Question No. 1, there are a variety of reasons why more than one U.S. person is associated with an account, including, for example, that an account owner and spouse are listed in UBS records as having a beneficial interest in the same account.

c. Will the new UBS policy apply only to U.S. persons residing in Switzerland or will it apply to any U.S. person residing outside of the United States?

RESPONSE: As currently contemplated, under the new policy UBS will continue to provide banking-only services to U.S. persons who reside outside of the U.S.

d. Will the new UBS policy apply only to accounts at UBS branches in Switzerland, or will it apply to accounts at UBS branches in other non-U.S. jurisdictions as well?

RESPONSE: As currently contemplated, under the new policy UBS will continue to provide banking-only services to U.S. persons who are not U.S. residents and who have accounts booked in Switzerland and other international locations.

6. With respect to the non-securities bank accounts held by U.S. persons who are non-residents of the United States that UBS plans to continue to service, will UBS require the U.S. persons associated with those accounts to provide UBS with W-9 Forms? Will UBS require those U.S. persons to certify that they have notified the IRS of their accounts and any revenue generated by those accounts? What controls will UBS implement to ensure that those accounts and any revenue generated by those accounts are made known to the IRS?

RESPONSE: Current law does not require any non-U.S. bank that provides a banking only account to a U.S. person who is resident outside of the U.S. to obtain a Form W-9 from such persons. Nevertheless, the issues raised by this question are currently under review within UBS, and are a subject of discussions with the IRS, as a result of which UBS will take appropriate actions.

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RESPONSES OF MARK BRANSON
Chief Financial Officer
Wealth Management & Swiss Bank, UBS
to
SUPPLEMENTAL QUESTIONS FOR THE RECORD
FROM
SENATOR TOM COBURN, MD

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON
TAX HAVEN BANKS AND U. S. TAX COMPLIANCE - OBTAINING THE NAMES OF U.S. CLIENTS WITH SWISS ACCOUNTS
March 4, 2009

1. UBS obviously had a number of compliance failures. What assurance can you provide this Subcommittee that these failures are a thing of the past?

RESPONSE: First, we are quite confident that we will not have similar compliance problems in this same business because UBS is exiting the United States cross-border business. Our Exit Program is subject to an independent testing, review and reporting mechanism under the Bank's agreements with the Department of Justice and the Securities and Exchange Commission. We are making significant progress in the Exit Program and are confident that the issues here will not recur. Second, UBS is also reviewing and will be enhancing its processes and controls relating to compliance with the Qualified Intermediary Agreement. UBS will be doing this with the assistance of various Qualified Intermediary Agreement experts. A key component of the comprehensive controls relating to adhering to requirements under the Qualified Intermediary Agreement is the appointment of a senior executive who will be responsible for ensuring that UBS is fully compliant.

2. Other than the contractual obligation under the Qualified Intermediary agreement to file a W-9 and 1099, what kind of duties does UBS have to make sure that a U.S. person is paying his taxes?

RESPONSE: Under the Qualified Intermediary Agreement, UBS is obligated to request Forms W-9 from U.S. persons who wish to invest in U.S. securities and, if a U.S. person chooses not to provide a Form W-9, to take certain measures to ensure that the account does not engage in transactions in U.S. securities and to sell any U.S. securities that might already be in such an account. In addition, UBS (either directly or indirectly through its custodian) is required to engage in 1099 reporting with respect to U.S. persons who earn income or proceeds from U.S. securities and to backup withhold on income or proceeds earned from U.S. securities by U.S. persons who have not provided UBS with a Form W-9. Like other banks that have entered into Qualified Intermediary Agreements, UBS is not otherwise required to ensure that U.S. persons are in compliance with other personal obligations that they may have incurred under U.S. tax laws. There are no provisions in either the Internal Revenue Code or the Treasury regulations requiring any financial institution, whether U.S. or foreign, to take any further steps to ensure

U.S. persons comply with their tax obligations in the United States. This framework reflects the fact that it is the individual taxpayer -- not his or her financial institution -- that has the primary obligation to pay any required tax.

3. You told this Subcommittee in July 2008 that UBS maintains accounts in Switzerland for about 20,000 U.S. clients, and that only about 1,000 of those accounts had been "declared" to U.S. authorities. In general, how would UBS know whether an account is declared or undeclared?

RESPONSE: UBS did not use the term "declared" in discussions with the Subcommittee Staff in which it described the roughly 1,000 accounts referenced in this question. Rather, UBS advised the Subcommittee Staff that, of the approximately 20,000 securities accounts mentioned in this question, UBS had on file Forms W-9 for about 1,000 of those accounts. The Subcommittee Staff then used the term "undeclared" in its staff report to refer to accounts that had not provided a Form W-9 but UBS believes that some percentage of the remaining 19,000 accounts were disclosed by the account holders to U.S. tax authorities. In those circumstances, the account holders have disclosed their accounts to the IRS but did not provide UBS with Forms W-9. As explained to the Subcommittee in March 2009 and July 2008, the Qualified Intermediary Agreement contemplated that UBS would maintain accounts for U.S. clients who do not provide UBS with a Form W-9. Under the Qualified Intermediary Agreement, UBS was not required to seek a Form W-9 from U.S. clients, and U.S. clients were not required to provide a Form W-9 to UBS, as long as the clients did not invest in U.S. securities.

a. Was UBS aware that the undeclared accounts were in violation of U.S. tax law simply by the failure of the U.S. citizens to declare the accounts?

RESPONSE: As a general matter, UBS had no reason to know whether the account holders were reporting the income from their accounts or declaring their ownership of the accounts on U.S. tax forms. Failing to submit a Form W-9 to UBS is not equivalent to not reporting income or declaring accounts to the IRS. And, as a general matter, UBS would not have knowledge of the account holders' practices in filing U.S. tax forms. UBS is aware that an account holder's failure to declare the accounts on tax forms is a violation of U.S. tax law by the account holder.

b. If UBS was aware that the accounts were in violation of the law by being undeclared, why was there no effort to at least alert the IRS to the problem in general, without needing to give names?

RESPONSE: The Qualified Intermediary Agreement, expressly contemplates that there would be no disclosure by foreign financial institutions of U.S customers that maintain foreign securities accounts, so long as such accounts do not contain U.S. securities. As I have indicated in previous testimony, it was permissible under the Qualified Intermediary Agreement for UBS to engage in a U.S. cross-border business, notwithstanding the absence of disclosure reporting by UBS to the IRS. UBS did undertake extensive compliance efforts to ensure that the vast majority of its accounts for U.S. persons did not contain U.S. securities in accordance with the Qualified Intermediary Agreement.

4. Is there, in your opinion, a simple way for a foreign bank such as UBS to confirm that assets delivered to its clients' accounts are not ill-gotten, undeclared, or otherwise the product of illegal activities?

RESPONSE: UBS has state-of-the-art Anti-Money Laundering and Know Your Customer policies and procedures that the Bank believes are effective at identifying and rejecting accounts and transactions that involve potentially illegal activities or are associated with persons or entities that are of questionable background or are subject to sanction.

RESPONSES OF MARK BRANSON
Chief Financial Officer
Wealth Management & Swiss Bank, UBS
to
SUPPLEMENTAL QUESTION FOR THE RECORD
FROM
SENATOR CLAIRE McCASKILL

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON
TAX HAVEN BANKS AND U. S. TAX COMPLIANCE - OBTAINING THE NAMES OF U.S. CLIENTS WITH SWISS ACCOUNTS
March 4, 2009

Q. UBS has said it will exit the cross-border market for U.S. citizens, but that it would keep open accounts for a certain number of U.S. citizens that are not U.S. residents and whose accounts contain only cash. How many accounts will fall into this category, and what amount of assets will that represent?

RESPONSE: As of March 31, 2009, UBS had, across all UBS booking centers outside the U.S., approximately 13,300 accounts held by U.S. persons who are not resident in the U.S. Those accounts held approximately CHF 1.360 billion in assets. As noted above, none of those accounts held U.S. securities.

UBS AG
P.O. Box
Org. Unit U3ER
CH-8098 Zurich
Tel +41-44-237 56 10

www.ubs.com

[Customer name]
[address]

Zurich, [date]

Reference: << CUSTOMERBC>>-<<CUSTOMERMASTERNO>> <NAME>

Information letter regarding termination of your current business relationship with UBS AG

Dear client,

On 17 July 2008, UBS AG ("UBS") publicly announced that it will no longer provide cross-border services to U.S. domiciled private clients and to offshore trusts, foundations and non-operating corporations beneficially owned by a U.S. individual through non-U.S. regulated entities, such as the UBS entity currently serving you. UBS is writing to you today to provide information on how this change affects you.

UBS will no longer be able to continue to provide services to you through your current account relationship. Going forward, UBS will provide services to persons domiciled in the United States solely through its U.S.-regulated domestic U.S. business (UBS Wealth Management USA) and its other SEC-registered units such as UBS Swiss Financial Advisers AG ("UBS SFA") and UBS International Hong Kong Limited ("UBS-I") with client assets booked in New York. We are thus providing you with notice to terminate your current banking relationship and all associated services and agreements with the master number [[<< CUSTOMERBC>>-<<CUSTOMERMASTERNO>>]] within 45 days from the date of this letter, pursuant to Article 13 of the General Terms and Conditions of your agreement with UBS.

UBS is fully committed to executing the complete exit from this business as expeditiously as possible and in an orderly and lawful manner. This exit will result in the termination of your current business relationship with the UBS unit currently serving you.

What you must do in connection with the closure of your account.

You must promptly instruct UBS to transfer the positions currently held in your account (or to liquidate such positions and transfer any resulting proceeds) to a financial institution that you designate. Further, you must promptly instruct UBS to transfer all contents, including cash, property and documents, held in your custody, safety deposit box or other safekeeping accounts. In this regard, a return notice form is enclosed. We kindly ask that you execute this form and return it to us within 45 days.

We suggest that you authorize a transfer to one of our SEC registered entities -- UBS Wealth Management USA, UBS SFA or UBS-I -- each of which allows UBS to provide a broad array of quality advice and services to U.S. clients (in the US and elsewhere) consistent with our global standards. Please note that a transfer to any of these UBS entities requires that you supply a properly executed U.S. Form W-9. (http://www.irs.gov/pub/irs-pdf/fw9.pdf).

UBS Wealth Management USA provides a complete set of domestic wealth management services to private clients through 480 branches throughout the United States and 8100 client advisors. UBS SFA, a Swiss-based investment adviser and UBS-I, a Hong Kong based investment adviser (with client assets booked in New York), both offer investment programs, trained private bankers, and expertise in global investment diversification.

U.S. clients have responded very positively to the investment opportunities and service models that those units offer.

What other considerations might apply in connection with the closure of your account.

UBS recommends that you consult with your U.S. tax advisor or tax preparer to determine any applicable U.S. tax consequences in connection with the closure of your existing UBS account, including whether you have any additional U.S. tax return filing or other disclosure obligations with respect to prior tax years or the closure of your account. In the event that you and your tax advisor identify any issues arising from prior tax years, UBS would like to inform you that the Internal Revenue Service (IRS) has a voluntary disclosure practice to encourage U.S. taxpayers to bring themselves voluntarily into full compliance with the U.S. tax laws, and, in exchange, the IRS may provide for substantial relief from otherwise applicable penalties and fines. (http://www.irs.gov/newsroom/article/0,,id=104361,00.html).

What are the consequences of not pursuing voluntary disclosure to address any issues arising from prior tax years in connection with the closure of your account.

You should be aware that, as publicly reported, the Department of Justice (DOJ) has an ongoing investigation of United States taxpayers using offshore accounts to evade U.S. taxes and defraud the IRS. UBS is continuing to cooperate with the ongoing investigation. In addition, as publicly reported, the IRS has issued a civil "John Doe" summons to UBS seeking the identities of U.S. taxpayers who maintained accounts with UBS in Switzerland for which they did not supply UBS with an IRS
Form W-9. We understand that, among other things, if the DOJ and IRS based on information obtained through these processes or otherwise, were to initiate a civil examination or criminal investigation of a taxpayer who has not already pursued voluntary compliance, the advantages of the IRS voluntary disclosure practice will be unavailable.

In connection with the IRS's pending John Doe summons, we ask that you give us your consent and instruct us to provide to the IRS on your behalf information relating to your account ("account information") that is responsive to the summons. If you would like to give this consent and instruct us accordingly, please sign the enclosed Form of Instruction Letter and return it to us in the enclosed prepaid envelope. We do not express any views as to whether provision of such account information would be treated by the IRS as a voluntary disclosure and recommend that you consult with a qualified local tax lawyer should you have questions.

What will UBS do to help you in connection with the closure of your account.

UBS has assembled and trained a dedicated team of advisory personnel to fully support you in relation to the closing of your account(s). In order to assist clients with voluntary disclosure to the IRS, UBS will provide documentation necessary, including income statements and, upon request by an accredited tax advisor of your choice, capital gain and loss statements free of charge.

What will happen if you do not provide instructions within 45 days with respect to your account.

Please be advised that if your instructions are not received within 45 days of the date of this letter, UBS will initiate any steps deemed appropriate for the closure of and remittance of funds in your account. Such steps may include the liquidation of your assets, and sending a U.S. dollar-denominated check to you in the amount of the closing balance of your account, or the holding of such a check at UBS in Switzerland for you.

Please be advised that, pursuant to Swiss law requirements, UBS will preserve all records of your account following termination for a period of ten years.

Should you have any additional questions, please do not hesitate to contact UBS through the above-referenced telephone number.

Sincerely,

UBS AG

Stephan Zimmermann
Chief Operating Officer
Wealth Management & Swiss Bank

Markus U. Diethelm
Group General Counsel

αβ

Master-no. <<
CUSTOMERBC>>-
<<CUSTOMERMASTERNO>>

IRS John Doe summons served on UBS AG on 8 July 2008

Name

Address

Zip code / City Country

I/We refer to the John Doe Summons issued by the U.S Internal Revenue Service (IRS) and served on UBS AG on 8 July 2008 (the 'John Doe Summons').

With the John Doe Summons, the IRS requests UBS AG to produce account records for the period 1 January 2002 through the date of compliance with the John Doe Summons, relating to accounts held by UBS AG for United States taxpayers as account holders, signatories or otherwise for their account, and for which no IRS Form W-9 had been provided by the United States taxpayer to UBS AG.

I/We understand that account records include, amongst other things,

a) documents identifying the United States taxpayer;

b) documents pertaining to foreign entities established or operated on behalf of such United States taxpayer;

c) account opening documents;

d) account statements and transaction confirmations, account summaries, records of wire transfers.

(collectively the 'Account Records').

I/We herewith declare and confirm that I am/we are willing to cooperate with the IRS and to disclose to the IRS, to the extent requested by the IRS, all relevant information relating to the account(s) held by UBS AG in my/our name(s) (the 'Account(s)'). I/We also confirm that I/we have consulted with specialized counsel; and that I am/we are aware of the consequences that these instructions could have.

I/We herewith instruct and authorize you to disclose to the IRS, on my/our behalf, any and all Account Records in your possession relating to the Account(s), as is or may be requested by the IRS. With this instruction, I/we hereby waive protections provided under bank secrecy laws of Switzerland.

I/We further instruct you to follow these instructions until revoked by me/us explicitly and in writing.

Place/Date Signature

Place/Date Signature

For internal bank use only Signature(s) verified/Signed in my presence

OU-Ref. Signature

76273 V0 DATE Page 1/1

Confidential Proprietary Business Information
Produced Pursuant t0.2o Senate Confidentiality Rules

Return to

UBS AG
Org. Unit U3ER
PEZH CITY 4 ET21-020
P.O. Box
CH-8098 Zurich
Switzerland

Tel. +41-44-237 56 10

αβ

Master no.
<< CUSTOMERSC>>-
<<CUSTOMERMASTERNO>>

UBS AG
Org. Unit U3ER
PEZH CITY 4 ET21-020
P.O. Box
CH-8098 Zurich
Switzerland

Tel. +41-44-237 56 10
[Date]

Reference: << A >>-<< CUSTOMERSC>>-<<CUSTOMERMASTERNO>>

Return Notice for Account Closure/Disposition/Transfer Instructions

To facilitate a timely and efficient remittance of your assets held by UBS AG, we kindly ask for your instructions by selecting one of the options noted below. Please return your original instructions duly signed (no fax and/or email) to UBS AG in the enclosed, pre-addressed postage-paid envelope.

Instructions to UBS AG

I hereby acknowledge that I am informed about the discontinuation of services relating to my account and the termination of my relationship with UBS AG.

Account holder's name and address:

Name

Address

Day-time telephone number -

Best time to be contacted: from : am/pm to : am/pm

Please note that I have selected one of the following options:

☐ I am interested in UBS's offering through U.S. regulated units and I would like to be contacted by a representative of the following unit(s):

- ☐ UBS Swiss Financial Advisers AG (based in Switzerland)
- ☐ UBS Financial Services Inc. (based in the United States)
- ☐ UBS International Hong Kong Limited (based in Hong Kong)

By selecting this option, I hereby instruct UBS AG to share with the above marked unit(s) all necessary information regarding the above referenced account relationship in order to facilitate a possible offering and, if applicable, the transfer process. Furthermore, I acknowledge and agree that UBS AG is not violating any confidentiality/secrecy laws of any jurisdiction to which UBS AG is subject to, or may otherwise be affected by, if information regarding my account relationship with UBS AG is shared with the above marked unit(s).

For internal bank use only Signature(s) verified/Signed in my presence

OU-Ref. Signature _____

DATE

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αβ

Master no.
<< CUSTOMERBC>>-
<<CUSTOMERMASTERNO>>

☐ I am not interested in UBS's offering through U.S. regulated units and I instruct UBS AG to close all my accounts and to

- ☐ Liquidate all positions and send/wire the proceeds as indicated below.
- ☐ Transfer all transferable securities, liquidate the non-transferable positions and send/wire the proceeds as indicated below.

I am aware that certain holdings (e.g. Hedge Funds) take several months for redemption and that certain securities in my portfolio might not be able to be transferred and therefore must be sold. Please note that all payments will be executed in USD. For payments to other countries than United States you have to indicate whether you would prefer a different transfer-currency. Transfers to any other UBS AG unit than those mentioned on page one are not possible. I take note that UBS AG will not charge me for executing any of the above options, but that third party charges may apply.

A ☐ **Wire transfer / Securities transfer**

Name/address of the financial institution to which the assets/proceeds are to be transferred:

Bank name

Address

SWIFT address

ABA / Routing

Account holder's name and account (as it appears on the financial institution's statement):

Name

Acc. no 1/IBAN Currency

Acc. no 2/IBAN Currency

Acc. no 3/IBAN Currency

Securities account

B ☐ **Bank check** (account payee only/non transferable)

Issue a bank check for the resulting proceeds payable to the following name:

Payable to:

Currency requested ☐ CHF ☐ EUR ☐ USD ☐ other:

Send check to the following address (no PO Box, **street address only**):

I have taken note that if my instructions are not received within 45 days of the date of this notice, UBS AG will initiate any steps deemed appropriate for the remittance of the assets in my account. I acknowledge that such steps may include, but are not limited to, the liquidation of my assets and the sending of a USD denominated check in the amount of the closing balance of my account(s), or the holding of such a check at UBS AG, Switzerland for me.

Place/Date _____ Signature _____

For internal bank use only Signature(s) verified/Signed in my presence

OU-Ref. Signature _____

76274 V0 DATE Page 2/2

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