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OFFSHORE TAX EVASION: THE EFFORT TO COLLECT UNPAID TAXES ON BILLIONS IN HIDDEN OFFSHORE ACCOUNTS

HEARING

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

VOLUME 1 OF 2

FEBRUARY 26, 2014

Available via the World Wide Web: http://www.fdsys.gov

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 McCain	7
Senator Coburn	9
Senator Johnson	26

WITNESSES

WEDNESDAY, FEBRUARY 26, 2014

Brady W. Dougan, Chief Executive Officer, Credit Suisse Group AG, Credit Suisse AG, New York, NY	10
Romeo Cerutti, General Counsel, Credit Suisse Group AG, Credit Suisse AG, Zurich, Switzerland	10
Hans-Ulrich Meister, Co-Head, Swiss Private Banking and Wealth Management, Chief Executive Officer-Region Switzerland, Credit Suisse Group AG, Credit Suisse AG, Zurich, Switzerland	10
Robert S. Shafir, Co-Head, Swiss Private Banking and Wealth Management, Chief Executive Officer Region Americas, Credit Suisse Group AG, Credit Suisse AG, New York, NY	10
Hon. James M. Cole, Deputy Attorney General, Office of the Attorney General	61
Hon. Kathryn M. Keneally, Assistant Attorney General, Tax Division, U.S. Department of Justice	61

ALPHABETICAL LIST OF WITNESSES

Cerutti, Romeo:	
Testimony	10
Joint prepared statement	93
Cole, Hon. James M.:	
Testimony	61
Joint prepared statement	107
Dougan, Brady W.:	
Testimony	10
Joint prepared statement	93
Keneally, Hon. Kathryn M.:	
Testimony	61
Joint prepared statement	107
Meister, Hans-Ulrich:	
Testimony	10
Prepared statement	93
Shafir, Robert S.:	
Testimony	10
Prepared statement	93

APPENDIX

Report by the Permanent Subcommittee entitled "Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts," February 26, 2014	115

Page

EXHIBIT LIST

VOLUME 1

1. a. *Credit Suisse U.S. Customers with Swiss Accounts: Only 1% Given by Swiss to United States,* chart prepared by the Permanent Subcommittee on Investigations. 329
   b. *Effect of Credit Suisse Reallocation of Client 5 Assets in 3Q2012,* chart prepared by the Permanent Subcommittee on Investigations. 330

U.S. Account Disclosure:

2. Credit Suisse email, dated March 2010, re: *Account Instructions (It will certainly be a pleasure to welcome you as a client, should you opt to knock on our door again in future times.).* [CS-SEN-00025083-084] 331
3. Credit Suisse email, dated October 2008, re: *Numbered Accounts (He needs not to disclose anything to anyone. He has the choice of disclosing it to the US authorities or not. It is his choice! Whatever he does is of no concern to us.).* [CS-SEN-00345395-396] 333

Documents Related to Travel:

4. a. Credit Suisse *Business Trips 2006 (Swiss Ball).* [CS-SEN-00080267-269] 335
   b. Credit Suisse *Business Trips SALN and SALN1 2007 (Key Client Visits).* [CS-SEN-00080270] 338
   c. Credit Suisse *Business Trips SALN and SALN1 2008 (Key Client Visits).* [CS-SEN-00080271-273] 339
5. a. Credit Suisse *Travel Report Summary,* February 2006, Destination: New York *(Clients covered - 20 - CHF 80,000,000 . . . Invitation to the Swiss Ball in New York, regular RO* [Rep Office] New York visit, Key Clients visited, successful meetings overall, Retention, new Referrals). [CS-SEN-00081860] 340
   b. Credit Suisse *Travel Report Summary,* May 2006, Destination: New York, Philadelphia, Chicago *(Clients covered - 42 - CHF 80'000'000 . . . Will have follow-up business, in pipeline NNA CHF 3'000'000).* [CS-SEN-00081868-869] 343
   c. Credit Suisse *Travel Report Summary,* May 2006, Destination: Miami, New York, Houston *(Clients covered - 40 - CHF 160'000'000).* [CS-SEN-00081872-873] 345
   d. Credit Suisse *Travel Report Summary,* July 2006, Destination: Miami, New York, Toronto, Montreal *(Clients covered - 34 - CHF 54'000'000 ... Client sends me a list of shares that we need to give our recommendations!).* [CS-SEN-00081874-875] 347
   e. Credit Suisse *Travel Report Summary,* February 2006, Destination: Houston, Los Angeles, Reno *(Clients covered - 28 - CHF 65,000,000 ... Knows some very wealthy people for future referrals.).* [CS-SEN-00081879-880] 349
   f. Credit Suisse *Travel Report Summary,* February 2007, Destination: New York *(Invitation to the Swiss Ball in New York, regular RO* [Rep Office] *New York visit . . . new Referrals).* [CS-SEN-00081883] 351
   g. Credit Suisse *Travel Report Summary,* March 2008, Destination: San Francisco, Los Angeles, New York, Toronto, Montreal *(Clients covered - 49 - CHF 230,000,000 ...* [Credit Suisse redacted] *for dinner in Beverly Hills . . .).* [CS-SEN-00081901-906] 352

Documents Related to Credit Suisse New York Representative Office:

6. Credit Suisse *Important phone numbers (Doerig Josef, Doerig Partner, external Trust expert; Singenberger Beda, Sinco AG, external Trust expert)* [CS-SEN-00011615-616] 357
7. Credit Suisse *Weekly Report - Rep. Office New York (Client Activities - Assisting client of Niccole (wire instructions to send additional funds) . . . Contact with prospective client from Chicago (US$3–5 Mio).* [CS-SEN-00096325-328] 359
8. Credit Suisse email, dated July 2008 *(We do not have any educational or promotional material we could provide to a US person regarding accounts in Switzerland. We are not allowed to actively solicit or promote offshore accounts from or into the United States. However, if your clients wants to call me to learn more about what services can be offered out of Switzerland - he can do that anytime. Please let me know if I can assist you in this regard.)* [CS-SEN-00095655-656] 363

Page

9. Credit Suisse PB Americas—Representative Office New York, *CSG Internal Audit, Executive Summary,* dated February 7, 2008 *(Audit Results . . . The overall control environment was found to be operating effectively.)* [CS-SEN-00226719-724] 365

Documents Related to SALN:

10. a. *SALN: Organizational Chart as of 01.04.2008,* with Swiss codes [CS-SEN-00080287] 371
    b. *SALN: Organizational Chart as of 01.04.2008* [CS-SEN-00011631-632] 372
11. a. Credit Suisse PB Americas—North America Offshore, Latin America and Bahamas, *CSG Internal Audit,* August 2006 draft *(Employees of SWLN making visits or holding meetings in the United States should not provide investment advice or solicit business, given existing regulations . . . the level of travel activities (in 2005 approximately 500 clients were met in the United States and Canada) may entail regulatory risk.* [CS-SEN-00408714-730] 374
    b. Credit Suisse PB Americas—North America Offshore, Latin America and Bahamas *CSG Internal Audit,* dated August 31, 2006 (final) *(The overall control environment was generally found to be operating adequately.)* [CS-SEN-00418830-839] 391
12. Credit Suisse PB Americas—North America International, *CSG Internal Audit,* dated December 9, 2009 *(Significant Reputational Risk Issues: None . . . The overall control environment was generally found to be operating adequately and we noted no deficiencies with regard to Policy P-00025.)* [CS-SEN-00417862-870] 401

Documents Related to Project W9:

13. Credit Suisse, *Project W9 Kick-Off Meeting,* dated September 29, 2006 (Chart at CS-SEN-00426144—*Swiss Booked W9 Clients: Affected Units, 998 CIFs.).* [CS-SEN-00426138-158] 410
14. Credit Suisse, *Project W9 6th Core Team Meeting,* dated January 26, 2007. [CS-SEN-00173686-704] 431

Documents Related to Credit Suisse Accounts Numbers/Exit Projects:

15. Credit Suisse email, dated March 2007, re: *Risk Country: Yearly Review 2006 (US—Market purity is still insufficient with regard to the business risk involved.).* [CS-SEN-00409535-555] 450
16. Credit Suisse, *US Project - STC #1,* dated August 19, 2008 (Chart at CS-SEN-00426306—*US Intl. business activities spread-out across whole organization).* [CS-SEN-00426290-307] 471
17. Credit Suisse, *Project Tom - STC #5,* dated December 19, 2008 (Chart at CS-SEN-00455231—*Quick Win Non W-9 (transfer SIOA 5 to SALN).* [CS-SEN-00455224-234] 489
18. Credit Suisse, *Update on Development of AuM and Accounts of U.S. Clients to the Senate Permanent Subcommittee on Investigations,* dated April 20, 2012. [CS-SEN-00189151-157] 500
19. Letter from Credit Suisse legal counsel to the Permanent Subcommittee on Investigations, dated August 13, 2013 re: *Credit Suisse's exit projects.* [PSI-CreditSuisse-37-000001-051] 507
20. Letter from Credit Suisse legal counsel to the Permanent Subcommittee on Investigations, dated December 20, 2013 re: *questions regarding Credit Suisse's internal investigation covering its U.S. cross-border business (In early 2012, the Bank formed a special task force to follow up on potential breaches of its internal policies . . . [and] imposed disciplinary action against a total of 10 Swiss based employees (6 in 2012 and 4 in 2013) . . . None of the employees were terminated).* [PSI-CreditSuisse-54-000001-048] 558

Document Related to Net New Assets (NNA):

21. Credit Suisse email, dated February 2012, re: *Important - NNA, PBMC (. . . we will again discuss our NNA results which have been very disappointing up until now. As our capability to attract clients and new assets is of utmost importance - also externally - we need to take all possible measures in order to change this into a positive story within the next weeks.).* [CS-SEN-00463981-984] 606

Page

22. Credit Suisse email, dated March 2012, re: *Major flows last week (. . . none of these assets are currently categorized as AUM and I would caution against it before speaking with me as I am very knowledgeable about the plans for the assets.).* [CS-SEN-00441333-335] 610
23. Credit Suisse email, dated March 2012, re: *Project* [Redacted] *(There is no agreement at this time. . . . There have been suggestions that we count as much as 5B CHF . . . this is not a number I want to risk having to reverse, so let's be sure we are VERY confident in what we count.).* [CS-SEN-00443178-181] 613
24. Credit Suisse email, dated April 2012, re: *PB NNA ([C]an you also check the disclosure issue re NNA in Switzerland vs US PB? As we know, investors are keeping a close eye on this and of course it is key that finance be comfortable with how we present this external*[l]*y.).* [CS-SEN-00424575-577] 617
25. Credit Suisse email, dated October 2012, re: *NNA Q3 2012 (. . . please find below . . . NNA for Q3 2012, as reported internally for PB Americas (CHF 2.4bn) vs. the externally released figure (CHF 0.2bn)).* [CS-SEN-00443246] 620
26. Credit Suisse email, dated December 2012, re: *NNA 4Q12 Forecast (Based on reported November NNA and the result of the first December week, our ambition to deliver WMC* [Wealth Management Clients] *NNA of around CHF 6-7bn in 4Q12 is at risk. With 3 weeks to go until the year comes to a close and QTD* [Quarter to Date] *actuals of CHF 2.5bn, we still need CHF 3.5bn to reach the lower end of this ambition. This requires continued efforts on all levels and your support is very important.).* [CS-SEN-0000560923-924] 621
27. Credit Suisse email, dated December 2012, re: *Confidential: Global Client Segments metrics (Zurich is looking for more potential NNA positions to support the global 2012 year-end disclosure. As a consequence they are looking to transfer more of* [Redacted/Client 5] *balance into AUM.).* [CS-SEN-00425106-107] 623
28. Credit Suisse email, dated January 2013, re: *Americas* [Redacted] *(Currently - for Q4 reporting - WMC* [Wealth Management Clients] *runs for NNA substantially below expectations. . . . [I]n order to support the PB division, a further* [Redacted/Client 5] *portion of 0.9bn CHF - fully reported internally and externally in the Americas region - would be a great favour for our division. Hans-Ueli* [Hans-Ulrich Meister] *would be extremely happy if you could support this.).* [CS-SEN-00425140-142] 625
29. Credit Suisse email, dated January 2013, re: *WG: NNA (I am convinced that with this enhanced story we will get approval soon from Carlos. . . . Given the rather weak granularity, we need to create a more powerful story in the sense of making more around the existing weak figures in the sense of:* [redacted] *consists of xx accounts, all held in the xx branch, covered by 2 senior RMs xx and yy which do high interaction level.....blabla. Might not be relevant but sounds rather good.).* [CS-SEN-00442608-613] 628
30. Credit Suisse email, dated June 2013, re: *Feedback from new RMs (We need some fresh blood and some nna.).* [CS-SEN-00424732] 634

Documents Related to the Department of Justice and the Swiss:

31. a. *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.* 635
    b. *Protocol Amending Tax Convention with Swiss Confederation,* January 2011. 680
    c. Translation of Swiss Parliamentary Resolution, dated March 16, 2012, *Federal Resolution Concerning a Supplement to the Double Taxation Treaty between Switzerland and the United States of America.* 705

32.a./b. Communications from the Department of Justice to Swiss representatives, unsigned and undated, outlining steps to be taken by the Department of Justice and The Swiss Confederation regarding Agreement between the Internal Revenue Service and The Swiss Confederation. [Also see Exhibit 45 for related communications.] 707-9

Page

33. Department of Justice letter, dated December 9, 2011, *(. . . in order to determine whether it will be fruitful for the United States Department of Justice to discuss with your institution the possibility of an agreement with us that could avoid indictment, the Department of Justice must have complete and accurate information and must have the information quickly.).* 711
34. Translation of newspaper article, *Tax Dispute with the US is Escalating,* SonntagsZeitung, September 4, 2011. 714
35. a. Press Release of the Swiss Federal Supreme Court, dated July 5, 2013, *Exchange of information in Tax Matters with the United States—The Federal Supreme Court rejects a first appeal.* 717
    b. Press Release of the Swiss Federal Administrative Court, dated January 8, 2014, *Julius Baer: IRS request for administrative assistance not sufficient for the disclosure of client data.* 719
36. a. Translation of the Swiss Federal Parliament *Lex USA, Measures to facilitate the resolution of the tax dispute between the Swiss banks and the United States,* dated May 29, 2013. 721
    b. Summarized Translation of the Swiss Federal Parliament Dispatch explaining *Lex USA,* dated May 29, 2013. 724
37. a. *Joint Statement between the U.S. Department of Justice and the Swiss Federal Department of Finance,* dated August 29, 2013. 731
    b. U.S. Department of Justice *Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks,* dated August 29, 2013. 733
38. *Deferred Prosecution Agreement, U.S. v. UBS AG,* undated. 743
39. a. Settlement of the John Doe Summons, agreement between the United States and the Swiss Confederation, August 19, 2009. 786
    b. Settlement of the John Doe Summons, agreement between the United States, the U.S. Internal Revenue Service and UBS AG, dated August 19, 2009. 796
40. *U.S. v. Walder et al.,* Case No. 1:11-CR-95 (E.D. Virginia) Superseding Indictment (July 21, 2011). 808

Additional Documents:

41. Credit Suisse email, dated January 2013 *(There was some legacy Clariden issues (CB) brewing that we need to brief you on.).* [CS-SEN-00426110-111] 855
42. a. *Swiss seek U.S. tax deal by year-end, but not at any price,* Reuters, August 3, 2012. 857
    b. *Switzerland to Allow Its Banks to Disclose Hidden Client Accounts,* The New York Times, May 29, 2013. 858
43. a. *Indictment, U.S. v. Wegelin & Co., et al.,* February 1, 2012. 863
    b. *Plea, U.S. v. Wegelin & Company,* January 3, 2013. 922
44. Letters between the Department of Justice and the Permanent Subcommittee on Investigations, March and June 2014, regarding extradition of Swiss nationals from Switzerland. 949
45. Letters between the Department of Justice, Internal Revenue Service and the Swiss State Secretariat for International Financial Matter, August, 2011, regarding Swiss-U.S. discussions on tax issues. 953
46. a. Responses of Credit Suisse to supplemental questions for the record from Senator Carl Levin. 960
    b. SEALED EXHIBIT: Question 4a and Credit Suisse's response. ..... *
    c. Memorandum to File from the Permanent Subcommittee Investigations Staff regarding Credit Suisse Classification of Net New Assets 967
47. Responses of Credit Suisse to supplemental questions for the record from Senator Tom Coburn. 969
48. Responses of the Department of Justice to supplemental questions for the record from Senator Carl Levin. 970

Page

VOLUME 2

49. *Document Locator List* and documents cited in the footnotes to *Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts,* the Report released in conjunction with the Subcommittee hearing on February 26, 2014. The *Document Locator List* provides the Bates numbers or a description of the documents cited in the Report and the hearing record page number where the document can be located. Not included are widely available public documents and documents related to Subcommittee interviews, which are not available to the public. 1002

* Retained in the files of the Subcommittee.

OFFSHORE TAX EVASION: THE EFFORT TO COLLECT UNPAID TAXES ON BILLIONS IN HIDDEN OFFSHORE ACCOUNTS VOLUME 1 OF 2

WEDNESDAY, FEBRUARY 26, 2014

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 9:34 a.m., in room G–50, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin, McCain, Coburn, and Johnson.

Staff present: Elise J. Bean, Staff Director and Chief Counsel; Mary D. Robertson, Chief Clerk; Robert L. Roach, Counsel and Chief Investigator; Allison F. Murphy, Counsel; Henry J. Kerner, Staff Director and Chief Counsel to the Minority; Michael Lueptow, Counsel to the Minority; Brad M. Patout, Senior Advisor to the Minority; Angela Messenger, Detailee (GAO); Admad Sarsour, Detailee (FDIC); Christopher Reed, Congressional Fellow; Joel Churches, Detailee (IRS); Admad Sarsour, Detailee; Jacob Rogers, Law Clerk; Alex Zerden, Law Clerk; Samira Ahmed, Law Clerk; Mohammad Aslami, Law Clerk; Harry Baumgarten, Law Clerk; Benjamin Driscoll, Law Clerk; Elizabeth Freidrich, Law Clerk; Megan Schneider, Law Clerk to the Minority; Bob Heckart and Tom Everett (Sen. Levin); Keith Ashdown, HSGAC Staff Director to the Minority (Sen. Coburn); Andrew Dockham, HSGAC Chief Counsel to the Minority (Sen. Coburn); Stephanie Hall (Sen. McCain); and Ritika Rodrigues (Sen. Johnson).

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Good morning, everybody. The Permanent Subcommittee on Investigations will come to order.

The American public is angry about offshore tax abuse—efforts by well-off Americans to evade their U.S. tax obligations by hiding money offshore.

Today's hearing follows up on a hearing that this Subcommittee held 5 years ago—in 2008—when we presented evidence that well-known international banks, located in secrecy jurisdictions, were deliberately helping U.S. clients cheat on their taxes by opening offshore accounts never reported to the Internal Revenue Service (IRS), despite U.S. laws requiring their disclosure. The hearing fo-

cused in part on Union Bank of Switzerland (UBS), the largest bank in Switzerland, which at one time had 52,000 U.S. customers with Swiss accounts holding $18 billion in hidden assets, and which back then had a practice of sending Swiss bankers onto U.S. soil to service those secret accounts.

On the first day of those hearings, in a dramatic admission, UBS acknowledged what its Swiss bankers had been up to and committed the bank to stopping the abuses. Seven months later, UBS signed a Deferred Prosecution Agreement (DPA) with the U.S. Justice Department (DOJ), paid a $780 million fine, and promised to close all undeclared Swiss accounts for U.S. clients. As part of that agreement, UBS turned over about 250 secret Swiss accounts with U.S. client names. And after a John Doe summons proceeding that took another year, UBS coughed up more accounts for a total of about 4,700 accounts.

UBS' actions sent a powerful signal that U.S. tax cheats using offshore accounts better pay up or face prosecution. Thousands of Americans with undeclared Swiss accounts, along with U.S. account holders with accounts in other offshore secrecy jurisdictions, ended up joining a voluntary disclosure program established by the IRS. Altogether, 43,000 taxpayers have paid back taxes, interest, and penalties totaling $6 billion to date, with more expected. Tax evaders acted to avoid being prosecuted. It is as simple as that.

UBS' breaking of Swiss secrecy also signaled a seismic shift in the offshore world. Suddenly Switzerland, as well as other secrecy jurisdictions, declared they would no longer use secrecy laws to facilitate tax evasion. A flurry of new tax information exchange agreements were signed around the world promising some new transparency. The G–20 world leaders declared the "era of bank secrecy is over."

Well, it is 5 years later, and the sad truth is that the era of bank secrecy is not over. Bank secrecy has been discredited and condemned, but it is not gone. Billions in unpaid taxes remain uncollected thanks to tax evaders' use of bank secrecy. And we have great concern that the battle to collect those unpaid taxes on hidden offshore assets seems stalled.

Our investigation chronicles the uneven and halting progress made in identifying U.S. taxpayers who cheated Uncle Sam by using offshore accounts. A bipartisan report that we are releasing today cites chapter and verse of the failure to collect taxes owed and to hold accountable the U.S. persons who evaded their tax obligations and the tax havens who helped them. To lay bare the problems, our report uses a detailed case study involving Credit Suisse.

After the UBS scandal broke in 2008, this Subcommittee asked Credit Suisse, as well as several other Swiss banks, whether they had been engaged in the same type of conduct as UBS. Credit Suisse privately admitted to Subcommittee investigators that it had, but that it was going to clean up. After seven Credit Suisse bankers were indicted by the Justice Department in 2011, we checked in again and found the bank had not yet closed thousands of undeclared Swiss accounts held by U.S. taxpayers. So we decided to take a closer look.

And what we found was that Credit Suisse had been holding back about how bad the problem was at the bank.

At its peak, in Switzerland, Credit Suisse had over 22,000 U.S. customers with accounts containing more than 12 billion Swiss francs, which translates into US $10 to $12 billion. Nearly 1,500 accounts were opened in the name of offshore shell companies to hide U.S. ownership. Another nearly 2,000 were opened at Clariden Leu, Credit Suisse's own little private bank. Almost 10,000 were serviced by a special Credit Suisse branch at the Zurich airport which enabled clients to fly in to do their banking without leaving airport grounds.

Although Credit Suisse policy was to concentrate its U.S. client accounts in Switzerland at a Swiss desk called SALN, which had about 15 bankers trained in U.S. regulatory and tax requirements, that policy was largely ignored. In 2008, over 1,800 bankers spread throughout the bank in Switzerland handled one or more U.S. accounts. One U.S. client told the Subcommittee about visiting the bank's main offices in Zurich. The client was ushered into a remotely controlled elevator with no floor buttons and escorted to a bare room with white walls, all dramatizing the bank's focus on secrecy. The client opened an account after being told the bank did not require completion of the W–9; without that form, the account was not reported to U.S. authorities. In later visits, the client was offered cash withdrawals and credit cards to draw from the Swiss account while in the U.S., and the client always signed a form ordering that the Credit Suisse account statements be immediately shredded. It was a classic case of bank secrecy and bank facilitation of U.S. tax evasion.

But the Swiss bankers did not stay in Switzerland. Like UBS, Credit Suisse bankers traveled across the U.S. Ten SALN bankers alone took more than 170 U.S. trips from 2001 to 2008 to look for new clients and service existing accounts. Credit Suisse arranged for them to host tables at the annual Swiss Ball in New York and to host golf tournaments in Florida to prospect for wealthy clients. Some also met with as many as 30 to 40 existing U.S. clients in a single trip to attend to their banking needs.

We learned of one Swiss banker who met with a U.S. client over breakfast at a U.S. luxury hotel and slipped the client bank account statements in between the pages of a *Sports Illustrated* magazine. Although none of the Swiss bankers were registered with the U.S. Securities and Exchange Commission (SEC), many provided broker-dealer and investment advisory services for U.S. clients, resulting in the $196 million fine that Credit Suisse paid last week. Some Swiss bankers also advised U.S. clients on how to structure cash transactions to avoid filing reports of cash transactions over $10,000, as required by U.S. law. Other Swiss bankers helped U.S. clients set up offshore shell corporations to hold their accounts and to hide the ownership trail. Some bankers lied on visa applications when they entered the United States, saying the purpose of their visit was tourism when, in fact, it was business.

The bottom line is that Credit Suisse was in it as deep as UBS, aiding and abetting U.S. tax evasion both in Switzerland and on U.S. soil.

Once UBS' misconduct was exposed, Credit Suisse initiated a series of so-called Exit Projects to close its U.S. client accounts in Switzerland. Those projects took 5 years, until 2013, to complete.

In the end, the bank verified accounts for about 3,500 out of the 22,000 U.S. clients as compliant with U.S. tax law, meaning they were disclosed to the IRS. The bank closed accounts for the other 18,900 U.S. customers. It is clear that the vast majority—up to 95 percent—were undeclared, meaning hidden from Uncle Sam.

So where are we now? Unlike UBS, U.S. enforcement action against Credit Suisse has stalled, even though the bank got a target letter 3 years ago in 2011. While seven of its bankers were indicted by U.S. prosecutors in 2011, none has stood trial and none has been the subject of a U.S. extradition request. Less than a handful of U.S. taxpayers with Credit Suisse accounts have been indicted.

Now, that is not much accountability for the bank, its bankers, or U.S. clients. Taxes owed on billions of dollars in hidden offshore assets remain uncollected. To collect those unpaid taxes and to hold U.S. tax evaders accountable, the critical first step is to get their names. The prospect of the U.S. getting names is what produced the UBS effect—the rush of U.S. offshore account holders making so-called voluntary account disclosures to the IRS and paying what they owe to avoid embarrassment and worse. But getting names is where this whole story goes bust.

Now, there is a chart,[1] which I would ask that we put up. It is a chart of the 22,000 U.S. clients with Swiss accounts at Credit Suisse. The total number of accounts with U.S. names disclosed by the Swiss to the United States over 5 years hits a grand total of 238. That is the slim, green sliver there. That is 238 out of 22,000, about 1 percent. Other Swiss banks with thousands of U.S. clients in Switzerland have, as far as we know, disclosed no names at all.

Now, the reason for this near total failure to date is continued Swiss insistence on bank secrecy and the U.S. letting them get away with it. When the U.S. Department of Justice issued grand jury subpoenas to Credit Suisse to get U.S. client names and account information in Switzweland, the Swiss Government inserted itself into the criminal investigation to stand between the bank and our Department of Justice. It told Credit Suisse that it could not deliver documents directly to the United States, but had to funnel them through Swiss officials first. Despite grand jury subpoenas outstanding against Credit Suisse, the Department of Justice did not attempt to enforce those subpoenas in a U.S. court. Nor did the Department of Justice turn to the IRS to issue a John Doe summons to the bank, even though it was a John Doe summons that caused the UBS to turn over 4,500 accounts, the largest single production from Switzerland.

Now, rather than using those proven U.S. tools that could be enforced in our courts, the Department of Justice reversed course from its UBS approach. For 5 years, the Department of Justice has voluntarily limited its requests for Swiss documents, including the names of tax evaders, to requests made under a U.S.-Swiss tax treaty, despite that treaty's highly restrictive, maddeningly slow, and unproductive process. In 2011, the Department of Justice submitted a treaty request for U.S. client names and account information from Credit Suisse and told the Swiss Government that the

[1] See Exhibit No. 1a, which appears in the Appendix on page 329.

Department of Justice saw the request as a "test case" of Switzerland's willingness to produce critical documents. At the end of a torturous process that took two requests, two court decisions, and nearly 2 years, in the summer of 2013, the Department of Justice was rewarded with 238 accounts that included U.S. client names. To me, getting 238 in 5 years out of a universe of 22,000, less than 1 percent, is more than an embarrassment. It abdicates the home-court advantage of using U.S. courts. Now, remember: the law which is accepted almost everywhere, including the United States, is that if a bank chooses to do business in a foreign country, it must accept and operate under the laws of that country.

By restricting itself to the treaty process, the Department of Justice essentially handed over control of U.S. information requests to Swiss regulators and Swiss courts that rule on how they will be handled and have regularly elevated bank secrecy over bank disclosures.

But the Swiss roadblocks did not end there. In 2009, right after the UBS battle, Switzerland agreed to amend the U.S.-Swiss tax treaty to replace its highly restrictive "tax fraud" standard with the somewhat less restrictive "relevance" standard. But the Swiss also insisted that the less restrictive disclosure standard be used only for information requests regarding Swiss accounts in existence after the amendments were signed on September 23, 2009. U.S. negotiators went along and produced a new treaty standard that may be useful prospectively, but cannot be used for potentially tens of thousands of Swiss accounts employed for U.S. tax evasion before 2009. The end result is that the tax evaders and the Swiss banks who helped them may get away with wrongdoing.

And in 2012, the Swiss passed legislation erecting still another roadblock to U.S. efforts to acquire U.S. client names. The legislation says that to get the names of a Swiss bank's U.S. clients, a U.S. treaty request must establish that the holder of the client information—in other words, the bank—"significantly contributed" to the pattern of misconduct by those unnamed account holders. In other words, the Department of Justice will have to prove that a bank is guilty of facilitating misconduct by a group of unnamed account holders before it can even get the account information needed to prove the misconduct. And even if the Department of Justice wanted to meet that new standard, it would have to do so in a country that prizes bank secrecy and whose banks have made a fortune from that secrecy. It is still a rigged game.

During the same time period, Switzerland pressed the Department of Justice to create a program to enable most of its banks—other than the 14 large banks under active Department of Justice investigation—to obtain non-prosecution agreements (NPA) or non-target letters in exchange for providing limited information and monetary fines, but still without producing any U.S. client names. In response, the Department of Justice, in 2013, announced an unprecedented program to give prosecutorial amnesty to hundreds of Swiss banks, without requiring those banks to disclose a single U.S. client name. Giving up on getting U.S. client names contradicts U.S. policy of demanding full cooperation from parties excused from prosecution, and it sets a bad precedent for how the Department of Justice will handle other tax haven banks.

The Department of Justice program allows the banks to give U.S. prosecutors bits and pieces of information, hints and clues that might help the United States in its hunt for tax evaders, instead of a straightforward list of U.S. clients with Swiss accounts. Accounts that existed before August 1, 2008, are not even covered. The United States is then told to piece the clues together and go on a treasure hunt, trying to identify accounts, again, using very limited information, while Swiss banks get immediate immunity from prosecution.

To make the situation even more difficult, in January a Swiss court turned down a U.S. treaty request for client names, ruling that the fact that a Swiss account was undisclosed—hidden from U.S. authorities—was not enough on its own to justify piercing Swiss secrecy laws. Again, the Swiss found preserving bank secrecy more important than supporting U.S. efforts to prosecute tax evasion.

After the Department of Justice overcame Swiss secrecy obstacles to obtain 4,700 accounts with U.S. client names from UBS, many predicted that Swiss secrecy would no longer impede U.S. prosecutions. In 2008 testimony before this Subcommittee, Justice officials pledged to act energetically. Associate Attorney General Kevin O'Connor testified, despite the challenges posed by bank secrecy, "we will not be deterred. We will pursue other formal and informal methods of obtaining the foreign evidence we seek." And he said, "This includes the use of John Doe summonses as well as Grand Jury subpoenas."

Well, that did not happen as promised, but it is not too late, though, to fulfill the pledge. The Department of Justice can still use U.S. tools, including grand jury subpoenas, John Doe summons, and U.S. indictments, to get U.S. client names from the 14 targeted banks, which includes some of the largest banks. The Department of Justice can still make extradition requests for indicted Swiss bankers and test Switzerland's professed willingness to cooperate with U.S. tax enforcement. The Department of Justice can still hold accountable the U.S. tax evaders and the tax haven banks that helped them, if the Department has the will. Among the questions we will be asking today is why the Department of Justice has slowed its investigations of the 14 banks through its failure to use U.S. legal tools; why it accepted Swiss bank secrecy principles in the Department of Justice non-prosecution program; why it obtained only 238 accounts with U.S. client names in 5 years out of the tens of thousands of Credit Suisse accounts; and how it plans to collect the unpaid taxes still owed on billions of dollars of Credit Suisse accounts.

Allowing Americans to evade their tax obligations through hidden offshore accounts deprives our government of needed revenue. And more than that, it deprives honest American taxpayers of something vital to the legitimacy of our tax system: fairness. Laws need to be enforced to ensure that taxpayers are not able to go offshore to cheat Uncle Sam and instead pay what they owe, and the tax haven banks that aided them are held accountable for their actions.

I would like to thank my Ranking Republican, John McCain, and his great staff for their strong support and involvement in this in-

vestigation and for carrying on the bipartisan work that began, in this case, as in so many other cases, with Senator Tom Coburn and his great staff.

Senator Coburn is now, of course, the Ranking Member of the full Committee, and we welcome him here today. But we will first call on my Ranking Member, Senator McCain.

OPENING STATEMENT OF SENATOR MCCAIN

Senator MCCAIN. Well, thank you, Mr. Chairman, and I thank you for that comprehensive overview of this really disturbing situation, and I thank you and all the staff for their hard work on this issue for a long time.

The bipartisan investigation into tax haven banks focuses today on Credit Suisse, Switzerland's second largest bank. The investigation has revealed another unfortunate example of a foreign bank succumbing to the charms of compensation over compliance and uncovered how, for years, Credit Suisse greatly profited by helping U.S. clients hide billions of dollars of taxable assets from the U.S. Treasury. By willfully undermining U.S. tax and securities laws and taking advantage of Switzerland's opaque banking practices, the bank became a safe haven for tax evasion, pure and simple. Today's hearing will examine instances of past misconduct, highlight how the bank delayed meaningful compliance for as long as possible, and consider how the Department of Justice's ineffective response allowed this conduct to persist.

How Credit Suisse bankers helped their U.S. clients hide their assets—and keep them hidden—from the view of U.S. tax authorities was egregious. As Chairman Levin mentioned, the bank orchestrated a wide range of surreptitious meetings with U.S. clients, on both sides of the Atlantic. Remotely controlled elevators leading to hidden rooms in the bank's Zurich headquarters, magazines in American hotel lobbies, and even family events were all used by bankers to unsuspectingly conduct illicit business with their U.S. clients. Credit Suisse bankers reportedly stated on customs forms that they were traveling to the United States for "tourism" purposes. But instead of sightseeing, they would secretly meet with clients—a violation of U.S. securities laws. In one instance, a Credit Suisse banker traveled to the United States, purportedly, to attend the wedding of a client's child. However, in addition to enjoying the wedding festivities, the banker also took advantage of this social occasion to secretly brief his client on the status of the client's undeclared Credit Suisse account. These alarming instances of illicit banking practices belong in a spy novel—not at one of the world's top banks.

The Swiss banking secrecy provisions that enabled such practices went largely unchallenged until 2008, when this Subcommittee conducted a seminal investigation and held public hearings into offshore tax evasion practices. Indeed, Credit Suisse prospered for years by not requiring its U.S. clients to be tax compliant. While it made some changes to its internal policies, it was slow to ensure sufficient compliance by its U.S. account holders. Even today, the bank still must answer for decades of ill-gotten profits.

Coincidentally—or not—just 5 days ago, with this hearing on the horizon and announced, Credit Suisse agreed to a regulatory settle-

ment with the SEC whereby it would admit wrongdoing and agree to pay $196 million for providing banking services in the United States without registering with the regulator. This fine, however, pales in comparison to the severity of the full extent of Credit Suisse's misconduct. The Justice Department and other Federal regulators should not sit by and give these foreign banks a free pass for their role in enabling U.S. tax evasion, concealing billions of dollars in tax revenue, and deceiving the U.S. Government and the American people.

At a time of fiscal hardship, the Justice Department appears to have willingly given up on using the tools it has to collect taxes owed to the U.S. Government. In 2008 alone, the Justice Department obtained information on U.S. tax evaders from a Swiss bank, leading to 72 prosecutions. But from 2009 to 2013, the Justice Department seems to have abandoned its efforts, issuing no summonses and enforcing no subpoenas against Swiss banks.

In fact, I am sure the Justice Department will probably dispute that, but facts are stubborn things. From 2009 to 2013, the Justice Department issued no summonses and enforced no subpoenas against Swiss banks.

In fact, even though in 2011 the Justice Department indicted a handful of individual Credit Suisse bankers for engaging in illicit banking practices, to date, it has failed to prosecute these indictments. That is since 2011. Instead, the Justice Department has opted to play the role of diplomat—helping to negotiate with the Swiss Government the creation of a program that allows Swiss banks to voluntarily disclose their tax evasion practices without risk of prosecution in the United States. As a result of this program, some banks may not even have to admit any wrongdoing for their misconduct. Instead, these financial institutions will simply pay fines on the illicit accounts they hold—a mere slap on the wrist for their role in concealing billions of dollars from the U.S. Treasury and a payment that may be deemed by banks wishing to engage in similar wrongdoing as an acceptable "cost of doing business."

As a result of offshore tax haven practices by Credit Suisse and other financial institutions, as recently as 2011, it has been estimated that the United States has been deprived of $337.3 billion in potential revenue—the largest amount of revenue lost due to tax evasion in the world. With this in mind, the Justice Department should be relentless in continuing its investigations into foreign banks, such as Credit Suisse, and seek penalties that reflect the severity of the wrongdoing, disgorge them of their wrongful gains, make aggrieved taxpayers whole, and effectively deter similar misconduct in the future. It is past time to fully and clearly expose how offshore tax haven banks help American account holders evade paying their taxes.

I want to thank the witnesses for appearing before the Subcommittee today, and I look forward to their testimony. And I want to thank Senator Coburn for his incredibly important efforts in this investigation and his work on the Subcommittee.

Thank you, Mr. Chairman.

Senator LEVIN. Thank you so much, Senator McCain.

As I mentioned, this has been a lengthy investigation lasting well over 2 years, and until January of last year, the Ranking Member of our Subcommittee was Dr. Coburn, so he and his staff played a major role in the early part of this investigation, a very important part of the investigation, and so I now call on him as the Ranking Member of our full Committee but the former Ranking Member of this Subcommittee. Welcome back to our Subcommittee, Dr. Coburn.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Thank you, Mr. Chairman and Senator McCain. I have a statement for the record that I would ask unanimous consent to be put in, but I would make an observation for the American public.

When you have a Justice Department that selectively enforces the law rather than carries out its oath to fully enforce the law, you have problems like this that occur. And we do not just see it in this case. We see it across a broad array of laws that are selectively enforced to the detriment of undermining the glue that holds this country together, which is the rule of law. And my disappointment in the actions of the Justice Department in this case are great, but not greater than what I see in the leadership in this Justice Department of a leader who does not take his oath seriously, does not do what is necessary to enhance the glue that binds us together.

I want to thank Senator Levin and Senator McCain. These are thorough investigations. This one has been extremely difficult in terms of getting information, and the report is comprehensive.

I also would thank the present leadership at Credit Suisse for, one, admitting culpability and, two, coming to testify and being open and honest with us.

And the final point I would make is that the tax treaty that has been negotiated needs to be completed, and then we need to put the pressure on to enhance further improvements to that so that we will not have the same things occurring in the future.

With that, I yield back.

Senator LEVIN. Thank you so much. Senator Johnson.

[No response.]

Thank you.

OK. We will now call our first panel for this morning's hearing, and I want to discuss the timing of the hearings here. Our second panel has to go to the White House, so when this panel finishes, we are going to probably have to adjourn. It depends on how long this panel lasts. But the second panel cannot start after 12:30. I assume this panel will last at least until then. So the likelihood is that we will be in recess approximately from 1 to 3 o'clock when we would begin the second panel.

Now, the reason I say that is the likelihood is because we do not know precisely when this panel will be over, and if it goes beyond 12:30 or 1 p.m., we will continue with this panel until it is concluded. I do not know if that came out clearly, but it is the best I can do at the moment.

And we will now call our first panel for this morning's hearing: Brady Dougan, the Chief Executive Officer (CEO) of Credit Suisse

Group AG in Zurich, Switzerland; Romeo Cerutti, General Counsel of Credit Suisse Group AG in Zurich, Switzerland; Hans-Ulrich Meister, the co-head of Private Banking and Wealth Management of Credit Suisse Group AG in Zurich, Switzerland; and Robert Shafir, the co-head of Private Banking and Wealth Management of Credit Suisse Group AG in New York. We appreciate all of you being with us here this morning, and we look forward to your testimony.

Pursuant to Rule 6, all witnesses who testify before this Subcommittee are required to be sworn, and at this time then I would ask you to please stand and raise your right hand. Do you swear that the testimony you will give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. DOUGAN. I do.

Mr. CERUTTI. I do.

Mr. MEISTER. I do.

Mr. SHAFIR. I do.

Senator LEVIN. We will be using a timing system for our witnesses today. Be aware that approximately 1 minute before the red light comes on, you will see the light change from green to yellow, giving you an opportunity to conclude your remarks. While your written testimony will be printed in the record in its entirety, we ask that you limit your oral testimony to 15 minutes. And if you need additional time beyond that, I am sure that we can find a way to provide it to you.

Mr. Dougan, please proceed.

TESTIMONY OF BRADY W. DOUGAN, CHIEF EXECUTIVE OFFICER, CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, NEW YORK, NEW YORK; ROMEO CERUTTI, GENERAL COUNSEL, CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, ZURICH, SWITZERLAND; HANS-ULRICH MEISTER, CO-HEAD, PRIVATE BANKING AND WEALTH MANAGEMENT, CHIEF EXECUTIVE OFFICER-REGION SWITZERLAND, CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, ZURICH, SWITZERLAND; AND ROBERT S. SHAFIR, CO-HEAD, PRIVATE BANKING AND WEALTH MANAGEMENT, CHIEF EXECUTIVE OFFICER-REGION AMERICAS, CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, NEW YORK, NEW YORK[1]

Mr. DOUGAN. Good morning, Chairman Levin, Ranking Member McCain, and Members of the Subcommittee. My name is Brady Dougan. I became the Chief Executive Officer of Credit Suisse in 2007. I am joined by Romeo Cerutti, who has been the General Counsel of Credit Suisse since 2009, and by Hans-Ulrich Meister and Rob Shafir, who have served since 2012 as co-heads of our Private Banking and Wealth Management Division. I would like to thank you for the opportunity to appear before the Subcommittee today.

Mr. Chairman, I would like to make a brief opening statement and ask, as you mentioned, that our longer prepared statement and our written comments to the report be included in their entirety in

[1] The joint prepared statement of Credit Suisse appears in the Appendix on page 93.

the hearing record. My fellow panelists will make brief oral statements following mine, but they have allowed me to encroach somewhat on their time.

I would like to begin by providing a little background about Credit Suisse. Our Bank operates in more than 50 countries and has over 45,000 employees, including approximately 9,000 U.S. employees in 19 locations in the United States. In the United States, Credit Suisse is regulated by the Federal Reserve. We have a New York branch, which is supervised by the New York State Department of Financial Services. We also have three regulated U.S. broker-dealer subsidiaries.

Our primary U.S. broker-dealer has been designated a Systemically Important Financial Institution under the Dodd-Frank law. Our Bank has a deep and substantial business in the United States.

The Credit Suisse management team also has strong personal ties and commitments to the United States. Rob Shafir and I are American citizens. I am the first American CEO of a major Swiss bank. Romeo Cerutti, our General Counsel, is an attorney who was admitted to both the Swiss and California bars. And Hans-Ulrich Meister has also worked in the United States. Our Bank also has deep roots in the United States. Parts of today's Credit Suisse date back to the First Boston Corporation, a U.S. firm that has its roots going back to the 18th Century.

Mr. Chairman, there are a few key points that I would like to clearly express to the Subcommittee at the outset today.

In 2008, your Subcommittee first held hearings highlighting abuses of Swiss banking secrecy to hide untaxed U.S. assets. That event, one year into my tenure as CEO, challenged the entire Swiss banking sector, and it encouraged us at Credit Suisse to push forward, work hard, and help bring about a transformation in the Swiss banking system.

Over the past 5 years, Credit Suisse has become one of the leaders in Switzerland, encouraging legal, cultural, and business changes to enable the United States to have transparent access to information about U.S. clients and to enable the United States to recover taxes that are still unpaid by Americans holding assets abroad.

I can assure you that not all banks in Switzerland agree with us, and many have privately and publicly opposed the positions we take. But for me it is very clear. Swiss banks can only hold assets that U.S. clients have established are compliant with U.S. tax law. Seeking out U.S. customers who want to hide untaxed assets and profiting from these untaxed assets is simply not acceptable.

Mr. Chairman, we are working daily to build a different and better legal and cultural reality for Credit Suisse and the Swiss private banking model. We have tried to demonstrate leadership in this area in a number of different ways. We have supported legal steps, both here and in Switzerland, that would enable the U.S. authorities to obtain information and recover unpaid taxes from U.S. clients. Credit Suisse has strongly supported the Foreign Account Tax Compliance Act (FATCA) at every opportunity, supporting it in both the United States and Switzerland, and working closely with the U.S. Senate to make the law as effective as possible.

While we supported FATCA, other banks opposed it. Because we embraced FATCA, Credit Suisse now has in place, sooner than FATCA requires, procedures to make sure U.S. clients demonstrate compliance with U.S. tax laws.

In addition, Credit Suisse supports full information exchange beyond FATCA, including the Organisation for Economic Co-operation and Development (OECDs) efforts toward global standards for automatic information exchange.

We have also supported the ratification of the Protocol to the Double Taxation Treaty agreed to by the U.S. and Swiss Governments in 2009 and approved by the Swiss Parliament almost 4 years ago. Credit Suisse is ready at this moment to provide the additional information about U.S. accounts that has been requested by the U.S. authorities, but we have been unable to do so because the U.S. Senate has not yet ratified the protocol. We urge the Senate to ratify the protocol so that Swiss banks can assist the U.S. authorities in recovering unpaid U.S. taxes.

We have proactively taken steps to require that only those U.S. clients who established compliance with U.S. tax laws can be clients of our Bank. In 2008, when UBS became the first Swiss bank to become the focus of investigations by the Justice Department and this Subcommittee, and many U.S. resident clients left UBS, some other Swiss banks welcomed those clients. But Credit Suisse immediately prohibited the transfer of assets from those former UBS clients to our bank.

Long before investigations by U.S. authorities, Credit Suisse—again, on our own initiative—moved to address the issues highlighted by the UBS situation. We wanted to ensure that all U.S. clients of our Bank establish compliance with U.S. law, and we prioritized that exercise based on what we understood were the key priorities of the U.S. Government.

Over the past 5 years, we pushed forward with a significant and complex remediation exercise. In addition to dedicated Credit Suisse staff, we hired numerous outside experts—law firms, accountants, and others—to help check whether clients who might have a possible U.S. connection were identified. If they had any U.S. connection, they were required to demonstrate their compliance with U.S. tax law if they wanted to remain clients of our Bank.

To check the thoroughness of our efforts, we hired one of the Big Four accounting firms which carefully analyzed what we had done. In 2013, this accounting firm confirmed that we had identified the complete population of potential U.S. account relationships to an extremely high level of confidence. Our remediation has been extensive and demonstrable, and the results of this substantial effort have been presented to the Subcommittee staff.

We fully recognize, Mr. Chairman, that despite our efforts, Credit Suisse has not been free of its own problems. We have invested enormous efforts to achieve as much clarity as possible about whether and to what extent Credit Suisse employees violated U.S. laws or helped clients to do so. We commissioned an independent internal investigation by the United States and Swiss law firms that reviewed all aspects of the Bank's Swiss-based private banking business with U.S. clients. The investigation identified evidence

of violations of Bank policy and U.S. laws that were centered on a small group of Swiss-based private bankers.

The investigation's evidence showed that these people went to great lengths to disguise their bad conduct from the Bank. We have presented the Subcommittee with the unvarnished results of our internal investigation.

Credit Suisse's management team regrets very deeply that, despite the industry-leading compliance measures we put in place, we had some Swiss-based private bankers who appear to have violated U.S. law. While I am extremely dismayed by their conduct, Mr. Chairman, I also believe that leadership requires facing up to the past and taking responsibility for what our employees did.

Mr. Chairman, let me conclude by stating once again that we made a decision some years ago to work hard and help bring about a transformation of the Swiss banking industry toward the highest standards of compliance. We have tried sincerely to demonstrate our leadership in the various ways I discussed this morning, and for me personally it has been one of my highest priorities to get this fixed, to get it right, and I believe we have made significant progress toward that goal.

And with that, with your permission, I would like to turn it over to Romeo Cerutti, our General Counsel.

Senator LEVIN. Thank you very much. Mr. Cerutti.

Mr. CERUTTI. Good morning, Chairman Levin, Ranking Member McCain, and Members of the Subcommittee. My name is Romeo Cerutti, and I have served as the General Counsel of Credit Suisse since 2009. I am happy to appear today to answer your questions. We have taken a hard look at this issue, and I will explain everything I can to the extent possible.

Before 2008, our Bank, like many banks in Switzerland at the time, had the view that tax compliance was a matter that was between the individual taxpayer and that taxpayer's government. Looking back, that approach left the Bank vulnerable to abuse by those U.S. clients and Swiss private bankers who wanted to hide untaxed assets. And back then, preventing U.S. accounts from holding untaxed assets was not a priority. That was a mistake.

But since that time there has been a real and meaningful change, and I should say that one of the most important drivers of that change has been this very Subcommittee and, most particularly, the Subcommittee's report of July 2008 concerning UBS.

Once the report came out, within a week we immediately decided that we would not take in the account holders that were leaving UBS as a result of the revelations in that report. We also decided that we would identify and close U.S. taxpayer accounts that would not or could not prove tax compliance.

We believed that our Swiss-based private bankers serving U.S. clients were complying with our policies. We were wrong. In fact, as we later learned, we had a problem. Certain private bankers in our Bank had apparently violated U.S. laws.

As a bank, we have since taken a number of important steps to face up to the past and guard against a recurrence of these problems.

First, we commissioned a full and independent internal investigation as to what happened and have provided detailed informa-

tion to the U.S. authorities. We have searched for the truth of what happened with a view that we need to take responsibility and resolve these matters.

Second, we have worked very hard to get the U.S. authorities the necessary information they wanted. This has not been easy, given that we need to comply with the laws of both the United States and Switzerland and these laws are sometimes directly conflicting.

Third, our effort has also included urging both the Swiss Parliament and the U.S. Senate to adopt the 2009 Protocol to the Double Taxation Treaty. While the Swiss Parliament adopted the Protocol a long time ago, it still awaits ratification by the U.S. Senate.

Fourth, we have worked very hard to close all U.S. accounts where clients have not demonstrated compliance in fulfilling their reporting obligations.

Fifth, we contacted current and former U.S. account holders and encouraged them to participate in the IRS' Voluntary Disclosure Program, which enables the IRS to recoup unpaid taxes.

Sixth, and last, we have made real progress in proactively improving our compliance standards. For example, we have prepared for the implementation of the Foreign Account Tax Compliance Act, ahead of time and have been a vocal leader in Switzerland and globally in support of FATCA, which will bring about important changes in providing the IRS information about U.S. accounts held abroad.

Senators, when we make mistakes, we take responsibility and we hold ourselves to high standards. The last 5 years have been an important wake-up call for the Swiss private banking industry. At Credit Suisse we have learned real lessons, and we have genuinely tried to use this experience as an opportunity to meaningfully improve our Bank's compliance framework.

Thank you.

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

Did you want Mr. Shafir or Mr. Meister?

Mr. MEISTER. Good morning, Mr. Chairman. Good morning, Ranking Member McCain. Good morning, Members of the Subcommittee. My name is Hans-Ulrich Meister. Along with my partner, Rob Shafir, I am the co-head of the Private Banking and Wealth Management Division at Credit Suisse.

I have had the privilege of working in this country and also had the opportunity to complete advanced management programs at Wharton and at Harvard.

I joined Credit Suisse in August 2008 as the regional CEO of Switzerland. In that role, one of the main tasks was to enhance and to drive the integration of the various local businesses in Switzerland, including the investment banking business, asset management, private banking, and the retail and the commercial businesses in Switzerland.

In August 2011, I became the Chief Executive Officer of the Private Banking Division, and in November 2012, Rob Shafir, to my right, and I were appointed to the newly formed division called Private Banking and Wealth Management.

As a Swiss person who has spent close to 30 years in the financial service industry, there are two points I want to emphasize.

The first point is that we agree that Swiss bank secrecy was abused by some clients in order to hide untaxed money from their local tax authorities.

We also recognize that there were some Swiss bankers, business people in Swiss banks, who helped those clients to hide their untaxed money.

I want to state clearly and directly to this Subcommittee that this approach, by some clients and some Swiss bankers, is totally unacceptable.

Not everyone in Switzerland wants to deal with this fact, but in my view, the Swiss banks have to recognize this issue and have to accept their share of responsibility.

The second point I want to make is that it is clear to me personally and it is clear to the entire management team of the Bank that the only way forward for the private banking business at Credit Suisse and for all the Swiss banks is to serve only U.S. clients who can establish compliance with U.S. laws, and this has been our goal for some years.

In 2008, while other banks in Switzerland accepted U.S. clients who left UBS, we prohibited acceptance of those clients. We have conducted a series of intensive projects over the last 5 years to check that only U.S. clients who can demonstrate that they have established compliance with U.S. tax laws can be clients of Credit Suisse. We are doing this because we do not want U.S. clients who are not fully compliant with the laws of this country.

The private banking industry worldwide, not just in Switzerland, has been going through a process of change for years in the direction of clear transparency, international exchange of information, and working closely together with regulators all over the world to enhance and improve the business.

Rob Shafir and I, as the responsible co-heads for the Private Banking and Wealth Management Division, welcome these changes because we strongly believe that is the only way forward for the Swiss financial center and the international private banking community. Thank you.

Senator LEVIN. Thank you very much, Mr. Meister. Mr. Shafir.

Mr. SHAFIR. Good morning, Chairman Levin, Ranking Member McCain, and Members of the Subcommittee. My name is Rob Shafir. I am the co-head, along with my colleague Hans-Ulrich Meister, of the Private Banking and Wealth Management Division.

I joined Credit Suisse in 2007 and have had a 30-year career in the U.S. financial services business. I appreciate your giving me a chance to speak with the Subcommittee today.

From 2007 to 2012, I have served at different times as the Chief Executive Officer of the Americas Region and the Chief Executive Officer of our asset management business. I have been on the Executive Board since I joined the Bank.

From the time I joined Credit Suisse, I have experienced firsthand a sincere and unambiguous culture of compliance. Our leadership has an intense focus on controls. We have strong and committed employees in various different functions who are ready and empowered to enforce the highest standards in the way we do business. That commitment starts with Mr. Dougan and the Board of Directors, and it is crystal clear to the members of the Executive

Board and the employees on down the line in the United States, Switzerland, and the rest of the world.

From outside the Bank, you can see our culture of compliance in action in the concrete steps we take. I have witnessed during my time at Credit Suisse that the Executive Board has a constant focus on creating a compliance culture, and the Bank has made significant progress in that direction.

You can also see the other steps that we have taken to support greater transparency in international banking. We have strongly advocated in favor of the Protocol to the Double Taxation Treaty, allowing for mutual assistance in tax matters. We have publicly supported the enactment of the implementation of FATCA, which represents a major advance in international information sharing. Even though the official implementation of FATCA has been delayed, we proactively adopted requirements that exceed what FATCA will require, and have done so on a faster timetable than required by the IRS. Then and now, we are totally committed to ensuring that our clients and our businesses are compliant with U.S. legal requirements.

I am not suggesting, Mr. Chairman, that we get it right every time or that we are always able to detect every problem in the Bank as soon as we would like. I can tell you that the attitude of this management team is to prioritize a culture of compliance at every level of this Bank and to resource and empower the people in the control functions.

In 2012, I was asked by Mr. Dougan to join my partner, Hans-Ulrich Meister, as co-head of the Private Banking and Wealth Management Division. I am the first American to serve as co-head of this business at our Bank. Mr. Meister and I are completely on the same page when it comes to the strategy we are implementing for our business. The value proposition of Credit Suisse for U.S. clients is that we can manage client assets with outstanding client service and performance. There is no value proposition in having U.S. clients that have not demonstrated compliance with U.S. law.

Mr. Chairman, these are the standards we have set for ourselves. This is where Credit Suisse is now. We believe this is the responsible and necessary future for the international banking industry.

Thank you for your time this morning.

Senator LEVIN. Thank you very much.

We will have many rounds of questions, but let us have 10 minutes for each round for each of us.

Mr. Dougan, in your opening statement, you said that Credit Suisse is willing to provide names of U.S. customers who held Swiss accounts, pending ratification of the 2009 Swiss Protocol. Now, that treaty is not going to facilitate the production of U.S. account names and information on accounts that are closed before September 2009, right? Is that correct?

Mr. CERUTTI. May I?

Senator LEVIN. Either one.

Mr. CERUTTI. Yes, that is correct. But any account that was still open at that time, you are going to get information. And if I may add, a lot of the accounts that were closed at that time went on to other Swiss banks. So you will get it if the IRS makes the same request under the treaty to other Swiss banks.

Senator LEVIN. Right. And, of course, the Swiss Parliament has amended the law so that we have to make certain proofs before we can get the information from those other banks. Bits and pieces are provided to us instead of the names. Instead of your going back and giving us the names, which is what will allow us to collect the taxes, instead you hide behind Swiss secrecy laws.

So we are interested in collecting taxes that are owed, which have been evaded, and we need the cooperation of the banks in order to do that. But if the banks will not cooperate, citing Swiss secrecy laws, then we simply have to use our own domestic laws to force cooperation from the banks.

Now, you cite Swiss secrecy laws, you said, Mr. Dougan, that you do not agree with those laws. Is that correct?

Mr. DOUGAN. Well, I think our position is very clear, which is we are ready to provide any information that we can legally provide. But I think that, as you point out, the issue that we have is we have two different legal jurisdictions and, therefore, for us to break the law in one jurisdiction in order to provide that information is difficult for us to do. But I think the most important thing, from our point of view, is that we cannot necessarily influence these discussions between governments and how they proceed. We are ready to provide any information that we can provide legally, and we do believe that approval of the new treaty would actually provide a lot of facility for the IRS and for the DOJ to actually get a lot of the information that they need. That is our belief.

Senator LEVIN. Well, I have indicated that we hope that treaty will get ratified, but it has its limits, and it does not apply to thousands of accounts of people who owe us money. And you folks have not been willing to give us more than 238 of those accounts, and that means that we lose billions of dollars in tax collections. And that is unacceptable to us. And if we are not going to get cooperation from the Swiss—and we will make this point very strongly to our own Department of Justice this afternoon—we are going to use our own means. And our own means are subpoenas, and our own means are to use the ways in which we can enforce our own laws in order to get those names.

And so you can say that you are caught between two countries' laws, but when you come to this country, you sent bankers into the United States, set up an office in the United States, helped U.S. customers hide what they were doing from U.S. authorities—that is what you did. And now the jig is up. You say you want to cooperate, but you cannot do it because of Swiss secrecy laws. Those laws do not apply in the United States. You are operating in the United States.

And so we believe and we think the law, which is fairly well accepted around the world, is that if you are going to operate in a country, you must abide by the laws of those countries, and you cannot hide behind the laws of your own country. That is not the way it works.

And so we are going to put a lot of pressure on our Justice Department to enforce the laws here and to enforce them against you if you are unwilling to do what our laws, we believe, require you to do, which is to turn over the names of the people whom you aided and abetted in tax evasion.

Mr. DOUGAN. Well, Mr. Chairman——

Senator LEVIN. Let me just ask you about Swiss laws, too, by the way. Have you urged the Swiss Government to change the laws to allow disclosure of U.S. customers' names? Have you urged the Swiss Government to change the laws?

Mr. DOUGAN. We have actually worked at all levels within Switzerland, certainly with the government, with regulators, and also have been very public about our support for increasing the ability for transparency. As we have said, we are——

Senator LEVIN. That is not my question.

Mr. CERUTTI. If I may——

Senator LEVIN. My question is: Has Credit Suisse urged the Swiss Government publicly to change the law so that you can turn over the names of your customers that you had prior to 2009?

Mr. CERUTTI. Mr. Chairman, we have absolutely the same goal. Every——

Senator LEVIN. No. Not the same goal. It is a very specific question. Have you urged the government to change the law so that you can cooperate with us so that we can collect taxes that are owing to us?

Mr. DOUGAN. Yes, we have.

Senator LEVIN. To change the law so that you can provide us those names?

Mr. DOUGAN. Yes, we have done that.

Senator LEVIN. You have.

Mr. DOUGAN. We have encouraged them. We have done it publicly. We have supported that goal, yes.

Senator LEVIN. That is good. Now, and you are saying other banks have not—no, no. Not the goal, because the goal can be achieved in the eyes of some through a treaty which gives us bits and pieces, not names. What the new treaty does is say, we are not going to give you the names. We are going to tell you generally what accounts were transferred to what other banks, and then you can go to those other banks, and then the Parliament in Switzerland changed the law to say under that new treaty, you are going to have to show that the bank that has received that account somehow or other worked with and is guilty also of aiding and abetting. That is a very difficult burden. So you can talk about the new treaty, and we hope it gets ratified. But its value is very limited. It has loopholes in it which will be used, I am sure, by banks to avoid ponying up the names.

Now, I want to ask you this question, not goal: Have you urged the Government of Switzerland, the Parliament of Switzerland, to allow you to give us the names of your customers that you aided and abetted in evading taxes prior to 2008?

Mr. DOUGAN. Yes, we have.

Senator LEVIN. OK. Now, Mr. Cerutti, as the bank's General Counsel, let me ask you questions about some grand jury subpoenas. Is it correct that in September 2011, the Department of Justice issued two grand jury subpoenas to Credit Suisse seeking information from the bank in Switzerland?

Mr. CERUTTI. That is correct.

Senator LEVIN. And those subpoenas in part ask for U.S. client names and account information for certain accounts going back to January 2000?

Mr. CERUTTI. That is also correct.

Senator LEVIN. Is it correct that while Credit Suisse produced some business records and information from Switzerland, it did not produce any account information disclosing U.S. client names?

Mr. CERUTTI. That is correct, yes.

Senator LEVIN. And the reason was Swiss secrecy laws. Is that correct?

Mr. CERUTTI. That is correct.

Senator LEVIN. Now, the bank must have known that the United States has case law bundled under the Bank of Nova Scotia line of cases that says if a bank is based in a secrecy jurisdiction but does business in the United States and if it gets served with a grand jury subpoena, the U.S. interest in criminal prosecutions outweighs the foreign jurisdiction's interest in secrecy and that the bank must produce the requested information. Are you aware of that line of cases?

Mr. CERUTTI. Yes, I am.

Senator LEVIN. And so you knew that the day would come when the bank might be subpoenaed for information in Switzerland and that a U.S. court would order the bank to honor the subpoena. But what actually happened here is that instead of enforcing the grand jury subpoenas in a U.S. court to obtain the U.S. client names in Switzerland, the Department of Justice put the subpoena on hold and in September 2011 filed a treaty request instead to obtain the names. Is that true?

Mr. CERUTTI. Yes, I think so.

Senator LEVIN. And that treaty request took two different requests, two court decisions, 2 years, and we ended up with 238 accounts with U.S. client names. Is that correct?

Mr. CERUTTI. That is correct, because that treaty request was made under the current 1996 treaty with the very tough standard, and as soon as the new treaty would be ratified, you would get, I am convinced, many more, probably thousands of account names.

Senator LEVIN. Well, I understand, but there also were 1,500 accounts, were there not, which were organized in the same way that the 238 came from? Those were the ones that were set up in the third country's jurisdictions using shell corporations. Is that correct?

Mr. CERUTTI. You are talking about entity accounts. That is correct. Now, the Swiss Federal Administrative Court has set up conditions under which they consider these entities to fall under this tax fraud or the like standard, and only 238 in their view——

Senator LEVIN. And so the Swiss courts again made the decision which denied us the names of accounts in Switzerland opened up by shell corporations—by the way, many of which your people helped to set up, and we will get into that later in my second or third round. But it was, again, a Swiss court which then denied us the names of your account holders which used shell corporations to cover up who the beneficial owners really were. That is totally unacceptable, and I just hope that our Department of Justice understands that when subpoenas are issued in 2011 and they sit there

unenforced year after year after year, and the excuse is that secrecy laws in another country do not allow the subject of that subpoena to provide information critical to our tax collection, that the Department of Justice, as far as I am concerned, is taking a totally unacceptable position, and we are going to do our best to change it.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. I thank the witnesses for being here.

Mr. Dougan, I would like to get something straight here. Is it true that, at its peak in 2006, Credit Suisse had over 22,000 accounts in Switzerland for U.S. customers with assets exceeding $10 to $12 billion? Is that roughly accurate?

Mr. DOUGAN. At the end of 2008, we had about 22,000 accounts, and the total—I think the total amount of assets that has been referred to by the Subcommittee is about $12 billion.

Senator MCCAIN. So that is an accurate statement now?

Mr. DOUGAN. That is generally accurate, yes.

Senator MCCAIN. Now, to date, due to Swiss law restrictions, is it true that Credit Suisse has turned over to the United States the names of only about 230 former U.S. customers with hidden accounts? Is that true?

Mr. DOUGAN. Yes, that is correct.

Senator MCCAIN. So we are really talking about a minuscule number of individuals who have intentionally evaded U.S. taxes has been revealed to the Justice Department or the Department of Treasury or other interested agencies. Is that true?

Mr. DOUGAN. That is correct, in terms of what has been delivered.

Senator MCCAIN. Now, would you explain again what Swiss law prevents you from providing that information?

Mr. DOUGAN. Yes, perhaps I could ask Mr. Cerutti to give the——

Senator MCCAIN. OK. Maybe Mr. Cerutti——

Mr. DOUGAN [continuing]. Legal point of view.

Mr. CERUTTI. Yes, Senator, Article 47 of the Swiss banking law, the banking secrecy provision, prohibits us from furnishing any client names to anyone within Switzerland or outside of Switzerland. And this is subject to imprisonment and fines. So that is——

Senator MCCAIN. So any real idea that the Government of Switzerland is cooperating with us is a joke, right? If we can only get 230 names out of 22,000 accounts, anyone in the Swiss Government who alleges that they are cooperating with the United States in trying to track these people down is just contradicted by the facts.

Mr. Dougan, 5 days ago, Credit Suisse settled with the SEC and paid over $82 million for disgorgement of its profits. The SEC settlement did not relate to the bank's facilitation of tax evasion of U.S. client accounts in Switzerland.

Do you know what the profits from those accounts were? Have you got a general idea?

Mr. DOUGAN. In terms of, sorry, as opposed to the SEC?

Senator MCCAIN. Right, the profits that you made from those accounts.

Mr. DOUGAN. No, Senator, I do not think we have a good idea of that. I can perhaps lead you through some of the numbers that might give you an understanding of how those numbers developed. But I do not think we have a precise idea, no.

Senator MCCAIN. But those profits were pretty substantial given the number of clients that—and the $10, $12 billion in the accounts.

Mr. DOUGAN. No, in terms of the importance of this business—and, frankly, it is one of the issues that makes this an issue that is for us as well as something that we regret a lot, this was a very small business, actually. From our point of view, it was about less than 1 percent of the profitability of our global Bank. And so this was actually a relatively small part of the business. Obviously we are not in any way trying to avoid responsibility for the acts which happened and the behavior, but clearly it was, from an economic point of view, a very small part of the business.

Senator MCCAIN. But I guess it is all dependent on how you look at it, but if it was $12 billion and, say, 10 percent, which is very modest, would be well over $1 billion.

Mr. DOUGAN. Well, can I address the $12 billion? Because I think that is actually an important issue that we thought was worth spending a little time on with the Subcommittee.

Senator MCCAIN. I thought you just responded $10 to $12 billion in the 22,000——

Mr. DOUGAN. Well, $12 billion was the amount of assets that we had outstanding as of the end of 2008. Of that $12 billion, $5 billion of that, as we went through and did a full investigation, was determined to be fully tax compliant. So not all of the $12 billion was not tax compliant. So $5 billion was tax compliant. Another $2.2 billion was actually determined to not have a U.S. taxpayer connected with it.

Senator MCCAIN. We are down to $10 billion now.

Mr. DOUGAN. We are basically down to about $7 billion.

Senator MCCAIN. Only $7 billion, OK. I think the point is that you made quite a bit of profits, even if it was a small percentage, and I guess it all depends on where you view a billion or two dollars. Maybe from Credit Suisse's standpoint it is not much, but, frankly, from most average citizens, that is a fair amount of money.

In your statement where you accept responsibility and deeply regret the actions, you said, how many culpable officers, directors, and key executives have been held accountable—I mean fired?

Mr. DOUGAN. Well, Senator, with this business, what we determined to do starting in 2008, 2009, particularly after the actions of the Subcommittee in highlighting these issues, was to shut this business down. So over the course of the last years, over the course of the first 2 years after that, we basically reduced the size of the business by about 80, 85 percent.

Senator MCCAIN. How many employees were fired?

Mr. DOUGAN. Which means that most of those people involved with the business actually were fired as part of shutting down the business, so the vast bulk of them actually left the business as we shut it down.

Senator MCCAIN. Mr. Meister, you are a high-ranking official, and you were directly responsible for overseeing a division that serviced many U.S. bank accounts in Switzerland. Is that true?

Mr. MEISTER. That is true, starting in August 2011, for the——

Senator MCCAIN. There was an office right in the Zurich airport, meaning the clients would not have to even enter the city to conduct these transactions. Yet in interviews with the staff, you said you were unaware that the branch was servicing these undeclared U.S. accounts? You were unaware of that?

Mr. MEISTER. Perhaps in the interviews I said that, because it was not clear to me at the time, because I took over the private banking as the CEO in August 2011, there was years before this sort of a team. In the meantime, of course, in preparation for this hearing, I now know that there was a team. There was a team of around seven to eight relationship managers and around 10,000 clients. The bulk of the clients were smaller clients with a balance between $30,000 and $75,000 and most of them did not hold securities. Generally, in Credit Suisse, a relationship manager normally in the private bank covers around 100; here it is around 1,000. So there was specific service for U.S. residents who came in, have perhaps a house somewhere in a tourist spot, used cash, most of them were cash accounts, no securities accounts and no advice.

Senator MCCAIN. So it really did not mean much that you had an office right there in the Zurich airport?

Mr. MEISTER. I did not say it did not mean much. That is what I learned in the meantime because I was not, as I said, accountable for this part. Perhaps Mr. Cerutti can give more light, or Mr. Dougan.

Mr. DOUGAN. Well, Senator, if I could just add, this airport office, as you mentioned—I think Hans-Ulrich Meister has outlined some of the parameters of it—it was really an office where, as you say, it was an office of convenience for clients——

Senator MCCAIN. It certainly was.

Mr. DOUGAN [continuing]. Who would come in, but basically they held relatively small amounts of money, and there was no active management. And actually in our investigation, which was a very detailed investigation, we did not find any systematic issues in that area.

Senator MCCAIN. Mr. Cerutti, you conducted an internal review in 2008 that included looking at the SALN desk, which primarily dealt with U.S. accounts. Your review found no wrongdoing. Yet in 2011, the DOJ found enough evidence to indict several employees from that desk. How do you explain your inability to—and gave a clean slate to your review of the SALN desk, and yet the DOJ found enough evidence to indict several employees from that same desk?

Mr. CERUTTI. Senator, we did the review at the end of 2008, beginning of 2009. We looked at the SALN desk, at our policies and our trainings, at the travel. We looked also at the audit reports, all that stuff, and we did not determine that we had a problem. In retrospect, that was a mistake.

Senator MCCAIN. I thank the witnesses. I thank you, Mr. Chairman.

Senator LEVIN. Thank you very much. Dr. Coburn.

Senator COBURN. Mr. Dougan, in your prepared testimony, you stated that Credit Suisse undertook an extensive internal investigation to try and uncover potential wrongdoing. Was there a formal report inside the bank on that investigation?

Mr. DOUGAN. Well, it was a very extensive and long-running investigation. We were updated very frequently on that. We also had various discussions, obviously, with our regulators, with various authorities here as well, updating them on the progress on that.

I think our view has been that, we are going to continue to make sure that we are looking throughout the Bank and doing everything we can to ensure compliance, so we did not really view it as a process that had ended. But we have constantly been, obviously, updated and involved in lessons learned and improving the environment as a result of that.

Senator COBURN. But there was no report brought to your board or to your chief executive level that here is the summary of what happened, here is——

Mr. DOUGAN. There was no formal report. Not one formal report.

Senator COBURN. Do you think that is unusual? Or was that done for legal purposes?

Mr. DOUGAN. No, I think it was—I have to tell you, I think in our firm and certainly in my 32 years in the industry, I have never seen a project with as much focus, as much resources, and as much time spent on it as this issue. I would say over the past 5 years this has probably been the single thing which has been the highest focus for us as a management team. And so this is discussed very regularly. It is discussed very regularly at our Executive Board virtually every week. It is discussed at our outside board meetings as well.

So it has been a very integral part of how we manage the business and what we have done all along. So I guess, in fact, I view that as a positive. We did not view it as a project which ended, and then we had a report which sort of summarized it. It is actually something that we continue to work with on a daily basis.

Senator COBURN. On this kind of plan that people would take tourist visas here to raise business, which is no longer happening, was there one individual that kind of promoted that scheme? And were they held accountable? And what has been the basis of that?

Mr. DOUGAN. The team that was involved in that—and, again, this is historic behavior, as you say, so it was pre-2008 behavior—was a group which compromised different numbers over time, but about 10 to 15 different account officers, and it was really concentrated in that group. That is the group where we admit there was behavior that we certainly do not countenance, we certainly think is egregious. We agree with, I think, all the adjectives that were used by the Subcommittee here. And that was really the group that was involved in that activity. The managers of that group were clearly the managers who I believe orchestrated that. We did not see any knowledge of that by others above them in the organization. And many of those individuals were part of the Department of Justice indictment. Many of those individuals are gone from the firm, and have been for a long time.

So that was the small focus group where we saw the behavior that was clearly not behavior that we would in any way countenance or defend.

Senator COBURN. All right. Mr. Cerutti, if John Doe subpoenas and the Justice Department fully carried out what they could carry out in this country, would you all have complied with those subpoenas?

Mr. CERUTTI. Senator, that is very difficult—impossible under Swiss law. We would all face criminal indictments in Switzerland and most probably prison terms if we would hand over these client names without the permission of the Swiss Government.

If I may just say in the UBS matter that Chairman Levin mentioned at the very beginning, the 4,500 names that ultimately were turned over were turned over as a consequence of a treaty that was entered into between the U.S. Government and the Swiss Government that allowed that any accounts with assets under management of $1 million and more be turned over. I would say that under the new Double Taxation Treaty, the one that still needs to be ratified here in the Senate—and I urge you to ratify it as quickly as possible, you will get many more accounts, and you can get them quickly, and the $1 million asset limitation, is not in that treaty.

Senator COBURN. Do you foresee a consequence if the Justice Department used all the tools and carried it through the courts that you might face prosecution in this country for not complying with those subpoenas?

Mr. CERUTTI. Yes.

Senator COBURN. So you have double jeopardy. Where would you like to spend time? [Laughter.]

Mr. CERUTTI. That is a tough decision.

Senator COBURN. The Subcommittee Report found that 1,800 different Credit Suisse employees serviced the 22,000 U.S.-linked accounts. According to the Subcommittee's Report, only 10 of the 1,800 employees were disciplined, and no one was fired. Is that an accurate statement?

Mr. DOUGAN. I think it is largely accurate, but maybe I could explain it. We did have a concentration of coverage of U.S. clients in a few areas, and the SALN desk, which is the area where we have seen the systematic, problematic behavior was the area that had a specific focus on U.S. accounts.

The larger group, the 1,800 number that is quoted, those were RMs throughout the bank. Typically they had one or two U.S. clients, and so they were not specifically focusing on the United States, but they might have an account that might have been, say, an expat in Switzerland, so it could have been a U.S. citizen who was living in Switzerland.

Senator COBURN. Got you.

Mr. DOUGAN. So most of those, the vast bulk of those 1,800 simply had a few U.S. accounts, and, again, in the course of our very thorough investigation, we did not find any systematic abuses in that group.

Senator COBURN. All right. Thank you very much.

One other question, Mr. Dougan. Credit Suisse started—in 2008, you undertook efforts to identify and close out noncompliant U.S.

accounts. In other words, they were not compliant with our tax laws.

Mr. DOUGAN. Yes.

Senator COBURN. How many noncompliant accounts were identified as part of your efforts?

Mr. DOUGAN. Do you want to answer that?

Mr. CERUTTI. Senator, if I may try to answer that, we did it the other way around. We tried to identify the ones that were compliant, and over the time we have identified some 6,678 that were compliant and another 1,900 that lost their U.S. nexus, so if you add that up, you have about 8,500 that were not part of the 22,000.

In addition, of the 22,000, you have about 9,000 that had less than $10,000 U.S. dollars, really small accounts. And this is a mix you have some 6,300, 6,500 expats, Americans who live abroad, mostly in Switzerland. They need an account. They beg us to open an account quite often because most Swiss banks are shut for business for U.S. persons. Everyone is so afraid at this point to——

Senator COBURN. Are they compliant?

Mr. CERUTTI. We looked at——

Senator COBURN. Are those 6,000 expat accounts compliant with U.S. tax law?

Mr. CERUTTI. We looked at this population, and starting in 2012, we had been hoping to do that as part of the FATCA implementation. FATCA got delayed, twice, as you know, it will now go into effect on July 1, 2014. We looked at that, and from a perspective of assets under management, to a large extent they were compliant. Account number-wise, I do not have the exact number here, but I could deliver that. Many, many are compliant.

Senator COBURN. That is a cultural issue, and we ought to address that. The fact is if your policy today is that U.S. accounts will be compliant with U.S. tax law, it does not matter what the percentage of assets under management that are. It is whether or not the accounts are. So, what I would do is just admonish that if that is your policy, then it ought to be installed vigorously and throughout.

Mr. DOUGAN. Perhaps, Senator, maybe I could just add another way to state it that might help in terms of understanding the process. Our top priority was to get to a point where all of the accounts that were here at the Bank were compliant. That was our top priority.

Now, as part of that as well, we made the decisions around restructuring this business, and so there were many parts of this where we just exited the business. So we did not spend a lot of time determining whether they were or they were not compliant. We just said——

Senator COBURN. You just closed the accounts?

Mr. DOUGAN. Yes, we just closed the accounts. And that is how—obviously, you go down by 80 percent in terms of the footprint in this business.

So that was our priority. I think as Mr. Cerutti said, on an ongoing basis, every account has to be compliant, and that was our most important goal, and so that is what we focused on.

Senator COBURN. All right. Thank you. I yield.

Senator LEVIN. Thank you, Dr. Coburn. Senator Johnson.

Senator JOHNSON. Thank you, Mr. Chairman.

Mr. Cerutti, you might be the best person to answer this question. How do you determine whether an account is compliant?

Mr. CERUTTI. Senator, today we have put all the FATCA requirements in place, so we are really looking at whether someone is a U.S. person from a tax perspective, U.S. nationality, green card, substantial presence test. We have them to sign these documents. We are also looking at dual citizens because often you have in Europe people who might have been born in the United States, and they are dual citizens now. So we are really looking at all of these people, and now they are signing waivers. They are all signing also a W–9 at this point. And once FATCA is in place, we can then transmit the account information to the IRS under the intergovernmental agreement that Switzerland has entered into with the United States.

Senator JOHNSON. OK. So you determine compliance because they basically sign waivers and a W–9, which gets reported back to the IRS, and so somebody knows that they have an account there and then that income is reported to the IRS, just like it is at any other normal bank.

Mr. CERUTTI. Exactly. It will now be starting July 1, 2014, with FATCA, and someone would be a fool to sign all of that and not pay the taxes.

Senator JOHNSON. I want to understand a little bit about what is so different about the 230 accounts where we actually received the names versus the other 22,000. What is unique that those 230 names were actually supplied?

Mr. CERUTTI. Historically, Switzerland distinguished between what the Swiss defined as tax fraud and tax evasion. And under the Double Tax Treaties in the past, you would only be able to get administrative assistance in a tax matter if the tax fraud standard was really fulfilled. And the Swiss courts have determined that these 238 accounts have the tax fraud standard fulfilled.

The other accounts, and by far not all of the 22,000 are not tax compliant, as I tried to explain before, but let us assume there are a number of those who are not tax compliant that would qualify as tax evasion. They would be covered by the new treaty, because Switzerland agreed to the new OECD standards, dropped the tax fraud requirement, accepted the tax evasion requirement, accepted also in 2012, as was mentioned by Chairman Levin, the group requests, and so once this treaty is signed, the IRS could just send out these requests, and these accounts should come in.

Senator JOHNSON. So the 238 accounts were determined fraudulent——

Mr. CERUTTI. Yes.

Senator JOHNSON [continuing]. That they were committing fraud?

Mr. CERUTTI. Yes.

Senator JOHNSON. How was that determined? How did the Swiss authorities determine that those 238 out of the 22,000 were actually engaged in some kind of tax fraudulent activity?

Mr. CERUTTI. Senator, it is a very good question. We have several court decisions by the Swiss Federal Administrative Court that have set the standards for fraud. Typically these were entity ac-

counts, like someone had an offshore entity, a U.S. person was sort of hiding behind an offshore entity. The corporate governance of the entity was violated. They held U.S. securities. I think these are the three main criterias to qualify for the fraud standard.

Senator JOHNSON. How were those entities targeted? How were they ever investigated? We did not know their names, so obviously, Swiss authorities opened up some kind of investigation for those 238 accounts?

Mr. CERUTTI. Yes, Senator, there was a group request by the IRS. It went to the Swiss Financial Tax Administration. They forwarded it to us at Credit Suisse. We had to identify all these accounts that qualified pursuant to these different criterias. We sent them in to the Swiss Federal Tax Administration. It was a somewhat larger group than 238. They then decided which one in their views would qualify. They were then forwarded on to the IRS by the Swiss Federal Tax Administration. Some appealed this decision, and those cases were then decided by the Swiss Federal Administrative Court.

Senator JOHNSON. OK. Mr. Meister, I think you mentioned that some clients and some Swiss bankers were involved in some of these fraudulent transactions. I think that was basically your testimony. I would like to review in general how important the Swiss banking sector is to Switzerland's economy. The numbers I have is that the Swiss economy is somewhere between $600 and $700 billion. Is that correct? Anybody know? Those are the figures I have.

Mr. MEISTER. Maybe I——

Mr. DOUGAN. That sounds right. I do not think we could contradict it.

Senator JOHNSON. I am seeing the banking sector somewhere between 6 and 12 percent of that, so somewhere in the $40 to $75 billion range.

Mr. DOUGAN. That sounds about right.

Senator JOHNSON. Now, when they reported that GDP, is that the profitability of the Swiss banking sector? Obviously total assets under management are much higher than that.

Mr. DOUGAN. So, yes. I would think that would be profitability, yes.

Senator JOHNSON. Why would a U.S. investor invest into a Swiss bank? What are the motivations?

Mr. MEISTER. To invest as an investor. You ask me as an investor. I think one of the points is no doubt that we can, because of the talent, provide attractive returns.

Senator JOHNSON. Have you historically had far higher returns than U.S. banks, British banks, or other banks?

Mr. DOUGAN. I would say largely in line, probably—I mean, different in different years, obviously, but I would say not systematically different.

Senator JOHNSON. So if U.S. investors have invested about $12 billion into Swiss banks, I mean, obviously that is a pretty small portion of the Swiss banking assets held, right? Isn't Credit Suisse about $1 trillion in assets held?

Mr. DOUGAN. Yes, that is right. It is a very small portion, that is correct.

Senator JOHNSON. So you have a lot of investors from all over the world then?

Mr. DOUGAN. Absolutely, yes.

Senator JOHNSON. And they invest in Switzerland, again, because? If there is no exceptional returns in Swiss banking, why do they do it in Switzerland?

Mr. DOUGAN. Well, I am sorry, I misunderstood your comments before to be talking about sort of our equity or our equity as an investment. If you are talking about our asset base, which, as you say, is over a trillion Swiss francs in terms of assets under management for our clients, I think, as Mr. Meister said, it is a combination of our ability to provide good service, our ability to provide very competitive returns on those assets as a banking client, our ability to provide lending to those clients, and I think particularly, obviously a comprehensive business that we can offer across asset management, private banking, but also some of the wholesale investment banking type services.

Mr. MEISTER. Perhaps if I can add also stability of the country and, of course, also currency risk diversification, because the Swiss Franc is a very stable currency.

Senator JOHNSON. I am just trying to get to the obvious point to why people put money into Switzerland. What is the obvious reason people take their money, transfer it from the United States or from Brazil or from England or from Russia and put their money in Switzerland?

Mr. DOUGAN. Well, I think——

Senator JOHNSON. I just want to state the obvious.

Mr. DOUGAN. Well, I think, first of all, we actually—we have a global business, so obviously that $1 trillion of assets is not all in Switzerland.

Senator JOHNSON. OK.

Mr. DOUGAN. So we have a lot of those assets here in the United States in——

Senator JOHNSON. I am not even targeting Credit Suisse. I am talking about the Switzerland banking sector. Why do people take money out of their countries of origin and invest in Switzerland?

Mr. DOUGAN. In Switzerland, you mean, actually in Switzerland as a country?

Senator JOHNSON. Right.

Mr. DOUGAN. Well, I think historically, as we discussed, there has been—one of the things that is obviously highlighted is that there is an ability to shelter assets and income from paying taxes. Obviously, that is decreasingly the case, and clearly, going forward, our view is that that is not the future of the industry. That is certainly not our business model. We do not think that should be any Swiss bank's business model. And, clearly, with FATCA, with a number of the OECD arrangements that are taking place, and also with a number of other developments, that is not an advantage that the Swiss banking system is going to have going forward.

So it really has to be around the ability to offer services and returns that are competitive and, in fact, superior to what they can see in other markets and other places where they can put their money.

Senator JOHNSON. OK. Well, again, I appreciate that I think it is important to get that basic, obvious reality on the table as we are talking about this, because that is what all the secrecy is about, that is what this whole thing is about.

So I think from the U.S. perspective, we are just trying to make sure that Switzerland opens it up, makes it transparent so that U.S. taxpayers cannot shelter income over there. If we want to invest in Switzerland because of great returns, we should have the right to do that. But we should not have the right to shelter income.

Mr. DOUGAN. Understood, and we completely agree with that.

Senator JOHNSON. OK.

Mr. DOUGAN. We are completely, exactly in the same place on that.

Senator JOHNSON. Well, thank you. I appreciate that.

Thank you, Mr. Chairman.

Senator LEVIN. Thank you, Senator Johnson.

Well, you may be in the same place, but the Swiss Government surely is not. It still has under the law that you cannot release the names of an account. You cite that for not complying with a subpoena. So maybe your bank is in that position, maybe for future deposits, but it sure does not reflect where the Swiss Government is. And your bank is using the Swiss Government's position in arguing against the enforcement of subpoenas. It says it puts you in a difficult position. But you come to this country, and you are governed by this country's laws, by almost universally accepted law. And yet you hide behind the Swiss law even though you are operating here. And that is just simply not going to cut it.

The trouble is that the Justice Department has been deterred by the Swiss Government's law, which you folks cite, and year after year after year goes by with subpoenas not being enforced to get the names that we have to have if we are going to enforce our tax laws and collect taxes which are owed to the United States. So that is a huge issue.

Is it not true that the Swiss law continues to have on its books you cannot release the name of your account holders? Is that true?

Mr. DOUGAN. Yes, that is true, and that——

Senator LEVIN. They have not changed their laws, have they?

Mr. DOUGAN. Well, as we said, the protocol——

Senator LEVIN. I know those new treaties, I understand the whole business of treaties, and I know all the holes that are in the treaties, including the one that is being apparently heard today in our Foreign Relations Committee. You buy a lawsuit if you operate under that treaty, because under Swiss law, now passed by the Parliament, the defense against that request is you have to prove that the bank to which the funds have been transferred somehow or other is violating the law, is contributing to the aiding and abetting. That is the burden of proof which someone has under that treaty. It is not the same threshold when we seek the names of the Americans who have accounts there, as when we seek to get the names of accounts in the United States. So there is a big loophole in this treaty which you continue to say we ought to ratify. I am all for it because it will provide some good, but the key point is Swiss law still requires going through hoops to get the names of

people who are hiding their assets from our tax folks. That is the bottom line.

Just have a direct response: We are bound by your laws; we come to your country, and we are going to comply with them; and we will take on the Swiss Government if they try to prosecute us for complying with the laws of a country where we do business, because that is not sustainable.

Do you think you are going to be convicted in a Swiss court? Is the Swiss Government going to prosecute you if you comply with our laws and turn over those names? Are you going to be prosecuted? Is that your fear?

Mr. CERUTTI. Yes.

Senator LEVIN. That is your fear?

Mr. CERUTTI. That is my fear, absolutely.

Senator LEVIN. Of the Swiss Government. In that case, let us be real clear here what we are talking about. You are not cooperating with us, hiding behind a law which applies in Switzerland but does not apply here, and yet you want to do business here. And that is not the way the international law is applied. You want to do business here? You must comply with our laws.

Now, let me go back to this so-called investigation which you have carried on. In answer to Dr. Coburn's question—and I believe this was you, Mr. Dougan, who responded to this question. You have an internal investigation going on on the issue of aiding and abetting tax evasion, and you are conducting interviews and you are looking at documents and so forth. You indicated there is not going to be a written report. I do not understand how you can have something as serious as you say you are undertaking and not have a written report. But is that your testimony under oath that there are no written reports about that?

Mr. DOUGAN. I said we have not yet had a summary written report. We have had a number of reports, but we have not had a summary report because we view this as an ongoing process.

Senator LEVIN. All right. We have asked you for those ongoing written reports, have we not?

Mr. DOUGAN. I believe you have, and I think we have had many sessions with the Subcommittee updating them on the progress of the projects, and I think, in fact, the Subcommittee's report today chronicles in great detail through many pages, all of the different efforts that we have made over the past 5 years to get at this problem and to get it right.

Senator LEVIN. Let me go back to my question. You say that you have some written reports but not a summary report, and I believe we have asked you for the written reports that you do have. Is that correct?

Mr. DOUGAN. Well, I believe we have provided on an ongoing basis——

Senator LEVIN. No, I am just talking about the written reports that you do have. I am not talking about the summary report. I am talking about these ongoing written reports. Have we asked you for those reports?

Mr. DOUGAN. Mr. Chairman, we have been asked for a lot of information by——

Senator LEVIN. Do you know whether we have asked for those written reports——

Mr. DOUGAN. I do not know——

Senator LEVIN [continuing]. As part of this very detailed investigation that you have undertaken? You have described this as a major investigation.

Mr. DOUGAN. Absolutely.

Senator LEVIN. OK. And there are some ongoing written reports, not yet a summary report. I think that is what you just said.

Mr. DOUGAN. Yes.

Senator LEVIN. Now, these ongoing written reports, have you made those available to this Subcommittee?

Mr. DOUGAN. I believe we have shared those with the Subcommittee, but maybe Mr. Cerutti can——

Senator LEVIN. Have you, Mr. Cerutti?

Mr. CERUTTI. Mr. Chairman, we have shared the conclusions of our investigation, but not any of these reports that we had to prepare for other regulators. Some are confidential and cannot be shared at this point with this Subcommittee.

Senator LEVIN. Well, would you give us a list of the reports that we have asked for that you have not shared them with this Subcommittee and the reason that you have not shared? Will you give us that for the record?

Mr. DOUGAN. Sure.

Mr. CERUTTI. OK, sure.

Senator LEVIN. All right.

Now, even though you have not shared those reports, I want to ask you whether you can tell us about some of the things that you found. For instance, have you found that Credit Suisse bankers repeatedly traveled to the United States to get prospective U.S. customers and to serve existing U.S. customers in violation of your own policies? Have you found that?

Mr. DOUGAN. Yes, we did find that with the limited group of people that we mentioned. Yes, we did find that.

Senator LEVIN. Did you find that some Swiss bankers advised U.S. customers to secure transactions under $10,000 which would then avoid triggering cash transaction reports?

Mr. DOUGAN. We did find some conversations around that, so we think that there may have been some of that activity, yes.

Senator LEVIN. All right. Was that limited, too, to the SALN?

Mr. DOUGAN. It was, yes. Materially it was, yes.

Senator LEVIN. Did you find that some Credit Suisse bankers helped refer U.S. customers to intermediaries who advised them to transfer their U.S. assets to foreign shell companies and then treat them as foreign account holders in the bank's own books?

Mr. DOUGAN. We did see activity with these private bankers referring to, as you say, outside potential arrangers. I am not sure that any of that came—if you are saying some of that came back on to our books——

Senator LEVIN. Oh, yes.

Mr. DOUGAN. Is that right? Yes, we did——

Mr. CERUTTI. We saw some of that, correct.

Senator LEVIN. Just think about that.

Mr. DOUGAN. Yes.

Senator LEVIN. Your bankers referred customers to create shell corporations in tax havens knowing that then those shell corporations would deposit those funds in their accounts with your bank under the name of the shell corporation.

Mr. DOUGAN. I view that just as egregiously as you do, Mr. Chairman. I agree.

Senator LEVIN. And who was fired for that?

Mr. DOUGAN. Well, as we said, a number——

Senator LEVIN. No. Was anyone fired who did that? I know a number of people have been fired, a number of people have been let go. I just want to know: People who engaged in that egregious act, illegal under our laws, by the way, were any of those people fired, for referring people to intermediaries for the purpose of then having that same money go in the name of a shell corporation back into your bank? Were any of those people fired, do you know?

Mr. DOUGAN. I believe all those people do not work for the bank anymore, but perhaps Mr. Cerutti can give you a more specific answer.

Senator LEVIN. Do you know, Mr. Cerutti?

Mr. CERUTTI. I do not know of anyone who was fired specifically because of that.

Senator LEVIN. All right.

Mr. DOUGAN. But the issue, Mr. Chairman, if I could just add to that, the issue is, as you know, again, we began the exit of this business starting in 2008. And so we basically exited virtually 85 percent of the business over the course of the next 2 years. By the time we actually found this behavior—which we agree with you, we find it just as unacceptable as you do. By the time we found that behavior, most of those people were gone.

Senator LEVIN. Mr. Cerutti, were all of those people in SALN?

Mr. CERUTTI. I would say it was centered around——

Senator LEVIN. Not centered. Do you know whether all of the people who engaged in that egregious conduct were in SALN?

Mr. CERUTTI. I would not know, Mr. Chairman.

Senator LEVIN. I am over time. Senator Johnson.

Senator JOHNSON. Thank you again, Mr. Chairman.

Mr. Dougan, let us go back to my line of questioning because, again, I want to get the obvious on the table here.

Mr. DOUGAN. Sure.

Senator JOHNSON. Historically, let us go back. People around the world have deposited money into Swiss banks as a real safe haven. Correct?

Mr. DOUGAN. Yes.

Senator JOHNSON. Is there validity to that? Do you think globally people ought to have some place, whether they are in an incredibly oppressive regime somewhere around the world, it would be kind of nice to move some money out of that terrible country and put it in some safe haven?

Mr. DOUGAN. Well, I think what we see in terms of our customers around the world is that they do have interest in—even being completely tax compliant and no issues around that, they do have an interest in diversifying the jurisdictions where they hold their money. We do see that as an interest from those clients.

Senator JOHNSON. And there is a conundrum right now for the Swiss Government. Obviously the U.S. Government is highly concerned about not being able to collect taxes because people are committing tax fraud and sheltering income there. And now they are having to open up information which puts at risk the ability of the Swiss Government to attract those types of deposits. Correct?

Mr. DOUGAN. Well, I actually think, our view is actually that we as an institution and the country have to go to a compliant framework. There is no other choice. So there is no—there is not any other choice. And, frankly, I think that the Swiss financial system can be very competitive on that basis. So I do not think that it is necessary, as you say, to have the ability to not pay taxes on money in Swiss banks for the Swiss financial system to be successful. I actually think—I actually think we would be a lot better off as a financial system with a completely compliant and transparent framework, which is what we have been promoting, actually.

Senator JOHNSON. I agree, and that makes an awful lot of sense. It gets back to the question of whether Credit Suisse has tried to work with and encourage——

Mr. DOUGAN. Absolutely.

Senator JOHNSON [continuing]. The Swiss Government to open up and be transparent because it is in your best interest as a global banking company, because there is still going to be value to have Switzerland as a pretty stable neutral country, as a safe haven, as a diversification destination for global assets.

Mr. DOUGAN. We think that is exactly right. We think it is in the best interest of the Swiss financial system. We think it is in our best interest, and we have absolutely promoted that at every level, publicly, with the regulators, with the government as well, because we think that is the right direction for the business and the right direction for Switzerland.

Senator JOHNSON. OK. I may be going to the Foreign Relations hearing on treaties later on, so, Mr. Cerutti, how could we strengthen that treaty so we do not have the loopholes that Senator Levin is talking about? Again, in the interest of transparency the Swiss banking sector can still operate and provide that safe haven where it is required.

Mr. CERUTTI. Senator, thank you for your question. I think this is a pretty good treaty. It goes very far because it is going to be really based on the OECD standard of tax evasion. It allows for group requests. It is untested yet. I think what Chairman Levin is afraid of is that the IRS will have to prove the misbehavior of the bank, the participation of the bank. Given that the DOJ has issued that program, as you know, the program for the Swiss banks, and that over 100, I think 106 banks have now filed to be in Category 2, I would assume at this point that for all the Category 2 banks, that the misbehavior that is requested under the treaty would be established just by being a Category 2 bank.

So I would hope that this treaty would really generate thousands and thousands of account names. That is my hope.

Mr. DOUGAN. Yes, and, Senator, I guess what we would say is we understand the Chairman's concerns about it, and I am sure there would be ways to even make that treaty stronger and better. This has been signed 4 years ago, and our view is that a good first

step would be to simply get it approved in the Senate so that we could provide—in our view, we could provide the vast bulk of the information that has been requested, which we want to do. We want to provide that information.

Just with that treaty approval, we think that would allow us to satisfy the bulk of that request from the U.S. authorities.

So I am sure there are ways to improve it down the line. I mean, we have been working very hard just to get the treaty approved, which, in our view, would be the first step and would be a very important step in getting these issues to a great degree resolved and allowing us to provide the information that we would like to provide.

Senator JOHNSON. When I asked a question earlier about how were you able to determine compliance, you talked about clients were signing waivers, they were filling out W–9s. What prevents you from having every client sign those waivers?

Mr. CERUTTI. Today, Senator, every U.S. client has to sign these waivers. Everyone who wants to keep an account or open an account at Credit Suisse has to sign these waivers.

Mr. DOUGAN. And perhaps you could explain the concept of the waiver. Waiver as to?

Mr. CERUTTI. On the one hand, there is the W–9 that reports the dividend and interest on U.S. securities. On the other hand, there is the waiver so that we can file the information under the FATCA law starting as of July 1, 2014.

Senator JOHNSON. So then what complicates that? Now we start talking about shell corporations.

Mr. CERUTTI. FATCA, I think FATCA is a brand-new law that has been now implemented and will start taking effect. I was surprised when I read the report last night to see that the Subcommittee is afraid that FATCA contains loopholes. But I would say let us see how FATCA starts. It is a huge, huge, huge administrative project. We have already spent about $100 million to implement FATCA globally, because it is not just for Switzerland, it is not just for the private bank. We have to do it in the investment bank, asset management private banking globally, and we continue to spend quite an amount of money. I think this year's budget is another $40 to $45 million. So you see we are really trying to get this right.

Senator JOHNSON. OK.

Mr. DOUGAN. And I think one of the things, I mean, we feel the combination of the steps we have taken, with the waiver, with the full implementation of the projects that we have laid out, with FATCA, will allow us to be 100 percent compliant with those requirements around the U.S. taxpayer. So we feel very good about that. In fact, we also believe we see some progress in this, because as the exit project has gone on, we have not seen from any of our regulators or other investigative bodies any issues that have come up post 2009. So, actually, that exit project we think has actually worked pretty well, and we believe we are in a position now, which is where we wanted to be, which is so that we can be compliant going forward. And, as the Chairman said, to make sure that any business we do with any U.S. client is done on a completely compliant basis, that is our objective.

Senator JOHNSON. Now, again, you have reported—or certainly in our reports we see the size of U.S. banking assets in Credit Suisse. Do you have any estimate of U.S. assets in total housed in Switzerland?

Mr. DOUGAN. I do not know if we do.

I do not think we do have that estimate, no. You are saying U.S. citizen assets in Swiss banks.

Senator JOHNSON. Assets in Swiss banks.

Mr. DOUGAN. I do not have that in hand, no.

Senator JOHNSON. OK. Well, I have no further questions. Thank you, Mr. Chairman.

Senator LEVIN. Thank you very much, Senator Johnson.

Let us go to just a few facts to get down very firmly. Of the 22,000 customers that you had in 2006, after you required a showing of compliance with our U.S. tax laws—we are talking about U.S. customers—18,900 of those accounts were closed, and today there are about 3,500 that you then have determined are in compliance. Are those numbers correct?

Mr. CERUTTI. Those numbers are correct as of today, but I would like to add that in total we have reviewed and verified for tax compliance some 6,678, of which about half, like 3,000, have been closed, and 3,500, the number you have just mentioned, are still with us.

Senator LEVIN. So what is the total number of accounts that you no longer have of the 22,000?

Mr. CERUTTI. Well, the 18,000 number you mentioned.

Senator LEVIN. All right.

Mr. CERUTTI. And if I may add, Mr. Chairman?

Senator LEVIN. Sure.

Mr. CERUTTI. We had a large population of U.S. resident clients, I think some, I would say, 11,000, I believe. They had account balances below $1 million in assets under management, and they were not even given the option to stay because to move to one of our fully U.S.-licensed broker-dealers, you needed $1 million as a minimum balance. So 11,000 of these 19,000 or 18,000 did not have the opportunity to prove tax compliance.

Senator LEVIN. All right. Mr. Cerutti, your U.S. persons policy required that Swiss accounts opened for U.S. residents be concentrated in that single Swiss office we have talked about, the SALN. Is that correct?

Mr. CERUTTI. It required that they be concentrated I think in SALN and in the other office that was near the airport. Those were the two offices that were then later merged into SALN in 2009.

Senator LEVIN. All right. And the point was that that office was supposed to have relationship managers that got special training in U.S. regulatory and tax compliance?

Mr. CERUTTI. That is also correct, Mr. Chairman, although I would like to add that every single relationship manager with one or more U.S. resident client got the training.

Senator LEVIN. So how many relationship managers had one or more accounts?

Mr. CERUTTI. Well, I think you mentioned the 1,800 number at the beginning. I would deduct about a thousand of those because they were dealing with expats. They were in the retail bank most-

ly. And then I think there are some—whether it is 500, 600, to 800, I do not have the exact number, but they were then all trained.

Senator LEVIN. So you had about a thousand that you say were trained.

Mr. CERUTTI. I think the number is somewhat lower. We can provide you with the exact number. I think the staff should have it.

Senator LEVIN. Well, there were about 1,800 that had one or more client accounts. As a matter of fact, take a look, if you would, at Exhibit 16.[1]

Mr. CERUTTI. Which page, if I may ask?

Senator LEVIN. Well, it should be numbered, the exhibits there. Now, Exhibit 16 is a Credit Suisse presentation chart called "US Project—Steering Committee #1," dated August 19, 2008, and at the chart on page, the last three digits, 306, the title of the chart is, "U.S. international business activities spread out across whole organization." And it shows that, besides SALN, there were another half-dozen offices in Switzerland that served U.S. clients.

In 2008, there were over 1,800 different Swiss bankers that had one or more client accounts. You said you wanted to deduct 600 or 800 that were dealing with expats or other reasons, so that would leave about a thousand, would it not?

Mr. CERUTTI. Mr. Chairman, I would like to deduct the third line, PB CH, the 993, because that is our retail business in Switzerland. Those were taken—they were mostly dealing with the expats, and so that would leave around 800.

Senator LEVIN. A total of 800. All right. Now, you are saying that these were the people who had special training?

Mr. CERUTTI. Yes, if you take the 800, you deduct the 240 of Clariden Leu, you have some 560 at Credit Suisse. I need to check whether that is the right number, but most of them, if not all of them, have been trained, and Clariden Leu I understand also had trainings, but I do not have the details there. So I would suggest we provide the staff with the exact number.

Senator LEVIN. Well, assuming it is around 500 or 600.

Mr. CERUTTI. Yes.

Senator LEVIN. And was the training about the same whether or not they were in SALN or whether they were in one of the other offices?

Mr. CERUTTI. I think they used the same training materials. Whether they spend the same amount of time on it as with the SALN people, I could not answer that question.

Senator LEVIN. Now, there were 1,800 relationship managers, approximately. Is that correct?

Mr. CERUTTI. On this chart, yes.

Senator LEVIN. Well, is that an accurate chart?

Mr. CERUTTI. That was a chart that was provided for the first Steering Committee. You see that it was August 2008, a few weeks after your report on UBS had been published. We were really trying to look at it and do the right thing. I would assume that these numbers are correct, but these were early numbers.

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[1] See Exhibit No. 16, which appears in the Appendix on page 471.

Senator LEVIN. So SALN had about perhaps 10 percent of the Swiss accounts opened by U.S. customers, and about 90 percent were spread out across the rest of the bank. Is that about right?

Mr. CERUTTI. If you look at it from an account perspective, that is correct. If you look at it from an assets under management perspective, it is a little bit different.

Senator LEVIN. Right. But, still, only about 10 percent of the Swiss accounts opened by the U.S. customers were in SALN. This was supposed to be a place where they were going to be concentrated.

Mr. CERUTTI. Plus the ones that are listed under PB EMEA because that would encompass the airport desk that you have mentioned before. That is also an area of concentration.

Senator LEVIN. All right. So to all 60——

Mr. CERUTTI. That is then almost, what, 60, 70 percent, because I always——

Senator LEVIN [continuing]. Seventy percent were spread out across the Bank?

Mr. CERUTTI. No.

Mr. DOUGAN. Sorry, Mr. Chairman. About 70 percent were concentrated in those two groups, so the airport office and SALN, and obviously 30 percent, I mean, I think we—particularly in hindsight, we would rather have seen it more concentrated, so we would rather have seen the 30 percent smaller, but that is where we were at that point in time, 70 percent in those two areas and 30 percent in the rest of the Bank.

Mr. CERUTTI. And that is about——

Senator LEVIN. The purpose, though, of this chart was to show, according to its title, how spread out this was across the whole organization.

Mr. CERUTTI. I understand.

Senator LEVIN. That is the purpose, whether it was 30 percent outside of those two units or 70 percent, this was spread out across the whole organization. So you had 1,800 or so, according to this, relation managers that were in contact with U.S. persons. And what that means, of course, is that when you have all those customers, most of whom—I think it is pretty clear perhaps 80–90 percent of whom were not paying their U.S. taxes—that is a very major problem for us, and it cannot easily be answered by saying that the rogue bankers were all located in SALN and that is where the problem was. You had bankers that were doing things that you acknowledge were improper, in some cases egregious, from other areas than SALN.

Mr. DOUGAN. Well, I think it is important to point out that, as we mentioned, Mr. Chairman, we have done a very extensive investigation across the whole Bank, including all of those, as you mentioned, 1,800, all of these other RMs, and we did not find any of the misbehavior, again, which we agree with you is egregious and should not have happened, that we found in SALN. We did not find it there.

So as you say, I think certainly from a business point of view, we would have rather seen it more concentrated, and that would have been better from a compliance point of view as well. But we have not seen any of the abuses in that broad population.

Senator LEVIN. Well, are you saying that all of the abuses that we have identified and you have acknowledged were found in your investigation were concentrated in SALN? Is that what you are saying?

Mr. DOUGAN. Yes, I mean, virtually all——

Senator LEVIN. Mr. Cerutti says that he does not even known where what you call egregious conduct—and I would agree with you on that issue—was concentrated in SALN. He does not know that.

Mr. CERUTTI. It was—it was centered around SALN, but there was——

Senator LEVIN. Go on.

Mr. CERUTTI. Most probably also outside of SALN, there was also some——

Senator LEVIN. What you would call "rogue bankers"?

Mr. DOUGAN. It is hard to exclude that there were not issues outside of that, but, again, in the investigation, the vast bulk of that behavior was in that one area. So, there were smatterings of issues elsewhere, as you would expect, I think, and obviously we are disappointed with those as well. But the vast bulk of the behavior was in that area, and——

Senator LEVIN. The vast bulk. And were accounts outside of SALN undeclared?

Mr. DOUGAN. I think the answer to that is probably yes.

Senator LEVIN. That is the problem we are focusing on, of course.

Mr. DOUGAN. Yes.

Senator LEVIN. It is not the problem you are focusing on. It is what we are focusing on. The billions of dollars that are uncollected in taxes, and there are a lot of reasons for that, but you folks have to look in the mirror if you want to help us identify one reason and go after the folks who have evaded paying taxes.

I just want to be real clear that you have a law there on your books, and you cannot simply say that if we ratify a treaty that that is going to solve that problem. Does your law get repealed if the treaty gets ratified, the law saying it is illegal to identify the name of people on accounts? Does that law go away when the treaty is ratified?

Mr. CERUTTI. Mr. Chairman, the law is not going to be repealed, but the law will permit to give you all the names under the treaty process.

Senator LEVIN. It will give us the names which comply with the treaty process, right?

Mr. CERUTTI. That is correct.

Senator LEVIN. Which is a long way from all the names. If we ask you for the names, you say, "We will give you the names. Just ratify that treaty." That is a commitment which I hope you will keep, because, remember, under that treaty, whoever wants those names is going to have to prove that the bank contributed significantly to the aiding and abetting. And this is after 2008, because we are not going to get any names before 2009 under the treaty, right? So we lose all those names, which is most of your accounts, which were closed by then. And the accounts that you kept open are compliant, you say, because you have proof of tax compliance. So when we ask you for the names pre-2009, when the treaty goes

into effect, are you saying that under this new treaty you are going to give us those names? Is that what you are saying?

Mr. CERUTTI. Mr. Chairman, we can give you any names of the accounts that were still open on September 23, 2009——

Senator LEVIN. And most were closed.

Mr. CERUTTI. If you look at the account numbers, that is, I think, not correct. I think number-wise——

Senator LEVIN. 50/50, let us say.

Mr. CERUTTI. Probably that might be right.

Senator LEVIN. OK.

Mr. CERUTTI. But then let me maybe just state that 50 percent of these accounts remained in Switzerland. They went to other Swiss banks, approximately 50 percent, and so they would have been opened at another bank in Switzerland, and you would then get them through a treaty request from another bank.

Senator LEVIN. And with that treaty request, again, whoever is making the request, has to prove that the bank was involved significantly in the aiding and abetting.

Mr. CERUTTI. That is again correct, Mr. Chairman.

Senator LEVIN. Now, let us just focus on that.

Mr. CERUTTI. Yes.

Senator LEVIN. Now, we are going to ask you for these names, I hope. We should use our subpoena power to get the names so we can collect the taxes owed. But you can expect that when this treaty is ratified that you are going to get a request for all the names prior to the effective date of that treaty. Will we get those names from you?

Mr. CERUTTI. The treaty works the way that the IRS may——

Senator LEVIN. Will we get those names from you, those half of the 22,000 names, are we going to get them from you?

Mr. CERUTTI. The Swiss legal system will most likely not let us provide those names.

Senator LEVIN. So do not tell us the treaty is going to get us what we want. It will not. You have just acknowledged it will not. The treaty is going to do some good in the future—some good—if we can prove that the banks that have the accounts have contributed to aiding and abetting in tax evasion, which is not an easy proof, and it is left up to the Swiss courts, and we know what the Swiss courts have done. OK?

So, most of us, I hope, want this treaty ratified. It has a slightly better test. But do not, please, represent to this Subcommittee and to the public that when the treaty is ratified, we can then expect those names from you. We are not going to get any pre-2009 names because of Swiss law. And the additional names, there is a burden of proof on the applicant for the names. You have to show that the bank significantly contributed to the problem. If you do not have the names, how do you show that the bank contributed to aiding and abetting the tax evasion if you do not have the names of the people? It is a chicken-egg problem.

So you have been helpful in acknowledging that that treaty is not going to get us the names that we are after.

Mr. CERUTTI. One last comment.

Senator LEVIN. Sure.

Mr. CERUTTI. May I?

Senator LEVIN. Go ahead.

Mr. CERUTTI. I would say with the DOJ's program, with the 106 banks in Category 2, that should be a very good indication, very helpful to fulfill the standard that these 106 banks have aided and abetted. So I hope that you should get tons of accounts.

Senator LEVIN. You would hope it would, but in terms of your bank, you are not one of the 106, are you?

Mr. CERUTTI. We are one of the 14 in——

Senator LEVIN. You are one of the 14.

Mr. CERUTTI. Yes.

Senator LEVIN. Not covered by that——

Mr. CERUTTI. Not covered by that program.

Senator LEVIN [continuing]. Program. So you cite the program relative to 200 or 300 other banks.

Mr. CERUTTI. Yes.

Senator LEVIN. A hundred of which have signed up.

Mr. CERUTTI. Yes.

Senator LEVIN. And those banks do not have to provide any information either before——

Mr. CERUTTI. The 14 will, to the 14 it will apply, anyway. That was my assumption.

Senator LEVIN. Well, the——

Mr. CERUTTI. The 14 in Category 1 that they are in the DOJ process, I think they will fulfill the standard for the treaty, anyway.

Senator LEVIN. OK.

Mr. CERUTTI. So we should have the 14, we should have the 106. That is 120.

Senator LEVIN. But they are not covered. We do not know for sure, do we, that those 14——

Mr. CERUTTI. I am pretty convinced.

Senator LEVIN. You hope they are covered.

Mr. CERUTTI. Yes.

Senator LEVIN. OK. We do, too.

Let me keep going here. I think it is clear, but whether we are talking about the program, which does not apply to the 14 banks, or to the new treaty itself, they do not give us names of account holders prior to 2009. Is that correct?

Mr. CERUTTI. That is correct, Mr. Chairman.

Senator LEVIN. So we cannot collect taxes owed from those folks, which is the heart of the problem of this hearing. It is tax collection.

One of your bank's former clients who admitted to tax evasion told us about opening an account at Credit Suisse, and we refer to the account holder as "Client 1" in our report. And Client 1 is an American citizen who, when he opened an account at Credit Suisse's main office in Zurich, provided a U.S. passport and a driver's license as identification so that he made it obvious he was an American. He told the Subcommittee that the Swiss banker expressly told him that a W–9 form, which identifies U.S. accounts and leads most importantly to the account being reported to the IRS, that banker told Client 1 that this form was required by the United States, but not required by Credit Suisse to open an account.

So he opened an account without the W–9, used it for 5 years, so there was no disclosure to the IRS. Later on the client entered into a voluntary disclosure program.

Would you agree that this is a pretty stark example of what facilitating tax evasion is? Mr. Dougan.

Mr. DOUGAN. Yes, I believe that you are referring, I think, to Client 1, if it is consistent with the DOJ indictment document, which, as you say, that first opened the account in 1990. So obviously we would look at the timing on that. But basically, yes, I think we would view that as a process that we think is obviously not something we would undertake today and is not something that we in any way approve of.

Senator LEVIN. Now, the bank told—I am sorry?

Mr. CERUTTI. I would just add, I think under the Qualified Intermediary Agreement of 2001, the requirement I think in retrospect that was a mistake in this agreement. It only applied to U.S. persons who held U.S. securities, and we were very strict for any U.S. person, U.S. client with Credit Suisse who wanted to purchase U.S. securities, we requested and required the W–9.

But as you just explained, there were situations where clients did not buy U.S. securities, so they did not have to sign the W–9, and that led then to what you just described. But with FATCA, this has—I think this will be closed.

Senator LEVIN. Client 1 opened the account in 2005, not in 1990.

Mr. CERUTTI. In 2005, yes.

Senator LEVIN. Now, the bank told us about 150 trips by 10 Swiss bankers to the United States from 2002 to 2008, and the Subcommittee has documented another 22. Did the bank have training or standards when relationship managers traveled to the United States?

Mr. CERUTTI. I think our U.S. policy was very strict as to traveling to the United States. It was only permitted for social purposes. Unfortunately, as we got to learn during our internal investigation, people used social purposes to get the trip approved and then met other clients during the same trips.

Senator LEVIN. Now, did the bank allow visits to clients in the United States to help them set up Swiss accounts and to conduct banking business while on U.S. soil?

Mr. CERUTTI. That would have been a violation of our policy.

Senator LEVIN. And the bank, though, paid for bankers to travel to the United States, 24 trips in 2007 and 2008, and not just, by the way, by SALN office bankers alone.

Now, take a look at Exhibit 5g,[1] if you would, in your book, Exhibit 5g. Credit Suisse required its bankers to complete travel reports after a U.S. trip, and this is a travel report for 2008. It is dated March 18, 2008. And it was completed by R29, whom we have determined to be Markus Walder, the head of the SALN office, which is otherwise known as the North American offshore private banking operation.

On the form, the banker reported that during his U.S. trip, he visited 49 clients with assets totaling $230 million. Now, I think you would agree, would you not—and either one of you could an-

[1] See Exhibit No. 5g, which appears in the Appendix on page 352.

swer this—that it is obvious that this person was doing business in the United States, soliciting new clients and servicing existing clients? Would you agree it is obvious from the form?

Mr. DOUGAN. I would say it is, yes.

Senator LEVIN. OK. Now, why did Credit Suisse ignore its own policies and pay for Swiss bankers to do this, to transact business? Why did you approve that?

Mr. DOUGAN. I think it was a mistake. I mean, we should—this was not approved—this was not authorized travel. They should not have been traveling for those purposes. And as you say, we should not have allowed the travel, let alone pay for it. So it was obviously a mistake. I mean, the fact that this was overlooked and that we, A, allowed the travel and, B, paid for it is a historical mistake. I mean, I think there is no other explanation for it.

If we had understood this kind of activity was going on, it should have been stopped absolutely at the time. So as you say, it is——

Senator LEVIN. Now, see, you have tried to say this misconduct was mainly in one area of the bank. From our perspective, it is pretty obvious, it was all over the bank wherever aiding and abetting tax evasion was going on. But in any event, you acknowledge that misconduct was not all in this one area of the bank. But you said that some rogue bankers mainly located in this one area of the bank. But the bank approved this expenditure. In other words, the person's travel should not have been allowed. Does that make that person a rogue banker?

Mr. DOUGAN. Our policy was very clear.

Senator LEVIN. No, but in your testimony, you said that the wrongdoing was just a small group of rogue bankers. I am asking you, was that banker who did that travel—and I do not know how many of these cases we have—were all those bankers rogue bankers?

Mr. DOUGAN. Yes, I would argue they were violating our policies. Now, as you say, we should have caught it. We should have had managers, we should have had control people who caught the fact that this was happening. But, absolutely, they were wantonly violating our policies.

Senator LEVIN. And the people who approved their travel, were they wantonly violating your policies?

Mr. DOUGAN. I think in our investigation what we found is that they were not intentionally doing so, but they obviously made mistakes in allowing that.

Senator LEVIN. So the people who approved the travel were not rogue, but the people who did travel were rogue. Is that what you are telling this Subcommittee?

Mr. DOUGAN. Well, we did feel that this group of people were misleading—at a certain level of management, misleading them as to this activity. So, yes, these people were violating the policy intentionally and obviously hiding that from their management.

Senator LEVIN. Now, this is not hidden to me. It is pretty obvious. If you look at Exhibit 5g,[1] it is just over and over again: Hotel for dinner to prepare for an introduction to somebody, obviously a prospective customer; we went to this person, to their offices, fol-

[1] See Exhibit No. 5g, which appears in the Appendix on page 352.

lowed by lunch; we went to this person, followed by a dinner, followed by a meeting; we went to a certain restaurant to prepare for an introduction to somebody else, an introduction over the phone. This is not hidden. It is all hanging out here.

Mr. DOUGAN. I could not agree more.

Senator LEVIN. You say this was hidden from the managers. It was open to the managers. My question is about the managers who got these reports and to the auditors who approved the travel. Are they rogue bankers?

Mr. DOUGAN. Well, I am not sure the managers did get these reports, and we know that——

Senator LEVIN. We believe they did get these reports. At any rate, if they got these reports and the auditors who got them approved them, are they part of that group, that small group of rogue managers?

Mr. DOUGAN. I think if they were aware and intentionally involved in allowing this behavior, they would be. That is not what we found. We found that they either unintentionally or through errors, allowed this to happen, or perhaps they were not vigilant enough in terms of their responsibility. But we do not feel that they were aware of the conduct and allowing it to happen.

Senator LEVIN. Even though this document is on its face very clear, you say——

Mr. DOUGAN. It is very clear. You are right.

Senator LEVIN. Then they are not doing their job as auditors if they are not reading the document.

Mr. DOUGAN. That is a fair comment.

Senator LEVIN. OK. Take a look, if you would, at Exhibit 6.[1] It is page 2 on Exhibit 6.

Now, this is a list of "Important phone numbers"—that is the title—that was kept in Credit Suisse's New York representative office, and it includes this entry. You will find this entry on page 2, about the third one from the top. There are two entries I want to talk to you about, again, on this list of important phone numbers.

Entry 1 says Josef Doerig. He is with Doerig Partnership, and he is an external trust expert.

And then the second one is near the bottom of that first group, Beda Singenberger, who is with Sinco AG, and that person is also an external trust expert.

Now, both of those gentlemen have been indicted for aiding and abetting U.S. tax evasion.

Is it correct that your Swiss bankers worked with both of these outside intermediaries to help U.S. citizens set up offshore shell entities and to open accounts in your bank in Switzerland in the name of those entities instead of in their own names?

Mr. DOUGAN. Yes, in some instances they did.

Senator LEVIN. And they were called intermediaries, right? Is that one of the names they were called?

Mr. DOUGAN. I am not sure. Fiduciaries? I think maybe fiduciaries, Mr. Chairman.

Mr. CERUTTI. I think these——

[1] See Exhibit No. 6, which appears in the Appendix on page 357.

Senator LEVIN. Synonymous with intermediaries, would you agree?

Mr. DOUGAN. To me they sound very similar, yes.

Senator LEVIN. OK. Now, the bank has acknowledged that it has also worked with other intermediaries. Can you tell us who they were? Besides these two, who have been indicted, can you tell us what other intermediaries—or what was the name that you used?

Mr. DOUGAN. Fiduciaries.

Senator LEVIN. Fiduciaries—that the bank worked with to do what I just described, to help U.S. clients set up—this is the egregious conduct you were talking about, Mr. Dougan—to set up offshore shell entities and then open accounts in your bank in Switzerland in the name of those entities instead of in their own names? What other names do you know of your people worked with?

Mr. CERUTTI. Personally, right now I know of no other name.

Senator LEVIN. Were there others?

Mr. CERUTTI. I would have to ask and go back and check.

Senator LEVIN. Is there someone who is behind you who might be able to tell you whether there were others?

Mr. CERUTTI. I can ask, yes.

[Pause.]

Mr. Chairman, apparently there were others, but under the Swiss laws, we are unfortunately not permitted to give you these names.

Senator LEVIN. OK. Do you know how many others there were, approximately?

Mr. CERUTTI. May I ask?

Senator LEVIN. Sure.

[Pause.]

Mr. CERUTTI. They are telling me that including the two you have mentioned, a total of maybe five, so three more.

Senator LEVIN. So here, again, Swiss secrecy protections is preventing us from going after behavior which is criminal behavior, allegedly, and is this going to be cured by the treaty?

Mr. CERUTTI. I would expect that, to a large extent, you should already probably be in possession of these names given the 38,000 or 43,000 people in the VDP plus the names you should get through the treaty.

Senator LEVIN. Do you think the treaty will provide that to us?

Mr. CERUTTI. Well, if you get these client names, you get the documentation——

Senator LEVIN. Oh, if we get the client names.

Mr. CERUTTI. When you get the—when you get it.

Senator LEVIN. If and when.

Mr. CERUTTI. If and when.

Mr. DOUGAN. But also, to be clear, Mr. Chairman, in our case, obviously, there will be no issues around this because we are going to be completely compliant going forward, so there is no——

Senator LEVIN. To the extent that Swiss law allows you.

Mr. DOUGAN. We will be completely compliant going forward with FATCA, etc. We will be compliant with the law, so any of these structures or anything else would have to be completely compliant with all the U.S. tax laws and——

Senator LEVIN. Going forward.

Mr. DOUGAN. Going forward, certainly. Well, since——

Mr. CERUTTI. Mr. Chairman——

Senator LEVIN. We are asking you about names going backward.

Mr. CERUTTI [continuing]. I have just been informed that the DOJ has these three names.

Senator LEVIN. Good. Well, that helps. Thank you.

Now, the United States has indicted over two dozen Swiss bankers for aiding and abetting U.S. tax evasion, including seven from Credit Suisse back to 2011. I can ask either one of you: Do you know of any U.S. extradition requests to bring those to trial? I am talking about the two dozen Swiss bankers for aiding and abetting U.S. tax evasion, including seven from Credit Suisse? Do you know of any U.S. extradition requests?

Mr. CERUTTI. Mr. Chairman, I do not know of any such extradition requests, but typically they are not made public, so maybe there were some, but I would not know.

Senator LEVIN. All right. But you do not know of any.

Mr. CERUTTI. No.

Senator LEVIN. Now, under our treaty, at Swiss insistence, obviously, the existing treaty, there is an exception to extradition which allows the Swiss to deny an extradition request for a person who is involved in a tax offense. Is that correct? Do you know, either one of you?

Mr. CERUTTI. Yes, Mr. Chairman, that is typically in all the extradition treaties that continental European countries have. It might also be—I do not know if the United States might have similar provisions in their treaties.

Senator LEVIN. It might, but it does with Switzerland.

Mr. CERUTTI. Yes.

Senator LEVIN. OK. And the question is whether or not Switzerland would deny extradition if a request was made, and my question to you both is the following: If the United States were to make an extradition request—and, by the way, we believe there have not been any. That is what we believe is the case. If the United States were to make an extradition request, would your bank object? I better ask you, Mr. Dougan. Maybe on advice of Mr. Cerutti, but let me ask you.

Mr. DOUGAN. No, Mr. Chairman, we would not object.

Senator LEVIN. OK. The last area I want to talk to you about is an area of what is called "net new assets." Mr. Cerutti, one of the things that we have reviewed in this investigation is the bank's decisions regarding its net new asset figures in 2012. Net new assets is the measure of the amount of new assets obtained by the bank on which it provides investment advice or asset management services. It is, in my lingo, not the custodial service. It is the investment service. Is that a way to describe it which you can connect with?

Mr. DOUGAN. Yes, I think that is broadly a reasonable——

Senator LEVIN. OK. Net new assets also is a key performance measure of the growth of the private bank, and I think both the bank and investors view it that way.

Now, we are going to talk about a client of your bank. We are going to call him Client 5. And in 2012, he chose Credit Suisse over

other financial institutions, and Credit Suisse recognized billions of dollars of that client's assets as net new assets throughout the year. The bank also made decisions on where, in its books, to credit those net new assets in the various regional areas of the private bank, particularly between two regional areas: Switzerland and the Americas region.

Now, recently you have told the Subcommittee that Credit Suisse has initiated an internal investigation into its net new asset process, and this is a process which I hope you would agree should be objective, and should produce accurate financial figures to the public and to investors.

Is it correct, first of all, that the bank is looking into the possible influence of business people on the net new asset process?

Mr. CERUTTI. That is correct, Mr. Chairman. As we have informed your staff, we are looking into 2011 and 2012. It will probably take a few weeks or months, and we are going to report back to the staff.

Senator LEVIN. And is the investigation reviewing the net new assets—is that investigation something which stemmed from Client 5's assets, or is it broader than that?

Mr. CERUTTI. It will be broader. I think we want to look at the whole area for the 2 years I mentioned before.

Senator LEVIN. You told the Subcommittee staff that the investigation has identified indications from the private bank's chief operating office that may raise issues of influence being inappropriately placed on the net new asset process. Is that correct?

Mr. CERUTTI. That is also correct, Mr. Chairman. That is why we want to look into it. It is too early to draw any conclusions.

Senator LEVIN. OK. Were there emails that you have looked at?

Mr. CERUTTI. Yes, there are some emails we have looked at, the wording we did not like, and I think that is what we need to go into.

Senator LEVIN. Can you tell us who sent the emails?

Mr. CERUTTI. I think there are a number of emails, and we are going to report back to the staff.

Senator LEVIN. Do you know the names of any offhand?

Mr. CERUTTI. Oh, that is a little bit difficult. I think some are probably in this stack of materials in here.

Senator LEVIN. OK. But there is no problem with Swiss secrecy on that one? You can give us that information?

Mr. CERUTTI. We gave you all the information that is in the United States. We are now reviewing also the emails that are in Switzerland. We can give you a summary and the conclusions, but we can at this point, unfortunately, not give you the emails that are only in Switzerland.

Senator LEVIN. Because of the Swiss secrecy law?

Mr. CERUTTI. Because of Swiss data protection laws and the Swiss so-called blocking statutes. It is really unfortunate.

Senator LEVIN. OK. Now, the private bank chief operating officer was, I believe, Mr. Rolf Boegli. Am I pronouncing his name correctly?

Mr. DOUGAN. Yes, that is correct.

Senator LEVIN. Is he one of the people you are going to be speaking to as part of that investigation?

Mr. CERUTTI. The investigation is going to be handled by two outside law firms. They will most probably speak with everyone that is relevant.

Senator LEVIN. And are you going to be looking into whether or not the bank's net new asset numbers on the books were accurately stated to the public?

Mr. CERUTTI. Yes, that is definitely part of the investigation, but so far we have really no indication that they were not.

Senator LEVIN. All right. And are you going to look into whether the numbers on the books differed from the numbers that were shown to the public? Did they differ?

Mr. CERUTTI. I would not know. At this point I think I——

Senator LEVIN. How do you know that——

Mr. CERUTTI. I think at this point we have just——

Senator LEVIN. How do you know they are accurately stated?

Mr. CERUTTI. That is what I have been informed by the law firms who have looked into this already. At this point there is no reason to assume that the numbers are not accurately stated, but, please, give us the time to do the work and come back to your staff.

Senator LEVIN. Well, except you represented here that the numbers are accurately stated, and so now I am asking you whether you were told by your lawyers that the numbers that were on the books were different from the numbers that were shown to the public. Have you talked to your lawyers about that problem?

Mr. CERUTTI. No, I——

Senator LEVIN. Pardon?

Mr. CERUTTI. I am not—this is really——

Senator LEVIN. That is OK. If you have not talked to them about it, you just say so.

Mr. CERUTTI. Yes, OK.

Senator LEVIN. Is that true?

Mr. CERUTTI. Yes, I—really I do not have the information.

Senator LEVIN. That is not my question. But have you talked to the lawyers about whether or not the numbers on the books were different from the numbers stated——

Mr. CERUTTI. May I just——

Senator LEVIN. Yes, sure.

[Pause.]

Mr. CERUTTI. The lawyers inform me that you might be referring to internal scorecards versus externally published numbers.

Senator LEVIN. I.e., books versus public statements.

Mr. CERUTTI. I would not call it "books versus public statements."

Senator LEVIN. What is an internal scorecard?

Mr. DOUGAN. As you know, we obviously have a very robust and crisp process around all of our publicly stated numbers. This is another one of our publicly stated numbers. We are going to look into this. But we also have a set of what we call management information. You might think of it as the Management Information Systems (MIS). So there are MIS numbers which we use to judge individuals' performances, groups' performances, and those often have a number of different rules that might depart from the public numbers that are stated, and there is nothing unusual about that. In some cases you might double count revenues in order just to pro-

vide certain incentives to different groups and sort of those are the internal accounting methods of looking at numbers.

Senator LEVIN. Well, we call them "books." But we are going to get into this a little bit more.

Take a look at Exhibit 21,[1] if you would. Now, this is a Credit Suisse email dated February 2012, and the subject is "Important—NNA, PBMC." The beginning of the email is on the last page of this exhibit, so that is 84. And it says, ". . . we will again discuss our NNA results which have been very disappointing up until now. As our capability to attract clients and new assets is of utmost importance—also externally—we need to take all possible measures in order to change this into a positive story within the next weeks."

Now, this is a memo from Mr. Boegli. Is that correct?

Mr. DOUGAN. That is right.

Mr. CERUTTI. Correct, yes.

Senator LEVIN. All right. Now, did he work for you? I guess I will ask Mr. Meister this. Did Mr. Boegli work for you?

Mr. MEISTER. Yes, that is correct.

Senator LEVIN. He was the chief operating officer (COO)?

Mr. MEISTER. He was the chief operating officer, and this area was also the chief financial officer (CFO) part for the division.

Senator LEVIN. And he was then saying we have to "take all possible measures in order to change this into a positive story in the next weeks." And you were on the email, I gather.

Mr. MEISTER. Yes.

Senator LEVIN. So he was pushing toward a particular NNA result in part, because it was reported externally. Is that correct?

Mr. MEISTER. I think that that email was February 27, and generally because new net asset is one, as you said, of the key performance indicators. he makes everybody aware of all possible net new assets, positive or negative, that can be recognized within the FINMA rules.

Senator LEVIN. Well, he did not say that.

Mr. MEISTER. No, but it is a normal process——

Senator LEVIN. I am not saying it is normal. I am just saying what he said. "We need to take all possible measures to change this into a positive story." That is not positive or negative.

Mr. MEISTER. So perhaps——

Senator LEVIN. He did not say change this into a positive or negative accurate story. He said, "We have to take all possible measures to change this into a positive story." How do you say "positive or negative" when he says "positive"?

Mr. MEISTER. Perhaps the email, I am copied on the email, but perhaps the language is not the right one or the appropriate one. But generally it is that we go through all the possible bigger tickets within the Bank, in order to check if there is a change from custody to assets under management. This is a normal process. The BA heads all over the world are contacted to see that we have the accurate numbers in the system and for the end of the quarter.

Senator LEVIN. I am very glad to hear that you seek accuracy at the end of the quarter, but this is not what this email says. This does not say, "We have to be absolutely accurate because we are

[1] See Exhibit No. 21, which appears in the Appendix on page 606.

making external statements." It says, "We need to take all possible measures to change this into a positive story." That is a deviation from your policy, I take it.

Mr. DOUGAN. Mr. Chairman, we agree with that. We have a process to ensure that all of our NNA numbers are recognized properly. And you are right, this kind of language is not consistent with the way we would think about it.

Senator LEVIN. All right. Now, take a look, if you would, at Exhibit No. 26,[1] Mr. Meister.

Mr. MEISTER. Yes.

Senator LEVIN. This is another Credit Suisse email dated December 2012. This is about a fourth quarter forecast, also from Mr. Boegli. "Our ambition to deliver WMC NNA of around CHF 6-7bn [Swiss francs] in 4Q12 is at risk." It does not say, Our ambition to have an accurate statement is at risk. It says we have an ambition to deliver WMC [wealth management clients] NNA of around 6 to 7 billion, it is at risk. And I take that back. I misspoke, because this is a slightly different issue. What he is saying is we want to try to bring in 6 to 7 billion, and I think that is a more accurate reading than what I said a moment ago. And I do not see anything particularly wrong with saying we have an ambition to add NNA. Nothing wrong with that. I do not think.

Then it says, "With 3 weeks to go until the year comes to a close . . . we still need CHF 2.5bn [Swiss francs] to reach the lower end of this ambition. This requires continued efforts on all levels . . ." What does that mean, "efforts on all levels?" What is that?

Mr. MEISTER. To give you perhaps a little bit of perspective, you have normal in-and outflows of net new assets, but you have these so-called big custody clients like the client in scope you had where we are looking in every single quarter. This was his intention to see if there was a change in the intention of the client or in the amount of advice we could provide or generally a change. And for that, you have to go through the world to all the different regions to see if there was a change on these big tickets. And then, of course, they have to go back to the relationship manager to look, and he does that in advance that we are of the respective quarter. That is what really the intention was, even if perhaps the language is not exactly what we want to have.

Mr. SHAFIR. Mr. Chairman, may I interject?

Senator LEVIN. Sure.

Mr. SHAFIR. It is hard for me to say specifically what Mr. Boegli was intending here, but if you look at this email specifically, the people it is addressed to are the sales managers and a couple of the product managers, who actually are the people who are interfacing with the clients. So, I mean, to have an ambition, as you said earlier, to hit a target, this would be very similar to hitting a sales target in a quarter, and addressing that to the sales managers seems to be a normal course of business, just looking at it objectively.

Senator LEVIN. Did you discuss, either one of you, with Mr. Boegli pushing bank employees to meet external NNA targets?

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[1] See Exhibit No. 26, which appears in the Appendix on page 621.

Mr. MEISTER. What I wanted to explain before, as a normal process now—we are co-heads, of course, we always push in our function, that we have the right figures in the system. That means that all new intents of the clients or investment advice are correctly reflected in the system. Mr. Boegli, who at the time was in charge of this process, made it aware to all the different business heads around the world that they have to take responsibility and ownership to see that the right figures are in place.

Senator LEVIN. All right. Did you ever talk to him about the language of this email?

Mr. MEISTER. I cannot recall that.

Senator LEVIN. Did you ever talk to Mr. Boegli about the language in this email?

Mr. MEISTER. Not to my memory.

Senator LEVIN. OK. Now, Mr. Meister, during 2012 Client 5 was shifting assets, apparently to bring them under the investment management of Credit Suisse, and his assets were a boost, a big boost to the bank's net new asset total for 2012. And this is especially in a year when net new assets was under pressure because the bank did not have much new money coming in, particularly in Switzerland.

Now, that is one issue. It is not the issue I want to focus on today, because when the bank showed the NNA stemming from Client 5's assets, the bank had a decision to make about what region should receive the credit for those assets. So one issue, which I am not going to focus on, has to do with whether or not that was properly considered custodial or investment and whether he properly shifted it to investment in the absence of a signed agreement. But, again, I am not going to focus on that piece.

I am going to focus, however, on the decision as to what region would receive the credit for that asset. And you said it was your decision, I believe, Mr. Meister, and you decided to split that new net asset 50/50 between the two regions of the private bank, Americas and Switzerland. Is that right?

Mr. MEISTER. That is right.

Senator LEVIN. And you told us that you made that decision early in 2012. Is that correct?

Mr. MEISTER. That is correct, yes.

Senator LEVIN. So now I want to discuss what actually happened with the regional credit for that net new asset amount from Client 5 in 2012.

In the first quarter, the NNA, net new asset, for Client 5 was actually split 60/40 between Americas and Switzerland. Now, why wasn't it split 50/50 between the Americas and Switzerland, like you said?

Mr. MEISTER. I do not know.

Senator LEVIN. OK. And the second quarter, the NNA for Client 5 was not split at all. It was entirely credited to Americas. Why?

Mr. MEISTER. Also this I do not know.

Senator LEVIN. In the third quarter, the bank went back to the beginning of the year, retroactively, added up all the Client 5 assets, divided it in half, deducted 1.6 billion from the Americas, added it to Switzerland. Retroactively. Why did you do that?

Mr. MEISTER. Also I do not know why this was done in the third quarter, but it was in line with my original decision to apply a 50/50 split because of the story looking back the last 10 years, and especially 2 years before, before the client decided to sell his company.

Senator LEVIN. All right. It also had a major effect, did it not, on net new assets for Switzerland, made it look a lot better than it otherwise would, wouldn't it?

Mr. MEISTER. To split the 50/50 generally?

Senator LEVIN. No. The retroactive shifting around these numbers made Switzerland look a lot better than it otherwise would vis-a-vis the Americas section, right?

Mr. MEISTER. That is right, yes.

Mr. DOUGAN. Mr. Chairman, if I could add, I think that, as you say, that was certainly the impact of that. We also show even more transparent disclosure on those net new assets in Switzerland, and we have been showing it in a more granular form. It has been showing outflows in Switzerland, and so we are not trying to hide the fact that there might be outflows in Switzerland because of certain business trends.

So as you say, that was certainly the effect of that, but, again, I think our view is really we want to show the accurate numbers, which I think this 50/50 split was what we thought was the accurate way to do it.

Now, as you point out, why that was not accurately reflected in the first and second quarter is one of the things that we will be looking into.

Senator LEVIN. Now take a look——

Mr. SHAFIR. If I may?

Senator LEVIN. Sure.

Mr. SHAFIR. The only thing I would add is, through the first three quarters, I was in the regional role in the Americas, so my involvement would be somewhat more peripheral until the fourth quarter. But I do remember the specific instances, the issues around this client.

And there were multiple people involved with getting this business, from the investment banking people to the private banking people, both in Switzerland and the United States. And it is difficult to really determine whether it is a 60/40 or a 50/50 split or a 25/75.

I would say this. It was clear, certainly from my seat, that there were several people that were part of winning the mandate for this client, and as long as I have managed businesses that have involved people from different regions, there have often been arguments about, who gets credit for what. So when I heard about the logic of putting—of splitting this thing down the middle, that did not seem inconsistent with what I had observed as the fact pattern around winning this business.

Senator LEVIN. Well, that is not the question. The question is the shifting around, the percentage of shifts every quarter. That is the problem and it obviously has an impact, an impact very favorably to what a public perception is. Would you agree with that, Mr. Dougan?

Mr. DOUGAN. Yes, I agree it has an impact. Again, in terms of the overall financial results, though, this is one element which I would say in 7 years as the CEO, I have been asked maybe a couple handfuls of questions about the NNA numbers, particularly on a regional basis. So I am not sure it is that important an issue that investors focus on. But yes, you are absolutely right.

Senator LEVIN. Are you serious, that that is not a factor that investors focus on?

Mr. DOUGAN. It is a factor. It is not high on the list of importance, I think, with most investors. That is just my experience. That is my——

Senator LEVIN. But would you say it is a relevant factor for investors?

Mr. DOUGAN. It is a relevant factor. I mean, the numbers——

Senator LEVIN. Would you say it should be accurately in——

Mr. DOUGAN. Absolutely.

Senator LEVIN. Would you say it should not be manipulated during a year——

Mr. DOUGAN. Absolutely.

Senator LEVIN [continuing]. From quarter to quarter——

Mr. DOUGAN. Yes.

Senator LEVIN [continuing]. To give a particular impression——

Mr. DOUGAN. Of course.

Senator LEVIN [continuing]. Or to avoid a bad image?

Mr. DOUGAN. Of course.

Senator LEVIN. OK. Well, that is what happened here. It was shifted around from quarter to quarter and then retroactively, retroactively was shifted, which then helped Switzerland—the Swiss part of the operation—look like it got a little bit of net NNA.

Mr. MEISTER. Perhaps, Mr. Chairman, I understand, of course, when you looked at the——

Senator LEVIN. That is the chart we are all looking at now, by the way, which shows what the——

Mr. MEISTER. The only thing I wanted to add—and we had the discussion with the Subcommittee in my interviews—when you look back at the last quarter of 2013, we are not shy to show negative numbers in Switzerland. We had two quarters in 2011 and we also had the last quarter in 2013, where we published negative Swiss NNA numbers.

So what is in line, looking back, therefore, is the 50/50 split out of the original discussion and the reasons Mr. Shafir also explained before, but how it was implemented is a part of our investigation and hopefully we will find out what was the reason why it was done, not in the second quarter, but retroactively in the third.

Senator LEVIN. With the effect that it had, which was to make the Swiss operation look more positive than it otherwise would.

Mr. MEISTER. But as I said, we are not shy.

Senator LEVIN. You are not shy now, maybe because you do not have the opportunity to do this.

Mr. MEISTER. I do not say, sir——

Senator LEVIN. Maybe somebody who is making a decision as to whether to have an investment of this $5 billion or whether to put it in custody. You may not have $5 billion coming in every day. That $5 billion is a huge part of what happened in 2012, and the

retroactive shifting around of the division of that number between the regions does not happen every year. So you may not have an alternative. You say you are not shy. There is no way of knowing whether or not you had the same opportunity. My guess is you did not. But that is my guess.

Take a look at Exhibit 25.[1] This is a Credit Suisse email, dated October 25, 2012. This is about the third quarter NNA. The email shows the math for the retroactive split. It meant that the bank's internal books, whatever you want to call them, you have a different word for books, Mr. Dougan, the internal——

Mr. DOUGAN. We call them MIS, so that is to distinguish from the financials that are, as you say, public. So it is more what management uses to manage the business.

Senator LEVIN. OK. So your own internal management books had a different number from the external book, and here is what it says in this email. "As per your request, please find below the bridge—for the NNA for third quarter 2012 as reported internally for Private Bank Americas versus the externally released figure." There it is. I mean, you were very much aware of it, that there was an external released figure that is different from what you were showing internally. Why?

Mr. DOUGAN. Well, Mr. Chairman, that is actually—as I tried to explain before and probably did not do a very good job that is a very common occurrence within the Bank because we do——

Senator LEVIN. On this kind of an issue? On NNA?

Mr. DOUGAN. Sure, because we are trying to provide the right incentives around for our sales forces, and if you think of it as sort of MIS side of things, it is more like a sales credit issue, which is not as influenced by the financial statements. It happens in this kind of an issue; it happens on all sorts of issues. Revenue splits——

Senator LEVIN. I am only talking about something which is——

Mr. DOUGAN. OK.

Senator LEVIN [continuing]. Shown to the public.

Mr. DOUGAN. OK.

Senator LEVIN. And where it is different. It is different in a very critical way at a very critical time for your bank. And what the effect was, you are saying, was a coincidence. Is that what you are saying?

Mr. DOUGAN. No. What I am saying is that——

Senator LEVIN. Are you saying it was a coincidence?

Mr. DOUGAN. We have specific rules around how MIS internal numbers are calculated and, in fact, I think what this email is laying out is a reconciliation between what is reported from an MIS point of view, sort of a management perspective, versus the financials, and we would have this every quarter. Every quarter there would be a reconciliation between how we, the internal performance——

Senator LEVIN. OK. On NNA?

Mr. DOUGAN. On NNA, yes.

Senator LEVIN. You would show this big a gap between what the internals show?

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[1] See Exhibit No. 25, which appears in the Appendix on page 620.

Mr. DOUGAN. Well, the size of the gap may vary from quarter to quarter.

Senator LEVIN. Right.

Mr. DOUGAN. But there are a series of rules and the way we think about it internally versus the external numbers and we try to——

Senator LEVIN. Which was more accurate?

Mr. DOUGAN. I would not know how to answer that. We have, for externally reported numbers, we have the FINMA rules, which we follow, and I think as Mr. Cerutti said, we are clearly going to look into making sure that we are following those faithfully in terms of what we externally report, and then internally we have a different set of rules in terms of how we think about and show those numbers internally to manage and motivate our sales forces.

Senator LEVIN. Can we agree on one thing? If Switzerland had not received the re-allocation in that quarter, it would have shown a negative 1.5 billion in NNA. Would you agree with that?

Mr. DOUGAN. Well, that is correct, but also, I guess, I would point out that it was really—it should have been 50/50 all along, which means Switzerland would have benefited in the first and the second quarter. So, in fact, we penalize Switzerland in the first and the second quarter by not properly reflecting that 50/50.

You are right. In the third quarter, that came through and it benefited Switzerland, but effectively, it penalized Switzerland in the first and second quarter. So if someone was intentionally trying to benefit Switzerland, they did a poor job because the first two quarters it was the other way around.

Senator LEVIN. No, but the question is not benefiting Switzerland. The question is showing Switzerland in the positive or in the negative. That is the issue. And by shifting this money retroactively, you are able to show publicly, externally that Switzerland is slightly up instead of massively down. That chart up there shows massively down. That is what your internal books show. Publicly you showed slightly up. That is not casual. That is important. That is what people count on, one of the things they count on when they invest.

Now, take a look at Page 135 in the report. We are going to give you our report so that you can take a look at Page 135. This is a page from your third quarter earnings report and it is headed——

Mr. DOUGAN. Page 134.

Senator LEVIN. Sorry. Did I give you the wrong page?

Mr. DOUGAN. Page 134. I think we are there.

Senator LEVIN. Page 134. This is a page from your third quarter earnings report. It says, Swiss francs "5.2 billion net assets driven by inflows and international booking centers, predominantly from emerging markets." That is what you are showing the public, inflows.

And then you look at this on the right-hand side: "Strong inflows from Asia Pacific', EMEA with strong inflows from Eastern Europe." Then look at that third one: "Positive contribution from Americas and Switzerland albeit seasonal slow down."

Now, Mr. Dougan, I do not think you can fairly or honestly say that this is irrelevant, this representation to the public. Would you agree to that?

Mr. DOUGAN. Of course I would not say it is irrelevant.

Senator LEVIN. Putting aside the motive for a moment, it was the result of that retroactive shift. Is that correct?

Mr. DOUGAN. The regional allocation was, obviously, the overall number as you referenced, the 5.2 billion would not have been impacted.

Senator LEVIN. Of course.

Mr. DOUGAN. But regional allocation——

Senator LEVIN. Would have. OK. And how do you think this would have read if it said positive contribution from Americas and negative in Switzerland? Do you think that gives a different impression to the public if that is what this had said? It does not make any difference. The public does not read these things anyway. Is that what you are saying?

Mr. DOUGAN. No, I think they do read it and obviously it needs to be correct, so I do not disagree with that. I do not think it would have had a significant difference in terms of how the earnings result would have been perceived, because obviously it is a much broader, more detailed set of issues. This is one aspect, the regional allocation between two regions, I am not trying to minimize it and it is relevant, but it is relatively—it is a detail in the overall——

Senator LEVIN. It is not a detail when you say positive results, black and white, from Switzerland, albeit, seasonal slow-down. And look at your chart. This is your chart. You may call it a detail. I call it something that investors would presumably look at. I hope they care whether or not your bank is profitable in all the regions or which region it is or which it is not.

But look at the Private Bank third quarter chart. You show for the Americas .2-plus for Switzerland, .1-plus, so that it is all on the upswing for your entire bank. By the way, you say it is the entire bank which counts. That is the 5.2 billion net assets driven by inflows. You think that is the only thing that counts. There is something else that counts.

There is a visual that you created that shows NNA generally on the upswing, and if that visual had reflected what the division was before the retroactive activity, you would have had a big increase in the Americas and a big decrease in Switzerland, and that would be a hell of a lot different to the viewer than what your chart is. Would you agree with that? It would give a very different impression visually.

Mr. DOUGAN. I would agree it would be different and I also agree the numbers need to be accurate. The question of how important an issue that would be to our investor base is one where perhaps you and I disagree. But I agree with those comments, yes.

Senator LEVIN. OK. Now, is the bank going to look at this process to try to avoid this kind of a situation where your internal books, I will call them, is different from your external to this degree? Are you going to change any procedure at all?

Mr. DOUGAN. Well, we are going to look into this whole process and we will take whatever measures we need to take, and I think as Mr. Cerutti said, it is probably a little premature to talk much about that, Mr. Chairman. But certainly we want—we believe it has been a process that has had integrity, but we will look at it

and make sure that it does and we will certainly make whatever changes we need to make to it.

Senator LEVIN. Please take a look at Exhibit 28.[1] This is a Credit Suisse email dated January 2013 regarding "Americas." And this is what Mr. Boegli wrote: "Wealth management clients runs for NNA substantially below expectations. In order to support the Private Bank Division, a further"—now he refers to Client 5——

Mr. CERUTTI. Sorry, Mr. Chairman. We have a problem locating the document.

Senator LEVIN. I understand. Let me slow down.

Mr. CERUTTI. Which number?

Senator LEVIN. Exhibit 28.

Mr. CERUTTI. Exhibit 28? OK, we found it.

Senator LEVIN. OK.

Mr. CERUTTI. Thank you.

Senator LEVIN. And it is down on the bottom. This is from Mr. Boegli. And it is dated—you have the date?

Mr. DOUGAN. Yes, we found it.

Senator LEVIN. January, OK. "Dear Tony: Currently—for Q4 reporting—WMC runs for NNA substantially below expectations. In terms of your region, latest indication from your regionally BI&S team estimates approx. 2.8bn NNA compared to a predicted Forecast of 3.0bn which is an excellent result in stormy times. However"—this is the part I want you to focus on—"in order to support the PB division, a further [redacted] portion of the 0.9bn CHF [Swiss francs]—fully reported internally and externally in the Americas region—would be a great favor for our division."

Is this the way your bank should operate?

Mr. DOUGAN. No, it is not. That is not language that we would agree with. It is not consistent with the process, so no, we do not think it is.

Senator LEVIN. And, Mr. Meister, did you talk to Mr. Boegli about this before he asked his colleague for the favor?

Mr. MEISTER. I can only repeat what Mr. Dougan said, that the language is, of course, completely inappropriate, and that the word "favor" is completely wrong in this place, because when we speak about 900 million, that is a completely separate process which goes to the CFO area of the group so nobody can give a favor if there is not a clear case for that. So I can only say the words used here in the email are completely inappropriate language.

Senator LEVIN. But it also said that "Mr. Meister"—that is you—"would be extremely happy if you could support this."

Mr. MEISTER. Also, there are——

Senator LEVIN. Is that true?

Mr. MEISTER. What?

Senator LEVIN. Was that true?

Mr. MEISTER. I cannot remember what——

Senator LEVIN. But would you have been "extremely happy?"

Mr. MEISTER. I would never use such terms.

Senator LEVIN. Well, where did he get that impression from?

Mr. MEISTER. I am sorry?

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[1] See Exhibit No. 28, which appears in the Appendix on page 625.

Senator LEVIN. Where did he get the impression you would be very happy unless you talked to him?

Mr. MEISTER. No, I think generally, it is clear that we drive the organization, Robert Shafir and myself, that we have net new asset number and hopefully, positive regions, and we are more happy if there are bigger portions, but always in line with what the FINMA rules and what the process is allowing, even if——

Senator LEVIN. You can say always in line, but that is not what the emails say.

Mr. MEISTER. Yes, but I did not——

Senator LEVIN. So it is not always in line. And the question is, you were reported as being "extremely happy" if that favor were granted. And my question to you is whether or not you talked to Mr. Boegli about this before he asked his colleague for that favor. That is my question.

Mr. MEISTER. I cannot recall that.

Senator LEVIN. Now, Mr. Shafir, are you familiar with the bank's account for Client 5 and how the bank showed $8.5 billion in NNA for 2012 as a result of Client 5?

Mr. SHAFIR. Yes.

Senator LEVIN. Did you ask your deputy to take a careful look at the fourth quarter NNA recognition by Client 5?

Mr. SHAFIR. Yes.

Senator LEVIN. The next step was for him then to get the head of Finance, Carlos Onis, to review it; is that correct?

Mr. SHAFIR. Well, yes. As Mr. Meister said, we have a process specifically—there are two parts to the process, Senator Levin. The first part is that we have an independent committee that looks at classification of NNA as a whole. The second piece of the process for larger transactions, specifically $500 million or above, is that their findings have to be reviewed and signed off by the Finance organization. Carlos Onis is the CFO of the Americas for Credit Suisse.

Senator LEVIN. OK. Continuing now, if you take a look, Mr. Shafir and Mr. Meister, at Exhibit 29,[1] it is on the second page about halfway down, the email indicates that, "Carlos asks for further detail with regards to the revenues."

And then, on the first page Mr. Bluntschli responded: "Given the rather weak granularity, we need to create a more powerful story in the sense of making more around the existing weak figures in the sense of redacted consists of xx accounts, all held in the xx branch covered by two senior RMs, xx and yy, which do high interaction level, blabla. Might not be relevant, but sounds rather good."

And then at the top Mr. Bluntschli wrote: "I am convinced that with this enhanced story, we will get approval soon from Carlos." Enhanced story. Do you know what that is?

Mr. SHAFIR. I do not know specifically.

Senator LEVIN. What he means, is that not like a half-truth?

Mr. SHAFIR. I do not know.

Senator LEVIN. An enhanced story. Does that language trouble you?

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[1] See Exhibit No. 29, which appears in the Appendix on page 628.

Mr. SHAFIR. The language is troubling, but it is difficult to say really what he meant by that. I was not copied on this email. But as I said, this process did go through two different checks. It did go through the independent committee and it also went to the Finance organization as well.

Senator LEVIN. Then what does it say, though, when it says, "it may not be relevant, but sounds rather good?" Is that the way you folks operate? This sounds good, "not relevant", "blabla."

Mr. SHAFIR. Senator, I cannot respond to the——

Senator LEVIN. "Enhanced story."

Mr. SHAFIR [continuing]. Intent of the email.

Senator LEVIN. What do you think, Mr. Dougan?

Mr. DOUGAN. Certainly I do not think that is consistent with our process. I think as Mr. Shafir said, when I hear something like enhanced story, it could mean—as you say, that it is a story, that it is something that is made up. On the other hand, enhanced—the enhanced—if there are enhanced facts around it, that I would support it.

Senator LEVIN. No, no. It is not——

Mr. DOUGAN. Well, maybe——

Senator LEVIN. Let us try to get a better input. It is an enhanced story.

Mr. DOUGAN. I think it may be hard to determine that just from this language. As you know, I mean, it is hard to exactly determine that. I agree with you that we would have the same concern that you have voiced. We would have that same concern and that is part of what we are going to be looking into.

Senator LEVIN. Well, these are examples of your process at work and I think you have real problems with your process.

Mr. DOUGAN. Well, we are going to look into it and we are going to determine if we do have problems, we are going to address them and we are going to fix it.

Senator LEVIN. Will you get back with us as to what, if anything, you do about it?

Mr. DOUGAN. Sure.

Senator LEVIN. And by the way, you said, I think, Mr. Shafir, you did not see Mr. Bluntschli's email; is that correct?

Mr. SHAFIR. That is correct.

Senator LEVIN. How about you, Mr. Meister? Did you see that email before today?

Mr. MEISTER. No, not to my memory.

Senator LEVIN. OK. Is this an appropriate way to recognize NNA, to "make more around existing weak figures? Is that appropriate?

Mr. MEISTER. I am sorry. I think I am to repeat again. The language used here out of this context, it is definitely not what we want to see.

Senator LEVIN. I am giving you the context. You have the whole context. You have the whole email.

Mr. MEISTER. But what you do not know is Mr. Onis—is Mr. Onis really asking about more granularity about why he could really reclass this? I do not know what it really means, and this email, Mr. Bluntschli is a German-speaking guy, so this is also, perhaps taking into consideration about the language around this. There-

fore, it is difficult only based on this email to say what the intention was.

Senator LEVIN. Well, Mr. Dougan, I would hope in your investigation that you would take a look at the process for recognizing NNA. That is represented to the public. And it cannot be accurate and involve colleagues like Mr. Boegli did, to recognize NNA as a "favor." Would you agree?

Mr. DOUGAN. I would agree with that, yes, sir.

Senator LEVIN. And it cannot have enhanced stories. It has got to be accurate stories. Would you agree with that?

Mr. DOUGAN. I would agree. Again, I am not sure what his exact meaning was there, but I agree with you in the sense——

Senator LEVIN. The common understanding of enhanced story. Would you not agree?

Mr. DOUGAN. Well, again, he is not a native English speaker, so it is a little unclear. But in your—the way you have interpreted it, we agree, yes.

Senator LEVIN. The way I have interpreted it? This is an email, enhanced story. The way you interpret the words enhanced story, would you not agree you do not want enhanced stories? You want enhanced profits.

Mr. DOUGAN. Again, as native English speakers, I completely agree with you.

Senator LEVIN. All right. And you do not think, I hope, that we should "make more around the existing weak figures," but we ought——

Mr. DOUGAN. Not language that I think is appropriate.

Senator LEVIN. OK. And "blabla might be relevant, but sounds rather good?"

Mr. DOUGAN. Not language I think is appropriate.

Senator LEVIN. This process, the way you read it, is not a good process?

Mr. DOUGAN. Well, I actually do believe the process—we believe the process is actually a good process, but we are going to get to the bottom of it and we are going to figure it out.

Senator LEVIN. Was the process, as reflected in these emails, the kind of process that you want to defend?

Mr. DOUGAN. The language and the things that have happened here, no, absolutely not. Whether the ultimate decisions that were made and whether the actual determinations that were made were correct is a different issue. But absolutely, this kind of language, this kind of an approach to the process is not consistent, it is not acceptable.

Senator LEVIN. Thank you. Well, it has been a long hearing. We are very grateful that you appeared here today and for your cooperation with the Subcommittee. We will look forward to the reports that you have promised to give us.

The bottom line for me is that your bank is a bank that really wants to be seen as a reformed bank, and you, in your opening statement, laid out the reforms that you have made. So that is something which is important to you. You do not want to be in the dirty business any longer of helping U.S. clients cheat on their taxes. But it is important, if you are going to really be a reformed bank, that you have to acknowledge what is clear in our report,

that the wrongdoing went beyond a small group of rogue bankers; that there is 22,000 Swiss accounts that were hidden from our authorities and we need full cooperation if we are going to be able to collect the taxes owing from those accounts. We need your cooperation.

And the bank right now is hiding behind a shield that the Swiss law tries to provide it, which cannot be recognized in any other country because we have to apply our own laws, and if you do banking in this country, you have to abide by our own laws and you have to take on your own government. You have to explain to your own government that you are banking in these other countries. You cannot cite a Swiss law that says account names are going to be kept secret in defense of what I hope will be the enforcement of subpoenas or other appropriate actions in order to get those names.

And so, what we will now do is recess the hearing. We are going to resume at 3 o'clock in a different room. We are going to resume at 3 p.m. in 342 Dirksen, which is the full Committee's hearing room because the Department of Justice has informed us that Mr. Cole has to go to the White House. We have agreed to accommodate him. So that is the reason for the delay, is the reason for the change in the room. I do not have it in front of me so I do not know, but for those of you who are going to be here this afternoon, or want to be here, it will be a different location.

We thank you again, all of you, for your presence and you are excused.

Mr. DOUGAN. Mr. Chairman, thank you very much.

[Whereupon, at 12:58 p.m., the committee recessed, to reconvene at 3 p.m. this same day, in room 342, Dirksen Senate Office Building.]

Senator LEVIN. The Subcommittee will come back to order and we will now call our second and final panel of witnesses for today's hearing. James M. Cole, the Deputy Attorney General at the U.S. Department of Justice, and Kathryn Keneally, Assistant Attorney General of the Tax Division of the U.S. Department of Justice. We thank you both for being with us today. We look forward to your testimony.

As you know, pursuant to Rule 6, all witnesses who testify before this Subcommittee are required to be sworn, so at this time I would ask that you 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. COLE. I do.

Ms. KENEALLY. I do.

Senator LEVIN. Thank you very much and we will be using our timing system today. A minute before the red light comes on, you will see the lights change from green to yellow, which gives you an opportunity to conclude your remarks. Your written testimony will be printed in the record in its entirety. We would appreciate you limiting your oral testimony to no more than 15 minutes. And if you need more than that, we will try to arrange it. We will have you go first, Mr. Cole, followed by Ms. Keneally, and then after we have heard the testimony, we will turn to questions. Mr. Cole.

TESTIMONY OF HON. JAMES M. COLE,[1] DEPUTY ATTORNEY GENERAL, OFFICE OF THE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, AND HON. KATHRYN M. KENEALLY, ASSISTANT ATTORNEY GENERAL, TAX DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. COLE. Thank you, Chairman Levin, and Ranking Member McCain. And first of all, Mr. Chairman, I want to thank you for accommodating the scheduling that we had to do today. I very much appreciate it.

I want to thank you for inviting us here to testify in the Department of Justice's efforts to address Swiss bank facilitation of U.S. tax evasion. With me this morning, as you have noted, is Kathryn Keneally, who is the Assistant Attorney General for the Tax Division. She oversees the Department's tax enforcement program.

The Department of Justice is committed to global enforcement against financial institutions that facilitate cross-border tax evasion, as well as against the individuals who evade their tax and reporting obligations and the bankers, accountants, lawyers, and other professionals who help them do it.

And while the Department's initial efforts and this hearing have focused on Switzerland, we have expanded our investigations to go after tax cheats and the banks assisting them in India, Israel, Liechtenstein, Luxembourg, and several Caribbean countries.

Since 2009, the Department has publicly charged 73 account holders and 35 professionals with violations arising from their offshore banking activities, and 72 individuals have pled guilty or were convicted at trial. Just as importantly, our enforcement efforts have driven over 43,000 taxpayers with secret offshore accounts to identify themselves to the IRS, disclose their offshore accounts, and to pay a total of over $6 billion in back taxes, penalties, and interest, and that number is growing.

As this Subcommittee well knows, investigating offshore banks and U.S. taxpayers with secret foreign accounts is difficult and time-consuming. It requires us to use virtually all of the tools at our disposal and to be creative and innovative. We must pursue not just legal avenues such as grand jury subpoenas and John Doe summons, but also discussions with the Swiss Government to obtain information we need.

And we need to make full use of cooperators and whistleblowers, and I can tell you that we are receiving information from such individuals in the offshore cases we are working right now. In appropriate circumstances, the Department may seek the enforcement of a Bank of Nova Scotia grand jury subpoena or a John Doe summons for Swiss bank records, but those tools cannot always be effectively employed.

First, they can only be used against a foreign bank that has a U.S. presence, and the majority of the Swiss financial institutions that we are currently investigating do not. Second, the use of Bank of Nova Scotia grand jury subpoenas or John Doe summons for extraterritorial records may result in protracted litigation.

[1] The joint prepared statement of Mr. Cole and Mr. Keneally appears in the Appendix on page 107.

Absent acquiescence by the Swiss Government, a bank may be caught between facing contempt sanctions in the United States or violating Swiss law or a Swiss blocking order. Because we are involved in active ongoing criminal investigations we are quite limited in what we can disclose publicly. But just because we cannot disclose what we are doing does not mean we are not actively pursuing these cases.

I do, however, want to quickly discuss a number of public actions we have taken recently and we fully expect additional public developments over the course of the coming months. By way of example, in 2013, the Department obtained four separate orders authorizing the IRS to issue John Doe summons seeking records from banks in the United States for the U.S. Correspondent accounts of banks located in the Caribbean, Switzerland, and other European countries, and we have successfully compelled account holders to provide us with their personal records of their foreign banking activities.

Since the UBS Deferred Prosecution Agreement in February 2009, the Department has taken public action against two other banks. In January, 2013, Wegelin Bank, one of the oldest financial institutions in Switzerland, pled guilty to conspiracy to defraud the United States and was ordered to pay substantial fines and to forfeit funds. As a result of its criminal conviction, Wegelin was forced to close its doors, which sent a shockwave through the community of banks in Switzerland and bankers in Switzerland that had been engaging in facilitating U.S. tax evasion.

In July 2013, Liechtensteinische Landesbank AG entered into a non-prosecution agreement and paid substantial fines. What is particularly notable about this case is that we were able to take an innovative approach, and with the bank's cooperation have Liechtenstein actually change its bank secrecy laws retroactively. This enabled the Department to obtain files relating to non-compliant U.S. account holders.

In August 2013, the Department publicly stated that 14 banks have been authorized for investigation concerning the use of Swiss bank accounts. This is in addition to ongoing investigations concerning cross-border activities by banks in India, Israel, Liechtenstein, Luxembourg, and several Caribbean countries.

A fundamental issue with respect to obtaining cooperation from Swiss banks has been the degree to which Swiss law blocks disclosure of banking information, including the identity of account holders, and for this reason, the Department and the IRS engaged in a series of discussions with representatives of the Swiss Government.

On August 29, 2013, the Department announced the program for non-prosecution agreements or non-target letters for Swiss banks. This program is designed to encourage Swiss banks not currently under investigation to cooperate with our law enforcement efforts in return for the possibility of non-prosecution agreements or deferred prosecution agreements.

I want to emphasize that the program expressly does not include the 14 Swiss banks we have targeted and are actively investigating. Each of those banks will need to negotiate a separate resolution with the Department that reflects the severity and the magnitude of its conduct, nor does the program offer or provide

protection or immunity to any U.S. account holders or foreign bankers or other advisors.

What the program does do is provide an opportunity to banks that we currently have little or no information about to self-report to the Department that they have committed or facilitated U.S. tax evasion. By the program's December 31, 2013 deadline, the Department received letters from 106 Swiss financial institutions concerning their intent to participate in the program.

The program requires extensive cooperation by each participating bank, including full disclosure of its illegal activities, the names of each of its culpable employees and third-party advisors, and the number and value of each of its U.S. accounts. For the accounts that closed after the Department's investigations became public, the banks are required to provide information that will allow the Department to follow the money. That is, we will be given detailed information to enable us to go after Swiss banks and banks around the globe to which those secret accounts were transferred.

In addition to this, the terms of the program require cooperation. Each of the banks must also pay steep penalties calibrated to reflect both the magnitude and the severity of the bank's conduct and agree to get out of the business of facilitating U.S. tax evasion.

Every Swiss bank that comes forward to cooperate under the program represents an opportunity to obtain valuable law enforcement information that is new to the Department and from a source which the Department did not previously have. While the program does not expressly require the banks to provide the identities of account holders, which is barred under Swiss law, we will be able to use the information the banks are obligated to provide under the program to formulate more effective treaty requests to obtain that very information.

And as one of the requirements for obtaining an NPA or a DPA, the banks are obligated to assist the Department in preparing such treaty requests, requests that the Swiss Government have committed to process on an expedited basis.

The treaty process is working, to some extent, and we are receiving some information. We cannot disclose the details publicly, but our success has not escaped notice. Since the announcement of the program, the IRS has advised us that they have seen an increase in the number of U.S. taxpayers participating in their offshore voluntary disclosure program.

But we believe we could obtain substantially more account information if the Senate were to ratify the new treaty known as the Protocol Amending the Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, which was ratified by Switzerland in September 2009. And as you yourself have mentioned, Mr. Chairman, I understand that there is a hearing on this treaty this morning before the Senate Foreign Relations Committee.

As I noted earlier, as a result of our enforcement efforts, over 43,000 individuals have self-reported that they have held secret Swiss bank accounts and paid over $6 billion in back taxes, interest, and penalties. In contrast, before 2009 and our law enforcement efforts in this area, the average number of voluntary disclo-

sures submitted to the IRS ranged from approximately 50 to slightly over 100 per year.

Because the Swiss banks that cooperate under the program will provide information about bank accounts globally, anyone who has not yet come forward to disclose a secret bank account anywhere in the world is on notice that their time is running out. The Department is engaged in and committed to robust enforcement globally using all available tools to enforce the law that we have at our disposal.

I want to thank you again, Mr. Chairman, for the opportunity to appear this morning to discuss our law enforcement efforts, and I want to thank you for your strong support of this vital law enforcement matter. We are happy to answer any questions that you or the other Members of the Subcommittee may have. I have given this opening statement on behalf of both myself and Ms. Keneally.

Senator LEVIN. Thank you so much, Mr. Cole. We will have 10 minutes for our first round and the subsequent rounds for each of us.

On Page 4 of your statement, your written statement, you say the following: A fundamental issue with respect to obtaining information about accounts located in Switzerland has been the degree to which Swiss law permits disclosure under the Convention Between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income signed in 1996. And then you say, Swiss banks have often contended, in response to our investigations, that Swiss law prohibits meaningful cooperation.

As part of our efforts to obtain information, you say, from these banks, the Department and the IRS engaged in a series of discussions with representatives of the Swiss Government. Now, the bottom line here, and I think the real problem that we have is this endless negotiation with the Swiss about their laws instead of implementing our laws, year after year after year instead of using the tools at our command.

We had a deal. In 2011, we issued subpoenas to Credit Suisse; they have not been enforced. And so, we have tens of thousands of names of people who have evaded taxes which Credit Suisse has, but what they do is say, Well, we have to go through a treaty request because there is a Swiss law that we are worried about.

Well, I am worried about implementing our laws and the failure to aggressively use the tools at our command to implement our laws. So why is it that you focus, right in your testimony, about a series of discussions with the representatives of the Swiss Government? Why is that such at the heart of what you are doing here, instead of doing what we know succeeds?

And that is what we did with UBS when we blew the whistle on them here in this Subcommittee. And then as a result of the exposure and as a result of the embarrassment and as a result of our investigation with UBS, what they did was basically confess error and turn over names, and those names led then to a fear of God in the hearts of a whole lot of tax evaders, and that is what led to people paying their taxes. It was the fear that accompanied UBS' release of names. This is the heart of the matter—names, names,

names. It is like location, location, location for the value of real estate. You have to get names.

You are going to get—and you talk a lot about this—this new program that you have, you are going to get bits and pieces. You are going to get leads and those leads will go to other banks, and then you are going to have to make treaty requests with those banks. Those are goose chases. And what we need is to see aggressive implementation by the Department of Justice.

In 2011, Credit Suisse received subpoenas. We do not see any enforcement. Now, you have issued a subpoena. You have issued a subpoena and you have not enforced it. And I want to just say one other thing about these treaty requests. We always have not been so willing to rely on treaty process. Now, there is value to the treaty process. I hope we ratify the treaty. OK? Let me get that clear. It was slightly better criteria. Not much, by the way, but slightly better criteria than the old treaty does and I hope we ratify it.

It has also got some holes in it. It does not get us to the names before 2009. The major number of names that Credit Suisse has, or at least half of the names, are the pre-2009 names. They are not covered by this new protocol.

And then there is something else which has happened. The Swiss unilaterally announced in their Parliament that the Protocol is not going to apply unless the person who makes the treaty request can show that the bank that it seeks the names and information from, significantly contributed to a pattern of conduct by the very unnamed people. You do not have the names. It is a chicken-egg kind of a deal.

It gives you just the hints and then you have to make a treaty request, and then it is against the bank, under a unilateral law passed by the Swiss, you have to make a showing. And where is the showing made? In a Swiss court. And what have the Swiss courts done? They have weakened every effort that we have made to pierce their secrecy because bank secrecy is the law of Switzerland.

Now, we have not always been willing to rely on the treaty process. Barry Schott, who was a senior IRS official, Deputy Commissioner, told a U.S. court the following about these so-called treaty requests. He said he spoke with the officials of the Swiss Government about the treaty requests on January 21, 2009.

During that conversation, I learned that the Swiss Government had made final determinations to provide the requested records for only 12 accounts. They will not provide records to the IRS about those 12 accounts until after the account holders had been given an opportunity to litigate in a Swiss court the Swiss Government's decision to turn those 12 records over to the IRS.

In sum, he said to the court, the American court, the Swiss Government has not provided any records sought under the treaty requests and it is not clear when, if ever, it will.

Now, it is very clear that the Department has the authority right here at home to require the banks to hand over client names and account information. It has been established law for 30 years that a foreign bank operating here in the United States served with a grand jury subpoena to provide records in its offshore offices—in

other words, in its offices back home—must obey and abide by that subpoena.

And the court here, the 11th Circuit Court of Appeals, upheld the subpoena and it said in the Bank of Nova Scotia cases, this Court simply cannot acquiesce in the proposition the U.S. criminal investigations must be thwarted whenever there is a conflict with the interest of other States.

The foreign origin of the subpoenaed documents should not be a decisive factor. The nationality of the bank was Canadian in that case, but its presence was pervasive in the United States. That is true with Credit Suisse. It cannot expect to avail itself, the Court said, of the benefits of doing business here without accepting the concomitant obligations.

Now, that is a good law today. It is established that the Department has the ability to control our own destiny on these matters and we do not always have to play ball with the other country and to play on their play field. It has the authority and the power to create for itself a direct line of evidence that it needs and it wants in order to identify tax cheats and the entities that abet them and collect what is owed to the U.S. Government.

That is a much more productive way, it seems to me, and a preferable way to move forward than using this frustrating, unproductive treaty process, and it has been a proven way to get names as seen in the UBS case. So I am going to ask you whether or not you accept the decision of the Swiss Parliament to unilaterally place limitations on this 2009 protocol.

Mr. COLE. Mr. Chairman, I want to start out by telling you how much I share your frustration in trying to get the names of account holders, U.S. taxpayers, who use Swiss banks to try and hide their money from lawful U.S. taxes. This has been a source of frustration from the day I got into office here as the Deputy Attorney General.

This is why we are using all our tools, because it is tough to get through the Swiss secrecy laws. We have gone through the analysis of the Bank of Nova Scotia subpoena and what we have determined it would give us to enforce it. We have never seen one, a Bank of Nova Scotia subpoena, that has actually produced an account record from Switzerland.

What you get, if you try and enforce it, is a contempt citation for failure to actually produce from the court with fines that will go each day. Many of these financial institutions are very wealthy and can afford those fines and do not want to run afoul of Swiss law where they are.

Second, you can only bring one against a company or a financial institution that is in the United States.

Senator LEVIN. Is Credit Suisse in the United States?

Mr. COLE. It is.

Senator LEVIN. Thank you.

Mr. COLE. It is. But we raise the UBS example, which I think is a good one, because it really informs how we go about trying to get through this very frustrating brick wall that the Swiss put up.

In that case, they built a case against UBS, and at the end of the day, as I understand how the names came through, it was through the resolution of that case, and then ultimately, actually, a treaty request that produced the 4,700 account names. Many,

many more were sought from UBS at that time, but only 4,700 were produced, and it was as part of a treaty request process in relation to their deferred prosecution agreement.

So what does that tell me about the best way for us to go about this? What it tells me is the best way to go about it is to build a strong criminal case against the banks in Switzerland who are fostering the tax evasion by U.S. citizens.

And what I have been focusing on is ways that I can go about getting information that I can use to build a solid criminal case against those 14 banks, and that involves maybe not the account records because that seems to be the real brick wall, but a lot of the discussions we had with the Swiss were about getting the internal bank records, non-account records, about how those banks conducted their business, about who the employees were in those banks who were fostering and facilitating this tax evasion, about who the managers were who were operating it and running it and condoning it so that we can bring criminal charges here in the United States against the financial institutions and against their officers and their employees who are doing it, because when you do that, that, the lesson from UBS taught us, is how you get account records out of the Swiss. Otherwise, they put up their wall.

Senator LEVIN. Thank you. My time is up. I want to come back to the UBS case when it comes back to me. I guess Dr. Coburn was next.

Senator COBURN. Mr. Chairman, I am going to defer at this time. I have another meeting I have to go to.

Senator LEVIN. Senator Johnson.

Senator JOHNSON. Thank you, Mr. Chairman. I am no lawyer, so can you talk to me a little bit about what types of criminal charges would you try to bring, and what are the impediments? What are the challenges doing that here in the United States against a Swiss entity?

Mr. COLE. Well, there is a whole host of criminal charges that you could bring depending on what kind of evidence you have from aiding and abetting tax evasion to conspiracy to fraud. I mean, there is a whole host. You would have to just sit and try to go through what your best alternatives would be. But there are a number of provisions in both the Tax Code and the Criminal Code that could be used.

Senator JOHNSON. And what were the charges, specifically criminal charges, brought against UBS? I am pretty new to this issue.

Mr. COLE. I was not here during that time. It ended up being a deferred prosecution agreement. I defer to Ms. Keneally as to the details of what were the topic of that deferred prosecution agreement.

Ms. KENEALLY. I also was not here at the time, but I understand it was conspiracy to evade taxes in the United States.

Senator JOHNSON. OK. In the morning hearing, what I was trying to establish was kind of the obvious in terms of, why does Switzerland have this very huge banking sector and is there value there? Is it nice to have some place where people can diversify where they hold their money? I am not necessarily opposed to that, but obviously totally opposed, as we all are, to tax evasion.

My guess is the reason the Swiss Government is so utterly opposed to any kind of transparency is they do not want to destroy that safe haven for other countries. So is there some way of preserving that safe haven in Switzerland for other countries and still allow the United States to get the type of information we want so there is no tax fraud?

Mr. COLE. This is what we are trying to discuss with the Swiss. Chairman Levin mentioned the 2009 treaty, which is very different in many respects. It is not perfect. It is not going to be a panacea that is going to solve every problem. It will be another tool.

Senator JOHNSON. Let me stop you right there. Talk to me about the holes in it, because Senator Levin has certainly been talking about that. I mean, what is the primary problem with that treaty?

Mr. COLE. Senator Levin has described what he views as a number of the holes. I think there is no treaty that is perfect and we just look for as many tools as we can find in order to use them all, because we need to come at this problem from a number of different angles. There is no one strategy that is going to solve this problem. You have to do a number of different strategies to try and break through it.

Senator JOHNSON. But again, do you have a comment? It looked like you wanted to say something, Ms. Keneally.

Ms. KENEALLY. Well, I would comment on the treaty process. Under the current treaty, we are required to establish fraud or the like, which is a Swiss standard that would be higher than tax evasion. Under the protocol, it is a relevance standard, and under the protocol it is a relevance standard to any tax enforcement. So it would give us information both on the civil and criminal side. The protocol would enhance our ability to get information in those ways.

To answer your question, Senator, on why—on how to allow Switzerland to maintain its banking system for other reasons and eliminate this, I think the protocol goes a long way toward addressing that issue, as do other steps that Switzerland and its banks have taken.

Senator JOHNSON. Can you describe how?

Ms. KENEALLY. Well, Switzerland ratified the protocol which will enable us to get information from its banks in—when we need it for tax enforcement reasons in a far simpler approach than not. Separately——

Senator JOHNSON. But that is going to require us to actually have knowledge that there may be some fraudulent activity occurring, correct or not?

Ms. KENEALLY. Senator, we need to be able to say that the information that we are looking for is relevant to our tax enforcement efforts. Senator Levin is correct that the Swiss did enact this legislation saying that there would need to be involvement shown by the banks. We need to ratify the protocol and test that.

But the way we have designed our law enforcement efforts under this program that we have for the Swiss banks, those banks that we did not already have under investigation and were not on our radar screen who have come forward will need to tell us what they did and what their wrongdoing was and cooperate with us in formulating treaty requests. And we believe that will get us the ac-

count information, we believe, under the current treaty, but certainly more effectively and probably more completely under the protocol.

Senator JOHNSON. That would not be blanket information. That would be, specific taxpayers at a time? Or is that a broader requirement?

Ms. KENEALLY. Under either the 1996 treaty in effect today or the protocol, we can make a request that are known as pattern requests. We can describe a kind of conduct or a kind of category of accounts and then get the account information which would give us the individual account holders.

Senator JOHNSON. What percent of the U.S.-based accounts or U.S.-owned accounts do you think that would reveal? A high percentage? Or would we still be scratching the surface? Would we be talking about 238 names out of a list of 22,000?

Ms. KENEALLY. I think if you take the standards under the protocol and combine it with the information that we expect to receive from the banks through the bank program that we have set up, it would be a very high percentage of the accounts that are currently in Switzerland, and we would also be getting information about accounts that closed and were transferred. I think we would get a very high percentage through these two mechanisms and the interaction between the two of them.

Senator JOHNSON. Now, earlier, obviously, we had a hearing with Credit Suisse and they have actually reduced the number of U.S.-held or U.S.-owned accounts pretty dramatically. What are the facts on the ground with the other banks? Have other banks taken similar action that you are aware of?

Mr. COLE. We are a little limited on what we can talk about that we have learned in the course of our investigation because these are banks that are currently under investigation, and we, in a long rule, both from statutory secrecy rules, grand jury secrecy rules, and long-standing Department of Justice rules, do not talk about all the things we are finding in a lot of these investigations.

Senator JOHNSON. Have you developed an estimate of how many dollars or how many Americans, how many dollars have Swiss bank accounts and how much is invested there? Do you have any estimate at all?

Mr. COLE. There have been a lot of numbers thrown out, Senator, and I think——

Senator JOHNSON. A range?

Mr. COLE. I am not sure exactly what the range would be and how valuable it would be. I think we would want to measure it more by how many dollars we bring in. From the voluntary disclosure program so far, we have gotten $6 billion and that number is growing every day. Since we established this latest program, the numbers in the voluntary disclosure are going up significantly. So we are looking forward to that number going up. It will be a postview that will tell us how much.

Senator JOHNSON. I understand that, but again, I would think you would be making some kind of estimate. Have you been 50 percent effective in terms of that voluntary program? Do you think maybe the outstanding liability would be $12 billion? Is it 1 percent and is it going to be even higher?

Mr. COLE. I will let Ms. Keneally talk about it but some of it is you do not know what you do not know.

Senator JOHNSON. I understand.

Mr. COLE. We do not know how many people really put that in there. If we knew, we would be a lot better off because we would have more information about what is there. We know it is a sizable number.

Senator JOHNSON. Ms. Keneally.

Ms. KENEALLY. Senator, all I can say on that is we set this program in place in late August and 106 Swiss financial institutions came forward. If you had asked me in August or September, I would not have anticipated 106 to come forward. So I have to agree with the Deputy Attorney General, I do not know what I do not know.

Senator JOHNSON. One hundred six out of how many? What is the total universe there?

Ms. KENEALLY. Somewhat over 300 is the total universe.

Senator JOHNSON. OK, so about a third.

Ms. KENEALLY. About a third. I would hope that it is true that not every Swiss bank engaged in this kind of conduct. So I think about a third was a remarkable response to the program.

Senator JOHNSON. But again, you are saying that the Department of Justice has made no estimate whatsoever in terms of the dollar amount of assets held in Swiss bank accounts? We really do not—not even give a guesstimate?

Mr. COLE. We really do not. It would be pure speculation.

Senator JOHNSON. Are you aware of any other agency that has done so?

Mr. COLE. Not offhand.

Senator JOHNSON. OK, I have no further questions.

Senator LEVIN. Thank you, Senator Johnson. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. I thank the witnesses for being here.

In the previous panel, Credit Suisse took great pains to assert the narrative that after UBS they fully cleaned up their act. They would have done even more if the 2009 protocol had been ratified or FATCA had been finalized. I believe that narrative glosses over the years of widespread misconduct across the Bank.

They asserted that they would have turned over the names of the tax-evading account holders but they were prevented from doing so by Swiss bank secrecy laws.

However, it appears that FATCA loopholes in the 2009 protocol will not permit U.S. authorities to get names for accounts closed before 2009. This means it is highly unlikely the United States will be able to collect much of the lost tax revenues from the billions hidden overseas. I do not buy their narrative. The American people should not, nor should the Department of Justice, Mr. Cole.

I ask that you keep in mind and use all already available legal tools at your disposal rather than relying on the treaty process.

So I guess my first question, Mr. Cole, is it not true that, even if the Senate ratifies the 2009 protocol to amend the Convention between our two countries for the avoidance of double taxation, the Justice Department will be no closer to obtaining information for non-compliant bank accounts closed prior to 2009?

Mr. COLE. Senator, that is true. The 2009 treaty only applies to matters and situations after the September 2009 time that it was put into place.

Senator MCCAIN. So basically, we will never—certainly in the way we are approaching it now, have information about non-compliant bank accounts prior—that were closed prior to 2009?

Mr. COLE. I do not think that is necessarily the case, Senator, because I——

Senator MCCAIN. How do you do that, then?

Mr. COLE. Because the program that we have is going to require that banks, even prior to 2009, going back into 2008, provide us with the information about accounts that will enable us to make much more effective treaty requests——

Senator MCCAIN. Going back to 2008.

Mr. COLE. That is right.

Senator MCCAIN. One year.

Mr. COLE. It is an additional year, that is correct.

Senator MCCAIN. That is good.

Mr. COLE. And many of those accounts were there in 2008 and had been there for quite a bit of time. It was not until, frankly, later in 2008 that the accounts really started to move.

Senator MCCAIN. So you are saying you will be able to obtain information for non-compliant bank accounts closed prior to 2009?

Mr. COLE. That is our hope. That is the goal we have with this program, yes.

Senator LEVIN. For the one year?

Mr. COLE. Well, we think that many of those accounts will have been in place for longer than just 2008. They will have been——

Senator MCCAIN. You think that——

Mr. COLE. We think that.

Senator MCCAIN. But the fact is, you will not be able to go back before that.

Let us move on here a second. The Justice Department's voluntary disclosure program allows banks to enter into non-prosecution agreements, avoiding a conviction or going to trial. Doesn't this change the risk/reward equation for complying with U.S. tax laws?

Mr. COLE. I do not think it does, Senator. A couple of things that need to be kept in mind about this program. One, it is only applying to banks that we really did not have any information about. These banks were not on our radar screen. The vast, vast majority of them have no presence here in the United States at all, so there is not any tools that we would have that we could really use.

The 14 banks are not covered. Individuals are not covered. We are going to get, first, a lot of information from these banks that will help us prosecute their employees and their officers. Second, we are going to get a lot of penalties from them, a lot of money, which is what this is all about. Third, we are going to get information that will help us do treaty requests in a better way because there is the proverbial wall that the Swiss keep putting up.

And all of this is, in fact, going to lead us to a lot of different beneficial avenues.

And the final one is they are contacting their bank account holders, who are U.S. citizens, and telling them that they are going to be providing this information and it is causing increases in the vol-

untary disclosure to the IRS and the U.S. people coming in, paying their taxes, their penalties and their interest. So it is having those effects.

The only thing we are not getting—and this is the thing we have always had a problem with—is the name of the account holders. But we are trying to get another set of tools to help us break through that wall.

Senator MCCAIN. In the last nearly 5 years your Department has achieved a plea of guilty from one out of the 14 banks under investigation. True?

Mr. COLE. That is correct.

Senator MCCAIN. So 5 years——

Mr. COLE. Not of the 14 necessarily. We have achieved a plea of guilty from one bank, which is Wegelin. We had an agreement with the Liechtenstein Bank. And we have an additional 14 Swiss banks, and that is not counting others that may be there, as well.

Senator MCCAIN. You have 14 banks that you have gotten a plea of guilty from?

Mr. COLE. No, that we are in the process of investigating.

Senator MCCAIN. Over 5 years.

Mr. COLE. I would not say it is necessarily over 5 years. There is periods of time——

Senator MCCAIN. Well, over 5 years you have gotten one guilty plea; right?

Mr. COLE. Well, if you go back 5 years, you would include UBS, which was a preferred prosecution case.

Senator MCCAIN. Since UBS——

Mr. COLE. Since UBS——

Senator MCCAIN. Let us not quibble here, Mr. Cole. Since UBS, you have had one plea of guilty.

Mr. COLE. That is correct, Senator.

Senator MCCAIN. So over the next 5 years, can we then count on two? The fact is that you have been incredibly slow over a 5-year period since UBS, getting one guilty plea and—my understanding is—14 banks under investigation.

Now if you think that is progress, fine. I do not.

Ms. Keneally, do you think that is progress over 5 years? One plea of guilty out of 14? And of course, over a 5-year period, we cannot discuss "ongoing investigations"; right? We cannot discuss any of these other 13 because they are "ongoing investigations" that have been going on for 5 years. I have seen that movie before.

Go ahead.

Ms. KENEALLY. Senator, just to clarify, Wegelin is not one of the 14. So there are 14 banks under investigation.

To specifically answer your question, yes, I do think it is progress. A number of those banks have——

Senator MCCAIN. You think it is progress?

Ms. KENEALLY. A number of those banks have come under investigation only recently. The majority——

Senator MCCAIN. Why only recently?

Ms. KENEALLY. The majority of those banks do not have a U.S. presence. It takes time to find out what is going on.

Senator MCCAIN. It takes 5 years.

Ms. KENEALLY. It takes time to find out what is going on in activity that is secret.

Senator MCCAIN. I disagree. I disagree, and so would any objective observer. That is not progress when nearly 5 years goes by and you have one bank.

Mr. COLE. Senator, if I may——

Senator MCCAIN. Yes, go ahead.

Mr. COLE. You also have 73 account holders who have been charged.

Senator MCCAIN. How many?

Mr. COLE. Seventy-three.

Senator MCCAIN. Seventy-three out of the estimate of 23,000——

Mr. COLE. Thirty-five professionals.

Senator MCCAIN [continuing]. I think it is.

Mr. COLE. Thirty-five professionals who are bankers and financial advisors. So it is not just one bank with a guilty plea. There have been many charges.

We are talking about people who are taking great pains to hide what they are doing. It takes time——

Senator MCCAIN. Excuse me, it was only——

Mr. COLE [continuing]. To disclose that.

Senator MCCAIN. It was only 22,000 accounts that Credit Suisse alone had, and you have gotten how many? Three hundred, did you say?

Mr. COLE. I am not saying they are all from Credit Suisse, 73 account holders have been prosecuted.

Senator MCCAIN. Then there is many thousands more?

Mr. COLE. There may well be and we are trying to find out who they are, Senator.

Senator MCCAIN. And you are doing a job that, frankly, has not shown any progress. That is the point, Mr. Cole. And if you want to sit there as a witness and say that one bank has been guilty over nearly 5 years, that of the 22,000 accounts just in Credit Suisse—and you say you have gotten how many, 300? Is that what you said?

Mr. COLE. No, I did not say that.

Senator MCCAIN. Mr. Cole, the taxpayers' dollars are not well spent by the way that you and your organization and you, Ms. Keneally, have been pursuing these individuals. And I still do not get it. If somebody comes forward and then just agrees to pay their taxes, even though they have been violating law, all is forgiven. That is not my idea of incentive for people to do the right thing.

So you have seen 106 Swiss banks file a letter of intent, Ms. Keneally, to enter into the Justice Department voluntary disclosure program, which will allow these banks to avoid prosecution in court. As to those banks that profited considerably from their wrongdoing, how do you justify that? Banks—they made a lot of money off of these depositors.

Ms. KENEALLY. Senator, the program is designed to have those banks pay penalties that will be higher than the money that they made. The program has very steep penalties that are based on the amount of U.S. assets that were under management and not disclosed to the United States. The program is designed to have those banks provide us with information that will lead to other wrong-

doing and will further our investigations. The program is motivating taxpayers into voluntary compliance.

We may disagree on this, but 43,000 people coming forward and becoming compliant taxpayers voluntarily, to me, is a very meaningful thing. And the program is motivating more people in. Those 43,000 people have paid not just the back taxes but penalties and interest that is now well over $6 billion.

So I see all of these tools working to that result.

And again, Senator, the 106 banks are banks we did not know about. So they have come in.

Senator MCCAIN. Maybe we should have. Maybe we should have known about them.

Thank you, Mr. Chairman.

Senator LEVIN. Thank you.

Let us just go through a few more numbers here.

Since 2009, either one bank or no banks of the 14 that were under criminal investigation have been indicted, depending on whether you count Wegelin. Now Ms. Keneally, you said Wegelin was not one of the 14, but whether it was or not—by the way, it did not have a presence here in the United States. Nonetheless, it was indicted and then pled guilty.

So your point, Mr. Cole, about you have to have a presence here in the United States if we are going to be using our tools against you, the one example we have was not the case because Wegelin did not have a presence here in the United States.

You also said that 38 bankers have been indicted. Is that correct?

Mr. COLE. I think it is 35.

Senator LEVIN. And how many convicted?

Mr. COLE. I will give that to Ms. Keneally, as to the exact number.

Senator LEVIN. How about four?

Ms. KENEALLY. If four is the number in our testimony, then the number is five as of today.

Senator LEVIN. OK, so five out of 30——

Ms. KENEALLY. One more pled guilty today, so the number—if four is the number, then five would be the number today.

Senator LEVIN. Out of how many?

Mr. COLE. Thirty-five.

Senator LEVIN. Now most of those would require extradition; is that correct?

Mr. COLE. That is correct.

Senator LEVIN. And have you sought extradition?

Mr. COLE. We have not filed an extradition request because we have been, through our experience in our Office of International Affairs, the Swiss will not extradite their citizens. So we have been focusing our efforts on things we thought would be more productive.

Senator LEVIN. But there is no prohibition on our requesting extradition?

Mr. COLE. There is not.

Senator LEVIN. And wouldn't we make a pretty clear point about our determination also about the Swiss being unhelpful if we file a request for extradition, in a criminal case, for people who have operated in the United States. If the Swiss reject that, that says

something about their willingness to cooperate. But the failure to even seek extradition says something about our willpower.

In any event, we have not sought extradition for any of them.

Now, in terms of 73 account holders being—I think that was the number you used—being found guilty or pleading guilty, that is out of—my numbers are 74,000 that we had from UBS and Credit Suisse together: 52,000 UBS; 22,000 Credit Suisse. So 73 account holders is out of 74,000 possibilities of names we did not get.

So this is all about names. And so I want to go back to the UBS issue. We got names from UBS and that is what started this flood that you have talked about, of all these voluntary payments. It was the threat that their names would be disclosed following UBS that began the flood.

With UBS, one of you said that we got the names through a treaty process. That is really very inaccurate except technically because, as a matter of fact, the treaty process was not working. The testimony that I read before was testimony about the failure of the treaty process in that matter.

And it was only because there was criminal evidence in the United States, related to an indictment that was going to be issued against UBS, and the fear of that indictment led to a deferred prosecution agreement because the treaty process was not working.

So now you have a deferred prosecution agreement with UBS. And then a John Doe summons, another one of the tools in our toolkit, was requested because the treaty process was not working.

And then, and only then, the Swiss agreed to release the names "under the treaty process" because it believed that the results under either the deferred prosecution agreement or the John Doe summons—would have been worse for the Swiss.

So it really is inaccurate for you to say that it was the treaty process in UBS that worked. It was the failure of the treaty process in UBS to work that led us to use the tools, the threat of indictment, and the John Doe summons request, that led then to the UBS outcome. And it was that outcome again—and it was acknowledged by Credit Suisse this morning—it was the UBS outcome, and this Subcommittee frankly going after UBS, that led to that outcome.

But it was that outcome, not driven by a treaty process, but by a failure of the treaty process and the willingness then of the Department of Justice to use the very strong tools that are available to you.

Mr. COLE. May I answer that?

Senator LEVIN. Sure.

Mr. COLE. I think that is what I was trying to—if I did not convey that that clearly, Senator, that was what I was trying to say is that UBS was, in fact, the model. That it was the threat of building a strong case that produced those records and that it was not a grand jury subpoena that got them——

Senator LEVIN. But it was not the treaty process.

Mr. COLE. Well, it ended up—as I believe I testified——

Senator LEVIN. Technically.

Mr. COLE [continuing]. Technically it was the treaty process, but it was the threat of the criminal process that got it.

Senator LEVIN. There you go.

Mr. COLE. Which is why I am focusing, and the Department of Justice is focusing its efforts, on trying to build the criminal cases against the 14. Because we think that is what is going to work.

Senator LEVIN. But you issued indictments against Credit Suisse in 2011. It is now 2014.

Mr. COLE. It was indictments against individuals.

Senator LEVIN. OK, in 2011.

Mr. COLE. Right.

Senator LEVIN. It is 2014. What is going on with Credit Suisse?

Mr. COLE. Senator, there is a lot that I cannot talk about—about what it is we are investigating. And as you and I discussed yesterday when we met, we explained that we cannot talk about the cases that we have pending and what we are doing with those in public forums. We cannot do that. That is not allowed.

Senator LEVIN. All right.

Now let us then talk about this new treaty again. Is it not true that the Swiss Parliament, after this new treaty was entered into, passed a law which put up a barrier to the usefulness of this new treaty? Is that correct?

Mr. COLE. That is my understanding and I think the treaty is helpful but it is not going to solve every problem.

Senator LEVIN. Well, the Swiss went ahead and passed laws unilaterally which created a barrier to the use of the treaty, saying that the effort to collect names must show a significant contribution by the bank to a pattern of conduct, by the very unnamed people who we do not know the names of.

Now what protest did we make, if we did, when the Swiss passed a law which nullifies some of the value—to the extent there is value—in the new treaty? Did we tell the Swiss, hey, that is inconsistent with the law, the treaty that you agreed to?

How do you expect to get a treaty ratified in the Senate—and I am all for it, by the way, for whatever value it has; it has some—but how do you expect to get that ratified if the other party, the partner to that treaty, then unilaterally passes a law which nullifies part of the value of the treaty?

Did you protest to the Swiss?

Mr. COLE. Did I personally? No.

Senator LEVIN. Did the government, our government, protest?

Mr. COLE. I do not know.

Senator LEVIN. Should we not know? Should you not know? Do you know, Ms. Keneally?

Ms. KENEALLY. I know that in designing the program, we took——

Senator LEVIN. Do you know whether we protested to the Swiss when they passed the law which nullified part of the treaty?

Ms. KENEALLY. I do not know if we formally protested——

Senator LEVIN. How about informally?

Ms. KENEALLY. I know that I raised the issue with the Swiss.

Senator LEVIN. Yes, but you do not know whether our government has?

Ms. KENEALLY. I do not know whether the government has. I know that I took it into account in how we designed the program so that we will be able to get the information through treaty re-

quests based on the information that the banks need to give us under the Swiss bank program.

Senator LEVIN. You took it into account? You accepted that, what they did?

Ms. KENEALLY. Senator—I—we thought through——

Senator LEVIN. I know, but——

Ms. KENEALLY. What information we needed to make effective treaty requests and we are requiring that of the banks. We did not do that in a vacuum. We were aware of what positions the Swiss had taken in terms of how their treaty system would work.

Senator LEVIN. Does that unilaterally created hurdle create a problem for us of any kind?

Ms. KENEALLY. Again, Senator, I——

Senator LEVIN. Is that a problem? You objected to it, I assume, informally. Is that because it was improper for them to unilaterally try to change a treaty?

Ms. KENEALLY. Senator, I would defer to those in the government who are responsible for the treaty process. In this case, I believe that would be Treasury. I did what I thought we needed to do for law enforcement, which was to build into the program the ability to get the information that we need to make effective treaty requests.

Senator LEVIN. OK.

[Pause.]

We have shown a chart this morning, I guess you may not have been here for it, Exhibit 1a[1] in your book. It shows that since 2011, Credit Suisse has turned over to the United States 238 accounts with U.S. client names out of the 22,000 U.S. customers with Swiss accounts, which is less than 1 percent of the relevant accounts.

The Department of Justice never apparently tried to enforce a subpoena against Credit Suisse, although they issued subpoenas that were not complied with. And they never worked with the IRS to issue a John Doe summons to Credit Suisse to get records from Switzerland.

Looking more broadly, all 14 banks under investigation for facilitating U.S. tax evasion, we have seen no grand jury subpoenas enforced, no John Doe summons issued to get the bank records in Switzerland, and less than 250 accounts from the Swiss with U.S. client names during that period.

Would you call that experiment a success?

Mr. COLE. Senator, I think as I have said a couple of times here, I have not seen Bank of Nova Scotia subpoenas, frankly, or John Doe summons on their own be very successful——

Senator LEVIN. Not on their own, but they have been helpful, have they not?

Mr. COLE. They set up a situation where if you have—frankly, you look at the UBS model again. If you have sufficient leverage from the criminal prosecution end, then maybe you can use those vehicles as the formality with which to get this. But without that, I have not seen them produce Swiss account records. And that has been the frustration, is that they do not.

[1] See Exhibit No. 1a, which appears in the Appendix on page 329.

So we try and build our cases against the individual institutions to hope that that will, in fact, try to blast out some of the account records because that seems to be what it takes.

Senator LEVIN. It is difficult for me to accept that, when you do not try to enforce a subpoena, when you do not go to a court when you have a subpoena which you have issued, to enforce it to get records, to help put the pressure on a bank. They are not going to want, for instance, lose their accreditation here in the United States if they are in violation of an order of a court to produce records.

Mr. COLE. I am not sure. That is not part of the Justice Department rulings, to lose their accreditation. But I am not sure that if they are not complying with a subpoena because they have received a blocking order from their home country, that that is going to cause them to lose their accreditation. These are things where there——

Senator LEVIN. I am not sure either. At least I think it might. What do you think? Do you think it might? Could it?

Mr. COLE. My experience, Senator, is what happens is they get a fine per day that they are not in compliance from the court, and that that goes on for an appreciable period of time and does not result in getting the records.

What I would rather do is have the resources——

Senator LEVIN. Yes, but have we sought to have their registration revoked in the United States for any bank for failure to follow a court order to produce records?

Mr. COLE. I am not aware of that.

Senator LEVIN. Have you tried?

Mr. COLE. What I have tried——

Senator LEVIN. These banks operate in the United States. They come here, they get clients here. OK? They have to operate according to our laws. And if they do not operate according to our laws and disclose client information, then it seems to me our laws have been violated.

You go to a court. You say we want to see those documents. We want those names. You are entitled to them against every American account holder in an American bank.

And so now you are telling me that, that a court will enforce the subpoena. You know that. But you do not know what the implications are, in terms of a bank losing its license to operate in the United States.

Frankly, you ought to know what it is. And we ought to argue. We ought to raise the fear of God that if you are going to aid and abet violations of American law, you are not going to be allowed to operate in America.

And I do not see that kind of a passion from you. I just do not see it.

Mr. COLE. Well, these are the issues that come out of the Treasury Department and the Fed, who control banks' abilities to operate in the United States.

Senator LEVIN. I know, but do you not ask them whether or not they might consider revoking a license to operate here in the United States if an order of a Federal Court is ignored? Do you ask the Fed?

Mr. COLE. Senator, again, there is a lot of things that we cannot talk about that we are involved in in our investigations.

Senator LEVIN. Well, you can tell me whether or not you asked the Fed to revoke a license of a bank which is in violation of a U.S. court order. You can tell me that without identifying the bank.

Mr. COLE. We are constrained from talking about the procedures we use, the tactics we use, things of that nature.

Senator LEVIN. You are not constrained about talking about whether or not, as a policy, you go to the Fed if there is a violation of a court order and urge the Fed to withdraw a license. There is no possible constraint on you. You are not identifying somebody or a bank. You are talking about a policy here. And that is the problem. We do not sense that kind of urgency here.

We collected $6 billion when Americans who had been avoiding and evading taxes they should not have been avoiding. They are evading their taxes, their obligations to the people of the United States, to their own countrymen.

And they run overseas and they put this money in banks and they hide it. And a lot of them are going to get away with it. And the ones that came forward, those 43,000, came forward because they were afraid, after UBS, that their names might get out there. That is what it is. It is just that simple.

And so, if nothing has happened since 2011 when indictments were issued, then there is a lag in this feeling on the part of these tax evaders that something is going to happen, they are going to pay a price. They have to fear that. They should fear it.

Mr. COLE. They do, Senator, and the numbers are going up right now as we sit here.

Senator LEVIN. I know, they are going up. How much are they going up?

Mr. COLE. Substantially. We are getting 400 or 500 a month.

Senator LEVIN. Four hundred or 500, great. And is it because then there is some fear?

Mr. COLE. Yes.

Senator LEVIN. Can you add to the fear?

Mr. COLE. We are trying to.

Senator LEVIN. By what publicly? By what?

Mr. COLE. By trying to bring cases. By trying to investigate things that people are hiding.

Senator LEVIN. You cannot talk about cases.

Mr. COLE. When we finally bring cases, they will be talked about, Senator.

Senator LEVIN. I will tell you, the $6 billion that was produced was the result of a tough enforcement action that worked, and the threat of an indictment and the John Doe summons against UBS. Even Credit Suisse acknowledged that this morning. They were very clear about it.

It was the UBS model. And we do not see that model being used, using our enforcement techniques.

Let me go on into the next question. Would you agree that the goal——

Ms. KENEALLY. Senator, can I comment on what scares taxpayers?

Senator LEVIN. Sure.

Ms. KENEALLY. Because before I was in this position, I represented taxpayers who came in through the voluntary disclosure program. And without question, the concern that names were going to be turned over by UBS scared taxpayers. But they are scared today because they know that we are getting names. We are getting names through treaty requests. We are getting names through cooperators. We are getting a lot of information.

We are getting information through John Doe summons that we are serving on U.S. banks for the correspondent accounts of offshore banks. That is an easy tool that we are using now because those records are in the United States and those banks cooperate almost immediately.

Senator LEVIN. Of course they do. They are in the United States. We are talking about names of accounts outside of the United States where American—some Americans who do not want to be full Americans, and instead they want to evade their obligations—get involved in tax evasion.

The accounts in the United States are the easy ones. I agree with you on that.

Ms. KENEALLY. But no, these are not accounts that are not in the United States.

Senator LEVIN. They are correspondent accounts——

Ms. KENEALLY. These are records in the United States——

Senator LEVIN [continuing]. For records in the United States.

Ms. KENEALLY [continuing]. Of transactions in foreign banks. They are not U.S. account records. They are foreign bank records.

Senator LEVIN. With correspondent accounts, you said, in the United States.

Ms. KENEALLY. They are correspondent accounts in the United States. It is a very powerful tool.

Also, Senator, in the program we built in an incentive to the banks to drive their remaining account holders into the voluntary disclosure program.

Senator LEVIN. And I know, and Mr. Cole made reference to that before.

Ms. KENEALLY. And so Senator, there are a lot of things that motivate taxpayers into that voluntary disclosure program and we are doing those things.

Senator LEVIN. Now the finance minister of Switzerland and president of the Swiss Confederation in 2012 said "It is important for us"—for them—"to be able to let the past be the past."

Are we going to take that attitude toward people who have evaded taxes and who owe Uncle Sam money? Is that our attitude?

Mr. COLE. It is not our attitude, Senator. And when they said that to us, when we were having discussions with them, we said that is not the case here.

Senator LEVIN. Good. I am glad you brought it to their attention.

In February 2011, the Department of Justice indicted four Credit Suisse bankers for participation in an ongoing conspiracy to defraud the government of tax revenue. In July of that year, a superceding indictment charged three more Credit Suisse bankers, as well as a corporate service provider who was a former Credit Suisse employee.

According to the indictment, the Credit Suisse bankers were coming here to the United States, facilitating tax evasion, violating our securities laws. At about the same time, Credit Suisse announced that it had received a target letter from the Department of Justice.

The U.S. Attorneys' manual indicates that a target letter is a very serious matter. It states that a target letter is only sent to: "A person as to whom the prosecutor or the grand jury has substantial evidence linking him or her to the commission of a crime and who, in the judgment of the prosecutor, is a putative defendant."

So a target letter was sent to Credit Suisse, they say. I do not know whether you can confirm that or not? Do you want to confirm that?

Mr. COLE. I cannot confirm it.

Senator LEVIN. They said it was and acknowledged it again today.

If it was sent, would that have presumably met the standards for a target letter? If it was sent, do you presume it met those standards that I just read?

Mr. COLE. When the Justice Department sends out target letters, it is because we meet the standard in the U.S. Attorneys' Manual. But it does not necessarily mean that we have sufficient evidence to go into court and win the case——

Senator LEVIN. Of course.

Mr. COLE [continuing]. And fully expose the complete breadth and scope of the misconduct that any particular putative defendant may have engaged in.

Senator LEVIN. Of course, but it means you have substantial evidence.

Mr. COLE. That is correct.

Senator LEVIN. And that substantial evidence is enough that it could lead to summons and indictments.

Mr. COLE. It can, but you want to make sure that if you pull the trigger and indict somebody that you are ready to go to trial and you are ready to describe the full breadth and scope of their conduct.

Senator LEVIN. And there is also, however, a fear of an indictment, is there not? Particularly of a bank that has a widely known name around the world and wants to maintain its reputation? That also exists, too, does it not?

Mr. COLE. As a general matter, financial institutions are afraid of being indicted.

Senator LEVIN. Now, take a look, if you would, at Exhibit 32b[1] in your book.

[Pause.]

Mr. COLE. Yes, Senator.

Senator LEVIN. What is this?

Mr. COLE. This is a draft of a position that the Department of Justice was taking in the course of our discussions with the Swiss. It is not what was actually communicated.

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[1] See Exhibit No. 32b, which appears in the Appendix on page 707.

Senator LEVIN. I am going to show you what we think is the final document. We did not have it until last night, but we will show it to you now.

[Pause.]

What is that document that I showed you?

Mr. COLE. This is a final copy that was communicated to the Swiss in regard to some negotiations that they were having with the IRS.

Senator LEVIN. Is this the one that led to that test case in November 2011?

Mr. COLE. I am not sure. I do not believe so——

Senator LEVIN. Is this an agreement——

Mr. COLE [continuing]. Because I do not think this was sent until December 2011.

Senator LEVIN. In any event, was this an agreement between us and them?

Mr. COLE. No, it was not an agreement.

Senator LEVIN. Is this our statement or their statement?

Mr. COLE. It is our statement.

Senator LEVIN. And it says, down in the middle there, "The records need not identify account holders."

Mr. COLE. At this point, what we were trying to do is the Swiss were not even allowing the banks to produce to us their own corporate records. Forget about account holder records, we were trying to get corporate records so we could build our criminal cases against the banks.

This was another block that the Swiss were throwing up against us and we were, at that point, trying to work to get some freedom from them to give those records over.

And so this really focuses on that aspect of it so we could build our criminal cases in the investigation.

Senator LEVIN. In any event, this is not an agreement?

Mr. COLE. It is not.

Senator LEVIN. There was a treaty request on September 26, 2011 seeking Credit Suisse account records; is that correct?

Mr. COLE. I believe that is—well, I will refer that to Ms. Keneally.

Senator LEVIN. Is that correct?

Ms. KENEALLY. My understanding is under Section 6105 of the Internal Revenue Code we cannot discuss specific treaty requests or responses.

Senator LEVIN. OK.

Did we, at some point, have a test of the Swiss Government's intent and ability to provide U.S. client names? Did we ever have a test case with them?

Ms. KENEALLY. Senator, I would have two problems responding to that. One would be timing. I would not—whether it happened on my watch or not. And second, again, I think it would be blocked by Section 6105.

Senator LEVIN. You cannot tell us that either?

Ms. KENEALLY. That is my understanding, yes, Senator.

Senator LEVIN. Go back then and look at the document, if you would, that I showed you there. Take a look at paragraph three of that document.

[Pause.]

"To assess the feasibility of such agreements, DOJ needs—and the Swiss government reasonably expects to produce by February 14, 2012—complete, unredacted account records for 100-150 accounts covered by the September 26, 2011 treaty request."

Do you see that?

Ms. KENEALLY. If that is directed to me, I see it. Yes, Senator.

Senator LEVIN. So there is—that is our document; right?

Ms. KENEALLY. That is my understanding. Yes, Senator.

Senator LEVIN. So we make reference there to a treaty request.

Ms. KENEALLY. Yes, it does, Senator.

Senator LEVIN. Does this violate the law?

Ms. KENEALLY. I do not know, Senator. And I do not have personal knowledge of the document or the treaty request.

Senator LEVIN. Then let me ask you, Mr. Cole. You are familiar with this document?

Mr. COLE. I am familiar with it, yes.

Senator LEVIN. There is a reference here: "To assess the feasibility of such agreements, DOJ needs—and the Swiss government reasonably expects to produce"—even though this is our document—"by February 14, 2012—complete, unredacted account records for 100-150 accounts covered by the September 26, 2011 treaty request."

Right? So it is public that there was a treaty request?

Mr. COLE. It is not public that there was a treaty request and this was not a public document. And what the Swiss were saying is let us show you that we can produce some account records to you.

Senator LEVIN. Well, it is a public document now.

Mr. COLE. Not that we made public, Senator.

Senator LEVIN. No, but it is a public document now.

Mr. COLE. Yes.

Senator LEVIN. And so, according to this document, we were seeking account records for 100 to 150 accounts covered by a treaty request. Right? Am I reading it correctly?

Mr. COLE. That is what it says, Senator.

Senator LEVIN. But you cannot confirm that is what we were seeking?

Mr. COLE. I cannot confirm the treaty request. I can confirm that we were talking with the Swiss at that time to see if they could produce account information, as a test to see if what they were saying was, in fact, valid.

Senator LEVIN. Take a look at Exhibit 33,[1] if you would.

[Pause.]

Can you tell us what this document is?

Mr. COLE. I do not know what it is, Senator.

Senator LEVIN. You do not?

Mr. COLE. No.

Senator LEVIN. It is on Department of Justice Tax Division stationery?

Mr. COLE. That is correct.

Senator LEVIN. OK. Do you know John Dicicco?

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[1] See Exhibit No. 33, which appears in the Appendix on page 711.

Mr. COLE. Yes. He used to be the Principal Deputy Assistant Attorney General for the Tax Division. He was the Acting Assisting Attorney General for the Tax Division.

I saw this yesterday for the first time so I do not really know what it is.

[Pause.]

Senator LEVIN. In March 2012, the United States indicted the Wegelin Bank, which is a small Swiss-based bank. And the President of Switzerland, I believe, is quoted in the press as saying that the Swiss Government was "very surprised" by the indictment because we that is, the Swiss, understood there to be an implicit agreement that they would not do something like that during the negotiations.

Mr. COLE. That was not our understanding, implicit or explicit.

Senator LEVIN. All right, so there was no such agreement?

Mr. COLE. No, there was not.

Senator LEVIN. And have you let the Swiss know that?

Mr. COLE. By indicting Wegelin they knew that pretty clearly.

Senator LEVIN. But did you tell them that you had never made such an agreement?

Mr. COLE. Yes.

Senator LEVIN. Do you know where they got the idea that the United States had made an implicit agreement?

Mr. COLE. I do not. You would have to ask them.

Senator LEVIN. OK.

Are you familiar with the fact that there were Tax Division attorneys that were sent off to U.S. Attorneys' offices to help out with work? Are you familiar with that?

Mr. COLE. Yes, I am, Senator.

Senator LEVIN. While we have all of these actions that we need to enforce our tax laws, everything has been frozen now, waiting for 2 years for treaty requests to be resolved. Now, apparently things are slowed down to the point that Tax Division attorneys are actually sent to another office to work on some other important business.

A letter to the Subcommittee says that the Department wrote that the attorneys continued to work on tax matters. But is it not the case that those transfers focused on something else other than tax matters?

Mr. COLE. Well, first of all, our work was not frozen. During that entire period of time, even if there was treaty requests out that were not being honored, we were doing a lot of other work at that same time doing lots of other things, Senator. So that is one premise that I think is not completely accurate.

Second, with the tax attorneys, they were doing work—many of them, I think most of them—on these kinds of cases, on offshore cases, even while they were detailed. Lots of U.S. Attorneys' offices are involved in these cases, as well.

Senator LEVIN. Is that their major mission, do you know?

Mr. COLE. I would have to go back on each one, but I think it was——

Senator LEVIN. Well, for the most of them. Put them all together, was the major——

Mr. COLE. Most of them, I think, were very involved. Ms. Keneally could——

Senator LEVIN. Was the major mission of most of them tax enforcement?

Ms. KENEALLY. Senator, I just want to make sure I understand the question. We are talking about the lawyers who were detailed?

Senator LEVIN. Right.

Ms. KENEALLY. The details began——

Senator LEVIN. My question is, was the main mission of those that were detailed tax enforcement? That is my question.

Ms. KENEALLY. A significant portion of what they did——

Senator LEVIN. No. Was the major mission—not significant portion, major mission—of those detailed attorneys tax enforcement? That is my question.

Ms. KENEALLY. Senator, I am not sure I can sit here and quantify it. I know what I did when I joined the Tax Division, because the details were already in place——

Senator LEVIN. All right.

Ms. KENEALLY [continuing]. I spoke to each of the U.S. Attorneys who had our detailed attorneys and confirmed that they were working on tax or other financial matters.

Senator LEVIN. As their main mission?

Ms. KENEALLY. As their main mission, tax or financial matters. Some of them were civil attorneys. Some of them were prosecutors. Where they were prosecutors, they were prosecuting tax and financial crimes.

And a number of them—it was only a small number of them that were handling any offshore matters before the details and a number of them continued to handle the same offshore matters on their details.

And again, the Deputy Attorney General is right, we work in conjunction with the U.S. Attorneys' offices. A very significant portion of the work in this area, in offshore tax enforcement, has taken place in the U.S. Attorneys' offices.

Senator LEVIN. They were not detailed to the U.S. Attorneys' office mainly to continue the work they were doing here. That is not why you detail people.

Ms. KENEALLY. Senator——

Senator LEVIN. If the main mission is to do the same thing they were doing here, you do not detail.

Mr. COLE. Well, actually Senator, the main reason we were detailing them was budget oriented.

Senator LEVIN. All right, fair enough.

Mr. COLE. We were in a position where the attrition rate at the Tax Division was not what it used to be. They were running out of money, as you may recall back then. The Federal Government had very strict constraints on our money. The U.S. Attorneys' budget had more money. So this was a way to alleviate some of the pressure on the Tax Division's budget by sending them there.

Senator LEVIN. OK, let us talk about the Wegelin plea. In 2013 February they pled guilty to aiding and abetting tax evasion. They paid $74 million in fines, forfeitures and restitution. In the indictment, the government charged that Wegelin had helped over 100 U.S. tax cheats hide $1.2 billion from 2002 to 2010.

And as I understand it, however, as part of that agreement we did not require Wegelin to turn over any client names. Is that true?

Mr. COLE. This was not an agreement with Wegelin. They pled to the indictment. So it was not a negotiated plea, in that regard.

Senator LEVIN. But there was a plea, was there not?

Mr. COLE. There was a plea. And people can plead guilty whenever they want. We did not have to agree.

Senator LEVIN. Of course, but was there not an agreement as to the sentence?

Mr. COLE. I think there may have been some understanding that were reached about the fine because there was only so much money available.

Senator LEVIN. And was there an understanding that they would turn over the names?

Mr. COLE. There was not.

Senator LEVIN. So instead, the IRS ends up issuing a John Doe summons to a UBS branch in the United States to obtain the records of a Wegelin correspondent account here.

Is that not awfully convoluted? Do you know whether there was an effort as part of an agreement on sentencing following that plea to have Wegelin provide the names? Do you know if that effort was made?

Mr. COLE. I do not know what the discussions were with Wegelin at that time, but the Swiss Government was not allowing account names to be given over. Wegelin was not continuing in existence. There was no ability to try and force that at that point because the Swiss Government was blocking it.

And so all we would have ended up having was the same thing we have now, which is Wegelin went out of business, paid us the money that they had. We made a big point in Switzerland about how we will take this seriously. And we were able to try and pursue whatever leads we could through the correspondent accounts to try and find the names of some of the people who were using the Wegelin account to evade their taxes here.

Senator LEVIN. Anyway, as far as you know, there were no names that were provided as part of a sentencing agreement or sentencing negotiation nor were there any names that were provided?

Mr. COLE. As far as I know, that is correct, Senator. But I did not do the negotiation.

Senator LEVIN. I understand.

Mr. COLE. I understand, but the Swiss Government was not allowing that.

Senator LEVIN. I know the Swiss Government does not allow things but that plea was not in Switzerland.

Mr. COLE. The plea was here——

Senator LEVIN. Right.

Mr. COLE [continuing]. And we had very little leverage to do that with a bank like Wegelin at that time.

Senator LEVIN. It was a criminal case, was it not?

Mr. COLE. It was, and they pled guilty to the full indictment.

Ms. KENEALLY. Senator, may I add something?

Senator LEVIN. No, I want to go to another matter, which is Julius Baer.

In January 2014, a Swiss court rejected a U.S. treaty request filed around April 2013 for client names and information from Bank Julius Baer about accounts in the name of offshore corporations that were owned by U.S. taxpayers.

Now this is what, this morning, the head of the Credit Suisse Bank said was "egregious." And this is really egregious, by the way. I cannot think of anything much more egregious in this area than a bank telling a customer, helping a customer to open up an account in a shell corporation account in some tax haven, the purpose of which is to then transfer that same money to the Swiss bank—in this case Credit Suisse—but now in the name of the shell corporation instead of the beneficial owner. And that was aided and abetted by Credit Suisse.

I cannot think of anything much more egregious. As a matter of fact, that is what constituted fraud, which produced the couple of hundred names that we did get from Credit Suisse.

So now Julius Baer. The Department of Justice apparently did not get any client names from the treaty request after almost a year of effort. Is that true?

Mr. COLE. We cannot talk about that under Section 6105. We are prohibited.

Senator LEVIN. All right.

Ms. KENEALLY. Senator, I may be able to add some information on that.

Senator LEVIN. On this case? On my question?

Ms. KENEALLY. Well Senator, I——

Senator LEVIN. Is it in response to my question?

Ms. KENEALLY. I believe it is in response to your question.

Senator LEVIN. Fine.

Ms. KENEALLY. Senator, when we make treaty requests, the Swiss Government publishes the fact of the treaty requests. The Swiss Government gives notice of the treaty request. And this is something I wanted to point out earlier.

So where we cannot speak, there is something out there that may indicate where there have been treaty requests. And we cannot comment on what responses we get to the treaty requests. But what happens is if an account holder seeks to block the treaty request they are required by U.S. law to notify the Attorney General that they have made that effort in the foreign country.

So what we usually see happen with the treaty requests is that the account holders do not try to block it. When they see the treaty requests, they come into the voluntary disclosure program.

So that a particular account holder actually attempted to block it and litigate it should not be interpreted as meaning we got nothing from a treaty request to a particular bank.

Senator LEVIN. You may have gotten some people coming in the office and you do not know whether they would have come in anyway. But that is not the point. The point is——

Ms. KENEALLY. But Senator, if I——

Senator LEVIN. Let me just finish. The point is that you were denied access to those names after making a treaty request by a Swiss court; is that correct?

Ms. KENEALLY. Senator, we were denied access for the account holder who brought that case.

Senator LEVIN. OK, that is fine.

Ms. KENEALLY. And you cannot draw the inference from that that other names did not come. I cannot say whether they did or they did not.

Senator LEVIN. I am not drawing the inference, but we could not get the name of that account holder from that court. Is that correct?

Ms. KENEALLY. One account holder. Yes, Senator.

Senator LEVIN. One account holder. So we go to get the name of one account holder with a treaty request that we had alleged had engaged in something that the Swiss have said constitutes fraud under the old treaty. And we cannot get that name from a Swiss court.

Ms. KENEALLY. Senator, my understanding is that the court said that the treaty request was too broad, that the treaty request can be redrawn, and the treaty request can be resubmitted. And my point is, it does not mean we got nothing under that treaty request. I just cannot comment on that.

Senator LEVIN. I know, you are trying to say the fact that making this request maybe encouraged other people to enter into a voluntary program.

Ms. KENEALLY. No, Senator——

Mr. COLE. Senator, the request may have been broader than just——

Ms. KENEALLY. I am saying that the request may—the fact that one account holder did not have that account holder's information turned over does not mean we got nothing under that treaty request. We just simply cannot comment on that specific treaty request.

Senator LEVIN. We were trying to get, as I understand, a client name and information from Bank Julius Baer; is that correct?

Ms. KENEALLY. Senator, I cannot comment on the specific treaty request but I cannot——

Senator LEVIN. Was there not a decision by the court that denied that request?

Ms. KENEALLY. As to one account holder——

Senator LEVIN. I know that——

Ms. KENEALLY [continuing]. Who opposed it, yes.

Senator LEVIN [continuing]. You cannot comment on it.

Ms. KENEALLY. Yes, Senator.

Senator LEVIN. I am just asking you whether or not we were denied and you are saying you cannot comment, it was a treaty request and the denial was a public opinion of a Swiss court, was it not?

Ms. KENEALLY. As to that account holder, yes.

Senator LEVIN. But you cannot confirm it?

Ms. KENEALLY. I can confirm that the decision exists.

Senator LEVIN. Every time, just about every time here that a reason is provided for a problem in trying to get names, it comes back to a refusal or reluctance or some act of obstruction by the Swiss Government or a Swiss court. Over and over again. This is what we come back to.

And that is why—we have all spoken on this subject now—we have to rely on our tools. Now you can give us the reasons why you

think it is premature, Mr. Cole. But we also have a pretty good record with the UBS model that worked. And we do not have evidence of that model being used as to these folks, in 2011, were indicted, and no letters of target notices going out since 2011.

So you can say things are happening that you cannot comment about. But we do not see is what we saw with UBS, where two things were threatened, involving tools in our toolbox that were used successfully to pry out a solution in UBS, which then helped to create—and I think most observers will agree—a flood of people coming forward with so-called voluntary payment of their taxes.

And every time, it seems like everything we come back to as to what the problem is, the problem goes back to Switzerland.

And now we have another deal with Switzerland. And under this deal, which was again discussed in another room this morning, in the Foreign Relations room, under this deal we have the Swiss adopting a law which vitiates part of the value of the deal unilaterally. But then we do not know whether or not we made a formal protest or not.

And that is the weakness on our part. The Swiss roadblocks seem to be forever. It is just one after another. You enter into a deal with them, they will pass a law vitiating part of the deal, the value. Our response? We do not even know if we had a formal protest.

That is what we see. And it is important that you see what we see and what we do not see because, it is a very important effort that we made, for all of the reasons that we gave this morning. When people try to evade paying Uncle Sam the taxes they owe, we should go after them vigorously. And it is the lack of vigor that we feel and you should be aware of it.

Now we talked about the Swiss Parliament, and you do not like what they did and so forth.

[Pause.]

I think there was a little confusion about dates earlier this afternoon. Whatever the benefits of the new treaty language is, it states that the provision will only apply to "information that relates to any date beginning on or after the date of the signature of the Protocol." The information that relates to any date beginning or after that date, which is September 23, 2009.

So if an account is closed before that date, the date the Protocol is signed, the information about that account will not be provided under the revised treaty.

Do we agree on those dates?

Mr. COLE. Yes.

Senator LEVIN. OK.

And I can only tell you that tax abuse was rampant between 2005 and mid–2009. The amount of taxes being evaded with accounts opened during that period, from our investigation, was very high. And so we are going to have to go through the old treaty, apparently, to get that information, which is hopeless. And so the only way it is possible to get it, is using the tools that are at your service.

Would you also agree that targets of treaty requests have a right to challenge those requests in Swiss courts?

Mr. COLE. That is my understanding.

[Pause.]

Senator LEVIN. Mr. Cole, we have talked a bit, at least, about the subpoenas that were issued in 2011 involving Credit Suisse. The Department issued a grand jury subpoena to Credit Suisse in 2011, and they reiterated that today. It asked for client names in that subpoena, account information going back to January 2000.

I wonder if you can tell us why the Department of Justice has not attempted to enforce the subpoenas that it issued in 2011 against Credit Suisse?

Mr. COLE. First of all, I do not think I did talk about those because I cannot talk about grand jury subpoenas that were issued. But I can talk about——

Senator LEVIN. I talked about it.

Mr. COLE. You did. But I can talk generally about our view on the effectiveness of enforcing these grand jury subpoenas and I think we have talked about that. And I have heard your views and I have tried to express mine that I do not think that has proven to be an effective method to get the records. The Swiss block it.

And so we have tried to——

Senator LEVIN. That is a terrible admission, by the way, that enforcing a subpoena does not have effects.

Mr. COLE. In the face of another country's laws that they then enforce on the banks that are resident there and say you cannot do this, this is very frustrating, Senator.

Senator LEVIN. Are they not bound by our law, Mr. Cole?

Mr. COLE. They are——

Senator LEVIN. Is there going to be an order——

Mr. COLE. They are subject to our law as well as to the laws of their home country. And this is where we get very frustrated. I share your frustration, Senator.

Senator LEVIN. This goes to the heart of the matter. If they want to operate here and they are bound by our laws, it seems to me, for us to give away the power of subpoena enforcement because that can get them in trouble back home when and if they are ordered by a court in the United States to do something, and they then do it, I do not think we have any alternative if people want to operate here. They abide by our laws. And if they do not abide by our laws, then it is our responsibility to then say, sorry, you cannot operate here.

And if we say that—and you do not know whether or not that has been said to them and you do not know whether you have asked the licensee or the people who issue the licenses to people to operate here. If we do that, I can almost guarantee you that those banks, if they want to function here, are going to have to comply. They are going to want to stay in the United States.

It is an unacceptable explanation. That is their explanation. It should not be your explanation. Your explanation, it seems to me, must be that you are going to aggressively go after the enforcement of subpoenas and if you win in court and if they do not abide by the subpoena, that you are going to aggressively seek to end their ability to do business in a country where they will not abide by the laws because of some other country's laws.

That is what I would like to hear from you and we have not.

Mr. COLE. Senator, what I can tell you is we are going to use every tool we can and we are going to use every tool that we think is going to be effective. And in particular, we think that the UBS model proved effective to a degree, and even that had its limitations. And that is where we are focusing, is building good solid cases against these banks to try and use that to make sure we get the information we want. And, through all of the other things we have talked about today, trying to ferret through voluntary disclosures and other kinds of information to find ways to encourage taxpayers to come forward and enable us to make whatever inroads we can in trying to find them.

It is hard. It is frustrating. It is time consuming. There are walls in our way. And we are going at it from every angle we can find that we think is going to work.

Senator LEVIN. Well, we have focused on two main issues today: the Credit Suisse history, showing how a major bank got into the dirty business of actively facilitating U.S. tax evasion. The other issue is the response of the Department of Justice which has—from my perspective—turned away from the UBS model and has chosen to rely instead on Swiss courts and treaty requests, which then has basically given up the full value of our home court advantage and U.S. tools.

Now the Swiss banks sought out U.S. clients. They traveled here. They sold Swiss secrecy to U.S. taxpayers. And they made a heck of a lot of money doing it. And they should be subject to U.S. transparency and not shielded by Swiss secrecy.

Now the Swiss Government has said it is willing to turn over a new leaf. And with some of the terms of the new treaty, frankly I am somewhat skeptical. But in any event, it has clearly indicated time and time again—including statements of its President, including keeping on its books its law that makes it a crime to divulge the name of a client or a customer—it will not unlock the vault to the secrets and misdeeds of the past.

There are promises about future conduct. They are not very effective as long as it does not provide the names. Instead, it provides a treasure hunt, of bits and pieces. Here, here is a few hints. Go and try to ferret it out from the banks now, the banks that have received the accounts from earlier banks that have maintained the secrecy, for instance.

So most of the tax evasion is probably in the past, we hope it is in the past. But in any event, if it is not going to be in the future, we have to go after the tax evaders and get them to pay what is owed. That is the best way to make sure that there is going to be less tax evasion in the future than there was in the past, is to go after these folks and to not allow Swiss law, Swiss interpretation, Swiss regulation, Swiss commentary to thwart our efforts.

And so it is important for our government to use every power and authority that we have to reclaim this money and to hold accountable those that have helped the tax avoiders, rather than to allow itself to be run through a convoluted and an unproductive process by a Swiss Government that has shown over and over again it is going to resist giving up the information, giving up the secrecy.

So I believe that the Department of Justice and the IRS has good intention, they are dedicated people. But I think also that you are going to have to be far more aggressive, as you were in the UBS case. And if you are not, we are not going to get the taxes owed and we are not going to be able to hold accountable those institutions that aided and abetted this massive fraud that has gone on for decades.

So at some point, Mr. Cole, you are going to have to play your cards. If you do not, no one is going to believe that you have a strong hand. That is the bottom line. It is the threat of prosecution that has been the incentive for tax cheats to go into the voluntary program. But that threat is going to lose force if people believe that our government is not serious about pursuing them.

The only people, roughly, who have been convicted so far at least in these major Swiss banks—and their names that they had on their accounts—were the folks that the UBS Bank were involved with.

And so that is what we are going to urge you to do, and with all of our energies we are going to keep on this case. We just simply cannot spend years negotiating treaties, watch the treaty partner poke holes in them, allow the courts in Switzerland to interpret their value away or to minimize their value, to then watch people that we go after be provided the kind of immunity that we have provided to them without, in exchange, insisting that we get the names from the banks that we are providing amnesty to.

It is all about the names. It is not about the hints. It is not about a treasure hunt. It is a treasure hunt. The treasure is the money that belongs to the U.S. Government. So I use the word treasure hunt here in kind of two ways. One way, it is what we cannot do, just be diverted to a hunt with clues. But in some sense, it is a treasure hunt. And if we are going to win the treasure that is owed to our Uncle Sam, we are going to need a very aggressive Department of Justice and IRS.

We thank you both. Thank you for your service and for your work for our government. We urge you on with much greater strength and we would ask you to keep us informed in the ways that we have requested.

Mr. COLE. Mr. Chairman, thank you for this hearing today. Thank you for your thoughts. We share your goals. We share your frustration. And we are trying to build a pretty good hand, which hopefully will show.

Senator LEVIN. Thank you.

[Whereupon, at 4:49 p.m., the Subcommittee was adjourned.]

APPENDIX

LEGACY U.S.-SWISS TAX ISSUES

STATEMENT OF CREDIT SUISSE

UNITED STATES SENATE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
FEBRUARY 26, 2014

Statement of Credit Suisse
United States Senate
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
February 26, 2014

Executive Summary

- **Since the Permanent Subcommittee on Investigations first highlighted abuses of Swiss banking secrecy in 2008, Credit Suisse has been working hard to help bring about the transformation of the Swiss banking system, moving from secrecy to transparency, with the objective of meeting the highest standards and best practices of banks anywhere in the world. Among other steps, we have strongly supported the Foreign Account Tax Compliance Act (FATCA) in the United States and Switzerland.**

- **We acknowledge that Swiss banking secrecy laws have historically been vulnerable to abuse and were in fact abused by U.S. taxpayers. But at Credit Suisse, we have built a business culture where hiding income and assets of U.S. clients is absolutely unacceptable. Although Swiss-based private banking relationships with U.S. clients have never been a significant part of the Bank's overall business, we have been active proponents of all Swiss financial institutions moving rapidly in this direction.**

- **Since the Subcommittee's 2008 investigation, Credit Suisse has taken proactive steps to require that only those U.S. clients who establish compliance with U.S. tax laws can be clients of our Bank. This has required a major effort to erect systems to bar non-compliant accounts. Our executive management has consistently and strongly directed that our employees conduct business in a fully compliant and ethical manner.**

- **Credit Suisse acknowledges that misconduct, centered on a small group of Swiss-based private bankers, previously occurred at our Bank. While that employee misconduct violated our policies, and was unknown to our executive management, we accept responsibility for and deeply regret these employees' actions.**

- **Credit Suisse has already provided U.S. client-related information to the U.S. authorities to the full extent allowed by Swiss law. Credit Suisse is ready to provide the additional information requested by the U.S. authorities on U.S. account holders, but we have been unable to do so because the U.S. Senate has not yet ratified the Protocol to the Double Taxation Treaty agreed to by the U.S. and Swiss governments in 2009 and approved by the Swiss Parliament in 2010. We urge the Senate to ratify the Protocol so that Swiss banks can assist the U.S. authorities in recovering unpaid U.S. taxes.**

Introduction

Good morning Chairman Levin, Ranking Member McCain, and Members of the Subcommittee. My name is Brady Dougan, and I have been the CEO of Credit Suisse since 2007. I am here today with Romeo Cerutti who has been the General Counsel of Credit Suisse since 2009, and Hans-Ulrich Meister and Rob Shafir who have been co-heads of the Private Banking & Wealth Management Division since 2012. Thank you for the opportunity to appear before you today. On behalf of Credit Suisse, we look forward to answering your questions on this important topic.

Credit Suisse is a global financial services company with operations in more than 50 countries and over 45,000 employees including approximately 9,000 U.S. employees in 19 U.S. locations. In the United States, Credit Suisse is a Financial Holding Company regulated by the Federal Reserve. The Bank has a New York branch, which is supervised by the New York Department of Financial Services, and we have three regulated U.S. broker/dealer subsidiaries. Our primary U.S. broker/dealer has been designated a Systemically Important Financial Institution under the Dodd-Frank law. We have a substantial business presence here in the United States.

The Credit Suisse management team has a strong personal commitment to the United States. Rob Shafir and I are American citizens. I am the first American CEO of a major Swiss bank. Romeo Cerutti is an attorney who was admitted to both the Swiss and the California bars, and Hans-Ulrich Meister has also worked in the United States. Our Bank has deep roots in the United States going back to the 18th century.

We would like to start by saying that Credit Suisse recognizes the historical reality that Swiss laws that protect client identity – commonly referred to as "Swiss banking secrecy" – were vulnerable to abuse and were abused. Specifically, it is clear that some U.S. clients of Swiss banks historically viewed Swiss banking secrecy as a way to hide the fact that not all of their income was taxed and declared to their local tax authorities. To our deep regret, it is also clear that some Swiss-based bankers at Credit Suisse appear to have helped their U.S. clients hide income and assets in the past. Although it was not and is not illegal for Swiss banks to accept deposits from Americans, it is absolutely unacceptable for Swiss-based bankers to help U.S. taxpayers evade taxes or to provide them with securities advice in the U.S. without being properly licensed.

Thanks in no small part to the efforts of the Permanent Subcommittee on Investigations, which in 2008 put the spotlight on abuses of Swiss banking secrecy, Swiss-based private banking services to U.S. clients began changing dramatically in that year. Credit Suisse has led the growing acceptance by Swiss banks of the importance of verifying that United States clients are demonstrating tax compliance, i.e., demonstrating clearly that they are compliant in fulfilling their reporting obligations.

Credit Suisse has chosen to be a leader in pushing through those legal, cultural, and business changes in Switzerland even when other banks opposed these efforts. Credit Suisse has strongly supported the Foreign Account Tax Compliance Act (FATCA) at every opportunity and

worked closely with the United States Senate and the IRS to make the law as effective as possible.

Credit Suisse has repeatedly and publicly supported the principle that banks have an obligation not to knowingly assist clients in hiding income and assets. We reaffirm that again today. Seeking out customers who want to hide income and assets from their home countries and profiting from these assets is simply not acceptable. We believe we have been a force for good in helping to develop a different – and better – legal and cultural reality for the Swiss private banking model.

We appreciate this Subcommittee's important role in advocating change, and we support the work of both Congress and the Administration toward greater transparency in international banking.

It is also important to acknowledge that Credit Suisse has made substantial progress in taking responsibility for past problems and resolving them in an appropriate way. Last week, Credit Suisse reached an agreement with the United States Securities and Exchange Commission (SEC) that concluded the SEC's investigation into the related issue of investment advice provided by Swiss-based private bankers to U.S. clients. As you know, Credit Suisse has also been cooperating with the U.S. Department of Justice's ongoing investigation of historical tax issues across the Swiss banking industry.

Credit Suisse's efforts to address the legacy U.S.-Swiss tax issues have helped to bring about a transformation in the way in which the Swiss banking industry now operates. Since the Subcommittee looked at these issues in 2008, Credit Suisse has taken the following steps in aspiring to the highest standards and best practices of global banking:

- Remediation. On our own initiative, Credit Suisse took proactive and decisive steps to ensure that only U.S. clients who established compliance with U.S. tax laws could remain at the Bank. Beginning in 2008, we voluntarily implemented a remediation program that required U.S. clients to demonstrate tax compliance – or leave the Bank. As part of that program, Credit Suisse moved the securities business with U.S. residents into U.S.-regulated subsidiaries or shut down those relationships.

- FATCA & Automatic Information Sharing. From the beginning, Credit Suisse has publicly and strongly supported FATCA, and we have worked with the Senate and the IRS to implement it effectively. While we supported FATCA, other banks opposed it. Because we embraced FATCA, Credit Suisse now has in place – sooner than FATCA requires – procedures to make sure customer information will be reported to the IRS. Credit Suisse supports full information exchange, beyond FATCA, including the OECD's efforts toward global standards for automatic information exchange.

- Prohibiting Transfers. Long before any investigation by U.S. authorities, Credit Suisse – again on our own initiative – took steps to prevent potential tax evaders fleeing UBS from coming to Credit Suisse. In 2008, when UBS – the first Swiss bank to be investigated by the Department of Justice and the Subcommittee – ejected its U.S.

resident clients, some other Swiss banks welcomed them. But Credit Suisse immediately prohibited the transfer of assets from those former UBS clients to our Bank.

- Results. Credit Suisse has done the complex, demanding work of identifying U.S. account relationships and then either closing accounts or requiring that clients establish compliance with U.S. tax laws. We consider our five-year voluntary program a significant achievement. We have documented the full effort invested in our remediation program in presentations to the Subcommittee staff.

- Credit Suisse's Internal Investigation. When Credit Suisse learned of possible wrongdoing at the Bank, we commissioned an independent internal investigation by highly respected U.S. and Swiss law firms. The investigation was broad and deep, looking at employees from line-level private bankers to executive management. Our counsel searched more than 10 million documents and conducted more than 100 interviews. We are committed to fully cooperating with U.S. authorities, and we have presented the Subcommittee with the unvarnished results of our internal investigation. The evidence from that investigation showed improper conduct centered on a group of private bankers within a desk that focused on larger U.S. resident accounts. Credit Suisse takes very seriously the historical problems of tax evasion by U.S. account holders and providing unlicensed securities advice in the United States. We deeply regret that – despite the industry-leading compliance measures we have put in place – before 2009, some Credit Suisse private bankers appear to have violated U.S. law.

- Management Knowledge. Our internal investigation found no evidence that Credit Suisse's executive management was aware of these problems. On the contrary, the Bank's management has consistently pushed Credit Suisse to enhance our compliance controls. The Bank had compliance policies and training in place to restrict Swiss-based private bankers from providing securities advice in the United States, and to prevent travel to the United States to offer investment advice, but we recognize that some private bankers violated our policies.

Our message to you today is that Credit Suisse takes the issue of compliance with the U.S. tax and securities laws very seriously, and we are absolutely committed to a culture of respect for U.S. laws applicable to our Bank and its clients. Credit Suisse took action early to emphasize the importance of compliance with U.S. law among our employees. We have worked hard to help bring about a transformation of the Swiss private banking industry in favor of greater international transparency.

We urge the U.S. Senate to ratify the Protocol to the U.S.-Swiss Double Taxation Treaty. This Protocol, signed September 23, 2009 and then unanimously approved by the Senate Foreign Relations Committee in 2011, has never been brought to the Senate floor for a vote. Approval of the Protocol would allow for much more information to be provided on U.S. client accounts to U.S. authorities.

The remainder of our testimony will provide greater details on our sustained focus on compliance with U.S. law as well as our cooperation with U.S. authorities.

Policies, Procedures, & Training

Even though private banking services to U.S. clients were a small portion of Credit Suisse's overall Swiss-based private banking business, compliance with U.S. law has long been a focus. Years before learning that any investigation of Swiss banks was on the horizon, Credit Suisse set up a compliance program with best-in-class policies that were regularly updated. The Bank also conducted training of private bankers, and undertook audits to monitor compliance. In hindsight, it is apparent that some Swiss-based private bankers with U.S. clients skirted the Bank's controls, and concealed their violations of policy from Credit Suisse executive management. While Credit Suisse deeply regrets and takes responsibility for those violations, those actions should not overshadow the Bank's ongoing commitment and consistent dedication to compliance with U.S. law.

As early as 2002, Credit Suisse put a series of policies in place to address services provided to U.S. clients by Swiss-based private bankers. These policies were drafted by U.S. lawyers and regularly updated. The Bank trained its employees on these policies and required employees to adhere to them.

- In **November 2002**, Credit Suisse adopted a detailed policy regarding relationships with U.S. persons and external asset managers. This policy outlined U.S. legal restrictions on banking relationships with U.S. residents and entities.

- In **2006**, the Bank launched a global effort to further assure compliance with local laws and regulations in the countries where its clients are located, called the "Cross-Border Plus" project. As part of this project, the Bank over time issued 300 compliance manuals covering the 80 countries where the Bank did business, including the United States, and followed up with training. To our knowledge, Credit Suisse's was the first project of its kind for any Swiss bank.

- In **May 2008**, we tightened the U.S. travel policy to prohibit Swiss-based private bankers from traveling to the United States for business.

- In **July 2008**, when some other banks rushed to exploit the exit of U.S. clients from UBS, Credit Suisse prohibited new accounts with U.S. residents who had prior relationships with UBS and LGT.

- In **April 2009**, we prohibited the opening of any securities relationships with U.S. residents outside of the Bank's U.S.-licensed entities.

- In **June 2012**, Credit Suisse began advanced implementation of FATCA restricting non-resident U.S. accounts to customers who demonstrated tax compliance. (Most of these accounts are held by U.S. citizens who reside in Switzerland.)

In addition, in 2002, the Bank established Credit Suisse Private Advisors AG (CSPA) as a U.S.-licensed, Swiss-based broker. CSPA maintained customer account records that were fully transparent to U.S. regulators, and it was registered with the SEC as a broker-dealer and

investment adviser. Credit Suisse required CSPA clients to waive Swiss banking secrecy. During this period, the Bank was actively encouraging its U.S. account holders with U.S. securities to transfer from the Swiss Private Bank to CSPA. A timeline reflecting the Bank's compliance efforts is attached.

Exit of U.S. Relationships

Following our decision to prohibit former U.S. clients of UBS from transferring their assets to Credit Suisse, in August 2008, Credit Suisse promptly turned to addressing issues highlighted by the UBS situation. In October 2008, Credit Suisse decided to allow relationships with non-U.S. entities that had U.S. beneficial owners only if they demonstrated U.S. tax compliance. We hired a leading Swiss law firm to review the tax status of U.S. clients that wanted to remain. By the end of the first year of review, all but 135 relationships with assets over $10,000 had been reviewed and resolved.

In April 2009, we extended our review to U.S. resident clients. Credit Suisse transferred virtually all U.S. resident accounts to one of the Bank's U.S.-registered affiliates, or terminated the relationships. Credit Suisse simply shut down those client relationships that were unwilling to move or that did not meet the $1 million requirement for transfer to the Bank's U.S.-regulated affiliates. By the end of the first full year of review, 2010, we had reviewed and resolved more than 85% of U.S.-resident relationships with assets over $10,000.

To ensure that the review was comprehensive, we also manually searched for accounts that, although not identified in our systems as U.S.-linked, could possibly have some U.S. connection – for example, a U.S. phone number or address in the paper client file, or a notation of a U.S. birthplace on a foreign passport. Credit Suisse also reviewed the private banking activities of its subsidiaries, including Clariden Leu, which was a nearly wholly owned Credit Suisse subsidiary between 2007 and 2012. Clariden Leu's review and exit projects paralleled the projects at Credit Suisse.

Credit Suisse also engaged one of the Big Four accounting firms to conduct its own review to assess whether the Bank had effectively identified the account relationships with U.S. links. This firm carefully analyzed the Bank's efforts – with an intense line-by-line analysis of account information – and concluded to an extremely high level of confidence that Credit Suisse had identified the complete population of U.S. account relationships. The results of this substantial effort have been presented to the Subcommittee staff.

"Undeclared Accounts"

Credit Suisse repeatedly discussed with the Subcommittee staff the fact that it is impossible for us to know the tax status of assets previously held by U.S. clients if those clients did not disclose that information to the Bank. Unfortunately, the Subcommittee has chosen to speculate based on a number of "methodologies," each of which is problematic and generates results that are, at best, unreliable. The Subcommittee's need to reference three conflicting "methodologies" is an implicit recognition that accurate estimates of unreported U.S. client assets previously held at Credit Suisse cannot be made based on the actual information available to the Bank and to the Subcommittee.

In any event, the Subcommittee assumes that every U.S. client account held abroad was undeclared. As discussed below, that is a demonstrably inappropriate assumption.

Moreover, U.S. Treasury Department regulations required U.S. citizens to report foreign accounts only if the balance exceeded $10,000 at some point during the year. While the Subcommittee staff has mentioned 22,000 accounts, more than 8,300 had balances below $10,000 as of December 31, 2008.

Troublingly, these estimates also lump in categories of accounts where there is every reason to believe that the client had a valid reason for holding a Swiss account. For example, the Subcommittee's estimates of "undeclared" accounts include approximately 6,400 accounts held by all U.S. expats who would ordinarily have a need for some form of local banking services outside of the U.S. Again, it should not be ignored that most expats *resided in Switzerland*, and therefore had a particularly valid reason for maintaining a bank near their homes.

Finally, each of the three "methodologies" that the Subcommittee staff has raised is problematic for different reasons:

The first method wrongly suggests that the number of accounts closed during the Bank's "Exit Projects" may be a proxy for "undeclared" accounts. The Bank's "Exit Projects" revealed that U.S. clients left the Bank for various reasons. For example, Credit Suisse decided to simply shut down around 11,000 U.S. resident accounts when the Bank decided to stop having Swiss-based private bankers service U.S. residents and because those clients' balances did not meet the $1 million requirement for transfer to the U.S. regulated affiliates. Those clients never had the opportunity to demonstrate tax compliance because their accounts were simply terminated. There is no basis factually to assume that all of these clients were not tax compliant.

The second method, the "UBS method," is simply unsupported. This method proposes to estimate accounts by considering all accounts without Forms W-9 to be "undeclared" U.S. accounts. The absence of a Form W-9 alone in no way supports an inference that a client failed to report the account to the IRS, or that the Bank was aware that the client failed to do so. The Qualified Intermediary Agreement with the IRS required the preparation of a Form W-9 only if the client maintained U.S. securities. If the client did not maintain U.S. securities, a Form W-9 was not required. These are the IRS's rules. Because this method does not consider whether the client maintained U.S. securities, it is inaccurate to assume that the account was maintained to evade U.S. taxes.

Nor is the third method conclusive. The so-called "DOJ Estimate" recounts a figure of $4 billion stated in an indictment of certain Bank relationship managers. Because the grand jury's proceedings are secret, neither we nor the Subcommittee have any basis to assess the grand jury's methodologies.

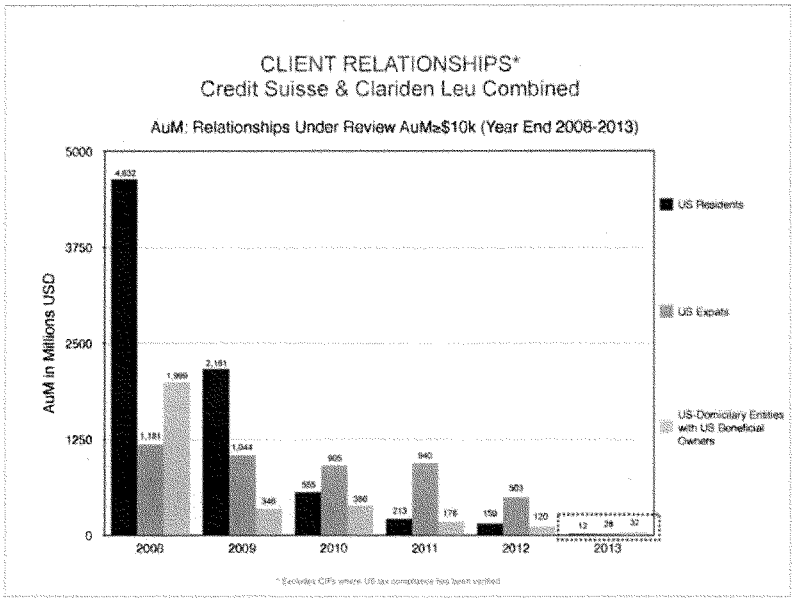
Below is a chart with key factors that should be considered in assessing whether a client relationship might have been undeclared. A "CIF" is a client identification file.

Key Factors to Consider Regarding Whether a Client Relationship may be Undeclared*

22,276 CIFs	All US linked Relationships
of which 8,317 CIFs	<10K (No FBAR Requirement under US law)
of which 6,384 CIFs	US Expats (Americans living overseas need some form of banking services/ primarily Americans living in Switzerland)
of which 11,033 CIFs	<$1M (Asked to close their accounts regardless of tax status)

***Based on 2008 numbers**

As to Assets under Management (AuM), it should be noted that our exit projects established that an approximate amount of $5 billion of AuM was reviewed and verified for tax compliance over the years. This number includes AuM transferred to our U.S.-registered entities or closed after tax compliance was established. In addition, approximately $2.25 billion AuM lost its U.S. nexus over the years. Finally, of the accounts that were closed over the years we simply have no basis to assume that all of them were undeclared. The chart below reflects assets in client relationships. (The numbers contain some minor rounding differences from tables previously provided to the Subcommittee.)



Internal Investigation

Nor did we turn a blind eye to the past. On the contrary, we invested enormous efforts to achieve as much clarity as possible about whether, and to what extent, Credit Suisse employees had violated U.S. laws or helped clients do so. Credit Suisse asked external counsel to investigate any instances of past improper conduct fully. That investigation was broad and deep. The U.S. law firm King & Spalding and the Swiss law firm Schellenberg Wittmer led the investigation, with help from a major accounting firm. The investigation reviewed all aspects of the Bank's Swiss-based private banking business with U.S. customers. It involved more than 100 interviews of Credit Suisse and Clariden Leu personnel, from line-level private bankers to senior leaders of the Bank. The investigation reviewed the conduct of bankers across the Swiss private bank who had a number of U.S. clients or traveled to the United States.

The investigation identified evidence of violations of Bank policy centered on a small group of Swiss-based private bankers. That conduct centered on a group of private bankers within a desk of 15 to 20 private bankers at any given time who were focused on larger accounts of U.S. residents. Most of the improper activity was focused on some private bankers who traveled to the United States once or twice a year; otherwise, the investigation found only scattered evidence of improper conduct.

The investigation did not find any evidence that senior executives of Credit Suisse knew these bankers were apparently helping U.S. customers hide income and assets. To the contrary, the evidence showed that some Swiss-based private bankers went to great lengths to disguise their bad conduct from Credit Suisse executive management.

Cooperation with U.S. Authorities

Credit Suisse has consistently cooperated with the investigations led by the Department of Justice, the SEC, and this Subcommittee, going to the greatest extent permissible by Swiss law to provide information to investigating U.S. authorities.

Since early 2011, Credit Suisse has produced hundreds of thousands of pages of documents, including translations of foreign-language documents. Our representatives have met with the Department of Justice to help them understand the information we provided and to describe the findings of our internal investigation and the Bank's various compliance efforts. Credit Suisse has also provided briefings to officials from the U.S. government, including the SEC and this Subcommittee. That includes more than 100 hours briefing the Subcommittee staff on details of the private banking business and the internal investigation and thousands more hours answering written questions from Subcommittee staff. Specifically, Credit Suisse produced over 580,000 pages of documents, provided 11 detailed briefings to the Subcommittee staff in all-day, or multi-day, sessions, provided 12 substantive written submissions, and made 17 witnesses available from both the United States and Switzerland, including the Bank's General Counsel, co-heads of the Private Bank and Wealth Management Division, and the CEO.

The Bank has cooperated with U.S. authorities despite restrictions imposed by Swiss law that limit production of documents and evidence outside of Switzerland. Credit Suisse willingly took the complex steps required by Swiss law to produce as much information as possible as quickly as possible. Throughout the investigation, Credit Suisse has faced harsh public criticism in Switzerland for its efforts to provide information to U.S. authorities. We have even faced litigation against us in Switzerland based on our cooperation with U.S. authorities, and we are fighting Swiss lawsuits trying to prevent our delivery of information to U.S. authorities. Nonetheless, we fully intend to continue to press for our ability to cooperate with U.S. authorities to the fullest extent allowed by law. These are not the actions of an institution flouting U.S. law enforcement or hiding behind Swiss law.

On February 21, 2014, the SEC entered an Order reflecting the settlement that Credit Suisse reached to resolve the SEC's investigation into investment advice in the United States by Swiss-based private bankers. The SEC Order recognizes that Credit Suisse had policies and training for all Swiss-based private bankers with even one U.S. resident client prohibiting U.S. securities law violations. Moreover, the SEC found that Credit Suisse management "expected [Swiss-based private bankers] to comply with the various restrictions associated with U.S. clients." The SEC also noted that Credit Suisse had voluntarily either transferred or terminated the vast majority of its relationships with U.S. clients by 2010. Credit Suisse is pleased to have resolved this matter.

Efforts To Facilitate Information Disclosure

Credit Suisse has also worked at the highest levels of the Swiss and American governments to bring about reforms that would improve transparency and make cooperation easier.

In Switzerland, Credit Suisse representatives have been engaged with senior Swiss officials for several years regarding U.S. tax matters. Senior Credit Suisse executives have appeared at parliamentary hearings in Switzerland to support a broad and complete resolution of U.S. tax issues, and Credit Suisse directors and executives have spoken out in favor of resolving U.S. tax issues in newspaper interviews and other public statements.

In the United States, the Bank has advocated on behalf of the revised Protocol to the Double Taxation Treaty with Switzerland. The treaty was signed in 2009 and was approved by the Swiss Parliament in 2010. It has been awaiting ratification by the United States Senate for more than four years. Credit Suisse has consistently urged Senate staff and Senators to support ratification throughout that period. Credit Suisse has met multiple times with the leadership of the Foreign Relations Committee, Senators on the Foreign Relations Committee and their staff, and other Congressional personnel to encourage ratification.

Credit Suisse also publicly supported the enactment and implementation of FATCA. When it goes into effect later this year, that law will require foreign financial institutions to report on U.S. taxpayers' foreign assets. Credit Suisse testified in favor of the law when Congress was considering it, and we have participated in more than 100 meetings with U.S. officials in support of the implementation of FATCA. Even though FATCA implementation has been delayed, Credit Suisse has proactively adopted requirements that exceed what FATCA will require, and we have done so faster than the timetable required by the IRS.

To that end, Credit Suisse started reviewing private banking relationships with U.S. citizens who live outside the United States (expats) in February 2012 to confirm compliance with U.S. tax law. More than 80 percent of Credit Suisse's U.S. expat clients reside in Switzerland and have an obvious need to have a local bank in Switzerland. While the review of those account relationships was ongoing, Credit Suisse sent letters to its U.S. expat clients reminding them of their reporting obligations under U.S. law.

Recognition of Net New Assets Under Swiss Regulations

Although it is unrelated to the tax issues that have been the primary focus of the Subcommittee's inquiry, you have asked that we address Swiss financial figures known as AuM and Net New Assets (NNA). U.S. law does not require these figures to be reported, but according to Swiss rules, Credit Suisse must report them in Switzerland.

The Subcommittee questions whether Credit Suisse properly recognized NNA with respect to one particular client – referenced by the Subcommittee as "Client 5" – during 2012. It should be emphasized that the assets in question were reported to U.S. authorities, and the client paid U.S. taxes on them. Nonetheless, Credit Suisse has decided to conduct a review of the internal process relating to NNA to ensure compliance with the Swiss rules and the Bank's

internal policy. The Swiss law firm Schellenberg Wittmer and the U.S. law firm Simpson Thacher & Bartlett, are conducting that review.

The Subcommittee's suggestion, however, that multiple management and accounting officials at Credit Suisse did not follow the Bank's policies regarding NNA recognition is not accurate. Nor is it supported that the U.S. banker responsible for "Client 5's" account raised NNA-related concerns that were not appropriately resolved in a timely way. And finally, the Bank's senior finance official with responsibility for NNA confirmed, based on all information he has learned to date, that he remains comfortable with his NNA determinations for Client 5 in 2012.

Conclusion

In closing, we would like to reiterate the following:

- Credit Suisse is supporting the transformation of Swiss banking. We have built a business culture where knowingly holding unreported assets of U.S. clients is absolutely unacceptable, and we are committed to a culture of respect for U.S. laws.

- On our own initiative, Credit Suisse has taken proactive steps to require that only those U.S. clients who establish compliance with U.S. laws can be clients of our Bank.

- Credit Suisse acknowledges that misconduct centered on a small group of its Swiss-based private bankers previously occurred at our Bank. While that misconduct violated our policies, and was unknown to our executive management, we accept responsibility for and deeply regret these employees' actions.

- We strongly support ratification of the 2009 Protocol to the U.S.-Swiss Tax Treaty, which would bring significant revenue to the United States.

For the management of Credit Suisse, compliance with U.S. laws has been and remains a key priority and commitment. We have worked hard to establish a reputation as strong advocates for greater international transparency in private banking and compliance with the laws of the United States. Thank you again for your attention to these matters. We would be happy to answer your questions.

TIMELINE OF U.S. COMPLIANCE EFFORTS

1953-2008
LEGACY ALLEGATIONS OF OPENING US-LINKED UNDECLARED ACCOUNTS

2002
ESTABLISHED US PERSON POLICY
The bank created a "US Person Policy" creating a strict framework governing its US cross-border business. Training was given by the legal team to all RMs in Switzerland with US resident clients.

2002
ESTABLISHED SWISS-BASED U.S. REGISTERED BROKER-DEALER AND INVESTMENT ADVISOR
Credit Suisse created a Swiss-based legal entity with broker-dealer and investment advisor registrations, Credit Suisse Private Advisors (CSPA), to service US resident clients.

2006
INITIATED REGULATORY REVIEW AND CROSS-BORDER + PROJECT
Under the Cross-Border + Project, Credit Suisse initiated a massive review of the regulatory structures of the US and over 80 countries. This led to the redefinition of the already strict internal guidelines applicable to services for US residents.

2008
PROHIBITED UBS AND LGT TRANSFERS
When the news of the UBS and LGT investigation broke, Credit Suisse moved promptly to prohibit transfers of assets from depositors who had been terminated by those banks.

REVIEWED NON-US DOMICILIARY ENTITIES
Credit Suisse also began a voluntary effort to ensure its accounts were US tax compliant by systematically reviewing non-US domiciliary entities with US beneficial ownership.

2009
EXITED US RESIDENT CROSS-BORDER BUSINESS
Credit Suisse announced its exit from the US resident cross-border business, and prohibited virtually all securities-holding relationships with US residents, except through the bank's US-licensed affiliates CSPA and PB USA, and a few pre-existing clients who documented compliance.

GLOBAL FINANCIAL CRISIS
2008Q1 — 2009Q2

2008
RELATIONSHIP MANAGERS ARE REQUIRED TO CERTIFY COMPLETION OF TRAINING

SEPTEMBER, 2009
AGREEMENT BETWEEN US & SWISS TO REVISE DOUBLE TAX TREATY

2010
REVISED CODE OF CONDUCT
Credit Suisse issues a revised Code of Conduct memorializing the bank's commitment to comply with all relevant tax laws, a reminder of the Bank's ongoing compliance efforts.

2011
REMINDED US CLIENTS OF OBLIGATIONS
Credit Suisse took the proactive step of reminding US expat clients about their foreign bank account reporting obligations under US Law. It is permissible under US law for a US citizen to maintain a foreign bank account.

2012
EFFORTS TO FACILITATE THE VOLUNTARY DISCLOSURE PROGRAM
The IRS program encourages US clients to self-report. Credit Suisse (i) in February 2012 sent letters to over 1,800 former clients informing them of the program and (ii) sent similar reminders to US clients who had been terminated.

2012
REQUESTED US EXPAT CERTIFICATION
Credit Suisse requested that US expats personally certify tax compliance, and submit certifications from paid and approved return preparers.

2013
IMPLEMENTED FACTA CONTROLS EARLY
Credit Suisse implemented a number of controls earlier than required by the Foreign Account Tax Compliance Act (FATCA) with high due diligence standards.

2014
FACTA IMPLEMENTATION
IRS and the Department of the Treasury have set a revised FACTA implementation date of July 1, 2014.

MOVING FORWARD
FULL INFORMATION EXCHANGE
Credit Suisse continues to promote an industry-leading approach to US legal and regulatory compliance. Based on the voluntary actions taken since 2002, the pending amendments to the Swiss-US tax treaty and full FATCA implementation, CS is confident that all identified US-linked open relationships at CS will be transparent and available to US tax enforcement officials.

Department of Justice

JOINT STATEMENT OF

JAMES M. COLE
DEPUTY ATTORNEY GENERAL
AND
KATHRYN KENEALLY
ASSISTANT ATTORNEY GENERAL
TAX DIVISION

DEPARTMENT OF JUSTICE

BEFORE THE

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

FOR A HEARING

OFFSHORE TAX EVASION: THE EFFORT TO COLLECT UNPAID TAXES ON BILLIONS IN OFFSHORE ACCOUNTS

PRESENTED ON

FEBRUARY 26, 2014

Joint Statement of
Deputy Attorney General James M. Cole and
Assistant Attorney General, Tax Division, Kathryn Keneally
Before the Permanent Subcommittee on Investigations
United States Senate Committee on Homeland Security and Government Affairs
February 26, 2014

Chairman Levin, Ranking Member McCain, and Members of the Subcommittee, thank you for inviting us to testify about the Department's efforts to address Swiss bank facilitation of U.S. tax evasion. The Department is committed to global enforcement against financial institutions that engage in or facilitate cross-border tax evasion. We also continue to track down and hold accountable individuals who sought to evade their tax and reporting obligations by hiding money in foreign accounts, and the individual bankers, accountants, lawyers, and other professionals who facilitated these crimes have also been and continue to be subject to investigation and prosecution. We greatly appreciate the dedicated work of the Subcommittee over many years in exposing this wrongful conduct, and your commitment to this important law enforcement issue.

Enforcement against Cross-Border Tax Evasion

The use of foreign bank accounts to evade U.S. taxes has been a long-standing challenge. These activities came under heightened scrutiny in 2008, with focused law enforcement efforts by the Department and the Internal Revenue Service (IRS). In February 2009, the Department reached a ground-breaking deferred prosecution agreement with UBS. With the agreement of the Swiss government, which invoked emergency powers under Swiss law, UBS disclosed certain account holder records, paid $780 million in fines, penalties, interest and restitution, and exited this cross-border business. Also as a result of this deferred prosecution agreement, the IRS subsequently obtained additional account holder information from UBS following approval by a federal district court to issue a John Doe summons.

Since 2009, the Department has publicly charged 73 account holders and 35 bankers and advisors with violations arising from offshore banking activities. Sixty-one account holders have pled guilty, seven were convicted at trial, and five await trial. Four bankers and financial advisors have pled guilty; many remain fugitives. Recently one banker, Raoul Weil, formerly the third-highest banking official at UBS, waived extradition following his arrest in Italy and is now awaiting trial in the United States. While the Department's enforcement focused initially on cross-border activities in Switzerland, it has expanded to include wrongdoing by U.S. account holders, financial institutions, and other facilitators globally, including publicly disclosed enforcement concerning banking activities in India, Israel, Liechtenstein, Luxembourg, Barbados, and other Caribbean countries.

These high-profile enforcement actions created pressure on non-compliant taxpayers to correct their tax returns to report previously undisclosed accounts. According to the IRS, since the inception of the investigation against UBS, over 40,000 taxpayers have reported previously secret accounts through the IRS's offshore voluntary disclosure programs, and have paid over $6 billion in back taxes, interest, and penalties. These enforcement efforts not only remedy past wrongdoing, but also bring into the system tax revenue from taxpayers who become compliant going forward.

The Department is committed to holding foreign banks accountable for their role in facilitating attempts to evade U.S. tax and reporting obligations. We understand that the Subcommittee's focus today is on the cross-border activities of Swiss banks. Since announcing the UBS deferred prosecution agreement in February 2009, the Department has continued to investigate this activity, and has taken public action against two other banks, one in Switzerland and one in Liechtenstein.

In February 2012, the Department indicted Wegelin Bank, one of the oldest financial institutions in Switzerland, for conspiracy to defraud the United States for actions arising from its efforts on behalf of U.S. account holders. Wegelin Bank pleaded guilty in January 2013, to the indictment, including the following allegations: in the wake of U.S. investigations of UBS, Wegelin's senior management decided to take steps to capture the illegal business that UBS had exited; to capitalize on the business opportunity and to increase its assets under management, and the fees earned from managing those assets, Wegelin employees persuaded clients to transfer assets from UBS to Wegelin by emphasizing that, unlike UBS, Wegelin did not have offices outside of Switzerland and was therefore less vulnerable to United States law enforcement pressure. Wegelin Bank was ordered to pay approximately $58 million to the United States and to forfeit funds in the amount of $16.2 million previously seized by the government from a correspondent account in the United States, for a total recovery to the United States of approximately $74 million.

In July 2013, the Department announced that Liechtensteinische Landesbank AG, a bank based in Vaduz, Liechtenstein ("LLB-Vaduz"), agreed to pay more than $23 million to the United States and entered into a non-prosecution agreement. As noted in the agreement, before the government began the investigation, LLB-Vaduz voluntarily implemented a series of remedial measures to stop servicing U.S. account holders with undeclared accounts. The bank also assisted in changing the law in Liechtenstein retroactively, which enabled the Department to obtain account files of non-compliant U.S. account holders without having to identify by name each account holder whose information was requested.

In addition to these public actions, the Department has on-going criminal investigations concerning the cross-border activities of banks and account holders, as well as bankers and other

professionals who facilitated U.S. tax evasion and reporting violations. In August 2013, the Department publicly stated that investigations have been authorized of fourteen banks concerning the use of Swiss bank accounts. This is in addition to on-going investigations concerning cross-border activities by banks outside Switzerland. While we are not in a position to provide information regarding these non-public matters, the absence of public disclosure should not be construed as a sign of inactivity in this critical law enforcement area.

The Department is also successfully using a variety of law enforcement tools to gather information that we believe will lead to admissible evidence in future enforcement efforts. For example, in January 2013, the federal district court for the Southern District of New York entered an order authorizing the IRS to issue a John Doe summons seeking records for Wegelin Bank's U.S. correspondent account at UBS. In April 2013, the federal district court for the Northern District of California entered an order authorizing the IRS to serve a John Doe summons seeking records of the correspondent account at Wells Fargo for Canadian Imperial Bank of Commerce FirstCaribbean International Bank (FCIB). FCIB is based in Barbados and has branches in 18 Caribbean countries. On November 7, 2013, the federal district court for the Southern District of New York entered an order authorizing the IRS to issue John Doe summonses seeking records of the Zurcher Kantonalbank and its affiliates (collectively ZKB) correspondent accounts at Bank of New York Mellon and Citibank NA for information relating to U.S. taxpayers holding undisclosed accounts in ZKB. A similar order was issued by the same court on November 12, 2013, authorizing the IRS to issue John Doe summonses seeking records of the correspondent accounts held by Bank of N.T. Butterfield & Son Limited and its affiliates in the Bahamas, Barbados, Cayman Islands, Guernsey, Hong Kong, Malta, Switzerland and the United Kingdom at Bank of New York Mellon, Citibank NA, JPMorgan Chase Bank NA, HSBC Bank NA and Bank of America NA. These orders allow the IRS to request the identities of U.S. taxpayers who may hold accounts at banks outside of the United States. We continue to work closely with the IRS to determine when to seek orders authorizing additional John Doe summonses as part of our comprehensive law enforcement strategy in these cases.

The Department has also enforced summonses and subpoenas for records that account holders are required to maintain concerning their foreign banking activities through the successful litigation of the applicability of the "required records" exception to the production privilege under the Fifth Amendment. All six appellate courts that have considered the issue have rejected the argument that witnesses can refuse to comply with a subpoena for the bank records that are required by law to be kept and presented for inspection as a condition of maintaining an offshore account. *In re Grand Jury Subpoena Dated February 2, 2012*, --- F.3d ---, available at 2013 WL 6670733 (2d Cir. Dec. 19, 2013); *United States v. Under Seal*, 737 F.3d 330 (4th Cir. 2013); *In re Grand Jury Proceedings*, No. 4-10, 707 F.3d 1262 (11th Cir. 2013), *cert. denied*, No. 12-1409, 81 U.S.L.W. 3692 (Oct. 7, 2013); *In re Grand Jury Subpoena*, 696 F.3d 428 (5th Cir. 2012); *In re Special February 2011-1 Grand Jury Subpoena Dated September*

12, 2011, 691 F.3d 903 (7th Cir. 2012), *cert. denied*, No. 12-853, 81 U.S.L.W. 3413 (May 13, 2013); *In re M.H.*, 648 F.3d 1067 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

Swiss Bank Program

The investigation and prosecution of offshore tax evasion requires the IRS and the Department to obtain foreign evidence, most often through a tax information exchange agreement or a mutual legal assistance or other treaty. A fundamental issue with respect to obtaining information about accounts located in Switzerland has been the degree to which Swiss law permits disclosure under 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 on October 2, 1996. Swiss banks have often contended, in response to our investigations, that Swiss law prohibits meaningful cooperation. As part of our efforts to obtain information from these banks, the Department and the IRS engaged in a series of discussions with representatives of the Swiss government. Our central focus in these discussions was on obtaining information from the banks that would serve our law enforcement goals of encouraging voluntary disclosure by account holders, prosecuting account holders who fail to come forward, and learning where else in Switzerland and the world U.S. taxpayers attempted to use secret accounts to engage in tax evasion. We also sought to maintain the integrity of pending U.S. law enforcement matters and the ability to prosecute those persons who assisted U.S. taxpayers in evading the law.

On August 29, 2013, the Department announced the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Program"), which is designed to encourage Swiss banks to cooperate in our ongoing investigations.[1] The Program allows Swiss banks not currently under investigation to come forward to provide cooperation and information in return for the possibility of a non-prosecution agreement or deferred prosecution agreement. Two significant points about the Program should be noted at the outset. First, the Program expressly excludes the fourteen banks, referred to in the Program as "Category 1 banks," that were previously authorized for investigation in connection with their Swiss banking activity. Second, the Program expressly excludes all individuals. No Swiss banker or professional advisor is offered any sort of protection or immunity, and no account holder is covered by the Program.

There are three categories of banks that are eligible to participate in the Program. "Category 2" banks are those Swiss banks that are not under investigation but believe that they have committed offenses under the Internal Revenue Code, related offenses under Title 18, or

[1] A copy of the Program and the Joint Statement between the Department and the Swiss Federal Department of Finance that accompanied its announcement are attached to this Statement.

offenses relating to the filing of Foreign Bank Account Reports (FBARs), in connection with U.S. related accounts. The information required to be provided by the cooperating banks is extensive, and includes full disclosure of their activities, the names of culpable employees and third party advisors, and the number of U.S. accounts. For those accounts that banks closed after the Department's investigation became public in mid-2008, the Program requires disclosure, on an account-by-account basis, of the number of U.S. persons related to the account, and the nature of that relationship, monthly balances, and monthly transfers into and out of the account. With this information, the Department will be able to pursue any banks in Switzerland that have not come forward. Equally important for our offshore enforcement efforts, we will have solid information with which to target banks in other countries that continue to hold themselves out as potential tax havens. Banks participating in the Program must also cooperate in treaty requests for account records, which Switzerland has committed to process on an expedited basis.

The Category 2 banks will also be required to pay a penalty equal to 20% of the value of all non-disclosed U.S. accounts that were held by the bank on August 1, 2008 (when our investigations were known), increasing to 30% for accounts opened between August 1, 2008 and February 28, 2009 (the month-end following the announcement of the UBS Deferred Prosecution Agreement), and 50% for accounts that were opened after February 28, 2009. The penalty structure is based on the maximum aggregate values of the undisclosed accounts, and is calibrated to reflect both the magnitude of a bank's involvement in the misconduct as well as the willingness of the bank to continue to service undeclared accounts after our law enforcement activities became known. The Department may require a deferred prosecution agreement in cases of extraordinary culpability.

Category 2 banks were required to take the initial step of expressing their intent to participate in the Program no later than December 31, 2013. The Department has received 106 such letters of intent. We caution, in providing this number, against a conclusion that all 106 of these entities will ultimately meet the requirements of the Program. We are reviewing the letters of intent to determine whether each entity has met the preliminary requirements under the Program. A number of banks have stated in their letters of intent that their internal reviews are not complete, and they reserve the right, as is allowed under the Program, to withdraw their letters of intent. Most significantly, the Program requires that the Tax Division be satisfied that each bank seeking relief provides full cooperation under the terms set out in the Program and payment of the required penalty. Even with these caveats, it is clear that a significant number of banks that were previously not on our radar screen have come forward to accept responsibility for their actions and to offer their cooperation in our law enforcement efforts. Every Swiss bank that comes forward to cooperate under the Program represents an opportunity to obtain valuable law enforcement information from a source that is new to the Department's investigations.

The Program also provides for participation by two additional categories of banks. As defined in the Program, "Category 3" banks are Swiss banks that did not commit any violations of U.S. law but want a determination of their present status regarding their activities. These banks may seek a non-target letter from the Department after providing a report by an independent examiner who conducted an internal investigation and additional information as required by the Program. Category 3 banks must also verify the percent of U.S. related accounts held in the bank, and the existence of an effective compliance program. "Category 4" banks are Swiss banks that meet certain criteria for "a deemed Compliant Financial Institution" based on definitions in the Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of Foreign Account Tax Compliance Act (FATCA) signed on February 14, 2013. These banks may also request a non-target letter after verification of their information and status. Category 3 and 4 banks may request participation beginning on July 1, 2014.

We anticipate that the Program will further our law enforcement goals in several important ways. To the extent that each Swiss bank was aware that other Swiss banks might provide information under the Program concerning interbank transactions, we expected the Program to motivate culpable banks to come forward. We believe that this prediction is borne out by the response to the Program. For several reasons, we also believe the Program is motivating culpable account holders to make voluntary disclosures of their accounts. First, the Swiss banks that participate in the Program will provide detailed information that is calculated to lead to the discovery of U.S. accountholders. Second, participating Swiss banks can reduce their penalties by showing that their account holders participated in an announced IRS Offshore Voluntary Disclosure Program or Initiative following notification by the bank of such a program or initiative; there have already been several public reports of communications to account holders by Swiss banks as a result of this provision. Finally, the Program requires cooperating Swiss banks to provide information that may lead our investigations to banks outside Switzerland, which sends a firm message to U.S. taxpayers with undisclosed accounts anywhere in the world that they should be concerned that their banks may be the next to come under investigation, adding to the pressure to disclose now.

When the Department announced the Program, a Joint Statement was also released in which Switzerland represented that "applicable Swiss law will permit effective participation by the Swiss Banks on the terms set out in the Program." While the disclosures under the Program will not include the identities of the account holders, the banks will be required to cooperate in treaty requests for account records, and in the Joint Statement, Switzerland committed to process these treaty requests on an expedited basis.

The Joint Statement and the Program are important milestones in our efforts to end the ability of U.S. taxpayers to use bank secrecy laws to hide their tax evasion and other crimes and

to bring tax dollars back into the Treasury from around the globe. In addition to enforcement efforts by the Department and IRS, the enactment of FATCA has fundamentally changed the risk/reward equation for those considering hiding money offshore. Further, the Senate's advice and consent to ratification of the Protocol amending the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, which was signed on September 23, 2009, would significantly enhance our ability to identify U.S. accountholders who use Swiss banks to evade federal tax laws. Under the existing tax treaty, Switzerland will identify U.S. account holders only if we can show that there is a reason to believe that they have engaged in fraudulent conduct under the particular standard of "fraud or the like" in Article 26 of the treaty. In general, it is not enough that we have reason to suspect a U.S. taxpayer of having engaged in criminal tax evasion. Our request must ordinarily be accompanied by what the Swiss courts refer to as allegations of a "scheme of lies." Under the Program, we are placed in as good a position as we have ever been in to meet this demanding standard. The Swiss banks participating in the program are required to assist us by disclosing to us information about the "scheme of lies" that has helped support the systemic problem of tax evasion through the use of secret Swiss bank accounts.

If the Senate were to approve the Protocol with Switzerland, however, we would no longer be limited to obtaining information in circumstances of "fraud or the like." Instead, the Protocol adopts the modern relevance standard that is found in most other income tax treaties and tax information exchange agreements. Under that standard, information would be exchanged between the governments as may be relevant for carrying out the provisions of the tax treaty or the administration or enforcement of the domestic tax laws of the United States and Switzerland. In other words, under the new treaty, not only will assistance be given in tax evasion matters involving fraudulent conduct, but also in ordinary tax examinations. The Program will get us information needed to make effective treaty requests under the currently governing 1996 treaty, but a ratified Protocol would enable us to obtain the maximum benefit possible from the banks' obligation to cooperate under the Program. This Committee's leadership in pursuing Senate advice and consent to ratification of this key protocol would enhance our ability to obtain crucial evidence.

Thank you again Mr. Chairman for the opportunity to appear this morning to discuss our law enforcement efforts and for your strong support of this vital law enforcement matter. We are happy to answer any questions that you or the other Members of the Subcommittee may have.

United States Senate
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Committee on Homeland Security and Governmental Affairs

Carl Levin, Chairman
John McCain, Ranking Minority Member

OFFSHORE TAX EVASION:
The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts

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OFFSHORE TAX EVASION:
The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts

TABLE OF CONTENTS

I. **EXECUTIVE SUMMARY** 1
- A. **Subcommittee Investigation** 2
- B. **Investigation Overview** 3
- C. **Findings of Fact and Recommendations** 8
  - Findings of Fact:
    - (1) Bank Practices That Facilitated U.S. Tax Evasion 8
    - (2) Inadequate Bank Response 8
    - (3) Lax U.S. Enforcement 8
    - (4) Swiss Secrecy 8
  - Recommendations:
    - (1) Improve Prosecution of Tax Haven Banks and Hidden Offshore Account Holders 9
    - (2) Increase Transparency of Tax Haven Banks That Impede U.S. Tax Enforcement 9
    - (3) Streamline John Doe Summons 9
    - (4) Close FATCA Loopholes 9
    - (5) Ratify Revised Swiss Tax Treaty 10

II. **BACKGROUND** 11
- A. **U.S. Tax Initiatives To Combat Hidden Foreign Accounts** . 12
- B. **Multinational Tax Efforts To Combat Hidden Foreign Accounts** 27
- C. **Switzerland** 37

III. **CREDIT SUISSE: CASE STUDY IN SWISS SECRECY** 49
- A. **Background on Credit Suisse** 51
  - (1) Credit Suisse Private Banking 54
  - (2) Clariden Leu 55
  - (3) Credit Suisse's U.S. Cross Border Business 56
  - (4) Credit Suisse Internal Investigation 59
- B. **U.S.-Linked Accounts in Switzerland** 62
  - (1) Over 1,800 Swiss Bankers Serviced Accounts for U.S. Clients 65
    - (a) Swiss Bank Secrecy 66
    - (b) Credit Suisse Organizational Barriers 67
    - (c) U.S.-Linked Swiss Accounts Outside of SALN 70
  - (2) Most U.S. Account Assets Were Undisclosed 73

C. Credit Suisse Banking Practices That Facilitated U.S. Tax Evasion 78
(1) Legal and Policy Restrictions on U.S. Activities 79
(2) Traveling to the United States 80
(3) Soliciting Clients on U.S. Soil 85
(4) Recruiting U.S. Clients at Bank-Sponsored Events 86
(5) Masking Account Ownership Through Offshore Entities 87
(6) Facilitating Client Formation of Offshore Entities 88
(7) Violating U.S. Securities Laws 92
(8) Counseling U.S. Clients on Avoiding Cash Reports 93
(9) Supplying Credit and Cash Cards 94
(10) Misusing New York Office to Service Swiss Accounts . 95
(11) Servicing U.S. Clients in Switzerland 103
D. Corporate Actions Contributing to Improper U.S. Cross Border Business 107
(1) Defining U.S. Persons in Ways that Excluded Key U.S. Taxpayers 108
(2) Ignoring Concentration Policy 110
(3) Restricting Oversight of U.S.-Linked Accounts in Switzerland 113
(4) Reviewing Accounts Through W-9 and Exit Projects . . . 119
E. Analysis 133

IV. PRESSURE ON NET NEW ASSETS REPORTING BY PRIVATE BANK 136
A. Defining Net New Assets (NNA) 136
B. NNA Under U.S. Securities Law 137
C. Importance of NNA 138
(1) Investors Watching NNA 139
(2) Touting NNA as Key Performance Indicator to Investors 142
(3) NNA Used As Internal Performance Measure 144
D. Financial Standards Governing NNA Reporting 145
(1) Standards for Disclosing Total NNA 146
(2) Internal Bank Process for Recognizing NNA 148
E. NNA at Credit Suisse Private Bank in 2012 150
(1) First Quarter 2012 150
(2) Second Quarter 2012 153
(3) Third Quarter 2012 157
(4) Fourth Quarter 2012 161

V. LAX U.S. ENFORCEMENT 165
A. Legal Tools Available to DOJ and IRS 166
(1) Nova Scotia Subpoenas 167
(2) John Doe Summons 169

(3) Prosecution Authority 171
(4) Treaty-based Solutions 173
(a) Mutual Legal Assistance Treaties 173
(b) Tax Treaties 174
(c) Extradition Treaties 176
B. DOJ and IRS Enforcement Efforts, 2009-2013 178
(1) Initial U.S. Enforcement Actions 179
(2) Initial Swiss Reaction to U.S. Enforcement Efforts 184
(3) Slowdown of U.S. Enforcement Efforts 185
(a) Negotiations Timeline 186
(b) Results of the Negotiations 197
i. Proposed 2009 Treaty Revisions 198
ii. Non-Prosecution Agreements and Non-Target Letters 200
iii. FATCA Agreement 203
C. DOJ Enforcement Efforts Related to Named Persons 206
D. Analysis 207

OFFSHORE TAX EVASION: THE EFFORT TO COLLECT UNPAID TAXES ON BILLIONS IN HIDDEN OFFSHORE ACCOUNTS

I. EXECUTIVE SUMMARY

This investigation arises from the Permanent Subcommittee on Investigations' longstanding focus on offshore tax abuse, including U.S. taxpayers using hidden offshore accounts. In 2008 and 2009, the Subcommittee held three days of hearings and released a bipartisan report examining how some tax haven banks were deliberately helping U.S. customers hide their assets offshore to evade U.S. taxes. The hearings focused on two tax haven banks, UBS AG, the largest bank in Switzerland, and LGT, a private bank owned by the royal family of Liechtenstein.[1] On the first day of the hearings, UBS acknowledged its role in facilitating U.S. tax evasion, apologized for its wrongdoing, and promised to end it. It later entered into a Deferred Prosecution Agreement with the U.S. Department of Justice (DOJ), paid a $780 million fine, and turned over about 4,700 accounts with U.S. client names that had not been disclosed to the Internal Revenue Service (IRS). It also committed to disclosing to the IRS all future accounts opened for U.S. persons.

Since then, significant progress has been made in the effort to combat offshore tax abuses. World leaders have declared their commitment to reduce cross border tax evasion. Tax havens around the world have declared they will no longer use secrecy laws to facilitate tax dodging. In the United States, over 43,000 taxpayers joined a voluntary IRS disclosure program, came clean about their hidden offshore accounts, and paid over $6 billion in back taxes, interest, and penalties. In addition, Congress enacted the Foreign Account Tax Compliance Act (FATCA), which requires foreign banks to either disclose their U.S. customer accounts on an automatic, annual basis or pay a 30% tax on their U.S. investment income. Just this month, at the request of G8 and G20 leaders, the Organisation for Economic Co-operation and Development (OECD) issued a model agreement that, like FATCA, will enable countries to automatically exchange account information to fight cross border tax evasion.

On the negative side of the ledger, despite evidence of widespread misconduct by Swiss banks in facilitating U.S. tax evasion, Switzerland has continued to severely restrict the ability of Swiss banks to disclose

[1] "Tax Haven Banks and U.S. Tax Compliance," hearing before U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 110-614 (July 17 and 25, 2008)(including bipartisan report); "Tax Haven Banks and U.S. Tax Compliance: Obtaining the Names of U.S. Clients with Swiss Accounts," hearing before U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 111-30 (March 4, 2009).

the names of U.S. customers with undeclared Swiss accounts. As a result, the United States has obtained few U.S. names and little account information. In addition, despite the passage of five years, the U.S. Justice Department has failed to hold accountable the vast majority of the 4,700 UBS accountholders whose names were given to the United States. Aside from UBS, it has prosecuted only one of the Swiss banks suspected of misconduct, while setting up a program for hundreds of Swiss banks to obtain non-prosecution agreements without disclosing the names of a single U.S. customer with a hidden account. The promise of FATCA to disclose hidden offshore accounts has also dimmed due to regulations that opened disclosure loopholes which may enable many offshore accountholders to continue to conceal their accounts from U.S. authorities.

In this Report, the Subcommittee's investigation chronicles these developments and provides an assessment of U.S. efforts to combat offshore tax evasion through hidden foreign accounts. It examines, in particular, ongoing roadblocks erected by the Swiss Government to block bank disclosure of the names of former U.S. customers with undeclared Swiss accounts. It uses as a case study a major Swiss bank, Credit Suisse, that was deeply involved in facilitating U.S. tax evasion and whose unnamed U.S. customers continue to owe unpaid U.S. taxes on billions of dollars in hidden assets.

A. Subcommittee Investigation

After the 2008 hearing on UBS, the Subcommittee initiated an informal bipartisan review into whether Switzerland's second largest bank, Credit Suisse, had also helped U.S. customers evade U.S. taxes. At that time, Credit Suisse representatives acknowledged having U.S.-linked Swiss accounts that had not been disclosed to the IRS, but also said that the bank was in the process of closing those accounts or disclosing them to the IRS. Three years later, in 2011, after seven Credit Suisse bankers were indicted by the U.S. Justice Department for aiding and abetting U.S. tax evasion, the Subcommittee opened a formal bipartisan investigation into the status of the bank's cleanup efforts and found that they were still far from complete.

Over the course of the next few years, the Subcommittee collected approximately 100,000 documents from Credit Suisse, as well as extensive documents from 16 additional parties, conducted 23 interviews of personnel at the bank, the U.S. Government, and other sources, as well as U.S. taxpayers who had evaded U.S. taxes using hidden Credit Suisse accounts. The Subcommittee also received 18 briefings from both the bank and various U.S. Government agencies with expertise in U.S. taxes, U.S. tax enforcement, cross border travel, and illicit money flows.

The materials reviewed by the Subcommittee included Credit Suisse filings with the U.S. Securities and Exchange Commission (SEC) and other investor disclosures, Credit Suisse internal memoranda, meeting minutes, emails, as well as legal pleadings and media reports. The Subcommittee also reviewed bank statements and financial documents related to some former accountholders. Additionally, Credit Suisse briefed the Subcommittee about the findings of an internal investigation conducted by outside lawyers in 2011, and provided statistics about its U.S.-linked accounts. The Subcommittee also examined U.S. and Swiss agreements, statements, legal pleadings, and other materials related to disclosing the names of U.S. clients with undeclared Swiss accounts.

B. Investigation Overview

Using the Credit Suisse case study, the Subcommittee investigation examined the bank's past actions, including the opening and servicing of undeclared Swiss accounts for U.S. customers, and subsequent actions to close those Swiss accounts, as well as the status of U.S. enforcement efforts to collect unpaid taxes and hold accountable the tax evaders and the banks that aided and abetted them.

22,000 U.S. Customers with 12 Billion Swiss Francs. The investigation found that, as of 2006, Credit Suisse had over 22,000 U.S. customers with Swiss accounts whose assets, at their peak, exceeded 12 billion Swiss francs (CHF). Although Credit Suisse has not determined or estimated how many of those accounts were hidden from U.S. authorities, the data suggests the vast majority were undeclared. To date, due to Swiss Government restrictions, the United States has obtained the names of only about 230 U.S. clients with hidden accounts at Credit Suisse.

Recruiting U.S. Clients and Facilitating Secrecy. The investigation found that, from at least 2001 to 2008, Credit Suisse recruited U.S. clients to open Swiss accounts, and employed a number of banking practices that helped its U.S. customers conceal their Swiss accounts from U.S. authorities. Those practices included sending Swiss bankers to the United States to secretly recruit clients and service existing accounts; sponsoring a New York office that served as a hub of activity on U.S. soil for Swiss bankers; and helping customers mask their Swiss accounts by referring them to "intermediaries" that could form offshore shell entities for them and by opening accounts in the name of those offshore entities. One former customer described how, on one occasion, a Credit Suisse banker traveled to the United States to meet with the customer at the Mandarin Oriental Hotel and, over breakfast, handed the customer bank statements hidden in a Sports Illustrated magazine. Credit Suisse also sent Swiss bankers to recruit clients at bank-sponsored events, including the annual "Swiss Ball" in

New York and golf tournaments in Florida. The Credit Suisse New York office kept a document listing "important phone numbers" of intermediaries that formed offshore shell entities for some of the bank's U.S. customers. Credit Suisse also encouraged U.S. customers to travel to Switzerland, providing them with a branch office at the Zurich airport offering a full range of banking services. Nearly 10,000 U.S. customers availed themselves of that convenience. The bank's own investigation indicates that Swiss bankers were well aware that some U.S. clients wanted to conceal their accounts from U.S. authorities, and either turned a blind eye to the accounts' undeclared status, or at times actively assisted those accountholders to hide assets from U.S. authorities.

Weak Oversight. The investigation also found that Credit Suisse exercised weak oversight of its own policies for U.S.-linked accounts in Switzerland, facilitating wrongdoing. A 2002 bank policy called for U.S.-linked accounts to be opened by a single Swiss office, SALN, whose bankers were given special training in U.S. regulatory and tax requirements. Despite that policy, a majority of U.S.-linked accounts were spread throughout other business areas of the bank; by 2008, over 1,800 Credit Suisse bankers were opening and servicing Swiss accounts for U.S. customers. Some of those Swiss bankers assisted U.S. clients to open undeclared accounts, buy and sell U.S. securities, and structure large cash transactions to avoid U.S. cash reporting requirements, in violation of U.S. law and the bank's own policies which prohibited those activities. The Swiss bank also used third party service providers to supply U.S. clients with credit cards and travel cash cards that enabled them to secretly draw upon the cash in their Swiss accounts. In addition, Credit Suisse restricted compliance, risk management, and audit oversight of all U.S. customer accounts in Switzerland to Swiss personnel due to Swiss secrecy laws, limiting the oversight that could be conducted by bank personnel in the United States. Credit Suisse extended those limitations even to the U.S.-linked accounts at SALN which was organizationally part of the Credit Suisse Private Bank for the Americas. On February 21, 2014, Credit Suisse paid a $196 million fine to the U.S. Securities and Exchange Commission to settle securities law violations by its Swiss bankers for conducting unlicensed broker-dealer and investment advice activities in the United States and by the bank for failing to prevent that misconduct due to poorly implemented controls and ineffective monitoring.

Five Year Exit. Beginning in 2008, after the UBS scandal broke, Credit Suisse initiated a series of "Exit Projects" to identify Swiss accounts that had been opened for U.S. customers, and ask the customers to either disclose their accounts to the United States, or close them. The Exit Projects took an overly incremental approach, delayed reviewing key groups of accounts, and took over five years to complete. The projects included, in chronological order, the Entities Project,

Project Tom, Project III, Project Tim, Legacy Entities Project, Project Titan, and Project Argon. The 2008 UBS scandal and 2011 indictment of seven Credit Suisse bankers spurred the account closing efforts represented by those projects, but they continued to take years to implement.

From 2008 to 2011, the Credit Suisse Exit Projects focused exclusively on Swiss accounts held by U.S. residents, ignoring the over 6,000 accounts opened by U.S. nationals living outside of the United States. The early projects also focused on the conduct of bankers at SALN, the office that was supposed to have been in charge of opening U.S.-linked accounts in Switzerland, even though the majority of U.S.-linked accounts were actually located in Swiss offices outside of SALN, including Credit Suisse's private bank subsidiary Clariden Leu. By the end of 2010, the Exit Projects had closed accounts held by nearly 11,000 U.S. clients, an indication of how extensive the problems were with the accounts. It was not until 2012, that the bank expanded the Exit Projects to include a review of the thousands of Swiss accounts opened by U.S. nationals living outside of the United States. At the end of 2013, five years after the UBS scandal broke, Credit Suisse data indicated that the bank had closed Swiss accounts for approximately 18,900 U.S. customers and retained accounts for about 3,500 U.S. customers with assets totaling about $2.6 billion. These figures represent an 85% drop in the number of the bank's U.S. customers in Switzerland.

Lax U.S. Enforcement. Credit Suisse has been under investigation by the U.S. Department of Justice (DOJ) since at least 2010. In 2011, seven of its Swiss bankers were indicted by DOJ for aiding and abetting U.S. tax evasion. Despite the passage of almost three years, however, none of those bankers has stood trial, instead remaining overseas. In 2011, the bank itself was served with a target letter by DOJ, indicating that Credit Suisse, not just some of its bankers, was under criminal investigation. The letter signifies that DOJ believed it had substantial evidence of criminal wrongdoing by the bank at that point, although no indictment was filed in the years that followed.

In 2011, as part of the DOJ investigation, the bank was asked to produce a variety of documents through Grand Jury subpoenas and other requests. In response, the Swiss Government intervened, took control of the document production process, and limited the documents that the bank produced to DOJ. When, at the request of the Swiss, the United States submitted a treaty request for names and account information related to U.S. persons with undeclared Swiss accounts at Credit Suisse, a Swiss court ruled that parts of the request did not meet the requirements of the U.S.-Swiss tax treaty, requiring the United States to submit a revised request. After roughly two years, the Swiss Supreme Court permitted about 230 U.S. customer files, or substantially less than 1% of the over 22,000 U.S. accountholders with Swiss accounts at

Credit Suisse, to be provided to U.S. authorities. During that same period, the DOJ did not use any of the authorities and remedies available to it in U.S. courts, such as enforcing the outstanding Grand Jury subpoenas or using a John Doe summons, to obtain U.S. client names and account information directly from Credit Suisse.

DOJ's decision to refrain from taking enforcement action against Credit Suisse over the past five years is part of a larger failure by the United States to obtain from the Swiss the names of the tens of thousands of U.S. persons who opened undeclared accounts in Switzerland and have not yet paid taxes on their hidden assets. Despite constructing a 2013 program to enable hundreds of Swiss banks to apply for non-prosecution agreements or non-target letters, DOJ did not obtain any agreement in return from the Swiss Government to permit any of those Swiss banks to furnish U.S. client names to the United States. To the contrary, DOJ explicitly surrendered the right of the United States to obtain U.S. client names from the banks given non-prosecution agreements and non-target letters under the new DOJ program, and may have implicitly surrendered the right to use remedies available in U.S. courts to obtain those names directly from those banks, including through Grand Jury subpoenas or John Doe summonses.

DOJ also appears to have decided to rely solely on the treaty process to obtain documents from the 14 Swiss banks under active investigation for facilitating U.S. tax evasion. For years, DOJ has not enforced a single Grand Jury subpoena directed at the 14 targeted banks, nor assisted the IRS in using a John Doe summons to obtain critical information from them in Switzerland. Instead, since 2011, DOJ has made treaty requests involving at least two of the targeted banks. After nearly three years, those treaty requests have produced few U.S. client names and little account information. By relying on the restrictive treaty process and refraining from using U.S. remedies enforceable in U.S. courts to obtain information directly from the 14 Swiss banks, DOJ essentially ceded control of the document process to Swiss regulators and Swiss courts that value bank secrecy and are willing to prohibit disclosure of bank information essential to effective U.S. investigations and prosecutions of U.S. tax evasion involving Switzerland.

In addition, since 2009, aside from UBS, DOJ has indicted only one Swiss bank, Wegelin & Co. When Wegelin pled guilty, DOJ accepted its guilty plea without obtaining a single client name that could be used to seek unpaid taxes from the U.S. clients that used the bank to escape their tax obligations. When DOJ used U.S. prosecution tools and IRS John Doe summons against UBS, the United States obtained about 4,700 accounts with U.S. client names, and DOJ prosecuted 72 taxpayers. In contrast, without those tools, when DOJ used only the treaty process to seek information from the 14 targeted banks, DOJ obtained only a few hundred U.S. client names and prosecuted less than

a handful of U.S. taxpayers for having a hidden account. DOJ's reduced effectiveness can be attributed, in part, to its reliance on the treaty process under Swiss control instead of on U.S. tools enforceable in U.S. courts. Further, while DOJ has indicted 34 Swiss banking and other professionals for aiding and abetting U.S. tax evasion, the vast majority of those defendants have yet to stand trial. Most continue to reside in Switzerland, without facing any public U.S. extradition request to require them to face U.S. criminal charges. As a result, DOJ has made little progress in collecting the unpaid U.S. taxes that continue to be owed on billions of dollars of assets hidden in Swiss accounts.

While Switzerland sometimes claims that there is no need to obtain client names from Swiss banks, because U.S. clients with hidden Swiss accounts will be named over the next few years under FATCA, FATCA will not, in fact, solve the disclosure problem. FATCA's implementing regulations have created multiple loopholes, with no statutory basis, in the law's disclosure requirements. Among other problems, the FATCA regulatory loopholes will require disclosure of only the largest dollar accounts; they will permit banks to ignore, in most cases, bank account information that is kept on paper rather than electronically; they will allow banks to treat accounts opened by offshore shell entities as non-U.S. accounts even when the entity is owned by a U.S. taxpayer; and the remaining disclosure requirements can be easily circumvented by U.S. persons opening accounts below the reporting thresholds at more than one bank. Switzerland has also sometimes claimed that additional client names can be obtained through the revised U.S.-Swiss tax treaty which has yet to be ratified by the Senate, but that treaty applies only to requests for accounts that were open after its signing date in September 2009, which excludes the years in which the bulk of misconduct by Swiss banks and their U.S. clients took place. The treaty also has a convoluted process for obtaining the names of accountholders who can seek to block disclosure in Swiss courts, and Swiss law has created new evidentiary burdens for U.S. requests seeking information about unnamed U.S. taxpayers with accounts at Swiss financial institutions.

Neither FATCA nor the revised U.S.-Swiss tax treaty nor the DOJ non-prosecution program for Swiss banks can be relied on to produce the names of U.S. clients who used Swiss accounts to hide assets, evade taxes, and dodge U.S. efforts to collect the taxes they still owe. Unless DOJ is willing to use available U.S. legal remedies to obtain those U.S. client names, many of the most egregious cases of tax evasion using hidden offshore accounts will escape accountability, while tax haven banks continue to profit from U.S. clients dodging U.S. taxes. Allowing tax cheats to dodge accountability for their actions would not only weaken the incentive for other U.S. taxpayers with hidden accounts to enter into the IRS Offshore Voluntary Disclosure Program, it would also

send the wrong message to other tax haven banks and governments, and give up on unpaid U.S. taxes on billions of dollars in hidden assets.

C. Findings of Fact and Recommendations

Findings of Fact. Based upon the Subcommittee's investigation, this Report makes the following findings of fact.

(1) **Bank Practices That Facilitated U.S. Tax Evasion.** From at least 2001 to 2008, Credit Suisse employed banking practices that facilitated tax evasion by U.S. customers, including by opening undeclared Swiss accounts for individuals, opening accounts in the name of offshore shell entities to mask their U.S. ownership, and sending Swiss bankers to the United States to recruit new U.S. customers and service existing Swiss accounts without creating paper trails. At its peak, Credit Suisse had over 22,000 U.S. customers with Swiss accounts containing assets that exceeded 12 billion Swiss francs.

(2) **Inadequate Bank Response.** Credit Suisse's efforts to close undeclared Swiss accounts opened by U.S. customers took more than five years, failed to identify how many were undeclared accounts hidden from U.S. authorities, and fell short of identifying any leadership failures or lessons learned from its legally-suspect U.S. cross border business.

(3) **Lax U.S. Enforcement.** Despite the passage of five years, U.S. law enforcement has failed to prosecute more than a dozen Swiss banks that facilitated U.S. tax evasion, failed to take legal action against thousands of U.S. persons whose names and hidden Swiss accounts were disclosed by UBS, and failed to utilize available U.S. legal means to obtain the names of tens of thousands of additional U.S. persons whose identities are still being concealed by the Swiss.

(4) **Swiss Secrecy.** Since 2008, Swiss officials have worked to preserve Swiss bank secrecy by intervening in U.S. criminal investigations to restrict document production by Swiss banks, pressuring the United States to construct a program for issuing non-prosecution agreements to hundreds of Swiss banks while excusing those banks from disclosing U.S. client names, enacting legislation creating new barriers to U.S. treaty requests seeking U.S. client names, and managing to limit the

actual disclosure of U.S. client names to only a few hundred names over five years, despite the tens of thousands of undeclared Swiss accounts opened by U.S. clients evading U.S. taxes.

Recommendations. Based upon the Subcommittee's investigation and findings of fact, this Report makes the following recommendations.

(1) **Improve Prosecution of Tax Haven Banks and Hidden Offshore Account Holders.** To ensure accountability, deter misconduct, and collect tax revenues, the Department of Justice should use available U.S. legal means, including enforcing Grand Jury subpoenas and John Doe summons in U.S. courts, to obtain the names of U.S. taxpayers with undeclared accounts at tax haven banks. DOJ should hold accountable tax haven banks that aided and abetted U.S. tax evasion, and take legal action against U.S. taxpayers to collect unpaid taxes on billions of dollars in offshore assets.

(2) **Increase Transparency of Tax Haven Banks That Impede U.S. Tax Enforcement.** U.S. regulators should use their existing authority to institute a probationary period of increased reporting requirements for, or to limit the opening of new accounts by, tax haven banks that enter into deferred prosecution agreements, non-prosecution agreements, settlements, or other concluding actions with law enforcement for facilitating U.S. tax evasion, taking into consideration repetitive or cumulative misconduct.

(3) **Streamline John Doe Summons.** Congress should amend U.S. tax laws to streamline the use of John Doe summons procedures to uncover the names of taxpayers using offshore accounts and other means to evade U.S. taxes, including by allowing a court to approve more than one John Doe summons related to the same tax investigation.

(4) **Close FATCA Loopholes.** To obtain systematic disclosure of undeclared offshore accounts used to evade U.S. taxes, the U.S. Treasury and IRS should close gaping loopholes in FATCA regulations that have no statutory basis, including provisions that allow financial institutions to ignore account information stored on paper, and allow foreign financial institutions to treat

offshore shell entities as non-U.S. entities even when beneficially owned and controlled by U.S. persons.

(5) Ratify Revised Swiss Tax Treaty. The U.S. Senate should promptly ratify the 2009 Protocol to the U.S.-Switzerland tax treaty to take advantage of improved disclosure standards.

II. BACKGROUND

Concerns about offshore tax abuses and the role of tax haven banks in facilitating tax evasion are longstanding. Over thirty years ago, in 1983, this Subcommittee held hearings on how U.S. taxpayers were using offshore secrecy jurisdictions to hide assets and evade U.S. taxes.[2] Since then, the problem has only grown. In 2000, the U.S. State Department estimated that assets secreted in offshore jurisdictions totaled $4.8 trillion.[3] In 2007, the Organisation for Economic Co-operation and Development (OECD), an international coalition of 34 countries, estimated the total at $5 to $7 trillion.[4] In 2012, the Tax Justice Network, an international nonprofit advocacy group combating tax evasion, estimated that offshore assets at the end of 2010 had reached between $21 and $32 trillion.[5] The group also estimated that, of that total, about $12 trillion was collectively managed by the 50 largest international banks.[6]

Offshore tax evasion has been an issue of concern, not only due to tax fairness and legal compliance issues, but also because lost tax revenues contribute to the U.S. annual deficit, which today exceeds $500 billion. Collecting unpaid taxes is one way to reduce the deficit without raising taxes. According to the IRS, the current estimated annual U.S. tax gap is $450 billion, which represents the total amount of U.S. taxes owed but not paid on time, despite an overall tax compliance rate among American taxpayers of 83%.[7] Contributing to that annual tax gap are offshore tax schemes responsible for lost tax revenues totaling an estimated $150 billion each year.[8]

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[2] See "Crime and Secrecy: The Use of Offshore Banks and Companies," hearing before the U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 98-151 (March 15, 16 and May 24, 1983).

[3] "International Narcotics Control Strategy Report," U.S. Department of State Bureau for International Narcotics and Law Enforcement Affairs (March 2000), at 565-66 in bound copy and at 2-3 on website (citing International Monetary Fund data), http://www.state.gov/j/inl/rls/nrcrpt/1999/928.htm.

[4] See Jeffrey P. Owens, Director, OECD Center for Tax Policy and Administration, "Offshore Tax Evasion," (July 20, 2007), Global Policy Forum, http://www.globalpolicy.org/component/content/article/172/30123.html.

[5] See "The Price of Offshore Revisited," Tax Justice Network briefing paper (July 2012), at 5, http://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf.

[6] Id. at 8.

[7] See "IRS Releases New Tax Gap Estimates; Compliance Rates Remain Statistically Unchanged From Previous Study," report by the Internal Revenue Service, No. IR-2012-4 (1/6/2012), http://www.irs.gov/uac/IRS-Releases-New-Tax-Gap-Estimates;-Compliance-Rates-Remain-Statistically-Unchanged-From-Previous-Study.

[8] The $150 billion estimate is derived from a number of investigations and studies, including the following: two hearings before the Permanent Subcommittee on Investigations, "Offshore Profit Shifting and the U.S. Tax Code – Part 1 (Microsoft and Hewlett-Packard)," S. Hrg. 112-781 (9/20/2012), and "Offshore Profit Shifting and the U.S. Tax Code – Part 2 (Apple Inc.)," S. Hrg. 113-90 (5/21/2013); Kimberly A. Clausing, "The Revenue Effects of Multinational Firm Income Shifting," Tax Notes (3/8/11) (estimating "income shifting of multinational firms reduced U.S. government corporate tax revenue by about $90 billion in 2008, approximately 30 percent of

Over the years, the United States and the international community have undertaken an array of initiatives to combat offshore tax abuses. In recent years, this effort has intensified. A summary of some of the major U.S. and global initiatives to combat offshore tax abuses follows.

A. U.S. Tax Initiatives To Combat Hidden Foreign Accounts

Over the past decade, the United States has used a variety of tools to try to identify U.S. taxpayers using foreign accounts to hide assets offshore and dodge payment of U.S. taxes. Three important methods for identifying those taxpayers involve U.S. information requests directed to foreign tax authorities under international tax information exchange agreements; U.S. review of disclosures made by foreign financial institutions participating in the Qualified Intermediary Program or the recently enacted Foreign Account Tax Compliance Act; and U.S. analysis of disclosures provided by taxpayers under the IRS Offshore Voluntary Disclosure Program.

U.S. Tax Information Exchange Agreements. One of the key ways that the United States combats offshore tax abuse is by obtaining information from foreign tax authorities through its network of tax treaties, tax information exchange agreements (TIEAs), and Mutual Legal Assistance Treaties (MLATs).[9] These agreements typically

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corporate tax revenues"); Martin Sullivan, "Drug Company Profits Shift Out of the United States," Tax Notes (3/8/10), at 1163 (showing nearly 80% of pharmaceutical company profits are offshore in 2008, compared to about 33% ten years earlier, and concluding "aggressive transfer pricing practices as the likely explanation for the shift in profits outside the United States"); Joseph Guttentag and Reuven Avi-Yonah, "Closing the International Tax Gap," in Max B. Sawicky, ed., Bridging the Tax Gap: Addressing the Crisis in Federal Tax Administration (2006) (estimating offshore tax evasion by individuals at $40-$70 billion in lost revenues annually); "Governments and Multinational Corporations in the Race to the Bottom," Tax Notes (2/27/06); "Data Show Dramatic Shift of Profits to Tax Havens," Tax Notes (9/13/04). See also series of 2007 articles authored by Martin Sullivan in Tax Notes (estimating over $1.5 trillion in hidden assets in four tax havens, Guernsey, Jersey, Isle of Man, and Switzerland, beneficially owned by nonresident individuals likely avoiding tax in their home jurisdictions); articles authored by Jesse Drucker of Bloomberg (describing specific examples of corporate tax avoidance including: "Exporting Profits Imports U.S. Tax Reductions for Pfizer, Lilly, Oracle," (5/13/2010); "Google 2.4% Rate Shows How $60 Billion Lost to Tax Loopholes," (10/21/2010); "Yahoo, Dell Swell Netherlands' $13 Trillion Tax Haven," (1/23/2013); "IBM Uses Dutch Tax Haven to Boost Profits as Sales Slide," (2/23/2014)); and "G.E.'s Strategies Let It Avoid Taxes Altogether," New York Times, David Kocieniewski (3/24/2011), http://www.nytimes.com/2011/03/25/business/economy/25tax.html?ref=butnobodypaysthat&_r=0.

[9] The United States generally enters into a tax treaty with a country to establish maximum rates of tax for certain types of income, protect persons from double taxation, arrange for tax information exchanges, and resolve other tax issues. In the case of a country with nominal or no taxes, however, the United States may forego addressing a full range of tax issues and instead seek to enter into simply a tax information exchange agreement. See "Offshore Tax Evasion: Stashing Cash Overseas," hearing before the Senate Committee on Finance (5/3/2007) (hereinafter "Finance Committee 2007 Hearing on Offshore Tax Evasion"), prepared testimony of Treasury Acting International Tax Counsel John Harrington, at 3 (at 2 on website), http://www.treasury.gov/press-center/press-releases/Pages/hp385.aspx.

include standards and procedures for the relevant tax authorities to exchange information for tax enforcement purposes.[10]

The U.S. Government has worked to strengthen and expand its tax information exchange arrangements with other countries. As of 2011, the United States had more than 140 tax treaties, protocols, TIEAs, MLATs, or similar tax information exchange agreements with 90 foreign jurisdictions.[11]

The United States has published a U.S. Model Income Tax Convention with the provisions that the United States seeks to include in its tax treaties.[12] Article 26 of that Model Convention focuses on tax information exchange.[13] It provides that the treaty partners:

> "shall exchange such information as may be relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes of every kind ... including information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, such taxes."[14]

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[10] The United States has identified three primary forms of information exchange: (1) exchanges of information upon request, in which the tax authority of one country requests specific information about specific taxpayers from the tax authority of the second country; (2) automatic exchanges of information, in which the tax authority of one country routinely provides information to the tax authority of the second country about a class of taxpayers, such as information detailing the interest, dividends, or royalties payments made to accounts held by the second country's taxpayers during a specified period; and (3) spontaneous exchanges of information, in which the tax authority of one country passes on information about specific taxpayers obtained in the course of administering its own tax laws to the tax authority of the second country without having been asked for the information. Id. U.S. tax treaties typically encompass all three types of information exchange. Id.

[11] See "Tax Administration: IRS's Information Exchanges with Other Countries Could Be Improved through Better Performance Information," prepared by U.S. Government Accountability Office (GAO), Report No. GAO-11-730 (Sept. 2011)(explaining that the U.S. had more than one agreement with a number of jurisdictions), http://www.gao.gov/assets/590/585299.pdf. For the text of recent agreements, see U.S. Treasury Department's Resource Center, "Treaties and TIEAS," http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/treaties.aspx; and IRS list of "United States Income Tax Treaties – A to Z", http://www.irs.gov/Businesses/International-Businesses/United-States-Income-Tax-Treaties---A-to-Z.

[12] For the text of the U.S. Model Income Tax Convention, see the IRS website, http://www.irs.gov/Businesses/International-Businesses/United-States-Model---Tax-Treaty-Documents (providing the text and a technical explanation for 1996 and 2006 versions of the Model Convention).

[13] The provisions and organization of the U.S. model convention, including the information exchange provisions in Article 26, are very similar to those in the model tax treaty promulgated by the OECD for use by countries around the world. See 1/28/2003 "Articles of the Model Convention with Respect to Taxes on Income and on Capital," Organization for Economic Co-operation and Development, at 23, http://www.oecd.org/tax/treaties/1914467.pdf.

[14] 11/15/2006 "2006 U.S. Model Income Tax Convention," Internal Revenue Service, Article 26, at 39, http://www.irs.gov/pub/irs-trty/model006.pdf.

The treaty's "may be relevant" standard for making tax information requests is derived from a federal statute which authorizes the IRS to request "any books, papers, records, or other data which may be relevant or material" to an investigation.[15] That tax inquiry standard has been examined and upheld by the U.S. Supreme Court.[16]

The model Article 26 also requires the treaty partners to protect the confidentiality of any information received under the treaty and to disclose the information only to persons, administrative bodies, and courts involved in tax administration. It permits a treaty partner to refuse to share information in certain limited circumstances, such as if obtaining the information would be at variance with the country's laws. At the same time, it requires the parties to provide requested information whether or not the person at issue is a resident or citizen of either country, whether or not the matter is of interest to the country being asked to supply the information, and whether or not the matter would constitute a violation of the tax laws of the country responding to the request. In addition, the model Article 26 requires the treaty parties to provide each other with requested information regardless of laws or practices relating to bank secrecy.

The United States has also signed dozens of TIEAs with other countries containing information exchange provisions similar to those in the model Article 26.[17] Those TIEAs typically include more detailed provisions on exchanging tax information, including what information must be provided by the requesting country and as well as the responding country. The United States began entering into TIEAs after enactment of a 1983 law authorizing the U.S. Treasury Department to negotiate bilateral or multilateral tax information exchange agreements with certain countries in the Caribbean and Central America.[18] TIEAs became increasingly popular after the OECD published a model TIEA in

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[15] 26 U.S.C. § 7602 (a)(1).

[16] See United States v. Arthur Young & Co., 465 U.S. 805, 814 (1984) (holding that the "may be relevant" standard reflects Congress' express intention to allow the IRS to obtain "items of even *potential* relevance to an ongoing investigation, without reference to its admissibility"(emphasis in original)).

[17] See "Inspection of the Exchange of Information Process at the Plantation, Florida, Office," prepared by the Treasury Inspector General for Tax Administration, No. 2012-IE-R006 (July 25, 2012), at 3, http://www.treasury.gov/tigta/iereports/2012reports/2012IER006fr.pdf. For a list of U.S.-signed TIEAs, see the U.S. Treasury Department's Resource Center, "Treaties and TIEAS," http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/treaties.aspx.

[18] See Caribbean Basin Initiative of 1983, P.L. 98-67, 97 Stat. 396, at § 222 http://uscode.house.gov/statutes/1983/1983-098-0067.pdf See also 26 U.S.C. §§ 274(h)(6)(C). This statutory framework initially authorized the Treasury Secretary to conclude agreements with countries in the Caribbean Basin (thereby qualifying such countries for certain benefits under the Caribbean Basin Initiative) but later expanded this authority to conclude TIEAs with any country.

2003,[19] encouraged countries around the world to use bilateral and multilateral TIEAs to combat cross border tax evasion, and increasingly used the willingness of a jurisdiction to enter into TIEAs as an indicator for avoiding its designation as an uncooperative tax haven.[20]

A few countries that have resisted signing either a tax treaty or a TIEA with the United States have instead entered into tax information exchange arrangements as part of a Mutual Legal Assistance Treaty (MLAT).[21] MLATs typically establish the parameters for the signatory countries to cooperate in criminal investigations and prosecutions. By using this mechanism to respond to tax information requests, the signatory country agrees to provide tax information only in criminal tax matters. Since most U.S. tax matters are handled in civil rather than criminal proceedings, this approach severely restricts tax information exchanges between the two countries.[22]

A recent U.S. Government Accountability Office (GAO) study examined how the United States utilized its tax treaties, TIEAs, and MLATs to combat offshore tax evasion. GAO found that the United States had used the agreements to establish automatic information exchanges with 25 foreign jurisdictions that, in 2010 alone, provided the IRS with about 2.1 million data items.[23] GAO also determined that, over the five year period from 2006 to 2010, the IRS had made a comparatively limited number of requests for information about specified taxpayers, initiating a total of about 900 such requests, ranging from a low of 165 to a high of 236 requests per year. Each of those requests could refer to one or multiple taxpayers. GAO further noted that the U.S. request activity was concentrated among a small group of countries, and that about 700 of the 900 requests made by the IRS involved a single foreign jurisdiction, which was not named in the report due to IRS confidentiality rules. GAO also observed that the median time to resolve a U.S. request for information was 149 days, or about five months. Together, the data indicated that the IRS made relatively few international requests for information, perhaps in part because of the time consuming process involved.

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[19] For the text of the OECD model TIEA, see OECD website, "Agreement on Exchange of Information on Tax matters," http://www.oecd.org/ctp/exchange-of-tax-information/2082215.pdf.

[20] See discussion of OECD initiative on uncooperative tax havens, infra.

[21] Some countries have both a MLAT and a tax treaty or tax information exchange agreement with the United States.

[22] A 2007 OECD assessment of 82 countries found that 17, all known tax havens, had limited their participation in tax information exchanges to criminal tax matters. See "Tax Co-operation: Towards a Level Playing Field – 2007 Assessment by the Global Forum on Taxation," Report No. ISBN-978-92-64-03902-5 (October 2007).

[23] "Tax Administration: IRS's Information Exchanges with Other Countries Could Be Improved through Better Performance Information," prepared by GAO, Report No. GAO-11-730 (Sept. 2011).

Qualified Intermediary Program. In addition to seeking information from foreign tax authorities, in 2000, the United States launched a major initiative called the Qualified Intermediary (QI) Program to obtain information from foreign financial institutions.[24] The QI Program, which was launched in 2000 and took effect in 2001, was designed to encourage foreign financial institutions voluntarily to report to the IRS U.S.-connected payments deposited into foreign accounts and to withhold and remit taxes on that income as required by U.S. tax law. Although thousands of foreign financial institutions eventually participated in the QI Program, program limitations and flaws led to abuses and minimal disclosures to the IRS.

The QI Program focused primarily on U.S. source income.[25] U.S. source income refers to income that originates in the United States, such as dividends paid on U.S. stock; capital gains paid on sales of U.S. stock or real estate; royalties paid on U.S. assets; rent paid on U.S. property; interest paid on U.S. deposits; and other types of "fixed, determinable, annual, or periodic income."[26] Most of this income, when paid to a U.S. person, is taxable; most of it is not taxable when paid to a non-U.S. person, in an attempt to attract foreign investment to the United States.[27]

The QI Program sought to enlist foreign financial institutions in the U.S. effort to collect U.S. taxes owed on U.S. source income, by offering participating institutions reduced paperwork and reduced disclosure obligations. The QI Program applied only to foreign financial institutions that bought and sold U.S. securities on behalf of their clients through securities accounts opened at U.S. financial institutions.[28] U.S. Treasury regulations, which took effect in 2001, required U.S. financial institutions to withhold 30% of the income earned on U.S. investments maintained in a foreign financial account, unless the foreign financial institution provided the U.S. withholding agent with the names of the

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[24] For more information about the QI Program, see 26 U.S.C. §§ 1441-43; Treas. Reg. § 1.1441-1(e)(5); and Revenue Procedure 2000-12, 2000-4 I.R.B. 387, http://www.irs.gov/pub/irs-drop/rp-00-12.pdf.

[25] The QI Agreement also required the reporting of two other categories of income: (1) proceeds from the sale of non-U.S. securities if the sale was effected by a broker within the United States; and (2) foreign source income, such as dividends, interest, rents, royalties or other fixed, determinable, annual, or periodic income, if that foreign income was paid in the United States. See Treas. Reg. §§ 1.6045-1(a)(1), 1.6042-3(b), 1.6049-5(b)(6); "U.S. Tax and Reporting Obligations for Foreign Intermediaries' Non-U.S. Securities," 47 Tax Notes Int'l 913 (9/3/2007).

[26] See, e.g., "Fixed, Determinable, Annual, Periodical (FDAP) Income," prepared by IRS, http://www.irs.gov/Individuals/International-Taxpayers/Fixed,-Determinable,-Annual,-Periodical-(FDAP)-Income.

[27] An exception is U.S. stock dividend income, which is taxable even when paid to a non-U.S. person.

[28] Since almost all U.S. securities are denominated in U.S. dollars and sold through U.S. financial accounts, virtually all foreign financial institutions active in the U.S. securities markets were eligible to participate in the QI Program.

beneficial owners of the accounts.[29] In effect, those regulations required foreign financial institutions doing business with U.S. financial institutions to disclose their clients by name or risk 30% of their client's income being withheld by the U.S. financial institution. Even facing that 30% penalty, however, many foreign financial institutions were reluctant to disclose client names, not only because it invited the U.S. financial institution to compete for their clients, but also because it undermined bank secrecy. The QI Program was designed, in part, to resolve that dilemma for foreign financial institutions.

To participate in the QI Program, a foreign financial institution had to voluntarily sign a standardized agreement with the IRS.[30] By signing the agreement, the foreign financial institution would act as the U.S. withholding agent for its clients and to comply with the withholding obligations set out in U.S. tax law for clients with U.S. source income. In addition, the institution agreed to put "Know-Your-Customer" procedures in place to identify the beneficial owners of its accounts so that it could identify all accountholders.

To carry out its withholding obligations, the foreign financial institution agreed to obtain a W-9 or W-8 Form from all of its clients who bought or sold U.S. securities through any account for which the foreign financial institution was a designated QI participant. Those forms, which each client was required to complete and provide to the foreign financial institution, identified the client as either a U.S. or non-U.S. person.[31] For every client who completed a W-9 Form – indicating the client was a U.S. person – the foreign financial institution agreed to file an annual, individualized 1099 Form with the IRS, reporting the client's name, taxpayer identification number, and all "reportable payments" made to the client's accounts.[32] In contrast, for every non-

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[29] See Treasury Regulations 1.1441-1, et seq., adopted in T.D. 8881, 2000-1 C.B. 1158 (5/5/2000).

[30] For a copy of the model QI agreement, see Rev. Proc. 2000-12, http://www.irs.gov/pub/irs-drop/rp-00-12.pdf.

[31] W-9 Forms must be filed for "U.S. persons," defined as U.S. citizens and U.S. resident aliens; corporations, partnerships, and associations organized under U.S. law; domestic estates; and domestic trusts. See W-9 Form, Request for Taxpayer Identification Number and Certification (Rev. 08-2013), General Instructions. http://www.irs.gov/pub/irs-pdf/iw9.pdf. W-9 Forms ask an accountholder to provide their name, address, account numbers, and Taxpayer Identification Number (TIN). W-8 Forms are filed for non-U.S. persons. W-8BEN Forms are filed for non-U.S. persons who beneficially own an account opened in the name of an intermediary, such as a bank, attorney, trustee, corporation, trust, or foundation. See Instructions for W-8BEN Form, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Rev. 2-2006), http://www.irs.gov/pub/irs-pdf/iw8ben.pdf. On the W-8BEN form, the nominal accountholder is supposed to identify the true owner of the assets, the so-called "beneficial owner," by providing, among other details, the owner's name, country of residence, and, as required, U.S. taxpayer identification number. See W-8BEN form, Certificate of Foreign Status of Beneficial Owner for United States Withholding, http://www.irs.gov/pub/irs-pdf/fw8ben.pdf.

[32] "Reportable payments" include several categories of income: (1) "reportable amounts," which are U.S. source payments such as interest, dividends, rents, royalties and other fixed, determinable, annual, or periodic income; (2) sales of foreign securities if effected in the United

U.S. person filing a W-8 or W-8BEN Form, the foreign financial institution was excused from filing an individualized 1042S Form reporting the account information to the IRS. Instead, QI participants were allowed to pool all of its non-U.S. clients' reportable payments, aggregate the total amounts in various categories such as by dividend income, interest, or capital gains, and then file a single 1042 Form for each category of income – called "pooled reporting." The foreign financial institution was required to calculate the total amount of tax withheld for each pooled category, and remit the withheld taxes to the IRS on an aggregated basis.

The pooled 1042 Forms filed by QI participants did not contain any client names or client-specific information; instead each form contained a single aggregate figure for a single category of income paid by the foreign financial institution during the year to all of its non-U.S. accountholders that traded U.S. securities. The foreign financial institution was also allowed to remit the withheld taxes in aggregated amounts to the IRS, with no breakdown for individual clients. For example, in the case of U.S. stock dividends, the QI participant could report the total amount of dividend payments made to all of its non-U.S. accountholders during the year on a single 1042 Form, and remit 30% of that total to the IRS, without providing any client-specific information. The practical effect was to preserve bank secrecy for non-U.S. accountholders, since the foreign financial institution was under no obligation to disclose any client names.

Because U.S. securities transactions are bought and sold in U.S. dollars, foreign financial institutions are required to execute U.S. securities transactions through dollar accounts at U.S. financial institutions. If a foreign financial institution also participated in the QI Program, it could designate those accounts as "QI Accounts." If the foreign financial institution did not participate in the program, it had only "Non-QI" or "NQI Accounts." Foreign financial institutions were required to designate each securities account they maintained with a U.S. financial institution as either a QI or NQI Account. With both types of accounts, the foreign financial institution was required to track the dividends derived from U.S. securities and other reportable payments made to individual client accounts. With a NQI Account, the foreign financial institution was also required to provide individual client names and account information to the U.S. financial institution, which in turn reported and remitted the withholding taxes to the IRS. But with a QI Account, the foreign financial institution could submit to the IRS forms using pooled reporting and aggregate withholdings, without any client-

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States; and (3) foreign-source interest, dividends, rents, royalties, or other fixed, determinable, annual, or periodic income, if paid in the United States. See, e.g., "U.S. Tax and Reporting Obligations for Foreign Intermediaries' Non-U.S. Securities," 47 Tax Notes Int'l 913 (9/3/2007).

specific information, shielding their client names from the IRS (and their American competitors) while maintaining access to the lucrative U.S. securities market.

To ensure that the program was operating as intended, QI participants were required to agree to an auditing regime. Generally, QI audits were conducted by external auditors chosen by the QI participant. To maintain client secrecy, the IRS agreed to forego access to the raw information reviewed by the external auditor, but did set the audit parameters, reviewed the auditor qualifications, and determined whether the auditor faced any impediments to accurately review the QI participant's performance. Audits were required in the second and fifth years of the QI agreement, with audit reports remitted to the IRS. If an audit report raised concerns within the IRS, a second phase audit was required, focusing on the areas of concern. If the concerns continued, a third phase could be ordered. According to a December 2007 review of the QI Program by GAO, "high rates of documentation failure, underreporting of U.S. source income, and under withholding" were the three most common reasons for third phase reviews.[33] Failure to satisfactorily resolve the concerns – or submit timely-filed audit reports – could lead to termination of the relevant QI agreement.

From the inception of the QI program until 2008, about 7,000 foreign financial institutions signed QI agreements and participated in the program.[34] Due to mergers, withdrawals, and terminations, the IRS estimated that, by 2008, about 5,500 QI agreements were active and that, since its inception, about 100 foreign financial institutions had been involuntarily terminated from the QI program.[35]

By 2007, evidence was emerging that some foreign financial institutions had been manipulating their QI reporting obligations to avoid reporting U.S. client accounts to the IRS. In its 2007 study, for example, GAO noted that QI reporting could be avoided in a number of ways. Since the QI reporting obligations attached only to accounts holding U.S. securities, a U.S. accountholder could avoid them simply by avoiding the purchase of U.S. securities. GAO also noted that if a U.S. person formed a foreign corporation and opened a foreign bank account in the name of that corporation, foreign banks could treat those accounts as non-U.S. accounts that were outside QI disclosure requirements.[36] GAO explained:

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[33] 12/2007 "Tax Compliance: Qualified Intermediary Program Provides Some Assurance That Taxes on Foreign Investors are Withheld and Reported, but Can Be Improved," prepared by the Government Accountability Office, at 26, (hereinafter "2007 GAO Report on QI Program").
[34] Subcommittee briefing by the IRS (5/9/08) (regarding the QI Program).
[35] Id.
[36] 2007 GAO Report on QI Program, at 21.

> "Under current U.S. tax law, corporations, including foreign corporations, are treated as the taxpayers and the owners of assets of their assets and income. Because the owners of the corporation are not known to [the] IRS, individuals are able to hide behind the corporate structure."[37]

GAO warned that the consequence under the QI Program was that "U.S. persons may evade taxes by masquerading as foreign corporations."[38]

GAO also warned: "Even if withholding agents learn[ed] the identities of the owners of foreign corporations while carrying out their due diligence responsibilities, they do not have a responsibility to report that information to IRS."[39] GAO observed that, to the contrary, "IRS regulations permit withholding agents (domestic and QIs) to accept documentation declaring corporations' ownership of income at face value, unless they have 'a reason to know' that the documentation is invalid."[40] GAO observed that, while the QI agreement "implicitly" required foreign financial institutions to use their Know-Your-Customer documentation to assess the validity of a W-8 certificate, there was no requirement that foreign corporations beneficially owned by U.S. persons be treated as U.S. accountholders that should be disclosed to the IRS.[41]

In 2008, this Subcommittee held a hearing exposing how two major international banks, UBS AG, a Swiss bank that was also one of the largest banks in the world, and LGT, a bank owned by the royal family of Liechtenstein, used loopholes to circumvent their QI reporting obligations and, from 2001 to 2007, avoided reporting tens of thousands of U.S. client accounts with billions of dollars in undeclared assets.[42] The Subcommittee presented evidence that, among other actions, the banks had helped some U.S. clients engage in a massive sell-off of their U.S. securities; helped others establish offshore structures to assume nominal ownership of their accounts and treated them as non-U.S. accounts outside the QI reporting regime; and helped many U.S. clients maintain undeclared accounts despite evidence they were hiding assets from the IRS. Both banks later admitted wrongdoing in facilitating tax evasion by their U.S. clients by providing them with undeclared accounts. A later statement of facts in one related criminal case contained this conclusion: "By concealing the U.S. clients' ownership and control in the assets held offshore, [the defendant], the Swiss Bank,

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[37] Id.
[38] Id. in "Highlights" section summarizing report.
[39] Id. at 21-22.
[40] Id. at 22.
[41] Id. at 12, 22.
[42] "Tax Haven Banks and U.S. Tax Compliance," hearing before the Permanent Subcommittee on Investigations, S. Hrg. 110-614 (July 17 and 25, 2008).

its managers and bankers evaded the requirements of the Q.I. program, defrauded the IRS and evaded United States income taxes."[43]

FATCA Automatic Disclosures. After learning in 2008, from the UBS, LGT, and other cases, of the extent of U.S. client use of hidden foreign bank accounts to evade U.S. taxes, in 2010, Congress enacted legislation to obtain information about foreign financial accounts held by U.S. persons, entitled the Foreign Account Tax Compliance Act (FATCA).[44] Sponsored by Congressman Charles Rangel and Senator Max Baucus, FATCA required foreign financial institutions either to agree to disclose to the United States foreign accounts held by U.S. persons or begin incurring a 30% withholding tax on all investment income received from the United States.

Set up to take effect in stages with the first steps in 2013, the law is designed to require a wide array of foreign financial institutions, including banks, broker-dealers, investment advisers, hedge funds, private equity funds, and others, to disclose certain accounts held by U.S. persons or incur the 30% withholding tax otherwise imposed by FATCA. Participating foreign financial institutions will have to provide annual disclosures of accountholder names and basic account information, including account balances. If a recalcitrant U.S. accountholder is able to block disclosure of the required information or if a foreign financial institution accountholder declines to participate in FATCA, the FATCA-compliant financial institution would be required to withhold and remit the 30% tax on any U.S.-connected payments to their accounts.[45]

To implement the law, foreign governments can either permit their financial institutions to sign FACTA agreements directly with the IRS, or the government can itself enter into one of two intergovernmental agreements with the United States. Treasury and the IRS have made public the two model alternatives for the intergovernmental agreements. Both are designed to "facilitate the effective and efficient implementation of FATCA by eliminating legal barriers to participation, reducing administrative burdens, and ensuring the participation of all non-exempt financial institutions in a partner jurisdiction."[46] Under the first alternative, known as Model 1 IGA, the foreign government agrees to collect the specified FATCA disclosure information, including U.S.

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[43] United States v. Birkenfeld, Case No. 08-CR-60099-ZLOCH (S.D. Fla.) Statement of Facts (10/06/2008) at 3, http://www.justice.gov/usao/fls/PressReleases/Attachments/080619-01.StatementofFacts.pdf.

[44] FATCA was enacted as part of the Hiring Incentives to Restore Employment Act of 2010, P.L. 111-147.

[45] See 1/17/2013 "Treasury and IRS Issue Final Regulations to Combat Offshore Tax Evasion," Treasury Department Press Release, http://www.treasury.gov/press-center/press-releases/Pages/tg1825.aspx.

[46] Id.

accountholder names, from its financial institutions and exchange the information, on an automated reciprocal basis, with the United States.[47] Under the second alternative, known as Model 2 IGA, the foreign government agrees to permit its financial institutions to register with and supply specified FATCA disclosures directly to the IRS, with government-to-government cooperation to overcome any legal impediments to sharing the information.[48] As of February 2014, the United States has concluded IGA agreements with 22 jurisdictions and is negotiating agreements with many more.[49]

FATCA provides a much stronger disclosure regime than the QI Program.[50] It covers all types of foreign financial firms and accounts, requires the disclosure of accountholder names for all covered accounts as well as account balances and other account specific information, includes accounts opened by U.S. persons in the name of an offshore entity or nominee, and requires foreign financial institutions to take note of their Know-Your-Customer and anti-money laundering information when determining account ownership.[51] On the other hand, FATCA's scope has been severely hobbled by implementing regulations which limit its application to foreign accounts with large dollar balances, a limitation with no statutory basis.[52] The implementing regulations contain a number of other non-statutory restrictions that may also limit the usefulness of the disclosures ultimately made by foreign financial institutions.

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[47] See "Agreement between the Government of the United States of America and the Government of [FATCA Partner] to Improve International Tax Compliance and to Implement FATCA," Model 1A IGA Reciprocal, Preexisting TIEA or DTC agreement (Nov. 4, 2013), http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Reciprocal-Model-1A-Agreement-Preexisting-TIEA-or-DTC-11-4-13.pdf. The United States also offers a nonreciprocal version of the agreement, referred to as Model 1B IGA. For the text of the Model 1B IGA, see the Treasury website, http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Nonreciprocal-Model-1B-Agreement-Preexisting-TIEA-or-DTC-11-4-13.pdf.

[48] See "Agreement between the Government of the United States of America and the Government of [FATCA Partner] for Cooperation to Facilitate the Implementation of FATCA," Model 2 IGA, Preexisting TIEA or DTC agreement (Nov. 4, 2013), http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Model-2-Agreement-Preexisting-TIEA-or-DTC-11-4-13.pdf. Both the Model 1 and Model 2 agreements also have two model annexes. For the text of those annexes, see the Treasury website, http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.

[49] See 2/6/2014 "U.S. Announces Agreement with Canada to Halt Offshore Tax Evasion," Treasury Department Press Release, http://www.treasury.gov/press-center/press-releases/Pages/jl2285.aspx; 11/8/2012 "U.S. Engaging with More than 50 Jurisdictions to Curtail Offshore Tax Evasion," Treasury Department Press Release, http://www.treasury.gov/press-center/press-releases/Pages/tg1759.aspx.

[50] See, e.g., "Exporting FATCA," Joshua D. Blank and Ruth Mason (2/2014), 142 Tax Notes, forthcoming; NYU Law and Economics Research Paper No. 14-05, at 3, SSRN: http://ssrn.com/abstract=2389500.

[51] Id. at 3-4; FATCA, § 501, codified at 26 U.S.C. § 1471.

[52] See Internal Revenue Bulletin 2012-8, T.D. 9567, 2/21/2012, http://www.irs.gov/irb/2012-08_IRB/ar10.html.

The U.S. effort to implement FATCA and establish automated annual account disclosures with foreign financial institutions in multiple countries is having a global impact. Not only are governments agreeing to require their financial institutions to participate, but some countries have decided to establish their own FATCA-like disclosure programs to obtain similar information for accounts opened by their nationals. The European Union, for example, is considering a proposal to establish its own automated information exchange, while six countries have already agreed to participate in a pilot program.[53] The United Kingdom has also entered into a similar information sharing arrangement with ten of its offshore territories, including Bermuda, the Cayman Islands, British Virgin Islands, and Channel Islands.[54]

FATCA's disclosure obligations and withholding tax are scheduled to begin taking effect in July 2014. As a first step, in August 2013, Treasury and the IRS began constructing a public database where foreign financial institutions can register their status as FATCA-compliant, and institutions have begun signing up.[55] The 22 intergovernmental agreements indicate that a majority of financial institutions in many countries, including Bermuda, Canada, the Cayman Islands, France, Germany, Guernsey, Isle of Man, Japan, Jersey, Mexico, Switzerland, and the United Kingdom, are expected to participate.[56] Over time, if its implementation regulations are strengthened and enforced, automated annual FATCA disclosures are designed to make it more difficult for U.S. persons to open or maintain foreign accounts hidden from the IRS.

IRS Offshore Voluntary Disclosure Program. In addition to directing information requests to foreign governments and foreign financial institutions, beginning in 2009, the IRS established an Offshore

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[53] See 6/12/2013 "Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation," No. COM(2013) 348 final, http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_cooperation/mutual_assistance/direct_tax_directive/com_2013_348_en.pdf. See also 5/27/2013 "A FATCA for the EU?" prepared by the Library for the European Parliament. http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130530/LDM_BRI(2013)130530_REV1_EN.pdf. Five countries initially agreed to participate in the pilot program, France, Germany, Italy, Spain, and the United Kingdom. In the summer of 2013, Mexico joined the pilot program as its first non-European participant. See "Mexico - FATCA-like program with European countries," prepared by KPMG (8/8/2013), https://www.kpmg.com/global/en/issuesandinsights/articlespublications/taxnewsflash/pages/mexico-fatca-like-program-with-european-countries.aspx.

[54] See, e.g., "G8: PM writes to crown dependency leaders," letter prepared by UK Prime Minister David Cameron to the heads of ten British crown dependencies and overseas territories (5/20/2013), https://www.gov.uk/government/news/g8-pm-writes-to-crown-dependency-leaders.

[55] The public database will be available starting in June 2014. See "FATCA FFI List Resources and Support Information," Internal Revenue Service (last updated 12/20/2013), http://www.irs.gov/Businesses/Corporations/FFI-List-Resources-Page.

[56] Treasury, Resource Center – FATCA, website, http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx (providing link to the list of signed intergovernmental agreements on the U.S. Treasury's website).

Voluntary Disclosure Program (OVDP) to encourage U.S. taxpayers to disclose the existence of their offshore accounts and, using a system of reduced penalties that removed the threat of criminal prosecution, pay the back taxes, interest, and penalties they owed for evading U.S. taxes. As a condition to participating in the program, the IRS required taxpayers to provide information about the offshore banks, investment firms, law firms, and others that helped them hide their assets offshore. To date, 43,000 U.S. taxpayers have used three OVDP initiatives to disclose tens of thousands of offshore accounts and have paid taxes, interest and penalties totaling about $6 billion, a total that is expected to increase.[57]

The original OVDP initiative was established in March 2009, the same month that the UBS Deferred Prosecution Agreement made clear that, as part of that settlement, UBS would be turning over to the United States the names of an unspecified number of U.S. clients with undeclared Swiss accounts. The IRS explained the reasons for establishing the OVDP as follows:

> "Recent IRS enforcement efforts in the offshore area have led to an increased number of voluntary disclosures. Additional taxpayers are considering making voluntary disclosures but are reportedly reluctant to come forward because of uncertainty about the amount of their liability for potentially onerous civil penalties. In order to resolve these cases in an organized, coordinated manner and to make exposure to civil penalties more predictable, the IRS has decided to centralize the civil processing of offshore voluntary disclosures and to offer a uniform penalty structure for taxpayers who voluntarily come forward. These steps were taken to ensure that taxpayers are treated consistently and predictably."[58]

After the OVDP was announced, many U.S. taxpayers used the program to disclose their offshore accounts out of concern that UBS would disclose their identities to settle the U.S. criminal charges against the bank and the John Doe summons seeking names of UBS clients with undeclared Swiss accounts.[59]

To participate in the program, taxpayers were required to complete an initial form with information about their offshore accounts. That information was used by the IRS Criminal Investigation Division to determine if the taxpayer's name had already been obtained by the IRS from UBS or another source. If the IRS already had the taxpayer's information prior to the initial contact, the taxpayer was not allowed into

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[57] Subcommittee briefing by the U.S. Department of Justice (12/17/2013).
[58] "Voluntary Disclosure: Questions and Answers," IRS document (9/21/2009).
[59] See, e.g., "UBS Clients Seek Amnesty on U.S. Taxes," Wall Street Journal, Carrick Mollenkamp and Evan Perez (11/24/2008), http://online.wsj.com/news/articles/SB122747979318351549.

the program and remained subject to criminal prosecution. However, if the taxpayer's information was previously unknown to the IRS, the taxpayer was allowed into the program upon supplying additional specific account information. That information included providing the name of the bank that held the account, the account balance, potential unreported income, when the account was opened, the purpose of the account, the accountholder's contacts at the bank, and the names of anyone who assisted the taxpayer in any capacity regarding the account.

Once the IRS Criminal Division obtained the required information from the taxpayer and cleared the taxpayer to participate in the program, the account information was forwarded to a central location where it was logged and analyzed by a different IRS division. That division then contacted the taxpayer to resolve their tax liability. In addition to the back tax and interest due, the taxpayer was subject to a pre-determined set of penalties for failing to file a "Report of Foreign Bank and Financial Accounts" (FBAR) with the U.S. Government. The FBAR-related penalty under the 2009 OVDP was 20% of the highest aggregate value of the financial account between 2003 and 2008. In limited situations, the penalty was reduced to 5%.

The first OVDP initiative closed in October 2009, after accepting over 15,000 participants who eventually paid back taxes, interest and penalties totaling more than $3.4 billion.[60] In 2011, as U.S. investigations into additional Swiss banks intensified, some taxpayers sought to reopen the OVDP. A second OVDP initiative was launched in 2011, with penalties that were higher than the first initiative, but still below statutory levels. During the second initiative, taxpayers again had to undergo an initial analysis to determine whether their names were already known to the IRS. If not, they could qualify for one of two reduced penalty rates, depending upon an IRS analysis that took into account a number of factors, including whether the taxpayer appeared to have intentionally evaded taxes by keeping their offshore account hidden from the U.S. Government. The reduced penalties imposed either a 5% or 12.5% penalty, based on the highest aggregate value of the financial account. The program also increased the maximum penalty from 20% during the 2009 initiative to 25%. The 2011 initiative closed in September 2011, after attracting another 18,000 participants.[61]

When the 2011 OVDP ended, IRS Commissioner Doug Shulman released information about the more than 30,000 offshore accounts that had been disclosed in connection with the two OVDP initiatives. He observed: "By any measure, we are in the middle of an unprecedented period for our global international tax enforcement efforts. We have pierced international bank secrecy laws, and we are making a serious

[60] "IRS Offshore Programs Produce $4.4 Billion to Date for Nation's Taxpayers; Offshore Voluntary Disclosure Program Reopens," IRS Press Release No. IR-2012-5 (1/9/2012).
[61] Id.

dent in offshore tax evasion."[62] The IRS later announced that the two OVDP initiatives had together obtained information from 33,000 taxpayers with undeclared offshore accounts and collected back taxes, interest, and penalties totaling about $4.4 billion, with more expected as taxpayers continued to settle their cases.

Due to strong continuing public interest, in January 2012, the IRS opened a third OVDP initiative which remains open today. The third initiative again raised the highest penalty rate, from 25% to 27.5%, while keeping in place the lower penalties of 5% and 12.5% for taxpayers who qualified for them. The 2012 initiative also introduced a "streamlined" option for "low risk" nonresidents.[63] The IRS announced that the program would "be open for an indefinite period," but could close or change its terms without notice.[64] In 2013, the program was the subject of criticism by the IRS Taxpayer Advocate for "draconian" penalties and burdensome reporting requirements.[65] As of December 2012, 39,000 taxpayers had disclosed offshore accounts through the three OVDP initiatives and paid $5.5 billion, with additional funds coming in as more taxpayers resolved their tax liability.[66]

The IRS has indicated that the OVDP filings have provided the United States with a treasure trove of information that could be used to clamp down on offshore tax evasion. To date, however, very little analysis of that information has been made public. In March 2013, the General Accountability Office (GAO) issued a report on the OVDP program.[67] As part of that effort, GAO analyzed about 10,500 OVDP filings submitted by taxpayers under the 2009 initiative. GAO determined that, in the 2009 initiative, the median offshore account amount was $570,000, while accounts with penalties greater than $1 million represented only about 6% of the cases, but accounted for almost half the penalties.

At the request of the Subcommittee, GAO also recently made public its analysis of the foreign bank account reports, known as FBARs, filed by participants in the 2009 OVDP initiative as part of their disclosure obligations.[68] GAO found that the participants had together

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[62] "IRS Shows Continued Progress on International Tax Evasion," IRS Press Release No. IR-2011-94 (9/15/2011).
[63] See 2013 Annual Report to Congress – Volume One, Taxpayer Advocate Service, "OFFSHORE VOLUNTARY DISCLOSURE: The IRS Offshore Voluntary Disclosure Program Disproportionately Burdens Those Who Made Honest Mistakes," at 232.
[64] "IRS Offshore Programs Produce $4.4 Billion to Date for Nation's Taxpayers; Offshore Voluntary Disclosure Program Reopens," IRS Press Release No. IR-2012-5 (1/9/2012).
[65] See 2013 Annual Report to Congress – Volume One, Taxpayer Advocate Service, "OFFSHORE VOLUNTARY DISCLOSURE: The IRS Offshore Voluntary Disclosure Program Disproportionately Burdens Those Who Made Honest Mistakes."
[66] "Offshore Tax Evasion: IRS Has Collected Billions of Dollars, but May be Missing Continued Evasion," No. GAO-13-318 (3/27/2013).
[67] Id.
[68] "IRS's Offshore Voluntary Disclosure Program: 2009 Participation by State and Location of Foreign Bank Accounts," Letter No. GAO-14-265R (1/6/2014).

filed over 12,800 FBARs, each of which disclosed one or more offshore accounts. Of that total, GAO determined that about 5,400 or 42% reported at least one account in Switzerland. The next highest country total was the United Kingdom with only about 1,000 accounts. GAO also determined that U.S. taxpayers across the country filed those FBARs, with the most FBARs filed by taxpayers in the five states with generally the largest populations, California (about 2,500 or 24% of the FBARs), New York (about 1,800 or 18% of the FBARs), Florida (about 1,000 or 10% of the FBARs), New Jersey (about 630 or 6% of the FBARs), and Texas (about 500 or 5% of the FBARs). No comparable analysis has yet been performed for FBARs filed in connection with the 2011 or 2012 OVDP initiatives. Nor has any analysis been made public regarding other types of information provided by OVDP participants.

The OVDP continues to provide valuable information for the United States in its efforts to combat offshore tax abuse, although it is far from clear that effective use is being made of the information generated. For taxpayers, it continues to offer a useful alternative to report undeclared offshore accounts that, potentially, number in the millions. According to the Taxpayer Advocate, "While 7.6 million U.S. citizens reside abroad and many more U.S. residents have FBAR filing requirements, the IRS received only 807,040 FBAR submissions in 2012," signaling "significant information reporting noncompliance."[69]

B. Multinational Tax Efforts To Combat Hidden Foreign Accounts

The United States is using tax exchange agreements, the QI Program, and FATCA to combat offshore tax evasion by U.S. taxpayers using hidden offshore accounts. It has also participated in multilateral initiatives undertaken by the international community to protect itself from offshore tax abuses and tax haven banks that, knowingly or unknowingly, have facilitated tax dodging by nonresidents. Among the most important of these initiatives are G8 and G20 efforts to stop cross border tax evasion, and OECD efforts to expand tax information exchange agreements and combat uncooperative tax havens.

G8 and G20 Efforts. In recent years, two key multilateral organizations in which the United States participates, the Group of 8 (G8) and Group of 20 (G20), have strengthened international cooperative efforts to combat cross border tax dodging.

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[69] 2013 Annual Report to Congress – Volume One, Taxpayer Advocate Service, "OFFSHORE VOLUNTARY DISCLOSURE: The IRS Offshore Voluntary Disclosure Program Disproportionately Burdens Those Who Made Honest Mistakes," at 229.

The G8, which assumed its current form in 1998, is composed of the governments of eight of the world's largest national economies, whose heads of state meet annually.[70] The G8 presidency rotates annually among its members, and the holder of the presidency sets the G8 agenda for the year, hosts the annual summit, and determines what ministerial meetings will take place. The G20 is formally known as the Group of Twenty Finance Ministers and Central Bank Governors, and hosts meetings of finance ministers and central bank governors from 19 major economies plus the European Union. Formed to address international financial issues, the G20 held its inaugural meeting in 1999, and the relevant finance ministers and central bank governors have continued to meet regularly. The G20 chair rotates annually and is selected from five regional groupings of its member countries. Beginning in 2008, the G20 heads of state also began to meet on a regular basis, and now hold annual summits.

Over the past decade, the G8 and G20 have become increasingly vocal about tackling cross border tax evasion, especially through tax havens. In 2004, for example, the G20 finance ministers and central bank governors issued a communique supporting tax information exchanges across international borders:

> "We reaffirmed our commitment to fight the abuse of the international financial system in all forms. To this end, we have committed ourselves to the high standards of transparency and exchange of information for tax purposes that have been developed by the OECD's Committee on Fiscal Affairs as set out in the attached statement. We will work to implement the high standards of transparency and effective exchange of information through legal mechanisms such as bilateral information exchange treaties, and we also call on those financial centres and other jurisdictions within and outside the OECD which have not yet adopted these standards to follow our lead and take the necessary steps, in particular in allowing access to bank and entity ownership information."[71]

In 2005 and 2006, the G8 heads of state made similar statements.[72]

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[70] The origin of the Group of 8 is a 1975 summit attended by representatives of six governments, France, Italy, Japan, West Germany, the United Kingdom, and the United States, leading to the name, Group of Six or G6. The following year Canada joined the group, producing the Group of 7. In 1998, Russia joined the group which then became known as the G8. The European Union is also represented within the G8 but cannot host or chair summits.

[71] 11/21/2004 "G20 Communique-Meeting of Finance Ministers and Central Bank Governors, Berlin, 20-21 November 2004," , at ¶9, http://www.g20.utoronto.ca/ministerials.html#2004.

[72] See 7/2005 "The Gleneagles Communique," G8 Communique, at ¶14(i), http://www.g8.utoronto.ca/summit/2005gleneagles/communique.pdf.; 7/17/2006 "G8 Chair's Summary, St. Petersburg," G8 Communique, http://www.g8.utoronto.ca/summit/2006stpetersburg/summary.html.

In 2008, after the UBS and LGT scandals sparked international outrage about tax haven banks helping high net worth individuals evade the taxes needed to prop up banks during the financial crisis, the G20 intensified its focus on tax haven abuses. Among other actions, the G20 supported efforts by the OECD to promote the exchange of tax information across borders upon request, issue a list of uncooperative tax havens, and impose sanctions on jurisdictions that impeded tax enforcement.

After a number of previously reluctant countries announced that they would adopt the OECD's standards for responding to specific requests for information to combat cross border tax evasion, the G20 heads of state issued a joint communique at an April 2009 summit declaring: "The era of bank secrecy is over." The leaders also announced a joint commitment to identify and take action against uncooperative tax havens:

> "In particular, we agree ... 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."[73]

Later in 2009, the G20 leaders held a second summit and issued a declaration that again addressed tax haven issues and warned of taking sanctions against uncooperative jurisdictions:

> "Our commitment to fight non-cooperative jurisdictions (NCJs) has produced impressive results. We are committed to maintain the momentum in dealing with tax havens, money laundering, proceeds of corruption, terrorist financing, and prudential standards. ... The main focus of the [OECD's Global Forum on Transparency and Exchange of Information]'s work will be to improve tax transparency and exchange of information so that countries can fully enforce their tax laws to protect their tax base. We stand ready to use countermeasures against tax havens from March 2010."[74]

After U.S. enactment of FATCA, by 2013, G20 and G8 world leaders announced their support for automated tax information

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[73] 4/2/2009 "London Summit-Leaders' Statement, 2 April 2009," G20 Communique, at 4, http://www.g20.utoronto.ca/2009/2009communique0402.pdf. See also 4/2/2009 "Declaration on Delivering Resources Through the International Financial Institutions, London Summit, 2 April 2009," http://www.g20.utoronto.ca/2009/2009delivery.pdf; "Obama Plays Peacemaker in French-Chinese Smackdown Over Tax Havens," ABC News Political Punch Blog, Huma Khan (4/2/2009), http://blogs.abcnews.com/politicalpunch/2009/04/source-obama-pl.html.

[74] 9/25/2009 "Leaders' Statement: The Pittsburgh Summit," at 15, http://ec.europa.eu/commission_ 2010-2014/president/pdf/statement_20090826_en_2.pdf.

exchanges as the new international standard for countries combating cross border tax evasion. An April 2013 declaration by the G20 finance ministers and central bank governors meeting in Washington, D.C. stated in part:

> "More needs to be done to address the issues of international tax avoidance and evasion, in particular through tax havens, as well as non-cooperative jurisdictions. ... In view of the next G20 Summit, we also strongly encourage all jurisdictions to sign or express interest in signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and call on the OECD to report on progress. We welcome progress made towards automatic exchange of information which is expected to be the standard and urge all jurisdictions to move towards exchanging information automatically with their treaty partners, as appropriate. We look forward to the OECD working with G20 countries to report back on the progress in developing of a new multilateral standard on automatic exchange of information, taking into account country-specific characteristics."[75]

At a June 2013 summit, the G8 world leaders issued a communique that went even farther:

> "Tax systems – essential to fairness and prosperity for all. We commit to establish the automatic exchange of information between tax authorities as the new global standard, and will work with the [OECD] to develop rapidly a multilateral model which will make it easier for governments to find and punish tax evaders. ... We will support developing countries to collect the taxes owed them, with access to the global tax information they need. We agree to publish national Action Plans to make information on who really owns and profits from companies and trusts available to tax collection and law enforcement agencies, for example through central registries of company beneficial ownership."[76]

In September 2013, at their latest summit, the G20 leaders re-confirmed their commitment to automatic tax information exchange, calling for automated exchanges to take effect by the end of 2015:

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[75] 4/19/2013 "G20 Meeting of Finance Ministers and Central Bank Governors, Washington DC, April 19, 2013" at ¶14, http://www.g20.utoronto.ca/2013/2013-0419-finance.html/.

[76] 6/18/2013 "2013 Lough Erne G8 Communique," at 1, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207771/Lough_Erne_2013_G8_Leaders_Communique.pdf. The communique also addressed tax evasion by multinational corporations. For more detail on how it addressed both sets of tax issues, see 6, 23-24.

> "In a context of severe fiscal consolidation and social hardship, in many countries ensuring that all taxpayers pay their fair share of taxes is more than ever a priority. Tax avoidance, harmful practices and aggressive tax planning have to be tackled. ... We commend the progress recently achieved in the area of tax transparency and we fully endorse the OECD proposal for a truly global model for multilateral and bilateral automatic exchange of information. Calling on all other jurisdictions to join us by the earliest possible date, we are committed to automatic exchange of information as the new global standard, which must ensure confidentiality and the proper use of information exchanged, and we fully support the OECD work with G20 countries aimed at presenting such a new single global standard for automatic exchange of information by February 2014 and to finalizing technical modalities of effective automatic exchange by mid-2014. In parallel, we expect to begin to exchange information automatically on tax matters among G20 members by the end of 2015. We call on all countries to join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters without further delay. We look forward to the practical and full implementation of the new standard on a global scale."[77]

This decade of G8 and G20 statements reflect not only the growing international consensus on the need to stop tax haven banks from facilitating tax evasion, but also global determination to take practical steps to stop abusive practices.

OECD Uncooperative Tax Haven Initiative. In calling for action to stop tax haven abuses, the G8 and G20 leaders repeatedly referred to the work undertaken by the OECD, a coalition of 34 nations, including the United States, which, since 1961, has been committed to advancing democratic governments and market economies. Nearly 20 years ago, in 1996, in part at the urging of the United States, the OECD launched an initiative to curb "harmful tax practices" that impede efforts by individual countries to enforce their tax laws.[78]

In 1998, the OECD issued a report which, among other matters, criticized tax havens that failed to cooperate with international tax

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[77] 9/6/2013 "G20 Leaders' Declaration" after St. Petersburg summit, at 12-13 https://www.g20.org/sites/default/files/g20_resources/library/Saint_Petersburg_Declaration_ENG.pdf. See also 7/20/2013 "G20 Communiqué: Meeting of Finance Ministers and Central Bank Governors," after Moscow meeting, at ¶¶ 18-19, https://www.mof.go.jp/english/international_policy/convention/g20/130720.pdf. Both the September and July documents also condemned and supported action to stop cross border tax avoidance by multinational corporations.

[78] See, e.g., "Fighting Offshore Tax Evasion," OECD Centre for Tax Policy and Administration, http://www.oecd.org/fr/ctp/fightingoffshoretaxevasion.htm.

enforcement efforts by refusing to provide requested information.[79] The OECD defined a "tax haven" as a country with no or nominal taxation, ineffective tax information exchange with other countries, and a lack of transparency in its tax or regulatory regime, including excessive bank or beneficial ownership secrecy.[80] In 2000, the OECD published a second report focused on how bank secrecy laws in many tax havens impeded their cooperation with international tax information requests. The report stated that all OECD countries should "permit tax authorities to have access to bank information, directly or indirectly, for all tax purposes so that tax authorities can fully discharge their revenue raising responsibilities and engage in effective exchange of information."[81]

As a result of these two reports, in June 2000, the OECD published a list of 35 offshore jurisdictions that it planned to include in a subsequent list of "uncooperative tax havens," unless the countries made written commitments to exchange information in international criminal tax matters by December 2003, and in international civil tax matters by December 2005.[82] Also in 2000, the OECD established a Global Forum on Taxation, with participants drawn from OECD member countries and non-member offshore jurisdictions, to discuss transparency and information exchange issues.

In an effort to avoid being included in either the initial list of 35 offshore jurisdictions or the OECD's subsequent list of uncooperative tax havens, six countries gave the OECD signed commitment letters in early 2000, promising to provide effective tax information exchange in criminal and civil matters by the specified deadlines.[83] In response, the OECD omitted those countries from the list of 35 countries it published in 2000. Other countries provided similar commitment letters to the

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[79] 1998 "Harmful Tax Competition: An Emerging Global Issue," OECD, http://www.oecd.org/tax/transparency/44430243.pdf.

[80] 5/3/2007 Prepared testimony of OECD Center for Tax Policy Director Jeffrey Owens, "Offshore Tax Evasion: Stashing Cash Overseas," hearing before the Senate Committee on Finance, at 5, http://www.finance.senate.gov/hearings/hearing/?id=e1f5f3eb-c76b-6516-53fe-c82e289d853b.

[81] 2000 "Improving Access to Bank Information for Tax Purposes," prepared by the OECD, at 14, http://www.oecd.org/tax/exchange-of-tax-information/2497487.pdf. In 2004, this standard was incorporated into paragraph 5 of Article 26 of the OECD Model Tax Convention on Income and on Capital.

[82] 6/2000 "Towards Global Tax Co-operation: Progress in Identifying and Eliminating Harmful Tax Practices," at 17, http://www.oecd.org/tax/transparency/44430257.pdf (listing the 35 tax havens identified by the OECD); also reprinted in the "What is the U.S. Position on Offshore Tax Havens?," hearing before the Permanent Subcommittee on Investigations, S. Hrg. 107-152 (7/18/2001), 125-152, at 140. See also chart prepared by the Subcommittee entitled, "2000 OECD List of Offshore Tax Havens," id., at 91.

[83] 5/3/2007 Prepared testimony of OECD Center for Tax Policy Director Jeffrey Owens, "Offshore Tax Evasion: Stashing Cash Overseas," hearing before the Senate Committee on Finance, at 5, http://www.finance.senate.gov/hearings/hearing/?id=e1f5f3eb-c76b-6516-53fe-c82e289d853b.

OECD in 2000 and 2001, and the OECD agreed to omit them from the list of uncooperative tax havens being prepared.

By 2002, 28 of the original 35 offshore jurisdictions identified by the OECD had committed to providing effective information exchange in criminal and civil tax matters by the specified dates.[84] As a result, only seven countries were actually named on the OECD's official list of uncooperative tax havens made public in mid-2002.[85]

Also in 2002, the OECD published a model tax information exchange agreement that countries could sign on a bilateral or multilateral basis to meet their commitments to tax information exchange.[86] The model agreement focused in particular on establishing procedures for countries supplying information in response to a specific request from another country. As indicated earlier, international organizations like the G8 and G20 issued statements of support for the OECD's model agreement.

In 2006, the OECD issued a new report assessing the legal and administrative frameworks for tax transparency and tax information exchange in 82 countries.[87] The purpose of this assessment was to help the OECD determine "what is required to achieve a global level playing field in the areas of transparency and effect exchange of information for tax purposes."[88] In October 2007, the OECD updated its 82-country assessment.[89] The OECD wrote:

> "Significant restrictions on access to bank [information] for tax purposes remain in three OECD countries (Austria, Luxembourg, Switzerland) and in a number of offshore financial centres (e.g. Cyprus, Liechtenstein, Panama and Singapore). Moreover, a number of offshore financial centres that committed to implement

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[84] These 28 countries were in addition to the 6 countries that, in early 2000, had committed to tax information exchange in civil and criminal matters to avoid being included in the list of 35 offshore jurisdictions.

[85] See 4/18/2002 "The OECD List of Unco-operative Tax Havens – A statement by the Chair of the OECD's Committee on Fiscal Affairs," OECD Press Release http://www.oecd.org/ctp/harmful/theoecdlistofunco-operativetaxhavens-astatementbythechairoftheoecdscommitteeonfiscalaffairsgabrielmakhlouf.htm.

[86] See OECD Model Agreement on Exchange of Information on Tax Matters, http://www.oecd.org/ctp/exchange-of-tax-information/2082215.pdf. This model agreement, with revisions adopted in 2005 and 2012, is also included in Article 26 of the OECD Model Tax Convention on Income and on Capital, which is similar to the U.S. Model Income Tax Convention.

[87] 5/2006 "Tax Co-operation: Towards a Level Playing Field – 2006 Assessment by the OECD Global Forum on Taxation," OECD Report No. ISBN-92-64-024077 http://www.oecd.org/tax/transparency/44430286.pdf.

[88] Id. at 7.

[89] See generally, 10/2007 "Tax Co-operation: Towards a Level Playing Field – 2007 Assessment by the Global Forum on Taxation," OECD Report No. ISBN-978-92-64-03902-5, http://www.oecd.org/tax/transparency/44430309.pdf.

standards on transparency and the effective exchange of information standards developed by the OECD's Global Forum on Taxation have failed to do so."[90]

In March 2007, the OECD sponsored a series of meetings with more than 100 tax inspectors from 36 countries to discuss aggressive tax planning schemes seen within their jurisdictions, involving those involving tax havens.[91]

It was in the midst of this OECD effort focusing attention on tax haven abuses that the UBS and LGT scandals came to light. Both banks were shown to have provided undeclared accounts to the nationals of multiple nations, sparking tax authority protests worldwide.[92] In response to international condemnation of their banks' actions, Liechtenstein and later Switzerland announced that they would no longer use bank secrecy to facilitate tax evasion. Both countries also announced that they had decided to adopt the OECD standard for tax information exchange and were ready to enter into TIEAs with other countries.[93] Those announcements set off a chain reaction in other jurisdictions with bank secrecy practices, and by March 2009, countries that included well known tax havens, including Austria, Belgium, Luxembourg, and Monaco, abruptly pledged for the first time that they would share tax information and cooperate with international tax enforcement.

In September 2009, at a meeting in Mexico City, the OECD announced that, for the first time, all 87 countries in its Global Forum on Taxation and Exchange of Information had agreed to adopt the OECD model agreement on tax information exchange.[94] OECD Secretary-

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[90] 10/12/2007 "OECD reports progress in fighting offshore tax evasion, but says more efforts are needed," OECD Press Release, http://www.oecd.org/general/oecdreportsprogressinfighting offshoretaxevasionbutsaysmoreeffortsareneeded.htm.

[91] See, e.g., "Offshore Financial Centers Playing Key Role In Aggressive Tax Plans, OECD Official Says," BNA Daily Report for Executives (3/27/2007).

[92] See, e.g., "Liechtenstein tax scandal makes waves across Europe," AFP (2/25/2008), http://www.google.com/hostednews/afp/article/ALeqM5i80VpHLp9ujcf-HLMOmtRnQbX8hw?hl=en; "Swiss banking dispute moves up a gear," Financial Times, Haig Simonian (3/23/2009), http://www.ft.com/intl/cms/s/0/61618274-17db-11de-8c9d-0000779fd2ac.html#axzz2u5XIyg7q.

[93] See "The Liechtenstein Declaration," prepared by Liechtenstein (3/12/2009), http://www.oecd.org/ctp/harmful/42826280.pdf; "Switzerland moves towards substantial implementation of tax information exchange," prepared by OEDC (9/23/2009), http://www.oecd.org/ctp/exchange-of-tax-information/switzerlandmovestowardssubstantialimplementationoftaxinformationexchange.htm. See also "Tax Havens Likely to be Target of G-20 Nations," New York Times, Matthew Saltmarsh (3/12/2009), http://www.nytimes.com/2009/03/13/business/worldbusiness/13liechtenstein.html?ref=liechtenstein&_r=0.

[94] See "OECD Global Forum consolidates tax evasion revolution in advance of Pittsburgh," (9/2/2009), http://www.oecd.org/ctp/harmful/oecdglobalforumconsolidatestaxevasion revolutioninadvaneeofpittsburgh.htm.

General Angel Gurría said: "[W]hat we are witnessing is nothing short of a revolution. By addressing the challenges posed by the dark side of the tax world, the campaign for global tax transparency is in full flow."[95] In addition to the wholesale adoption of the tax information exchange standards in the OECD's model agreement, the OECD won approval to establish a Peer Review Group to monitor and review "progress made towards full and effective exchange of information" on tax matters and ensure that members implemented their information exchange commitments.[96]

In 2010, the OECD worked with the Council of Europe to update the tax information exchange provisions of the Convention on Mutual Administrative Assistance in Tax Matters.[97] That Convention, first developed in 1988, was the most comprehensive multilateral instrument available in Europe supporting cooperative efforts to tackle tax evasion and avoidance.[98] It was amended to bring the Convention into alignment with the OECD's tax information exchange standards and opened it up for signature by all countries.[99] Since then, G8 and G20 leaders have called on all countries to sign the Convention and strengthen their cooperative anti-tax evasion efforts.

In 2012, again in response to requests from the G8 and G20, the OECD revised its own model tax information exchange agreement.[100] The model was revised, first, to provide a solid legal foundation for broad-based automated exchanges of information, such as those envisioned by FATCA and similar disclosure regimes. Second, its commentary was revised to make it clear that requesting countries could obtain information, not only about individual taxpayers identified by name, but also about groups of unnamed taxpayers involved in misconduct, such as the unnamed U.S. persons who opened undeclared accounts at UBS and LGT.[101] This clarification, which was made in part at the urging of the United States after making a similar change to its own model agreements, was important to make certain that the model

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[95] Id.
[96] "Summary of Outcomes of the Meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes Held in Mexico on 1-2 September 2009," http://www.oecd.org/ctp/exchange-of-tax-information/43610626.pdf.
[97] See "Convention on Mutual Administrative Assistance in Tax Matters," OECD, http://www.oecd.org/ctp/exchange-of-tax-information/conventiononmutualadministrative assistanceintaxmatters.htm.
[98] Id.
[99] See 2010 "Text of the Revised Explanatory Report to the Convention on Mutual Administrative Assistance in Tax Matters As Amended by Protocol," http://www.oecd.org/ctp/exchange-of-tax-information/Explanatory_Report_ENG_%2015_04_2010.pdf.
[100] See "Update to Article 26 of the OECD Model Tax Convention and its Commentary," (approved by the OECD Council on 7/17/2012), http://www.oecd.org/ctp/exchange-of-tax-information/120718_Article%2026-ENG_no%20cover%20(2).pdf.
[101] See id. at ¶¶ 5.1 and 5.2.

agreements could be used to obtain the names of taxpayers with hidden foreign bank accounts.

Also in 2012, the OECD launched a new "Tax Inspectors Without Borders" initiative to "help developing countries bolster their domestic revenues by making their tax systems fairer and more effective" and better able to "address tax base erosion, including tax evasion and avoidance."[102] The OECD committed to establishing, by the end of 2013, an independent foundation that would deploy experts "to work directly with local tax officials on current audits and audit-related issues concerning international tax matters," "share general audit practices," and build tax capacity in developing countries.[103] Pilot projects are now underway.[104]

In 2013, the OECD was charged by the G8 and G20 leaders with continuing work on a number of tax initiatives. First was developing a FATCA-like automated information exchange system for G20 members. As described in a September 2013 G20 communique, the OECD was charged with developing "a single global standard for automatic exchange of information by February 2014," and "finalizing technical modalities of effective automatic exchange by mid-2014," so that G20 members could "begin to exchange information automatically on tax matters among G20 members by the end of 2015."[105] The OECD was also asked to take a number of actions to combat tax avoidance and evasion by multinational corporations, including by developing a template for corporations to report their tax payments on a country-by-country basis, and by developing principles to determine how corporations should be taxed when they carry out activities in multiple countries.[106]

On February 13, 2014, the OECD released its much anticipated model multilateral agreement to enable countries to exchange

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[102] 5/10/2012 "OECD launches Tax Inspectors Without Borders," OECD Press Release, http://www.oecd.org/newsroom/taxoecdlaunchestaxinspectorswithoutborders.htm.
[103] "Tax Inspectors Without Borders," OECD, http://www.oecd.org/tax/taxinspectors.htm.
[104] Id.
[105] 9/06/2013 "G20 Leaders' Declaration" after St. Petersburg summit, at 12. https://www.g20.org/sites/default/files/g20_resources/library/Saint_Petersburg_Declaration_ENG.pdf.
[106] See "About BEPS," on the OECD website, http://www.oecd.org/tax/beps-about.htm. BEPS stands for "Base Erosion and Profit Shifting," which was the subject of two OECD reports in 2013. The OECD website explains that the BEPS project is intended to address issues related to gaps in national laws that "can be exploited by companies who avoid taxation in their home countries by pushing activities abroad to low or no tax jurisdictions." Id. The OECD has issued an "Action Plan" to "develop a new set of standards to prevent double non-taxation" by corporations operating in multiple countries, and "a multilateral instrument to amend bilateral tax treaties" to quickly implement BEPS solutions. Id. See also 5/29/2013 OECD "Declaration on Base Erosion and Profit Shifting," http://www.oecd.org/tax/C-MIN(2013)22-FINAL-ENG.pdf.

information on an automatic basis.[107] The model sets out the commitment of each signatory country to exchange financial account information on an automated annual basis. It specifies required due diligence standards, required data fields – including accountholder names, account numbers, and account balances – and common technical standards to ensure effective electronic data exchanges at minimal cost. An introduction to the model agreement stated that it "drew extensively" from the information exchange arrangements already established by the United States under FATCA and described the model as "compatible" with, though not identical to, FATCA disclosures.[108] The OECD observed that additional guidance and technical specifications would be provided by June 2014, with the goal of enabling automated reporting to begin in 2015.[109]

The OECD's landmark work on automatic tax information exchange provides an important international forum for U.S. efforts to combat tax haven banks that facilitate tax evasion by nonresidents.

C. Switzerland

One country that, over the last decade, has played a central role in issues involving hidden bank accounts is Switzerland. According to the Swiss Bankers Association, Switzerland has about 300 banks[110] and, in 2012, managed about $2.8 trillion in assets, representing about a quarter of the world's total assets and significantly more than in any other country.[111] Its two largest banks, UBS and Credit Suisse, together managed about half of those 2012 assets.[112] According to the U.S. Treasury, in 2011, banking assets held by Swiss banks represented about 820% of Switzerland's gross domestic product (GDP), demonstrating the banking sector's importance to the Swiss economy.[113] The Swiss

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[107] See 2/13/2014 "Standard for Automatic Exchange of Financial Account Information," OECD http://www.oecd.org/ctp/exchange-of-tax-information/Automatic-Exchange-Financial-Account-Information-Common-Reporting-Standard.pdf ("Under the standard, jurisdictions obtain financial information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. The standard consists of two components: a) the [Common Reporting Standard], which contains the reporting and due diligence rules and b) the Model [Competent Authority Agreement], which contains the detailed rules on the exchange of information.").

[108] Id.

[109] Id.

[110] "The Economic Significance of the Swiss Financial Centre-Banks and branches in Switzerland," Swiss Bankers Association, http://www.swissbanking.org/en/home/finanzplatz-link/facts_figures.htm.

[111] See 7/29/2013 "The Financial Centre: Engine of the Swiss Economy," Swiss Bankers Association at 16, http://www.swissbanking.org/en/20130715-fp_motor_der_schweizer_wirtschaft.pdf.

[112] Id. at 9.

[113] See 6/6/2011 "Remarks by Treasury Secretary Tim Geithner to the International Monetary Conference," http://www.treasury.gov/press-center/press-releases/Pages/tg1202.aspx. In contrast, banking assets represent about 100% of U.S. GDP. Id.

financial regulator is known as the Financial Market Supervisory Authority (FINMA).

Switzerland's primary financial centers are located in the cities of Geneva, Lugano, and Zurich. Its banks have been described as falling into six categories: large international banks; Cantonal banks which are Swiss government-owned commercial banks based in the country's territorial cantons; regional and savings banks; investment banks; foreign banks; and Raiffeisen banks which are Swiss cooperative banks; with "private bankers" designated as a separate category.[114]

Switzerland has long been known for its strict bank secrecy laws. Its resistance to disclosing account information can be seen in its resistance to complying with disclosure obligations in the European Savings Directive and years of resistance to adopting the OECD standards for tax information exchange. In 2013, the Tax Justice Network, a nonprofit dedicated to fighting tax evasion, ranked Switzerland number one out of 82 jurisdictions on its Financial Secrecy Index.[115]

U.S.-Swiss Tax Treaty. Switzerland and the United States also have a long history of negotiation over tax information exchanges and bank secrecy. Switzerland first entered into a tax treaty with the United States in 1951.[116] Under that treaty, Switzerland agreed to exchange information only in criminal cases involving "tax fraud," a criminal offense narrowly defined in Swiss law.[117] This limitation, unique to the Swiss, and has not appeared in any other U.S. tax treaty.

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[114] 7/29/2013 "The Financial Centre: Engine of the Swiss Economy," prepared by the Swiss Bankers Association, at 8, http://www.swissbanking.org/en/20130715-fp_motor_der_schweizer_wirtschaft.pdf.

[115] See11/7/2013 "Financial Secrecy Index," Tax Justice Network, http://www.financialsecrecyindex.com/introduction/fsi-2013-results. See also "Narrative Report on Switzerland," Tax Justice Network, http://www.financialsecrecyindex.com/PDF/Switzerland.pdf.

[116] "Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 2013," Department of State, http://www.state.gov/documents/organization/218912.pdf, at 276-277. In addition to this tax treaty, in 1973, Switzerland entered into a Mutual Legal Assistance Treaty with the United States. That MLAT, however, by its terms, generally excludes "violations with respect to taxes," and so is not used for assistance in tax matters. 1/23/1977 Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, 273 UST 2019, at Article 2. http://www.rhf.admin.ch/etc/medialib/data/rhf/recht.Par.0010.File.tmp/sr0-351-933-6-e.pdf. Switzerland also has a 1981 domestic law allowing "International Mutual Assistance in Criminal Matters," but that law is difficult to use since it is confined to criminal cases, is limited to document and testimony requests, and allows multiple appeals within Switzerland. Subcommittee meeting with the Embassy of Switzerland (7/10/2008).

[117] See, e.g., J. Springer, "An Overview of International Evidence and Asset Gathering in Civil and Criminal Tax Cases," 22 Geo. Wash. J. Int'l L. & Econ. 277, 303-8 (1988); Aubert, "The Limits of Swiss Banking Secrecy Under Domestic and International Law," 273 Int'l Tax & Bus. Law. 273, 286-88 (1984); J. Knapp, "Mutual Legal Assistance Treaties as a Way to Pierce Bank Secrecy," Case W. Res. J. Int'l L. 405-8, 418-20 (1988). Tax evasion is an administrative offense, not a criminal offense in Switzerland. The only tax-related crime in Switzerland is for "tax fraud," which is difficult to establish.

In 1996, Switzerland and the United States updated the tax treaty and, among other changes, modernized and slightly expanded the tax information exchange provisions.[118] The revised Article 26 permitted tax information exchange for both criminal and civil purposes. However, it still limited information exchange to circumstances in which the exchange of information was "necessary for carrying out the provisions of the present Convention or for the prevention of tax fraud or the like."[119]

The 1996 Protocol agreed to in connection with the revision of the tax treaty provided a new, slightly more expansive definition of "tax fraud" than what was applied in the earlier tax treaty or in Swiss law. The Protocol stated 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."[120] It explained further:

> "Fraudulent conduct is assumed in situations when a taxpayer uses, or has the intention to use a forged or falsified document ... 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 ('Lugengebaude') to deceive the tax authority."

The revised treaty provisions essentially meant that tax information could not be exchanged solely because a taxpayer had failed to file a tax return or had included false information on the return; instead, the United States had to show that some type of additional fraudulent conduct was involved.

The U.S. State Department, when submitting the 1996 treaty for ratification by the U.S. Senate, stated that the new language had "significantly expand[ed] the scope of the exchange of information between the United States and Switzerland."[121] Others criticized the continuing limited nature of Swiss assistance in U.S. tax matters.

A few years later, in 2000, the United States launched its Qualified Intermediary Program seeking additional disclosures from foreign banks with accounts opened by U.S. persons. In 2001, most Swiss banks,

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[118] See "Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with respect to Taxes on Income," (signed 10/2/1996) (hereinafter "United States-Switzerland Tax Convention"), reprinted in a Message from the President of the United States to the U.S. Senate transmitting the Convention and a related Protocol, Treaty Doc. 105-8 (6/25/1997), http://www.irs.gov/pub/irs-trty/swiss.pdf.
[119] Id., Article 26 (1). Again, this standard is unique to the Swiss and has not appeared in any other U.S. tax treaty.
[120] Id., Protocol (10).
[121] Letter of Submittal by the U.S. Secretary of State to the President regarding the United States-Switzerland Tax Convention (10/2/1996), reprinted in Treaty Doc. 105-8 (6/25/1997), at VII.

including UBS and Credit Suisse, signed QI agreements with the United States.

UBS Scandal. In 2008, the UBS scandal broke. At hearings before this Subcommittee in July 2008 and March 2009, it was disclosed that, from at least 2000 to 2007, UBS had as many as 52,000 accounts in Switzerland that were beneficially owned by U.S. clients with nearly $18 billion in assets that had not been disclosed to U.S. tax authorities.[122]

The Subcommittee hearings also disclosed that UBS used an array of secrecy tricks to help their U.S. clients avoid detection of their Swiss accounts by the IRS. Those tricks included using code names for clients to disguise their identities; sending bankers to the United States under cover of tourism or personal trips to service client accounts; providing its bankers with encrypted computers when traveling to keep client information out of the reach of tax authorities; opening accounts in the names of offshore shell companies to hide the real owners; and providing its bankers with counter-surveillance training to detect and deflect inquiries from government officials.

At the July 2008 hearing, UBS acknowledged misconduct and announced it would take responsibility for its actions. It apologized for past compliance failures, promised to close all U.S. client accounts in Switzerland unless the U.S. accountholder agreed to disclose the account to the IRS, and announced it would no longer offer undeclared offshore accounts for U.S. clients. UBS also indicated that it was prepared to cooperate with a John Doe summons that had been served on the bank by the IRS seeking the names of U.S. clients with undeclared Swiss accounts, pending negotiations between the U.S. and Swiss Governments on how it should comply.[123]

Seven months later, in February 2009, UBS entered into a Deferred Prosecution Agreement with the U.S. Department of Justice in which it admitted conspiring to defraud the United States out of tax revenues, paid a $780 million fine, and agreed not to open any more U.S. client accounts without alerting the IRS.[124] The deferred prosecution

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[122] See "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, S. Hrg. 111-30 (3/4/2009), Exhibit 12, at 3 (2004 UBS internal report analyzing U.S. client accounts opened in Switzerland: "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)." "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 accountholder who is a U.S. person.).

[123] See United States v. UBS, Case No. 09-20423-CIV-GOLD/MCALILEY (S.D. Fla. 2009), Petition to Enforce John Doe Summons (2/19/2009). The summons was served on UBS on or about July 21, 2008. Id. at ¶ 9.

[124] United States v. UBS, Case No. 09-60033-CR-COHN (S.D. Fla. 2009), Deferred Prosecution Agreement (2/18/2009).

agreement also provided that the Justice Department would seek to enforce the John Doe summons that had been served on the bank and, if UBS lost its court challenge to the summons but then failed to provide the requested information, the United States could deem that failure to be a material violation of the agreement and restart criminal proceedings against the bank.[125]

In addition, as part of the Deferred Prosecution Agreement, UBS and the Swiss Government agreed that the bank would turn over a small number of U.S. client accounts to the United States, reportedly totaling between 250 and 300.[126] The disclosure of the account information, including U.S. client names, by UBS was expressly approved by the Swiss financial regulator, FINMA.[127] Despite a subsequent Parliamentary inquiry and intense criticism by some Swiss legislators, the disclosure was ultimately upheld as lawful by the Swiss Federal Supreme Court.[128]

To settle the John Doe summons enforcement proceeding, UBS and the Swiss negotiated a complex set of agreements with the IRS and the Justice Department regarding the disclosure of additional accounts.[129] As part of that settlement, the United States and Switzerland signed an agreement setting out the criteria that would govern which UBS accounts would be required to disclose additional information, including U.S. client names.[130] The criteria included, for example, accounts with more than 1 million in Swiss francs, those opened in the name of an offshore entity, and those which had been undeclared for at least three years and produced more than 100,000 Swiss francs in average annual revenues for UBS.[131] The criteria were also designed to ensure that all of the covered accounts met the "fraud or

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[125] Id. at 9.
[126] Id. at 11-13.
[127] See "FINMA appeals Federal Administrative Court ruling," (1/21/2010) (discussing FINMA order issued on 2/18/2009), http://www.finma.ch/e/aktuell/Pages/mm-entscheid-finma-urteil-bvger-20100121.aspx.
[128] See, e.g., "UBS Data Disclosure on 255 U.S. Clients Was Legal, Court Says," Bloomberg, (7/18/2011), Elizabeth Amon. The Swiss Supreme Court overturned a lower court decision which had found that the disclosures were improper.
[129] See United States v. UBS, Case No. 09-20423-CIV-GOLD/MCALILEY (S.D. Fla. 2008). The 8/19/2009 settlement consisted of three documents. The "Settlement Agreement" between UBS and the United States set out a schedule for bank production of the requested information and, upon receiving the requested information, for the IRS to withdraw the John Doe summons. An annex set forth the text of a notice that UBS would be required to send to all of its U.S. clients about disclosing their accounts to the United States. A separate agreement between the United States and Switzerland set out the criteria governing which accounts would be disclosed. The third document was an IRS request to Switzerland for the covered account information to be produced under the U.S.-Swiss tax treaty.
[130] "Agreement Between the United States of America and the Swiss Confederation on the request for information from the Internal Revenue Service of the United States of America regarding UBS AG, a corporation established under the laws of the Swiss Confederation," (8/19/2009).
[131] Id. at Annex, ¶¶ 1-2.

the like" standard for disclosure under the 1996 U.S.-Swiss tax treaty.

Legal proceedings challenging various aspects of the U.S.-Swiss agreement were initiated by UBS clients. In one court proceeding in March 2009, the Swiss Federal Administrative Court explicitly held that the 1996 U.S.-Swiss tax treaty permitted the United States to request information about a group of taxpayers, without identifying them by name, in the circumstances of the UBS case.[132] Despite that ruling, the Swiss courts invalidated the agreement on other grounds. In response, in the summer of 2010, the Swiss Parliament took action to formally approve the agreement and the requested disclosures.[133] That Parliamentary action was then upheld by the Swiss Federal Administrative Court.[134] After that ruling, UBS began producing the promised information and, by the end of 2010, turned over about 4,450 additional accounts with related account information, including U.S. client names.[135]

Altogether, as a result of the Deferred Prosecution Agreement and the settlement of the John Doe summons, UBS reportedly turned over to the United States about 4,700 U.S. client accounts and related information, including U.S. client names. While those disclosures represented a dramatic break from past practice in Switzerland, they provided information on less than 10% of the 52,000 undeclared UBS Swiss accounts held by U.S. clients.

Revised Tax Treaty. In addition to supporting the UBS disclosures, Switzerland reversed more than a decade of tax policy, and announced in March 2009, that it would adopt the OECD standard for tax information exchange.[136] A statement issued by the Swiss Federal Council explained that it had decided to "permit the exchange of information with other countries in individual cases where a specific and justified request has been made."[137] The statement also stated:

> "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

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[132] See id. at Annex, ¶ 1.
[133] See, e.g., "Statement IRS Commissioner Doug Shulman on today's Swiss Parliament vote," (6/17/2010).
[134] See, e.g., "Swiss Court Rejects UBS Client Attempt to Halt Handover of Account Details to U.S.," BNA Daily Tax RealTime (7/19/2010).
[135] See United States v. UBS, Case No. 09-20423-CIV-GOLD/MCALILEY (S.D. Fla. 2008), Settlement Agreement (8/19/2009), at ¶ 2 (estimating that 4,450 accounts would be turned over). Since some U.S. clients held more than one Swiss account, the number of U.S. client names turned over to the United States as a result of the John Doe summons totaled less than 4,000. Subcommittee briefing by the IRS (2/21/2014).
[136] See "Switzerland to adopt OECD standard on administrative assistance in fiscal matters," press release issued by Switzerland (3/13/2009).
[137] Id.

> secrecy and resolutely rejects any form of automatic exchange of information."[138]

In accordance with its change in policy, in September 2009, Switzerland signed a Protocol with the United States amending their 1996 tax treaty to incorporate the OECD standard for tax information exchange.[139] The new language eliminated the Swiss limitation that information could be exchanged only in cases of "fraud or the like," instead providing:

> "The competent authorities of the Contracting States shall exchange such information as may be relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention."[140]

The "may be relevant" standard for tax information exchange is the same standard that appears in the U.S. Model Income Tax Convention and U.S. law governing IRS inquiries, and has been upheld by the U.S. Supreme Court.

The 2009 Protocol also included new language in the treaty to ensure that bank secrecy laws would not bar disclosure of requested information:

> "In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information, the tax authorities of the requested Contracting State, if necessary to comply with its obligations under this paragraph, shall have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws."[141]

The 2009 Protocol was careful to make it clear that the revised treaty authorized the exchange of information only in cases where one treaty partner made a specific request to the other for information about

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[138] Id.
[139] "Protocol Amending 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 October 2, 1996," (9/23/2009).
[140] Id. at Article 3 (amending Article 26 of the 1996 Treaty).
[141] Id.

specified taxpayers.[142] The official explanatory commentary also stated that the requesting country "typically" would have to provide the name and other identifying information for the taxpayer who was the subject of the request:

> "It is understood that the competent authority of a Contracting State shall provide the following information to the competent authority of the requested State when making a request for information under Article 26 of the Convention:
>
> i) information sufficient to identify the person under examination or investigation (typically, name and, to the extent known, address, account number or similar identifying information)."[143]

The 2009 Protocol also continued to bar "fishing expeditions":

> "The purpose of referring to information that may be relevant is intended to provide for exchange of information in tax matters to the widest possible extent without allowing the Contracting States to engage in fishing expeditions or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While paragraph 10(a) contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, subparagraphs (i) through (v) of paragraph 10(a) nevertheless are to be interpreted in order not to frustrate effective exchange of information."[144]

The language in the 2009 Protocol, the explanatory comments, and the provision banning fishing expeditions created uncertainty as to whether the revised treaty would allow U.S. requests for information related to a group of U.S. taxpayers without identifying each of the taxpayers by name. In an effort to clarify the situation, in 2012, the Swiss Parliament passed legislation that stated that the revised treaty did not require taxpayers to be named in all instances.[145] At the same time, the legislation imposed new requirements for such requests, using language that did not appear in either the old or revised treaty. The 2012 Swiss legislation required, for example, that a treaty partner requesting

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[142] The 2009 Protocol included a new provision stating: "Although Article 26 of the Convention does not restrict the possible methods for exchanging information, it shall not commit a Contracting State to exchange information on an automatic or spontaneous basis." Id. at Article 4 (amending Paragraph 10 of the Protocol to the 1996 Treaty).

[143] Id. at Article 4 (amending Paragraph 10 of the Protocol to the 1996 Treaty).

[144] Id. The prohibition on "fishing expeditions" was already part of the 1996 tax treaty.

[145] Bundesbeschluss über eine Ergänzung des Doppelbesteuerungsabkommens zwischen der Schweiz und den Vereinigten Staaten von Amerika ("Federal Resolution Concerning a Supplement to the Double Taxation Treaty between Switzerland and the United States of America") (http://www.admin.ch/opc/de/federal-gazette/2012/3511.pdf (3/16/2012), translated from German by Law Library of Congress.

information about a group of unnamed taxpayers provide evidence of "a pattern of conduct on the basis of which it can be assumed that persons subject to taxation who behaved according to this pattern have not lived up to their statutory obligations."[146] The legislation also stated: "Persons subject to taxation may only be identified in this manner, however, if the holder of the information or his coworkers has contributed significantly to such conduct."[147] Swiss courts may view these new evidentiary requirements as binding, even though they are not included in the negotiated treaty.

Another issue involves the effective date for the new, less restrictive standard for tax information exchange, which is linked in the 2009 Protocol to the date on which the treaty revisions were agreed to, September 23, 2009. The key provision states that the revisions to Article 26 related to information requests from a bank or other financial institution: "shall have effect ... to requests made on or after the date of entry into force of this Protocol ... to information that relates to any date beginning on or after the date of signature of this Protocol."[148] The parties have interpreted this provision to mean that treaty requests can employ the new less restrictive standard only when seeking information about Swiss accounts that were open on or after September 23, 2009, while treaty requests seeking information about accounts that were closed prior to that date must be processed under the more restrictive provisions of the1996 treaty.[149]

In March 2012, the Swiss Parliament ratified the revised U.S.-Swiss tax treaty, as amended by the 2009 protocol. The U.S. Senate Committee on Foreign Relations voted in favor of the revised treaty and sent it to the full Senate for floor consideration on January 26, 2011.[150] The Senate has yet to vote on ratifying the revised treaty, however, because a hold on consideration of the treaty has been in place for more than three years.[151]

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[146] Id.

[147] Id. See also "Swiss Lawmakers Approve U.S. Tax-Treaty Amendment, Aiding Talks," Bloomberg, Klaus Wille (3/5/2012), http://www.bloomberg.com/news/2012-03-05/swiss-lawmakers-approve-u-s-tax-treaty-amendment-aiding-talks.html.

[148] "Protocol Amending 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 October 2, 1996," (9/23/2009), Article 5.2.b.i.

[149] See, e.g., U.S. Department of the Treasury Technical Explanation of the Protocol Signed at Washington on September 23, 2009 Amending the Convention between the United States of America and Swiss Confederation for the Avoidance of Double Taxation and the Prevent of Fiscal Evasion with respect to Taxes on Income," at 9.

[150] See Library of Congress record of "Protocol Amending Tax Convention with Swiss Confederation," Treaty No. 112-1, referred to the full Senate on January 26, 2011, http://thomas.loc.gov/cgi-bin/ntquery/z?trtys:112TD00001: The treaty was referred back to the Foreign Relations Committee at the end of the 112th Congress, and is scheduled to be considered in a committee hearing on February 26, 2014.

[151] See, e.g., "Treasury Continues Push for Ratification Of Three Stalled Treaties, Official Says," Bloomberg BNA, Alison Bennett (6/5/2013),

FATCA. In addition to negotiating the revised treaty, Switzerland became the eighth country to sign a disclosure agreement with the United States under the Foreign Account Tax Compliance Act (FATCA). In February 2013, Switzerland signed an intergovernmental agreement with the United States requiring all Swiss financial institutions to comply with FATCA's new disclosures.[152] The agreement directs Swiss financial institutions to provide the required disclosures directly to the IRS. If any financial institutions are suspected of non-compliance, the agreement enables the IRS to seek information from them through a tax treaty information request on a group basis after an eight-month Swiss investigation period. Swiss financial institutions must begin to disclose all of their U.S. accounts and initiate withholding of taxes on July 1, 2014.

In addition to signing the FATCA agreement with the United States, in 2013, Switzerland signed the Convention on Mutual Administrative Assistance in Tax Matters that requires signatories to cooperate with international tax information exchange requests and tax enforcement efforts.[153] Switzerland also signed a number of tax information exchange agreements with other countries.

DOJ Program for Swiss Banks. Since the 2008 UBS scandal, the U.S. Department of Justice has initiated investigations into 14 Swiss banks for misconduct similar to that perpetrated by UBS. In 2012, the Justice Department indicted Wegelin & Co., Switzerland's oldest bank, which eventually pled guilty to conspiracy to defraud the United States of tax revenue, forfeiting $32 million that had been frozen in its U.S. accounts and paying fines and restitution of $42 million for a total of $74 million.[154] Since 2009, the Justice Department also indicted a number of individual Swiss bankers from UBS, Credit Suisse, Wegelin, and Bank Frey, though most have yet to stand trial.

Due to turmoil in the Swiss banking sector caused by the ongoing U.S. criminal investigations, in 2011, the Swiss began pressing the United States for a broad-based settlement that would establish procedures for how the U.S. Government would handle future prosecutions of Swiss banks, and how it would signal when a bank is no

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http://www.taxtreatiesanalysis.com/2013/06/entreasury-continues-push-ratification-stalled-treaties-official/.

[152] See "Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA," (2/14/2013), http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Switzerland-2-14-2013.pdf.

[153] See "Switzerland signs OECD tax convention," swissinfo.ch (10/15/2013), http://www.swissinfo.ch/eng/politics/Switzerland_signs_OECD_tax_convention.html?cid=37118262.

[154] United States v. Wegelin & Co., Case No. 12-CR-02 (SDNY), Plea (1/3/2013), http://www.justice.gov/usao/nys/pressreleases/January13/WegelinSummonsPR/Exhibit%20D%20Wegelin%20Guilty%20Plea%20Transcript.pdf.

longer under suspicion. In August 2013, the United States announced a "program" designed to establish a procedure for resolving or clearing as many as 300 Swiss banks of charges that they may have assisted U.S. clients to evade U.S. taxes.[155] In connection with that announcement, the United States and Switzerland signed a joint statement in which both expressed support for the program and in which the Swiss Finance Department urged participation by Swiss banks.[156]

The program divided Swiss banks into four tiers. Tier 1 banks were the 14 Swiss banks already under investigation by the United States for criminal wrongdoing. Tier 2 banks were those that may have taken actions that facilitated tax evasion but were not currently under investigation. Tier 3 banks were those that had opened accounts for U.S. persons, but believe they did not engage in wrongdoing, were not under investigation, and were willing to undergo a third party review to validate their status. Tier 4 banks were those deemed to be compliant financial institutions that had a local client base in Switzerland as defined under FATCA standards, and were not under investigation.

The program did not address the ongoing U.S. investigations into the Tier 1 banks or provide any procedure for resolving them. Those banks were not eligible to participate in the program. It did establish a procedure for Tier 2 banks to obtain a non-prosecution agreement in exchange for conducting an internal review verified by an independent examiner and providing the results to the United States, including certain information about their cross border operations and undeclared accounts opened by U.S. clients, and paying a penalty equal to 20% to 50% of the aggregate dollar value of the undeclared accounts, depending upon how long the accounts were kept open. It also set up a procedure for Tier 3 banks to provide an internal investigation report prepared by an independent examiner to demonstrate they did not engage in suspect conduct. Tier 4 banks must provide verification by the bank and an independent examiner that they do not have U.S. clients and maintain records to support that position.

A key issue in the design of the program was to address Swiss concerns about providing client-specific information in violation of Swiss secrecy laws. The program dealt with the issue by requiring the affected banks to provide certain account information about closed accounts, such as the maximum dollar value of the account, the number of U.S. persons affiliated or potentially affiliated with each account, whether the account held any securities, information concerning the

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[155] See "United States and Switzerland Issue Joint Statement Regarding Tax Evasion Investigations," press release prepared by the U.S. Justice Department (8/29/2013), http://www.justice.gov/opa/pr/2013/August/13-tax-975.html.

[156] See "Joint Statement between the U.S. Department of Justice and the Swiss Federal Department of Finance," (8/29/2013).

transfer of funds in and out of the account, and the name of any banker, fiduciary, attorney financial advisor or individual affiliated with the account. The program explicitly excused the Swiss banks from providing any client names, account numbers, or other identifying information for those closed accounts.

The U.S. Government will have to use the information it receives in connection with the program to fashion one or more treaty requests to the Swiss Government under either the 1996 or – when ratified – the 2009 treaty, depending upon when the accounts in question were open. If an account's assets were transferred to a bank in another country, the United States will have to attempt to secure the client information from the bank in that other country. The program did not address U.S. client accounts that remained open at the banks since the larger of those accounts would supposedly have to be revealed when FATCA disclosures become mandatory for all Swiss banks.

After the U.S. program to resolve Swiss bank culpability was announced, the Swiss Bankers Association issued a public apology for the role Swiss banks had played in facilitating U.S. tax evasion. Association Chairman Patrick Odier was quoted as saying: "We acted wrongly .... We have damaged the reputation of the entire Swiss financial center."[157]

By the end of 2013, over 100 or about a third of Swiss banks had reportedly taken advantage of the program's procedures to resolve their status.[158] The program and U.S. criminal investigations into Swiss banks are ongoing.

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[157] "Offshore tax-dodger dragnet widens with U.S.-Swiss bank deal: lawyers," Reuters (9/3/2013), Patrick Temple-West and Kevin Drawbaugh (quoting Patrick Odier).
[158] See, e.g., "Swiss Banks Seek Tax Amnesty as Third Accept U.S. Offer," Bloomberg, David Voreacos (1/26/2014), http://www.bloomberg.com/news/2014-01-25/tax-amnesty-program-draws-106-swiss-banks-u-s-prosecutor-says.html.

III. CREDIT SUISSE: CASE STUDY IN SWISS SECRECY

In an attempt to understand the extent of past tax haven bank facilitation of U.S. tax evasion and U.S. efforts to hold tax haven banks and their U.S. clients accountable and collect unpaid U.S. taxes, the Subcommittee examined one bank in depth, Credit Suisse. Credit Suisse is the second largest bank in Switzerland and, thus, after UBS, the Swiss bank most likely to have a large number of undeclared Swiss accounts for U.S. customers seeking to evade U.S. taxes.

22,000 U.S. Customers with 12 Billion Swiss Francs. The investigation found that, as of 2006, Credit Suisse had over 22,000 U.S. customers with Swiss accounts whose assets, at their peak, exceeded 12 billion Swiss francs (CHF).[159] Although Credit Suisse has not determined or estimated how many of those accounts were hidden from U.S. authorities, the data suggests the vast majority were undeclared. To date, due to Swiss Government restrictions, the United States has obtained the names of only about 230 U.S. clients with hidden accounts at Credit Suisse.

Recruiting U.S. Clients and Facilitating Secrecy. The investigation found that, from at least 2001 to 2008, Credit Suisse recruited U.S. clients to open Swiss accounts, and employed a number of banking practices that helped its U.S. customers conceal their Swiss accounts from U.S. authorities. Those practices included sending Swiss bankers to the United States to secretly recruit clients and service existing accounts; sponsoring a New York office that served as a hub of activity on U.S. soil for Swiss bankers; and helping customers mask their Swiss accounts by referring them to "intermediaries" that could form offshore shell entities for them and by opening accounts in the name of those offshore entities. One former customer described how, on one occasion, a Credit Suisse banker traveled to the United States to meet with the customer at the Mandarin Oriental Hotel and, over breakfast, handed the customer bank statements hidden in a Sports Illustrated magazine. Credit Suisse also sent Swiss bankers to recruit clients at bank-sponsored events, including the annual "Swiss Ball" in New York and golf tournaments in Florida. The Credit Suisse New York office kept a document listing "important phone numbers" of intermediaries that formed offshore shell entities for some of the bank's U.S. customers. Credit Suisse also encouraged U.S. customers to travel to Switzerland, providing them with a branch office at the Zurich airport offering a full range of banking services. Nearly 10,000 U.S. customers availed themselves of that convenience. The bank's own investigation indicates that Swiss bankers were well aware that some U.S. clients

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[159] During the period 2004 to 2007, one U.S. dollar was roughly equivalent to 1.25 Swiss francs, and from 2008 to 2012, one U.S. dollar was roughly equivalent to one Swiss franc. 12 billion CHF fluctuated over time between $10-$12 billion.

wanted to conceal their accounts from U.S. authorities, and either turned a blind eye to the accounts' undeclared status, or at times actively assisted those accountholders to hide assets from U.S. authorities.

Weak Oversight. The investigation also found that Credit Suisse exercised weak oversight of its own policies for U.S.-linked accounts in Switzerland, facilitating wrongdoing. A 2002 bank policy called for U.S.-linked accounts to be opened by a single Swiss office, SALN, whose bankers were given special training in U.S. regulatory and tax requirements. Despite that policy, a majority of U.S.-linked accounts were spread throughout other business areas of the bank; by 2008, over 1,800 Credit Suisse bankers were opening and servicing Swiss accounts for U.S. customers. Some of those Swiss bankers assisted U.S. clients to open undeclared accounts, buy and sell U.S. securities, and structure large cash transactions to avoid U.S. cash reporting requirements, in violation of U.S. law and the bank's own policies which prohibited those activities. The Swiss bank also used third party service providers to supply U.S. clients with credit cards and travel cash cards that enabled them to secretly draw upon the cash in their Swiss accounts. In addition, Credit Suisse restricted compliance, risk management, and audit oversight of all U.S. customer accounts in Switzerland to Swiss personnel due to Swiss secrecy laws, limiting the oversight that could be conducted by bank personnel in the United States. Credit Suisse extended those limitations even to the U.S.-linked accounts at SALN which was organizationally part of the Credit Suisse Private Bank for the Americas. On February 21, 2014, Credit Suisse paid $196 million in disgorgement, pre-judgment interest, and penalty monies to the U.S. Securities and Exchange Commission (SEC) to settle securities law violations by its Swiss bankers for conducting unlicensed broker-dealer and investment advice activities in the United States and by the bank for failing to prevent that misconduct due to poorly implemented controls and ineffective monitoring.

Five Year Exit. Beginning in 2008, after the UBS scandal broke, Credit Suisse initiated a series of "Exit Projects" to identify Swiss accounts that had been opened for U.S. customers, and ask the customers to either disclose their accounts to the United States, or close them. The Exit Projects took an overly incremental approach, delayed reviewing key groups of accounts, and took over five years to complete. The projects included, in chronological order, the Entities Project, Project Tom, Project III, Project Tim, Legacy Entities Project, Project Titan, and Project Argon. The 2008 UBS scandal and 2011 indictment of seven Credit Suisse bankers spurred the account closing efforts represented by those projects, but they continued to take years to implement.

From 2008 to 2011, the Credit Suisse Exit Projects focused primarily on Swiss accounts held by U.S. residents, ignoring the over

6,000 accounts opened by U.S. nationals living outside of the United States. The early projects also focused on the conduct of bankers at SALN, the office that was supposed to have been in charge of opening U.S.-linked accounts in Switzerland, even though the majority of U.S.-linked accounts were actually located in Swiss offices outside of SALN, including Credit Suisse's private bank subsidiary Clariden Leu. By the end of 2010, the Exit Projects had closed accounts held by nearly 11,000 U.S. clients, an indication of how extensive the problems were with the accounts. It was not until 2012, that the bank expanded the Exit Projects to include a review of the thousands of Swiss accounts opened by U.S. nationals living outside of the United States. At the end of 2013, five years after the UBS scandal broke, Credit Suisse data indicated that the bank had closed Swiss accounts for approximately 18,900 U.S. customers and retained accounts for about 3,500 U.S. customers with assets totaling about $2.6 billion. These figures represent an 85% drop in the number of the bank's U.S. customers in Switzerland.

A. Background on Credit Suisse

Founded in 1856, Credit Suisse Group AG is a Swiss holding company. It is a global financial services provider headquartered in Zurich, Switzerland.[160] Credit Suisse Group AG owns Credit Suisse AG, a Swiss bank that is its primary subsidiary and one of the largest banks in the world. Both Credit Suisse Group AG and Credit Suisse AG are regulated by the Swiss Financial Market Regulatory Authority (FINMA). Through its ownership of Credit Suisse AG, Credit Suisse Group controls multiple global subsidiaries.

As of December 30, 2013, Credit Suisse held over 1.25 trillion Swiss francs (CHF) in assets under management (AuM) around the world,[161] with approximately 25.28 billion CHF in revenues for the year.[162] On the New York Stock Exchange (NYSE), Credit Suisse is listed under the ticker symbol "CS."[163] In Switzerland, Credit Suisse is listed as "CSGN."[164] Credit Suisse employs over 46,300 people in 530 offices and 22 booking centers across more than 50 countries.[165]

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[160] "Credit Suisse at a Glance," Credit Suisse, https://www.credit-suisse.com/who_we_are/en/at_a_glance.jsp#.
[161] Id. During the period 2004 to 2007, one U.S. dollar was roughly equivalent to 1.25 Swiss francs, and from 2008 to 2012, one U.S. dollar was roughly equivalent to one Swiss franc.
[162] Credit Suisse, "Financial Report 4Q13," at 2, https://www.credit-suisse.com/investors/doc/csg_financialreport_4q13.pdf
[163] "Listing Information and Indices," Credit Suisse, https://www.credit-suisse.com/investors/en/share/ticker_symbols.jsp.
[164] "Credit Suisse at a Glance," Credit Suisse, https://www.credit-suisse.com/who_we_are/en/at_a_glance.jsp#.
[165] 8/2013 "About Credit Suisse: A brief presentation," Credit Suisse, at 4, https://www.credit-suisse.com/who_we_are/doc/brief_presentation_en.pdf.

Credit Suisse has two global business divisions: (1) Private Banking and Wealth Management, and (2) Investment Banking. The Private Banking and Wealth Management division offers a wide array of financial advice, products, and services to individuals, institutions and corporations. The Investment Banking Division specializes in investment advice, products, and services, including prime brokerage services, securities sales, trading, and capital formation. The global operations structure of Credit Suisse is organized into four geographic regions called "business areas": Switzerland; the Americas; Europe, Middle East and Africa (EMEA); and Asia Pacific (APAC). The two business divisions are subdivided along those four global business areas.

Credit Suisse Group and Credit Suisse AG share the same Board of Directors. The Chairman of the Board of Directors is Urs Rohner. The CEO is Brady Dougan. Mr. Dougan became CEO in 2007,[166] succeeding Oswald Gruebel when he became Chairman of the Board. Credit Suisse Group and Credit Suisse AG also share the same Executive Board which is responsible for the daily operation and management of both the Group and the bank. The Executive Board develops and implements strategic business plans for Credit Suisse, subject to the approval of the Board of Directors. Senior officials of Credit Suisse Group, including the CEO, the General Counsel, the Chief Financial Officer, the Chief Risk Officer, as well as the chief executives of the bank's two business divisions and four business areas, are members of the Executive Board. These officials hold the same positions in the bank.[167] Most of the senior officials and Members of the Board are located in Switzerland.

Credit Suisse maintains its headquarters and large operations in Switzerland, but it has also maintained a business presence in the United States for over 140 years. Credit Suisse first established a presence in the U.S. market in 1870, through a foreign representative office in New York City.[168] In 1964, Credit Suisse became a full-service bank, allowing it to provide deposit services to clients in the United States.[169] Beginning what became a decade-long acquisition, Credit Suisse bought shares of the First National Bank of Boston in 1978.[170] In 1988, Credit

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[166] "Executive Board," Credit Suisse, https://www.credit-suisse.com/governance/en/executive_board_cs.jsp.
[167] Id.
[168] "Milestones in the Company's History," Credit Suisse, at 2 ("The first Credit Suisse foreign representative office is established in New York"), https://www.credit-suisse.com/sites/multimedia/en/about-us/who-we-are/milestones.html. In 1939, SKA, the predecessor to Credit Suisse, created Swiss American Corporation in New York City to focus on underwriting and investment consulting. Id. at 9 ("1939 - Swissam"). The following year, SKA opened up the New York Agency. Id. at 10 ("1940 - New York").
[169] Id. at 12 ("1964-Full-Service Bank").
[170] Wright, Tom. "Credit Suisse drops a name: First Boston," New York Times, (6/30/2005), http://www.nytimes.com/2005/06/29/business/worldbusiness/29iht-suisse.html?_r=0.

Suisse Holdings acquired a 44.5% stake in First Boston, Inc.,[171] and the company became known as CS First Boston.[172] By 1990, Credit Suisse maintained a majority holding in CS First Boston.[173] In 2005, Credit Suisse merged the legal entities holding its private bank operations in Switzerland and its investment bank in the United States, and named the merged corporation Credit Suisse First Boston.[174] Credit Suisse First Boston was later renamed Credit Suisse Securities (USA) LLC.

Today, Credit Suisse continues to exercise control over several financial enterprises in the United States. While it no longer maintains a retail banking business in the United States, Credit Suisse AG currently operates a New York State-licensed branch in New York City, the "Credit Suisse AG, New York Branch."[175] According to Credit Suisse, the New York branch office "is not a separate legal entity, rather it is a U.S. branch of the Swiss legal entity Credit Suisse," established in 2009.[176] Its primary regulator is the New York State Department of Financial Services, although the primary regulator for all of Credit Suisse's U.S. operations is the Federal Reserve Bank of New York. The branch does not accept retail deposits, but offers time deposits, including certificates of deposit, to private banking clients.[177] Those deposits are not insured by the Federal Deposit Insurance Corporation.[178] Its other primary activities involve intercompany funding and treasury activities, debt issuance, lending, derivatives, and deposit sweep offerings.[179] Credit Suisse AG also owns a subsidiary U.S. holding company called Credit Suisse Holdings (USA), Inc.,[180] through which it controls Credit Suisse Securities (USA) LLC, an SEC-registered broker-dealer and investment advisor.[181] Its U.S. presence includes 27 offices across the United States.[182]

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[171] "Milestones in the Company's History," Credit Suisse, at 16 ("1988 - Stake acquired in CSFBI"), https://www.credit-suisse.com/sites/multimedia/en/about-us/who-we-are/milestones.html.
[172] Id. at 16 ("1988 - Stake acquired in CSFBI").
[173] Id.
[174] Id. at 26 ("2005 - One Bank").
[175] 2/19/2014 letter from Credit Suisse legal counsel to the Subcommittee, at 6.
[176] Id.
[177] Id.
[178] Id.; see also 9/2013 "Credit Suisse Global Recovery and Resolution Plan," at 10, http://www.federalreserve.gov/bankinforeg/resolution-plans/credit-suisse-1g-20131001.pdf.
[179] 2/19/2014 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-67-000001, at 006.
[180] 7/3/2013 "Credit Suisse Group AG – Principal Legal Entities Overview," Credit Suisse, https://www.credit-suisse.com/investors/doc/simplified_legal_entity_overview.pdf.
[181] Id. See also "About Us: Important Disclosures," Credit Suisse, https://www.credit-suisse.com/legal/en/pb/pb_usa.jsp.
[182] "Global Presence: 362 locations in over 50 countries worldwide," Credit Suisse, https://www.credit-suisse.com/us/en/.

(1) Credit Suisse Private Banking

In November 2012, Credit Suisse merged its Private Bank and Asset Management divisions into a single division called Private Banking and Wealth Management. The new division consists of three business lines: Wealth Management Clients; Corporate and Institutional Clients; and Asset Management. The Corporate and Institutional Clients business supplies financial products and services to corporations and institutions, mainly in Switzerland. The Asset Management business provides worldwide investment products and functions. The Wealth Management Clients business is the location of Credit Suisse's traditional Private Bank for wealthy individuals. The Wealth Management Clients business has over 2 million clients, over 3,900 relationship managers in 42 countries, and more than 332 offices and 22 booking centers worldwide.

As of December 30, 2013, the Credit Suisse Private Banking and Wealth Management division had 1.25 trillion CHF in assets under management and had generated approximately 13.5 billion CHF in revenues for the year, representing about half of all of the revenues generated by Credit Suisse in that time period.[183]

The current co-heads of the Private Banking and Wealth Management division are Hans-Ulrich Meister and Robert Shafir. Each also heads one of Credit Suisse's four geographical regions. Mr. Meister is the CEO of the Switzerland Region business area, while Mr. Shafir is CEO of the Americas Region business area. In 2011, Mr. Meister had held the top position in the Credit Suisse Private Banking Division prior to its merger into the larger division in November 2012. Previously, from 2008 to 2012, he was CEO of the Swiss Region, where he estimated he spent 80% of his time on Private Bank issues.[184]

Mr. Shafir was formerly head of the Credit Suisse Asset Management division, and became co-head of the Private Banking and Wealth Management division with Mr. Meister after the November 2012 merger.

The current head of the Private Bank Americas business area, under Mr. Shafir's purview in the Americas Region, is Philip Vasan. He assumed that role in March 2013, succeeding Anthony DeChellis, who had been head of that business area since 2006. Mr. Vasan had held

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[183] Credit Suisse, "Financial Report 4Q13," at 2, https://www.credit-suisse.com/investors/doc/csg_financialreport_4q13.pdf.
[184] Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (9/24/2013).

several management positions in other areas at Credit Suisse since joining the company in 1992.[185]

(2) Clariden Leu

In addition to its own private banking operations, Credit Suisse also operated an independent private banking subsidiary – called Clariden Leu – in Zurich for most of the last seven years. In 2007, Credit Suisse merged five smaller independent Swiss financial institutions, Clariden Bank, Bank Leu, Bank Hofmann, Banca di Gestione Patrimoniale, and Credit Suisse Fides, into a new subsidiary named Clariden Leu.[186] The next year, Clariden Leu serviced nearly 2,000 Swiss accounts for U.S. clients.[187] According to Credit Suisse, its operation of Clariden Leu was part of a common corporate "two brand" strategy.[188] While Credit Suisse was a big institution, Clariden Leu maintained the image of a small, independent Swiss brand, and Credit Suisse structured Clariden Leu so both its customers and its employees perceived it in that way.[189] For example, while Credit Suisse placed several of its executives on Clariden Leu's Board of Directors, Credit Suisse did not put any of its own executives in Clariden Leu's management. This decision allowed Clariden Leu to retain its senior management and control of its day-to-day functions.

Altogether, the Clariden Leu board had seven directors, three who were Credit Suisse executives and four who were independent, external directors.[190] Some of the Credit Suisse executives that served on the Clariden Leu board were Hans-Ulrich Meister, co-head of the Private Banking and Wealth Management Division, who became Chairman of the Clariden Leu Board in 2011,[191] and Romeo Cerutti, Credit Suisse General Counsel who also participated on the Clariden Leu audit committee.[192]

In 2012, Credit Suisse ended its operation of Clariden Leu as an independent subsidiary, and integrated its employees, systems,

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[185] "Phil Vasan, Head of Private Banking Americas, Credit Suisse," Credit Suisse, https://www.credit-suisse.com/sites/conferences/megatrends/en/megatrends/meta/popup/philip-vasan.html.

[186] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/14/2014); see also 9/14/2007 CSG Internal Audit, Clariden Leu Data Migration, CS-SEN-00417211 ("The CSG board of directors decided in spring 2006 to merge its independent private banks Bank Leu, Bank Hofmann, Banca di Gestione Patrimoniale (BGP), Clariden Bank and Credit Suisse Fides into Clariden Leu.").

[187] See Credit Suisse presentation, US Project – STC #1, Zurich (8/19/2008), CS-SEN-00426290, at 306.

[188] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/14/2014).

[189] Id.

[190] Id.

[191] 11/15/2011 email from Brady Dougan to Hans Vetsch and others, "Credit Suisse to Integrate Clariden Leu," CS-SEN-00402176.

[192] Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (9/24/2013).

operations, and clients into the Credit Suisse bank.[193] As a result, in 2012, a number of former Clariden Leu clients left, taking approximately 7.5 billion CHF in assets with them,[194] a level that Hans-Ulrich Meister characterized as normal in such circumstances.[195] Prior to the integration, Clariden Leu had approximately 100 billion CHF in assets under management,[196] which was about one-third the size of the assets managed by Credit Suisse's Private Bank in Region Switzerland.[197]

(3) Credit Suisse's U.S. Cross Border Business

As previously noted, operationally, the Credit Suisse Private Banking and Wealth Management division was subdivided along the four geographical business areas that made up Credit Suisse's global operations: Switzerland, the Americas, EMEA, and APAC. In Switzerland, the Private Bank maintained a "Swiss Booking Center," in which an account was established, stored, and serviced on the Swiss IT platform. The Swiss Booking Center not only housed accounts of the Swiss Private Bank for Swiss persons, but also serviced an extensive cross border program that provided accounts and services to private banking clients with citizenship or residency in countries other than Switzerland.

As early as 2002, Credit Suisse established a global policy that cross border accounts should be grouped by the domicile of the client and held or "concentrated" at the same "desk," meaning an office that reported to the regional business area (region) that included the country in which the clients were citizens. For example, under the policy, a German citizen who held an account in the Swiss booking center would be assigned to the German desk, which is part of the EMEA business area, which includes Germany. The Swiss Booking Center included multiple such desks to service private banking clients with citizenship or residency outside Switzerland.

In Switzerland, the Swiss Booking Center included a desk that was designated the "Center of Competence" for servicing U.S. private banking clients. That desk was referred to as SALN.[198] The SALN desk

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[193] Credit Suisse, Integration of Clariden Leu, https://www.credit-suisse.com/lu/asset_management/en/clariden_leu.jsp.

[194] 3/22/2013 Credit Suisse Fourth Quarter and Full-Year 2012 Results, Presentation to Investors and Media, at 15 (showing 7.5 billion CHF in Clariden Leu outflows of Net New Assets in 2012).

[195] Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (9/24/2013).

[196] Id.

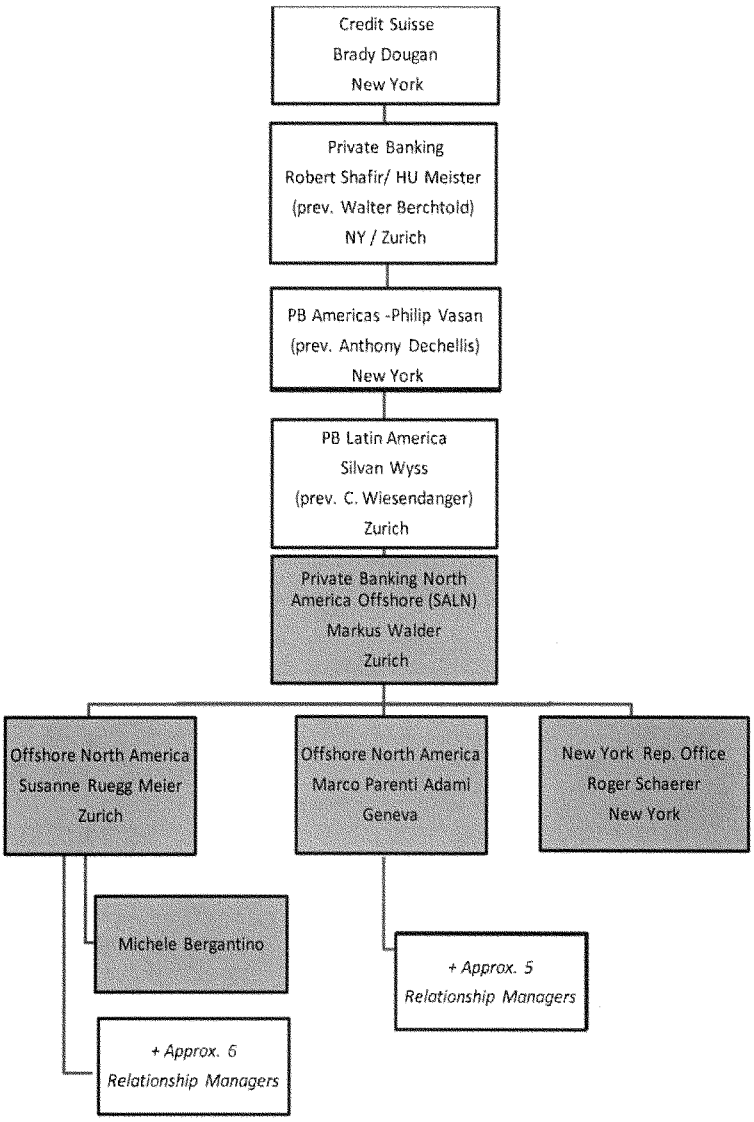
[197] See Credit Suisse website, www.creditsuisse.com (showing 301 billion CHF in AuM for the first quarter of 2012 for the Private Bank, Region Switzerland).

[198] SALN is a code with each letter signifying a more narrow group. "S" stands for Private Bank, "A" stands for Americas, "L" stands for Latin America, and "N" stands for North America.

was part of the Private Bank Americas business and maintained offices in both Zurich and Geneva. The line of reporting from the Zurich SALN desk, which was headed by Susanne Ruegg Meier, and from the Geneva SALN desk, which was headed by Marco Parenti Adami, went directly to Markus Walder, head of the North America Offshore Private Banking division (SALN).[199] Those SALN supervisors, Ms. Ruegg Meier, Mr. Parenti Adami and Mr. Walder, were named in an indictment filed by the U.S. Department of Justice, and are currently on paid administrative leave from the bank. On the organizational chart, below, the individuals that have been indicted are in a darker color box.

[199] 9/24/2006 Credit Suisse, "Private Banking Americas Latin America, Bahamas and North America Offshore Management Meeting – Day 1," CS-SEN-00282872, at 920.

Credit Suisse Organizational Chart Related to SALN



Source: Credit Suisse. Prepared by U.S. Senate Permanent Subcommittee on Investigations, February 2014. Susanne Ruegg Meier, Marco Parenti Adami, and Markus Walder have been on paid administrative leave since 2011. Michele Bergantino left the bank prior to 2011. The New York Representative office closed in 2009, at which point Roger Schaerer left the bank.

The two Swiss SALN offices had roughly 15 relationship managers that served U.S. clients directly, and about another eight administrative staff.[200] The SALN desk also had a New York Representative Office, headed by Roger Schaerer, who also reported to Markus Walder.[201] Mr. Walder reported in turn to Christian Weisendanger, head of Private Banking Latin America. Mr. Wiesendanger was based in Switzerland, left Credit Suisse in 2010, and was replaced by another Swiss manager, Silvan Wyss. They, in turn, reported to Anthony DeChellis, who was head of Private Banking Americas from 2006 until 2013. Mr. DeChellis was based in New York City. Currently, Philip Vasan holds that role. He is also based in New York City.

During Mr. DeChellis' time at Credit Suisse, he reported to Walter Berchtold, head of the Private Bank. In 2011, Mr. Berchtold was replaced by Hans-Ulrich Meister. Today, Mr. Vasan reports to Robert Shafir, co-head of the Private Banking and Wealth Management division. Mr. Shafir is also head of the Americas business area, which includes the SALN desk in Switzerland.

Although the SALN office was the designated "Center of Competence" for servicing U.S. private banking clients and U.S. client accounts were supposed to be concentrated there, in fact, as explained below, most of the U.S.-linked accounts in Switzerland were not at SALN, but were spread out among multiple Swiss offices. The Swiss bank office with the largest number of accounts held by U.S. customers was located at the Zurich airport.

(4) Credit Suisse Internal Investigation

In February 2011, four Credit Suisse bankers were indicted by the U.S. Department of Justice for aiding and abetting tax evasion by U.S. taxpayers. In response, Credit Suisse initiated an internal investigation, named Project Valentina, for the Valentine's Day on which it started, February 14, 2011.[202] The bank retained both Swiss and U.S. external counsel to carry out the investigation. The purpose of the internal investigation was to "examine the Private Bank's U.S. cross-border banking business ... the conduct of the business' employees and to determine whether any of the activities violated the bank's internal policies or regulations governing the business."[203]

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[200] Id.
[201] Id.
[202] Subcommittee interview of Agnes Reicke, Credit Suisse (10/29/2013).
[203] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, PSI-CreditSuisse-54-00000, at 004.

Project Valentina focused on conduct related to accounts opened by SALN Swiss bankers. The bank gave the Subcommittee different explanations for that focus. One reason given by the bank was that U.S. resident accounts were concentrated in SALN.[204] That representation turned out to be false, however, as only a minority of U.S. accounts was located at SALN during the period when Credit Suisse was actively soliciting and servicing its U.S. cross border business. Another reason offered by the bank for focusing on SALN was that it was the "most likely place to be a problem."[205] The fact that the U.S. indictment named several SALN bankers may be the basis for that explanation.

The bank's internal investigation reviewed information going back to 2000, included documents for a subset of "hundreds" of U.S. customers, as well as account statements and email correspondence.[206] The investigative team conducted interviews with some relationship managers and supervisors, and in rare instances, former employees.[207] Altogether, the team interviewed about 20 employees in the United States and 98 employees in Switzerland.[208]

The investigation was expanded at some point to include the Zurich airport office, as well as some information from other Swiss private banking offices. The investigative team provided at least weekly briefings to Project Valentina managers, and "any issues identified by the external investigators were reported to the General Counsel [Romeo Cerutti] of the Bank and several of his direct reports."[209]

On July 21, 2011, three additional Credit Suisse bankers were named in a superseding indictment filed by the U.S. Department of Justice, increasing the total number of indicted Credit Suisse bankers to seven.[210] Additionally in July 2011, Credit Suisse received a target letter from the Department of Justice, indicating that the bank itself was a target of a criminal investigation.[211]

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[204] Credit Suisse letter from legal counsel to Subcommittee (8/13/2013), PSI-CreditSuisse-37-000001, at 004.
[205] Subcommittee briefing by Credit Suisse (1/16/2014) (Andrew Hruska).
[206] Id.
[207] Id.
[208] 11/1/2013 Letter to Subcommittee, PSI-CreditSuisse-46-000068-071.
[209] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, PSI-CreditSuisse-54-000001, at 004.
[210] United States v. Markus Walder et al., Case No. 1:11-Cr-95 (E.D. VA), Superseding Indictment (7/21/2011).
[211] 7/15/2011 "Update on US Department of Justice Investigation," Credit Suisse Press Release, https://www.credit-suisse.com/news/en/media_release.jsp?ns=41815 ("Credit Suisse has been responding to requests for information, including subpoenas, in an investigation by the US Department of Justice (DoJ) and other US authorities. The investigation concerns historical Private Banking services provided on a cross-border basis to US persons. As part of this process, on July 14, 2011, Credit Suisse received a letter notifying it that it is a target of the DoJ investigation.").

Starting roughly after the 2011 indictments, the largely-Swiss based executives of Credit Suisse all but ceased travel to the United States. In 2013, Brady Dougan told the Subcommittee that it had "been a couple years" since the bank's Executive Board held any meeting in the United States, and conceded that there has been a "reluctance" by Credit Suisse Swiss executives to travel to the United States.[212] He acknowledged that Credit Suisse has accommodated "people with concerns" by scheduling Executive Board and other high level meetings in locations other than the United States.[213] As the Co-Head of the Private Bank Robert Shafir, who is based in New York, stated, Swiss executives were "not comfortable" traveling to the United States for past few years.[214] In one document, a performance appraisal indicated that it had been "tough for HUM [Hans Ulrich Meister] to assess [the employee] as he has not been able to travel to the US."[215] In 2014, when Romeo Cerutti, the bank's General Counsel, traveled to Washington, D.C. to speak with the Subcommittee, he acknowledged that it had been a few years since he had traveled to the United States because of the "U.S. tax matter."[216]

Despite the passage of three years since the 2011 indictments, none of the indicted Credit Suisse bankers has stood trial. All have remained outside of the United States, and none has been extradited to the United States to face charges. In addition, no formal legal action has been taken by the Justice Department against the bank.

In the meantime, Credit Suisse has invoked Swiss banking secrecy and data privacy laws as the reason for the bank's retaining key information within Swiss borders, even though the Swiss bank has been transacting business on U.S. soil for years. Credit Suisse engaged in an extensive cross border business with U.S. customers worth billions of dollars; sent its Swiss bankers to travel across the United States to recruit and service accounts, solicit U.S. securities transactions, and give investment advice that they weren't licensed to provide in the United States; and even set up a Swiss office in New York. Now that the bank has been asked to produce documents and information in connection with that conduct, it has claimed to be unable to provide much of the requested information under the shield of Swiss law.

The bank's internal investigation has largely completed its work although significant questions remain unanswered. For example, the bank still has not determined or estimated how many of the Swiss

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[212] Subcommittee interview of Brady Dougan, Credit Suisse (12/20/2013).
[213] Id.
[214] Subcommittee interview of Robert Shafir, Credit Suisse (9/11/2013).
[215] 12/20/2012 email from Cary Friedman to Jennifer Frost, "STR Dec 12 Notes for Jen Frost," CS-SEN-00421462, at 464.
[216] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014).

accounts opened for U.S. customers were undeclared.[217] The bank also told the Subcommittee that the investigation concluded without producing a detailed report about its findings.[218] In 2012, the bank established an internal task force and review panel "to determine the need to impose disciplinary action against employees still with the Bank."[219] To date, of the 1,800 private bankers that serviced U.S.-linked accounts,[220] 10 employees have been disciplined, and none terminated.[221] The disciplined employees received "formal warnings that go in the HR [Human Resources] file of the employee concerned for a retention period of between 1 and 6 years, plus substantial bonus cuts."[222] To date, no bank executive or senior official at Credit Suisse has been identified as responsible for any of the misconduct in Credit Suisse's cross border activity, even though that activity went on for decades, involved tens of thousands of U.S. clients and billions of dollars, and has resulted in indictments of seven bankers and a criminal investigation of the bank itself.

A few days prior to the release of this Report, the U.S. Securities and Exchange Commission instituted a cease-and-desist order and reached a settlement with Credit Suisse, for violating U.S. securities laws in its cross border business involving Swiss accounts held by U.S. customers. Credit Suisse admitted wrongdoing and agreed to pay $196 million in disgorgement, interest, and penalties.[223]

B. U.S.-Linked Accounts in Switzerland

Credit Suisse had an extensive cross border program for U.S. clients. For many years, Credit Suisse serviced tens of thousands of accounts owned or controlled by U.S. taxpayers, referred to here as U.S.-linked accounts.

In order to determine the number of U.S.-linked accounts and their corresponding assets held in Switzerland over time, the bank undertook an internal analysis with the help of outside attorneys and consultants. Credit Suisse decided that, rather than report the number of accounts, it would instead track the number of U.S.-linked Client Information Files

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[217] An "undeclared" account is "a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that had not been reported to the U.S. government on an income tax return and an FBAR." United States v. Markus Walder, et al., Case No. 1:11-CR-95 (E.D. VA), Superseding Indictment (7/21/2011), at ¶18.
[218] 2/19/2014 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-67-000001, at 006.
[219] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-54-000001, at 035.
[219] Id.
[220] Id. at 034.
[221] Id. at 035.
[222] Id.
[223] In re Credit Suisse Group AG, SEC File No. 3-15763, Order Instituting Administrative and Cease-and-Desist Proceedings (2/21/2014).

(CIFs) it maintained. According to Credit Suisse, a CIF is "a master client relationship which may – depending on the client's needs – contain several accounts holding different products or in different currencies."[224] A single CIF might include, for example, multiple Swiss accounts such as a banking account, a securities account, and a safe deposit box; it might also include Swiss accounts opened in the name of an offshore corporation or trust. By providing CIF or customer file numbers rather than adding up the number of clients involved or the number of accounts opened for each "Client Information File," Credit Suisse minimized the total number of U.S.-linked accounts that were booked in Switzerland.

According to the data provided by the bank for the years 2005 to 2011, the number of Credit Suisse U.S.-linked customer files booked and serviced in Switzerland reached a 2005 peak of about 23,000 customer files, with assets totaling 10.5 billion CHF. In 2006, the number of customer files declined to over 22,000, but the total assets held by those customer files increased to 12.4 billion CHF.

Table 1.

Total Swiss-booked U.S. CIFs[225]
Credit Suisse (CS) and Clariden Leu (CL)

	2005	2006	2007	2008	2009	2010	2011	2012
CS AuM (Billions of CHF)	10.5	12.4	12.3	7.8	4.2	3	2.8	N/A
CS CIFs	22,980	22,283	21,450	20,652	11,918	9,749	7,135	
CL AuM (Billions of USD)	N/A	N/A	N/A	3.3	1.9	1.2	0.9	0.3
CL CIFs	N/A	N/A	N/A	2,340	2,149	1,474	949	434
TOTAL CIFs	22,980	22,283	21,450	22,992	14,067	11,223	8,084	434

Source: Credit Suisse and Clariden Leu data.
Prepared by U.S. Senate Permanent Subcommittee on Investigations, February 2014.

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[224] 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-29-000001, at 008.

[225] Credit Suisse data compiled from Credit Suisse presentation, Credit Suisse Update on Development of AuM and Accounts of U.S. Clients to the Senate Permanent Subcommittee on Investigations (4/20/2012) CS-SEN-00189151, 153-154; Clariden Leu statistics from Credit Suisse presentation, "Credit Suisse Report to the Permanent Subcommittee on Investigations," (7/31/2013), PSI-CreditSuisse-33-000001, at 029-031. "CIF" stands for Client Information File. "AuM" means assets under management. During the period 2004 to 2007, one U.S. dollar was roughly equivalent to 1.25 Swiss francs, and from 2008 to 2012, one U.S. dollar was roughly equivalent to one Swiss franc.

To get a more detailed view of the U.S.-linked accounts, it is possible to break down the annual account totals into three subcategories of accountholders: U.S. residents; U.S. nationals; and non-U.S. legal entities with a U.S. beneficial owner. A U.S. resident, also referred to as a U.S.-domiciled natural person, is an individual person residing in the United States, who may or may not be a U.S. citizen, but, under U.S. tax law, has an obligation to pay U.S. taxes. A U.S. national (also sometimes referred to as a U.S. citizen residing outside the United States), is a U.S. citizen or U.S. greencard holder who is not living within U.S. borders but, under U.S. tax law, has an obligation to pay U.S. taxes. Finally, non-U.S. legal entities with a U.S. beneficial owner are legally-created entities, such as a corporation or trust, that are formed in another country, and that have a U.S. person as the beneficial owner of the income from that entity. Swiss banks sometimes refer to those entities as "domiciliary entities," because they do not engage in any commercial or manufacturing business or any other form of commercial operation.[226] However, they are generally structured in a way that can hide the identity of the true owners of the entities' assets.

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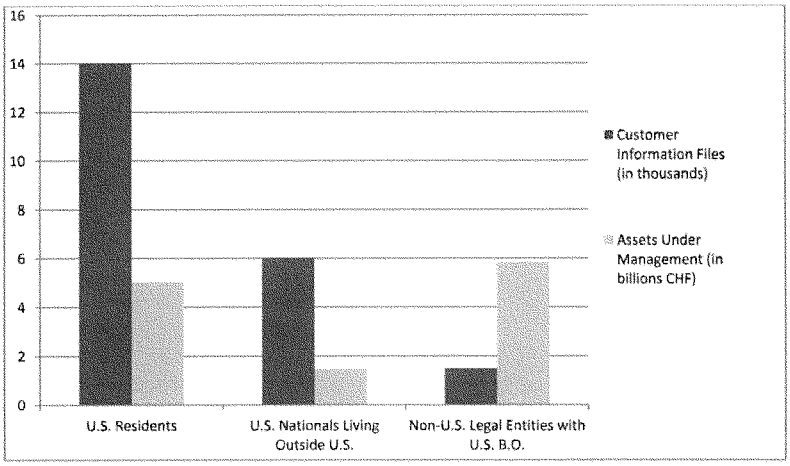
[226] Article 4 of the Swiss banks' code of conduct defines "domiciliary company" as "all legal entities, companies, establishments, foundations, trusts/fiduciary companies or similar associations, either Swiss or foreign, that do not engage in any commercial or manufacturing business or any other form of commercial operation." 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-29-000001, at 007; see also 1/2009 Credit Suisse presentation to Subcommittee, CS-SEN-0001, at 017.

Categories of U.S.-Linked Accounts in Switzerland – 2007



Source: Credit Suisse presentation, Update on Development of AuM and Accounts of U.S. Clients to the Senate Permanent Subcommittee on Investigations (4/20/2012) (providing asset data in Swiss francs), CS-SEN-00189151. Prepared by U.S. Senate Permanent Subcommittee on Investigations, February 2014

(1) Over 1,800 Swiss Bankers Serviced Accounts for U.S. Clients

Despite a policy that called for U.S.-linked accounts to be opened by a single Swiss office with special training in U.S. regulatory and tax requirements, in 2008, over 1,800 Credit Suisse bankers in eight different areas of the bank opened and serviced Swiss accounts for U.S. clients.[227] That breakdown in bank policy was fueled by Swiss secrecy laws, inadequate oversight of Swiss accounts, and multiple exceptions that undermined the bank's concentration policy.

Credit Suisse's policy, as previously explained, aimed at grouping cross border clients of the same nationality at the same desk, called the "Center of Competence," in the business area (region) that included the country in which the clients were citizens. In the Swiss Booking Center, the SALN desk was designated as the Center of Competence for U.S.-linked accounts.[228] According to Credit Suisse, there were both efficiency and compliance reasons for operating a centralized desk for U.S. clients, including ensuring that Credit Suisse had a designated cadre of relationship managers who were knowledgeable and well-trained in

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[227] Credit Suisse presentation, US Project – STC #1, Zurich (8/19/2008), CS-SEN-00426290, at 306.
[228] 9/2008 Legal & Compliance Alert LC-00014, CS-PSI-0037.

U.S. regulatory requirements to handle U.S. clients in accordance with U.S. law.[229]

But that is not what actually happened. At least three factors impaired the effectiveness of the concentration policy with respect to U.S.-linked accounts in Switzerland. They included: (a) Swiss bank secrecy laws which impeded the flow of information between the Swiss and Americas business areas; (b) Credit Suisse's organizational structure which made Swiss-based personnel responsible for the SALN desk in Switzerland, and (c) the limited role of U.S.-based personnel; and the fact that many U.S.-linked accounts were opened by Swiss offices other than the SALN desk.

(a) Swiss Bank Secrecy

Under Credit Suisse policy, the U.S.-linked accounts at the SALN desk in Switzerland were part of the Americas business area, and were supposed to be managed and overseen by Credit Suisse Americas personnel. But because Swiss bank secrecy laws forbid the communication of client-specific bank information outside of the country, little information about the accounts or client activity involving the SALN desk were communicated to Credit Suisse managers in the United States. SALN private bankers instead reported to Markus Walder, who was in Switzerland; he reported to Mr. Wiesendanger, who was also in Switzerland; he reported in turn to Mr. DeChellis, who was in New York, who reported to Mr. Berchtold (later, Mr. Meister), again in Switzerland.

Mr. DeChellis was the head of Credit Suisse private banking offices spread throughout North and South America, and he was hired to build the private banking business in the Americas region.[230] Mr. DeChellis periodically traveled to Zurich, where he interacted with other Private Bank executives and other departments, such as Business Risk and Legal.[231] However, due to Swiss banking secrecy laws, only limited information from the SALN desk was allowed to be transmitted to him or other management in the United States. According to Credit Suisse, its Swiss personnel were restricted to discussing with U.S. managers only U.S. cross border policy with U.S. managers and macro-level data about the Swiss accounts.[232] Bank information related to the U.S. customers in Switzerland was kept out of the United States, where it could be reviewed by U.S. regulators and readily accessible to U.S. legal process.

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[229] Subcommittee briefing by Credit Suisse (10/29/2013) (Agnes Reicke).
[230] Subcommittee briefing by Credit Suisse (1/15/2009).
[231] Subcommittee interview of Anthony DeChellis, Credit Suisse (8/9/2013).
[232] Subcommittee briefing by Credit Suisse (1/15/2009).

In the U.S.-based files that Credit Suisse provided to the Subcommittee for review, information about the SALN accounts and client activities is rare. Information about U.S.-linked accounts opened in Switzerland by desks other than SALN is almost non-existent, even though many such Swiss accounts were opened as explained below. Credit Suisse's sensitivity to Swiss banking secrecy also led it to restrict information provided to Mr. DeChellis and other U.S. personnel even during their visits to Switzerland. Mr. DeChellis told the Subcommittee, for example, that when he attended certain meetings in Switzerland, any accompanying documentation, such as a presentation, was passed out in person and then collected again at the end of the meeting.[233]

In fact, if the bank had organized SALN to be part of its legal entity in the United States, it would have had to operate differently at the time, and ultimately, would have been allowed to provide account information from U.S-linked CIFs to the U.S. Government.[234] But that was not how the bank set up the SALN desk, which was organizationally part of Credit Suisse's operations in Switzerland.

(b) Credit Suisse Organizational Barriers

Credit Suisse organizational structures, combined with Swiss bank secrecy laws, further impeded the flow of key information as well as management oversight of the U.S.-linked accounts in Switzerland. Credit Suisse decided to locate all compliance and legal responsibility for those accounts in Switzerland.[235] When asked who handled compliance and legal issues for the Swiss accounts opened for U.S. clients, one Credit Suisse lawyer explained: "All roads led to the General Counsel in Switzerland," Romeo Cerutti.[236] Mr. Cerutti explained that the nature of Swiss law, with its strict secrecy requirements, drove the bank's compliance structure.[237] He also explained that the Swiss legal division issued the bank's policies on U.S.-linked accounts,[238] which then also applied to accounts in the Americas region.[239]

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[233] Subcommittee interview of Anthony DeChellis, Credit Suisse (8/9/2013).
[234] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014).
[235] See Subcommittee interview of Colleen Graham, Credit Suisse (12/5/2013) (explaining that cross border issues regarding U.S. clients with Swiss accounts were handled by the Swiss legal division); Subcommittee interview of Hans-Ulrieh Meister, Credit Suisse (1/31/2014) (explaining that the role of Credit Suisse's legal division in Switzerland is to identify areas where work is required, develop and issue policies, and guide efforts such as Exit Projects, while the business line acts as a "partner" to ensure appropriate resources and communication are carried out among bank staff).
[236] See Subcommittee interview of Colleen Graham, Credit Suisse (12/5/2013).
[237] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014).
[238] See, e.g., 11/26/2002 Credit Suisse Financial Services Directive, "Bank relationships with US Persons, US Taxpayers and EAMs that are located in the US or have clients who are US persons and/or US Taxpayers ("US Person Directive"), CS-SEN-00465963; 1/1/2007 Credit Suisse Policy, "Bank relationships with US Persons, US Taxpayers and EAMs that are located in the

Credit Suisse told the Subcommittee that the head of Private Bank Compliance, Ursula Lang, who was based in Switzerland, was responsible for compliance issues involving all accounts in Switzerland, including those opened for U.S. clients by SALN.[240] Credit Suisse also explained that, while SALN audit reports were sent to Compliance staff in both Switzerland and the Americas, it was the Swiss Compliance staff, headed by Martin Eichmann in 2006, and Ursula Lang beginning in 2009, that was responsible for resolving any audit issues.[241] Romeo Cerutti, the bank's General Counsel, also told the Subcommittee that he, too, viewed Swiss accounts as the responsibility of Swiss compliance officials. He stated that the Swiss compliance staff was responsible for implementing any adjustments as a result of SALN audits.[242]

On the U.S. side, Colleen Graham, the Credit Suisse lawyer who served as Regional Head of Compliance for the Americas from 2006 - 2010, and then became the Chief of Staff to the Private Bank Americas CEO from 2010 - 2012, defined her job as "having a first class control environment in Private Bank USA,"[243] but not for U.S.-linked accounts in Switzerland. She also explained that when the bank began to identify groups of U.S.-linked accounts in Switzerland to determine whether they were tax compliant, she was not given a role in that process, and was only vaguely aware of that activity from what she heard at General Counsel meetings. She said she had no responsibility regarding the SALN conduct that eventually led to the 2011 indictment of seven Credit Suisse Swiss bankers by the Department of Justice for facilitating U.S. tax evasion.[244]

Business Risk Management was handled the same way, with responsibility for risk issues affecting Swiss accounts assigned solely to Swiss risk managers. For example, documents tracking the monitoring of U.S.-linked accounts in Switzerland, including statistics on account approvals at booking locations within Switzerland, show that the risk reports were carried out solely by the Swiss Business Risk Management

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US or have clients who are US persons and/or US Taxpayers ("US Person Directive"), CS-SEN-00081934 (Version 1.0, replaces D-0025 Version 1.0 of 11/26/2002); 5/19/2008 Credit Suisse Policy, "Bank relationships with US Persons, US Taxpayers US EAMs, and non-EAMs with US persons and/or US Taxpayers clients ("US Person Policy")," (Version 2.1, replaces P-00025 Version 1.1 of 1/1/2007); 4/17/2012 Credit Suisse Policy, "Relationships involving US Persons and US Taxpayers," CS-SEN-00432317 (Version 3.0, replaces P-00025 Version 2.0 of 5/19/2008; and replaces LC-00014 Version 2.0, dated 4/23/2009).

[239] See Subcommittee interview of Colleen Graham, Credit Suisse (12/5/2013).

[240] Id.

[241] Id.

[242] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014) (stating that Martin Eichman, head of Compliance at the time of the 2006 SALN audit, was responsible for implementation because he was in Switzerland.).

[243] See Subcommittee interview of Colleen Graham, Credit Suisse (12/5/2013).

[244] Id.

group.[245] The bank identified only one instance in which the risk reports were shared with an American-based manager.[246]

Credit Suisse's Internal Audit division maintained offices in both Switzerland and New York, but Credit Suisse indicated that the U.S.-linked accounts in Switzerland were solely under the purview of the Swiss office. The SALN desk was subjected to internal audits in 2006 and 2009; both audit reports show the audits were conducted by the Swiss audit team.[247] While the SALN audits were sent to Compliance staff from the Americas region, that staff told the Subcommittee that the Swiss Compliance staff was solely responsible for any issues in the audit, so the U.S. personnel did not exercise any oversight.[248]

Even Credit Suisse's New York Representative Office, which was organized under the SALN desk, was physically located in the United States, and dealt primarily with U.S. clients, was placed under the purview of the Swiss legal division,[249] the Swiss Internal Audit division,[250] and Swiss Compliance. Credit Suisse's U.S. legal and audit personnel were given no oversight responsibility for that New York office.

One result of the decision to restrict oversight of U.S.-linked accounts in Switzerland to Swiss legal, compliance, and audit personnel, is that even senior Credit Suisse personnel responsible for the Americas business knew little about the accounts. A startling admission was made by Robert Shafir, who as current co-head of the Credit Suisse Private Banking and Wealth Management division and CEO of the Americas business area oversees private banking operations in the United States. Mr. Shafir told the Subcommittee that, despite his position and duties, he had not heard of the SALN desk until the Subcommittee made him aware of it in an interview.[251] He told the Subcommittee he had not heard of SALN even though that desk was the designated Center of

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[245] See 3/30/2007 email from Peter Oberhansli to Anthony DeChellis, and others, "Risk Country: Yearly Review 2006," CS-SEN-00409535, attaching 3/30/2007 Credit Suisse Private Banking Risk Country Report 2006.

[246] Id.; Subcommittee interview of Agnes Reicke, Credit Suisse (11/7/2013); see also Subcommittee interview of Colleen Graham, Credit Suisse (12/5/2013) (stating that she never saw any Market Management materials that reported the booking location of U.S. accounts, other than where the booking location was in the United States).

[247] 8/31/2006 "CSG Internal Audit: Private Banking Americas, North America Offshore, Latin America and Bahamas," Credit Suisse Internal Audit, CS-SEN-00418830; 12/9/2009 "CSG Internal Audit Private Banking Americas, North America International," CSG Internal Audit, CS-SEN-00417862.

[248] See Subcommittee interviews of Romeo Cerutti, Credit Suisse (1/15/2014) and Colleen Graham, Credit Suisse (12/4/2013).

[249] See, e.g., 1/2008 Compliance Training Rep. Office New York, CS-SEN-00081458, at 491 ("New York Representative Office Supervisory Team," includes a redacted name "from U.S. Legal Matters in Zurich").

[250] 2/7/2008 "CSG Internal Audit: PB Americas Representative Office New York, CSG Internal Audit, CS-SEN-00226719.

[251] Subcommittee interview of Robert Shafir, Credit Suisse (9/11/2013).

Competence for opening U.S.-linked accounts in Switzerland, had been opening U.S.-linked accounts for years, and its work was ultimately within his sphere of responsibility for the Americas. Mr. Shafir told the Subcommittee he was also unaware of the extent of U.S.-linked accounts being opened in Switzerland by desks other than SALN.

Swiss secrecy laws made it possible for Credit Suisse to tell its U.S. customers that their Swiss accounts were subject solely to Swiss oversight. Swiss personnel attuned to Swiss banking secrecy, and Swiss laws which still do not categorize tax evasion as a crime, controlled the oversight and decision-making for tens of thousands of Swiss accounts opened for U.S. clients with billions of dollars in assets and enable U.S. taxable income to not be reported to U.S. tax authorities.

(c) U.S.-Linked Swiss Accounts Outside of SALN

Credit Suisse told the Subcommittee that its policy was to concentrate on U.S.-linked accounts opened in Switzerland at the SALN desk whose staff was trained in U.S. regulatory requirements. But a third factor was the bank's decision to allow numerous exceptions to its concentration policy leading to thousands of U.S.-linked Swiss accounts being opened by desks other than SALN.[252] In fact, Credit Suisse data indicates that SALN held less than a tenth of all the Swiss accounts opened for U.S. clients in 2008, as the below table indicates.[253]

Although the SALN desk was supposed to open all U.S.-linked accounts in Switzerland, the bank's policy explicitly permitted numerous exceptions. One exception allowed accounts that had been opened before the bank's concentration policy was created to stay at the desks that opened them. Another exception was made for "special desks," such as a desk known by the cryptic code, "SIOA5,"[254] which was

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[252] 3/31/2010 Credit Suisse, "Coverage Rules for Swiss Banking Platform," CS-SEN-00419952.
[253] Credit Suisse presentation, US Project – STC #1, Zurich (8/19/2008), CS-SEN-00426290, at 306.
[254] When the Subcommittee first asked Credit Suisse what SIOA and SIOA5 stood for, and to explain the business it conducted, the bank responded: "The SIOA business unit has been reorganized a number of times over the years and has included different countries at different points in time. If there is a particular period of time that the Subcommittee believes is relevant to this inquiry for the SIOA and SIOA5 units, we can provide you with further details and the composition of the countries covered at that time." Letter from Credit Suisse legal counsel to Subcommittee (7/12/2013), PSI-CreditSuisse-29-000001, at 011-012. When the Subcommittee again requested an explanation, the bank wrote that SIOA was called "Market Area UK/International (from January 2006 until May 2009)," and SIOA5 was "Department Mixed International (from January 2006 until May 2009)." The bank stated that SIOA/SIOA5 carried out business for "clients with generally less than CHF 250,000 in assets with the bank who were non-Swiss international clients resident in the UK and other countries, including but not limited to the US, were assigned to these RMs to receive private banking services in accordance with applicable policies." See Credit Suisse, "Request PSI: Explain the name of, and business conducted by, the SIOA and SIOA5 units," (9/24/2013) CS-SEN-00426136-137. The bank did not disclose until later that SIOA5 was located at the Zurich airport and included a desk focused on U.S. clients.

located at the bank's branch at the Zurich airport.[255] That desk was created in order to make it convenient for U.S. clients who wanted to fly into the country, do their banking at the airport, and leave, so none of the SIOA5 accounts had to go through the SALN desk. Additionally, relationship managers working at desks outside SALN and even outside of the Americas region were allowed to maintain "side business" accounts for "Ultra High Net Worth Individual" clients,[256] family members of clients, and where they had a "business case" for an exception.[257] As a result, U.S.-linked cross border accounts were not concentrated at a single desk, as portrayed in the written Credit Suisse policy.

A 2008 internal Credit Suisse presentation disclosed the real-world results of the many exceptions to the concentration policy. A table prepared as part of the presentation showed that Switzerland was by far the largest location for U.S.-linked offshore accounts, housing 90% of the U.S.-linked CIFs and 80% of the assets under management in the U.S. cross border business.[258] It also showed that, contrary to Credit Suisse's concentration policy, U.S.-linked accounts had been opened by Swiss bankers working in all areas of the bank; as the title of the table states: "US Int'l business activities spread-out across whole organization."[259]

That table, reprinted below, provides a breakdown of the U.S.-linked accounts in Switzerland, including both individual person accounts and accounts opened in the name of legal entities, that were being managed by various regional desks in Switzerland. The acronym at the far left, SBIP, means that the accounts were booked on the Swiss Booking Platform, meaning they were Swiss accounts.

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[255] 3/30/2007 Credit Suisse Private Banking Risk Country Report 2006, CS-SEN-00409537, at 546; Subcommittee interview with Agnes Reicke (10/29/2013).
[256] Ultra High Net Worth Individuals were, at the time of this 2010 presentation, defined as clients worth more than 50 million CHF.
[257] 3/31/2010 Credit Suisse, "Coverage Rules for Swiss Banking Platform," CS-SEN-00419952, at 954, 956.
[258] Credit Suisse presentation, US Project – STC #1, Zurich (8/19/2008), CS-SEN-00426290, at 306.
[259] Id.

CREDIT SUISSE

STRICTLY CONFIDENTIAL

Slide 33

W9 | Non-W9 | Non-US Person

US Intl. business activities spread-out across whole organization – US Person under US tax law[1)]

PRELIMINARY

		CIFs (#)[2)]			Assets (CHF Bn)	Revenues (CHF Mn)[3)]	RM's (#)[4)]
		Individuals	Legal entities	Total			
SBIP	PB Americas	2'551	92	2'643	2.7	35	66/22
	w/o CSPA	*367*	*34*	*401*	*0.6*	*2*	*6/6*
	P&BB CH	6'009	771	6'780	1.8	32	993/44
	PB EMEA	10'283	269	10'552	2.2	36	465/19
	w/o SIOA 5	*9'345*	*91*	*9'436*	*1.1*	*17*	169/62
	PB Asia	84	6	90	0.1	1	38/0
	PB IS&P[5)]	539	35	574	0.7	7	57/3
	Other[6)]	1'191	17	1'208	0.0	1	8/1
Other BCs[7)]		N/A	N/A	337	0.5	4	N/A
Clariden Leu		1'660	240	1'990	1.8	22	239/12
Total		22'317	1'430	24'084	9.7	137	1'866/101

~90% of CIFs, ~80% of AuM and revenues within SBIP

1) 'US Person' from tax perspective; excluding Non-US domiciled greencard holders, other special cases (e.g. *material physical presence in US*) and Non US legal entities ('structures') with 'US Person' (tax perspective) on Form 'A' or in position of control; 2) Includes 'Konto & Depot'; 3) Revenues annualized using 2x factor of 1H08; 4) RMs servicing at ≥ 1 US Intl. costumer (individuals or companies) respectively servicing ≥ 5 US Intl. customers (in italic); 5) Including EAM business; 6) Including PB Technical BA, IB 0877; 7) Included BCs: Spain, China (HK), Dubai, Singapore, Australia, Indonesia, Austria, Germany, Luxembourg, Guernsey, UK, France, Bahamas; only US domiciled clients; Sources: MIS; SOAM/SOVA analysis

Source: Credit Suisse presentation, US Project – STC #1, Zurich (8/19/2008), CS-SEN-00426290, at 306.

The table shows that, in 2008, in addition to the SALN desk, which is represented by the first box in the chart labeled "PB Americas," there were seven other business areas, including Clariden Leu, that opened and serviced U.S. linked accounts. Together, those eight business lines had 1,866 Swiss private bankers servicing U.S. clients.[260] While most of the private bankers serviced only one U.S.-linked Swiss account, the

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[260] On the left, the rows represent different Credit Suisse business areas operating in Switzerland, including:
"PB Americas" which is the SALN desk;
"w/o CSPA" "where of" 367 CIFs, of the 2,551 CIFs that were in PB Americas, were booked by Credit Suisse Private Advisors, a Zurich-based Credit Suisse subsidiary registered with the U.S. SEC;
"P&BB CH" which refers to Private Banking and Business Switzerland;
"PB EMEA" which refers to Private Banking for Europe, Middle East, and Africa;
"w/o SIOA 5" "where of" 9,345 CIFs were in SIOA5, the Credit Suisse branch at the Zurich airport, of the 10,283 CIFS that were in PB EMEA;
"PB Asia" which refers to Private Bank Asia offices located in Switzerland intended to serve Asian clients;
"PB IS&P" which refers to Private Bank External Asset Managers, that is, third parties that service U.S. CIFs with assets in custody at Credit Suisse;
"Other" which refers to other Booking Centers located outside of Switzerland and includes only U.S. resident CIFs, not U.S. national CIFs or foreign entity CIFs with U.S. beneficial owners;
"Other BCs" which refers to other banking centers in Switzerland servicing U.S. clients in 13 countries named in footnote (7) of the chart; and
"Clariden Leu" which refers to CS' private banking subsidiary located in Switzerland.
Credit Suisse presentation, US Project – STC #1, Zurich (8/19/2008), CS-SEN-00426290, at 306.

table indicates that 101 bankers serviced five or more U.S.-linked accounts.[261]

The table also shows that the vast majority of U.S.-linked accounts and assets were handled by desks outside SALN and even outside the PB Americas business area, despite the bank's concentration policy. Two business areas – Private & Business Banking in Switzerland (P&BB CH) and Private Banking in Europe, the Middle East, and Africa (PB EMEA) together held over 17,000 U.S.-linked CIFs with 4 billion CHF in assets, compared to about 2,500 CIFs and 2.1 billion CHF in assets in SALN. Clariden Leu alone, Credit Suisse's subsidiary private bank, reported 1,990 U.S. CIFs with assets of 1.8 billion CHF.

The desk with the most U.S.-linked accounts, SIOA5, was located in the Zurich Airport branch, which was part of the PB EMEA business area, not the SALN (PB Americas) desk. The airport branch had over 9,400 U.S.-linked CIFs, with assets of 1.1 billion CHF. That represented almost quadruple the number of the 2,500 U.S.-linked CIFs in SALN. Credit Suisse indicated that some of those airport branch accounts held less than $50,000, while others held more than $1 million.[262] The U.S.-linked CIFs at the SIOA5 airport branch were part of Private Banking EMEA, as the above chart shows, which organizationally reported into management responsible for Europe, Middle East, and Africa. Neither that nor any of the other offices outside of the PB Americas had any U.S. management in the chain to monitor their U.S.-linked accounts.

The bottom line is that, until 2009, despite a written policy calling for Swiss accounts opened for U.S. clients to be controlled by a single specially trained office that knew U.S. tax laws applicable to its customers, Credit Suisse allowed virtually any Swiss banker to open a Swiss account for a U.S. person.

(2) Most U.S. Account Assets Were Undisclosed

When asked how many of the U.S.-linked accounts opened in Switzerland were hidden from the United States, Credit Suisse told the Subcommittee that it has been unable to determine or estimate that number. When asked how much money was involved in the undisclosed Swiss accounts, Credit Suisse was again unwilling to answer. But any one of three methods for estimating the extent of the tax compliance problem at Credit Suisse shows that the vast majority of the 22,000 Swiss accounts opened for U.S. customers – between 85 and 95% – may have been hidden from U.S. authorities. Those potentially undeclared Swiss accounts held an estimated minimum of 5 billion CHF and perhaps as much as 12 billion CHF. Together those estimates indicate

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[261] Id.
[262] Subcommittee interview with Agnes Reicke, Credit Suisse (10/29/2013).

that 20,000 U.S. accountholders with undeclared Swiss accounts at Credit Suisse may still owe unpaid U.S. taxes on assets totaling billions of dollars.

Closed Accounts Method. Credit Suisse has used bank data to calculate the total number of Swiss accounts it opened for U.S. clients, but has not taken the next step to calculate, or even estimate, how many of those accounts and how much of their assets were likely hidden from U.S. authorities.

Credit Suisse has determined that the total number of U.S.-linked accounts it opened in Switzerland peaked in 2006 with over 22,000 U.S. CIFs with 12.4 billion CHF.[263] Its records also show a decline in that number over time, with the drop in the number of accounts accelerating after the UBS scandal broke in 2008, and Credit Suisse initiated a series of "Exit Projects," described below, to close U.S.-linked accounts in Switzerland that had not been disclosed to the United States. By 2011, the number of U.S. CIFs booked in Switzerland dropped to about 7,000 U.S. CIFs with 2.8 billion CHF in assets.[264] Credit Suisse told the Subcommittee that, as of the end of the year 2013, only 3,500 U.S.-linked CIFs remained at the bank, all of which had been reviewed, verified as tax compliant, and determined to be active, with $2.6 billion in assets.[265] Another 90 U.S. CIFs, with $70 million in assets, were in the process of review by the bank.[266]

Altogether, over a seven-year period, Credit Suisse's U.S-linked accounts in Switzerland dropped from about 22,000 U.S. CIFs with a peak of 12.4 billion CHF in 2006, to 3,500 CIFs and $2.6 billion in 2013. Those figures show that, by the time the bank's Exit Projects concluded, over 85% of the U.S.-linked CIFs had left the bank. Since the purpose of the Exit Projects was to maintain accounts only if the U.S. accountholders could demonstrate U.S. tax compliance, meaning they were disclosed to U.S. authorities, the bank's figures on closed accounts suggest that 85% were undisclosed, producing an estimate of

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[263] See Table 1, above.
[264] Id. These figures do not include nearly 2,300 U.S.-linked accounts that, from 2008 to 2012, were booked at Clariden Leu, the private Swiss bank purchased and maintained by Credit Suisse as a separate subsidiary until merging its accounts and operations into the larger bank in 2012.
[265] See Credit Suisse presentation, "Credit Suisse Report to the Permanent Subcommittee on Investigations," (2/10/2014), PSI-CreditSuisse-64-000001. Those accounts included accounts opened by U.S. residents, U.S. nationals, and foreign domiciliary entities with U.S. beneficial owners. Additionally, Credit Suisse identified 973 U.S.-linked CIFs with $1.5 billion which, between 2008 and 2013, were no longer categorized as a U.S. account, either because the client moved out of the United States or for some other reason.
[266] Id.

nearly 19,000 U.S. customers with hidden Swiss assets totaling nearly $5 billion.[267]

UBS Method. Another way to estimate of the number of undeclared Swiss accounts is to use the method that UBS used when it came forward in 2008 to admit that it had aided and abetted tax evasion by U.S. persons with Swiss bank accounts. At that time, UBS estimated the number of undeclared U.S. accounts to be equal to the number of U.S. client accounts in Switzerland that had no IRS W-9 form on file with the bank. UBS reasoned that a U.S. accountholder who failed to provide a W-9 account to the bank likely also failed to disclose the Swiss account to U.S. authorities. In 2006, Credit Suisse had over 22,000 U.S-linked CIFs, a customer base which grew when it acquired Clariden Leu in 2007, so that the combined number of U.S.-linked CIFs at both Credit Suisse and Clariden Leu totaled nearly 23,000 in 2008.[268]

Using the UBS standard, the key factual question is how many of the Credit Suisse and Clariden Leu accounts opened for U.S. customers in Switzerland were allowed to operate with no W-9 form on file with the bank. Using data supplied by the bank for 2008, Credit Suisse, including Clariden Leu, had at least[269] 8,700 U.S.-linked CIFs with $9.1 billion in assets in securities accounts, and an additional 15,300 CIFs with another $2.8 billion in assets in non-securities accounts, that had not provided the bank with a W-9 or similar tax form.[270] Using the UBS methodology indicates that, in 2008, about 24,000 U.S.-linked CIFs in Switzerland – about 95% of the total number of accounts – holding roughly $11.9 billion in assets may have been undeclared to U.S. authorities.

DOJ Estimate. Still another way to estimate the extent of undeclared Swiss accounts at Credit Suisse is to draw from the Department of Justice's 2011 indictment of seven Credit Suisse bankers. In the superseding indictment, filed in July 2011, DOJ alleged that Credit Suisse had $4 billion in undeclared U.S.-linked accounts:

> "International Bank's managers and bankers working in the cross-border business knew and should have known that they were

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[267] Id. Numbers do not add up because the bank opened some U.S.-linked accounts during that time period.
[268] See Table 1, above.
[269] These figures are "at least" because they represent the accounts that Credit Suisse has reviewed, but not all of the U.S.-linked Swiss accounts that existed during that year.
[270] Credit Suisse presentation, "Credit Suisse Report to the Permanent Subcommittee on Investigations," (7/31/2013), PSI-CreditSuisse-33-000001, at 020-031. Credit Suisse explained to the Subcommittee that accountholders for non-securities accounts were not required to provide a W-9 form, and the bank did not search data to determine if any such accountholders, nonetheless, had a W-9 on file, noting that it was possible that an accountholder would have volunteered a W-9 form in order to show tax compliance. See Subcommittee briefing by Credit Suisse (2/7/2014).

> aiding and abetting U.S. customers in evading their U.S. income taxes. As of the fall of 2008, International Bank maintained thousands of undeclared accounts containing approximately $4 billion in total assets under management in those accounts."[271]

The $4 billion figure may have been sourced from a W-9 project presentation prepared by Credit Suisse in the course of a 2006 effort to identify Swiss accounts opened by U.S. residents which held U.S. securities. The presentation estimated that the total number of U.S. resident CIFs without W-9 forms on file at the bank at that time held assets totaling $4.1 billion.[272] That presentation left out two categories of U.S. CIFs – U.S. nationals living outside the United States, and U.S. beneficial owners of foreign entities. The bank has since developed statistics that in 2006, it had 6,000 U.S. national CIFs with 1.5 billion CHF, and 1,400 CIFs of U.S. beneficial owners of foreign entities, with 5.7 billion CHF.[273] Given those additional facts uncovered since the bank's 2006 estimate, however, as described above, the amount of assets associated with the bank's undeclared Swiss accounts are likely significantly greater than the amount cited by DOJ in the indictment. For example, using the UBS method for estimating the number of undeclared accounts indicates that 95% of the Swiss accounts opened for U.S. clients at Credit Suisse might not have been disclosed to the United States; that percentage suggests, in turn, that nearly all of the funds in those accounts, totaling nearly $12 billion, may also have been unreported to U.S. authorities.

Credit Suisse Resistance. Credit Suisse has resisted using bank data to determine or estimate either the number of undeclared Swiss accounts held by its U.S. clients or the amount of funds associated with those undeclared accounts. Mr. Dougan, Credit Suisse's CEO, told the Subcommittee that the bank has never had any estimate of undeclared U.S.-linked accounts, either as a percentage or number of accounts, or as an amount of assets, because the bank never went through an exercise to develop such an estimate.[274] The bank also told the Subcommittee:

> "Credit Suisse did not systematically track any figures on the number of undisclosed client relationships at the Bank. Moreover, as also previously discussed, in the vast majority of cases the Relationship manager, let alone the Bank, was unaware of the tax status of the client. We are therefore unable to provide the number

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[271] United States v. Markus Walder, et al., Case No. 1:11-CR-95 (E.D. VA), Superseding Indictment (7/21/2011), at ¶1. "International Bank" is Credit Suisse.
[272] See 11/28/2006 Credit Suisse presentation, CSPA Transfer of W-9 Clients "Receiver Project" 2 STC-Meeting, at 6, CS-SEN-00143681, at 685.
[273] Credit Suisse presentation, Update on Development of AuM and Accounts of U.S. Clients to the Senate Permanent Subcommittee on Investigations (4/20/2012) (providing asset data in Swiss francs), CS-SEN-00189151, at 153-154.
[274] Subcommittee interview of Brady Dougan, Credit Suisse (12/20/2013).

> of client relationships that were undisclosed to U.S. authorities each year."[275]

When the Subcommittee asked for estimates of undisclosed accounts based on the Exit Projects conducted by the bank, Credit Suisse responded: "The objective of the Credit Suisse and Clariden Leu exit projects was to verify tax compliance of U.S. linked accounts in order to allow these accounts to remain at the banks. The projects were never intended to identify non-compliant behavior."[276] While the bank has repeated that it was not its responsibility to ensure their U.S. clients paid their taxes, it reaped profits from its undeclared business.

These responses by Credit Suisse, and additional materials obtained by the Subcommittee, suggest that even after the UBS case, the bank and its employees failed to inquire into and turned a blind eye toward evidence of undeclared Swiss accounts being used by U.S. clients to evade U.S. taxes. Credit Suisse continues to resist calculating the extent to which its Swiss accounts were used to facilitate U.S. tax evasion.

It is clear from the evidence, however, that Credit Suisse bankers knew that the bank's Swiss accounts were being used to hide assets, and were willing to facilitate that misconduct even after the UBS scandal erupted. In October 2008, for example, two months after the Subcommittee's hearing in which UBS publicly admitted wrongdoing and apologized, a Credit Suisse banker who worked at the SIOA5 branch at the Zurich airport received a question from a colleague about setting up an account for a U.S. client and provided this response:

> "He needs not to disclose anything to anyone. He has the choice of disclosing it to the US authorities or not. It is his choice! Whatever he does is of no concern to us. If he opts not to disclose his SSN, he is simply barred from purchasing US ISIN instruments (www.sec.com Edgar List) [U.S. securities]."[277]

That banker later moved to the SALN desk and now manages it.

In another instance, Credit Suisse openly advised a U.S. client that filing a W-9 tax form identifying his account as one that had to be reported to the IRS was optional, unless the client purchased U.S. securities; that approach to the filing of W-9 forms was, in fact, the bank's official policy until 2012. A former Credit Suisse accountholder

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[275] 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-29-000001, at 003-004.

[276] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, at PSI-CreditSnisse-54-000003, at 033.

[277] 10/24/2008 email from Joseph Haering to Raphael Waknine, "Numbered Accounts," CS-SEN-00345395.

described to the Subcommittee how this policy was carried out in practice.[278] In 2005, Client 1, an American citizen, arrived at Credit Suisse headquarters in Zurich and asked to open an account in Switzerland. To open the account, a bank representative was provided a copy of Client 1's U.S. passport and driver's license as identification. Client 1 told the Subcommittee that a SALN relationship manager, Michele Bergantino, entered the room with a stack of account opening paperwork to be filled out, including a W-9 form. Client 1 told the Subcommittee that Mr. Bergantino explained that, while the W-9 form was required by the U.S. Government, Credit Suisse did not require it to open an account, and that it could be provided at another time. Client 1 proceeded to open an account and use it for the next five years, without ever signing a W-9 form or disclosing the account to the IRS until Client 1 entered the IRS Offshore Voluntary Disclosure Program in 2010. Even after Client 1 told a Credit Suisse banker about entering the Voluntary Disclosure Program and requested closure of the account in order to pay fines and fees to the IRS as a result of failing to disclose the account, the bank expressed no condemnation but indicated that the bank would welcome the client's business in the future.[279]

Together, the evidence is overwhelming that Credit Suisse opened tens of thousands of undeclared Swiss accounts for U.S. customers with billions of dollars in assets.

C. Credit Suisse Banking Practices That Facilitated U.S. Tax Evasion

The investigation found that, from about 2001 to 2008, Credit Suisse recruited U.S. clients to open Swiss accounts, and employed a number of banking practices that helped its U.S. customers conceal their Swiss accounts from U.S. authorities. Those practices included sending Swiss bankers to the United States to secretly recruit clients and service existing accounts; sponsoring a New York Representative Office that served as a hub of activity on U.S. soil for Swiss bankers; and helping customers mask their Swiss accounts by referring them to "intermediaries" that could form offshore shell entities for them and by opening accounts in the name of those offshore entities. One former customer described how, on one occasion, a Credit Suisse banker traveled to the United States to meet with the customer at the Mandarin Oriental Hotel and, over breakfast, handed the customer the bank

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[278] Subcommittee interview of Client 1 (9/10/2012). Client 1, and other Credit Suisse clients who spoke with the Subcommittee, have been anonymized.

[279] See 3/2/2010 Chris Bagios emails to Client 1, CS-SEN-00025083 ("Nevertheless, do let me know if you agree to discuss the reasons for your decision; I trust that we can address concerns pertaining to the continuation of the relationship out of Zurich, which I would very much hope for. I am particularly interested in discussing whether your attorney or the IRS directly concluded that the assets have to be repatriated. … It will certainly be a pleasure to welcome you as a client, should you opt to knock on our door again.").

statements hidden in a Sports Illustrated magazine. Credit Suisse also sent Swiss bankers to recruit clients at bank-sponsored events, including the annual "Swiss Ball" in New York and golf tournaments in Florida. The Credit Suisse New York Representative Office maintained a document listing "important phone numbers" of intermediaries that formed offshore shell entities for some of the bank's U.S. customers. Credit Suisse also encouraged U.S. customers to travel to Switzerland, providing them with a branch office at the Zurich airport offering a full range of banking services and servicing accounts for nearly 10,000 U.S. customers. Bank documents also indicate that Swiss bankers were well aware that many U.S. clients wanted to conceal their accounts from U.S. authorities, but either turned a blind eye to their undeclared status or actively assisted those accountholders to hide their assets from the United States.

(1) Legal and Policy Restrictions on U.S. Activities

Foreign banks seeking to conduct securities or banking activities in the United States are subject to U.S. oversight and certain legal restrictions. To advertise securities products, solicit clients, carry out securities transactions, or give investment advice in the United States, non-U.S. persons must first register with the U.S. Securities and Exchange Commission (SEC).[280] 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 non-U.S. securities, mutual funds, and other investment products may not meet. Similar prohibitions in State securities and banking laws may also apply.

While Credit Suisse has a U.S. broker/dealer and investment advisor that is registered with the SEC, called Credit Suisse Securities (USA) LLC, that firm's license applies only to its own employees. The Swiss private bankers who traveled to the United States were employed by Credit Suisse AG, a Swiss-licensed bank which does not have a U.S.

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[280] 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."

broker/dealer license and is not authorized to conduct securities activities within the United States.[281]

Credit Suisse was well aware that its Swiss bankers had no authority to conduct most banking services or securities activities in the United States. Since at least 2002, Credit Suisse maintained an internal policy, called the U.S. Persons Policy, which set out guidelines to avoid violating U.S. securities laws. The policy forbid Credit Suisse AG bankers from offering investment advice, soliciting clients, or executing securities transactions in the United States. The policy also restricted sales of certain financial products, using an internal website to identify which could or could not be sold to U.S. clients.[282] The policy explicitly prohibited Swiss bankers from using telephones and email to provide investment advice or solicit securities transactions:

> "General Rule: Communications by mail, telephone, telex, telefax, internet or e-mails into or from the United States, or visits or meetings in the United States, may **not** be used to provide **Investment Advice or Solicitation**, as defined below."[283]

When traveling in the United States, or communicating with U.S. residents through telephone calls, mail, fax, or email, Credit Suisse private bankers had to abide by both the SEC restrictions and the bank's own policies.

(2) Traveling in the United States

Despite the prohibitions in U.S. law and bank policy, Credit Suisse Swiss bankers met with their American clients in person on American soil. While traveling to the United States was not itself illegal, the U.S. trips enabled the Swiss bankers to travel across the country to carry out activities prohibited by U.S. law or the bank's own policies. Evidence shows that the Swiss bankers used their in-person meetings with U.S. clients, for example, to provide account statements for Swiss accounts, provide investment advice, and obtain approval for securities transactions without creating any paper trails in the United States of illegal securities transactions or undeclared accounts. Swiss bankers also traveled to the United States in order to broaden their client base, seeking referrals and arranging meetings with prospective clients.

According to an analysis prepared by Credit Suisse, its travel records indicate that, from 2001 to 2008, Swiss relationship managers

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[281] Credit Suisse Private Advisors, a subsidiary of Credit Suisse AG, was a Zurich-based, SEC-licensed broker/dealer, however, the conduct at issue in this report was through Credit Suisse AG, not Credit Suisse Private Advisors.

[282] See, e.g, 11/26/2002 Credit Suisse Financial Services Directive, "Bank relationships with US Persons, US Taxpayers and EAMs that are located in the US or have clients who are US persons and/or US Taxpayers ("US Person Directive"), CS-SEN-00465963.

[283] Id. at 964 (emphasis in original).

made over 150 separate trips to the United States to meet with American clients, as well as solicit new clients.[284] In conducting this analysis, Credit Suisse focused on Swiss bankers associated with the SALN office, and included only a general review of travel by bankers in other Swiss offices with U.S.-linked accounts. Credit Suisse explained that internal "Travel Reports" were normally required, but had not been prepared or retained for almost half of the U.S. trips taken by its Swiss bankers, and that the Travel Reports that did exist contained inconsistent levels of detail.[285] Its review, which drew from those incomplete and inconsistent travel records, necessarily underestimated the total number of trips taken to the United States.[286]

Even the limited bank analysis found that, from 2001 to 2008, SALN Relationship Managers took at least 107 trips to the United States, with the number of trips peaking at 20 per year in the years 2002 and 2006.[287] Credit Suisse indicated that "almost all" SALN travel was to meet with U.S. clients.[288] Outside of SALN, the bank's analysis determined that other Swiss-based Relationship Managers took at least 50 trips to the United States between 2002 and 2008, with most trips for the purpose of soliciting or servicing U.S. clients, some of whom may have opened or had undeclared accounts.[289] In 2008, after the UBS scandal broke, Credit Suisse banned all further client-related travel to the United States by Swiss bankers.

To supplement the Credit Suisse analysis, the Subcommittee identified additional U.S. trips by SALN Relationship Managers using official travel records collected and maintained by the U.S. Customs and Border Protection (CBP). The bank provided travel reports for SALN relationship managers that have been indicted by the U.S. Department of Justice – Markus Walder, Marco Parenti Adami, Michele Bergantino, Susanne Ruegg Meier – as well as two other relationship managers. The CPB data examined by the Subcommittee reported U.S. trips by four additional SALN relationship managers. Those four Swiss bankers made an additional 22 trips, to major cities like New York, San

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[284] Credit Suisse presentation, Report to the Senate Permanent Subcommittee on Investigations (2/29/2012), PSI-CreditSuisse-11-000001-019, at 011 (travel statistics based on SALN relationship manager travel reports, email, data from travel agency records, expense statements, lists of business trips of SALN employees, list of training attendees, and DHL information on shipments).

[285] See 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, at PSI-CreditSuisse-54-000003, at 012.

[286] Id.

[287] Credit Suisse presentation, Preliminary Review (7/26/2011), CS-SEN-0001, at 014; see also Credit Suisse presentation, Report to the Senate Permanent Subcommittee on Investigations (2/29/2012), PSI-CreditSuisse-11-000001, at 011.

[288] Subcommittee briefing by Credit Suisse (1/16/2014).

[289] Id.

Francisco, Los Angeles, and Miami.[290] The bank told the Subcommittee that travel by non-supervising Relationship Managers from SALN was typically undertaken for client-related reasons.[291]

When SALN Relationship Managers took a trip to the United States, they sometimes filled out Travel Report Summaries at the bank. Credit Suisse provided the Subcommittee with roughly 15 of those Travel Report Summaries out of the 107 trips taken by SALN bankers. Credit Suisse informed the Subcommittee that the number was limited, because the bank could provide copies of only those Travel Report Summaries that were physically located in the United States; production of travel records, or any document, located in Switzerland was prohibited by Swiss secrecy and data protection laws. In its review of just those 15 reports, Credit Suisse identified one instance where a supervisory Relationship Manager told a traveling Relationship Manager to lie on a travel report to mask using a U.S. trip to solicit business, which was against bank policy. Instead of reporting the business aspects of the trip, the supervisor told the Relationship Manager to write that he had attended the wedding of a client's child, which fell within internal bank travel guidelines.[292] SALN bankers who traveled to the United States also lied on U.S. travel forms, administered by the Department of Homeland Security, when they filled out requests for visa waivers in order to travel in the United States by stating that they planned to visit the United States for "tourism" purposes instead of "business" purposes."[293] While the bank did not provide travel reports for all U.S. trips, there were at least five SALN bankers whose travel reports showed that they were conducting banking business with U.S. customers, and, CBP data for the same trip showed that they represented to U.S. authorities that they were tourists.[294]

The Travel Report Summary templates included fields for the Relationship Managers to report, among other things, their name, destination, travel dates, cost of travel, and the number of clients visited. It also requested the number of prospective clients the Relationship

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[290] 3/9/2012 Letter from the Department of Homeland Security to Allison F. Murphy and Andrew C. Dockham, U.S. Permanent Subcommittee on Investigations [Sealed Exhibit]; 4/5/2012 Letter from the Department of Homeland Security to Allison F. Murphy and Andrew C. Dockham, U.S. Permanent Subcommittee on Investigations [Sealed Exhibit].
[291] Subcommittee briefing by Credit Suisse (1/16/2014).
[292] See 2/29/2012 K&S Presentation, discussion re PSI-CreditSuisse-11-000011; see also CS-SEN-00081864 (original report) with CS-SEN-00081865 (edited report "the reason for this trip was an invitation to a wedding in San Francisco.").
[293] See Subcommittee analysis of travel reports of SALN bankers provided by Credit Suisse and Customs and Border Protection data requested by Subcommittee, including 3/9/2012 Letter from the Department of Homeland Security to Allison F. Murphy and Andrew C. Dockham, U.S. Permanent Subcommittee on Investigations [Sealed Exhibit]; 4/5/2012 Letter from the Department of Homeland Security to Allison F. Murphy and Andrew C. Dockham, U.S. Permanent Subcommittee on Investigations [Sealed Exhibit].
[294] Id.

Manager saw, the number of client referrals received, and the number of new accounts opened, with corresponding asset amounts for all categories. It also included an open field for recording notes related to the travel activity, and a field for reporting a "Success Story" from the trip. While all of the Travel Reports contained some redactions, including redactions that removed the names of the bankers who traveled to the United States, the Subcommittee was able to identify most of the relevant SALN bankers who filed the reports.[295]

The Credit Suisse Travel Reports, like the CBP travel records, showed that SALN Relationship Managers traveled extensively across the United States, visiting cities along the West Coast,[296] East Coast,[297] South,[298] and many cities in between, such as Houston[299] and Chicago.[300] On a given trip, Relationship Managers often visited several cities.[301] According to the bank's trip analysis, the average trip to the United States by an SALN Relationship Manager lasted seven to ten days with three to four client visits per day.[302] The Travel Reports also indicated that, over the course of a trip, SALN Relationship Managers visited an average of 32 clients with assets totaling about 110 million CHF. In addition, the Travel Reports showed that the Swiss bankers frequently took clients out for meals[303] and, on occasion, provided a

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[295] Compare 2008 SALN Organizational Chart, CS-SEN-00080287 (names of Swiss employees redacted and replaced with codes, such as RM22) with 2008 SALN Organizational Chart, CS-SEN-00011631 (names of Swiss employees not redacted).

[296] 4/28/2006 Travel Report Summary from "RM02" [identified by Subcommittee as Michele Bergantino], CS-SEN-00081864 (San Franciso, Los Angeles, Newport Beach); 10/12/2005 Travel Report Summary from "RM20SH" [identified by Subcommittee as Marco Parenti Adami], CS-SEN-00081881 (Los Angeles).

[297] 5/3/2006 Travel Report Summary from "RM19" [identified by Subcommittee as Werner Luscher], CS-SEN-00081868 (New York, Philadelphia); 7/19/2006 Travel Report Summary by "RM25" [identified by Subcommittee as Florian Schefer], CS-SEN-00081874 (New York); 5/6/2006 Travel Report Summary by "RM29 RH" [identified by Subcommittee as Markus Walder], CS-SEN-00081870 (New York, Boston); 4/1/2007 Travel Report Summary by "RM29 RH" [identified by Subcommittee as Markus Walder], CS-SEN-00081885 (New York, Boston).

[298] 7/19/2006 Travel Report Summary from "RM21" [not identified], CS-SEN-00081877 (Miami); 5/20/2006 Travel Report Summary from "RM22 SH DRH" [identified by Subcommittee as Susanne Ruegg-Meier], CS-SEN-00081872 (Miami, Tampa and Jupiter); 7/19/2006 Travel Report Summary by "RM25" [identified by Subcommittee as Florian Schefer], CS-SEN-00081874 (Miami).

[299] 10/2/2006 Travel Report Summary from "RM21" [not identified], CS-SEN-00081879 (Houston, Reno); 5/20/2006 Travel Report Summary from "RM22 SH DRH" [identified by Subcommittee as Susanne Ruegg-Meier], CS-SEN-00081872 (Houston).

[300] 5/3/2006 Travel Report Summary from "RM19" [identified by Subcommittee as Werner Luscher], CS-SEN-00081868); 4/1/2007 Travel Report Summary by "RM29 RH" [identified by Subcommittee as Markus Walder], CS-SEN-00081885.

[301] Id. Some of the Travel Reports also reported a few visits to Canadian cities, but did not include data to indicate the number of Canadian clients visited or the amount of assets under management.

[302] See Credit Suisse presentation, Report to the Senate Permanent Subcommittee on Investigations (2/29/2012), PSI-CreditSuisse-11-000001, (discussion regarding 011).

[303] See, e.g., 4/28/2006 Travel Report Summary from "RM02" [identified by Subcommittee as Michele Bergantino], CS-SEN-00081864, at 866 (receipt for lunch); 3/11/2008 Travel Report Summary from Business Trip Report from "RM29 RH" [identified by Subcommittee as Markus

client with a gift.[304] Client discussions focused primarily on issues related to U.S. securities.[305]

Several former Credit Suisse customers told the Subcommittee about meeting with Swiss bankers who serviced their undeclared Swiss accounts. In one instance, a former Credit Suisse accountholder, Client 1, spoke to the Subcommittee about meeting with a SALN Relationship Manager, Michele Bergantino, in the United States.[306] According to the client, Mr. Bergantino traveled to the city where Client 1 lived and extended an invitation to meet at a Mandarin Oriental hotel for breakfast. At the hotel, Mr. Bergantino and Client 1 discussed the client's account. Mr. Bergantino also brought Client 1's account statements in hard copy to review. According to Client 1, Mr. Bergantino handed the client a Sports Illustrated magazine, with the account statements hidden inside the magazine pages.

Other actions taken by Swiss bankers while on U.S. soil are described in the 2011 superseding indictment of seven Credit Suisse Swiss bankers. The allegations state that, while on travel in the United States, among other actions, some of the Swiss bankers "caused U.S. customers to execute forms that directed [the bank] not to disclose their identities to the IRS ... caused U.S. customers to open and maintain both declared and undeclared accounts ... so that U.S. authorities would likely not suspect the customer had an undeclared account ... provided cash in the United States to U.S. customers as withdrawals from their undeclared accounts ... [and] solicited cash deposits in the United States from U.S. customers with undeclared accounts."[307]

Together, the bank's trip analysis, the bankers' Travel Reports, the CBP travel records, and the information provided by former clients present clear evidence that travel to the United States by Credit Suisse bankers between 2001 and 2008 was an extensive and routine business practice. On some of those trips, some of the Swiss bankers solicited new U.S. clients, serviced existing clients, and engaged in banking and securities transactions on U.S. soil, in apparent violation of U.S. law and the bank's own written policy.

Walder], CS-SEN-00081901, at 903-904 ("February 25, 2008: [redacted] the hotel for lunch; [redacted] @ the hotel for coffee; [redacted] dinner," "February 26, 2008: [redacted] @ the [M]eridian Hotel for lunch; [redacted] @ the hotel for drinks followed by dinner with [redacted]; [redacted] @ the hotel for dinner").

[304] Id. (see expense list for "gift to client").

[305] See Credit Suisse presentation, Report to the Senate Permanent Subcommittee on Investigations (2/29/2012), PSI-CreditSuisse-11-000001, at 006.

[306] Subcommittee interview of Client 1 (9/10/2013).

[307] United States v. Walder, Case No. 1:11-CR-95 (E.D. Va.), Superseding Indictment (7/21/2011), ¶¶ 36-45.

(3) Soliciting Clients on U.S. Soil

According to bank policy issued in 2006, Credit Suisse bankers based in Switzerland were not permitted to solicit new clients while traveling in the United States.[308] The Credit Suisse travel reports show, however, that the solicitation of new clients was expected, encouraged, and in fact occurred on a regular basis with the full knowledge of senior bank personnel.

The Credit Suisse Travel Reports reviewed by the Subcommittee required Swiss Relationship Managers to report to their supervisors the number of prospective clients they visited in the United States, the amount of assets that could be attracted, and the number of new accounts actually opened during the trip.[309] In 2003, travel to the United States required "at least one prospect per day (travelling days included),"[310] and by 2006, the bank appears to have increased the level of client solicitation that was required on trips, as indicated by multiple Travel Reports indicating that "at least 25% of visits" to "prospects" were required.[311] Additionally, several Relationship Managers wrote in the trip notes that their goals were to seek U.S. client referrals, obtain new U.S. clients, and expand the client assets they were managing. One SALN Relationship Manager, for example, wrote that his "mission" for the trip was: "Members of [SALN] are asset and profit hungry people proud to deliver outstanding results."[312] That Relationship Manager, Michele Bergantino, wrote:

> "In order to keep up the pace in TOI's [Total Operating Income], it will be key for me to increase asset base of existing clients

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[308] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, at PSI-CreditSuisse-54-000012 ("Meeting prospective clients was expressly prohibited by internal Bank policy in 2006.").

[309] See, e.g., 10/12/2006 Travel Report Summary from "RM20 SH" [identified by Subcommittee as Marco Parenti Adami], CS-SEN-00081881 (also indicating that the banker met with 5 prospects); 10/2/2006 Travel Report Summary from "RM21" [not identified], CS-SEN-00081879 (also indicating that the banker met with 7 prospects); 7/19/2006 Travel Report Summary from "RM25" [identified by Subcommittee as Florian Schefer] (also indicating that the banker met with 10 prospects with "potential of CHF 15,000,000"), CS-SEN-00081874.

[310] In re Credit Suisse Group AG, SEC File No. 3-15763, Order Instituting Administrative and Cease-and-Desist Proceedings (2/21/2014), at 5 ("[M]inutes from an SALN meeting that occurred on January 1, 2003 stated SALN management's view that 'business trips will no longer be allowed if no prospecting is included. *Every trip will involve at least one prospect per day (travelling days included)*.'" [Emphasis in original.]).

[311] See, e.g., 10/12/2006 Travel Report Summary from "RM20 SH" [identified by Subcommittee as Marco Parenti Adami], CS-SEN-00081881 (also indicating that the banker met with 5 prospects); 10/2/2006 Travel Report Summary from "RM21" [not identified], CS-SEN-00081879 (also indicating that the banker met with 7 prospects); 7/19/2006 Travel Report Summary from "RM25" [identified by Subcommittee as Florian Schefer] (also indicating that the banker met with 10 prospects with "potential of CHF 15,000,000"), CS-SEN-00081874.

[312] 4/28/2006 Travel Report Summary from "RM02" [identified by Subcommittee as Michele Bergantino], CS-SEN-00081864.

(consolidation of banking relationships) or to attract new clients. Very encouraging to see that now after 4 years the amount of referrals is increasing significantly."[313]

Credit Suisse told the Subcommittee that it was unable to quantify the total number of American clients that were solicited during the trips that Swiss Relationship Managers took to the United States,[314] but freely admitted that client solicitation occurred.[315]

(4) Recruiting U.S. Clients at Bank-Sponsored Events

Credit Suisse not only sent Swiss bankers to the United States and required them to report on their client solicitations, it also arranged for them to meet wealthy potential clients at bank-sponsored events. Credit Suisse told the Subcommittee that it was aware of only a few "isolated" instances in which Swiss bankers were flown to the United States to attend a Credit Suisse-sponsored golf tournament in Florida or an annual Swiss ball in New York.[316] At the same time, it produced SALN yearly business travel calendars for 2006, 2007, and 2008 – the only years provided – all of which listed the Swiss Ball in New York and multiple golf events in Florida as well as in Nassau, Bahamas as events that SALN bankers attended.[317] The Subcommittee learned that, for the Swiss Ball, Credit Suisse typically sponsored a table and invited existing and prospective clients as guests and seated them with several Swiss bankers.[318] In 2007, Markus Walder, the most senior manager of the SALN office, submitted a proposal form for the bank to sponsor a table at the Swiss Ball in New York at a cost of $6,500.[319] He wrote on the form that his objective for the event was "product volume" of between

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[313] Id.

[314] 12/20/2013 letter from legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, at PSI-CreditSuisse-54-000001, at 012.

[315] See, e.g., 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-29-000001, at 10 ("[T]here were instances where SALN Relationships Managers advised U.S. clients about U.S. securities, solicited U.S. clients while traveling to the U.S., and provided U.S. clients with account information when the client was in the U.S. – both by email and when traveling.").

[316] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, at PSI-CreditSuisse-54-000001, at 013 ("Our investigation did not reveal any instances in which Swiss-based relationship managers organized or visited special events in the U.S. for the purpose of meeting existing or prospective clients, except for an isolated trip to a golf event in Florida and the occasional attendance of the annual Swiss Ball in New York, a social event of the Swiss community which bank clients may also have attended.").

[317] See Business Trips 2006, CS-SEN-00080267; Business Trips SALN and SALN1 2007, CS-SEN-00080270; Business Trips SALN and SALN1 2008, CS-SEN-00080271.

[318] 1/15/2004 email from Manuel Rybach to Mary Whalen, "Swiss Ball in New York on January 24, 2003," CS-SEN-00231704.

[319] 12/2006 Marketing Event/Activity – Proposal Form by "RM29 RH" [identified by Subcommittee as Markus Walder], CS-SEN-00081907.

10-20 million CHF in assets under management. He also noted: "Invitees have a huge referral potential and an excellent network."[320]

Some of the Credit Suisse Travel Reports also indicated that, when recruiting new clients in the United States, the relationship managers openly discussed opening Swiss accounts that would not be reported to U.S. tax authorities. For example, one banker wrote that an unnamed client planned to open a reported account first and an unreported account later, explaining that the client: "Will come in GE [Geneva] in November to open a reported account of 1.5 mio [million] usd [U.S. dollars] and invest in VVA [a discretionary mandate account[321]]. Will slowly include the unreported account."[322]

(5) Masking Account Ownership Through Offshore Entities

When opening Swiss accounts for U.S. clients, the evidence shows that some Credit Suisse bankers recommended the use of offshore shell entities as the nominal accountholders. While it is not illegal to establish a trust or entity as an accountholder, using offshore shell corporations, trusts, or similar legal entities as the named accountholder instead of the U.S. person providing the funds for the account is a common tactic used to evade U.S. taxes by impeding identification of both U.S. accounts and U.S. accountholders.[323]

One former U.S. accountholder, Client 1, told the Subcommittee that a Credit Suisse banker suggested forming an offshore entity to act as the client's Swiss accountholder several times, both before and after 2008, because it would provide "one more layer of protection" for the assets.[324] Client 3 explained that the client dismissed the suggestions, because of the additional charges involved, and because the client had felt sufficiently secure after placing the funds in Switzerland.[325] Travel notes by a Credit Suisse banker, Markus Walder, on a March 2007 trip to New York, state that an unnamed U.S. client had "signed papers for Liechtenstein foundation named [redacted] and Hong Kong Company [redacted]."[326] Travel notes by another Credit Suisse banker discussing

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[320] Id.
[321] Subcommittee briefing by Credit Suisse (1/16/2014) (a discretionary mandate account gave the bank discretion to invest the client's assets according to a risk profile provided by the client).
[322] 10/2/2006 Travel Report Summary from "RM21" [not identified], CS-SEN-00081879.
[323] Credit Suisse told the Subcommittee that using legal entities as the accountholder, instead of a natural person, could also serve more innocuous purposes such as inheritance and succession planning. 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, PSI-CreditSuisse-54-000001, at 023.
[324] Subcommittee interview of former Credit Suisse Client 1 (9/10/2013).
[325] Id.
[326] 3/22/2007 Travel Report for "RM29 R" [identified by Subcommittee as Markus Walder], CS-SEN-00081889, at 893 (redaction by Credit Suisse).

a new U.S. client account stated: "Offshore/Trust structure to be suggested in 1-2 years."[327] In acknowledgement of these and other instances in which U.S.-linked accounts in Switzerland were opened in the name of offshore entities, Credit Suisse wrote to the Subcommittee: "Swiss-based employees, pre-2009, occasionally recommended that clients hold assets in non-U.S. entities when they had knowledge that the funds were undeclared."[328]

When asked to quantify how many of the U.S.-linked accounts in Switzerland were opened in the name of offshore entities, Credit Suisse reported that, in 2008, 1,243 CIFs with 4 billion CHF in assets had been opened in the name of offshore entities beneficially owned by U.S. customers who had failed to file a W-9 identifying their account as held by a U.S. person.[329] In 2006 and 2007, offshore entity accounts beneficially owned by U.S. customers contained assets totaling, respectively, 5.7 billion CHF and 5.8 billion CHF.[330] Collectively, those accounts held around half of the 10-12 billion CHF in total assets in the U.S.-linked accounts in Switzerland identified by Credit Suisse during those years.[331]

The Swiss Government treated the practice of opening accounts in the names of foreign entities and treating them as non-U.S. accounts, despite U.S. persons' supplying the account funds and controlling the account activity, as examples of "tax fraud or the like" under Switzerland's 1996 tax treaty with the United States. Meeting that standard justified Swiss banks disclosing the names of the true accountholders to the United States under the U.S.-Swiss tax treaty.[332] In 2012, Credit Suisse turned over accountholder names to the U.S. Government authorities for only about 230 foreign entity accounts which the Swiss Government authorized under the "tax fraud or the like" treaty standard.[333]

(6) Facilitating Client Formation of Offshore Entities

Credit Suisse not only opened Swiss accounts for U.S. clients using offshore shell entities as the nominal accountholders, some of its

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[327] 10/2/2006 Travel Report Summary from "RM21" [not identified], CS-SEN-00081879.
[328] 12/20/2013 letter from legal counsel to Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, at PSI-CreditSuisse-54-000001, at 011 ("[I]t is not possible to quantify the frequency and asset amounts of these occurrences.").
[329] Credit Suisse presentation, Report to the Senate Permanent Subcommittee on Investigations (7/31/2013), at PSI-CreditSuisse-33-000001, at 022.
[330] Credit Suisse presentation, Update on Development of AuM and Accounts of U.S. Clients to the Senate Permanent Subcommittee on Investigations (4/20/2012) (providing asset data in Swiss francs), CS-SEN-00189151.
[331] See Table 1, infra, showing that the U.S.-linked accounts in Switzerland contained assets totaling about $10 billion CHF in 2006 and about 12 billion CHF in 2007.
[332] See Credit Suisse letter to Subcommittee (8/13/2013).
[333] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014) (Mr. Cerutti said 238 accounts were turned over.).

bankers actively assisted U.S. clients in forming those entities by referring them to "intermediaries" or "fiduciaries" who acted as "service providers that form and maintain legal entities."[334]

Credit Suisse told the Subcommittee that it often relied on "intermediaries" or "finders" to introduce prospective clients to the bank.[335] The bank explained that the relationship also went in the opposite direction, when Credit Suisse bankers referred prospective or current clients to intermediaries to set up a legal entity to act as the Swiss accountholder. Credit Suisse said that most of the intermediaries that its Swiss bankers used were located in Switzerland or Liechtenstein.[336]

Credit Suisse provided the Subcommittee with a copy of the two-page list of "Important phone numbers," a copy of which was kept in the New York Representative Office, to contact intermediaries that would help U.S. clients form offshore shell entities to act as Swiss accountholders. The list included contact information for Josef Doerig of Doerig Partner, described as an "external Trust expert," as well as Beda Singenberger, of Sinco Truehand, a company that was located in Switzerland and specialized in forming offshore entities.[337] In 2011, both individuals were indicted by the U.S. Department of Justice, for allegedly assisting U.S. persons to evade U.S. taxes by setting up sham entities to hold their Swiss bank accounts and concealing their identities from the IRS.[338] Credit Suisse informed the Subcommittee that its Swiss bankers also referred clients to a certain lawyer and a certain firm for the same purpose, but declined to identify those two other intermediaries, citing Swiss secrecy laws.[339] The bank also declined to confirm that certain intermediaries identified by the Subcommittee had helped U.S. clients form offshore shell entities to act as their nominal Swiss accountholders.

At the same time, Credit Suisse admitted that SALN bankers in Switzerland "had relationships with several commonly used fiduciaries," and that two of those intermediaries had formal referral agreements with Credit Suisse specifying the compensation that they would pay to the

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[334] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, PSI-CreditSuisse-54-000001, at 023.
[335] Id. at 022.
[336] Subcommittee briefing by Credit Suisse (1/16/2014).
[337] 11/16/2007 Credit Suisse document, "Important Phone Numbers," CS-SEN 00011615.
[338] United States v. Singenberger, Case No. 11-CR-620 (S.D.N.Y), Indictment (7/11/2011); United States v. Walder et al., Case No.1;11-CR-95(E.D. Va.), Superseding Indictment (7/21/2011).
[339] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, PSI-CreditSuisse-54-000001, at 022-023.

bank for sending them clients.[340] Credit Suisse told the Subcommittee that it was unable to quantify the frequency or asset amounts associated with the U.S. clients referred to such intermediaries, except to say that it found no evidence of such conduct after 2008.[341]

An indictment filed by the Department of Justice of one former Credit Suisse U.S. accountholder, Jacques Wajsfelner, described how he used the bank's "external trust expert," Beda Singenberger, to establish a foreign sham entity, which hid his account from U.S. authorities. According to the indictment, in 2006, Mr. Singenberger traveled to the United States and met with Mr. Wajsfelner.[342] That same year, Mr. Singenberger formed Ample Lion Inc. as a Hong Kong corporation with Mr. Wajsfelner as the sole beneficial owner and with Mr. Singenberger as the nominal corporate director.[343]

The indictment states that Mr. Singenberger assisted Mr. Wajsfelner in opening an account at Credit Suisse using Ample Lion as his accountholder.[344] According to the indictment, Mr. Wajsfelner was identified to Credit Suisse as the beneficial owner of Ample Lion at the time of the account opening in 2006.[345] After the account was opened, the indictment alleges that all communications from Credit Suisse to Ample Lion were sent to Mr. Singenberger's company, Sinco Treuhand, in Switzerland and never to the United States.[346] The indictment states that the Ample Lion account had assets valued at about $3.3 million in July 2006; the assets rose to a value of nearly $5.7 million by December 31, 2007, and then declined to about $2.3 million when they were transferred to Mr. Wajsfelner's personal account at Credit Suisse on December 5, 2008.[347] The indictment alleges that the Ample Lion account was closed around December 2008, following the asset transfer.[348] In June 2009, Mr. Wajsfelner transferred the assets from his personal account at Credit Suisse to an account at Wegelin, another Swiss bank.[349]

Additionally, Credit Suisse told the Subcommittee that its internal investigation had found instances in which its Swiss-based bankers may have been involved in hiding the identity of U.S.-linked accountholders by accepting inaccurate W-8BEN forms from the legal entities acting as

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[340] Id. at 024; see also Subcommittee briefing by Credit Suisse (1/16/2014).
[341] Id. at 22. But see Subcommittee interview of former Credit Suisse Client 1 (9/10/2013) (asserting that a Credit Suisse banker recommended forming an offshore shell entity both before and after 2008).
[342] See United States v. Wajsfelner, Case No. 1:12cr641, Indictment (8/20/2012), at ¶9.
[343] Id. at ¶13.
[344] Id.
[345] Id.
[346] Id.
[347] Id. at ¶14, ¶16, ¶18.
[348] Id. at ¶18.
[349] Id. at ¶19.

nominal accountholders. W-8BEN forms are supposed to be filed by accountholders that are holding account assets for the benefit of another.[350] Switzerland has its own version of such a form, called Form A, which requires identification of the true owner of the account assets, the so-called "beneficial owner" of the account. Both forms seek to go behind a nominal accountholder, although differences between the two forms may lead to discrepancies in the reported information.[351] On the W-8BEN form, the nominal accountholder is supposed to identify the true owner of the assets, the beneficial owner, by providing, among other details, the owner's name, country of residence, and, as required, U.S. taxpayer identification number. The accountholder then files the form with the bank. Banks are supposed to use the W-8 and W-9 forms filed by their clients to identify U.S. accounts that must be disclosed to the IRS. By allowing an offshore entity to file a W-8BEN form signifying an account is being held on behalf of a non-U.S. person, versus a W-9 form that would have signified a U.S. person, Credit Suisse avoided disclosing the account to the IRS.

Credit Suisse told the Subcommittee that its internal investigation also found instances where an offshore entity filed a W-8BEN form with the bank for a Swiss account, stating that the beneficial owner was not a U.S. person, when the beneficial owner was in fact a U.S. person.[352] The bank said that it was unable to quantify how extensively that practice occurred or how often a Credit Suisse banker participated in the subterfuge.[353] The bank's internal investigation did find that its Swiss Relationship Managers were generally aware of the nationality of the beneficial owners of the shell entities that acted as their accountholders. The bank said its investigation also determined that the Relationship Managers were aware that some offshore entities didn't follow the proper formalities in managing the account, which suggests that the beneficial owner may have been making the account decisions instead. While the Relationship Managers did not admit that the beneficial owners were disregarding or abusing their shell entities, the bank's internal investigation identified this type of troubling conduct in more than 100 instances.[354]

By allowing offshore shell entities to act as Swiss accountholders for U.S. clients, sending U.S. clients to intermediaries to create the necessary offshore entities, and accepting W-8BEN forms that concealed

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[350] W-8BEN form: http://www.irs.gov/pub/irs-pdf/fw8ben.pdf; W-8BEN form instructions (depending on the circumstances of the taxpayer, a social security number, individual taxpayer identification number or employer tax information number may be used instead of a U.S. taxpayer information number), http://www.irs.gov/pub/irs-pdf/iw8ben.pdf.
[351] Subcommittee briefing by Credit Suisse (1/16/2014).
[352] See Credit Suisse presentation, Report to the Senate Permanent Subcommittee on Investigations (2/29/2012), PSI-CreditSuisse-11-000001 (discussing review of entities).
[353] Id.
[354] Id.

the U.S. ownership interest in the accounts, Credit Suisse actively helped U.S. clients escape detection of their Swiss accounts by U.S. authorities.

(7) Violating U.S. Securities Laws

In addition to aiding and abetting U.S. accountholders engaged in evading U.S. taxes, some Swiss bankers at Credit Suisse engaged in practices that violated U.S. securities laws. In February 2014, the bank admitted wrongdoing and agreed to pay $196 million in disgorged profits, interest, and penalties to settle SEC charges that its relationship managers provided unlicensed investment advice and broker-dealer services.[355] The bank admitted that its bankers engaged in this misconduct while traveling in the United States and while working in Switzerland and using the telephone and email to interact with U.S. customers.

Because Swiss bankers were generally not employees of a U.S. registered broker-dealer, they could not legally advise clients in the United States about securities in their accounts, nor could they solicit securities transactions. The bank's internal policy also prohibited Swiss bankers from giving securities advice or soliciting securities transactions while on travel in the United States or while in Switzerland when communicating with clients in the United States. Credit Suisse admitted to the Subcommittee that its Swiss bankers knew they were not permitted to sell securities into the United States, but at times violated this prohibition.[356]

The SALN desk in Switzerland, which was tasked with servicing U.S. clients, had approximately 15 relationship managers.[357] Credit Suisse admitted to the Subcommittee that every SALN relationship manager had violated the bank's U.S. Persons Policy by selling U.S. securities into the United States, either while on travel there or communicating on the telephone with clients in the United States.[358] During the course of the bank's internal investigation, Credit Suisse said that the Swiss bankers admitted to using the telephone to sell securities into the United States and to hearing their colleagues in the room on the telephone doing the same.[359]

The bank told the Subcommittee that its internal investigation also identified an unspecified number of "instances" where its policy was

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[355] In re Credit Suisse Group AG, SEC File No. 3-15763, Order Instituting Administrative and Cease-and-Desist Proceedings (2/21/2014).
[356] Subcommittee briefing by Credit Suisse (1/16/2014).
[357] See, e.g., 4/1/2008 SALN Organizational Chart, CS-SEN-00011631.
[358] See Credit Suisse presentation, Report to the Senate Permanent Subcommittee on Investigations (2/29/2012), PSI-CreditSuisse-11-000001.
[359] Subcommittee briefing by Credit Suisse (1/16/2014).

violated during Swiss banker trips to the United States.[360] According to Credit Suisse:

> "We also identified instances where Swiss-based employees within the SALN group traveled to the U.S. and advised clients about their securities against Bank policy. Certain SALN and Clariden Leu employees also provided securities related investment advice to their clients in the U.S. We identified instances where Swiss-based employees outside of SALN advised clients located in the U.S. but on a much less frequent basis."[361]

A 2006 Credit Suisse internal audit examining SALN travel issues looked in part at the securities solicitation problem. The draft audit report commented:

> "Management of [SALN] has the opinion, that the RM's strictly adhere to the directives (no investment advice). We think it is not reliable to visit 500 clients and not to provide investment advice on this occasion. In addition, we noted some indications that stock exchange transactions have taken place after such visits."[362]

While the final audit report did not conclude that SALN RMs violated travel and securities-related rules,[363] Credit Suisse has since stated that SALN Swiss management lied to Internal Audit staff about this matter, which had led to the audit team omitting from its final audit report the initial, more serious conclusions in the draft report.[364]

(8) Counseling U.S. Clients on Avoiding Cash Reports

In addition to helping U.S. clients conceal their Swiss accounts from U.S. authorities, some Credit Suisse bankers counseled U.S. clients on ways to avoid triggering the filing of reports intended to disclose large cash transactions to the U.S. Treasury.

Credit Suisse told the Subcommittee that its internal investigation had found that it was "not uncommon" for Swiss Relationship Managers to have advised U.S. clients on how to structure large cash transactions

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[360] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, at PSI-CreditSuisse-54-000001, at 012.
[361] Id. at 015.
[362] 2006 "Draft CSG Internal Audit: Private Banking Americas, North America Offshore, Latin America and Bahamas," Credit Suisse Internal Audit, CS-SEN-00408716 (stated by Roland Ottiger, Sector Head, Internal Audit).
[363] See 8/31/2006 "CSG Internal Audit: Private Banking Americas, North America Offshore, Latin America and Bahamas," Credit Suisse Internal Audit, CS-SEN-00418830 (stating that, "he overall control environment was generally found to be operating adequately," with no mention of any evaluation of compliance with travel restrictions or securities laws).
[364] See Credit Suisse presentation, Report to the Senate Permanent Subcommittee on Investigations (2/29/2012), PSI-CreditSuisse-11-000001, at 010).

involving their Swiss accounts in ways that would avoid the automatic filing of Currency Transaction Reports (CTRs), which are triggered by transactions of $10,000 or more.[365] To avoid the $10,000 reporting threshold, for example, a structured transaction might break up a $15,000 cash transfer into two smaller cash transfers. For many years, however, U.S. law has explicitly prohibited using "structured" transactions to evade CTR reports.[366]

The bank investigation performed a flow of funds analysis of its U.S.-linked accounts in Switzerland and uncovered examples in which, according to the bank, it was "quite clear that advice was given" by the Relationship Manager to the accountholder on how to structure transactions to avoid triggering CTR reports, and "many more where you saw the behavior of the RM giving instructions."[367] The bank also identified documents showing Swiss Relationship Managers "repeatedly volunteering" advice to U.S. accountholders that transactions over $10,000 would attract scrutiny, though the bank did not determine if that information then led to the accountholders inappropriately structuring their cash transactions.[368] The bank said that a survey of a subset of Credit Suisse accounts found more than 20 examples in which banker advice led to a series of transactions under $10,000, while a review of Clariden Leu accounts produced between 10 and 20 examples of similar misconduct.[369] The bank admitted that if more accounts had been analyzed, more examples would likely have been identified.[370] For example, the bank interviewed one Relationship Manager who had a "standing order" to transfer amounts just under $10,000, and who was aware that doing so was wrong.[371]

By advising U.S. accountholders to use structured transactions to avoid CTR reporting obligations, some Credit Suisse bankers not only helped hide their Swiss accounts from U.S. authorities, but may have also broken U.S. law.

(9) Supplying Credit and Cash Cards

Still another service offered by Credit Suisse was to employ third party service providers to supply its U.S. customers with credit cards and travel cash cards that enabled them to secretly draw upon the cash in

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[365] Subcommittee briefing by Credit Suisse (1/16/2014).
[366] See 31 U.S.C. § 5324 (providing that structured transactions undertaken to evade CTR filings can result in civil or criminal penalties, including imprisonment for not more than five years and a fine of up to $250,000); 18 U.S.C. § 3571 (if the structuring involved more than $100,000 in a twelve month period or was performed while violating another U.S. law, imposes double those penalties).
[367] Subcommittee briefing by Credit Suisse (1/16/2014).
[368] Id.
[369] Id.
[370] Id.
[371] Id.

their Swiss accounts. Credit Suisse explained to the Subcommittee that U.S. clients with Swiss accounts could choose to obtain either a credit card or a travel cash card (TCCs) which would be linked to their Swiss account and could be paid without leaving a paper trail in the United States. TCCs were prepaid cards that allowed U.S. clients, among others, to wire a certain amount of account funds from a bank account to the third party issuer of the card, which then loaded the funds onto the card. The name of the client did not appear on the TCC, though it did appear on the credit card.[372]

Credit Suisse told the Subcommittee that it provided TCCs starting in 2005, and ceased offering them to SALN clients after spring 2007, and to Clariden Leu clients in late 2010 or early 2011.[373] The bank said that it was unable to provide the total number of cards that were used by U.S. accountholders with Swiss accounts.[374] Client 1 told the Subcommittee that after establishing a Swiss account at Credit Suisse in 2005, the bank offered to provide a credit card that would be paid using the funds in the client's undeclared Swiss account.[375]

(10) Misusing New York Office to Service Swiss Accounts

In addition to sending Swiss bankers on trips to the United States to recruit and service U.S. clients with hidden Swiss accounts, Credit Suisse also misused its representative office in New York to engage in those same activities, contrary to the restrictions in its license and later triggering a criminal indictment of the head of the office for facilitating U.S. tax evasion.

New York Office Generally. In 1999, Credit Suisse first established the New York Representative Office as part of the SALN desk in Switzerland. The office was located in New York City. From its inception, it was staffed by one permanent employee, Roger Schaerer, a U.S./Swiss dual citizen, and several administrative or temporary staff in training. Additionally, a team of private bankers, focused on Latin American clients, joined the office from 2003 to 2005.[376] Mr. Schaerer, who joined Credit Suisse in 1974, had risen up through the ranks as a

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[372] Id.
[373] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, at PSI-CreditSuisse-54-000001, at 018.
[374] 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-29-000001, at 010 ("The Bank's systems do not systematically flag accounts where the client uses a credit card or travel cash card ("TCC"). ... We understand that the use of credit cards was not widespread among U.S. domiciled clients.").
[375] Subcommittee interview of Client 1 (9/10/2013). Client 1 reported declining the card offer.
[376] 12/22/2005 New York Representative Office, Federal Reserve Bank of New York Target Review, FRBNY to DOJTAXCS 00066 [Sealed Exhibit].

teller, private banker, and then head of the New York office.[377] He reported to Markus Walder, head of SALN in Switzerland, and was overseen in part by the Credit Suisse compliance office in Switzerland.[378]

Credit Suisse told the Subcommittee that the office was intended as an outpost of the Swiss bank in New York, not to provide standard banking services, but to serve as a liaison with clients seeking information from the bank, or Swiss customers traveling in the United States. A 2007 internal bank document described the function of the office in more blunt terms, in its words, to "solicit new banking business."[379] After ten years of operation, Credit Suisse closed the office in 2009, and Mr. Schaerer returned to Switzerland.

License Restrictions and Misconduct. From 1999 until 2009, the New York Representative Office, or the "Rep Office," as it was known, was subject to regulation by the Federal Reserve Bank of New York, as well as the New York State Banking Department, recently renamed the New York Department of Financial Services. The New York Representative Office was supervised by both agencies.[380] Its licenses restricted the office from performing a wide range of banking services that a bank would typically offer, allowing it to act only as a "liaison" for Credit Suisse AG, serving "primarily [as] a point of contact for clients and prospects of Credit Suisse" and carrying out certain administrative functions.[381]

In recognition of its licensing restrictions, the bank and the office maintained a "Rep Office Statement of Scope of Activities" that constrained the types of client communications, bank products, and bank services that the office was supposed to offer to the narrow range

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[377] See 1/2008 Credit Suisse Biographical Sketch of the Principal Officer, CS-SEN-00009786.
[378] See 6/21/2007 Credit Suisse, Rep. Office Coverage Review Report, CS-SEN-00011902, at 904. See also 12/13/2005 Credit Suisse Private Banking Representative Office, "Entry Letter Request for the Representative Office Review of the Federal Reserve Bank of New York," FRBNY to DOJTAXCS 00006, at 009 and 016 (describing how the head office, business line management, and compliance offices monitored and assessed the Representative Office) [Sealed Exhibit].
[379] 12/6/2007 Credit Suisse, "New York Representative Office Statement of Scope of Activities," CS-SEN-00011245.
[380] See, e.g., 1/8/1993 Memo from Federal Reserve Bank of New York Examiner-in-Charge, "Credit Suisse Representative Office On-Site Examination," FRBNY to DOJTAXCS 00157 [Sealed Exhibit]; 1/5/2006 letter from Federal Reserve Bank of New York to Markus Walder and Roger Schaerer, Credit Suisse (transmitting examination results of New York Representative Office), FRBNY to DOJTAXCS 00004 [Sealed Exhibit]; Banking Department State of New York, License to Maintain a Representative Office (3/24/1999), PSI-NYSDFS-03-000024; Banking Department State of New York, License to Maintain a Representative Office (5/13/2005), PSI-NYSDFS-03-000027. The Banking Department State of New York is now called the New York State Department of Financial Services.
[381] See 6/21/2007 Credit Suisse, Rep. Office Coverage Review Report, CS-SEN-00011902, at 903.

permitted under its licenses.[382] The Statement made it clear that the office was not licensed to give securities advice.[383] It could solicit clients only for loans,[384] not deposits.[385] The Statement also made it clear that Swiss banking secrecy laws covered all office activities related to any client,[386] despite the physical presence of the office in New York.

In 2005, New York banking regulators found that a team of Credit Suisse bankers operating in New York to assist Latin American clients had violated the office's licensing restrictions by engaging in private banking activity and giving investment advice, which had "been occurring for some time involving the representative office."[387] Both the New York State Banking Department and the Federal Reserve Bank of New York told the Rep Office "that any private banking activities, including solicitation of clients for private banking business, if continued by the bank, must occur through a licensed branch or agency…[and] CS and its counsel agreed to these restrictions."[388] In January 2006, the Federal Reserve Bank of New York wrote to Credit Suisse that the objectionable conduct by the team of bankers had appeared to have stopped.[389]

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[382] See, e.g., 5/13/2005 Credit Suisse Rep Office Statement of Scope of Activities, CS-SEN-00539337 ("The Rep Office is limited to engaging in representational and administrative functions, such as soliciting new banking business and acting as liaison between any Credit Suisse branch worldwide and clients in the U.S. The Rep does not have the authority to make any business decision for the account of the head office of Credit Suisse (the 'Head Office'), including contracting for any liability on the latter's behalf.").

[383] 12/6/2007 Credit Suisse, "New York Rep. Office of Credit Suisse U.S. Anti-Money Laundering Program," FRBNY to DOJTAXCS 00070, at 71 ("Under no circumstances may the Employees provide investment advice to or solicit any securities transactions from prospective or existing clients of Credit Suisse.) [Sealed Exhibit].

[384] Id.; see also 12/2005 Federal Reserve Bank of New York, New York Representative Office Targeted Review, FRBNY to DOJTAXCS 0066, at 0068 ("CS NYRO may solicit loans for CS in principal amounts of at least $250,000 and assist in applications for such loans ….") [Sealed Exhibit].

[385] See, e.g., 12/2005 Federal Reserve Bank of New York, New York Representative Office Targeted Review, FRBNY to DOJTAXCS 0066, at 0067 ("The Rep solicits primarily banking business on behalf of CS and may also solicit commercial banking transactions, however, this does not include deposits or deposit-type liabilities.") [Sealed Exhibit].

[386] See 5/13/2005 Credit Suisse, New York Representative Office Statement of Scope of Activities, FRBNY to DOJ TAXCS 00017, at 20 [Sealed Exhibit].

[387] See, e.g., 5/10/2005 New York State Banking Department Memorandum re Credit Suisse Representative Office – Proposed Private Banking-Related Activities, PSI-NYSDFS-03-0008 [Sealed Exhibit]; 12/22/2005 New York Representative Office, Federal Reserve Bank of New York Target Review, FRBNY to DOJTAXCS 00066 ("In August 2003, a Latin American team was established within the CS NYRO acting as liaison between Credit Suisse Private Banking and other business units of Credit Suisse Group (CSG), including giving investment advice to clients. It was determined by FRBNY and NYSBD that such activities are impermissible at a Representative Office (Rep Office).") [Sealed Exhibit].

[388] 5/10/2005 New York State Banking Department Memorandum re Credit Suisse Representative Office – Proposed Private Banking-Related Activities, PSI-NYSDFS-03-0008 [Sealed Exhibit].

[389] 1/5/2006 Letter and Report of Examination from the Federal Reserve Bank of New York to Markus Walder, Credit Suisse, FRBNY to DOJTAXCS 00004 [Sealed Exhibit].

In 2009, Credit Suisse closed the office. Two years later, in February 2011, the U.S. Department of Justice indicted the office head Roger Schaerer as well as three other SALN bankers for assisting U.S. clients to evade U.S. taxes.[390] The indictment alleged that Mr. Schaerer, the named Credit Suisse bankers, and others had used the New York Rep Office to "provide banking and investment services to U.S. customers with undeclared accounts."[391]

Soliciting U.S. Clients to Open Swiss Accounts. Regulatory reports, the 2011 indictment, and the Subcommittee's own inquiry provide a more detailed picture of how Credit Suisse bankers misused the bank's New York Representative Office to solicit U.S. clients to open large dollar accounts in Switzerland without notice to U.S. authorities.

Despite the licensing restrictions on the New York Representative Office, Mr. Schaerer appears to have routinely solicited U.S. clients to open Swiss accounts. Given his quarterly reports to Swiss management on the estimated value of the accounts he referred to Switzerland, and regulatory reports reflecting meetings with Mr. Schaerer,[392] none of the monies appear to have been in the allowable category of loans; rather, they all appear to be new deposits in accounts, which were not allowed. In 2003, for example, he reported to regulators that the New York Rep Office typically made yearly account referrals to Switzerland worth between $30 million and $40 million per year.[393] By 2005, his average yearly account referrals had grown to $40 to $45 million per year, with $60 million in referrals in the year 2005.[394]

Documents reviewed by the Subcommittee, including weekly reports sent by the New York Rep Office to Switzerland in 2007, suggest that the minimum account size had to be $500,000 before the New York Representative Office would consider working with a prospective U.S. client to establish a Swiss account.[395] In one email reviewed by the Subcommittee, a Dallas banker inquired if 500,000

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[390] United States v. Parenti Adami et al., Case No. 1:11-CR-95 (E.D. VA) Indictment (2/23/2011) (The other named defendants are Credit Suisse SALN relationship managers).
[391] See, e.g., id. at ¶¶25, 44, 77.
[392] FRBNY to DOJTAXCS 00192 ("Since the RO does not have any clients and engages in very limited activities, there is virtually no formal reporting from the NY to the head office. However, on a quarterly basis, the RO does report the estimated value of the accounts he referred to Switzerland.") [Sealed Exhibit].
[393] FRBNY to DOJTAXCS 00159 ("In a typical year, the RO will make referrals worth between $30MM and $40MM, including new accounts and additions to established accounts. The best year, in Mr. Schaerer's experience, generated referrals of nearly $60MM while 2002 will rank worst.") [Sealed Exhibit].
[394] FRBNY to DOJTAXCS 00066, at 68 [Sealed Exhibit].
[395] 12/17/2002 Federal Reserve Board of New York, Meeting Notes re Credit Suisse Private Banking Representative Office, FRBNY to DOJTAXCS 00189, at 191 [Sealed Exhibit].

CHF would be an appropriate minimum threshold;[396] in other documents, the Rep Office noted that it had "several inquiries regarding opening an account (too small)."[397] Swiss accounts that were apparently opened for U.S. clients during November 2007 involved assets ranging from $500,000 to $5 million: "opening of new account for Susanne from Chicago (>US$ 2 Mio [million])";[398] "contact with prospective client from Chicago (US$3 – 5 Mio)";[399] "[o]pening of new account for Miachal (US$1 mio)";[400] "opening of new account for Michael (>US $500'000),"[401] and "meeting with prospective client for SALN (>US$ 1-3 Mio)."[402]

In 2008, it appears that Credit Suisse increased the minimum amount for a Swiss account to $1 million. In a September 2008 email responding to a request by a Credit Suisse banker for guidance in helping a U.S. client open a Swiss account, Mr. Schaerer wrote:

> "It would be very helpful to let them know that we require a minimum of one million Dollars to open the account. To make it easier for you to handle such e-mail inquiries, I would recommend that you simply reply in a similar way our head office in Zurich does: In order to know more about our accounts and services in Switzerland, please contact our Representative Office in New York at (212) 238-5125. If they call we are happy to explain what is possible and what is not."[403]

None of these documents make any mention of loans, the financial activity expressly allowed under the Rep Office's licenses. Instead, these documents suggest that Mr. Schaerer was directly involved with soliciting large bank deposits for accounts to be opened in Switzerland.

Other emails contain similar indicators. In one instance, a Credit Suisse private banker based in Dallas emailed Mr. Schaerer with the following inquiry:

> "I received another cold call-in from a gentleman in Houston. He says he has a partner with a current CS account in Zurich, and that he wants one also. I told him we can not deal with him directly, but that you handle this kind of situation for a US investor wanting

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[396] See 9/9/2008 email from Frank Ramirez to Gerda David, "funds transfer," CS-SEN-00084480.
[397] See 11/25/2007 Weekly Report – Rep Office New York, CS-SEN-00096327.
[398] See 11/18/2007 Weekly Report – Rep Office New York, CS-SEN-00096326.
[399] Id.
[400] See 11/25/2007 Weekly Report – Rep Office New York, CS-SEN-00096327.
[401] See 12/2/2007 Weekly Report – Rep Office New York, CS-SEN-00096328.
[402] Id.
[403] 9/30/2008 email from Roger Schaerer to Peter Skoglund, "opening an account with credit Suisse," CS-SEN-00096543.

> an account in Switzerland. He says he would also like a US account, and I will have a team contact him about that."

Mr. Schaerer responded: "Thanks … I will get in touch with him."[404]

On another occasion, Mr. Schaerer answered questions about the circumstances when U.S. persons would have to provide tax information if they wanted a Swiss bank account. He indicated that a Swiss account could be opened even if the U.S. client did not want to file a W-9 form with the bank disclosing the client's status as a U.S. person. A Credit Suisse banker based in the United States wrote:

> " [A Credit Suisse banker stationed in the United States] has asked me to follow up with a local gentleman looking to set up an account in Switzerland. My understanding is that he ideally needs at least CHF 500,000…Will he need to provide a W-9 or US Tax ID?"[405]

Mr. Schaerer responded:

> "If he intends to purchase US securities, he will need a W-9. If he plans to invest the money in money market, European securities, time deposits, euro bonds in US$ or other currencies, no W-9 is needed or US Tax ID is needed."[406]

But in another email, Mr. Schaerer made it clear that he understood Credit Suisse was not allowed to solicit U.S. clients to open accounts in Switzerland, and would not provide written materials about opening those accounts. He also made it clear that he would be happy to speak to prospective U.S. clients about those same Swiss accounts by telephone:

> "We do not have any educational or promotional material we could provide to a US person regarding accounts in Switzerland. We are not allowed to actively solicit or promote offshore accounts from or out of the United States. However, if your client wants to call me to learn more about what services can be offered out of Switzerland – he can do that anytime. Please let me know if I can assist you in this regard."[407]

For ten years, the New York Rep Office appears to have been focused on recruiting U.S. clients to open Swiss accounts. According to weekly reports sent by the office to Switzerland, most of its resources and time were spent on meeting with existing or prospective clients with

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[404] 1/24/2007 email from David Holmes to Roger Schaerer, "Prospect," CS-SEN-00100092.
[405] 11/10/2006 email from Frank Villarreal to Roger Schaerer, "Referral," CS-SEN-00099390, at 391.
[406] Id. at 390.
[407] 7/1/2008 email from Roger Shaerer to Chris Baldwin, "[blank subject line],"CS-SEN-00095655.

Swiss accounts. The reports indicate that the bulk of the office's activity was spent on a "meeting with client," or "contact with client" or "visit of prospect," whether in 2003,[408] 2004,[409] 2005[410] or 2007.[411] When confronted with this evidence, however, Credit Suisse claimed to the Subcommittee that it was only "on rare occasions" that the New York Rep Office acted against bank policy by carrying out account requests of U.S. persons for their Swiss accounts, for example, by "forward[ing] wire transfer instructions and check requests to relationship managers in Switzerland on behalf of U.S. clients prior to its closure in January 2009."[412]

Assisting Swiss Bankers Visiting the United States. In addition to its direct client solicitation efforts, the New York Rep Office supported the Credit Suisse bankers who traveled to the United States from Switzerland to solicit new Swiss accounts and service existing American clients.

The bank reported to the Subcommittee that that "[w]hen Swiss-based employees of Credit Suisse traveled to the U.S., some would notify the New York representative office in advance of the trip, particularly if they intended to use the representative office's facilities."[413] The bank also reported:

> "Swiss-based Credit Suisse employees who traveled to the U.S. often visited and occasionally worked out of the New York rep office during their trips. These Swiss-based employees did meet with their clients at the rep office on occasions and not at all after 2006, but we cannot quantify the meetings as a systematic log was not maintained for visitors to the office."[414]

Although Credit Suisse asserted that no Swiss banker met with clients at the New York Rep Office after 2006, other documentary evidence indicates that the meetings continued.[415] These meetings continued even

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[408] See, e.g., Weekly Report – Rep. Office New York (for weeks 12/1/2003 – 12/28/2003) CS-SEN-00009938-941.
[409] See, e.g., Weekly Report – Rep. Office New York (for weeks 1/4/2004 – 2/1/2004) CS-SEN-00009933-937.
[410] See, e.g., Weekly Report – Rep. Office New York (for weeks 9/12/2005 – 10/30/2005) CS-SEN-00012130.
[411] See, e.g., Weekly Report – Rep. Office New York (for weeks 11/05/2007 – 12/2/2007) CS-SEN-00096325-328.
[412] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, at PSI-CreditSuisse-54-000001, at 021.
[413] Id. at 013.
[414] Id. at 022.
[415] See, e.g., 10/30/2007 Request to Use Office space of Rep Office New York, by SALN banker Susanne Ruegg Meier, CS-SEN-00010746 (Request form to use the Rep Office New York as "working space," signed by Susanne Ruegg Meier in confirmation that "I her[e]by confirm that I have been informed and I am fully aware of all the rules, regulations and restrictions that govern the scope of activities of Credit Suisse New York Representative Office and that I will be in full

after a 2006 New York Rep Office training presentation cautioned the office that, "Internal Audit noted specific compliance related weaknesses in relation to traveling activities and to CS Rep. Offices and recommended performing formal compliance reviews and providing compliance training."[416]

Weekly reports maintained by the Credit Suisse New York Rep Office document extensive efforts to support the SALN bankers traveling to the United States.[417] The weekly reports include bulleted lists of "client activities" and "visits/events," of which half or more refer to SALN clients or SALN Relationship Managers. References were also made to the "SWLN" office, which was the name of the SALN office in earlier years.

Examples include "SWLN visiting the RO"; "SWLN and Roger [Schaerer] lunch with PCF on Friday at CSFB [Credit Suisse First Boston] premises";[418] and "Susanne [Ruegg Meier, a SALN banker] in New York through Wednesday."[419] Other weekly reports show the New York Rep Office helping to service SALN clients by, for example, "assisting client of SALN (rates for loans and TD)";[420] "contact with clients of Susanne [Ruegg Meier] (wire instruction)";[421] "meeting with SWLN client on Monday,"[422] "opening a new joint account for client of Michele [Bergantino],"[423] and "dinner with client of SWLN."[424] Still other weekly reports show the New York Rep Office soliciting American clients to establish Swiss accounts using information supplied by SALN bankers. For example, the weekly reports list "visit[ing] of prospect (SWL) in Ridgefield Connecticut on Sunday,"[425] and "follow[ing] up with prospective client of Susanne [Ruegg Meier]."[426] The SALN bankers apparently appreciated the support, as shown by one

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compliance."); 11/5/2007 Request to Use Office space of Rep Office New York, by SALN banker Stanislas Lubomirski, CS-SEN-00010751 (same request form).

[416] 12/2006 U.S. Legal Affairs, Credit Suisse presentation, "Compliance Training: Rep. Office New York," CS-SEN-00081418, at 420.

[417] See, e.g., 2/1/2004 Weekly Report – Rep. Office New York, CS-SEN-00009933-941 (including many references to SALN Relationship Managers, such as "Susanne [Ruegg Meier]", then head of SALN, and "Emanuel [Agustoni])."

[418] 1/25/2004 Weekly Report – Rep. Office New York, CS-SEN-00009934.

[419] 12/7/2003 Weekly Report – Rep. Office New York CS-SEN-00009941.

[420] 5/20/2007 Weekly Report – Rep. Office New York, CS-SEN-00012647, at 648.

[421] Id.; See also, e.g., 4/15/2007 Weekly Report – Rep. Office New York, CS-SEN-00012647 ("Contact with client of Werner [Luscher] (will travel to Zurich in June)", "Meeting with client of SALN (retention, social contact),").

[422] 2/1/2004 Weekly Report – Rep. Office New York, CS-SEN-00009933. While Credit Suisse redacted the last names of Relationship Managers, it represented to the Subcommittee that most Relationship Managers referenced in the weekly reports were SALN Relationship Managers. Subcommittee briefing by Credit Suisse (1/16/2014). The only SALN Relationship Manager with the first name Michele is Michele Bergantino.

[423] Id.

[424] 1/25/2004 Weekly Report – Rep. Office New York, CS-SEN-00009933, at 934.

[425] 12/7/2003 Weekly Report – Rep. Office New York CS-SEN-00009933, at 941.

[426] 12/28/2003 Weekly Report – Rep. Office New York, CS-SEN-00009933, at 938.

SALN banker, Marco Parenti Adami, who wrote in his travel notes: "Visit to the Rep of Miami with [redacted] we discussed how to collaborate more and better and one idea was to have a plaquette of SWLN2 sent to all the people at the Rep. Offices."[427]

Offering Tax and Accounting Advice. In addition to soliciting clients directly and supporting the SALN bankers visiting from Switzerland, the New York Rep Office also, on occasion, seems to have offered advice on complex tax, accounting, and estate planning issues related to U.S. clients with Swiss accounts.

The weekly reports indicate, for example, that the New York Rep Office "assist[ed] accountant of SWLN [later renamed SALN] client, assist[ed] estate lawyer of client of Susanne [Ruegg Meier],"[428] "assist[ed] client of Enrique [Jacoby] with his taxes,"[429] "contact[ed] client of Emanuel [Agustoni] re: estate planning,"[430] and "assist[ed] client of Enrique re: W8-BEN,"[431] a U.S. form used when an account is opened by one person on behalf of another and asks for the identity of the account's beneficial owner. While it was not illegal for the New York Rep Office to help liaise and communicate with clients, if such assistance and communication was in furtherance of undisclosed U.S. accounts, then the New York Rep Office may have been facilitating U.S. tax evasion.

Under the direction of Mr. Schaerer, the Credit Suisse New York Representative Office provided an ongoing U.S. presence for Credit Suisse efforts to assist U.S. clients to open undisclosed accounts in Switzerland.

(11) Servicing U.S. Clients in Switzerland

Credit Suisse bankers that traveled to the United States encouraged their American clients to visit them in Switzerland,[432] where clients could engage in activities without creating a paper trail that could betray the secrecy of their Swiss accounts. Swiss bankers assisted U.S. clients visiting in person to review account statements that were not mailed to the United States; engage in financial transactions such as buying or selling securities; execute funds deposits, transfers, or withdrawals; or

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[427] 10/12/2005 Travel Report Summary from "RM20SH" [identified by Subcommittee as Marco Parenti Adami], CS-SEN-00081881.
[428] 12/7/2003 Weekly Report – Rep. Office New York CS-SEN-00009933, at 941.
[429] 1/4/2004 Weekly Report – Rep. Office New York, CS-SEN-00009933, at 937.
[430] Id.
[431] 12/21/2003 Weekly Report – Rep. Office New York, CS-SEN-00009933, at 939.
[432] See, e.g., 3/15/2006 Credit Suisse memorandum from RM02 Senior [identified by Subcommittee as Michele Bergantino] to "RM29 RH" [identified by Subcommittee as Markus Walder], CS-SEN-00081867 (stating that "goals" for travel were to "motivate clients to come to Zurich more often (D-0025)"). D-0025 was the code for bank's internal U.S. Persons Policy, issued in 2002, which laid out restrictions for dealing with U.S. clients.

complete forms indicating how their accounts should be handled. These in-person meetings offshore avoided the jurisdiction of the SEC, which requires that investment advice going into the United States be provided by a licensed broker-dealer. No Credit Suisse Swiss bankers were licensed by the SEC,[433] so when their clients were outside of the United States, Swiss bankers were able to dispense investment advice and solicit securities transactions without legal consequences.

To make it convenient for U.S. account holders traveling to Switzerland, the bank maintained a full-service office at the Zurich airport. As explained earlier, this office was referred to by a code name, "SIOA5." By 2008, the Zurich airport office had more U.S.-linked accounts than any other Swiss office, servicing more than 9,400 U.S. customers with accounts containing a total of 1.1 billion CHF.[434]

The airport office was created in 2006, when Credit Suisse decided to move two desks in its Zurich headquarters – one which was servicing predominantly U.S. resident clients and the other which was serving a mix of international wealthy clients, including U.S. residents – to the airport.[435] The bank explained that the reason for the move was "to offer better client service for a broader range of clients and have appropriate contacts at the airport for walk-ins."[436] Brady Dougan, Credit Suisse's CEO, told the Subcommittee that the airport office was needed because many U.S. clients traveled to Switzerland to go skiing, and after arriving at the airport, desired to continue traveling directly to a ski resort without going into the city of Zurich to take care of banking business.[437] Unlike many banking kiosks or ATMs servicing travelers at airports, which offer only currency changes or limited withdrawals, the Zurich airport office offered the "full range of banking services" of Credit Suisse.[438]

The U.S. desk at the airport office was open for three years, from 2006 to 2009. During those three years, the airport office serviced both existing accounts as well as opened new ones.[439] U.S. accountholders

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[433] Credit Suisse had a Zurich-based, SEC-licensed broker/dealer, called Credit Suisse Private Advisors. The conduct of those employees is not the focus here.

[434] Credit Suisse presentation, US Project – STC #1, Zurich (8/19/2008), CS-SEN-00426290, at 306.

[435] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, PSI-CreditSuisse-54-000001, at 017.

[436] Id.

[437] Subcommittee interview of Brady Dougan, Credit Suisse (12/20/2013).

[438] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, PSI-CreditSuisse-54-000001, at 019.

[439] From 2006 to 2009, overall, Credit Suisse opened 317 new Swiss accounts for U.S. residents; during the same period the assets in those accounts increased at a mueh greater pace. The Assets under Management of U.S. resident CIFs more than doubled, from $253 million to $588 million, during the three years the airport desk was open. See 12/20/2013 letter from Credit Suisse legal

also traveled to other Swiss offices of Credit Suisse, besides the Zurich airport, to service their accounts.

The Subcommittee interviewed several former Credit Suisse clients who live in the United States, but traveled to Switzerland to transact business involving the clients' then-undeclared Swiss accounts. All four clients subsequently entered the IRS Offshore Voluntary Disclosure Program and paid back taxes, interest, and penalties in connection with using their accounts to evade paying U.S. taxes. The following information was provided during those interviews.

Client 1. Client 1 established an undisclosed account at Credit Suisse in 2005. Client 1 also had undisclosed accounts at FirstCarribbean International Bank Ltd., UBS, Raiffeisen Zentralbank Austria AG, Bank Austria, and, later, Wegelin & Co. In 2008, Client 1's total offshore assets exceeded $7 million,[440] of which about $2.6 million was in a Swiss account at Credit Suisse.[441] At Credit Suisse, Client 1's banker was Michele Bergantino for most of the time the account was held at the bank. When Client 1 initially opened the account at Credit Suisse, the bank set forth instructions for the manner in which it would conduct business once the account was open: Credit Suisse would not send Client 1 any mail; Credit Suisse would allow in-person viewing of account statements; and Client 1 should send any account instructions to Credit Suisse via a courier. After 2008, Credit Suisse became more restrictive in its rules for clients communicating with the bank. Mr. Bergantino explained that Client 1 should not contact Credit Suisse from the United States, and was "very serious" that any fax should be from a non-U.S. area code.

In order to tend to the Credit Suisse account, Client 1 usually traveled to meet Mr. Bergantino in Switzerland on an annual basis. Typically, Client 1 informed Mr. Bergantino, in advance of the trip, of plans to visit Switzerland. At each visit, upon arriving at the bank, Client 1 met a Credit Suisse employee in the lobby. When they took an elevator to another floor, Client 1 observed that the elevator had no buttons and was controlled remotely. A bank representative then escorted Client 1 to a nondescript meeting room, painted white, to meet with Mr. Bergantino, instead of meeting in Mr. Bergantino's office. As was the usual practice, Client 1 viewed the account statements, and then discussed their contents with Mr. Bergantino. Mr. Bergantino then offered Client 1 additional financial products. At the close of each visit, Client 1 signed an order to destroy the account statements that had been

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counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, PSI-CreditSuisse-54-000001, at 018-19.

[440] 05/09/2011, Amended 2008 Report of Foreign Bank and Financial Accounts (IRS FBAR) for Client 1, PSI-[Client 1]-06-000154, 155 [Sealed Exhibit].

[441] Id. at 154.

reviewed. Whenever Client 1 was visiting the bank, Credit Suisse offered an opportunity to withdraw funds in cash, though Client 1 did not recall ever doing so.

Client 2. The Subcommittee interviewed the spouse of a former Credit Suisse accountholder; the spouse interviewed by the Subcommittee is referred to as Client 2. Client 2's spouse inherited undeclared accounts in Switzerland and took sole control of those accounts.[442] Client 2 was aware that the spouse had three undeclared accounts in Switzerland at Credit Suisse, UBS, and a third bank. At its highest point, the account at Credit Suisse was worth approximately $5 million; adding the other two Swiss accounts created an aggregate high balance of approximately $7 million.

Client 2's spouse never used written correspondence with the Swiss bankers, instead communicating only through verbal, in-person discussions. In a 2003 trip, Client 2 traveled with the spouse to Switzerland, where they met with Credit Suisse bankers to discuss the account. They had lunch with their Credit Suisse banker, who worked out of the Basel, Switzerland office.[443] The banker brought documents in hard copy to show the spouse, and they discussed the account activity. Client 2 left the lunch with the impression that it was not appropriate to keep any documents because it would have created a paper trail. The next day, Client 2 and the spouse had lunch with their UBS private banker and, again, reviewed but did not keep paper account statements. While Client 2 did not witness funds ever being provided to the spouse during such trips to Switzerland, Client 2 was aware that both Credit Suisse and UBS bankers gave cash to the spouse to bring back to the United States.

In 2009, Client 2 traveled to Switzerland to withdraw funds from the accounts and instructed the banks to wire the funds to another foreign country. At Credit Suisse, Client 2 met with the same banker as before to withdraw the funds. In 2009, Client 2's visits with both Credit Suisse and UBS bankers had a different tone, and they conversed about how the era of Swiss banking was coming to an end.

Client 3. Client 3 held undisclosed accounts at Credit Suisse and UBS.[444] Client 3 opened the Credit Suisse account in 1999, with $1.1 million, eventually transferred the UBS assets into it, and by 2008, the Credit Suisse account held assets worth approximately $3.05 million. One of the UBS accounts was located in Geneva, and a second UBS account, as well as the Credit Suisse account, was located in Kreuzlingen, Switzerland. The accounts held mostly cash and some

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[442] Subcommittee interview of Client 2 (May 18, 2012).
[443] Id. (relying on account statements that identified the Basel office).
[444] Subcommittee interview of [Client 3] (5/23/2012).

stocks in German companies, but no U.S. securities. Client 3 did not communicate with Credit Suisse by telephone or mail, and the account was charged fees for the "retained correspondence" policy.[445] Client 3 had only in-person meetings with bankers at Credit Suisse which occurred roughly every 18 months. They always met at the bank. Client 3 withdrew cash in euros, typically under the equivalent of $5,000, while at the bank. Client 3 also directed purchases or sales of securities during the in-person meetings.

Client 4. Client 4 held an undisclosed Swiss account at Credit Suisse that, at its highest point, held over $560,000.[446] The account was established when Client 4 received a gift of gold, and continued to keep the physical gold in custody at the bank. The account then continued in existence for years. Client 4 added funds to the account over time, noting they were after-tax funds, but still did not report the account to the IRS, or the income that was earned on the account, which was as high as $19,000 in one year. Client 4 made a personal visit to Credit Suisse in Switzerland in-person roughly every other year to stay apprised of the account.

While Client 1's Swiss relationship manager for the account was in SALN, the relationship managers for Clients 2, 3, and 4 were not at SALN. All four clients entered the IRS Offshore Voluntary Disclosure Program.

D. Corporate Actions Contributing to Improper U.S. Cross Border Business

Credit Suisse corporate actions contributed to the bank's extended involvement with banking practices that encouraged U.S. customers to establish hidden Swiss accounts. The overly restrictive manner in which Credit Suisse defined the class of U.S.-linked accounts, its failure to implement its policy to concentrate those accounts in a single Swiss office, and its restricted approach to oversight of those accounts, as well as the way in which it approached solving the problem of non-compliance, were symptomatic of the bank's view of U.S. tax obligations and the bank's culture. By and large, the departments and employees at the bank who were responsible for U.S. accounts and associated compliance were Swiss. Swiss bank culture saw Swiss bank secrecy as paramount. When the bank began to establish programs to ensure that its U.S. accountholders were complying with U.S. laws, it proceeded cautiously and acted incrementally, starting with a narrow category of U.S. clients whose accounts were subject to disclosure under

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[445] See 9/14/2009 Credit Suisse ad hoc account statement (126.67 in charges for retained correspondence), at PSI-[Client 3]-01-000611 [Sealed Exhibit].
[446] See PSI-[Client 4]-01-0001–006 [Sealed Exhibit].

the Qualified Intermediary (QI) program, which the bank had joined in 2001.

Credit Suisse initially reviewed only accounts opened by U.S. residents with U.S. securities because those were subject to the QI Program and focused on compliance with U.S. securities laws. Later, the bank reviewed accounts opened by offshore entities with U.S. beneficial owners; then all accounts opened by U.S. residents; and finally all accounts opened by U.S. nationals living outside of the United States. The account reviews were carried out through iterative projects. Exceptions were permitted, as were delays. Many of the projects unfolded over years, and some ended without completing the review of all relevant accounts. It was not until the UBS scandal broke and the bank itself came under scrutiny by the U.S. Department of Justice that its review intensified and led to the closure of thousands of undeclared Swiss accounts. Credit Suisse's General Counsel, Romeo Cerutti, acknowledged to the Subcommittee that the bank could have taken a better approach to reviewing U.S. accounts in its Swiss branches.[447]

(1) Defining U.S. Persons in Ways that Excluded Key U.S. Taxpayers

One of Credit Suisse's policy failures was an overly restrictive definition of "U.S. Person" that excluded key groups of U.S. taxpayers. Because this definition was connected to many other bank policies and compliance efforts, it contributed to the bank's involvement with undeclared Swiss accounts that U.S. clients used to evade U.S. taxes.

Since at least 2002, Credit Suisse has maintained an official policy on opening Swiss accounts for and providing banking services to U.S. customers, called the U.S. Persons Policy.[448] The U.S. Persons Policy defined several categories of customers who qualified as "U.S. Persons," as well as setting out the obligations that attach to opening accounts for those categories of customers. Prior to 2012, Credit Suisse defined "U.S. persons" more narrowly than U.S. tax law, including only: U.S. residents, partnerships or LLCs if organized under U.S. law, and trusts

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[447] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014).

[448] See 11/26/2002 Credit Suisse Financial Services Directive, "Bank relationships with US Persons, US Taxpayers and EAMs that are located in the US or have clients who are US persons and/or US Taxpayers ("US Person Directive"), CS-SEN-00465963; 1/1/2007 Credit Suisse Policy, "Bank relationships with US Persons, US Taxpayers and EAMs that are located in the US or have clients who are US persons and/or US Taxpayers ("US Person Directive"), CS-SEN-00081934 (Version 1.0, replaces D-0025 Version 1.0 of 11/26/2002); 5/19/2008 Credit Suisse Policy, "Bank relationships with US Persons, US Taxpayers US EAMs, and non-EAMs with US persons and/or US Taxpayers clients ("US Person Policy")," (Version 2.0, replaces P-00025 Version 1.1 1/1/2007), CS-SEN-00082026; 4/17/2012 Credit Suisse Policy, "Relationships involving US Persons and US Taxpayers," CS-SEN-00432317 (Version 3.0, replaces P-00025 version 2.0 of 5/19/2008; and replaces LC-00014 version 2.0, dated 4/23/2009).

and estates if any trustee or executor was a U.S. resident.[449] According to the bank, the definition concentrated on U.S. residents, because the policy "focuse[d] on compliance with U.S. securities law."[450] That narrow definition excluded significant numbers of U.S. taxpayers, including U.S. nationals who were not resident in the United States and U.S. beneficial owners of non-U.S. legal entities, both of which comprised a significant number of Swiss accounts and a large amount of assets in the Credit Suisse U.S. cross border business. In addition, the policy made an "important exception" for assets of U.S. persons that were "managed by non-US financial intermediaries on a discretionary basis,"[451] allowing an American residing in the United States to be considered a "non-US person" by Credit Suisse if their assets were managed by a foreign intermediary.

At the same time, the Credit Suisse U.S. Persons Policy separately defined "US taxpayers" to include "not only US persons, but also US citizens and US greencard holders, wherever they reside and regardless of whether they have granted a discretionary mandate, as well as many non-US trusts with non-US trustees but US beneficiaries."[452] Despite that broader definition, the bank's internal policies regarding tax compliance generally were triggered only if the client was a "U.S. person" under its policy, meaning a U.S. resident, as opposed to a "U.S. taxpayer."[453]

It was not until 2012 that the bank's policies were changed to explicitly place restrictions on banking services that could be offered to U.S. nationals who were not living in the United States, but nevertheless had U.S. tax obligations.[454] It was also when the bank's policy for the first time began including a dual U.S. citizen, meaning a person who held citizenship in more than one country, within its definition of a U.S.

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[449] 11/26/2002 Credit Suisse Financial Services Directive, "Bank relationships with US Persons, US Taxpayers and EAMs that are located in the US or have clients who are US persons and/or US Taxpayers ("US Person Directive"), CS-SEN-00465963, at 964; see also at 4/17/2012 Credit Suisse Policy, "Relationships involving US Persons and US Taxpayers," CS-SEN-00432317, at 344 ("US person: Any US person for US securities law purposes.").

[450] Credit Suisse presentation, Report to the Senate Permanent Subcommittee on Investigations (2/29/2012), PSI-CreditSuisse-11-000001, at 006.

[451] 11/26/2002 Credit Suisse Financial Services Directive, "Bank relationships with US Persons, US Taxpayers and EAMs that are located in the US or have clients who are US persons and/or US Taxpayers ("US Person Directive"), CS-SEN-00465963, at 964.

[452] Id. at 966.

[453] See, e.g., 11/26/2002 Credit Suisse Financial Services Directive, "Bank relationships with US Persons, US Taxpayers and EAMs that are located in the US or have clients who are US persons and/or US Taxpayers, CS-SEN-00465963, at 965-966 (setting out in part 5 "permissible accounts, services and contacts with US persons"); 1/1/2007 Credit Suisse Policy, "Bank relationships with US Persons, US Taxpayers and EAMs that are located in the US or have clients who are US persons and/or US Taxpayers ("US Person Directive"), CS-SEN-00081934, at 937-939 (setting out in part 5 "permissible accounts, services and contacts with US persons").

[454] See 4/17/2012 Credit Suisse Policy, "Relationships involving US Persons and US Taxpayers," CS-SEN-00432317.

taxpayer.[455] To implement that policy change, in 2012, the bank started to ask prospective clients if they were dual citizens, and added two lines on its bank application for two nationalities.[456]

Credit Suisse's overly narrow definition of "U.S. Person," which focused on U.S. residents and excluded key categories of U.S. taxpayers with Swiss accounts, contributed to the bank's compliance failures, including the opening of Swiss accounts that should have been but were not disclosed to U.S. authorities.

(2) Ignoring Concentration Policy

Since 2002, Credit Suisse's policy was that "all new bank relationships with US Persons ... are to be opened within, managed and monitored by the dedicated US Center of Competence in Zurich or Geneva,"[457] meaning the SALN desk. This "concentration" policy was intended to ensure that U.S. accounts were overseen by Swiss bankers with specialized training in U.S. legal and regulatory requirements.[458] This policy, however, was largely ignored.

As described earlier, Credit Suisse permitted so many exceptions to the concentration policy – both explicitly in written policies and acknowledged in practice – that, by 2008, over 1,800 Swiss bankers were handling one or more U.S. clients. The U.S. Persons Policy contributed to this practice by excluding U.S. nationals residing outside of the United States from its definition of "U.S. person," which meant the concentration policy did not apply to them and their accounts did not have to be opened at SALN.

The result was that, despite the bank's concentration policy, U.S.-linked accounts were not concentrated in SALN. As indicated in the charts below, in 2008, only 9% of U.S.-linked CIFs and 24% of the related assets under management were handled by SALN.[459] Other U.S.-linked accounts were handled by a variety of Swiss offices within the bank. The business area called Private and Business Banking Switzerland (P&BB), which was the retail banking business in Switzerland, held 28%, or over 6,700 U.S.-linked CIFs in Switzerland,

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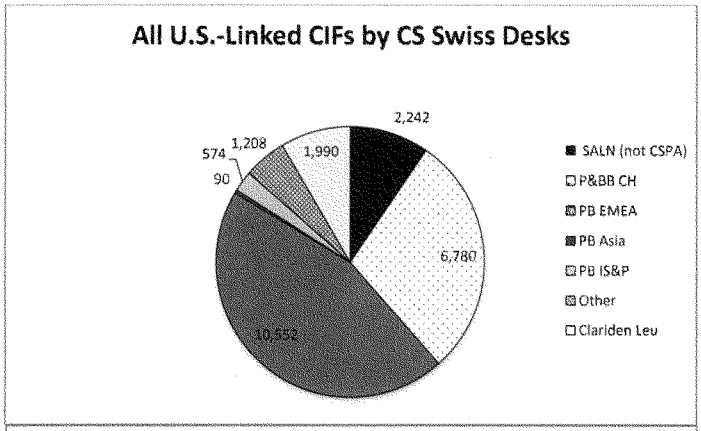
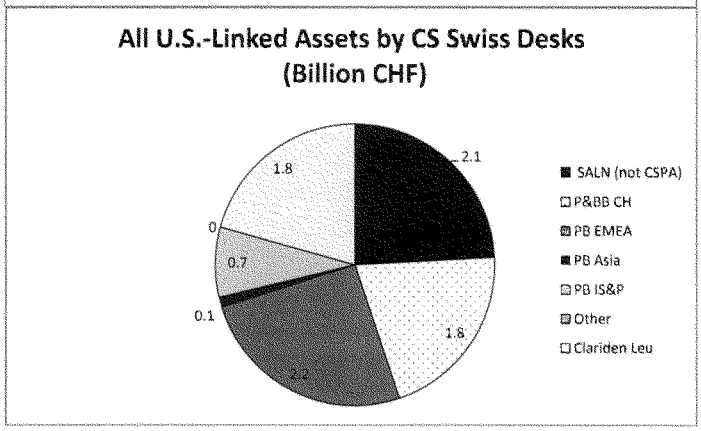
[455] Id. at 344.
[456] Subcommittee briefing by Credit Suisse (11/7/2013).
[457] 11/26/2002 Credit Suisse Financial Services, "Bank relationships with US persons, US Taxpayers and EAMS that are located in the US or have clients who are US Persons and/or US Taxpayers ("US Person Directive,")," CS-SEN-00465963, at 967.
[458] Id.; see also Credit Suisse, P-00025 Policy, "Bank relationships with US persons, US Taxpayers and EAMs that are located in the US or have clients who are US persons and/or US Taxpayers ("US Person Policy")," CS-SEN-00081934, at 940 ("Section 8.1. Switzerland: Concentration of US Person clients").
[459] Credit Suisse presentation, US Project – STC #1, Zurich (8/19/2008), CS-SEN-00426118, at 134 (9% = 2,242 U.S.-linked CIFs, not including CSPA / 23,436 total U.S.-linked CIFs in Switzerland, excluding CSPA).

with 1.8 billion CHF in assets, representing about 19% of the U.S. cross border assets in Switzerland.[460] At the time, the head of the P&BB business was Hans-Ulrich Meister, currently the co-head of the entire Private Bank. Another Swiss office, Clariden Leu, Credit Suisse's subsidiary private bank, held nearly 2,000 U.S.-linked CIFs with 1.8 billion CHF.[461]





Source: Credit Suisse presentation, US Project – STC #1, Zurich (8/19/2008), CS-SEN-00426290, at 306.

As depicted above, even larger concentrations of U.S. cross border clients existed in other Swiss offices. Again, despite the concentration policy that called for sending U.S.-linked accounts to the SALN desk, Credit Suisse maintained another desk in Zurich that serviced

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[460] Subcommittee briefing by Credit Suisse (10/29/2013) (Agnes Reicke) (discussing CS-SEN-00426118, at 134).
[461] Credit Suisse presentation, US Project – STC #1, Zurich (8/19/2008), CS-SEN-00426118, at 134.

"predominantly U.S. resident[s]."[462] That desk reported to the bank's European, Middle East and Africa (EMEA) business area, not the Americas. In 2006, it serviced over 7,600 U.S. resident clients with $253 million in assets.[463] Still another desk, which serviced "mixed international clients," was also in the EMEA business area, and serviced nearly 1,800 U.S. resident clients with $374 million.[464] Both desks had been formed in 2003,[465] at least a year after the SALN concentration policy was formalized. In 2006, the two desks were combined into a single desk at the Zurich airport, still under the EMEA business area. While most bankers moved to the airport office, several remained at Credit Suisse headquarters in Zurich office and were permitted to retain their higher-value U.S. resident clients.

When asked why these offices were allowed to open Swiss accounts for U.S. clients despite the concentration policy, the bank told the Subcommittee that it considered the airport office, and its predecessors, as "special desks," and viewed the account size, which was smaller on average than SALN accounts, as the key feature for defining the appropriate booking location for the accounts.[466] It appears that the nature of the account holders as American, and the compliance enhancements that would be triggered by booking the accounts at SALN, were not as important as those considerations.

In May 2009, three years after the U.S. private banker team had moved to the Zurich airport office, and which by then had nearly 10,000 U.S. clients – more than any other Swiss office – the airport office was transferred into SALN.[467] The bank called this transfer, Project Quick-Win.[468] The transfer was one of the few actions taken by the bank to enforce its concentration policy.

Even in the last few years, however, the bank has continued to allow numerous exceptions to its concentration policy for U.S.-linked accounts.[469] For example, for "Affluent/HNWI [High Net Worth Individual] clients," the bank's default rule was: "Clients to be covered by respective BA [Business Area] responsible for domicile." That meant affluent U.S. clients should have been directed to offices within the Americas business area, including SALN. But as mentioned earlier, exceptions were permitted for "selected PBS [Private Bank Switzerland]

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[462] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, at PSI-CreditSuisse-54-000001, at 018.
[463] Id.
[464] Id. (subtracting the number of U.S. resident clients of the top chart from the bottom chart).
[465] Id. at 017.
[466] Subcommittee briefing by Credit Suisse (1/16/2014) (Agnes Reicke).
[467] Id. at 019.
[468] See 12/19/2008 "Quick Win Non W-9 (transfer SIOA 5 to SALN)," CS-SEN-00455231.
[469] See 3/31/2010 presentation slides, "Coverage Rules for Swiss Banking Platform," CS-SEN-00419952.

and PB EMEA locations," whose bankers were allowed to open accounts for U.S. clients as a "side business."[470] Side business for "Ultra High Net Worth Individual" clients was also allowed, without restriction, for other business areas.[471] Additionally, exceptions were allowed for family members and for "RMs with business case."[472] And, "case-by-case exceptions of any rule can be granted by dual approval of RMs line manager and Market Leader at top management level."[473]

Credit Suisse's poor implementation of its concentration policy allowed U.S. client accounts to be opened throughout the bank's Swiss offices, without the U.S. regulatory expertise and consistent oversight that the concentration policy was supposed to provide.

(3) Restricting Oversight of U.S.-Linked Accounts in Switzerland

A third key corporate failure was the bank's decision to subject Swiss accounts opened for U.S. clients to monitoring by solely Swiss personnel and to exclude U.S. personnel who were not only more familiar with U.S. requirements, but also more culturally attuned to U.S. expectations regarding disclosure of account information.

As explained earlier, because the accounts for 22,000 U.S. customers were opened in Switzerland and subject to Swiss secrecy laws, Credit Suisse gave responsibility only to risk managers, compliance officers, and auditors who were based in Switzerland to monitor the accounts. U.S. managers in charge of Private Bank Americas were rarely informed about or given access to risk management, compliance, or internal audit data related to the U.S.-linked accounts in Switzerland.[474] Moreover, Legal and Compliance personnel in the United States, who were part of the Private Bank Americas business area, had little if any control or communications with the personnel in Switzerland directly overseeing the U.S. Cross Border program.[475] Only in the past year did Credit Suisse appoint an employee in the United States to track risk and compliance issues with respect to U.S. linked-accounts in Switzerland.[476] Still another problem was the Swiss Internal Audit department failed to identify serious compliance problems in the SALN and the New York Representative Office, and

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[470] Id. at 953.
[471] Id.
[472] See id. at 954; see also Subcommittee interview of Agnes Reicke, Credit Suisse (10/29/2013).
[473] 3/31/2010 presentation slides, "Coverage Rules for Swiss Banking Platform," CS-SEN-00419952, at 954.
[474] See Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (9/24/2013).
[475] See Subcommittee interview of Colleen Graham, Credit Suisse (12/5/2013).
[476] Mr. Stephen Paine, Head of Policy and Training within Legal and Compliance.

even when they sent their work to U.S. compliance personnel, the U.S. personnel were not familiar with the issues.[477]

The monitoring of U.S.-linked accounts in Switzerland, including of account opening approvals per location within Switzerland, was carried out by the Swiss Business Risk Management Group.[478] Normally, monitoring reports they produced were not shared with U.S. personnel and the bank could identify only one instance in which a monitoring report was shared with any American-based manager.[479] The reports were produced under a bank policy that required regular monitoring of the desk locations of U.S. accounts, as well as certain other "risk countries." Starting in 2003, the "primary goal of the risk country review" was to "ensure proper risk management, increase the overall market purity, and define actions if necessary," including for U.S.-linked accounts.[480] The term, "market purity," was used to evaluate whether clients of a particular nationality were, in fact, being referred to the Swiss office designated as the "Center of Competence" for that nationality under the bank's concentration policy.

The Swiss Business Risk Management Group conducted this monitoring on a yearly basis[481] until approximately 2007, and then on a quarterly basis.[482] Their monitoring reports were circulated among Swiss offices,[483] but normally were not sent to anyone in the United States.[484] Swiss managers, compliance personnel, and other employees regularly received the reports and were thus aware of the volume of U.S.-linked accounts, the assets under management associated with those accounts, the location of those accounts, and the level of exceptions that were made in order to service U.S.-linked accounts.

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[477] See Subcommittee interview of Colleen Graham, Credit Suisse (12/5/2013) (did not recall the SALN audit for years 2006 and 2009).

[478] See 3/30/2007 email from Peter Oberhansli to Anthony DeChellis, and others, "Risk Country: Yearly Review 2006," CS-SEN-00409535, attaching 3/30/2007 Credit Suisse Private Banking Risk Country Report 2006.

[479] Id.; Subcommittee interview of Agnes Reicke, Credit Suisse (11/7/2013); Subcommittee interview of Colleen Graham, Credit Suisse (12/5/2013) (stating that she never saw any Market Management materials that reported the booking location of U.S. accounts, other than where the booking location was in the United States). Mr. Cerutti explained, however, that if Mr. DeChellis had been physically present in Switzerland and made a request for that report to Swiss staff, there would not have been a basis to deny him access to the report. Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014).

[480] 3/30/2007 Credit Suisse Private Banking Risk Country Report 2006, CS-SEN-00409537, at 538; see also Subcommittee interview of Agnes Reicke, Credit Suisse (10/29/2013).

[481] Id. ("P-00027 (RC) requires BRM [Business Risk Management] / CoC [Center of Competence] to yearly present an overview of all Risk Country relationships managed outside country desks.").

[482] From 2003 – 2007, annual reports were produced, and since that time quarterly reports were produced. Subcommittee interview of Agnes Reicke, Credit Suisse (11/7/2013).

[483] See 3/30/2007 email from Peter Oberhansli to Anthony DeChellis, and others, "Risk Country: Yearly Review 2006," CS-SEN-00409535, attaching 3/30/2007 Credit Suisse Private Banking Risk Country Report 2006.

[484] Subcommittee interview of Agnes Reicke, Credit Suisse (11/7/2013).

U.S. managers did not receive the reports and were subsequently left uninformed.

The chart tracking "market purity," below, provides a snapshot of where Credit Suisse had booked Swiss accounts for U.S. resident clients in 2006.[485] It shows that only about 15% of U.S. clients were at the "country desk," or SALN, while 71% were at desks that received "Special Approval," that is, a blanket approval to book the U.S. resident client at a "special desk," like at the airport office.[486] Another 10% of U.S. resident clients had "Exception Approval," meaning that they were permitted to be booked at a non-SALN desk on a case-by-case basis. Finally, another 3% had no approval, blanket or otherwise, to be booked outside the SALN desk, which meant that a Swiss banker had booked the account in a location outside the policy requirements and outside the policy exceptions without receiving sign-off from any superior.

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[485] Though this document does not specify that the U.S. accounts are of U.S. residents, the number of U.S. CIFs here, 14,536, is very close to 14,967, the number of U.S.-resident CIFs the bank has identified to the Subcommittee as having existed in 2006.
[486] Subcommittee interview of Agnes Reicke, Credit Suisse (11/7/2013).

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Country Desks - Market Purity HK, US and Australia

	# of CIF						AUM					
	Total PB	At Country Desk	Percentage at Country Desk	Special Approval	Exception Approval	not approved	Total PB	At Country Desk	Percentage at Country Desk	Special Approval	Exception Approval	not approved
USA	14'538	2'283	15.7%	10'352	1'498	405	8'933'361'280	2'855'896'121	32.1%	1'747'857'815	2'989'143'077	1'310'464'267 *)
Hong Kong	1'437	907	63.1%	311	118	101	4'705'193'849	4'021'248'828	85.5%	155'720'933	391'250'009	136'955'179
Australia	2'526	296	11.8%	1'996	163	67	1'079'870'657	543'295'553	50.4%	207'736'670	227'728'281	100'110'150 **)

*) whereof 73 cases with AUM 659 m in SIDP

**) whereof 15 cases with AUM 23 m in SIDP

- US – Market purity is still insufficient with regard to the business risk involved
- HK – Market purity in AuM is good, number of CIF's could be further improved
- AUS – Market purity is insufficient (CIF's and AuM) with regard to the business risk involved

- Project W9 regarding centralization of US clients within CS Private Advisors ongoing.

Source: 3/30/2007 Credit Suisse Private Banking Risk Country Report 2006, CS-SEN-00409537, at 551.

This chart shows that Swiss risk managers, as well as all the Swiss employees who received their reports, were well aware in 2006, that U.S. clients were not concentrated at SALN, but spread out through the bank's Swiss offices. As the Business Risk Management Group concluded, for U.S. resident account holders, "Market purity is still

insufficient with regard to the business risk involved."[487] The Group reached this conclusion even without including in the chart all of the thousands of U.S.-linked accounts opened by U.S. nationals residing outside of the United States, by offshore entities with U.S. beneficial owners, and by U.S. clients using Clariden Leu. Further, no evidence suggests that anyone in the bank used the 2006 risk data to strengthen implementation of the concentration policy with respect to U.S.-linked accounts in Switzerland.

The bank's Internal Audit Group had an equally ineffective record. Credit Suisse's Internal Audit Group had offices in both Switzerland and New York, but the U.S.-linked accounts in Switzerland were placed under the sole purview of the Swiss internal audit office. Internal audits conducted of Swiss offices that established and serviced U.S.-linked accounts repeatedly failed to identify misconduct or compliance failures related to those offices. Notably, the Swiss audit team conducted audits of the SALN office in 2006 and 2009.[488] In 2006, auditors initially identified multiple, serious repeat issues in the SALN office.[489] The draft rating was a C2 as a result of "significant reputational risk" issues, possible U.S. travel violations that could incur "regulatory risk," and failings in Know-Your-Customer documentation, among others.[490] The final rating, however, was improved to a B2 level, and the final audit report dropped issues that had been identified in the draft, concluding instead that there were no significant reputational risk or repeat issues, and eliminating all observations about travel.[491]

The 2006 draft audit contained strong language, later dropped, suggesting Swiss bankers were engaging in prohibited securities advice and transactions while on travel in the United States, based on the confluence of securities transactions and the bankers' travel dates, noting:

> "[W]e think it is not reliable to visit 500 clients and not to provide investment advice on this occasion. In addition, we noted some

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[487] 3/30/2007 Credit Suisse Private Banking Risk Country Report 2006, CS-SEN-00409537, at 551.

[488] 8/31/2006 "CSG Internal Audit: Private Banking Americas, North America Offshore, Latin America and Bahamas," Credit Suisse Internal Audit, CS-SEN-00418830; 12/9/2009 "CSG Internal Audit Private Banking Americas, North America International," CSG Internal Audit, CS-SEN-00417862.

[489] 2006 "Draft CSG Internal Audit: Private Banking Americas, North America Offshore, Latin America and Bahamas," Credit Suisse Internal Audit, CS-SEN-00408716 (stated by Roland Ottiger, Sector Head, Internal Audit).

[490] Id.

[491] 8/31/2006 "CSG Internal Audit: Private Banking Americas, North America Offshore, Latin America and Bahamas," Credit Suisse Internal Audit, CS-SEN-00418830.

> indications that stock exchange transactions have [ ] taken place after such visits."[492]

When asked about the changes in the audit report, the bank told the Subcommittee that the SALN business head, Markus Walder, had persuaded the auditors to drop the negative findings, in part by submitting an altered travel report. An altered travel report does not, however, explain away the securities transactions that were questioned by the auditors. As explained earlier, the altered travel report led to the audit team dropping its initial, more serious conclusions.[493] Had the auditors kept the low rating, it might have drawn management attention to SALN's actions and perhaps stopped the misconduct before it resulted in an indictment.

Three years later, in 2009, months after the UBS deferred prosecution agreement was signed, Swiss auditors performed another audit of SALN, and gave it another favorable B2 rating.[494] Despite the red flags that UBS' misconduct had raised in other parts of Credit Suisse, including top management and legal and compliance, the internal auditors wrote that the "overall control environment was generally found to be operating adequately" in the SALN office.[495] Thirteen months later, the U.S. Department of Justice indicted several SALN bankers for aiding and abetting tax evasion.

A third audit conducted by the Swiss internal audit office reviewed the bank's New York Representative Office and, in 2008, gave the office a clean audit that failed to identify any problems.[496] As described earlier, this office functioned as a hub of activity on U.S. soil for Credit Suisse's Swiss bankers seeking to recruit U.S. customers to open Swiss accounts and servicing existing Swiss accounts. A couple years later, the head of the New York Representative Office, Roger Schaerer, was indicted for aiding and abetting tax evasion by U.S. clients.

Credit Suisse's Swiss Internal Audit Group reviewed key offices at the center of the bank's U.S. cross border business during a key period, from 2006 to 2009, but failed to identify or elevate any issues related to undeclared accounts or the facilitation of U.S. tax evasion.

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[492] 2006 "Draft CSG Internal Audit: Private Banking Americas, North America Offshore, Latin America and Bahamas," Credit Suisse Internal Audit, CS-SEN-00408716.
[493] See Credit Suisse Presentation, Report to the Senate Permanent Subcommittee on Investigations (2/29/2012) (Andrew Hruska) (discussion at PSI-CreditSuisse-11-000011); see also Subcommittee briefing by Credit Suisse (10/29/2013) (Agnes Reike).
[494] 12/9/2009 "CSG Internal Audit Private Banking Americas, North America International," CSG Internal Audit, CS-SEN-00417862.
[495] Id.
[496] 2/7/2008 "CSG Internal Audit," PB Americas Representative Office New York, CSG Internal Audit, CS-SEN-00226719.

Credit Suisse's failure to adequately define the class of U.S.-linked accounts requiring special oversight, enforce its own concentration policy, and conduct effective risk and audit oversight contributed to the proliferation of employee misconduct and undeclared Swiss accounts inviting U.S. tax abuses.

(4) Reviewing Accounts Through W-9 and Exit Projects

Beginning in 2008, after the UBS scandal broke, Credit Suisse initiated a series of "Exit Projects" to identify Swiss accounts that had been opened for U.S. customers, and ask the customers to disclose their accounts to the United States, or close them. The Exit Projects took an incremental approach, delayed review of key groups of accounts, and took over five years to complete.

Tax Scandals. The 2008 UBS scandal was not the first to affect Credit Suisse. In 2006, the bank's Brazilian branch was shut down by Brazilian authorities for aiding and abetting tax evasion.[497] That misconduct, and its consequences for the bank led to the initiation of a worldwide effort within Credit Suisse's Private Bank to improve its cross border business standards and practices.[498]

That effort, called Cross Border+, was a compliance program to develop legal and regulatory manuals for private banking in all geographic areas where Credit Suisse had business, construct a formal set of rules for private bankers traveling outside of their home countries, and provide related training for Private Bank Relationship Managers.[499] Another development, begun in October 2006, was Project W9, a securities compliance initiative aimed at moving U.S. resident accounts in Switzerland that held U.S. securities into Credit Suisse Private Advisors, the bank's U.S. registered broker-dealer. Moving the accounts to that unit was supposed to ensure that the bank did not run afoul of U.S. securities laws. That project ran from 2006 until 2009.

Starting in late 2008, after the UBS scandal broke, Credit Suisse initiated a series of "Exit Projects" focused on tax compliance, and

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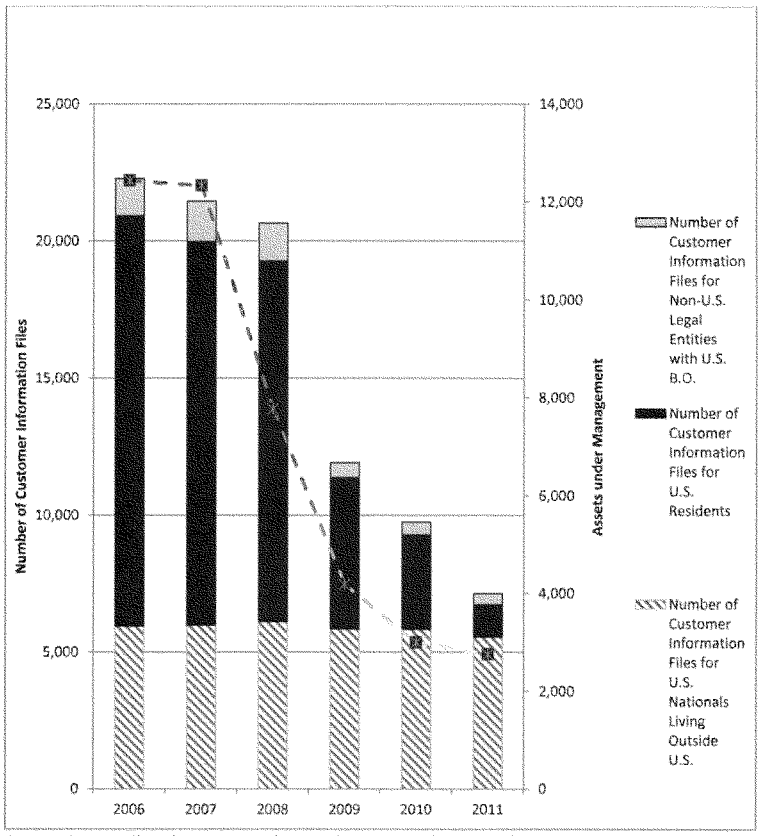
[497] In re Credit Suisse Group AG, SEC File No. 3-15763, Order Instituting Administrative and Cease-and-Desist Proceedings (2/21/2014), at 10.
[498] Id.
[499] Credit Suisse presentation, Report to the Senate Permanent Subcommittee on Investigations (7/31/2013), PSI-CreditSuisse-33-000001, at 006. See also In re Credit Suisse Group AG, SEC File No. 3-15763, Order Instituting Administrative and Cease-and-Desist Proceedings (2/21/2014), at 10 ("The CB+ Project is an ongoing global initiative covering over 80 countries, including the United States, and was described internally as an effort to 'set out how CS and its business units should conduct cross-border business going forward with clear guidance on acceptable business activities' .... The end deliverables were 'country manuals' designed to provide RMs with guidance on how to conduct business in all of the countries where CSAG had a presence, as well as training modules and revisions to existing cross-border policies.").

intended to identify all Swiss accounts opened by U.S. customers, not just those holding U.S. securities. Once identified, bankers participating in the Exit Projects were required to ask the U.S. customers to verify that their accounts complied with U.S. tax law, meaning they had been disclosed to the IRS, or close them. Over the following four years, multiple Exit Projects were initiated including, in chronological order, the Entities Project, Project Tom, Project III, Project Tim, Legacy Entities Project, Project Titan, and Project Argon. Each project focused on a different group of U.S.-linked accounts in Switzerland. Clariden Leu carried out parallel exit projects referred to as Compass I through V.

During most years of the Exit Projects, the bank's analyses are unclear as to exactly what the bank requested of its U.S. customers, and what verbal or written assurances, if any, those customers provided to the bank. An Exit Process analysis on any given account typically ended with the statement that Credit Suisse had "maintained confirmed tax-compliant relationships," or "exit[ed] those that cannot demonstrate tax compliance," but for the years 2008 – 2011, no description or written documents provided by the bank detail how the bank did, in fact, confirm that specific accounts complied with U.S. tax law.

From the perspective of having an offshore account, the only tax compliance issue is whether an account was disclosed to U.S. authorities, but the bank repeatedly told the Subcommittee that it did not have any knowledge or estimates of how many of its U.S. customer accounts were disclosed to the United States. The bank explained that it did not require all of its U.S. customers to sign W-9 forms and submit written tax compliance certifications until 2012; before then, the bank made providing W-9 forms optional for U.S. customers opening Swiss accounts, with the exception of U.S. residents with U.S. securities accounts. The bank's Exit Projects then had to review all of its U.S.-linked accounts in Switzerland and, on an account-by-account basis, determined whether an account was "tax compliant" and, if not, closed it. The contradiction between the bank's assertions that it has closed all non-tax compliant accounts held by U.S. customers, but is unable to quantify how many of those accounts were undisclosed to U.S. authorities, is difficult to resolve.

Categories of U.S.-Linked Accounts in Exit Projects in Credit Suisse Private Bank Switzerland, 2006 – 2011



Source: See Credit Suisse Presentation, Update on Development of AuM and Accounts of U.S. Clients to the Senate Permanent Subcommittee on Investigations (4/20/2012) CS-SEN-00189151, at 153-154 (does not include Clariden Leu).

Project W9. The bank's 2006 "Project W9" represents its first effort to review individual accounts held by U.S. customers in Switzerland. Project W9 was, at its core, a narrow securities compliance effort that surveyed less than 5% of the bank's U.S.-linked accounts at the time.[500] It was designed to transfer all U.S. resident accounts in Switzerland that held U.S. securities to the bank's U.S.-registered broker-dealer in Switzerland, CSPA.

When Credit Suisse initiated Project W9, the motive was avoidance of U.S. securities law risks, not U.S. tax law risks. Because

[500] In 2006, the year Project W9 began, the scope of the project was 998 CIFs, compared to 22,283 total U.S. linked CIFs in the Swiss Private Bank.

Credit Suisse AG, the Swiss bank, had merged with Credit Suisse First Boston, a U.S. firm, in 2005, that merger exposed the Swiss bank for the first time to the possibility of a U.S. enforcement action related to U.S. securities activities. Romeo Cerutti, the bank's General Counsel, explained that the "One Bank" initiative – the merger of Credit Suisse AG and Credit Suisse First Boston – created a new risk situation for the Swiss operations.[501] Prior to the merger, Credit Suisse AG had no presence in the United States, but afterward, due to Credit Suisse First Boston's presence in the United States, Credit Suisse AG had increased legal exposure to U.S. laws.[502]

A 2005 "risk assessment" by the bank summarized its situation as follows:

> "100% adherence to D-0025 [U.S. Person Policy] is not possible given its complexity and the broad distribution of US-person relationships across CS. Any single US-person client complaint or action against CS can trigger public criminal, civil and/or regulatory sanctions. US-persons with a W9 are more likely to file a complaint with US authorities, or to initiate criminal or civil proceedings. **CS is now vulnerable.** Prior to May 13, 2005 [date of merger between Credit Suisse AG and Credit Suisse First Boston] CS Bank had no significant direct US presence with a low risk of successful indirect US domestic enforcement against e.g. CSFB or SASI. Post May 13 2005, CS has significant US assets which are directly exposed to domestic US enforcement actions."[503]

Other presentations similarly describe the motive for Project W9: "The One Bank initiative has increased Credit Suisse's exposure regarding US legal risks since the beginning of 2006."[504] The bank perceived these U.S. legal risks as extending to any U.S. resident Swiss accountholder who engaged in U.S. securities transactions.[505]

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[501] Subcommittee interview of Romeo Cerutti, Credit Suisse (10/15/2014) (discussing Credit Suisse, Project W9 Kick-Off Meeting presentation (9/29/2006) CS-SEN-0046138, at 140).
[502] See Subcommittee interview of Agnes Reicke, Credit Suisse (10/29/2013).
[503] 9/19/2005 Draft Credit Suisse CSPA Position Paper, CS-SEN-00283097, at 102 [emphasis in original].
[504] See Credit Suisse presentation, Project W9 Kick-Off Meeting, (10/2/2006), CS SEN 00426140; see also Credit Suisse presentation, Project W9 16th Core Meeting (5/8/2008), CS-SEN-00426224, at 226; see also Credit Suisse presentation, Project W9 8th Core Team Meeting (3/29/2007), CS-SEN-00426237, at 251 ("objectives phase 2: Further reduction of SEC induced risks by ..."); see also Credit Suisse presentation, Project W9 Roadshow Presentation (11/22/2006), CS-SEN-00287318, at 319 ("Recent and current strategic initiatives (One Bank, PB USA) increase the exposure of Credit Suisse to US regulations. And, our US clients can only be provided a very limited service level.").
[505] See also Credit Suisse presentation, Project W9 16th Core Meeting (5/8/2008), CS-SEN-00426224, at 226; see also Credit Suisse presentation, Project W9 8th Core Team Meeting (3/29/2007), CS-SEN-00426237, at 251 ("objectives phase 2: Further reduction of SEC induced

Project W9 had a very narrow scope: moving all Swiss accounts that already had a W-9 on file for U.S. residents and held U.S. securities to its U.S. licensed broker-dealer.[506] The bank's longstanding policy had been to require a W-9 form for U.S.-linked accounts that traded in U.S. securities, so the bank did not undertake a search for U.S. accounts that lacked a W-9 form; rather, it reviewed accounts that already had a W-9 form on file.[507] The purpose of the project was to move all of those U.S. resident accounts with U.S. securities to Credit Suisse Private Advisors (CSPA), the bank's Swiss broker-dealer registered with the SEC.[508] Concentrating U.S. resident accounts with U.S. securities at CSPA was supposed to have taken place since roughly 2002, a year after Credit Suisse signed a Qualified Intermediary (QI) agreement with the IRS which required Credit Suisse to withhold certain taxes from Swiss accounts that held U.S. securities and, for those accounts belonging to U.S. persons, disclose certain account information to the IRS on annual basis.[509] Credit Suisse was supposed to carry out its QI responsibilities by moving its U.S. resident accounts with U.S. securities to CSPA, the only client group for which Credit Suisse required a signed W-9 form. CSPA would then use those W-9 forms to identify the U.S. resident accounts and file the required annual account disclosures to the IRS. But, according to the bank, many Swiss bankers were given permission to keep their U.S. resident accounts, even if the U.S. accountholder had filed a W-9 and had U.S. securities among their assets:

> "W-9 concentration did not take place. Some Market Group Heads signed up to 90% exemptions especially for W-9 members of 'client groups.' Relationship Managers were reluctant to 'give up' clients."[510]

In the fall of 2006, the bank began to implement Project W9, which covered over 900 U.S. resident CIFs with U.S. securities valued at 1 billion CHF, and sought to transfer them from Credit Suisse to CSPA.[511] Compared to all U.S. accountholders in Switzerland, Project W9 scope covered only approximately 5% of them. The bank planned to start the transfer in January 2007 and finish by mid-2007.[512] By April

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risks by ..."); see also Credit Suisse presentation, Project W9 Roadshow Presentation (11/22/2006), CS-SEN-00287318, at 319 ("Recent and current strategic initiatives (One Bank, PB USA) increase the exposure of Credit Suisse to US regulations. And, our US clients can only be provided a very limited service level.").

[506] See Credit Suisse Presentation Project W9 6th Core Team Meeting (1/26/2007) CS-SEN-00173686, at 690.

[507] Id.

[508] Id.

[509] Credit Suisse briefing to the Subcommittee (1/15/2009).

[510] 9/19/2005 Draft Credit Suisse CSPA Position Paper, CS-SEN-00283097, at 104.

[511] See 9/29/2006 Credit Suisse presentation, Project W9 – Kick-Off Meeting, CS-SEN-00426138, at 144.

[512] See Credit Suisse Presentation Project W9 6th Core Team Meeting (1/26/2007) CS-SEN-00173686, at 690.

2007, however, little progress had been made, prompting a senior Credit Suisse official, Anthony DeChellis, to ask the head of CSPA, Richard Isarin, "Why so slow?"[513] Mr. Isarin responded that it was not a priority for Credit Suisse Relationship Managers, presumably because, as indicated above, they were, in effect, being asked to surrender accounts to another bank office.[514] The deadline was extended from mid-2007 to mid-2008.[515] By September 2008, the bank had transferred only 228 CIFs out of the original pool of more than 900 to CSPA.[516]

Throughout the two-year period, the bank entertained at least 92 requests for exceptions, and a decision board granted 26 of those requests.[517] The bank also identified a number of "Dual Relationship" clients, that is, accountholders who held both a W-9 account, indicating that the accountholder had signed the U.S tax form to report their account, and a non-W-9 account, which did not have the W-9 tax form on file. Early on, in December 2006, the bank considered "full implementation," that is, using Project W9 to identify and close all U.S. resident accounts for which no W-9 was on file where the customer also held a CSPA account, but reasoned that the impact of such a decision would be a "loss of AuM [assets under management] & revenue," from the closed accounts.[518] Instead, the bank offered clients a choice to: (A) transfer their W-9 accounts to CSPA and close any Non-W-9 accounts, or (B) keep the Non-W-9 accounts at Credit Suisse and close the W-9 accounts, or (C) close all accounts.[519] In other words, instead of moving all U.S. resident accounts to CSPA where they would be handled by a U.S.-licensed broker-dealer and tagged as U.S. accounts that would have to be disclosed to the IRS, Credit Suisse provided a plan "B," allowing known U.S. clients to maintain Swiss accounts in a manner that could keep them hidden from the IRS.

Credit Suisse also allowed Clariden Leu, which had over 1,400 U.S. resident Swiss accounts with nearly $1 billion in assets,[520] to avoid participating in Project W9, even though Clariden Leu had been made a direct subsidiary of the bank in 2007, the year after Project W9 began.

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[513] 4/16/2007 Email from Anthony DeChellis to Richard Isarin, "CSPA W9 project, new estimated AuM-transfer and TOI's," CS-SEN-00075697, at 698.
[514] Id. at 697.
[515] See Credit Suisse Presentation, CS Private Advisors Information Meeting (12/17/2007) CS-SEN-00160287, at 291.
[516] Credit Suisse, Credit Suisse Private Advisors Confidential presentation (9/17/2008) CS-SEN-00159528, at 542.
[517] 3/23/2007, Meeting Minutes of the Private Bank Management Committee, CS-SEN-00061066, at 068.
[518] 11/24/2006 Credit Suisse slide presentation, "PROJECT W9, 4th Core Team Meeting," CS-SEN-00426202, at 211.
[519] See Credit Suisse Presentation, Project W9, 7th Core Team Meeting (3/2/2007) CS-SEN-00181281, at 285.
[520] Credit Suisse presentation to Subcommittee, PSI-CreditSuisse-54-000001, at 042-043.

In the end, very few Credit Suisse accounts were transferred to CSPA as a result of the project. Credit Suisse's General Counsel, Mr. Cerutti, told the Subcommittee that while the "W-9 Project was going in the right direction, it didn't go far enough," and it was fair to criticize the effort for failing to go "far enough, early enough."[521]

Early Exit Projects. In July 2008, the UBS scandal broke. In reaction, Credit Suisse took a number of steps.[522] The bank established a Steering Committee which, in its first presentation in Zurich in August 2008, analyzed the scope of its own business with American account holders in Switzerland, as well as relevant legal and bank policies governing U.S. accounts.[523] The bank decided to "exit the business" meaning, not that it would necessarily cease all its cross border relationships with U.S. clients, but would seek information from its U.S. clients to determine whether their accounts were compliant with U.S. tax rules, and if not, to end such client relationships. This effort, which was carried out in stages, was collectively known as the Exit Project.

In addition, in July 2008, the bank issued a directive to prohibit inflows of U.S. client account funds from UBS, as well as LGT.[524] Brady Dougan, the bank's CEO, initiated an internal review to determine if Credit Suisse had engaged in similar conduct as UBS, and if so, the extent of Credit Suisse's legal exposure.[525] After the bank was contacted by the Subcommittee in the second half of 2008, it implemented a review that pulled together information and senior managers from its tax department, SALN front office, business risk management, outside counsel, government affairs, and General Counsel's office.[526] After a two-day long meeting in January 2009 in Switzerland, according to General Counsel Romeo Cerutti, the bank decided against launching an in-depth internal investigation, which he characterized in an interview as the "wrong conclusion." According to Mr. Cerutti, "no further work [was] done" at that time.[527]

The Exit Projects began in November 2008. Leadership was provided by Swiss-based personnel in the Legal Department, and staff from the Private Bank helped carry out the day-to-day tasks. For the first three years, from 2008 to 2011, Credit Suisse's Exit Projects focused on accounts where the accountholder was a U.S. resident, as

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[521] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014).
[522] Id.
[523] See Credit Suisse presentation, US Project – STC #1 – Zurich (8/19/2008) CS-SEN-00426290.
[524] 7/28/2008 Legal & Compliance Alert LC-00014, CS-PSI-0037.
[525] Subcommittee interview of Brady Dougan, Credit Suisse (12/20/2013).
[526] Subcommittee interview of Romeo Cerutti, Credit Suisse (2/9/2014).
[527] Id.

opposed to a U.S. national living outside of the United States.[528] One reason for the bank's initial focus on U.S. residents was that U.S. securities laws assessed penalties for violations involving investors within the United States, as opposed to U.S. tax law which did not draw a distinction based on the geographic location of a U.S. person. The bank knew, of course, that U.S. customers living abroad were also subject to U.S. tax laws – it included that category of accountholder within its definition of "U.S. taxpayers" in its U.S. Persons Policy and within its definition of "U S Holder" in its 2007 annual report.[529] However, the bank has acknowledged that its initial focus on U.S. residents as a risk-based decision, in that Swiss accounts held by U.S. residents posed a higher risk than accounts held by, for example, U.S. citizens living in Switzerland.[530] The bank noted that there was a greater likelihood of violating securities law with U.S. resident accounts, because banker conduct was much more likely to have taken place within U.S. borders while visiting a U.S. resident. As a result of this risk-based analysis, Credit Suisse did not expand its focus to Swiss accounts held by American accountholders living outside of the United States until 2012, even though thousands of those U.S.-linked accounts were also in Switzerland.

Entities Project and Project Tom. One of the first Exit Projects, called the Entities Project, focused on accounts that had been opened by offshore entities with U.S. beneficial owners.[531] Starting in November 2008, the bank identified U.S. resident or citizen accounts that had been opened in the name of an offshore entity, such as an offshore corporation or trust. The bank required the affected clients to either undergo an outside counsel review of their status or leave the bank.[532] Project Tom was an outgrowth of the Entities Project and was conducted mostly in 2009.[533] It was headed up by Urs Rohner, then General Counsel of the bank and now Chairman of the Board, Romeo Cerutti, then General Counsel of Private Bank and now General Counsel of the entire bank, and Walter Berchtold, then head of the Private Bank.[534]

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[528] See Credit Suisse letter to Subcommittee, PSI-CreditSuisse-29-000005 (7/12/2013). See also Credit Suisse "Non-US Legal Entities with US Domiciled Person on Form A*" (3/13/2009), CS-PSI-0185 (including entities with beneficiaries domiciled in the US).
[529] See 2007 Credit Suisse Annual Report, at 383, at https://www.credit-suisse.com/media/cc/docs/investors/csg-ar-2007-en.pdf.
[530] Subcommittee briefing by Credit Suisse (1/16/2014).
[531] 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-29-000001, at 5.
[532] Id.; see also Subcommittee briefing by Credit Suisse (10/28/2013) (Agnes Reicke).
[533] See, e.g. Project Tom – STC#5, Zurich, December 19, 2008, CS-SEN-00455224; see 12/2009 Credit Suisse presentation, "Business Performance PB Americas," CS-SEN-00065086, at 087 (showing Project Tom neutralization, or account outflows, totaling 2.4 billion CHF as of Dec. 2009).
[534] Subcommittee interview of Anthony DeChellis (8/9/2013).

Project III. In April 2009, Project III was initiated to focus on Swiss accounts opened by U.S. residents.[535] The bank contacted the accountholders and asked the U.S. residents to either demonstrate that their account was in compliance with U.S. tax law or leave the bank.[536] The bank also decided at that time to permit new U.S. resident accounts to be opened only at a U.S.-licensed Credit Suisse affiliate, such as CSPA.[537] Project III lasted about two years and was closed in 2011.

Although Project III was ongoing and would continue for another two years, in talking points for a 2009 Investor Day, the bank characterized its Exit Projects as complete:

> "CS with relatively small US offshore business; in anticipation of changes to the QI [Qualified Intermediary] rules, we **assessed all clients** and took appropriate action; some accounts we terminated, some moved to our SEC regulated entity Credit Suisse Private Advisors, some remained unchanged ..."[538]

In fact, the Exit Projects were far from over.

Project Tim and Project Legacy Entities. While Project III continued to review U.S. resident accounts, the bank undertook a series of projects to take a second look at accounts opened by offshore entities with U.S. beneficial owners. Project Tim, a continuation of the Entities Project, began in May 2011.[539] Next, Project Legacy Entities "involved the review of specific, approved cases from Project Entities,"[540] in order to determine that the accounts approved earlier for being in compliance with U.S. tax laws were also compliant with U.S. securities requirements. Of the approximately 400 offshore entities reviewed during that project, approximately 50 were asked to "exit" as clients from Credit Suisse due to concerns about securities compliance.[541]

Referrals to Other Swiss Banks. While the Exit Projects were underway, the bank put in place a policy that prohibited relationships managers from referring U.S. clients to other Swiss banks. Credit Suisse initially told the Subcommittee that, despite this policy, its internal investigation found at least 100 instances where it was violated.[542]

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[535] 4/23/2009 Credit Suisse presentation, "Info Package Project III," CS-SEN-00387046.
[536] 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, at PSI-CreditSuisse-29-00001, at 005.
[537] Id.
[538] See, e.g., 2009 PB Investors Day prepared Q&A; see email from Ray Ying to David Walker, Sept. 16, 2009, Q&A – PB Investor Day, CS-SEN-00078584 [emphasis added].
[539] 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, at PSI-CreditSuisse-29-00001, at 005.
[540] Id.
[541] Subcommittee briefing by Credit Suisse (1/16/2014).
[542] Credit Suisse presentation, Report to the Senate Permanent Subcommittee on Investigations (2/29/2012) (Andrew Hruska), PSI-CreditSuisse-11-000001.

Later, the bank said the instances were likely less frequent.[543] The bank's internal investigation also identified five Swiss relationship managers who admitted making referrals by giving U.S. clients the names of specific Swiss banks that were accepting U.S. customers.[544] At the same time, the bank said that it would have been easily apparent to any U.S. person who could use the Internet which Swiss banks were still accepting U.S. clients after 2008.[545]

One former Credit Suisse client, Client 1, told the Subcommittee that a Swiss relationship manager, Michele Bergantino, provided a bank referral shortly after the UBS misdeeds became public to help that client maintain the secrecy of funds that had been on deposit at UBS.[546] Client 1 told Mr. Bergantino that in addition to a Credit Suisse account, the client had another undisclosed account at UBS, which had triggered a sense of "panic"[547] in Client 1, who did not want to be caught in law enforcement efforts focused on UBS clients. While Mr. Bergantino told Client 1 that Credit Suisse could not accept a transfer from UBS, Mr. Bergantino provided the name of a banker who would set up a new account for Client 1's UBS funds at Wegelin & Co., a Swiss bank with no branches or offices in the United States.[548] This transfer enabled Client 1 to maintain the secrecy, and undeclared status, of the funds that had been deposited at UBS, until Client 1 decided to come forward through the Offshore Voluntary Disclosure Program.

First Phase Ended. From 2008, when the bank began its Exit Projects, through 2010, right before the bank's SALN bankers were indicted, a total of about 13,000 U.S.-linked CIFs left the bank.[549] Those closed accounts represented about 65% of its U.S.-linked CIFs, most of whom were U.S. residents, the primary target of its exit projects until then.[550] The closed accounts had about $4.1 billion in assets.[551]

Clariden Leu Exit Projects. Like Credit Suisse, Clariden Leu also established and served U.S.-linked accounts in Switzerland, and some of its private bankers focused on the U.S. market.[552] Like Credit Suisse bankers, Clariden Leu bankers traveled to the United States, recruited U.S. clients and serviced existing accounts while there, dispensed investment advice and helped conduct securities transactions

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[543] Subcommittee briefing by Credit Suisse (1/16/2014) (Andrew Hruska).
[544] Id.
[545] Id.
[546] Subcommittee interview of Client 1 (9/10/2013).
[547] Id.
[548] Id.
[549] 2/10/2014 Credit Suisse Report to the Senate Permanent Subcommittee on Investigations, PSI-CreditSuisse-64-000001 (adding up all accounts denoted as "closed.").
[550] The bank had 20,314 total U.S-linked CIFs in 2008 and 9,701 CIFs in 2010. Id.
[551] 2/10/2014 Credit Suisse Report to the Senate Permanent Subcommittee on Investigations, PSI-CreditSuisse-64-000001 (adding up all accounts denoted as "closed.").
[552] Credit Suisse briefing to the Subcommittee (1/16/2014) (Andrew Hruska).

while in the United States, and opened many undeclared accounts in Switzerland for U.S. clients, at times in violation of Credit Suisse policy or U.S. regulations.[553]

Because Clariden Leu was managed independently, it carried out its own Exit Projects to review its U.S-linked accounts. Clariden Leu hired its own legal counsel and established its own series of projects, with different names than those at Credit Suisse.

Over a four-year period from 2008 to 2012, through its Exit Projects, Clariden Leu closed more than 90% of its U.S.-linked accounts in Switzerland. Clariden Leu reduced its portfolio from 3,260 U.S.-linked CIFs with $2.3 billion in assets in 2008,[554] to only 273 U.S.-linked CIFs by the end of the year 2012. Of those accounts, a small minority, totaling 217 CIFs with $643 million in assets from 2008 – 2012, lost their nexus to the United States due to, for example, a U.S. resident moving overseas, and were no longer considered U.S.-linked accounts. But the rest retained their U.S. character. Given these figures, less than 10% of the U.S. clients at Clariden Leu in 2008 were apparently willing or able to demonstrate that their accounts were compliant with U.S. tax laws, or wished to remain a customer at the bank.

Despite these figures, Credit Suisse asserts that it is unable to determine how many of the Clariden Leu accounts were undeclared or otherwise hidden from the United States. According to Credit Suisse, the "objective of the ... Clariden Leu exit projects was to verify tax compliance of U.S. linked accounts in order to allow these accounts to remain at the bank. The projects were never intended to identify non-compliant behavior."[555]

Clariden Leu's Exit Projects, while lagging Credit Suisse's efforts, generally paralleled the same categories of U.S. accountholders that Credit Suisse was serially addressing.[556] Clariden Leu's projects were named Compass, and there were five iterations of the Compass Projects. Compass I and II focused on accounts held in the name of non-U.S. domiciliary companies with U.S. beneficial owners and required the

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[553] Credit Suisse briefing to the Subcommittee (2/29/2012), PSI-CreditSuisse-11-000001.
[554] Credit Suisse presentation, Report to the Senate Permanent Subcommittee on Investigations (7/31/2013), PSI-CreditSuisse-33-000001 at 029-031.
[555] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, PSI-CreditSuisse-54-00003, at 033 ("Clients may have left the bank in the course of the exit projects for any number of reasons other than not being compliant including (1) choosing not to provide proof of compliance, (2) not meeting the minimum asset level in order to transfer to CSPA, or (3) leaving the bank for reasons unrelated to the tax status of the account. Additionally, our investigation showed that clients tended to switch banks during times of change in services, particularly with respect to regulatory changes or changes in relationship managers.").
[556] Credit Suisse briefing to the Subcommittee (1/16/2014).

accountholder to demonstrate U.S. tax compliance or exit the bank.[557] Compass III and IV dealt with accounts opened by U.S. resident natural person clients. Compass III ran from May 2009 to March 2011, and sought a new course.[558] Compass III set out with the initial goal of retaining U.S. resident clients who could show they were tax compliant, and then move their account to a new subsidiary that Clariden Leu planned to establish which, like CSPA, would be a U.S.-licensed broker-dealer.[559] Clariden Leu asked its U.S. resident clients to submit a W-9 form. If the client provided it, Clariden Leu planned to move the client to the new subsidiary, and if not, it terminated the relationship. Ultimately, there were insufficient clients who were willing to sign a W-9, and Clariden Leu abandoned the idea.[560]

Compass IV ran from March 2011 to July 2012 and required the exit of all remaining U.S. resident natural person clients.[561] In May 2012, Credit Suisse required written tax compliance certifications and signed W-9 forms from U.S. customers in order for their Swiss accounts to remain at the bank, but it is not clear that this requirement applied to all accountholders in the Compass IV project. Finally, Compass V was a process to capture any clients still not resolved in the other projects to verify compliance or force closure of the accounts.[562] While it began in March 2011, it was not complete by the time of the 2012 merger of Clariden Leu into Credit Suisse, and Credit Suisse took over the project.[563]

Project Titan. In early 2012, Credit Suisse began its first Exit Project to review accounts opened by U.S. nationals who resided outside of the United States. The category of "U.S. nationals" was defined as including U.S. citizens, U.S. citizens who held dual citizenship with another country, and persons with a U.S. green card. The project, called Project Titan, was triggered by U.S. enactment of the 2010 Foreign Account Tax Compliance Act (FATCA).[564] FATCA requires all foreign

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[557] 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-29-000001.
[558] Id.
[559] Id.
[560] Id.
[561] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, PSI-CreditSuisse-54-000003, at 031.
[562] 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-29-000001.
[563] 12/20/2013 letter from Credit Suisse legal counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, PSI-CreditSuisse-54-000003, at 031.
[564] "Core Team Meeting, Project Titan Wave 1, SOAM 1," February 17, 2012, v1.0; CS-SEN-00388498, esp. 502, 505; see also Credit Suisse, letter from legal counsel to the Subcommittee, (8/13/2013) PSI-CreditSuisse-37-00001, at 001-003 ("Still, well in advance of the implementation of FATCA rules, beginning in 2011, CS voluntarily embarked on another extensive project designed to confirm (to the extent possible) that [U.S. national] relationships

financial institutions to disclose all accounts held by U.S. persons or pay a 30% tax on their U.S. investment income. As originally drafted its provisions would have begun taking effect in 2012, though they were subsequently delayed. The bank told the Subcommittee that the prospect of the account disclosures and other requirements under FATCA, spurred the bank to conduct a review of its accounts held by U.S. nationals, not just those held by U.S. residents.

In May 2012, Project Titan required U.S. nationals holding Swiss accounts to return a form certifying that their account was in compliance with U.S. tax law if they wished to maintain that account at the bank.[565] The tax certifications were also fashioned to function as waivers allowing the bank to provide client-specific information to the IRS under FATCA.[566] To identify U.S. accountholders, the bank used "U.S. indicia" in client files, such as evidence of a U.S. birthplace, mailing address, or telephone number. It also used dual citizenship with the United States, a method of identifying U.S. accounts that the bank had not used until it was suggested in FATCA implementing rules.[567] The bank told the Subcommittee that it was aware that one of the areas of abuse involved U.S. dual citizens who did not reveal their U.S. citizenship, only their other citizenship.[568] Until FATCA specifically instituted requirements for dual citizens, the bank did not ask new clients if they were dual citizens, and their forms only had one line for indicating nationality, but the bank changed its forms to address dual citizens in 2012.[569] Also that year, Credit Suisse required a W-9 form to be signed by all new U.S. accountholders. Those common sense steps to identify U.S. accountholders and reduce bank employee misconduct had not been taken by Credit Suisse until they were explicitly required by the United States.

Project Argon. In May 2012, Credit Suisse initiated still another Exit Project, named Project Argon. All other ongoing Exit Projects were subsumed within it, including Project Titan and Clariden Leu's Compass V project.[570]

Like Project Titan, Project Argon focused bank attention on Swiss accounts held by U.S. nationals. As indicated by the blue line in the chart below, for more than five years prior to the initiation of the Exit

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were tax-compliant. In 2011, the Bank first reminded all U.S. national clients about their foreign bank account reporting obligations under U.S. law. In early 2012 ... the Bank began requiring U.S. tax compliance certification forms from non-resident nationals.").

[565] Id.

[566] Subcommittee briefing by Credit Suisse (11/7/2013) (Tina Freund).

[567] Id.; see also 3/2011 Credit Suisse presentation by Andrea Kuttner, "FATCA International Transparency Phase Overview," CS-SEN-00408837, at 854.

[568] Subcommittee interview of Agnes Reicke, Credit Suisse (11/7/2013).

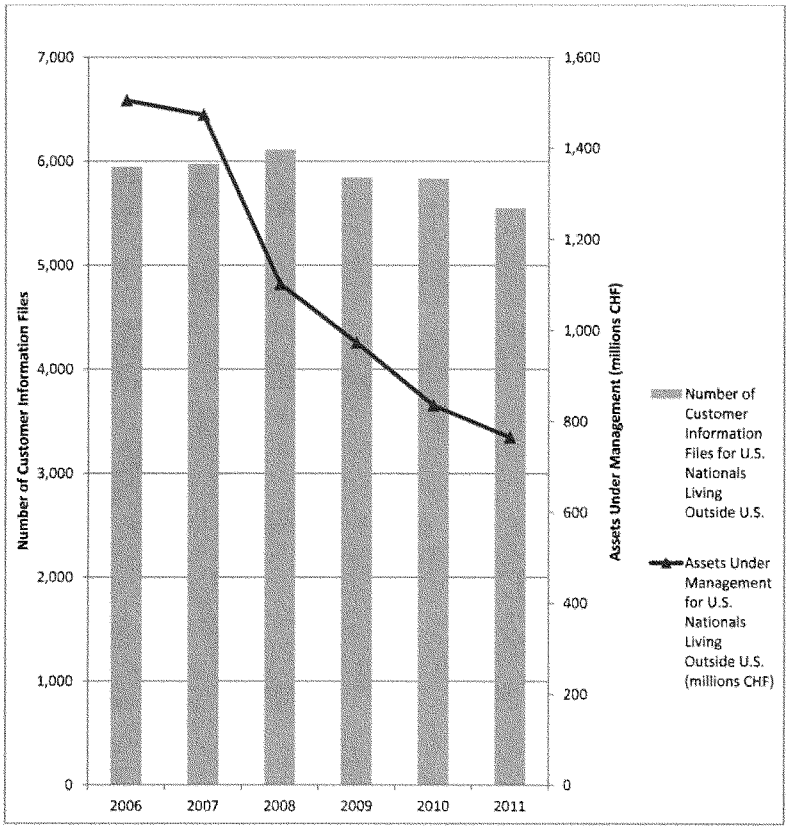
[569] Subcommittee briefing by Credit Suisse (11/7/2013) (Tina Freund).

[570] 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-29-000001 at 006.

Projects, Credit Suisse had housed Swiss accounts for about 6,000 U.S. nationals living outside of the United States. The number of clients peaked in 2008, with about 6,100 CIFs. By 2011, only about 550 CIFs had exited the bank, which meant that Project Argon had to review thousands of those U.S. client accounts. The relatively higher decline in the value of the assets held in those accounts, which fell from a high of about 1.5 billion CHF in 2006, to about 765 million CHF by 2011, suggests that the exited accounts were either higher value accounts or that the remaining accountholders were reducing the total amount of assets kept in their Swiss accounts.

Credit Suisse told the Subcommittee that it completed its Exit Projects in 2013, five years after they began. Statistics provided by the bank show that the overall levels of U.S. clients and assets once in Swiss accounts at the bank have continued to drop. At the end of 2013, Credit Suisse data indicated that, from its 2006 peak of over 22,000 U.S.-linked CIFs in Switzerland with as much as 12 billion CHF in assets, about 18,900 U.S. clients had left the bank with about $5 billion in assets. At the end of the year, Credit Suisse had about 3,500 U.S.-linked CIFs with about $2.6 billion in assets.

U.S. National Clients in Credit Suisse Switzerland, 2006 – 2011



Source: Credit Suisse presentation, Update on Development of AuM and Accounts of U.S. Clients to the Senate Permanent Subcommittee on Investigations (4/20/2012) (providing asset data in Swiss francs), CS-SEN-00189151.

E. Analysis

For decades, Credit Suisse engaged in an extensive cross border business designed to solicit U.S. taxpayers as customers of the bank in Switzerland. It sent Swiss bankers into the United States, pressed them to recruit new clients, and opened tens of thousands of undeclared Swiss accounts. In the course of that cross border business, some Credit Suisse bankers also offered investment advice and undertook securities transactions for U.S. clients in violation of U.S. securities law. Credit Suisse's cross border business with U.S. customers reached its heights in 2006 and 2007.

Credit Suisse's initial efforts to address non-compliance of U.S. accounts in Switzerland were limited to those that posed a risk of

securities law violations due to the bank's 2005 merger that created a new exposure to U.S. securities laws and regulation. The W-9 project only included U.S. resident accounts which had U.S. securities and a W-9 form on file. That meant that the bank sought to address less than 5% of all its U.S.-linked accounts,[571] and, because those accounts already had a W-9, were not as likely to pose a tax compliance risk. Credit Suisse did not address the issue of tax compliance of its U.S. accounts until after the UBS case in 2008, even though the obligation of U.S. citizens to pay taxes on offshore earnings was longstanding and very clear. Credit Suisse has admitted that its subsequent internal review and Exit Projects were prompted by the consequences borne by UBS.[572] Moreover, the bank has told the Subcommittee that it did not believe it ultimately needed to address U.S. national accountholders, because it did not think that UBS had turned over names of U.S. nationals to the U.S. Government as part of its deferred prosecution agreement, and it did not believe that UBS had conducted an exit project that included U.S. nationals.[573]

When the bank finally initiated an Exit Project for U.S. nationals, it was propelled by FATCA, not longstanding U.S. tax laws. While Credit Suisse has publicly supported FATCA and has met certain FATCA milestones, a larger issue remains as to why the bank avoided taking earlier steps that could have prevented its bankers from aiding and abetting tax evasion by U.S. accountholders, such as requiring all new U.S. accountholders to sign W-9 tax forms, or identifying data, like a U.S. mailing address or birthplace, that would show the accountholder was a U.S. customer with U.S. tax obligations. The largest issue, of course, is the need to access the thousands of accountholder names of tax evaders who cost the U.S. Treasury tax revenues on billions of assets.

Credit Suisse finally took steps in carrying out the Exit Projects to ensure only compliant U.S. accounts remain, though the bank's process identifies a troubling refrain that should inform future laws and regulations governing cross border banking. Credit Suisse engaged in the ad seriatim projects to address, piecemeal, its views of its potential legal exposure, whether from securities laws or as identified through UBS' public admissions or FATCA's extensive, prescriptive guidelines. Bank leadership never established or enforced a structure of its U.S. cross border business with an eye towards compliance; it was structured instead by business considerations, for example, by locating the Zurich

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[571] In 2006, the year Project W9 began, the scope of the project was 998 CIFs, compared to 22,283 total U.S. linked CIFs in the Swiss Private Bank.

[572] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014); Subcommittee briefing by Credit Suisse (1/16/2014) (stating that the Subcommittee's work on the UBS scandal was "a big wake up call.").

[573] Subcommittee briefing by Credit Suisse (1/16/2014) (Joseph Seidel).

airport office for the convenience of traveling Americans or grouping other accounts by asset size. Credit Suisse's General Counsel has acknowledged that Swiss bank secrecy is "vulnerable to abuse, and it has been abused,"[574] but the bank could have and still could structure its U.S. cross border business to prevent such abuse and constrain its own employees from having a hand in it.

Credit Suisse has yet to admit that its U.S. cross border business was largely a dishonest enterprise, dominated by undeclared accounts and U.S. accountholders dodging U.S. taxes. The bank has not developed or implemented lessons-learned that would guide the bank for the future. Also, Credit Suisse has not examined the role of its leadership in allowing this business to go on for so many years. The bank's U.S. cross border business involved tens of thousands of U.S. customers, billions in assets, and 1,800 Swiss private bankers opening accounts that were largely hidden from U.S. tax authorities, but there is still no accounting of how that business came to be at Credit Suisse, or who among the bank's leadership was responsible.

Credit Suisse has determined that, as a result of the Exit Projects, from 2008 – 2012, only about one-quarter of U.S. accountholder funds that left the bank returned to the United States; half of the accountholder funds that left Credit Suisse stayed in Switzerland.[575] Given that most of the accounts that the bank closed in those years were for U.S. residents, the trend of funds staying in Switzerland is a disturbing indicator of the continued lack of disclosure with U.S. authorities, and the continued role of Switzerland and Swiss banks in giving them sanctuary. The task now falls to identify the names of U.S. accountholders who evaded U.S. laws, and ultimately, to collect the tax revenues that they owe.

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[574] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014).

[575] See Subcommittee briefing by Credit Suisse (2/10/2014) (Agnes Reicke); 2/20/2014 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-68-000001, at 010-014 ("Leaver Report" showing that, from August 1, 2008 – first quarter 2013, 51.78% of closed account funds went to a location in Switzerland, and 28.75% of closed account funds went to a location in the United States. For the account funds that stayed in Switzerland, the bank did an analysis of the top 30 banks in Switzerland that received outflows, and the most outflows to Switzerland were, by far, in the year 2009, with $1.194 billion going to Switzerland in tbat year, compared to a total of $1.864 billion from August 1, 2008 – first quarter 2013).

IV. PRESSURE ON NET NEW ASSETS REPORTING BY PRIVATE BANK

Across its global operations, Credit Suisse issues public reports about the amount of new assets that flow into the Private Bank. These flows, called Net New Assets (NNA), show the extent of growth of the bank's asset base. NNA is important for bank management and bankers to gauge growth and profit potential. NNA is similarly important to investors for the same reasons, as well as for measuring the bank against its competitors. Credit Suisse has internal policies and processes that are supposed to produce an accurate NNA figure.

During 2012, multiple high level management and accounting officials within the bank did not follow their own prescribed policies for determining the size of NNA. Instead of what should have been a clean process of recognizing NNA and allocating it among regions of the bank, the bank's decisions suffered from business pressure and inconsistency. In 2012, Credit Suisse made decisions about reclassification of NNA, and retroactive decisions about the regions where it was allocated, which had the effect of appearing to bolster the financial performance of the Private Banking division, particularly in Switzerland. The actions of senior managers within the Private Bank raise concern that the motivation for certain decisions regarding the classification and allocation of NNA appear at times to have been driven more by the desire to improve the public NNA numbers of the Private Bank and certain business areas within the bank, to the detriment of following the established guidelines of NNA classification.

As a result of inquiries by the Subcommittee to the bank that business pressure may have swayed NNA decisions, Credit Suisse has initiated an investigation into 2011 and 2012 NNA figures and processes to ascertain if it complied with accounting rules and securities disclosure rules. The bank did not initiate that investigation until early 2014, and it is ongoing.

A. Defining Net New Assets (NNA)

Credit Suisse defines client assets as "passive balances of all client related balance sheet accounts, fiduciary investments, and client safekeeping accounts, including accrued interest."[576] Client assets fall under two categories: Assets under Management (AuM) and Assets under Custody (AuC). AuM are assets for which the bank "provides investment advice or discretionary asset management services."[577] Given that the bank charges fees for its financial advice and asset management services, assets that are categorized as AuM usually generate a higher profit margin for the bank than those in the other

[576] Credit Suisse Policy P-04890, CS-SEN-00421553, at 555.
[577] Id.

category, Assets under Custody.[578] AuC are "assets of private or institutional clients that are held solely for transaction-related or safekeeping/custody purposes" and "are not considered AuM since the bank does not provide specific advice regarding asset allocation or investment decisions."[579]

Every quarter, the change, or net difference, in AuM is categorized as Net New Assets (NNA). NNA reflects the bank's potential to generate earnings.[580] The bank increases its NNA in various ways: by successfully managing its AuM so total assets grow every quarter, by having clients move AuC to AuM by seeking the bank's advice or management on a greater proportion of their wealth, or by bringing new business into the bank.[581] NNA "correspond[s] to the net inflow/outflow of new money that must be disclosed" in accordance with Swiss Financial Market Supervisory Authority (FINMA) policies.[582] NNA may be broken down into regional areas of the bank, such as Private Bank Americas, or Private Bank Switzerland, which represent geographic areas of the bank.

B. NNA Under U.S. Securities Law

Credit Suisse, as an issuer of its own securities, falls under securities obligations to provide complete and accurate facts about the information it provides to the marketplace. While there are no specific U.S. guidelines for how a bank must calculate and disclose NNA, or regional NNA, if it does provide such information, according to Securities and Exchange Commission Rule 10b-5,[583] it must not make untrue statements or omissions of material facts. SEC Rule 10b-5 imposes specific disclosure obligations on market participants when they involve material information.[584] The rule applies to statements in bank press releases, annual reports, quarterly and annual public SEC filings,

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[578] Id.

[579] Id.

[580] Subcommittee interview of Philip Vasan, Credit Suisse (10/28/2013).

[581] Subcommittee briefing by Credit Suisse (11/25/2013).

[582] Credit Suisse Policy P-04890, CS-SEN-00421553, at 556.

[583] SEC Rule 10b-5 makes it unlawful to "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." 17 C.F.R. Section 240.10b-5(b) (2011), adopted by the SEC pursuant to Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78(j)(b) (2006).

[584] The Supreme Court has ruled that information is "material" when there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." Basic, Inc. v. Levinson, 485 U.S. 224, 231-232 (1988) (quoting TSC Indus. v. Northway, Inc., 426 U.S. 438, 449 (1976)); see also Castellano v. Young &Rubicam, Inc., 257 F.3d 171, 180 (2d Cir. 2001) (quoting SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 849 (2d Cir. 1968) ("Material facts include those that 'affect the probable future of the company and [that] may affect the desire of investors to buy, sell, or hold the company's securities.'").

and news articles, because investors view these documents as reliable sources from which they make investment decisions.[585]

C. Importance of NNA

NNA, at a minimum, must meet accuracy standards according to Swiss financial accounting guidelines and U.S. securities disclosure rules. The measurement of NNA is significant, however, for many other reasons. NNA is an indicator of the bank's potential to realize additional income through client asset management and an indicator of the bank's profitability.[586] Investors and analysts in the marketplace commonly feature news of NNA figures and scrutinize it as a measure of the growth and profitability of Credit Suisse, as well as other banks.[587] Hans-Ulrich Meister, co-head of the bank's Private Banking division, which was included in the new Wealth Management Clients division in late 2012, said that Credit Suisse, as well as other "big banks in Switzerland" such as UBS and Julius Baer, regularly disclose NNA for private banking divisions, in quarterly financial reports.[588] Other European banks, such as Deutsche Bank and Barclays, also report net new assets in annual reports and quarterly investor presentations.[589] NNA is highlighted in earnings releases and investor calls as a significant metric for the bank and its investors as well as in internal meetings. It is considered one of the Key Performance Indicators (KPIs) both internally and externally.[590]

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[585] See, e.g., In re Ames Dep't Stores Stock Litig., 991 F.2d 953, 969 (2d Cir. 1993) (annual reports, public statements, and SEC filings); "Public Statements by Corporate Representatives," Securities and Exchange Commission Rel. No. 6504 (Jan. 13, 1984) ("The antifraud provisions of the federal securities laws [citing Section 17 of the Securities Act of 1933 and Section 19(b) of the Exchange Act, and the rules thereunder, particularly Rule 10b-5] apply to all company statements that can reasonably be expected to reach investors and the trading markets, whoever the intended primary audience. Thus, as with any communications to investors, such statements should not be materially misleading, as the result of either misstatement or omission. To the extent that the standard for accuracy and completeness embodied in the antifraud provisions is not met, the company and any person responsible for the statements may be liable under the federal securities law.").

[586] Subcommittee interview of Philip Vasan, Credit Suisse (10/28/2013).

[587] Id.

[588] Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (9/24/2013); see also Barclays Bank PLC, 3/5/2013, "Annual Report 2012," http://group.barclays.com/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobheadernamel=Content-Disposition&blobheadernamc2=MDT-Type&blobheadervalue1=inline%3B+filename%3D2012-Barclays-Bank-PLC-Annual-Report-PDF.pdf&blobheadervalue2=abinary%3B+charset%3DUTF-8&blobkey=id&blobtable=MungoBlobs&blobwhere=1330696635849&ssbinary=true; see also Deutsche Bank 3Q2013 Results, 10/29/13, at 24, https://www.db.com/ir/en/images/Deutsche_Bank_3Q2013_results.pdf and Deutsche Bank *Preliminary results for the 2012 financial year*, 1/31/2013, at 31 https://www.db.com/ir/en/images/Jain_Krause_4Q2012_Analyst_call_31_Jan_2013_final.pdf.

[589] See e.g., 2012, Barclays Bank plc, Annual Report, at 224 (Net New Assets reporting under the Wealth and Investment Management section).

[590] According to Credit Suisse, Key Performance Indicators are "targets to be achieved over a three to five year period across market cycles." Historical numbers and growth rates for net new assets are cited as divisional and operational KPIs for Wealth Management clients. See "About Credit Suisse – A Brief Presentation," February 2014, https://www.credit-suisse.com/who_we_are/doc/brief_presentation_en.pdf.

Within the bank, NNA is one of the metrics used for measuring employee performance and compensation.[591]

(1) Investors Watching NNA

NNA is featured regularly in financial news discussing the health of Credit Suisse and other major banks, both in the marketplace, and in releases from Credit Suisse. It is an indicator that is part of the analysis affecting the bank's overall share price. In 2013, "[s]hare prices dipped slightly despite news that Credit Suisse had attracted CHF7.5 billion in net new money from wealthy clients."[592] At an earlier point in time, another analyst commented that "'[i]nflows in the private bank look disappointing . . . . A good aspect is that they have said January was positive, but the first impression is that the report is weak."[593]

Additionally, both the bank and media reports explain reasons behind NNA inflows and outflows. For example:

> "Credit Suisse said net new assets for its private banking and wealth management business rose to 8.1 billion francs ($9.1 billion) in the quarter, from the 5.3 billion francs in the same period a year earlier. Outflows in Western Europe were offset by growth in emerging markets and among so-called ultra-high-net-worth clients, the bank said."[594]

The financial markets specifically scrutinized NNA reporting in light of ongoing tax evasion inquiries and consequent outflows of client assets.

> "[N]et new assets from wealth management clients tumbled 28 percent to 2.9 billion francs in the fourth quarter. Like UBS, it [Credit Suisse] suffered big outflows of money from clients in Europe, where Swiss banks are under fire for helping tax cheats."[595]

> "The division attracted 8.1 billion francs in net new assets in the quarter, with 3.2 billion francs from wealth management clients as inflows in Asia Pacific and the Americas were

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[591] Subcommittee interview of Robert Shafir, Credit Suisse (9/11/2013).

[592] "Muted reaction to Credit Suisse profit hike," Matthew Allen, swissinfo.ch, (7/25/2013), http://www.swissinfo.ch/eng/business/Muted_reaction_to_Credit_Suisse_profit_hike_.html?cid=36539540.

[593] "Credit Suisse is upbeat despite loss," New York Times, (2/11/2009), http://www.nytimes.com/2009/02/11/business/worldbusiness/11iht-bank.1.20104893.html?_r=0.

[594] "Credit Suisse Third-Quarter Profit Misses Forecasts," John Letzing, The Wall Street Journal, (10/24/2013), http://online.wsj.com/article/BT-CO-20131024-700114.html.

[595] "Credit Suisse sees overhaul bearing fruit this year," Katharina Bart, Reuters, (2/7/2013), http://www.reuters.com/article/2013/02/07/us-creditsuisse-results-idUSBRE9151C520130207.

> partly offset by 2.3 billion francs in outflows from western European cross-border businesses."[596]

In comparing NNA results across competitors Credit Suisse and UBS, analysts speculated on the impact of Credit Suisse's ongoing tax evasion inquiry:

> "One piece of good news [for Credit Suisse] was the influx of 4 billion [CHF] of net new assets from wealthy clients in the last three months of last year, a result that beat the 3.1 billion [CHF] posted by rival UBS on Tuesday. In common with UBS, most of Credit Suisse's new assets came from emerging markets or from the ultra-rich clients that both banks are targeting with renewed focus. Unlike UBS, Credit Suisse is still under the spotlight of the United States authorities that are investigating allegations of tax evasion."[597]

Internal documents indicate that bank executives were aware of the importance of NNA to investors, whether reported as a whole or by region. For example, the Chief Executive Officer (CEO) of the Americas Region wrote to a senior manager in the Office of the Chief Financial Officer (CFO): "Can you also check the disclosure issue re NNA in Switzerland vs US PB? As we know, investors are keeping a close eye on this and of course it is key that finance be comfortable with how we present this externally."[598] In fact, the bank drafted answers for anticipated questions on Private Banking (Wealth Management) NNA when it prepared for earnings presentations. Potential "key questions" that the bank expected analysts might pose to the bank's CEO Brady Dougan and CFO David Mathers included: "Can you provide an outlook on [Wealth Management] NNA?"[599] The bank also expected a negative inference from its low NNA figures for Switzerland in 2013, according to a draft question: "NNA in [Wealth Management] is 6.2bn but only 0.4bn in Switzerland. Is Switzerland losing its attraction for [Wealth Management] clients?"[600] On that earnings call, the bank, in fact, received a question about new money inflows and outflows from

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[596] "Credit Suisse Misses Estimates as Securities Profit Falls" Elena Logutenkova, Bloomberg, (10/24/2013), http://www.bloomberg.com/news/2013-10-24/credit-suisse-net-climbs-79-.html.
[597] "Credit Suisse results hit by cutting risk," Matthew Allen, Swissinfo.ch, (2/9/2012), http://www.swissinfo.ch/eng/Specials/Rebuilding_the_financial_sector/News,_results,_regulations/Credit_Suisse_results_hit_by_cutting_risk.html?theView=extendedMail&view=popup&cid=32093386.
[598] 4/5/2012 email from Antonio Quintella to Carlos Onis, "PB NNA," CS-SEN-00424575.
[599] 4/22/2013 email from Andrew Blain to Brady Dougan and others, "Results Presentation: Q1 Q&A Dry Run with BD," CS-SEN-00424649, at 658.
[600] Id.

Western Europe. Mr. Mathers responded that he didn't think there was "anything particular to note there."[601]

Because of action against Swiss banks for aiding and abetting tax evasion by taxpayers of other countries, there was concern voiced by analysts that a lucrative part of the Private Banking business would decline both for the industry and Credit Suisse, the bank's ability to serve clients would be diminished, and the bank's potential future earnings would be reduced. This issue was of particular concern to one large client at Credit Suisse. He had read about "the DOJ matter" with Credit Suisse and "wanted to make sure it wouldn't impact his level of service."[602] He was concerned "that the current proceedings between [Credit Suisse] and the IRS [would] impact [the bank's] ability to provide investment services" for his family "no matter which country they are a resident of."[603] The relationship manager for the account arranged for the bank's Global Head of Litigation and Chief of Staff for Private Banking Americas to call the client to resolve his concerns.[604]

The market expressed concerns as well, not only for the potential impact on Credit Suisse, but for the Swiss banking sector as a whole:

> "When Boris Collardi delivers the 2011 results of Julius Baer on Monday morning, his audience will, for once, not be focused just on the financial performance of Switzerland's biggest 'pure play' private bank. On Thursday, the same will apply to Credit Suisse, and, on Friday, Zürcher Kantonalbank (ZKB). All three are among the 11 banks identified by the US authorities investigating alleged assistance in helping Americans evade tax."[605]

> "Weak results and a continuing US investigation into allegations of tax evasion among Swiss banks hit Julius Baer on Monday. The Swiss private bank fell 3.8 per cent to SFr36.40 after its results for 2011 came in below expectations. 'The US investigation of 11 Swiss banks including Baer could weigh on near-term sentiment,' said Jon Peace, European banks analyst at Nomura. Switzerland's two largest banks were also caught up in the selling. UBS fell 1.8 per cent to SFr13.21, ahead of its 2011 results on Tuesday, while Credit Suisse slipped 2.1 per cent to SFr25.16."[606]

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[601] 4/24/2013 Credit Suisse Group ADR CS Q1 2013 Earnings Call Transcript, http://www.morningstar.com/earnings/PrintTranscript.aspx?id=54047750.
[602] Subcommittee interview of Colleen Graham, Credit Suisse (12/5/2013).
[603] 1/5/2012 email from James Martin to [an advisor to Client 5], "CS Legal Team Call-Thursday, January 5th @11:30 AM EST," CS-SEN-00435087.
[604] Id.
[605] "US tax evasion hangs over Swiss banks," Haig Simonian, Financial Times, (2/5/2012), http://www.ft.com/cms/s/0/29e93678-5006-11e1-8c9a-00144feabdc0.html#ixzz2pT4VDZ5t.
[606] "Julius Baer hit after weak results and US probe," Duncan Robinson, Financial Times, (2/6/2012), http://www.ft.com/intl/cms/s/0/be466d78-50af-11e1-8cdb-00144feabdc0.html#axzz2tyYwvDMo.

> "Profitability in [Credit Suisse] wealth management is under pressure as the erosion of bank secrecy leads to withdrawals of offshore funds from Switzerland."[607]

(2) Touting NNA as Key Performance Indicator to Investors

Because the bank is aware of investor interest in NNA, it has touted positive NNA results in media releases. For example, CEO Brady Dougan, summing up the year 2010, stated:

> "Private banking has shown strong net new asset inflows and our success in attracting client assets underscores our strong value proposition and the trust that clients place in us. Among the world's wealth management firms, our private bank has an unparalleled competitive position in regard to net new asset generation, profitability, and client satisfaction."[608]

When Credit Suisse reported its 2011 fourth quarter results, one analyst commented that, "One piece of good news was the influx of SFr4 billion of net new assets from wealthy clients in the last three months of last year, a result that beat the SFr3.1 billion posted by rival UBS on Tuesday."[609]

In the first quarter of 2012 Credit Suisse reported 5.8 billion CHF in NNA for the Wealth Management Clients division,[610] and explained how this result overcame outflows in that same quarter. The bank stated that inflows were driven partly by "continued solid growth from ultra-high net worth clients and most emerging markets. Solid inflows in home market Switzerland masked CHF 4.1 bn asset outflows due to Clariden Leu integration."[611] The NNA result in the first quarter was, as CEO Brady Dougan stated, "indicative of what our business model can produce and it underscores the strength of the client franchise we have built over the past years."[612]

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[607] "Credit Suisse Profits Plunge and Miss Expectations, Management Cranks Up Cost Cuts," Elena Logutenkova, Bloomberg, via Business Insider, (10/25/2012), http://read.bi/S7I9WI.
[608] 2/10/2011 "Statement by Credit Suisse CEO Brady Dougan," Credit Suisse Media Release, at 3, https://www.credit-suisse.com/news/en/media_release.jsp?ns=41697.
[609] "Credit Suisse results hit by cutting risk," Matthew Allen, swissinfo.ch, (2/9/2012), http://www.swissinfo.ch/eng/Specials/Rebuilding_the_financial_sector/News,_results,_regulations/Credit_Suisse_results_hit_by_cutting_risk.html?cid=32093386
[610] 4/25/2012 "Credit Suisse First Quarter 2012 Results, Presentation to Investors and Media," at 14, https://www.credit-suisse.com/investors/doc/csg_1q2012_slides.pdf (showing that the Wealth Management Clients division, plus the Corporate & Institutional Clients division, together make up the Private Bank).
[611] Id.
[612] 4/25/2012 "Statement by Credit Suisse CEO Brady Dougan," Credit Suisse Media Release, at 2, https://www.credit-suisse.com/news/en/media_release.jsp?ns=41981.

During the bank's fourth quarter 2012 earnings call, Mr. Dougan highlighted the bank's ability to generate NNA as something that set Credit Suisse apart from its peers. He said, "We have one of the leading Private Banking and Wealth Management businesses globally. In the last 4 years, we've generated more net new assets at CHF 162 billion than any of our competitors."[613]

More recently, in its October 2013 Form 6-K filing with the SEC, Credit Suisse described itself as a firm with a "broad footprint…to generate a geographically balanced stream of revenues and net new assets."[614]

When asked by the Subcommittee if NNA was an important data point for investors, Credit Suisse CEO Brady Dougan affirmed that, "yes, it's useful and provides a level of transparency around what's happening with clients, and that is useful."[615] Mr. Dougan said this metric was "of interest" to investors, and "more on an annual basis" than quarter over quarter because of fluctuations.[616] He stated that the regional breakdowns of NNA were "less meaningful because of management discretion."[617]

The Co-Heads of the Private Banking & Wealth Management division, Robert Shafir and Hans-Ulrich Meister, also consider NNA an important measure among a few benchmark indicators. Mr. Shafir described a goal of the bank to have positive net asset flows into the bank, not negative net flows, with NNA as the measure of that goal.[618] Internal emails showed that he gave that direction to his subordinate manager in charge of Private Banking Latin America: "We need some fresh blood and some NNA."[619] In his interview with the Subcommittee, he said he preferred to look at revenues over NNA as a measure and he acknowledged that he was an outlier among his peers in his view that NNA was not as important as other performance measures.[620]

Mr. Meister told the Subcommittee that NNA was "one of several important measurements, because it signals that you can get traction and growth in the market where you are present."[621] He added that as the

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[613] "Credit Suisse Group Management Discusses Q4 2012 Results – Earnings Call Transcript," (2/7/2013) http://seekingalpha.com/article/1165251-credit-suisse-group-management-discusses-q4-2012-results-earnings-call-transcript?source=nasdaq.
[614] United States Securities and Exchange Commission Form 6-K, Credit Suisse AG, Commission File Number 001-33434, (10/31/2013).
[615] Subcommittee interview of Brady Dougan, Credit Suisse (12/20/2013).
[616] Id.
[617] Id.
[618] Subcommittee interview of Robert Shafir, Credit Suisse (9/11/2013).
[619] See 6/10/2013 email from Robert Shafir to Philip Vasan, "Feedback from new RMs," CS-SEN-00424732.
[620] Subcommittee interview of Robert Shafir, Credit Suisse (9/11/2013).
[621] Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (1/31/2014).

"divisional head he was concerned about key performance indicators," including pre-tax profits, cost-to-income ratios, and NNA. "All are publicly reported and how we want to be measured in the outside world."[622] He said the most significant NNA figure was the overall Private Banking number, and that financial markets would be concerned with regional negative NNA numbers if they repeated negative figures, though one negative quarter would not be a "disaster."[623]

(3) NNA Used As Internal Performance Measure

Senior management within the bank established projections for NNA, tracked progress towards projections, and discussed NNA at regular intervals. For example, in 2009, one of four main goals for Private Banking was to increase NNA at a rate of 6% or greater.[624] The goal remained in place through at least 2011: "Credit Suisse's targets for its private banking business [was] as a whole to add at least 6% of assets under management in net new money annually."[625]

During a February 2009 Regional Management Board meeting, Mr. Meister expressed the importance of a positive NNA trend for the Swiss region.[626] After commenting on the "UBS settlement with the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) and the respective significance/consequences for CS and its business activities," Mr. Meister said he hoped that the "satisfying" financial results within the Swiss region continued: "As a key element therein, he declare[d] a positive NNA trend to be crucial."[627] Private Bank Management Committee minutes also reflect frequent discussions of NNA goals.[628] Private Banking Americas Management Committee Meeting minutes from 2007 through 2012 indicated that NNA was of concern to senior management because NNA statistics were frequently reported for the Private Banking Americas division's business performance as a whole, as well as breakdowns between the United States and Latin America.

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[622] Id.

[623] Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (9/24/2013).

[624] Credit Suisse Private Banking: Strategy Update, Martin Mende Head Business Development Private Banking, Vontobel Swiss Banking Conference 2009, (11/16/2009), www.credit-suisse.com/webcalapp/dbfs/download/mende_vontobel11_09.pdf.

[625] "Clariden Leu Names Jaquet New Chief as Bank Aims for Growth," Elena Logutenkova, Bloomberg, (3/10/2011), http://www.bloomberg.com/news/print/2011-03-10/clariden-leu-names-olivier-jaquet-ceo-succeeding-hans-nuetzi.html.

[626] 3/4/2009 email from Sven Ehret to Hans-Ulrich Meister and others, "Regional Management Board Switzerland incl. PBB specific items," CS-SEN-00533390 at 393.

[627] Id.

[628] Subcommittee's binder of Credit Suisse PBAMC Minutes 2007-2012; see tab 1, 4/24/2007 Management Committee meeting PB Americas minutes, CS-SEN-00282776, at 777 (discussing NNA for PB Americas); see also tab 8, 5/14/2009 Management Committee meeting PB Americas minutes, CS-SEN-00282836, at 837 (discussing NNA for USA and LatAm); see also tab 3, 1/31/2008 Management Committee meeting PB Americas minutes, CS-SEN-00077835, at 837 (NNA goals).

During Credit Suisse's annual general meeting on April 27, 2012, Mr. Dougan referenced the Private Banking division's "continued strong asset inflows" for 2011 and the first quarter of 2012.[629] Mr. Dougan added: "This is a testament to the stability we maintained during the financial crisis and the level of trust we have built with our clients."[630] For the first quarter of 2012, he said, "We attracted net new assets of CHF 8.4 billion."[631]

NNA was one of several key performance indicators tracked internally by the bank and used in internal presentations. For example, NNA was listed along with AuM, cost to income, gross margin, and pre-tax income margin as key indicators of the Private Banking/Wealth Management's division's financial performance for December 2012.[632]

D. Financial Standards Governing NNA Reporting

The reporting of NNA in financial disclosures is governed by several sets of standards. The bank's overall NNA figure is guided by Swiss financial standards, set by the Swiss financial regulator, FINMA. The bank also has internal policy guidance based on FINMA standards. Determinations of NNA are based on whether the client has the intent to invest, a standard of prudence to err on the conservative side, and, to some degree, a practice within the bank to consider the expected margin return earned by the client assets.

When NNA is broken down into regional areas of the bank, such as Private Bank Americas, or Private Bank Switzerland, only internal management discretion guides the regional allocations based on Credit Suisse's internal policy. In the United States, there is no standard for NNA reporting, regional or otherwise, because it is not a Generally Accepted Accounting Principles (GAAP) but securities regulations require financial disclosures to be truthful and complete.[633]

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[629] "Annual General Meeting of Credit Suisse Group AG, Zurich, April 27, 2012," CS-SEN-00455272, at 275.

[630] Id.

[631] Id. at 280.

[632] "Financial Results 4Q12, PB&WM Coverage MC," (1/2013), CS-SEN-00453667.

[633] Under Securities and Exchange Commission Rule 10b-5 and Section 17(a) of the Securities Act of 1933, it is unlawful for issuers of securities to make untrue statements or omissions of material facts in connection with the sale or purchase of securities. SEC Rule 10b-5 makes it unlawful to "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." 17 C.F.R. Section 240.10b-5(b) (2011), adopted by the SEC pursuant to Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78(j)(b) (2006). Section 17(a) makes it unlawful "in the offer or sale of any securities ... (1) to employ any device, scheme, or artifice to defraud; (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary to make the statement made not misleading; or (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." See 15 U.S.C. § 77q(a) (1976).

(1) Standards for Disclosing Total NNA

According to external standards and internal policy, the determination of NNA is based on clients' intent for their funds. Credit Suisse Policy P-04890 states that "the classification of AuM is conditional on the investment purposes of the assets which is individually assessed on the basis of each client's intentions and objectives."[634] Credit Suisse's NNA policy is based on FINMA Circular 2008/2, which defines the classification of NNA.[635] The Circular itself is very general – it allows each bank to define its calculation methodology for new money inflows and outflows,[636] though banks must disclose that methodology.[637]

Credit Suisse executives agreed that client intent is a defining element of characterizing assets as AuM. Thomas Sipp, Chief Operating Officer (COO) for the Private Banking Americas division, told the Subcommittee that as a general rule, Credit Suisse determines that assets can be reclassified from AuC to AuM when the client indicates an intent to invest involving the advice of the firm, instead of just holding the funds in custody.[638] Robert Shafir, Co-Head of Credit Suisse's Private Banking and Wealth Management division, and Philip Vasan, Head of Private Banking Americas, also agreed that client intent was the determining factor in reclassification of assets from custody to AuM.[639]

There are, however, "gray areas with client intent," as Mr. Shafir told the Subcommittee.[640] Iqbal Khan, CFO of the Private Banking

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business which operates or would operate as a fraud or deceit upon the purchaser." See 15 U.S.C. § 77q(a) (1976).

[634] Credit Suisse Policy P-04890, CS-SEN-00421553, at 555. This version was implemented in June 2012, to reflect the bank's current practices of AuM/NNA treatment resulting from changes in the bank's business model with respect to business with ultra-high net worth clients and new products.

[635] FINMA Circular 2008/2 Accounting-banks, (11/20/2008), PSI-CreditSuisse-50-000001 at 063, ("The net inflow or outflow of assets under management (net new money) during a particular period is to include new clients acquired, client departures, and the inflow and outflow of investments of existing clients. The term "net new money" not only includes cash inflows and outflows but also the inflow and outflow of other typical investments (e.g., securities or precious metals). The calculation of net new money inflow/outflow is done at the level of "total managed assets," i.e., before the elimination of double counting."). A senior manager from Credit Suisse confirmed that "net new money" is synonymous with "net new assets." Subcommittee briefing by Credit Suisse (11/25/2013) (Iqbal Khan).

[636] FINMA Circular 2008/2 Accounting-banks, (11/20/2008), PSI-CreditSuisse-50-000001 at 063; see also Subcommittee briefing by Credit Suisse (11/25/2013) (Thomas Sipp).

[637] Subcommittee briefing by Credit Suisse (11/25/2013) (Thomas Sipp); see also Credit Suisse's 2012 annual report includes an "Assets under management" section which defines the terms "Assets under management," "client assets," and "net new assets." The section contains a table comparing growth in assets under management for the third and fourth quarters of 2012 compared to the fourth quarter of 2011. "Credit Suisse Financial Report 4Q12, Revised," at 38-40, https://www.credit-suisse.com/investors/doc/csg_financialreport_4q12.pdf.

[638] Subcommittee briefing by Credit Suisse (11/25/2013) (Thomas Sipp).

[639] Subcommittee interview of Robert Shafir, Credit Suisse (9/11/2013); see also Subcommittee interview of Philip Vasan, Credit Suisse (10/28/2013).

[640] Subcommittee interview of Robert Shafir, Credit Suisse (9/11/2013).

Americas division, added that there is no checklist of criteria that management uses to define client intent, and the decision to reclassify assets involves some level of judgment.[641] However, Mr. Khan acknowledged that there is no specific instruction in the bank's policy that requires relationship managers to ask the client a direct question about his investment intentions. "Relationship, portfolio and sales managers are responsible for allocating assets to the correct asset category (i.e., discretionary, advisory, custody and commercial assets," based on a number of factors.[642] Mr. Khan said that examples of intent or "investment purpose" include having an agreement in place for managing the assets, the services and products provided to the client, and the client's portfolio diversity.[643]

One principle that helps to more precisely define client intent is the principle of prudence contained in the FINMA guidelines.[644] Similarly, as the bank described it, the prudence concept means to "be conservative" and "do not overstate anything."[645] It forces an inquiry into whether the bank's investment advice extends to the total amount of assets under consideration, or whether only a portion of the assets will be the subject of investment advice. For example, if some portion of the assets were going to be used for a tax payment, or going to be the subject of advice by the client (self-directed) or an external investment advisor, only a portion of the assets might be classified as AuM at the bank.

In practice, bank management has referenced an additional NNA criterion – namely the expected amount of return – to determine whether assets should be reclassified as NNA. In the Credit Suisse template for assessing assets for qualification as NNA, the document includes a data field to indicate the expected return in terms of basis points for assets being proposed for NNA treatment.[646] There was no consensus among the bank executives interviewed as to what the minimum threshold or range was for approving reclassification of assets to NNA. In one NNA qualification assessment, the expected revenue size was 7-10 basis

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[641] Subcommittee briefing by Credit Suisse (11/25/2013) (Iqbal Khan).
[642] Credit Suisse Policy P-04890, CS-SEN-00421553, at 558 ("The classification of AuM is generally assessed on the basis of each client's intentions and objectives and the banking services provided to the client.").
[643] Subcommittee briefing by Credit Suisse (11/25/2013) (Iqbal Khan).
[644] FINMA Circular 2008/2 Accounting-banks, (11/20/2008), PSI-CreditSuisse-50-000001 at 009 ("The principle of prudence requires that in all cases where there is uncertainty regarding valuation and risk assessment, the more prudent of two available values is to be taken into account.").
[645] Subcommittee briefing by Credit Suisse (11/25/2013) (Peter Bresnan); see also 4/23/2012 email from Rolf Boegli to David Mathers, "Two questions before the call tomorrow," CS-SEN-00424581 ("Still considering the accounting rule of prudence – this position amounts to CHF 4.3bn.").
[646] Credit Suisse "AuM/NNA qualification assessment template," CS-SEN-00424609.

points.[647] Mr. Meister told the Subcommittee that the minimum margin requirement was roughly 20-30 basis points in order for assets to be reclassified as NNA.[648] Anthony DeChellis, former head of Private Banking Americas, told the Subcommittee that the threshold to count assets as NNA was a minimum of 25 basis points of revenues earned on the client's assets.[649] Even the bank's Chief Financial Officer, David Mathers, believed that a minimum return on assets threshold was required for assets to qualify as NNA, stating that 12 basis points was "low."[650] Mr. Khan told the Subcommittee that using a threshold – such as 30-40 basis points, for example – was only a guideline and depended on the individual client.[651] Carlos Onis, Head of Group Finance, echoed this sentiment in response to Mr. Mathers' query that 12 basis points was "low."[652] There was no minimum threshold set out in any formal bank policy, but the bank's documentation and senior financial staff indicated that the expected or actual return on investment was a factor in assessing NNA.

(2) Internal Bank Process for Recognizing NNA

The process for reclassifying assets from AuC to AuM/NNA took place on an ongoing basis. Mr. Sipp told the Subcommittee that, every quarter, Rolf Boegli, former Chief Operating Officer of Private Bank Switzerland, circulated lists of large custody accounts among private banking staff to initiate discussion about whether any of the assets listed in the custody accounts should be reclassified as AuM.[653] Mr. Boegli encouraged relationship managers to consider assets for NNA reclassification. Mr. Sipp said this practice was appropriate, because relationship managers who had already met their NNA goals for the quarter had an incentive to keep assets in custody to "save them for a rainy day," especially if they anticipated outflows in a future quarter.[654] Retaining assets as AuC was more likely to occur in December or January, as relationship managers' performance scorecards were typically filled out by the end of November.[655] The bank told the Subcommittee that Mr. Boegli acknowledged he pushed others to acknowledge NNA, but believed he did so within the principles of the

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[647] Id.
[648] Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (9/24/2013).
[649] Subcommittee interview of Anthony DeChellis, Credit Suisse (8/9/2013).
[650] 1/15/2013 email from David Mathers to Carlos Onis, "Flash 2/December 2012," CS-SEN-00421543 ("What's the threshold for the return on assets to qualify as AuM? 12bps seems a bit low.").
[651] Subcommittee briefing by Credit Suisse (11/25/2013) (Iqbal Khan).
[652] 1/15/2013 email from David Mathers to Carlos Onis, "Flash 2/December 2012," CS-SEN-00421543.
[653] Subcommittee briefing by Credit Suisse (11/25/2013) (Thomas Sipp).
[654] Id.
[655] Id.

policy.[656] The Subcommittee was not able to interview Mr. Boegli, as he is based in Switzerland and declined the Subcommittee's request for an interview, and has since taken a temporary leave of absence from the bank.[657]

According to the bank's internal policy, the Group Finance division is responsible for reporting AuM/NNA figures to the bank's Executive Board and the Board of Directors, as well as for the purpose of external disclosure.[658] First, the business area makes a proposal to the AuM Committee for review, including facts for the AuM Committee on which to base its decision. Mr. Khan said the bank's AuM Committee assesses special cases, per policy, for assets over 500 million CHF, and is chaired by the Head of Group Finance.[659] Reclassifications are discussed at these meetings, and the outcomes are recorded in the minutes.[660] Finally, AuM/NNA figures are reviewed by the bank's external auditors, as are all of the banks disclosed financial statements, although the bank told the Subcommittee that its external auditors had not conducted any particular or focused review of its AuM/NNA figures through 2012.[661]

Regional allocation of NNA, that is, assignment of total NNA by geographic business areas, is based on bank management's discretion.[662] There is no FINMA or GAAP requirement for disclosing regional splits or regional allocations. Mr. Khan said the NNA is "one of the metrics investors look at, just as they look at other metrics to assess the bank's performance."[663] The regional breakdown gives "color" on the bank's performance.[664]

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[656] Subcommittee briefing by Credit Suisse (11/25/2013) (Peter Bresnan).

[657] Rolf Boegli took a temporary leave from Credit Suisse in November 2013. "Credit Suisse Super-Rich Clients Head Boegli to Step Down," Elena Logutenkova, Bloomberg (11/29/2013), http://www.bloomberg.com/news/2013-11-29/credit-suisse-super-rich-clients-head-boegli-to-step-down-1-.html.

[658] Credit Suisse Policy P-04890, CS-SEN-00421553, at 557.

[659] Subcommittee briefing by Credit Suisse (11/25/2013) (Iqbal Khan).

[660] Id.

[661] According to the bank, KPMG reviewed the bank's 2012 internal policy document AuM/NNA and an internal audit in February 2007 reviewed the AuM reporting process. The internal audit received a 'B' rating, and there were no significant instances of non-compliance. FINMA has never conducted a compliance audit that focuses on how the bank calculates its AuM and NNA numbers. See Subcommittee briefing by Credit Suisse (11/25/2013) (Peter Bresnan) and Subcommittee interview of James Martin, Credit Suisse (1/23/2014).

[662] Subcommittee briefing by Credit Suisse (11/25/2013) (Peter Bresnan); see also Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (9/24/2013); see also Subcommittee briefing and presentation by Credit Suisse (7/18/2013), PSI-Credit Suisse-31-000001 at 006 ("Regional allocation of NNA is not part of the audited financials; Regional allocation reflects collaborative efforts across various CS units; "Management Judgment" cited in securities disclosure as allocation criterion.").

[663] Subcommittee briefing by Credit Suisse (11/25/2013) (Iqbal Khan).

[664] Id.

E. NNA at Credit Suisse Private Bank in 2012

In 2012, one of the bank's largest clients, called Client 5 to preserve anonymity in this report, made changes in his account, and Credit Suisse expressed those changes by reclassifying billions of assets as Net New Assets (NNA). With billions of dollars of assets at Credit Suisse, that client significantly impacted the bank's NNA results for 2012. The changes resulted in internal discussions throughout the year between relationship managers and senior management in the United States and Switzerland as to whether the reclassification was appropriate. Some internal emails indicate concern about recognizing assets as NNA too quickly; another internal email from Swiss Private Banking management requested reclassification of more assets as NNA, characterized as a "favour," from Private Banking Americas management.[665] Credit Suisse also made changes throughout most of the year in how NNA was allocated between the Americas and Switzerland using a calculation that changed every quarter over the course of 2012.

Credit Suisse policy states that client intent is the primary factor in deciding whether to reclassify assets from Custody (AuC) to AuM.[666] Proposals to reclassify assets from AuC to AuM must go through several levels of review and approval, including review and approval by the AuM Committee for special cases.[667] However, internal documents indicate that in the case of Client 5's assets, the reclassification and reallocation raise questions about the bank's decisions to recognize and allocate NNA.

(1) First Quarter 2012

In 2011, quarterly NNA tumbled down for the Private Bank, showing fewer and fewer assets obtained by the Private Bank throughout the year,[668] and early 2012 prospects appeared to continue the downward slide. According to the bank, the first quarter of the year is typically a busy one, because clients tend to make financial plans and do not have outflows, like annual tax payments, or distractions, such as August vacations or end-of-the-year holidays. During the first quarter of 2012, however, Hans-Ulrich Meister, Co-Head of the Private Banking and

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[665] 1/9/2013 email from Rolf Boegli to Anthony DeChellis, "Americas/[Client 5]," CS-SEN-00425140.

[666] Credit Suisse Policy P-04890, CS-SEN-00421553, at 555. The bank's policy is based on FINMA Circular 2008/2 Accounting-banks (11/20/2008), PSI-CreditSuisse-50-000001.

[667] Subcommittee briefing by Credit Suisse (11/25/2013) (Iqbal Khan).

[668] 1Q2011 NNA: 15.7 billion CHF; 2Q2011: 11.5 billion CHF; 3Q2011NNA: 6.6 billion CHF; 4Q2011NNA: 4.0 billion CHF. (Credit Suisse, Quarterly Results, at https://www.credit-suisse.com/investors/en/information/quarterly_reporting.jsp# (First Quarter 2011, Second Quarter 2011, Third Quarter 2011, and Fourth Quarter 2011, under Spreadsheets/Time Series, tab Private Banking 2).).

Wealth Management division, and Rolf Boegli, former Chief Operating Officer of Private Bank Switzerland, began expressing concerns about the Private Banking division's NNA results and outlook. Mr. Boegli wrote the following to the Private Banking Management Committee (PBMC) in February 2012:

> "In the PBMC, we will talk about our results in the first weeks of 2012. In this context, we will again discuss our NNA results which have been very disappointing up until now. As our capability to attract clients and new assets is of utmost importance – also externally – we need to take all possible measures in order to change this into a positive story within the next weeks."[669]

The next month, records from the Private Banking Americas Management Committee meeting indicate NNA quarterly performance continued to be a topic of discussion among senior management. Mr. DeChellis reported: "[Hans-Ulrich] Meister and [Rolf] Boegli are focused on NNA, however, outlook is not too promising."[670] Mr. DeChellis added, "PB Americas is currently the number one contributor to NNA."[671]

At the same time, Credit Suisse was integrating its subsidiary private bank, Clariden Leu, into the larger Credit Suisse Group, a wholesale effort that included Clariden Leu's operations, databases and systems, staff, and clients. While the more streamlined, integrated bank would ultimately cut costs, the integration caused outflows of client assets. As one analyst noted when reporting on first quarter 2012 financial results from the Private Banking division: "Clariden Leu, one of Switzerland's oldest bank brands which was integrated into Credit Suisse earlier this month, shed 4.1 billion Swiss francs in assets in the first quarter."[672]

Client 5 was a long-term Private Banking client. The client held assets that were treated as custody assets for years within the Americas region. The size of the portfolio averaged around 7-8 billion CHF

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[669] 2/27/2012 email from Rolf Boegli to Hans-Ulrich Meister and others, "Important – NNA, PBMC," CS-SEN-00463981 at 984 ("Colleagues, I'm looking forward to seeing all you tomorrow for the PB RMC and on Wednesday for the PBMC. In the PBMC, we will talk about our results in the first weeks of 2012. In this context, we will again discuss our NNA results which have been very disappointing up until now. As our capability to attract clients and new assets is of utmost importance – also externally – we need to take all possible measures in order to change this into a positive story within the next two weeks. In order to get a better feeling about our expected Q1 NNA numbers, can I please ask you to be prepared to deliver a respective forecast number for your BA during the PBMC discussion? You should also be prepared to talk about the 3-4 biggest deals in pipeline for the next weeks until the end of Q1.").

[670] Management Committee Meeting, PB Americas, Minutes (3/8/2012), CS-SEN-00425277.

[671] Id.

[672] "Credit Suisse posts profits on cost cuts, fixed income," Reuters, The Globe and Mail (4/25/12) http://www.theglobeandmail.com/report-on-business/international-business/european-business/credit-suisse-posts-profit-on-cost-cuts-fixed-income/article1390925/

during that time and no investment advice was given to the client by the bank. In 2011, the client entered into a business deal, and planned to convert his portfolio into cash and publicly-traded securities in 2012.[673] In light of the large transaction and subsequent need for additional money management, the client heard presentations from Credit Suisse and other large financial institutions about services the banks could potentially provide. On or about February 2, 2012, the client informed Credit Suisse he would give the bank his business.[674] A few weeks later, on February 22, 2012, the client decided to continue to live in the United States.[675]

Internally within the bank, discussion began about when, and how much, of the client's assets could be counted as Net New Assets (NNA).[676] The first set of assets was a charitable fund worth 1.1 billion CHF, which was an internal transfer from the client's main account in 2011.[677] That transfer represented a clear case that the 1.1 billion CHF in charitable assets would be recognized as NNA, because the client's intent to receive the bank's investment advice was set forth late in 2011 when the client transferred funds and submitted paperwork to open the charitable fund.[678] Later in that quarter, the bank sought to recognize all of the remaining assets as NNA except for a certain portion that was estimated to be the future tax payment, leaving 4.3 billion CHF potentially available for NNA recognition.

In March, the bank's employees working on the account were busy responding to the client's requests for certain agreements with the bank, including an agreement on terms and fees of the bank, called the Custody Services Agreement, or mandate, as well as a bank guaranty for the funds. When James Martin, a Director within Private Banking USA who primarily handled the Client 5 account, was approached in mid-March about the status of the client's assets, Mr. Martin wrote his

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[673] Subcommittee briefing by Credit Suisse (11/25/2013); see also 1/15/2013 "Memorandum PB Americas/Reclassification of USD 1bn in 4Q12," CS-SEN-00421550 (describing Client 5 account). (According to metadata inherent in the document, the memorandum was created on 1/15/2013).

[674] Subcommittee briefing by Credit Suisse (11/25/2013).

[675] Id.; see also 1/15/2013 "Memorandum PB Americas/Reclassification of USD 1bn in 4Q12," CS-SEN-00421550.

[676] "Financial Results incl. Forecasts February 2012," 3/2012, CS-SEN-00466068 ("Forecast based on NNA review by BAs as per 23 March 12; including potential NNA from segment changes of approx. CHF 4.3bn in PB Americas."). Mr. Martin confirmed this referred to the Client 5 account and that the mandate had not yet been signed. He said it was "not premature to forecast [this] because we forecast we would get [the mandate]." Subcommittee interview of James Martin, Credit Suisse (1/23/2014).

[677] Subcommittee briefing by Credit Suisse (1/23/2014) (Peter Bresnan); see also 12/13/2011 email from James Martin to Anthony DeChellis, Colleen Graham, and others, "[Client 5] DAF DONE!" CS-SEN-00451178.

[678] 12/13/2011 email from James Martin to Anthony DeChellis, Colleen Graham, and others, "[Client 5] DAF DONE!" CS-SEN-00451178. ("I am delighted to inform you that I have received the signed paperwork to open the DAF [charitable fund] for [Client 5]"); see also "Client information and agreement," signed 5/31/2012, CS-SEN-00510273).

colleague that he would "caution against [classifying these assets as AuM] as [he was] very knowledgeable about the plans for the assets.'[679] Mr. Martin believed the bank would eventually be able to reclassify most of the assets from Custody to NNA, but he needed "further client guidance before doing so."[680] Mr. Martin told the Subcommittee that the "further guidance" he needed was for the client to be comfortable with the Custody Services Agreement and guaranty for doing business with Private Banking Americas.[681] Mr. Martin viewed the bank guaranty as an especially important condition. During this time in mid-March, because he was busy preparing the Terms and Conditions and the guaranty for the client, he was "not comfortable" with considering the assets to be NNA.[682]

The discussions about reclassifying assets continued, despite the absence of a signed Services Agreement. Later that month, on March 29, Anthony DeChellis, Head of Private Banking Americas wrote in an email: "There is no agreement at this time.... There have been suggestions that we count as much as 5B CHF...this is not a number I want to risk having to reverse, so let's be sure we are VERY confident in what we count."[683] Adrian Studer, Managing Director, Business Information and Systems, Private Banking Americas, responded that Mr. Martin's position had not changed, stating that Mr. Martin indicated the client would not "put to work more of his assets until the Services Agreement is completed and signed."[684] In the last two days of the first quarter, the bank supplied the guaranty, but the client did not sign the Services Agreement which he had sought from the bank.

(2) Second Quarter 2012

In April, the bank's process for recognizing large amounts of NNA for 1Q2012 took place with several meetings of the AuM Committee, though actual decisions appear to have been made by management outside the aegis of the AuM Committee, and not during Committee discussions. On April 2, 2012, during the Preparation Meeting for the AuM Committee, the committee members discussed the potential reclassification of 4.3 billion CHF of Client 5's assets to NNA. While

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[679] 3/12/2012 email from James Martin to Gilbert de David, "Major flows last week," CS-SEN-00441333 ("[M]y understanding is that none of these assets are currently categorized as AUM and I would caution against it before speaking with me as I am very knowledgeable about the plans for the assets. While I am extremely comfortable that we can eventually categorize most assets as NNA, I need further client guidance before doing so.").

[680] Id.; see also Subcommittee interview of James Martin, Credit Suisse (1/23/2014).

[681] Subcommittee interview of James Martin, Credit Suisse (1/23/2014) (Credit Suisse management used "custody services agreement," "services agreement," and "mandate" interchangeably).

[682] Id.

[683] 3/29/2012 email from Anthony DeChellis to Adrian Studer, "Project [Client 5]," CS-SEN-00443178 [emphasis in original].

[684] Id.

delaying the meeting decision until the full committee meeting, the Preparation Meeting note indicate that reclassification of Client 5's assets was, "[s]ubject to obtaining the signed client agreement by 1Q12 close (latest before Earnings Release on April 25)."[685] After the Preparation Meeting, high level finance staff had discussions about recognizing the assets as NNA too quickly. Carlos Onis, then Head of Group Finance, who was responsible for deciding the reclassification,[686] said the reclassification was not a "slam dunk," explaining that "[t]he questions I asked were what are the risks of the deal not closing and wanted to make sure that if the deal does not close or if the client sends all the assets to another [private bank] then Q2 will have a negative (outflow) of NNA, so we need to be very comfortable that the client is agreed to bring the assets in."[687] Antonio Quintella, CEO of Credit Suisse Americas, added that he wanted to "make sure finance agrees that we can count these assets as NNA simply on an expectation that we will be performing on a future date services we don't perform today. The client, I believe, has not signed any docs to that effect."[688]

The next day, on April 4, 2012, the AuM Committee approved the reclassification of 4.3 billion CHF in Client 5's assets from Custody to AuM, which had been contingent upon receiving a signed agreement.[689] Later, other employees in the Finance Group referenced that decision, noting that "[t]he decision has been taken by senior management and formally approved by Group Controlling to convert about $4.7bn of Client 5's custody assets to NNA/AuM."[690] Credit Suisse could not tell the Subcommittee why or how this decision was made without the signed agreement.[691] In response to a question from Antonio Quintella, Mr. Boegli emailed him, copying Mr. Meister, that the reason for the NNA recognition was that Client 5 "is a strategic long-term client and a wide range of advice has been provided by both PB and IB over the last few quarters."[692]

On April 23, 2012, Mr. Boegli sent an email to Mr. Mathers, Mr. Meister, and Mr. Onis that the client "signed off" on the client mandate

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[685] 4/27/2012 meeting minutes of monthly AuM Review Committee, CS-SEN-00452658 (stating the signed client agreement was needed by 1Q12 close).
[686] 4/3/2012 email from Carlos Onis to Antonio Quintella, "PB NNA," CS-SEN-00424575 ("I … have to review the global NNA disclosure.").
[687] Id. at 576.
[688] 4/3/2012 email from Antonio Quintella to Carlos Onis, "PB NNA," CS-SEN-00424575, at 576.
[689] 4/27/2012 meeting minutes of monthly AuM Review Committee, CS-SEN-00452658, at 659. (From the April 2, 2012, Preparation Meeting: "Subject to obtaining the signed client agreement by 1Q12 close (latest before Earnings Release on April 25).").
[690] 4/17/2012 email from Adrian Studer to Peter Skoglund, "[Client 5] Allocation," CS-SEN-00442422.
[691] Subcommittee briefing by Credit Suisse (11/25/2013).
[692] 4/4/2012 Email from Rolf Boegli to Antonio Quintella and Hans-Ulrich Meister, "Project [Client 5]," CS-SEN-00558438.

stating, "As far as the document is concerned: the client's family office has signed off the services agreement including terms already."[693] Mr. Onis told the Subcommittee that he believed Mr. Boegli's email meant that the bank had received the signed agreement.[694] The AuM Committee minutes were updated, stating "that the client's family office has signed the mandate," and Mr. Onis gave his approval.[695]

Mr. Boegli's email about the "document" that received the client's "sign-off," however, gave the wrong impression that the agreement had actually been signed. The Subcommittee later learned from Credit Suisse that it was never actually signed.[696] Mr. Onis learned, several days before meeting with the Subcommittee, and one year and nine months after this NNA matter had been decided, that the agreement had never been signed.[697] He told the Subcommittee that the signature showing client intent would have been a "critical piece of information," and the client's signature would have been "added value,"[698] and if he had found out then that there was no signature he probably would have reconvened the AuM Committee and talked to Mr. Boegli and Mr. Mathers about getting documentation of the client's intent.[699] Mr. Onis further noted that he believes Credit Suisse policies do not require signed documents for an NNA decision, and he regretted requiring that the Services Agreement be signed before approving the NNA classification.[700] Mr. Boegli's email left the wrong impression that the client's intent was expressed in a written signature.

As a result of the NNA decision, the bank's first quarter financial statements included all of the 4.3 billion CHF Client 5 account funds, except for 2.3 billion CHF still held as custody assets for an estimated tax payment, as NNA. For the prior four quarters, Wealth Management Clients NNA had declined from 15.7 billion in the first quarter, to 11.5 billion in the second quarter, to 6.6 billion in the third quarter, and to 4.0 billion in the fourth quarter.[701] Because of the inflow of 4.3 billion CHF, the first quarter NNA was 5.8 billion CHF, curbing the downward trend. Had the reclassification not been approved, there would have only been 1.5 billion CHF, continuing the downward trend to a very low

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[693] 4/23/2012 email from Rolf Boegli to David Mathers, Hans-Ulrich Meister, and Carlos Onis, "Two questions before the call tomorrow," CS-SEN-00424581.
[694] Subcommittee interview of Carlos Onis, Credit Suisse (1/10/2014).
[695] 4/27/2012 meeting minutes of monthly AuM Review Committee, CS-SEN-00452658, at 659.
[696] Subcommittee interview of James Martin, Credit Suisse (1/23/2014).
[697] Subcommittee interview of Carlos Onis, Credit Suisse (1/10/2014).
[698] Id.
[699] Id.
[700] Id.
[701] Credit Suisse, Quarterly Results, at https://www.credit-suisse.com/investors/en/information/quarterly_reporting.jsp# (First Quarter 2012, under Spreadsheets/Time Series, tab Private Banking 2) and (Fourth Quarter and Full Year Results 2011, under Spreadsheets/Time Series, tab Private Banking 2).

level. If NNA had been 1.5 billion that quarter, there was only one instance going back to 2005 that was lower, the earliest data available.[702]

Along with the bank's decision to recognize NNA, the bank had to decide how to regionally allocate the 5.4 billion CHF that came from Client 5. Mr. Meister told the Subcommittee that he decided in early 2012 to allocate the sum equally among the Americas and Switzerland regions, because employees from both regions worked to secure the business from Client 5 for Credit Suisse.[703]

Yet, in the first quarter, while the 4.3 billion CHF was split between America and Switzerland, the charitable fund worth 1.1 billion CHF was allocated entirely to the Americas region. Therefore, in the first quarter, Switzerland was allocated 2.15 billion CHF and the Americas was allocated 3.25 billion CHF, not a 50/50 split. Mr. Meister could not explain why the two sums, the 1.1 billion CHF and 4.3 billion CHF, were treated differently.

In the second quarter, the client's daughter transferred 1.7 billion CHF from another financial institution to Credit Suisse, in order for Credit Suisse to provide her investment advice. When the bank management made its decision to regionally allocate the NNA from the daughter's funds, it allocated the entire sum to the Americas, and none was allocated to Switzerland. Again, the 50/50 split that Mr. Meister had determined to use for allocating NNA between Switzerland and the Americas region was not employed. The below chart lists the amounts of assets of Client 5 and his daughter that were classified as NNA for 2012, as well as the regional allocation of those assets.

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[702] CS Quarterly results released prior to the second quarter of 2012. Numbers reported after June 2012, when P-04890 was changed, even for NNA figures in prior quarters, were reconciled by the bank to conform to the new policy. See Credit Suisse Policy P-04890 Policy, CS-SEN-00421553 (revised in June 2012); Credit Suisse, Quarterly Results, at https://www.credit-suisse.com/investors/en/information/quarterly_reporting.jsp# (First Quarter 2012, under Spreadsheets/Time Series, tab Private Banking 2) and (Fourth Quarter and Full Year Results 2009, under Spreadsheets/Time Series, tab Private Banking 2) and (Full year results 2005).
[703] See Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (1/31/2014).

NNA Regional Allocation of Client 5 Assets in 2012
(in billions CHF)

	1st Quarter[704]	2nd Quarter[705]	3rd Quarter[706]	4th Quarter[707]
Americas				
Assets	3.25 b CHF	2.2 b CHF	0	0.9 b CHF
Allocation %	60%	100%	-50%	100%
Switzerland				
Assets	2.15 b CHF	0	0	0
Allocation %	40%	0%	+50%	0%

(3) Third Quarter 2012

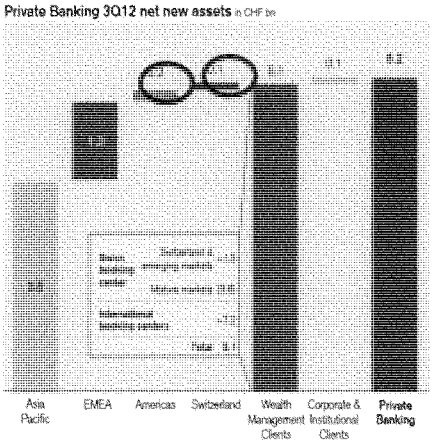
In the third quarter of 2012, there were no Client 5 assets that were recognized or transferred into the bank as NNA. However, Credit Suisse made a significant regional allocation decision to retroactively shift 1.6 billion CHF of the NNA from the Americas region to the Swiss region. In October 2012, several days after the end of the third quarter, bank management decided to retroactively apply a 50/50 split to the year-to-date NNA from Client 5. To do so, the bank added up all the assets of the client and his daughter that had been recognized as NNA since the beginning of the year, divided by half, and then removed some of the Americas' NNA to add to Switzerland's NNA.[708] There was no substantive change in where the NNA was located or where the

[704] Q1 NNA consists of 1.1 billion CHF charitable fund (4/27/2012 meeting minutes of monthly AuM Review Committee, CS-SEN-00452658) and 4.3 billion CHF Client 5 assets 4/27/2012 meeting minutes of monthly AuM Review Committee, CS-SEN-00452658, at 659 (stating the reclassification of CHF 4.3bn from AuC to AuM was approved). 1.1 billion allocated in December 2011 based on Subcommittee interview of James Martin, Credit Suisse (1/23/2014), 4.3 billion allocated April 2012 based on 4/27/2012 meeting minutes of monthly AuM Review Committee, CS-SEN-00452658, at 659 (stating NNA is shown 50% USA and 50% Switzerland).
[705] Q2 NNA consists of 1.7 billion CHF from Client 5's daughter, and 500 million CHF from Client 5. January 2013 memorandum, "PB Americas/Reclassification of USD 1 bn in 4Q12," CS-SEN-00421550, first page. Subcommittee interview of Thomas Sipp, Credit Suisse (11/25/2013) (stating he directed Carlos Onis to write the memo, possibly first two weeks of 2013). Between CHF 450 – 500 million of Client 5's assets were reclassified from Custody to AuM, effective for 2Q 2012. 7/7/2012 email from Adrian Studer to Anthony DeChellis, "Q2 NNA," CS-SEN-00442429 ("As per earlier discussion, and backed by information from the frontline, we deem it appropriate to include an incremental CHF 450-CHF 500mm in NNA for the [Client 5] relationship in Q2. This will reduce the custody balance to approximately CHF 1.9 bn."). Credit Suisse could not confirm the final amount or provide a rationale behind the reclassification. See Credit Suisse briefing to Subcommittee (11/25/2013).
[706] 10/5/2012 email from Adrian Studer to Roland Spah and Minesh Parekh, "Re: Q3 [Client 5] Adjustment," CS-SEN-00443242, at 244 (stating the YTD [Client 5] NNA number will be split between Americas and PBS. "The amount of this adjustment is CHF 1.6 bn. As a direct consequence the Q3 NNA number for Americas will be reduced by this amount.").
[707] 1/9/2013 email from Rolf Boegli to Anthony DeChellis, "Americas/Client 5," CS-SEN-00425140; see also 1/15/2013 "Memorandum PB Americas/Reclassification of USD 1bn in 4Q12," CS-SEN-00421550, at 551; see also 1/16/2013 email from Adrian Studer to Anthony DeChellis, "[Client 5] reclass," CS-SEN-00442426.
[708] 10/25/2012 email from Adrian Studer to Minesh Parekh and Thomas Steiner, "NNA Q3 2012," CS-SEN-00443246.

investment advice originated. The result left the Americas region with 1.6 billion CHF less Assets under Management, and Switzerland with 1.6 billion CHF more NNA, which was characterized as an inflow to Switzerland As the bank's Finance staff explained, "as a direct consequence, the Q3 NNA numbers [for the Americas region] will be reduced by this amount."[709] The Private Bank Americas third quarter NNA was reduced by 1.6 billion CHF, from 2.4 billion CHF to 0.2 billion CHF, while Switzerland's third quarter NNA was increased by 1.6 billion CHF, converting what was a Swiss region loss of 1.5 billion CHF into a 0.1 billion CHF gain, or inflow.[710] The bank's external earnings report presentation, below, shows the impact, with Switzerland showing a gain of 0.1 billion CHF.

CHF 5.2 bn net assets driven by inflows in international booking centers, predominantly from emerging markets

Private Banking 3Q12 net new assets in CHF bn



- **Strong inflows in Asia Pacific**
- EMEA with strong inflows from Eastern Europe and Middle East markets partly offset by outflows in Western Europe
- **Positive contribution** from Americas and Switzerland albeit seasonal slowdown
- Emerging markets and Ultra-high-net-worth clients with **continued solid growth**

Booking center view:

- **Inflows in international booking centers** partially offset by **outflows on Swiss platform mainly from Western European mature markets**

EMEA = Europe, Middle East and Africa

CREDIT SUISSE

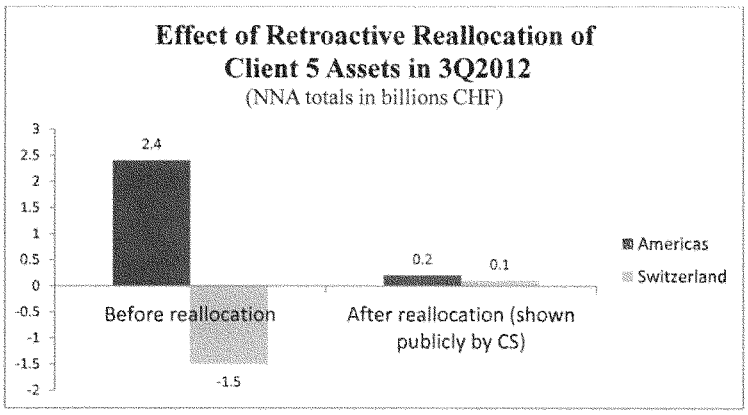
October 25, 2012 10

Source: 10/25/2012 Credit Suisse Third Quarter Earnings Presentation, at slide 10 (circles added by Subcommittee around key text), https://www.credit-suisse.com/investors/doc/csg_3q2012_slides.pdf.

In the bank's third quarter 2012 earnings presentation to investors, shown above for the Private Bank, 0.2 billion CHF in NNA was reported publicly for Private Banking Americas, and 0.1 billion CHF in NNA was

[709] 10/5/2012 email from Adrian Studer to Roland Spah and Minesh Parekh, "Q3 [Client 5] Adjustment," CS-SEN-00443242, at 244.
[710] Id.

reported for Private Banking Switzerland.[711] If not for the 1.6 billion CHF that moved from the Americas to Switzerland, Switzerland would have reported negative 1.5 billion CHF, a fact confirmed by Mr. Shafir and Mr. Meister.[712] The chart below demonstrates the difference that the regional allocation made to the publicly disclosed NNA figures.



Sources: "After reallocation (shown publicly by CS):" 10/25/2012 Credit Suisse Third Quarter Earnings Presentation, slide 10, https://www.credit-suisse.com/investors/doc/csg_3q2012_slides.pdf. "Before reallocation:" 10/25/2012 email from Richard Aeschlimann to Dale Miller and others, "NNA Q3 2012," CS-SEN-00443246 ("50/50 split of the NNA generated with [Client 5] between Americas and Switzerland. CHF 1.6bn was deducted top-side on a regional level (credit to Region Switzerland);" see also "Performance Reporting EIS," CS-SEN-00454941 at 944, showing 2.4 billion CHF NNA for Americas, 3rd Quarter 2012.

The earnings presentation did not accurately portray the NNA earned by the Swiss region in the third quarter of 2012. While the earnings presentation showed that the Swiss region made a "positive contribution" to NNA "inflows,"[713] the inflows to Switzerland did not, in fact, represent new assets brought into the bank. They were actually no more than a reallocation on Credit Suisse's books, which masked what was a 1.5 billion CHF outflow of NNA from Switzerland by reporting what appeared to be a positive 0.1 billion inflow. The result is that investors were presented with an inaccurate presentation of the Swiss region's performance in the third quarter. The Subcommittee drew the attention of CEO Brady Dougan to this apparent inconsistency, as well as the bulleted point on the right of the presentation, showing that there was a "positive contribution from … Switzerland."[714] Mr.

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[711] "Credit Suisse Third Quarter 2012 Results, Presentation to Investors and Media," 10/25/2012, slide 10, https://www.credit-suisse.com/investors/doc/csg_3q2012_slides.pdf ; see also "Credit Suisse Third Quarter 2012 Results, Presentation to Investors and Media," CS-SEN-00454956, at 965.

[712] Subcommittee interview of Robert Shafir, Credit Suisse (9/11/2013); see also Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (1/31/2014).

[713] 10/25/2012 Credit Suisse Third Quarter Earnings Presentation, https://www.credit-suisse.com/investors/doc/csg_3q2012_slides.pdf, at slide 10 (emphasis added).

[714] See Subcommittee interview of Brady Dougan, Credit Suisse (12/20/2013).

Dougan stated that he had confidence in the bank's internal process for recognizing and reporting NNA, which was a rigorous process and produced accurate results.[715]

That same day at the earnings presentation, the market continued to put pressure on its NNA, with analysts noting that for the Private Bank, Credit Suisse "missed the bank's own targets by far."[716] Another analyst critiqued NNA, focusing on Switzerland: "Profitability in [Credit Suisse] wealth management is under pressure as the erosion of bank secrecy leads to withdrawals of offshore funds from Switzerland."[717]

Internal NNA Does Not Match External NNA. Internally, however, Credit Suisse's financial reports did not show the retroactive regional split; Americas still had 2.4 billion CHF, and Switzerland showed -1.5 billion CHF.[718] That inconsistency does not reflect the situation in "95 percent of cases," according to Mr. Meister, where the bank's internal books match the bank's external books.[719]

Moreover, Mr. Meister was unable to explain why the split was carried out only for one set of assets in the first quarter, and retroactively in the third quarter.[720] To add to the back-and-forth, when the fourth quarter brought forth another 0.9 billion in NNA for the same client, the regional allocation was not split. All NNA stayed in the Americas.

The effect of Credit Suisse's decision to, in the third quarter, retroactively split the first quarter and second quarter NNA was to make Switzerland's NNA figures appear better than they actually were by turning a negative outflow into "a positive contribution," as the bank told investors. Mr. Meister told the Subcommittee that the bank has to "present the right picture, both inflows and outflows. I'm interested in the right figures being reflected."[721] The third quarter figures did not achieve that result.

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[715] Id.

[716] "Credit Suisse to cut $1 billion more costs as profits fall," Katharina Bart, Reuters, (10/25/2012), http://www.reuters.com/article/2012/10/25/us-creditsuisse-earnings-idUSBRE89O07V20121025.

[717] "Credit Suisse profits plunge and miss expectations, management cranks up cost cuts," Elena Logutenkova, Bloomberg, via Business Insider, (10/25/2012), http://read.bi/S7l9Wl.

[718] "Performance Reporting EIS," CS-SEN-00454941, at 944 (showing 2.4 billion CHF NNA for Americas, 3rd Quarter 2012).

[719] Subcommittee interview with Hans-Ulrich Meister, Credit Suisse (9/24/2013).

[720] Id. (Stating that Mr. Boegli was responsible for the "details.").

[721] Id.

(4) Fourth Quarter 2012

In the fourth quarter, Mr. Boegli continued to stress new NNA:

> "Based on reported November NNA and the result of the first December week, our ambition to deliver WMC [Wealth Management Clients] NNA of around CHF 6-7bn in 4Q12 is at risk. With 3 weeks to go until the year comes to a close and QTD [Quarter to Date] actuals of CHF 2.5 bn, we still need CHF 3.5 bn to reach the lower end of this ambition. This requires continued efforts on all levels and your support is very important."[722]

As the quarter was brought to a close, the bank's decisions continued a problematic pattern regarding both recognition of NNA and regional allocation, by ignoring Mr. Meister's earlier decision to split NNA evenly between the Swiss and Americas region.

NNA "Favour." Starting in late December 2012, Swiss Private Bank management began seeking recognition of another 900 million CHF of NNA from the Client 5 account. A Credit Suisse analyst in New York emailed Mr. DeChellis that "Zurich is looking for more potential NNA positions to support the global 2012 year-end disclosure. As a consequence they are looking to transfer more of [Client 5] balance into AUM."[723] The reference to Zurich was an indication that the source was Private Bank Management in Switzerland, such as Mr. Meister or Mr. Boegli, who were based there. A few weeks later, Mr. Boegli approached Mr. DeChellis about reclassifying Client 5 assets for the fourth quarter, stating:

> "Currently – for Q4 reporting – WMC [Wealth Management Clients] runs for NNA substantially below expectations. … [I]n order to support the PB division, a further [Client 5] portion of 0.9bn CHF – fully reported internally and externally in the Americas region – would be a great favour for our division. Hans-Ueli [Hans-Ulrich Meister] would be extremely happy if you could support this."[724]

In response, Mr. DeChellis agreed to support a decision if it fell "within the firm's guidelines and policies," but pointed out that the assets were not being invested: "This client is slow to put money to work, the return is essentially T-bills at the moment" and "only 250 [million] has been

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[722] 12/17/2012 email from Rolf Boegli to Romeo Lacher and others, "NNA 4Q12 Forecast," CS-SEN-00560923.
[723] 12/21/2012 email from Minesh Parekh to Anthony DeChellis, "Global Client Segments metrics," CS-SEN-00425106.
[724] 1/8/2013 email from Rolf Boegli to Anthony DeChellis, "Americas/[Client 5]," CS-SEN-00425140.

put to work … the rest (many proposals and pending investments) is still on hold."[725] Mr. Martin, the client's longstanding Credit Suisse banker, confirmed that the client's assets, at the time, were essentially in cash-equivalent instruments.[726]

Nonetheless, the decision was made to recognize the funds as NNA, and it was made by Mr. Boegli: "We will include the amount in NNA numbers. I have checked accounting guidelines and have given sign-off for this case."[727] However, Mr. Boegli was not in a position to make this decision or give final approval, as amounts over 500 million CHF had to be approved by Carlos Onis, the Head of Group Finance.[728] Mr. Shafir asked his deputy, Mr. Sipp, to look into the matter. After the reclassification was approved, Mr. Onis requested that his staff provide supporting documentation of the handling of the Client 5 account, including the reclassification in the fourth quarter.[729] He requested information about the "overall profitability on the AuM" and "confirmation that PB USA management is still fine with the reclassification. Rolf Boegli [was] in charge to confirm this."[730]

In order to respond to Mr. Onis' request for documents that would support the reclassification decision, Thomas Bluntschli, Head of Private Banking Business Information and Systems and Divisional AuM/NNA Reporting Officer, suggested an "enhanced story" that would "get approval soon from [Mr. Onis]."[731] In a January 9, 2013, email, he advised another colleague:

> "[G]iven the rather weak granularity, we need to create a more powerful story in the sense of making more around the existing weak figures…[Client 5] consists of xx accounts, all held in the xx branch, covered by 2 senior RMs [Relationship Managers] xx and yy which do high interaction level….blabla. Might not be relevant

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[725] Id. Mr. Martin, the client's relationship manager, initially disagreed with this, but then acknowledged that most of the client's assets were in cash and cash equivalents, specifically one stock and short-term bonds. See Subcommittee interview of James Martin (1/23/2014) (Most of the cash was in Switzerland and "instruments of less than one year is a cash allocation."). An email dated 10/25/2012 indicated that the client had only invested $85 million—of his almost $10 billion total assets—in a Holt portfolio. See 10/25/2012 email from James Martin to Bill Woodson, Yogi Thambiah, and Jim Garrity, "[Client 5] Timely Next Steps," CS-SEN-00424095.
[726] Subcommittee interview of James Martin, Credit Suisse (1/23/2014).
[727] See 1/9/2013 email from Rolf Boegli to Anthony DeChellis, "Americas/[Client 5]," CS-SEN-00421476.
[728] Subcommittee briefing by Credit Suisse (11/25/2013) (Iqbal Khan).
[729] 1/9/2013 email from Adrian Studer to Minesh Parekh, Roland Spah and others, "NNA," CS-SEN-00442608 at 612.
[730] Id. at 10.
[731] 1/9/2013 email from Thomas Bluntschli to Adrian Studer and others, "NNA," CS-SEN-00442608.

but sounds rather good. Blabla, also mentioning IB [Investment Bank] revenues thanks to [Client 5] relation."[732]

Mr. Onis was not copied or forwarded on that email chain. He did eventually guide preparation of a memorandum in early January to support the fourth quarter 2012 reclassification of Client 5's assets.[733] The fourth quarter NNA of 900 million CHF was attributed to the Private Banking and Wealth Management division, and allocated to the Americas.

The record on the reclassification decision suggests that it was driven by the goal of improving the year-end NNA numbers of the Private Bank, as stated in Mr. Boegli's email to Mr. DeChellis. Moreover, after the AuM Committee approval of the reclassification,[734] a memorandum was drafted to buttress Mr. Boegli's decision, which was fed by information that was "not … relevant but sounds rather good. Blabla."

When Mr. Dougan saw Mr. Boegli's email, Mr. Dougan said he found the language "disturbing" and "very objectionable" because "client intent" was not mentioned, and the decision to reclassify assets based on a desire to help the appearance of the Private Banking division's financial condition did not seem to follow the principle of management's discretion.[735] However, he said he "relies on the process and people who make sure this is done right," and he was "comfortable with the process."[736] That is, he relied on the AuM Committee, accountants, and lawyers to review reclassification requests.[737] Mr. Meister also said he relied on the process and his "specialists" in the Private Banking division to make decisions about reclassification of assets.[738]

Confidence in the results, however, requires a process that has integrity, and the fourth quarter reclassification of nearly 1 billion CHF in NNA, during a period of market attention and criticism of the Private Bank's NNA, should put a fine point on the leadership and implementation of Credit Suisse's financial disclosures. It does not appear that the decision to reclassify the 900 million CHF followed the bank's formal process.

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[732] Id. ("Xx" and "yy" reflect original email content as written by Mr. Bluntschli).
[733] 1/15/2013 "Memorandum PB Americas/Reclassification of USD 1bn in 4Q12," CS-SEN-00421550.
[734] 2/11/2013 meeting minutes of monthly AuM Review Committee, CS-SEN-00452662, at 664.
[735] Subcommittee interview of Brady Dougan, Credit Suisse (12/20/2013).
[736] Id.
[737] Id.
[738] Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (1/31/2014).

After the Subcommittee made an inquiry into the matters related to NNA reclassification and reallocation, the bank subsequently informed the Subcommittee that it had initiated an internal investigation led by outside legal counsel to examine the issues. Credit Suisse is currently carrying out an internal investigation into the potential influence on its reclassification decisions in 2011 and 2012.

V. LAX U.S. ENFORCEMENT

After the UBS case, the U.S. Department of Justice (DOJ) and the U.S. Internal Revenue Service (IRS) announced that they intended to take an aggressive approach to obtaining from Swiss banks the names and account information of U.S clients that had used Swiss accounts to evade U.S. taxes. DOJ and the IRS also indicated that they intended to investigate and prosecute the financial institutions that facilitated U.S. client tax evasion. Since 2009, DOJ has opened criminal investigations into 14 banks operating in Switzerland and, among other matters, sought the names of U.S. clients with Swiss accounts at those banks. However, nearly five years after the UBS case was closed, DOJ and IRS enforcement efforts to hold U.S. tax evaders and Swiss banks accountable for misconduct have bogged down. Instead, the U.S. Government has engaged in prolonged negotiations with the Swiss Government regarding the conditions under which U.S. client names and information might be provided, and how DOJ will handle the investigation and prosecution of Swiss banks.

Those negotiations have now lasted over two years. During that time, DOJ has obtained few U.S. client names and little account information. DOJ has also failed to employ the enforcement authorities available to it in the United States to obtain needed information directly from the banks it is investigating. For years, it has not enforced grand jury subpoenas directed at the 14 targeted banks, nor assisted the IRS in using John Doe summonses to obtain critical information from Switzerland. Instead, DOJ has limited its efforts to making information requests under a time-consuming and restrictive treaty process that has produced relatively little useful information. DOJ's reliance on the treaty process has also given Swiss regulators and Swiss courts control over the amount, nature, and timing of the information supplied by Swiss banks. As a result, DOJ has ceded control over the information collection process and ultimate authority over what information it will receive from a foreign government intent on secrecy and limiting the disclosure of bank information – information essential to effective U.S. investigations and prosecutions of U.S. tax evasion.

During the same five-year period, after the UBS settlement, DOJ has indicted only one Swiss bank, Wegelin & Co., out of the 14 banks under investigation for facilitating U.S. tax evasion. When Wegelin pled guilty, DOJ accepted its guilty plea without obtaining a single client name that could be used to seek unpaid taxes from the U.S. clients that used the bank to escape their tax obligations. When DOJ used U.S. prosecution tools and IRS John Doe summons against UBS, the United States obtained about 4,700 accounts with U.S. client names, and DOJ prosecuted 71 tax evaders. In contrast, when DOJ used the treaty process to seek information from the 14 targeted banks, DOJ was able to

obtain only a few hundred U.S. client names. DOJ's reduced effectiveness can be attributed, in part, to its reliance on the treaty process under Swiss control instead of U.S. tools enforceable in U.S. courts. Further, while DOJ has indicted 34 Swiss banking and other professionals for aiding and abetting U.S. tax evasion, the vast majority of those defendants have yet to stand trial. Most continue to reside in Switzerland, without facing any public U.S. extradition request to require them to face the criminal charges. DOJ has also done little to collect the unpaid U.S. taxes that continue to be owed on billions of dollars of assets that were hidden in offshore accounts.

A. Legal Tools Available to DOJ and IRS

DOJ and the IRS work together to combat offshore tax evasion. While the international nature of this illegal activity compounds the obstacles that U.S. agencies face in the investigation and prosecution of such crimes, they do have a number of tools available to secure the evidence necessary to identify tax evaders, collect the taxes and penalties they owe, and, when appropriate, prosecute them and the institutions that aided and abetted their activity. Some of these tools are U.S. based, making use of U.S. laws and U.S. courts; others are international in nature, making use of information and extradition requests under treaties negotiated with foreign governments and relying on foreign regulators and courts for enforcement. The primary U.S. based tools available to DOJ and the IRS include so-called "Nova Scotia" grand jury subpoenas, John Doe summonses, and DOJ's prosecutorial authority. The international tools include information requests made under the 1993 U.S.-Swiss Mutual Legal Assistance Treaty, 1996 U.S.-Swiss tax treaty, and 1997 U.S.-Swiss extradition treaty.

The benefits of using U.S. based authorities and remedies are that they are products of U.S. laws, they are adjudicated in U.S. courts, and they provide enforcement authority within the United States. If the recipient of a U.S. subpoena or summons has a U.S. presence, failure to comply with the subpoena, summons, or a subsequent compliance order issued by a court may result in a finding of contempt, monetary fines, and even imprisonment of associated persons pending a commitment to comply. In other words, the U.S.-based tools ensure that foreign entities suspected of violating U.S. law will be subject to the requirements and standards of U.S. law governing civil and criminal investigations and prosecutions. Additionally, U.S. law will govern the standards used by the courts to enforce information demands, and U.S. laws will determine the remedies available.

International treaties and other agreements necessarily rely to a greater extent on the laws and procedures of foreign governments. The

authority for determining what information will be provided is left to foreign agencies and government officials who may not recognize the acts under investigation as violations of criminal or civil laws, and may have laws and regulations that restrict production of information needed for a successful investigation or prosecution. Foreign courts may also be unsympathetic to investigating tax offenses that are not viewed as crimes in the foreign jurisdiction. Indifferent, reluctant, or hostile foreign agencies, officials, or courts seeking to protect their jurisdiction and its financial institutions, can impede or even prevent a U.S. criminal investigation and subsequent prosecution.

(1) Nova Scotia Subpoenas

U.S. case law provides U.S. law enforcement with the ability to obtain foreign business records through its grand jury subpoena power, even where production of the records would violate the foreign country's secrecy laws.[739] The key case is known as In Re Grand Jury Proceedings (Bank of Nova Scotia).[740] Court opinions issued by the Eleventh Circuit Court of Appeals, in 1982 and 1984, determined that a grand jury plays a critical role in gathering evidence as part of a criminal investigation and has wide discretion to request relevant information.[741] The Court also found that, when serving in its information-gathering function, a grand jury may take enforcement action to obtain information from a person, even when the production of such records may conflict with the laws of another nation in which the records and the person are located. In deciding whether to enforce such a subpoena, the Court identified a number of factors that should be considered, including the importance of the national interests at stake; the hardship that would be caused to the subpoenaed party being subjected to inconsistent enforcement actions by courts in two different jurisdictions; how much of the misconduct took place in each nation; the nationality of the target of the subpoena; and the extent to which an enforcement action by either side can be expected to achieve compliance.[742]

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[739] U.S. Attorneys' Manual, Title 9, Criminal Resource Manual, Subpoenas, hhtp://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/cr00279.htm.

[740] The Nova Scotia decision involved two cases. In Re Grand Jury Proceedings (Bank of Nova Scotia), 740 F.2d 817 (11th Cir. 1984), cert. denied, 469 U.S. 1106 (1985); In Re Grand Jury Proceedings (Bank of Nova Scotia), 691 F.2d 1384 (11th Cir. 1982) cert. denied, 462 U.S. 1119 (1983).

[741] See In Re Grand Jury Proceedings the Bank of Nova Scotia, Case No. 740 F.2d 817 (11th Cir. 1984), at 825 ("Since the ability to obtain evidence is crucial to all criminal justice proceedings, courts have repeatedly allowed the grand jury wide discretion in seeking evidence."); In Re Grand Jury Proceedings (Bank of Nova Scotia), 691 F.2d 1384 (11th Cir. 1982), at 1391 ("[A]bsent direction from the Legislative and Executive branches of our federal government, we are not willing to emasculate the grand jury process whenever a foreign nation attempts to block our criminal justice process.").

[742] See In Re Grand Jury Proceedings the Bank of Nova Scotia, Case No. 740 F.2d 817 (11th Cir. 1984), at 827 ("Where two states have jurisdiction to prescribe and enforce rules of law and the rules they may prescribe require inconsistent conduct upon the part of a person, each state is

Because the Bank of Nova Scotia case involved an effort by a U.S. grand jury to obtain records from a foreign bank that had engaged in business within the United States, the Circuit Court opinion focused in particular on the issue of bank secrecy laws in the foreign jurisdiction. The Court ruled that:

1. A criminal investigation outweighs bank secrecy, even where bank secrecy is a national interest, as bank secrecy jurisdictions do not claim absolute secrecy in the interest of aiding crime.[743]
2. The hardship that might be imposed on a bank should not be unexpected when a bank avails itself of a foreign jurisdiction.[744]
3. The foreign origin of the documents is not decisive, and the location of their disclosure is the United States.[745]
4. U.S. nationals have reduced expectations of privacy in their bank accounts compared with citizens of foreign jurisdictions.[746]
5. Enforcement is consistent with the long and effective history of grand juries.[747]

The Eleventh Circuit's observations include the following:

"The interest of American citizens in the privacy of their bank records is substantially reduced when balanced against the interests of their own government engaged in a criminal investigation ....

'In a world where commercial transactions are international in scope, conflicts are inevitable. Courts and legislatures should take every reasonable precaution to avoid placing individuals in the situation [the Bank] finds itself. Yet, this court simply cannot acquiesce in the proposition that United States criminal investigations must be thwarted whenever there is conflict with the interest of other states.' ...

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required by international law to consider, in good faith, moderating the exercise of its enforcement jurisdiction, in the light of such factors as:
(a) vital national interests of each of the states,
(b) the extent and the nature of the hardship that inconsistent enforcement actions would impose upon the person,
(c) the extent to which the required conduct is to take place in the territory of the other state,
(d) the nationality of the person, and
(e) the extent to which enforcement by action of either state can reasonably be expected to achieve compliance with the rule prescribed by that state.").

[743] See id. at 827.
[744] Id. at 827-828.
[745] Id. at 828.
[746] Id.
[747] Id.

> The foreign origin of the subpoenaed documents should not be a decisive factor. The nationality of the Bank is Canadian, but its presence is pervasive in the United States. ... It cannot expect to avail itself of the benefits of doing business here without accepting the concomitant obligations."[748]

According to the United States Attorneys' Manual, the Bank of Nova Scotia case allows federal prosecutors to obtain foreign business records "even where production of the records would violate the foreign country's secrecy laws."[749]

Because Nova Scotia subpoenas may conflict with foreign laws, the Department of Justice has created a special procedure for issuing one. Any DOJ attorney wishing to issue a Nova Scotia Subpoena must first present a request in writing to the Department of Justice's Office of International Affairs ("OIA").[750] OIA will then take into account the availability of alternate methods of obtaining the records, their importance to the investigation, and the need to protect against destruction of records located abroad, in deciding whether to support issuance of the subpoena.[751]

Nova Scotia subpoenas, like other grand jury subpoenas, can be served on foreign financial institutions if they have a presence in the United States.[752] Some foreign banks, like UBS and Credit Suisse, maintain a branch office in the United States where process can be served. Others, like Wegelin & Co., do not have a U.S. presence, making it difficult to subject them to a grand jury enforcement proceeding in the United States. In cases where the subpoenaed party declines to produce the subpoenaed material, DOJ must seek to enforce the subpoena. Typically, to enforce a grand jury subpoena, DOJ files a petition with a U.S. court asking it to order the subpoenaed party to comply or show cause why compliance is not required.[753]

(2) John Doe Summons

The John Doe summons is a tool that the IRS, with the assistance of the DOJ Tax Division, can use in civil tax cases to collect information about a population of people whose identity is unknown, so long as there is evidence showing that the group is likely to have committed a tax-

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[748] In Re Grand jury Proceedings the Bank of Nova Scotia, Case No. 740 F.2d 817 (11th Cir.), (8/14/1984), at 828, 829 (citations, footnotes, and attributions omitted).
[749] U.S. Attorneys' Manual, Title 9, Criminal Resources Manual, Subpoenas, http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00279.htm.
[750] Id. ("[A]ll federal prosecutors must obtain written approval through OIA before issuing any subpoenas to persons or entities in the United States for records located abroad.").
[751] Id.
[752] Id.
[753] Fed.R.Civ.P. 45(g).

related offense.[754] In order to issue a John Doe summons, the IRS must first obtain the approval of a federal court.[755]

In order to secure court approval, a John Doe summons must fulfill three requirements:

a. The summons must relate to the investigation of a particular person or ascertainable group or class of persons.
b. The IRS must have 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 U.S. tax laws.
c. The information and identities sought to be obtained from summoned records must not be readily available from other sources.[756]

The IRS Manual clarifies some of the above requirements. It notes that "generally, the common activities or transactions of the group or class of persons will directly relate to compliance with the internal revenue laws."[757] It also explains that a "reasonable basis" for failure to comply with the tax laws can be established by showing that the targeted group either: (1) "has engaged in or is engaging in a transaction or transactions that the Service has determined to be noncompliant with the tax laws;" or (2) "has engaged in or is engaging in an activity or course of action that is of such a nature that there is a likelihood of underreporting or other type of noncompliance with the tax laws."[758] In addition, the IRS Manual explains that "not readily available" means both that the IRS cannot obtain the information from public sources, and that it cannot obtain the information voluntarily from entities such as state or national agencies or business organizations.[759]

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[754] "Special Procedures for John Doe Summonses," § 25.5.7.5.2, Internal Revenue Manual, (11/22/2011), http://www.irs.gov/irm/part25/irm_25-005-007.html.
[755] Id. at § 25.5.7.5.3.
[756] Id.
[757] Id. at § 25.5.7.5.1.
[758] Id. at § 25.5.7.5.2.
[759] Id. at § 25.5.7.5.3. For references to all John Doe summonses issued from 2008 to January 2014, see "Justice Department Asks Court to Authorize Service of a John Doe Summons Seeking the Identities of U.S. Clients of R. Allen Stanford's Investment companies," Department of Justice Press Release (12/2/2009), http://www.justice.gov/tax/txdv091295.htm; "Justice Department Asks Court to Allow IRS to Seek HSBC India Bank Account Records," Department of Justice Press Release (4/7/2011), http://www.justice.gov/tax/txdv11439.htm; "Court Authorizes IRS To Seek Records From UBS Relating To U.S Taxpayers With Swiss Bank Accounts," U.S. Attorney Southern District of New York Press Release (1/28/2013), http://www.justice.gov/usao/nys/pressreleases/January13/WegelinSummonsPR.php; In re the Tax Liabilities of John Does ECF Case, (S.D.N.Y.), "Memorandum of Law in support of the United States' Ex Parte Petition for Leave to Serve John Doe Summons," (1/25/2013) at 18-21, http://www.justice.gov/usao/nys/pressreleases/January13/WegelinSummonsPR/Memo%20of%20Law%20in%20Support%20of%20Petition.pdf; "Court Authorizes Service of John Doe Summons Seeking the Identities of U.S. Taxpayers with Offshore Account at CIBC First Caribeean International Bank," U.S. Department of Justice Press Release (4/30/2013), http://www.justice.gov/tax/2013/txdv13488.htm; "Court Authorizes IRS To Issue Summonses

The Bank of Nova Scotia principles apply to a civil summons, including a John Doe summons, in the same way they apply to a criminal subpoena. In addition, the IRS and DOJ can face the same difficulties in enforcing compliance with a John Doe summons as with a grand jury subpoena. To enforce a John Doe summons, the IRS and DOJ must file a petition in federal court asking the court to order the subpoenaed party to comply or show cause why compliance is not required. The agencies must also serve a copy of the petition on the subpoenaed party which, if it has no presence in the United States, can be extremely difficult.[760] Once service is complete, the IRS and DOJ must prevail in a court proceeding and obtain a court order directing the subpoenaed party to produce the requested materials.

(3) Prosecution Authority

In situations where the U.S. Government has sufficient evidence to charge an individual or entity with a crime, it has a number of options in utilizing its prosecutorial discretion to resolve a case. The government may choose to bring an indictment against the suspect and either seek to obtain a conviction through trial, or negotiate and accept a plea agreement. It may reach a plea agreement with the suspect prior to filing any charges. It may also decide not to file any charges due to cooperation by the suspect.

In the corporate context the government has also resolved criminal matters through a Deferred Prosecution Agreement ("DPA") or Non-Prosecution Agreement ("NPA"). DPAs and NPAs have recently been employed in civil enforcement actions as well. In general, a DPA refers to a situation in which a formal charging document is filed by the government and the agreement to resolve the case is filed with an appropriate court, whereas an NPA is typically an agreement strictly between the two parties to the case.[761] The Department of Justice generally considers DPAs and NPAs as an important tool for resolving corporate wrongdoing. The U.S. Attorneys' Manual, under a section entitled, "General Considerations of Corporate Liability," states: "Non-prosecution and deferred prosecution agreements, for example, occupy an important middle ground between declining prosecution and

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For Records Relating To U.S Taxpayers With Offshore Bank Accounts," U.S. Attorney Southern District of New York Press Release (11/12/2013), http://www.justice.gov/usao/nys/pressreleases/November13/JohnDoeSummonsesPR.php?print=1.

[760] "Explanation of Proposed Protocol to the Income Tax Treaty Between the United States and Switzerland," Joint Committee on Taxation (5/20/2011), No. JCX-32-11, at 24, https://www.jct.gov/publications.html?func=startdown&id=3791.

[761] See U.S. Attorneys' Manual, Title 9, Criminal Resources Manual, Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations, §163, at footnote 2, http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00163.htm#FN2.

obtaining the conviction of a corporation."[762] The Manual further notes that NPAs and DPAs can be particularly appropriate for situations in which "the collateral consequences of a corporate conviction for innocent third parties would be significant."[763]

In instances where it chooses a pre- or post-indictment settlement with a suspect, the government has broad authority to fashion a settlement of the charges. The U.S. Attorneys' Manual provides certain goals for these settlements. It states:

> "Under appropriate circumstances, a deferred prosecution or non-prosecution agreement can help restore the integrity of a company's operations and preserve the financial viability of a corporation that has engaged in criminal conduct, while preserving the government's ability to prosecute a recalcitrant corporation that materially breaches the agreement."[764]

The Manual does not provide any instructions for the specific content of these agreements or other types of settlements. Instead, the overall principles of corporate prosecution suggest that a prosecutor should weigh several factors including the effects on the public and future deterrence in using the prosecutor's discretion to craft a DPA, NPA, or other settlement agreement appropriate to each case.[765]

With respect to banks that facilitate tax evasion by U.S. taxpayers, the U.S. Government may employ negotiated agreements or settlements to secure an acknowledgement of guilt and impose sanctions on the bank and, as a condition of the agreement, require the bank to provide the names and account information of U.S. clients who used the bank's services and facilities to evade U.S. taxes.

As information supplied by individuals participating in the IRS Offshore Voluntary Disclosure Program, and from other sources, provides the United States with more evidence of how particular banks aided and abetted tax evasion by U.S. taxpayers, the use of negotiated agreements or settlements offer prosecutorial options to resolve cases. This tool has already been employed in different ways by DOJ in its

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[762] U.S. Attorneys' Manual, Title 9, Criminal Resources Manual, Principles of Federal Prosecution of Business Organizations, § 9-28.200, http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/28mcrm.htm#9-28.200.
[763] Id. at § 9-28.1000 Collateral Consequences.
[764] Id.
[765] See generally id. Additionally, court accommodation of DPAs appears to be very broad. One of the few circumstances in which a judge did not go along with a DPA was because the terms of the agreement that the government agreed to were too weak in the opinion of the court. E.g. SEC v. Citigroup, Case No. 11 Civ. 7387 (JSR) (SD NY.), Opinion and Order (11/28/2011); SEC v. Bear, Stearns et al., Case No. 03 Civ. 2937 (WHP) (SD NY.), Order (3/15/2010).

efforts to identify and prosecute U.S. tax evaders and the banks that aided and abetted them.[766]

(4) Treaty-based Solutions

(a) Mutual Legal Assistance Treaties

In general, Mutual Legal Assistance Treaties ("MLATs") enable treaty partners to exchange information to assist criminal proceedings and related matters.[767] MLATs are negotiated on behalf of the United States by the U.S. Department of State in cooperation with the U.S. Department of Justice.[768] The State Department has explained that MLATs "can be extremely useful as a means of obtaining banking and other financial records from our treaty partners."[769] However, the Department of Justice U.S. Attorneys' Manual notes that "several [MLATs] have only limited coverage, at best, for tax offenses."[770] MLATs typically establish the parameters for the signatory countries to cooperate in criminal investigations and prosecutions. When using this mechanism to respond to tax information requests, the signatory country agrees to provide tax information only in criminal tax matters. That approach may severely restrict the MLAT's usefulness to the United States, since most U.S. tax matters are handled in civil rather than criminal proceedings.

The 1973 MLAT with Switzerland is one of the treaties with minimal tax coverage. According to the Department of Justice, the Swiss MLAT excludes "tax and similar fiscal offenses from its scope except in cases of organized crime."[771] The Swiss do allow DOJ to obtain information about some tax cases through supplemental domestic laws called domestic mutual assistance statutes, but these laws are limited to cases involving "tax fraud" which has historically been a very strict standard in Swiss law that does not correspond to felony tax crimes under U.S. law or to most U.S. civil tax cases.[772]

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[766] DOJ and IRS used a DPA and John Doe summons to obtain information for about 4,700 Swiss accounts, including the accountholders' names, from UBS. In contrast, approximately four years later, when Wegelin & Co. pled guilty, DOJ accepted its guilty plea without obtaining a single client name that could be used to seek unpaid taxes from the U.S. clients that used the bank to escape their tax obligations.

[767] "2012 INCSR: Treaties and Agreements," U.S. Department of State, (3/7/2012), http://www.state.gov/j/inl/rls/nrcrpt/2012/vol2/184110.htm.

[768] Id.

[769] Id.

[770] DOJ Criminal Tax Manual, Obtaining Foreign Evidence and Other Types of Assistance for Criminal Tax Cases (June 2001), § 41.02, http://www.justice.gov/tax/readingroom/2001ctm/41ctax.htm.

[771] Id. at § 41.02[3].

[772] Id. The footnote gives an example that a false tax return, considered fraudulent in the United States, would not be considered tax fraud in Switzerland. Id.

(b) Tax Treaties

In addition to MLATs, as explained earlier, the IRS and DOJ may make use of Tax Information Exchange Agreements (TIEAs) and tax treaties between the United States and foreign jurisdictions. These negotiated agreements include provisions specifically focused on providing mutual exchanges of information related to civil and criminal tax cases.[773] These agreements can be negotiated by the U.S. Treasury Department or incorporated into treaties requiring the advice and consent of the Senate. They generally allow information requests to be made by the "Competent Authority" for tax matters in each jurisdiction.[774]

The United States and Switzerland have signed a 1996 Tax Convention which, in Article 26, authorizes the exchange of information for the prevention of "tax fraud or the like."[775] This "tax fraud or the like" standard is defined in Swiss law to mean fraudulent conduct that causes or is intended to cause an illegal and substantial reduction in the amount of the tax paid.[776]

In order to make a treaty request under Article 26, DOJ requires a procedure involving multiple parties. First, the DOJ attorney seeking to make the treaty request must contact an exchange analyst on the DOJ exchange of information team.[777] After consulting, the attorney, who is typically the investigator or prosecutor in charge of the case, must draft a formal request to be sent to the exchange analyst or an IRS representative for review.[778] After review and approval, the request

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[773] Id. at § 41.04[2].

[774] Id. See also "Explanation of Proposed Protocol to the Income Tax Treaty Between the United States and Switzerland," Joint Committee on Taxation (5/20/2011) JCX-32-11, at 6-7, https://www.jct.gov/publications.html?func=startdown&id=3791.

[775] "Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with respect to Taxes on Income," (signed 10/2/1996) (hereinafter "United States-Switzerland Tax Convention"), reprinted in a Message from the President of the United States to the U.S. Senate transmitting the Convention and a related Protocol, Treaty Doc. 105-8 (6/25/1997), http://www.irs.gov/pub/irs-trty/swiss.pdf.

[776] See Chapter II. See also "Explanation of Proposed Protocol to the Income Tax Treaty Between the United States and Switzerland," Joint Committee on Taxation (5/20/2011), No. JCX-32-11, at 23, https://www.jct.gov/publications.html?func=startdown&id=3791.

[777] 2001 DOJ Criminal Tax Manual, Obtaining Foreign Evidence and Other Types of Assistance for Criminal Tax Cases (June 2001), § 41.04[8], http://www.justice.gov/tax/readingroom/2001ctm/41ctax.htm.

[778] Id. A standard request under the 1996 treaty requires the following:

a. The taxpayer's (defendant's) name and address, and, if applicable, social security number, place and date of birth, and whether the taxpayer is a citizen of the United States;

b. The names and addresses of pertinent entities affiliated with the taxpayer and the nature of such affiliations;

c. A brief resume of the case with particular reference to the tax issues;

d. A detailed statement of the information sought and why it is needed;

e. A statement of the efforts made to secure the desired information prior to the request and why the efforts were not successful (including comment on any relevant data supplied by the taxpayer and the reasons for considering such data inadequate);

must be formalized and then sent to the foreign Competent Authority for execution.[779]

The DOJ Criminal Tax Manual notes that the use of tax treaty requests has been limited in some civil law jurisdictions because officials in those jurisdictions "balk at executing tax treaty requests in criminal tax cases, especially those arising from grand jury investigations."[780] The manual also notes that some countries "will not obtain and provide financial information, such as bank records, because of bank secrecy laws."[781] Additionally, tax treaty agreements generally ask the United States to provide the names of the accountholders in any request for bank information, further limiting their usefulness in a bank secrecy jurisdiction such as Switzerland, where learning the identities of the accountholders is often the most critical and difficult step.[782]

Even in instances where there is substantial evidence of tax fraud, the Swiss allow bank clients whose account information is covered by a treaty request to sue in Swiss court to prevent their account information from being released to the United States. In one instance in January 2014, a U.S. treaty request for client names and account information from Bank Julius Baer, a Swiss bank, was challenged by one of the affected clients. The Swiss Administrative Court rejected the U.S. request, which lacked specific client names, holding that the U.S. request was too close to a "fishing expedition."[783] The Swiss court held that an indictment against Julius Baer employees for assisting with tax evasion did not set forth conduct sufficient to meet the 1996 treaty's tax

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f. If the records of a foreign affiliate of the taxpayer are to be examined, the name and address of the custodian of the records and a document authorizing the custodian to permit the examination or an explanation as to why the authorization was not obtained;

g. All pertinent names, addresses, leads, and other information that may be helpful in complying with the request; and

h. Requests for bank account information should specify the branch.

To the extent known, the following information should also be transmitted with the request:

i. Date upon which a response is required (e.g., for statute of limitations purposes) or any other facts indicating the urgency of the information;

j. Information concerning the importance of the case and any other facts which make the case unusual or worthy of preferential treatment; and

k. The taxable years and approximate tax liability or additional income involved.

[779] Generally, each treaty partner appoints a representative, called the Competent Authority, to resolve issues and disputes arising from their tax treaty; the U.S. Competent Authority is a senior IRS official.

[780] Id. at § 41.04[11].

[781] Id.

[782] Id. at § 41.04[8].

[783] 1/8/2014 "Julius Baer: IRS request for administrative assistance not sufficient for the disclosure of client data" Press Release Tribunal Administrative Federal (1/8/2014) http://bccctaxwatch.ch/f.php?id=764.

fraud or the like standard, which must be met for the production of client names.[784]

In 2009, as explained earlier, the U.S. and Swiss Governments negotiated a protocol to the 1996 tax treaty that broadened the standard for information that may be provided through a treaty request, and opened the door to more requests for information related to a specified group of unnamed taxpayers, such as those with undeclared accounts at a named bank. As discussed below, however, there are still limitations in the revised treaty. In particular, the new standard is uncertain because of the presence of language about "fishing expeditions" in combination with a relevance standard, and even where information can be requested, the new protocol cannot be applied to obtain client names or account information if that information does not relate to a date beginning on or after September 23, 2009.[785]

(c) Extradition Treaties

The United States and Switzerland also have an extradition treaty, which was signed in 1990, and updated in 1997.[786] Extradition is the official process used when one country seeks the transfer of a suspected or convicted criminal from another country to stand trial or accept punishment for wrongdoing. The U.S.-Swiss treaty contains two exceptions that limit its usefulness in the ongoing U.S. investigations of U.S. clients and Swiss banks engaged in tax evasion.

The first exception relates to tax offenses. Article 3 of the U.S.-Swiss treaty states that a treaty partner "may deny extradition for acts which ... are intended exclusively to reduce taxes or duties."[787] The official Letter of Transmittal to the U.S. Senate seeking ratification of the 1997 treaty explains further:

> "Article 3(3) provides that the executive authority of the Requested State may refuse extradition for acts which ... are intended exclusively to reduce taxes or duties .... The provisions ... were included in the Treaty because Swiss law for the most part

[784] "Julius Baer: IRS request for administrative assistance not sufficient for the disclosure of client data," Press Release Tribunal Administrative Federal (1/8/2014), http://www.bvger.ch/index.html?lang=en;
"U.S. Tax Evasion Case Touches Julius Baer" New York Times, David Jolly, (10/12/2011), http://dealbook.nytimes.com/2011/10/12/u-s-tax-evasion-case-touches-julius-baer/?_php=true&_type=blogs&_r=0.

[785] "Department of the Treasury Technical Explanation of the Protocol Signed at Washington On September 23, 2009 Amending The Convention Between the United States Of America and the Swiss Confederation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Signed at Washington on October 2, 1996, as Amended by the Protocol Signed on October 2, 1996," Department of the Treasury, http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/TreasTechExp-2009-Protocol-Switzerland-Tax-Treaty.pdf.

[786] See "Switzerland International Extradition Treaty with the United States," (9/10/1997) .

[787] Id. at Article 3.3(b).

prohibits extradition for purely fiscal or tax offenses. This provision would not be used to shield from extradition underlying criminal conduct, such as fraud, embezzlement, or falsification of public documents, if that conduct is otherwise extraditable."[788]

While Article 3 does not prohibit the extradition of defendants facing criminal tax charges in the United States, it gives the Swiss discretion to allow or deny U.S. extradition requests for such defendants, unless the United States can also establish additional "underlying criminal conduct" such as fraud or falsification of a public document.

The second treaty exception relates to the principle asserted by some countries to protect their nationals from extradition. While the U.S.-Swiss extradition treaty does not bar such extraditions, Article 8 allows a treaty partner to deny an extradition request for one of its nationals if the treaty partner is itself willing to prosecute that person:

"Extradition of Nationals

1. The Requested State shall not decline to extradite because the person sought is a national of the Requested State unless it has jurisdiction to prosecute that person for the acts for which extradition is sought.

2. If extradition is not granted pursuant to paragraph 1, the Requested State shall, at the request of the Requesting State, submit the case to its competent authorities for the purpose of prosecution. For this purpose, documents and evidence relating to the offense shall be submitted without charge to the Requested State. The Requesting State shall be informed of the result of its request."[789]

Since Switzerland generally does not treat tax evasion as a criminal offense, it may not meet the requirements of Article 8 that it have "jurisdiction to prosecute" the person subject to an extradition request and, if extradition were denied and a U.S. request were made, it would, in fact, conduct the prosecution. In any event, in the case of Swiss defendants accused of facilitating U.S. tax evasion, the Article 3 exception for extradition requests involving tax offenses would likely take precedence over the Article 8 exception.

To date, the U.S. Department of Justice has not made public any extradition requests made in connection with its investigation of Swiss banks suspected of facilitating U.S. tax evasion, even though it has indicted over two dozen Swiss banking and other professionals, most of whom have avoided trial for years by remaining in Switzerland. The

[788] Id.
[789] Id. at Article 8(a).

United States has not said whether it has tested how Switzerland would exercise its discretion under the extradition treaty in the context of Swiss bankers charged with aiding and abetting U.S. tax evasion.

B. DOJ and IRS Enforcement Efforts, 2009 - 2013

Before the United States can investigate or prosecute U.S. taxpayers suspected of evading U.S. taxes by hiding assets in undeclared accounts, or examine the banks suspected of helping them, it must obtain the names of the U.S. taxpayers who opened the accounts. In the case of banks located in Switzerland, despite available U.S. and foreign based tools to obtain that information, and despite the United States' success in obtaining U.S. client information in the UBS case, DOJ and the IRS have not obtained similar information from the 14 other Swiss banks under investigation for the last four years. Instead, the U.S. Government, through DOJ and the IRS, has engaged in prolonged negotiations with the Swiss Government regarding the conditions under which U.S. client names and information might be provided. To date, the end result of those negotiations has been that the United States gained access to only a tiny percentage of the names of the tens of thousands of U.S. customers with undeclared Swiss accounts. Allowing those U.S. accountholders to escape accountability not only excuses their wrongdoing, but denies the U.S. treasury unpaid taxes on the billions of dollars in their hidden accounts.

Since 2009, DOJ has chosen either not to employ or not to enforce U.S.-based authorities, including Nova Scotia subpoenas and John Doe summonses, against the 14 Swiss banks being investigated for misconduct. Instead, in consultation with the Swiss, in 2013, DOJ announced a new program that, while not applicable to the 14 banks under investigation for facilitating tax evasion, enables the vast majority of other Swiss banks to obtain non-prosecution agreements or non-target letters from the United States in exchange for supplying DOJ with certain account information. That program, however, does not require any Swiss bank to disclose the name of any U.S. customers, even those with undeclared Swiss accounts.

Instead, each bank that obtains a non-prosecution agreement must provide to DOJ certain aggregate account data, information about employees who handled undeclared accounts, and account-specific information about where funds were transferred from closed accounts in a process overseen by Swiss regulators and Swiss courts. The program allows the Swiss banks to limit that information to accounts opened after August 2008. DOJ investigators must then sort through any information provided to fashion client account information requests subject to treaty procedures that are also under the control of Swiss regulators and Swiss courts. Requests under the 1996 treaty must meet the difficult tax fraud

or the like standard. Requests under the 2009 revised treaty, once ratified, are limited to accounts open after September 2009.

Both the August 2008 and September 2009 dates may exclude tens of thousands of undeclared Swiss accounts opened by U.S. customers, many of which were closed in the immediate aftermath of the UBS scandal in July 2008. For those closed accounts, DOJ will have to use the older and more restrictive treaty process that, to date, has yielded few client names and little account information. In fact, under the 1996 treaty, the only time that the United States has successfully obtained a large number of client names was during the UBS prosecution, when DOJ employed U.S.-based tools to leverage the cooperation of Swiss authorities.

Moreover, the Swiss Government may claim an implied understanding that DOJ will not attempt to use U.S.-based tools such as Nova Scotia subpoenas or John Doe summons to obtain information from either the banks going through the DOJ program or from the 14 banks currently under investigation by DOJ. That claim of an understanding, if shared by the United States, would require DOJ to give up use of U.S.-based authorities, remedies, and courts to obtain U.S. client names and account information from the Swiss banks that serviced those accounts. Given Swiss reluctance to disclose client-specific information, it might also doom the effort of the United States to hold accountable the U.S. tax evaders and tax haven banks that conspired to defraud the U.S. public out of tax revenues owed on billions of dollars in hidden offshore assets.

(1) Initial U.S. Enforcement Actions

As explained earlier, in the UBS case, the U.S. Government successfully overcame numerous obstacles posed by Swiss bank secrecy and data protection laws and obtained U.S. client names and information for about 4,700 Swiss accounts at UBS. They included approximately 250 accounts with U.S. client names obtained through the UBS Deferred Prosecution Agreement and approximately 4,450 accounts with U.S. client names obtained through the UBS John Doe summons settlement. Those results were viewed as a significant breakthrough in U.S. efforts to overcome Swiss bank secrecy laws, data protection laws, and the practices of Swiss financial institutions.

After the UBS settlement, the issue confronting the U.S. Government was how it would approach the larger task of securing the names and account information of the thousands of other U.S. clients that used hidden accounts at other banks in Switzerland and elsewhere to evade their U.S. tax obligations, and how it would handle the prosecution of the banks that aided them.

In July of 2008 and March of 2009, this Subcommittee held hearings on the problem of tax haven banks and the difficulties with obtaining the names and account information of U.S. citizens who used accounts at those banks to evade U.S. taxes. At those hearings, the Subcommittee Chairman, Senator Carl Levin, articulated the problem confronting the DOJ and the IRS:

> "Right now, tax haven banks and tax haven governments dress up their secrecy laws and banking practices with phrases like 'financial privacy' and 'wealth management.' But secrecy breeds tax evasion. And secrecy hides not only the wrongdoers, but also those who aid and abet the wrongdoing."[790]

> "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."[791]

Representatives from DOJ and the IRS who testified at the hearing agreed. They described the importance of obtaining the names of the offshore accountholders as well as the many obstacles erected by offshore secrecy jurisdictions like Switzerland, which had a strong tradition of bank secrecy, enacted strict laws to enforce that tradition, and did not view tax evasion as a criminal or even serious civil offense. Testifying before the Subcommittee in 2008, when discussing accounts that were not disclosed to the United States under the Qualified Intermediary Program, IRS Commissioner Douglas Shulman observed: "My comment is that the idea of getting a line of sight to the people who own and control these accounts is the whole game."[792]

The government witnesses at the hearings used forceful language when describing how they planned to proceed, recognizing that they would be dealing with jurisdictions that were unsympathetic and in some

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[790] "Tax Haven Banks and U.S. Tax Compliance," hearing before the Permanent Subcommittee on Investigations, S. Hrg. 110-614 (July 17 and 25, 2008), at 7.
[791] "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, S. Hrg. 111-30 (March 4, 2009), at 6.
[792] "Tax Haven Banks and U.S. Tax Compliance," hearing before the Permanent Subcommittee on Investigations, S. Hrg. 110-614 (July 17 and 25, 2008), at 19.

cases opposed to the U.S. effort to secure client account information about U.S. tax evaders. The witnesses were clear that they intended to make use of U.S.-based authorities and the full power of American courts to obtain the names of people who were evading U.S. taxes.

Associate Attorney General Kevin O'Connor, told the Subcommittee:

> "Critical to every investigation of offshore activity is the ability to obtain evidence from a foreign country. In addition to traditional letters rogatory, information can be requested through tax treaties or tax information exchange agreements in both civil and criminal cases, and through Mutual Legal Assistance Treaties—otherwise known as MLATs—in criminal cases. Unfortunately, we do not have cooperative agreements with every country. Moreover, not all cooperative agreements cover both civil and criminal matters. On occasion, MLATs exclude outright tax crimes altogether, while other MLATs and tax treaties are limited to particular instances in which we can allege specific kinds of fraud.
>
> "In such circumstances, however, we will not be deterred. We will pursue other formal and informal methods of obtaining the foreign evidence we seek. This includes the use of John Doe summonses as well as Grand Jury subpoenas."[793]

Mr. O'Connor later emphasized the point that the Department of Justice would not hesitate to use the U.S.-based authorities available to it:

> "So we find that each country is different, but we are very creative in exploring different avenues. If we run into a dead end with a MLAT, we will pursue those documents through the tax treaty. And again, as [IRS] Commissioner Shulman said, if we have to go all the way down to using a Grand Jury subpoena or a John Doe summons, we will do that as well."[794]

In the March 2009 Subcommittee hearing, held to address the issue of how the government planned to obtain the names of tax evaders from UBS and Swiss banks in general, John DiCicco, Acting Assistant Attorney General for the Tax Division of the Department of Justice, stated that DOJ would use the U.S. authorities available to it to achieve its goals:

> "Senator LEVIN. How big a barrier are secrecy laws to tax investigations by the United States?

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[793] Id. at 15.
[794] Id. at 21.

> 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."[795]

Through their actions in the UBS case and their statements at the hearings, the DOJ and IRS representatives articulated an agenda for combating offshore tax evasion and a plan for achieving it. It included using U.S. authorities and remedies to:

- Obtain client name and account information from the offshore banks;
- Recover taxes owed and the interest and penalties due for failing to pay those taxes; and
- Prosecute the institutions that aided and abetted U.S. tax evasion.

After the hearings in 2008 and 2009, the United States initiated criminal investigations into the activities of a number of banks that operated in Switzerland and were suspected of facilitating U.S. tax evasion. Since 2009, 14 banks that are either headquartered or have branches in Switzerland have been placed under investigation by DOJ for aiding and abetting tax evasion by U.S. customers, among other acts of suspected wrongdoing. Grand Juries were empaneled to investigate a number of those banks, and Nova Scotia subpoenas were issued for the production of information related to U.S. clients with Swiss accounts.

In addition, since 2008, DOJ has also indicted over two dozen Swiss bankers and other Swiss professionals suspected of aiding and abetting U.S. tax evasion. The majority of these defendants were from UBS,[796] but also included professionals from Credit Suisse and Bank Frey.

As noted in an earlier chapter, the Credit Suisse indictment involved seven bankers. The February 2011 initial indictment named

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[795] "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, S. Hrg. 111-30 (March 4, 2009), at 19.

[796] See "Offshore Tax-Avoidance and IRS Compliance Efforts," prepared by IRS, (1/15/2014), http://www.irs.gov/uac/Offshore-Tax-Avoidance-and-IRS-Compliance-Efforts.

four Credit Suisse bankers;[797] the July 2011 superseding indictment named three more, including the head of the SALN desk in Switzerland.[798] The indictment also named a Swiss corporate service provider who was a former Credit Suisse employee, set up his own firm, and helped U.S. customers form offshore shell entities to hold their Swiss accounts at Credit Suisse.[799] The indictment accused the Credit Suisse bankers of participating in an ongoing conspiracy to defraud the U.S. Government of tax revenue. The indictment attributed to the bankers a variety of misconduct, including making false statements to the Federal Reserve Bank of New York and IRS, providing cash to U.S. customers as withdrawals from their undeclared Swiss accounts, soliciting U.S. customers by promising that Swiss bank secrecy would allow them to conceal ownership of their assets, and, in some cases, destroying documents present in the United States that detailed the undeclared bank accounts. Also in July 2011, Credit Suisse disclosed publicly that it had received a target letter from the Department of Justice indicating that it was the subject of a criminal investigation into how Swiss banks facilitated U.S. tax evasion.[800]

In 2012, as mentioned earlier, DOJ indicted Wegelin & Co., the only Swiss bank to have been indicted since UBS.[801] Wegelin was charged with conspiring with more than 100 U.S. taxpayers, from 2002 to 2011, to conceal at least $1.2 billion in assets in undeclared Swiss accounts at the bank and defraud the United States of the tax revenues owed on those assets.[802] In 2013, Wegelin pled guilty, forfeiting $32 million that had been frozen in its U.S. accounts and paying fines and restitution of $42 million for a total of $74 million.[803] The bank also disbanded, selling key units to other Swiss financial institutions.[804] The United States accepted the guilty plea, but failed to secure a single U.S.

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[797] United States v. Marco Parenti Adami et al., Case No. 1:11-CR-95 (E.D. Virginia) Indictment (2/23/2011).

[798] United States v. Walder et al. Case No. 1:11 -CR-95 (E.D. Virginia) Indictment (7/21/2011).

[799] See indictment of Josef Doerig, included in United States v. Walder et al. Case No. 1:11 -CR-95 (E.D. Virginia) Indictment (7/21/2011).

[800] "Update on US Department of Justice Investigation," Credit Suisse Press Release (7/15/2011), https://www.credit-suisse.com/news/en/media_release.jsp?ns=41815. A target letter is only sent to "a person as to whom the prosecutor or the Grand jury has substantial evidence linking him or her to the commission of a crime and who, in the judgment of the prosecutor, is a putative defendant." U.S. Attorneys' Manual,Title 9, Advice of 'Rights' of Grand Jury Witnesses, § 9-11.151, http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/11mcrm.htm#9-11.151; U.S. Attorneys' Manual, Title 9, Notification of Targets, § 9-11.153, http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/11mcrm.htm#9-11.153.

[801] 1/3/2013 "Swiss Bank Pleads Guilty In Manhattan Federal Court To Conspiracy To Evade Taxes," Department of Justice Press Release, http://www.justice.gov/usao/nys/pressreleases/January13/WegelinPleaPR.php?print=1.

[802] United States v. Wegelin & Co., Case No. 12-CR-02 (SDNY), Indictment (2/1/2012), ¶12.

[803] United States v. Wegelin & Co., Case No. 12-CR-02 (SDNY), Plea (1/3/2013), http://www.justice.gov/usao/nys/pressreleases/January13/WegelinSummonsPR/Exhibit%20D%20Wegelin%20Guilty%20Plea%20Transcript.pdf.

[804] See, e.g., "Swiss bank Wegelin to close after US tax evasion fine," BBC (1/4/2013), http://www.bbc.co.uk/news/business-20907359?print=true.

client name from the bank to enable it to begin collecting the unpaid taxes.

While DOJ pursued these criminal investigations and prosecutions, the IRS established an Offshore Voluntary Disclosure Program which offered U.S. taxpayers the opportunity to disclose offshore accounts that they had not previously reported, despite the legal obligation to do so, and pay taxes, interest, and penalties using a reduced penalty rate. Since 2009, over 43,000 U.S. taxpayers have participated in the program and, to date, remitted over $6 billion.[805]

(2) Initial Swiss Reaction to U.S. Enforcement Efforts

Actions taken by DOJ and the IRS to obtain U.S. client names and account information and to prosecute Swiss banks and banking professionals suspected of facilitating U.S. tax evasion initially had a significant impact on Switzerland and the Swiss banking community. Many Swiss banks, for the first time, began to focus on the tax status of U.S.-linked accounts in Switzerland, and in some instances initiated efforts to significantly reduce or completely exit their U.S. cross border business. Credit Suisse, for example, initiated a series of so-called "Exit Projects," described above.[806]

In 2009, as explained earlier, the Swiss Government reversed decades of policy and adopted the OECD standard for tax information exchange in order to avoid being blacklisted as an uncooperative tax haven.[807] The Swiss also negotiated amendments to its tax treaty with the United States, and the Swiss Parliament enacted legislation related to the amended treaty, which established a less restrictive standard for the production of client account information in response to treaty requests. At the same time, the treaty's overall scope remained in doubt due to its provision barring "fishing expeditions," and the Swiss position that the new treaty standard could not be applied to accounts closed before September 2009.[808]

The Swiss Government also continued to intervene in the DOJ criminal investigations of Swiss banks suspected of aiding and abetting U.S. tax evasion. Even though the investigations were of largely private entities, Swiss regulators took control of the document production process, prohibiting Swiss banks from producing documents directly to DOJ.[809] DOJ acquiesced in the Swiss Government's funneling all bank document productions through the Swiss regulators. In addition, the Swiss initiated talks with the IRS and later DOJ about crafting a global

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[805] For more information, see Chapter II, Offshore Voluntary Disclosure Program.
[806] See Chapter III, Exit Projects.
[807] See Chapter II, Switzerland.
[808] See Chapter II, U.S.-Swiss Tax Treaty.
[809] Subcommittee briefing by Credit Suisse (1/16/2014)(Agnes Reicke).

settlement with the U.S. Government that would resolve the conditions under which client names and information might be provided, and how DOJ would handle the investigation and prosecution of Swiss banks beyond UBS.

A key Swiss objective was to ensure that client-specific disclosures complied with Swiss secrecy laws, and to prevent the United States from applying the less restrictive disclosure standard agreed to in the 2009 amendments to the U.S.-Swiss tax treaty to older accounts subject to investigation. The Swiss took the position that the less restrictive disclosure standard could not be given retroactive effect and so could apply only to accounts in existence after the treaty's signature date in September 2009. In the words of Switzerland's President, Eveline Widmer-Schlumpf, "It is important for us to let the past be the past."[810]

The Swiss objectives were in direct conflict with a primary objective of the U.S. prosecutors, which was to obtain the names and account information of the U.S. taxpayers who, for many years prior to 2009, used Swiss bank accounts to evade their U.S. tax obligations. The United States wanted the U.S. client names not only to hold them accountable for tax evasion, but also to collect unpaid taxes on the billions of dollars hidden offshore. The U.S.-Swiss conflict over disclosing U.S. client names became a primary focus of the DOJ-Swiss negotiations over the next two years.

(3) Slowdown of U.S. Enforcement Efforts

In the spring of 2011, the Swiss approached the U.S. Government about negotiating a global process for resolving DOJ's investigations and prosecutions of Swiss banks. Employing its laws and regulatory authorities, the Swiss Government effectively took control of the transfer of virtually all information requested by DOJ from the Swiss banks under investigation. The Swiss Government prohibited all Swiss banks from providing documents directly to the United States, and instead required the documents to be provided first to Swiss regulators who then decided what to provide to the United States.[811]

Instead of turning to the U.S. remedies available to it to obtain that information directly from some of the Swiss banks, as it had in the UBS case, DOJ acceded to the Swiss action, essentially reducing what had been a series of criminal investigations into a prolonged international negotiation. In addition, there may have been an implicit understanding that DOJ would hold off on enforcement actions during the negotiating

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[810] "Switzerland to Allow Its Banks to Disclose Hidden Client Accounts," New York Times, Lynnley Browning and Julia Werdigier (5/29/2013), http://dealbook.nytimes.com/2013/05/29/swiss-officials-to-allow-banks-to-sidestep-secrecy-laws/.

[811] Subcommittee briefing by Credit Suisse (1/16/2014)(Agnes Reicke).

process.[812] The result was that the DOJ investigative and prosecutorial efforts slowed and ground almost to a halt. During the negotiations that ensued, deadlines that DOJ had set for Swiss bank compliance with U.S. document requests passed and went unenforced.

Evidence of the negotiation process includes public statements by Swiss officials, official communications between the Swiss Executive Council and the Swiss Parliament, as well as communications from senior DOJ officials, including the Deputy Attorney General. They show how DOJ slowed and then gave up its efforts to obtain U.S. client names and account information directly from Swiss banks; delayed prosecution of the financial institutions suspected of aiding and abetting U.S. tax evasion; and, as a result, failed to collect unpaid taxes owed to the U.S. Treasury.

(a) Negotiations Timeline

The following information outlines the negotiations that took place between Switzerland, DOJ, and the IRS, from 2011 to 2014.

DOJ Interviews. In 2010, DOJ began to interview Swiss banks about their U.S. cross border businesses, including the opening of undeclared Swiss accounts for U.S. customers.[813]

2011 Credit Suisse Banker Indictments. In February 2011, the DOJ indicted four Credit Suisse Swiss bankers. At this time, DOJ began to empanel Grand Juries to examine activities at a number of Swiss banks.

Credit Suisse Grand Jury Subpoena. In March 2011, a U.S. grand jury issued a subpoena to Credit Suisse for the production of materials in the United States.[814]

Swiss Government Intervention. In the spring of 2011, representatives of the Swiss Government approached the U.S. Government about crafting a global process for resolving DOJ's investigations and prosecutions of Swiss banks.[815]

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[812] For example, when the DOJ indicted Wegelin & Co., the only bank it indicted during this period, Swiss President Widmer-Schlump reportedly commented that the Swiss Government was "very surprised" by the Wegelin indictment, "because we understood there to be an implicit agreement that they would not do something like that during the negotiations." "Swiss Continue to Seek Deal on Banking Secrecy" New York Times, David Jolly (3/9/2012), http://www.nytimes.com/2012/03/09/business/global/swiss-president-blames-us-for-impasse-on-tax-accord.html?pagewanted=all&_r=0 (alternate title: "Swiss President Wants Tax Accord From U.S.").

[813] Subcommittee briefing by Credit Suisse (2/7/2014).

[814] Id.

[815] See e.g. "Swiss Banks Block Access to Offshore Accounts on Tax Deals," Bloomberg, Elena Logutenkova (7/6/2011), http://www.bloomberg.com/news/print/2011-07-05/swiss-banks-block-foreign-client-accounts-on-pending-tax-deals.html.

Credit Suisse Banker Indictments. In February and July 2011, DOJ filed an initial and superseding indictment of seven Credit Suisse bankers.

2011 Exchange of Signed Letters. In early September 2011, a German newspaper reported on an exchange of letters, which it had obtained, between Swiss and U.S. officials regarding the U.S. investigations into Swiss banks.[816] The newspaper did not make copies of the letters public, but reported extensively on their content. It reported that in late August 2011, Swiss Secretary of State Michael Ambuehl, principal representative of the Swiss Government in the negotiations with the United States over the U.S. investigations of Swiss banks, sent a letter to U.S representatives proposing to "negotiate a 'top-down approach' to the Swiss bank issue." According to the newspaper, Mr. Ambuehl proposed to resolve "conceptual topics" and then address the issue of "aggregated and statistical data."

The newspaper reported that Mr. Ambuehl referred in the letters to an "Additional Protocol of the Federal Council to the U.S. Tax Convention" that should allow for group requests without specifying individual names. According to Mr. Ambuehl, with the "new instrument" the United States would obtain administrative assistance in "more cases than before." He wrote that it would require, however, "mutual will and an agreement on the key points," because otherwise the Swiss Parliament would not go along.

The newspaper article reported that in his letter responding to the Swiss overture, U.S. Deputy Attorney General James Cole demanded immediate and extensive disclosure of the type and extent of the tax evasion by Swiss banks. "Without these data I do not see how we can actually progress," wrote Mr. Cole in the letter of August 31. In addition, Mr. Cole wrote that the United States demanded data for a "significant" number of U.S. accounts "speedily and with certainty."

According to the newspaper, Mr. Cole indicated that, in return, the United States would be willing to "test" the Swiss plan with group requests, under the following conditions: First, the United States wanted comprehensive "statistical information." Second, he noted that Switzerland had so far refused to provide the requested "amount structure," an unexplained term, and asserted that it was only after the United States received it that the Americans would be willing, according to Mr. Cole, to veer toward the path of administrative assistance that the Swiss Government proposed.

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[816] "Steuerstreit mit den USA Eskaliert [Tax Dispute with the U.S. is Escalating]," SonntagsZeitung, Lukas Hassig and Martin Spieler, (9/4/2011), translated from German by the Law Library of Congress, http://www.sonntagszeitung.ch/wirtschaft/artikel-detailseite/?newsid=188456.

The newspaper article reported that Mr. Cole identified a third condition, that "to be on the safe side," the United States wanted to simultaneously issue a "Grand jury subpoena" and possibly also a "John Doe Summons" against the affected banks. The newspaper article described both as "court-ordered coercive measures for the disclosure of customer data." According to Deputy Attorney General Cole, Switzerland would have to do everything possible to facilitate and accelerate the "delivery of account information and any other form" of a global deal or "I am afraid that we will hardly have a choice other than to apply the measures that are at our disposal."

Mr. Cole also, according to the newspaper, wrote that individual deals would have to be negotiated with the ten banks under investigation and there was "no promise" of not suing them. Finally, the newspaper reported, the Americans demanded an agreement for other banks that would ensure that "certain customer information" was disclosed, evaded taxes were paid, and correct behavior was guaranteed.

Credit Suisse Grand Jury Subpoenas. In early September 2011, a U.S. grand jury issued two subpoenas to Credit Suisse, one of the 14 banks under active investigation for facilitating U.S. tax evasion, seeking the production of material in Switzerland. One was for the production of business records, and one was for the production of client name and account information.[817] The subpoena seeking client names sought account records going back to January 1, 2000. At some point during September, DOJ apparently agreed, as part of its negotiations with the Swiss Government, to work through the Swiss regulators, rather than directly with Swiss banks, and try to use the treaty process to obtain the material it had subpoenaed from Credit Suisse, as well as similar material it had sought from other Swiss banks.

Credit Suisse Treaty Request in Place of Subpoena. On September 26, 2011, DOJ submitted a request under the 1996 U.S.-Swiss tax treaty for client names and account information for approximately 200-250 Swiss accounts opened for U.S. customers by Credit Suisse.[818] This treaty request essentially took the place of one of the grand jury subpoenas DOJ had sent to Credit Suisse earlier in the month. In addition, DOJ agreed to allow the business records that it sought from Swiss banks to be processed through the Swiss regulators.

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[817] Subcommittee briefing by Credit Suisse (2/7/2014).

[818] Id.; undated, unaddressed, unattributed communication from DOJ to Swiss Government officials, at ¶3; undated Credit Suisse announcement of U.S. treaty request, "Request for administrative assistance regarding certain client relationships with US persons as beneficial owners," https://www.credit-suisse.com/news/en/administrative_assistance.jsp; 11/2/2011 letter from Credit Suisse to an unnamed U.S. accountholder (discussing U.S. treaty request and right of the accountholder to challenge the request in court), http://www.ustaxfs.com/wp-content/uploads/2013/05/Credit_Suisse-Letter.pdf.

The grand jury subpoenas were left outstanding, unanswered, and remain that way today.

DOJ Communication to Swiss Government. In the November to December 2011 time period, in what appears to be part of the U.S.-Swiss negotiations over crafting a process for how DOJ would collect information from the Swiss banks it was investigating, a senior IRS official, who was engaged in the negotiations with Swiss officials, delivered a communication to the Swiss at the request of DOJ officials.[819] The document was undated and was not addressed or attributed to any specific person. The DOJ officials conducting the negotiations worked in the Office of the Deputy Attorney General.

The DOJ communication laid out a framework for two activities – what was expected of the Swiss banks and what DOJ expected Switzerland to provide. First, in order to take advantage of the "negotiations toward a resolution of potential criminal liability," the DOJ communication indicated that, by December 31, 2011, the Swiss banks targeted for investigation at the time by DOJ would be expected to provide DOJ with business record documents relating to their U.S. cross border activities, including how the business was organized, how they were reported internally, how they serviced and communicated with clients, the identities of bank employees and outside advisors that were involved, and other information. Expressly excluded was any obligation to provide the names of U.S. accountholders: "In this production, the records provided to the DOJ need not include the names of account holders."

Noting that production of account records identifying accountholders would be necessary for any settlement agreement with the targeted banks, the DOJ communication stated that a treaty request, which had been made on September 26, 2011, would serve as a test of the Swiss Government's intent and ability to provide U.S. client names. The DOJ communication stated:

> "To demonstrate the intent and ability of the Swiss Government to produce complete, unredacted account records pursuant to the treaty process, the Swiss taxing authority (SFTA) will issue final decrees by January 2, 2012 as to 200-250 accounts covered by the treaty request submitted on September 26, 2011, and will produce to the U.S. at least 100-150 accounts by February 14, 2012."

That treaty request sought information related to accounts at Credit Suisse.

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[819] Undated, unaddressed, unattributed communication from DOJ to Swiss Government officials.

The DOJ communication further stated that if the Swiss Government agreed and the targeted banks began to implement the outlined steps, "DOJ will refrain until December 31, 2011, from seeking an indictment or enforcing a Grand jury subpoena against a Targeted Bank that commences or continues good faith negotiations with DOJ relating to past violations of U.S. tax laws and related provisions." The DOJ communication also promised:

> "Upon obtaining the information described above, and DOJ being satisfied that the further account information, containing the identity of the account holders, to be produced under the Agreement will satisfy law enforcement interests, DOJ will move toward finalizing the resolution of potential liability of the Targeted Banks. Under those circumstances, DOJ will continue to refrain through March 2012 from seeking an indictment or enforcing a subpoena against a Targeted Bank that continues to negotiate in good faith with the DOJ toward a resolution of its potential criminal liability."

The DOJ communication, whose authenticity has not been disputed by DOJ or the IRS, and has been confirmed by several sources, indicates that DOJ was already negotiating a plan that would enable the targeted banks to negotiate settlements, would consider "finalizing" that plan if certain information was supplied, and was willing to hold off enforcing outstanding subpoenas and filing indictments against Swiss banks.

Signed DOJ Letter to 14 Targeted Banks. On December 9, 2011, John DiCicco, Principal Deputy Assistant Attorney General for the Tax Division, sent a signed letter to the targeted banks reiterating much of what had been laid out in the unsigned letter to the Swiss Government regarding what the banks must do to negotiate a settlement and avoid indictment.[820] Attached to the letter was an appendix listing the materials that the banks were required to provide to the DOJ. The list did not include any request to provide U.S. accountholder names.

Swiss Statement. At the end of 2011, Swiss President Widmer-Schlumpf was quoted as predicting that, with respect to negotiations with the United States regarding the investigation of Swiss banks, "I assume that we will find a solution by the end of the year."[821]

Wegelin Indictment. In February 2012, DOJ indicted Wegelin & Co., Switzerland's oldest bank. In March 2012, Swiss President Widmer-Schlump was cited in the press as indicating that the Swiss

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[820] 12/9/2011 letter from John DiCicco, Principal Deputy Assistant Attorney General for the Tax Division, U.S. Department of Justice.

[821] "No Swiss payment offer over U.S. tax probe," Reuters (11/4/2011), http://mobile.reuters.com/article/topNews/idUSTRE7A325D20111104.

Government was "very surprised" by the Wegelin indictment, "because we understood there to be an implicit agreement that they would not do something like that during the negotiations."[822]

Encrypted Swiss Business Information. During the first quarter of 2012, the Swiss Government made a partial turnover of the business information that the United States had requested from targeted Swiss banks, but redacted some of the information and encrypted the files. Swiss President Widmer-Schlumpf stated in connection with the turnover of encrypted data that "we [the Swiss government] will only decode when we have found a solution with the United States on all the banks that are under discussion."[823]

Tax Division Attorneys Reassigned for Six Months. On March 20, 2012, following the Wegelin indictment, the U.S. Senate Finance Committee held a hearing in which Senator Richard Burr asked about a program to embed DOJ prosecutors in various U.S. Attorney field offices.[824] Ronald Cimino, the DOJ witness, confirmed the existence of the program, stating that the Tax Division had "redoubled our efforts to offer resources from the tax division to U.S. attorneys."[825] Senator Burr then described this program as one that had been initiated by Deputy Attorney General Cole, and which had diverted 33 criminal tax attorneys away from the Tax Division.[826] Senator Burr raised concerns about diverting such a large number of tax attorneys, almost 15% of the Tax Division's total criminal department, which might hinder the Tax Division in its enforcement efforts. Mr. Cimino confirmed the transfer of the Tax Division attorneys, explaining: "What we in the tax division did, Senator, is to place for 6 months our prosecutors and our civil litigators ... across the country."[827] In response to questions about this matter posed by the Subcommittee, DOJ explained:

> "This program was in place for a six-month period that ended on September 30, 2012, and approximately 23 criminal and14 civil trial attorneys from the Tax Division participated in the Department-wide detail opportunity. Tax Division attorneys

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[822] "Swiss Continue to Seek Deal on Banking Secrecy," New York Times, David Jolly (3/9/2012), http://www.nytimes.com/2012/03/09/business/global/swiss-president-blames-us-for-impasse-on-tax-accord.html?pagewanted=all&_r=0 (alternate title: "Swiss President Wants Tax Accord From U.S.").

[823] "Swiss Turn Over Encrypted Bank Data to US Prosecutors," New York Times (1/31/2012), http://www.nytimes.com/2012/02/01/business/global/swiss-turn-over-encrypted-bank-data-to-us-prosecutors.html?pagewanted=print; Subcommittee Interview of Romeo Cerutti, Credit Suisse (1/15/2014) (confirming that the information had been largely redacted and encrypted and that Credit Suisse had to provide a decryption key after it was cleared with the Swiss Government).

[824] "Tax Fraud by Identity Theft, Part 2: Status, Progress, and Potential Solutions," U.S. Senate Committee on Finance Subcommittee on Fiscal Responsibility & Economic Growth, S.Hrg. 112-708 (March 20, 2012), at 11.

[825] Id.

[826] Id.

[827] Id.

serving these details worked on significant investigations and prosecutions of tax and other financial crime, including matters involving foreign banks accounts. The Department's investigations and prosecutions of the use of foreign bank accounts to evade U.S. taxes and reporting requirements continued unabated before, during and after the detail program."[828]

Swiss Court Rejects Credit Suisse Treaty Request. In April 2012, the U.S. treaty request for about 250 Credit Suisse accountholder names that were part of the September 26, 2011 treaty request, and referenced in the unsigned communication from the DOJ to the Swiss Government as a test case, was partially rejected by a lower Swiss court, and only a portion of the account information requested was provided. In response, the IRS filed a revised treaty request.[829]

Julius Baer Information. In June 2012, Bank Julius Baer handed over the names of certain bank employees to U.S. authorities, but did not disclose any information about the identities of U.S. accountholders with Swiss accounts.[830]

Swiss Statement. In August 2012, when asked about the absence of a resolution of the U.S. investigation into Swiss banks, the chief Swiss negotiator, Michael Ambuehl, was quoted in the press as stating that the "absolute priority is the best possible solution for Switzerland. We want a U.S. settlement by year-end, but not at any price."[831] Mr. Ambuehl also emphasized the Swiss goal of providing information only about the future and excluding information about accounts that had been closed before the UBS case, stating: "We exclude the introduction of retroactive legislation to enable us to hand over bank data" that predates the new treaty agreement reached in 2009."[832]

Wegelin Guilty Plea. In early 2013, Wegelin & Co. pled guilty to aiding and abetting U.S. tax evasion.[833] The plea agreement did not

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[828] 12/9/2013 Letter from Peter J. Kadzik, Principal Deputy Assistant Attorney General for the Office of Legislative Affairs, U.S. Department of Justice, to the Subcommittee, at 3.
[829] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014). See also "Credit Suisse Sends U.S. Customers Notice of Compliance with Refined U.S. John Doe Treaty Request," Federal Tax Crimes, Jack Townsend, (8/9/2012; revised 8/11/2012), http://www.federaltaxcrimes.blogspot.com/2012/08/irs-submits-reformulated-treaty-request.html.
[830] "Details of Swiss-US banking deal outlined," swissinfo.ch, (8/30/2013), http://www.swissinfo.ch/eng/politics/Details_of_Swiss-US_banking_deal_outlined.html?cid=36782498.
[831] "Swiss seek US tax deal by year-end, but not at any price," Reuters, (8/3/2012), http://uk.mobile.reuters.com/article/rbssFinancialServicesAndRealEstateNews/idUKL6E8J30ND20120803.
[832] Id.
[833] United States v. Wegelin & Co, Case No 12 CR 02 (SDNY), Plea (1/3/2013), http://www.justice.gov/usao/nys/pressreleases/January13/WegelinSummonsPR/Exhibit%20D%20Wegelin%20Guilty%20Plea%20Transcript.pdf. See also "Oldest Swiss Bank Wegelin to Close

require the bank to provide any U.S. client names or account information to U.S. authorities.[834]

Lex USA. On May 29, 2013, the Swiss Federal Council introduced a bill in Parliament called the "Lex USA."[835] The proposed legislation authorized Swiss banks to provide certain information to the United States to resolve "the tax dispute," and included certain requirements and processes that the banks must comply with for the protection of employees and other third parties whose identities or other information may be supplied to the U.S. Government. The legislation provided authorization for the types of information that Swiss banks would have to provide and activities they would have to engage in to qualify for the non-prosecution agreement and non-target letter program the United States was negotiating with Switzerland and would announce in August 2013. The Swiss legislation specifically noted: "Not included in the authorization are data of customers and account information."

The proposed legislation was accompanied by a message entitled, "Federal Act Concerning Measures to Facilitate a Resolution of the Tax Dispute between the Swiss Banks and the United States."[836] In this message the Swiss Federal Council provided an overview of the history of the negotiations that had taken place with the U.S. Government and the issues that were involved. The message, among other matters, indicated the following:

- For approximately two years the Swiss Government had been involved in discussions with "U.S. justice and tax authorities" regarding how to resolve the "tax dispute" involving "Swiss banks who are accused of having violated American tax law by assisting U.S. customers in evading American taxes."
- The "discussions were originally carried out with the U.S. Tax Authority and they aimed at a solution that would have cleared the past conduct of each bank through an individual *Closing Agreement*. Such an Agreement would have required an Adjustment of the Qualified Intermediary Agreement and a payment."
- "In the fall of 2012, leadership was transferred to the DoJ [Department of Justice]. The solution now envisioned calls for

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After Guilty Plea," Reuters (1/4/2013), http://www.reuters.com/article/2013/01/04/us-swissbank-wegelin-idUSBRE9020O020130104.

[834] United States v. Wegelin & Co., Case No 12-CR-02 (SDNY), Plea (1/3/2013), http://www.justice.gov/usao/nys/pressreleases/January13/WegelinSummonsPR/Exhibit%20D%20Wegelin%20Guilty%20Plea%20Transcript.pdf.

[835] "Switzerland: Translation of the 'Lex USA,'" "(Measures to facilitate the resolution of the tax dispute between the Swiss banks and the United States.)," (5/29/2013), translated from German by the Law Library of Congress.

[836] "Switzerland: Summarized Translation of the Dispatch (Message) to the 'Lex USA,'" (5/29/2013), translated from German by the Law Library of Congress.

an individual solution for each bank that wants to clear up its relationship with the U.S. authorities."

- "Within this framework it should also be possible for a bank to obtain a declaratory statement of its compliance with American law."
- "Within this framework it should also be possible to obtain a declaration that American law has not been violated."
- "The furnishing of customer data [including account information] is excluded."[837]

Swiss President Widmer-Schlumpf, in commenting on this bill, was quoted as stating: "We [the Swiss government] expect this to create the base for banks to again gain some room for maneuver so that calm can return to the sector."[838]

Julius Baer Treaty Request. In April 2013, DOJ filed a treaty request to obtain information about Swiss accounts held by U.S. clients at Bank Julius Baer.[839] According to one press report citing a May 15, 2013 letter sent by the bank to some of its U.S. clients: "The IRS is seeking information on accounts 'owned through a domiciliary company' and held at any time between the beginning of 2002 and the end of 2012."[840]

Swiss Model Order. In July 2013, the Swiss Government released a model order that, upon request from a Swiss bank, would enable the bank to deal directly with the U.S. Government in producing information, in an effort to assist them in ending the DOJ investigations.[841] This order again stated explicitly that it did not permit the disclosure of client names or account information to the United States.[842]

Credit Suisse Treaty Request Approved After Nearly Two Years. In the summer of 2013, the Swiss Federal Supreme Court approved the revised U.S. treaty request and allowed the release of the

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[837] Id.

[838] "Switzerland to Allow Its Banks to Disclose Hidden Client Accounts," New York Times, Lynnley Browning and Julia Werdigier (5/29/2013), http://dealbook.nytimes.com/2013/05/29/swiss-officials-to-allow-banks-to-sidestep-secrecy-laws/.

[839] See "Julius Baer tells American Clients of Information Request," Bloomberg, Giles Broom (5/28/2013), http://www.bloomberg.com/news/2013-05-28/julius-baer-says-working-on-u-s-request-for-client-information.html; "Swiss Court Blocks Julius Baer Client Data Transfer to U.S.," Bloomberg Businessweek, Giles Broom (1/8/2014), http://www.businessweek.com/news/2014-01-08/swiss-court-blocks-julius-baer-client-data-transfer-to-u-dot-s.

[840] "Swiss Court Blocks Julius Baer Client Data Transfer to U.S.," Bloomberg Businessweek, Giles Broom (1/8/2014), http://www.businessweek.com/news/2014-01-08/swiss-court-blocks-julius-baer-client-data-transfer-to-u-dot-s.

[841] Federal Council Model Order, prepared by Federal Council of Switzerland, "Informal translation by [Swiss] MoF [Ministry of Finance]," (7/8/2013), PSI-DOJ-02-000001.

[842] Id.

remaining client names and account information for Swiss accounts at Credit Suisse that had been part of the September 2011 request. The court decision concluded the treaty process that had begun in September 2011, nearly two years earlier.[843] DOJ had described the September 2011 treaty request as a test of the Swiss Government's intent and ability to provide client names under the 1996 treaty. The test showed it required two requests, two court rulings, and nearly two years for the United States to gain access to a small number of U.S. client names. The 230 names disclosed to the United States represent less than 1% of the 22,000 U.S. clients with Swiss accounts at Credit Suisse and less than 1% of the 18,700 U.S. clients whose Swiss accounts were closed by the bank during its Exit Projects.[844]

2013 DOJ Program. In August 2013, DOJ jointly announced with Switzerland its formation of a new DOJ program to enable Swiss banks, other than the 14 under active investigation for facilitating U.S. tax evasion, to obtain non-prosecution agreements or non-target letters under certain conditions.[845] This program was limited in scope to cover only those Swiss accounts in existence between August 1, 2008 and a date no later than December 31, 2014.[846] The program enabled a Swiss bank to obtain a non-prosecution agreement or non-target letter without disclosing a single U.S. client name to DOJ or the IRS.[847]

John Doe Summons. In the fall of 2013, following announcement of the DOJ program for Swiss banks, a John Doe summons was issued to UBS for records in the United States related to U.S. correspondent

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[843] "Exchange of information in Tax Matters with the United States – The Federal Supreme Court rejects a first appeal," Press Release of the Swiss Federal Supreme Court (7/5/2013), http://www.bger.ch/press-news-2c_269_2013-eng-t.pdf; Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014). See also "Credit Suisse Sends U.S. Customers Notice of Compliance with Refined U.S. John Doe Treaty Request," Federal Tax Crimes, Jack Townsend, (8/9/2012; revised 8/11/2012), http://www.federaltaxcrimes.blogspot.com/2012/08/irs-submits-reformulated-treaty-request.html.

[844] For more information, see Chapter III, Exit Projects.

[845] See Chapter II, DOJ Program.

[846] 9/29/2013 Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks, Department of Justice. http://www.justice.gov/iso/opa/resources/7532013829164644664074.pdf. Under the program announced by DOJ, banks will have to provide information only for accounts open during the "Applicable Period," which is defined as: "the period between August 1, 2008 and either (a) the later of December 31, 2014, or the effective date of an FFI Agreement, or (b) the date of the Non-Prosecution Agreement or Non-Target Letter, if that date is earlier than December 31, 2014, inclusive." The amount of information that banks are required to provide for accounts that remained open during the Applicable Period is much less than what the banks must supply for accounts that were closed during that period, presumably because the expectation is that the accounts that remained open will be subsequently disclosed through the FATCA process. FACTA disclosures, however, are also limited, as explained below.

[847] 9/29/2013 Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks, Department of Justice. http://www.justice.gov/iso/opa/resources/7532013829164644664074.pdf.

accounts used by Swiss banks.[848] The John Doe summons did not seek any records outside of the United States.

Swiss Banker Extradited to United States. In December 2013, after being arrested while vacationing in Italy, former UBS Swiss banking executive Raoul Weil was extradited to the United States to stand trial on five-year-old federal charges related to facilitating U.S. tax evasion by U.S. customers of UBS.[849] Mr. Weil pled not guilty and was freed on $10.5 million bail awaiting trial, which is scheduled to begin in October 2014.[850] Mr. Weil is the only Swiss individual charged with aiding and abetting U.S. tax evasion to be extradited to the United States; the remaining Swiss defendants apparently continue to reside in Switzerland, and are not currently facing extradition proceedings initiated by the United States.[851]

Julius Baer Treaty Request Rejected. In January 2014, a Swiss court rejected the U.S. treaty request for account and client information related to Swiss accounts held in the name of corporations beneficially

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[848] For references to all John Doe summonses issued from 2008 to January 2014, see "Justice Department Asks Court to Authorize Service of a John Doe Summons Seeking the Identities of U.S. Clients of R. Allen Stanford's Investment companies," Department of Justice Press Release (12/2/2009), http://www.justice.gov/tax/txdv091295.htm; "Justice Department Asks Court to Allow IRS to Seek HSBC India Bank Account Records," Department of Justice Press Release (4/7/2011), http://www.justice.gov/tax/txdv11439.htm; "Court Authorizes IRS To Seek Records From UBS Relating To U.S Taxpayers With Swiss Bank Accounts," U.S. Attorney Southern District of New York Press Release (1/28/2013), http://www.justice.gov/usao/nys/pressreleases/January13/WegelinSummonsPR.php; In re the Tax Liabilities of John Does ECF Case, (S.D.N.Y.), "Memorandum of Law in support of the United States' Ex Parte Petition for Leave to Serve John Doe Summons," (1/25/2013), at 18-21, http://www.justice.gov/usao/nys/pressreleases/January13/WegelinSummonsPR/Memo%20of%20Law%20in%20Support%20of%20Petition.pdf; "Court Authorizes Service of John Doe Summons Seeking the Identities of U.S. Taxpayers with Offshore Account at CIBC First Caribeean International Bank," U.S. Department of Justice Press Release (4/30/2013), http://www.justice.gov/tax/2013/txdv13488.htm; "Court Authorizes IRS To Issue Summonses For Records Relating To U.S Taxpayers With Offshore Bank Accounts," U.S. Attorney Southern District of New York Press Release (11/12/2013), http://www.justice.gov/usao/nys/pressreleases/November13/JohnDoeSummonsesPR.php?print=1.

[849] See "Swiss Bank Executive Charged with Aiding U.S. Taxpayers Evade Income Tax," (11/12/2008), U.S. Department of Justice Press Release, http://www.justice.gov/tax/txdv081001.htm; U.S. v. Weil, Case No. 08-60322-CR –Cohn (SD Fla.), Arraignment (1/7/2014).

[850] See "Florida judge grants $10.5 million bail for ex-UBS banker," Reuters, Zachary Fagenson (12/16/2013), http://www.reuters.com/article/2013/12/16/us-banker-extradition-tax-bail-idUSBRE9BF16Q20131216; "Ex-UBS banker pleads not guilty in US tax case," swissinfo.ch (1/7/2014), http://www.swissinfo.ch/eng/business/Ex-UBS_banker_pleads_not_guilty_in_US_tax_case.html?cid=37687726.

[851] Credit Suisse informed the Subcommittee that it was unaware of any extradition request or proceedings relating to a former or current Credit Suisse employee indicted for facilitating U.S. tax evasion. DOJ declined to answer whether it has made any extradition requests that were denied by the Swiss, has any extradition requests pending, or plans to make any extradition requests in the near future for the Swiss defendants indicted over the last five years in connection with aiding and abetting U.S. tax evasion through hidden accounts in Switzerland.

owned by U.S. customers at Bank Julius Baer.[852] According to a press report, the Federal Administrative Court held that the Swiss Federal Tax Administration "unlawfully granted the request for administrative assistance" submitted by the IRS in April.[853] The press reported that the court held "administrative assistance shall not be granted for presumed tax evasion, even if high amounts are at stake," and found that the U.S. treaty request, which "abstractly described the alleged conduct of" the bank's clients, was insufficient to meet the "tax fraud" treaty standard. According to the press, the court ruled that "the mere failure to declare a bank account may be qualified – at the utmost – as a tax evasion, which is not subject to administrative assistance" under the tax treaty.[854] In other words, the Swiss court seemed to rule that, even if a Swiss bank account were hidden from U.S. tax authorities, that fact alone was insufficient to grant a U.S. treaty request for information about the undeclared account.

(b) Results of the Negotiations

The negotiation timeline details how, beginning in 2011, the Swiss Government pressed DOJ to craft a global settlement process to handle how U.S. client names and account information might be provided and how DOJ investigations and prosecutions of Swiss banks would be handled. Two and a half years later, the Swiss achieved their objectives: DOJ announced a program enabling about 300 Swiss banks, other than the 14 under active investigation, to obtain non-prosecution agreements or non-target letters from the Department of Justice without supplying client names. This nationwide program was unprecedented in U.S. history.

The Swiss also achieved its objective of limiting U.S. access to U.S. client names and account information in Switzerland. Since 2009, aside from UBS, out of the tens of thousands of U.S. taxpayers with undeclared Swiss accounts, DOJ has obtained the names of only about 230. Despite being subjected to a years-long, painstaking, expensive, and unproductive treaty process that repeatedly denied U.S. access to information about U.S. clients engaged in U.S. tax evasion with the help of Swiss banks, DOJ never returned to its earlier posture of using U.S.-based tools to obtain that information. Apparently at no point from 2011 to 2014, did DOJ pursue a John Doe summons or enforce a subpoena against a Swiss bank to obtain U.S. client account names and information from Switzerland. Instead, DOJ informed the Swiss

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[852] "Julius Baer: IRS request for administrative assistance not sufficient for the disclosure of client data," Swiss Federal Administrative Court Press Release (1/8/2014), http://www.bvger.ch/index.html?lang=en.

[853] "Swiss Court Blocks Julius Baer Client Data Transfer to U.S.," Bloomberg Businessweek, Giles Broom (1/8/2014), http://www.businessweek.com/news/2014-01-08/swiss-court-blocks-julius-baer-client-data-transfer-to-u-dot-s.

[854] Id.

Government on several occasions that it would delay enforcing outstanding grand jury subpoenas or moving forward with indictments of Swiss banks, contingent upon receiving certain information – which always excluded U.S. client names. In fact, in letters and the 2013 program for Swiss banks, DOJ explicitly decided that Swiss banks would not be required to provide any U.S. client names. By relying virtually exclusively on the treaty process instead of U.S.-based remedies, DOJ ceded control of the information collection process to a foreign government intent on secrecy and limiting the amount of U.S. client information disclosed to U.S. authorities.

Since the 2008 UBS case revealed the extent of Swiss bank facilitation of U.S. tax evasion, the United States has entered into three new agreements with the Swiss which it hopes will improve the ability of DOJ to obtain U.S. client names and account information from Switzerland in the future. Those three agreements are the revised U.S.-Swiss tax treaty which was amended with a protocol in 2009, but has yet to be ratified by the United States; the non-prosecution agreements that Swiss banks may sign under the 2013 DOJ program; and the new U.S.-Swiss intergovernmental FATCA agreement which requires Swiss banks to disclose certain U.S. accounts to the IRS.[855] While those agreements will facilitate some U.S. client name disclosures in the future, each has limitations that restrict its usefulness in obtaining information about U.S. client and Swiss bank tax misconduct prior to 2009.

(i) Proposed 2009 Treaty Revisions

In 2009, the United States and Switzerland reached an accord on revisions to the 1996 U.S.-Swiss tax treaty, which included substantial modification of the information exchange section; however the treaty has not yet been ratified.[856] Of particular note, the 2009 treaty amendments would change the standard for when the Swiss would have to produce information in tax matters, moving from the highly restrictive "tax fraud or the like" standard to the less restrictive "may be relevant" standard in the revised treaty.[857]

DOJ has suggested that ratification of the amended tax treaty would be a significant aid in enforcement of U.S. tax laws by allowing greater information exchange with Switzerland, including access to the

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[855] For more information on these agreements, see Chapter II.

[856] "Protocol Amending Tax Convention with Swiss Confederation," Proposed Treaty Amendment (signed 9/23/2009), referred to U.S. Senate Committee on Foreign Relations (1/26/2011), http://www.foreign.senate.gov/download/?id=476108C2-C9AF-4BDE-9038-B9C09B894442.

[857] "Explanation of Proposed Protocol to the Income Tax Treaty Between the United States and Switzerland," Joint Committee on Taxation, No. JCX-32-11 (5/20/2011), at 18, https://www.jct.gov/publications.html?func=startdown&id=3791.

names of U.S. accountholders.[858] However, the Swiss also insist that the new treaty standard can be applied only to requests involving accounts that were open and existed in a bank after September 23, 2009, the date the Protocol to the treaty was signed. The Swiss assert that applying the standard to any accounts that were closed on that date would be a retroactive application of the treaty standard in violation of Swiss legal principles. This treaty limitation means that requests for information related to accounts closed before September 2009, would have to be processed under the more restrictive standard in the 1996 treaty. As a result, while the revised treaty will provide a less restrictive standard for information exchanges in the future, it will provide limited assistance in obtaining U.S. client names and information about the many accounts that were closed after the UBS scandal broke in July 2008 and prior to the treaty signing in September 2009, and will not help collect unpaid U.S. taxes or resolve tax offenses committed during a period in which some of the most abusive Swiss banking practices took place.

The 2009 treaty revision also leaves in place the treaty's prohibition against "fishing expeditions," a prohibition that is unique to the Swiss tax treaty and creates an uncertain standard left to the discretion of Swiss regulators and Swiss courts.[859] As recently as January 2014, the Swiss Federal Supreme Court reportedly cited the provision barring fishing expeditions as part of the basis for denying a U.S. treaty request regarding accounts at Bank Julius Baer.

In 2012, the Swiss passed legislation that was supposed to make it clear, despite the fishing expedition language, that U.S. treaty requests could successfully obtain account information about groups of unnamed taxpayers under the 2009 treaty.[860] At the same time, the legislation imposed new requirements that had no basis in the treaty language. The legislation provided, for example, that Swiss assistance would be granted for U.S. treaty requests that described a group of unnamed taxpayers only where the United States described "a pattern of conduct on the basis of which it can be assumed that persons subject to taxation who behaved according to this pattern have not lived up to their statutory obligations."[861] On top of that, the legislation stated: "Persons subject to taxation may only be identified in this manner, however, if the

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[858] 1/24/2014 letter from Peter J. Kadzik, Principal Deputy Assistant Attorney General for the Office of Legislative Affairs, U.S. Department of Justice, to the Subcommittee, PSI-DOJ-03-000001-005. [Sealed Exhibit]

[859] "Explanation of Proposed Protocol to the Income Tax Treaty Between the United States and Switzerland," Joint Committee on Taxation, No. JCX-32-11 (5/20/2011), at 35, https://www.jct.gov/publications.html?func=startdown&id=3791.

[860] Bundesbeschluss über eine Ergänzung des Doppelbesteuerungsabkommens zwischen der Schweiz und den Vereinigten Staaten von Amerika ("Federal Resolution Concerning a Supplement to the Double Taxation Treaty between Switzerland and the United States of America"), (3/16/2012), http://www.admin.ch/opc/de/federal-gazette/2012/3511.pdf, translated from German by the Law Library of Congress.

[861] Id.

holder of the information or his coworkers has contributed significantly to such conduct."[862] Determining when a Swiss bank or other person "contributed significantly" to a U.S. taxpayer's tax offense would be left up to Swiss regulators and Swiss courts to decide. Given the Swiss bias against disclosing any names or account information, it may be extremely difficult for the United States to proffer sufficient evidence to establish to a court's satisfaction that, for example, a Swiss bank "significantly contributed" to conduct by U.S. accountholders indicating they were "not living up to" their statutory tax obligations.

(ii) Non-Prosecution Agreements and Non-Target Letters

On August 29, 2013, DOJ announced with Switzerland the new DOJ program to allow all Swiss banks except for the 14 banks under active investigation at that time to come forward, disclose any wrongdoing, provide certain information to the United States, and obtain either a "non-prosecution agreement" or a "non-target letter" from DOJ.[863] The non-prosecution agreement contained a commitment from DOJ not to prosecute the signatory bank in exchange for meeting specified conditions. The non-target letter essentially confirmed that the specified bank was not the target of a U.S. criminal investigation. DOJ normally does not make either type of document public.[864]

As explained earlier, the 2013 DOJ program created four categories of Swiss banks that were eligible to participate in the program in different ways.[865] Tier 1 banks were those already under criminal investigation as of August 2013, and ineligible to participate in the program.[866] Tier 2 banks were those eligible to enter into a non-prosecution agreement.[867] Tier 3 and 4 banks were those eligible to request a non-target letter from DOJ, with the distinction that Tier 3 banks were those that had not facilitated any tax crimes, while Tier 4 banks were those that had almost entirely local clients and were not involved with U.S. customers or U.S. taxes at all.[868]

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[862] Id.
[863] 8/29/2013 "United States and Switzerland Issue Joint Statement Regarding Tax Evasion Investigations," U.S. Department of Justice Press Release, http://www.justice.gov/tax/2013/txdv13975.htm.; "Joint Statement between the U.S. Department of Justice and the Swiss Federal Department of Finance," (8/29/2013), http://www.justice.gov/iso/opa/resources/7532013829164644664074.pdf (includes joint statement and "Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks," setting out the parameters of the DOJ program).
[864] Subcommittee interview of Eileen Shatz, U.S. Department of Justice (12/17/2013).
[865] For more general information about the DOJ program, see Chapter II.
[866] 8/29/2013 Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks, U.S. Department of Justice, http://www.justice.gov/iso/opa/resources/ 7532013829164644664074.pdf.
[867] Id.
[868] Id. at III and IV.

The program requires an independent examiner to go over each bank's records and confirm disclosure of certain information to DOJ. In the case of Tier 2 banks, an extensive disclosure is required detailing the ways in which the bank facilitated U.S. tax evasion, providing specific information about assets and transactions involving accounts that were closed, and providing the names of bank personnel who assisted U.S. customers with U.S. tax evasion.[869] Absent, however, is any requirement for a Swiss bank to provide any U.S. client names or other identifying information about the U.S. accountholders.[870] In the case of Tier 3 and 4 Banks, the independent examiner is responsible for confirming that the bank did not facilitate U.S. tax evasion in any way.[871]

When the DOJ program was announced, Swiss officials stated, and DOJ officials later confirmed to the Subcommittee, that the information required to be provided by Swiss banks under the non-prosecution agreements and non-target letters was information that Swiss banks were already allowed to provide under Swiss law.[872] Both Switzerland and DOJ agreed that the DOJ Program offered no new legal or regulatory means for the United States to obtain information – including U.S. client names – beyond what was already available under the restricted 1996 treaty request process.

In addition, the DOJ program was made limited in scope, covering only those Swiss accounts in existence between August 1, 2008 and no later than December 31, 2014.[873] This limitation means that the non-prosecution agreements will allow Swiss banks to omit information about accounts that were not open after August 1, 2008 – even though that was the time period when the largest number of undeclared Swiss accounts were held by U.S. customers and some of the most egregious bank conduct facilitating U.S. tax evasion took place.

DOJ was also very clear in informing the Subcommittee that no Swiss bank would have to disclose the name or other identifying information of a single U.S. accountholder, even for accounts associated with tax evasion.[874] DOJ's action in agreeing to that restriction in the

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[869] Id. at II (D).
[870] Id.
[871] Id., at III and IV.
[872] Subcommittee interview of Eileen Shatz, U.S. Department of Justice (12/17/2013).
[873] Id. at I(B)(6). Under this provision, banks will have to provide information only for accounts open during the "Applicable Period," which is defined as: "the period between August 1, 2008 and either (a) the later of December 31, 2014, or the effective date of an FFI Agreement, or (b) the date of the Non-Prosecution Agreement or Non-Target Letter, if that date is earlier than December 31, 2014, inclusive." The amount of information that banks are required to provide for accounts that remained open during the Applicable Period is much less than what the banks must supply for accounts that were closed during that period, presumably because the expectation is that the accounts that remained open will be subsequently disclosed through the FATCA process. FACTA disclosures, however, are also limited, as explained below.
[874] Subcommittee interview of Eileen Shatz, U.S. Department of Justice (12/17/2013).

DOJ program enabling Swiss banks to secure non-prosecution agreements or non-target letters essentially elevated Swiss bank secrecy principles over U.S. efforts to effectively prosecute U.S. taxpayers engaged in U.S. tax evasion and collect unpaid taxes owed on billions of dollars.

When asked why DOJ agreed to allow Swiss banks to avoid disclosing U.S. client names in exchange for obtaining non-prosecution agreements under the 2013 program, one DOJ official suggested to this Subcommittee that the other detailed information that the Swiss banks were required to provide in exchange for avoiding U.S. prosecution could be sufficient to file a successful treaty request with the Swiss Government for U.S. accountholder names.[875] However, when asked how information about the amount of account assets or the names of bank personnel handling an account would elevate a case of tax evasion to a case of tax fraud that would meet the 1996 "tax fraud" treaty standard for obtaining additional account information, DOJ was unable to provide a satisfactory explanation.[876]

Still another problem with the DOJ program is that, while not explicitly stated in the program details, the Swiss Government may claim, and the U.S. Government may agree, that it constrains the United States from using any other method outside of the program to obtain U.S. client names from any bank participating in the program. In other words, the Swiss may claim that DOJ is not allowed to use Nova Scotia subpoenas or John Doe summons to obtain additional information from Swiss banks signing non-prosecution agreements, and that those banks will have to produce only what is described in the program and nothing more.

If the United States agrees with that analysis, DOJ has effectively given up obtaining U.S. client names and account information outside of the treaty process for the hundreds of Swiss banks that may apply for non-prosecution agreements and non-target letters. The DOJ program requires the Swiss banks signing non-prosecution agreements to provide transactional information on accounts closed after August 1, 2008, including information on where account assets were forwarded if they left the bank, but does not require them to provide any account numbers, client names, or other identifying information. The United States apparently will have to sort through and analyze that transactional information to determine where the funds were transferred. It will then have to request U.S. client names and account information for accounts at the recipient banks using the revised standard of the 2009 treaty, once ratified, for accounts in existence after September 2009, and under the older treaty for accounts that were closed before that date. Moreover,

[875] Id.
[876] Id.

DOJ may have locked the United States into a posture where it will be unable to use U.S. legal remedies in U.S. courts to secure any withheld names.

Another concern is that the United States may ultimately come to the same type of agreement with the Tier 1 banks, the 14 banks under active investigation, and will, again, give up trying to obtain disclosure of any U.S. client names or account information directly from those banks using U.S. legal tools, and instead rely solely on the treaty process. Taking that approach, however, would place DOJ in the same bind of using a weak treaty process under the control of a foreign government seeking to limit disclosures, instead of using U.S. remedies enforceable in U.S. courts that favor transparency.

If DOJ were to give up using U.S. authorities, remedies, and courts in its investigation of Swiss banks that facilitated U.S. tax evasion, it would help the Swiss achieve their objective of securing bank secrecy for accounts that were opened and operated in the past. But it would weaken our government's ability to recover a large amount of unpaid taxes and to hold accountable both the tax evaders and the tax haven banks that assisted them.

(iii) FATCA Agreement

Some contend that the limitations in the old and revised tax treaty and in the non-prosecution agreements will become irrelevant, because U.S. client accounts that remain in Switzerland will be disclosed to the United States over the next few years under the Foreign Account Tax Compliance Act (FATCA). They point out that the Swiss have signed an intergovernmental agreement that requires all Swiss banks to comply with FATCA's disclosure requirements.[877] But FATCA's disclosure requirements have been limited and weakened by its implementing regulations, and may allow many U.S. taxpayers to continue to conceal their accounts in Switzerland and elsewhere.

One key limitation created by the FATCA regulations is a set of high dollar reporting thresholds. FATCA regulations state that foreign financial institutions do not have to disclose accounts holding assets below specified thresholds. If a taxpayer lives within the United States, the reporting threshold is a $50,000 account balance at the end of the tax year or more than $75,000 at any time during the tax year; those thresholds are doubled to $100,000 and $150,000 if filing jointly with a spouse.[878] If the U.S. taxpayer lives outside of the United States, the reporting thresholds are four times higher: a $200,000 account balance at the end of the tax year or more than $300,000 at any time during the

[877] For more information, see Chapter II.
[878] 26 C.F.R. § 1.6038D-2T (2011).

tax year; and thresholds that double to $400,000 and $600,000 if filing jointly with a spouse.[879]

One key limitation of those reporting thresholds is that they require the aggregation of account balances in different accounts only when the accounts are at the same financial institution. A U.S. taxpayer who opened accounts at multiple banks could easily maintain account balances below the FATCA reporting thresholds. For example, a U.S. couple living abroad could maintain three accounts at three banks, each with $350,000 and together exceeding $1 million, yet legally avoid all FATCA reporting. Given the Credit Suisse data showing 6,000 Swiss accounts at that bank alone that were held by U.S. clients living abroad, as well as GAO's analysis showing a $570,000 median value for 2009 offshore accounts, FATCA's $400,000 reporting threshold for U.S. couples living outside of the United States seems certain to enable thousands of high dollar offshore accounts to go unreported.

The FATCA regulations also place limits on how much effort a financial institution must undertake to review its existing accounts, as opposed to new accounts opened after January 1, 2014, to identify those that have to be reported to the United States. The regulations state, for example, that a participating financial institution is not required to report information on its existing accounts that are held by an individual and have an aggregate balance of $50,000 or less.[880] The limit is five times higher for entities: financial institutions do not need to report information for existing accounts that are held by an entity, such as an offshore corporation or trust, and have an aggregate balance of $250,000 or less.[881]

In addition, for existing individual accounts with a balance of $1,000,000 or less, a participating financial institution may rely solely on a review of its electronically searchable information to identify any "U.S. indicia," such as a U.S. address or telephone number, indicating that the account is owned by a U.S. person and must be reported to the United States.[882] Electronically searchable information is limited to files stored is an electronic database that allows for standard queries, and does not include pdfs, scanned documents, or paper materials.[883] Though balance thresholds apply to an aggregate of all accounts held by the same accountholder, the aggregation is determined when the financial institution's computerized systems links the accounts.[884] The institution must also aggregate accounts that a relationship manager

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[879] Id.
[880] Regulations Relating to Information Reporting, 78 Fed. Reg. 5948 (Jan. 28, 2013).
[881] 78 Fed. Reg. 5946 (Jan. 28, 2013).
[882] 78 Fed. Reg. 5949 (Jan. 28, 2013).
[883] 78 Fed. Reg. 5908 (Jan. 28, 2013).
[884] 78 Fed. Reg. 5947, 5965 (Jan. 28, 2013).

knows are associated,[885] but relationship managers may be limited to handling only very high dollar accounts.[886] Again, aggregation applies only to accounts held at the same institution, and does not prevent a person from using accounts in multiple banks to avoid triggering reporting thresholds.

Still another problem is a series of presumptions that the FATCA regulations created. The regulations currently allow a financial institution to presume that an entity with U.S. indicia, such as an accountholder with a U.S. birthplace, mailing address, or telephone number, is a foreign entity if the entity provides documentation showing that it was organized outside the United States, or it is classified as a resident of a foreign country.[887] That presumption seems to allow banks to treat accounts opened by offshore shell corporations as foreign accounts, even when beneficially owned by a U.S. person. The FATCA regulations also allow banks to presume that an account is a non-U.S. account if there is an indication of foreign status, and the account documentation is not sufficient to determine a person's status.[888]

Other FATCA rules require banks to take into account their "actual knowledge" of an account and account "due diligence" information when determining whether an account should be reported as a U.S. account. But under existing IRS withholding rules, when a non-U.S. corporation, such as an offshore shell corporation, is the official accountholder, even if the corporation is wholly or beneficially owned by a U.S. person, a financial institution may accept a W-8 filing from the corporate accountholder and treat the account as a non-U.S. account outside of FATCA.[889] The FATCA regulations do not change that outcome. For example, they do not require a financial institution that has actual knowledge of a U.S. beneficial owner of a non-U.S. corporate accountholder to treat the account as a U.S. account that must be reported to the IRS. This FATCA loophole may enable many offshore accounts opened by offshore shell corporations beneficially owned by U.S. persons to avoid FATCA reporting obligations.

Given these limitations, the United States cannot rely on FATCA to cure the limitations imposed by the Swiss on its ability to obtain information about U.S. customers with undeclared Swiss accounts.

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[885] 78 Fed. Reg. 5965 (Jan. 28, 2013).
[886] 78 Fed. Reg. 5910 (Jan. 28, 2013).
[887] 78 Fed. Reg. 5938 (Jan. 28, 2013).
[888] Id. at 5941.
[889] See, e.g., 2/19/2014 letter from Credit Suisse legal counsel to the Subcommittee (containing a similar analysis), PSI-CreditSuisse-67-000001, at 003-004.

C. DOJ Enforcement Efforts Related to Named Persons

While DOJ has had great difficulty obtaining U.S. client names and account information for the tens of thousands of undeclared accounts in Switzerland, another set of issues involves its relatively lax enforcement efforts with respect to the U.S. accountholders and Swiss bankers whose names it does have.

Contrasting DOJ's treatment of UBS and related parties versus its treatment of the 14 banks and related parties under investigation since then illustrates the problem. In 2009, after less than two years of investigation, DOJ entered into a Deferred Prosecution Agreement with UBS and, as part of that agreement, obtained at least 250 undeclared Swiss accounts with the names of U.S. clients at UBS. The next year, in connection with a John Doe summons proceeding, UBS provided another 4,450 accounts with U.S. client names.[890] According to DOJ, since 2009, it has charged 71 U.S. taxpayers with evading U.S. taxes through the use of offshore accounts,[891] almost all of whom had accounts at UBS.[892] Of those 71 defendants, 59 taxpayers have pled guilty, and 7 taxpayers were found guilty at trial.[893]

During the same five-year period from 2009 to 2013, DOJ opened investigations into 14 banks, but has so far indicted only one, Wegelin & Co., which pled guilty in 2013. Apparently, to date, only one of the U.S. accountholders with undeclared Wegelin accounts in Switzerland has been prosecuted. In 2013, after a two-year process, DOJ obtained from the Swiss Government about 230 names of U.S. clients with Swiss accounts at Credit Suisse. Less than five Credit Suisse accountholders have been prosecuted to date.[894]

In short, using U.S. prosecution tools and the IRS John Doe summons, the United States obtained about 4,700 accounts with U.S. client names from UBS, and DOJ prosecuted 71 taxpayers. In contrast,

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[890] UBS provided those 4,450 accounts, together with the U.S. client names, to the IRS by the end of 2010.

[891] 1/24/2014 letter from Peter J. Kadzik, Principal Deputy Assistant Attorney General for the Office of Legislative Affair, U.S. Department of Justice, to the Subcommittee, PSI-DOJ-03-000001-005. [Sealed Exhibit]

[892] See "Offshore Account Convictions," Federal Tax Crimes, Jack Townsend, (updated 1/26/2014), http://federaltaxcrimes.blogspot.com/p/offshore-charges-convictions.html. The prosecutions can also be partially checked against a list of cases provided by the IRS on its "IRS Offshore Tax Avoidance and IRS Compliance Efforts" webpage, but that list is incomplete. See IRS Offshore Tax Enforcement webpage, http://www.irs.gov/uac/Offshore-Tax-Avoidance-and-IRS-Compliance-Efforts.

[893] 1/24/2014 letter from Peter J. Kadzik, Principal Deputy Assistant Attorney General for the Office of Legislative Affairs, U.S. Department of Justice, to the Subcommittee, PSI-DOJ-03-000001-005. [Sealed Exhibit]

[894] "Offshore Tax-Avoidance and IRS Compliance Efforts," prepared by IRS, http://www.irs.gov/uac/Offshore-Tax-Avoidance-and-IRS-Compliance-Efforts; Offshore Compliance Initiative, prepared by DOJ, http://www.justice.gov/tax/offshore_compliance_intiative.htm.

while using the treaty process, DOJ was able to obtain only a few hundred U.S. client names from the 14 banks under investigation. DOJ's reduced effectiveness can be attributed, in part, to its reliance on the time-consuming and difficult treaty process under Swiss control versus its use of U.S. tools enforceable in U.S. courts.

A similar contrast relates to the Swiss bankers, corporate service providers, and others that facilitated U.S. tax evasion. During the same five-year period from 2009 to 2013, according to DOJ, it charged 34 banking and other Swiss professionals with crimes related to aiding and abetting U.S. tax evasion.[895] Of those defendants, 4 have pled guilty or proceeded to trial. All were associated with UBS. The other 30 defendants have yet to stand trial, and are instead generally continuing to reside in Switzerland without facing extradition proceedings. One Swiss banker, Raoul Weil, a former UBS executive, was recently extradited to the United States after he left Switzerland and was arrested while vacationing in Italy. His trial is scheduled to begin in October 2014. None of the seven Credit Suisse bankers who were indicted three years ago in 2011, and continue to reside in Switzerland, has yet to stand trial.

These figures show that the bulk of the prosecutions that have taken place to date were based on the information obtained from the UBS accounts. The data also indicates that many other U.S. accountholders whose names have long been known to DOJ have yet to be held accountable for their actions. DOJ has taken relatively few enforcement actions against the other 14 banks, banking professionals, and U.S. clients that have been under investigation for years. As DOJ's attention and resources were diverted from taking enforcement actions to negotiating with the Swiss Government over treaty requests and Swiss bank opportunities to obtain non-prosecution agreements, U.S. tax cheats continued to dodge responsibility for their actions and the unpaid taxes they owe.

D. Analysis

The U.S. Government has not, as Mr. DiCicco from the Justice Department promised back in 2008, "use[d] U.S. remedies" to get what it thought it was entitled to receive. Instead, more than two years of DOJ negotiations with the Swiss ended up with the Swiss providing little information about U.S. clients or Swiss bank involvement with U.S. tax evasion, while DOJ's investigative and prosecutorial efforts languished.

The Swiss Government's active involvement in DOJ's Swiss bank investigations was unusual. A national government interposed itself into

[895] 1/24/2014 letter from Peter J. Kadzik, Principal Deputy Assistant Attorney General for the Office of Legislative Affairs, U.S. Department of Justice, to the Subcommittee, PSI-DOJ-03-000001-005. [Sealed Exhibit]

another country's investigations of criminal conduct by private entities and attempted to negotiate protections for an entire industry, using as leverage its laws and regulatory procedures to limit the information turned over to DOJ. Its intervention also enabled Swiss banks to stymie U.S. criminal investigations into their conduct in the United States by claiming they could not produce requested information under order of their home jurisdiction.

Instead of rejecting the intervention of the Swiss Government into its criminal investigations, DOJ entered into a prolonged period of negotiations with the Swiss. The Swiss objective was to reach a settlement on how DOJ would handle its investigation and prosecution of numerous Swiss banks that may have facilitated tax evasion by U.S. persons. The U.S. objective was to obtain client and account information that the Swiss government was prohibiting the Swiss banks from turning over. In a response to Subcommittee questions regarding the negotiations with Switzerland, DOJ stated:

> "The Department's central purpose in discussions with representatives of the Swiss government has been to gain the support of Switzerland in our efforts to obtain information from Swiss banks that would serve our law enforcement goal: to hold to account those banks and individuals that assisted U.S. taxpayers in evading U.S. tax law as well as those U.S. taxpayers that engaged in such evasion. The representations made by the Swiss Federal Department of Finance in the Joint Statement, and subsequent steps taken by the Swiss government in support of the Program [for NPAs], have greatly aided in this goal."[896]

It is difficult to discern how the Swiss have advanced DOJ's goal of obtaining U.S. client names and account information to prosecute U.S. taxpayers who have yet to pay the taxes they owe on offshore assets hidden in Swiss accounts. Instead, DOJ may have locked itself into a process which cedes control of the information flow to Swiss officials and courts, and denies DOJ the opportunity to employ U.S.-based authorities and remedies to obtain withheld information.

During the more than two years of negotiations, DOJ slowed its investigative and prosecutorial efforts related to both the Swiss banks and their U.S. clients. In the four-year period between 2009 and 2013, not a single John Doe summons directed to a Swiss bank sought materials in Switzerland such as U.S. client names and account information. In almost three years, DOJ has not attempted to enforce a single grand jury subpoena against a Swiss bank. With the exception of Wegelin, DOJ has not indicted any of the 14 banks it has been

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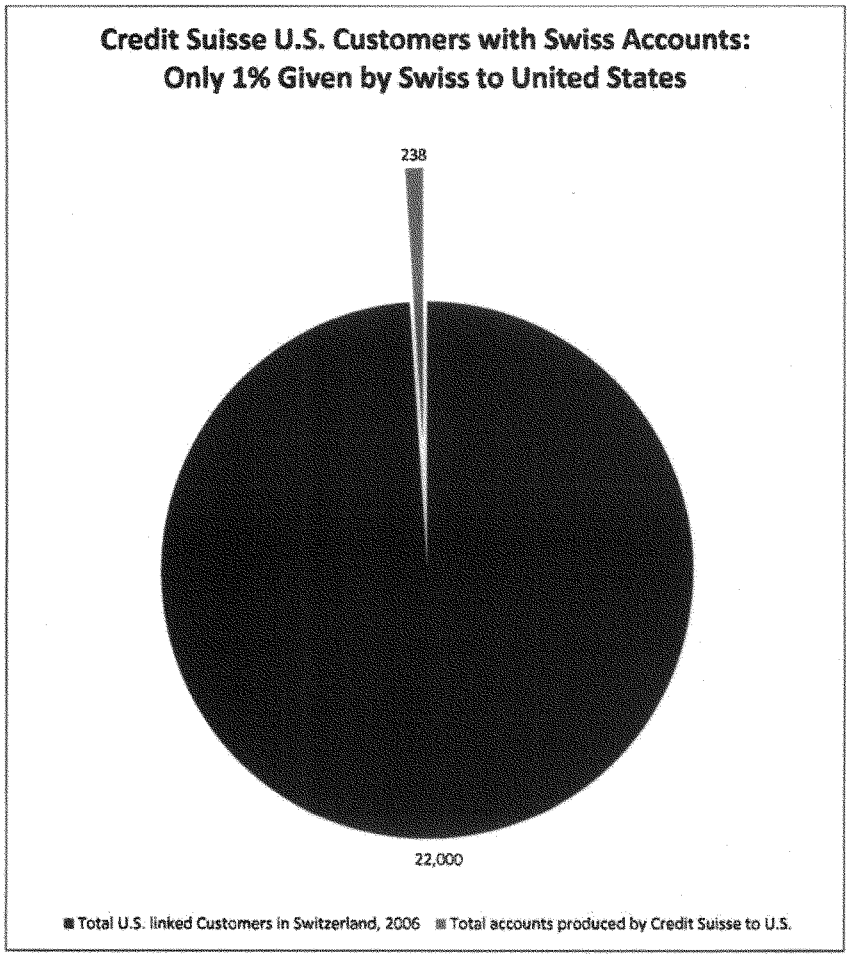
[896] Id.

investigating for years, even though at least one target letter indicated that the DOJ believed it had substantial evidence to indict a major Swiss bank back in 2011. Apparently, not a single extradition request has been made public to test Switzerland's professed willingness to stop facilitating tax evasion. DOJ seems to have abandoned its effort to secure client names and account information directly from any of the Swiss banks or to use U.S.-based remedies to do so.

DOJ's recent record of lax enforcement stands in stark contrast to its innovative and successful effort in holding UBS accountable for aiding and abetting U.S. tax evasion. It is also puzzling in light of the massive tax revenues still owed and uncollected. DOJ's failure to use U.S. enforcement tools and its decision to go along with Swiss demands that Swiss banks be excused from providing U.S. client names, not only fail to reflect U.S. values favoring bank transparency and taxpayer honesty, but also set a troubling precedent for how DOJ will approach other offshore banks around the world that facilitate U.S. tax evasion.

# # #

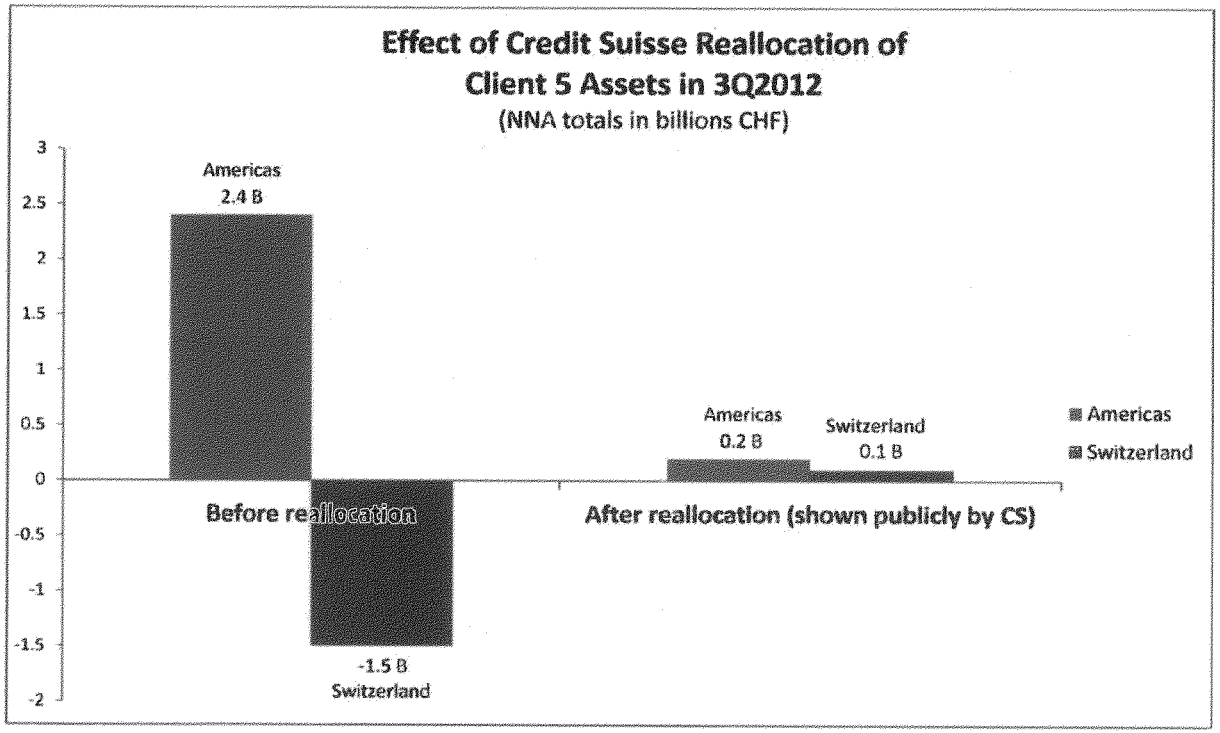


Sources: Credit Suisse Report to the Permanent Subcommittee on Investigations (2/6/2014); Subcommittee Briefing by Credit Suisse (1/16/2014).

Permanent Subcommittee on Investigations
EXHIBIT #1a

Permanent Subcommittee on Investigations

EXHIBIT #1b



Sources: "After reallocation (shown publicly by CS)": 10/25/2012 Credit Suisse Third Quarter Earnings Presentation, slide 10. "Before reallocation": 10/25/2012 email from Richard Aeschlimann to Dale Miller and others, "NNA Q3 2012," CS-SEN-00443246 ("50/50 split of the NNA generated with [Client 5] between Americas and Switzerland. CHF 1.6bn was deducted top-side on a regional level (credit to Region Switzerland);" see also "Performance Reporting EIS," CS-SEN-00454941 at 944, showing 2.4 billion CHF NNA for Americas, 3rd Quarter, 2012.

From: Bagios, Chris (CSPA)
To: [redacted]
CC: [redacted]
Sent: 3/3/2010 4:33:51 PM
Subject: RE: Account Instructions

[redacted] = Redacted by the Permanent Subcommittee on Investigations

Dear [redacted]

I truly appreciate your swift and candid response. In that case, [redacted] proceed as necessary, in order to facilitate a timely conclusion of the issue on your side.

It will certainly be a pleasure to welcome you as a client, should you opt to knock on our door again in future times.

With my best wishes,

Chris

From: [redacted]
Sent: Wednesday, March 03, 2010 4:18 PM
To: Bagios, Chris (CSPA)
Cc: [redacted]
Subject: RE: Account Instructions

Dear Chris;

Thanks for your e mail, but this is not on advise on the attorney but based on the amount of the fine. The IRS has notified that they will impose the tax and full penalties, and if the penalties are contested they will kick you out of the voluntary program. At this point I feel that I will need all the money to pay taxes and penlaties based on other accounts that I have in Switzerland.

I will proceed to send the notification to Rolf via courier.

Best regards
[redacted]

From: "Bagios, Chris (CSPA)" <chris.bagios@credit-suisse.com>
To: [redacted]
Cc: [redacted]
Date: 03/03/2010 04:32 AM
Subject: RE: Account Instructions

Dear [redacted]

I regret to hear that you decided to close the account with CS. As the account is not with CS Private Advisors yet, but is still being serviced by [redacted] (whom I am cc'ing on this mail), I am not able to proceed with the account closing and transfer.

Nevertheless, do let me know if you agree to discuss the reasons for your decision; I trust that we can address concerns pertaining to the continuation of the relationship out of Zurich, which I would very much hope for. I am particularly interested in discussing whether your attorney or the IRS directly concluded that the assets have to be repatriated.

Permanent Subcommittee on Investigations
EXHIBIT #2

[redacted] will take the necessary steps for the account closing (hence I am forwarding your letter of instructions to him with this mail), should you, despite our conversation, opt to terminate the relationship in any case.

Thank you and best regards

[redacted] = Redacted by the Permanent Subcommittee on Investigations

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Head Relationship Management
US West Coast
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From: [redacted]
Sent: Tuesday, March 02, 2010 8:26 PM
To: Bagios, Chris (CSPA)
Subject: Account Instructions

Dear Chris;

I have decided to close the account and transfer the money, enclosed are the instructions in PDF format and I have also sent the same via fax.

best regards,
[redacted]

----- Forwarded by [redacted] 03/02/2010 02:24 PM -----

From:	[redacted]
To:	[redacted]
Date:	03/02/2010 02:23 PM
Subject:	Message from KMBT_C253

==========
Please access the attached hyperlink for an important electronic communications disclaimer:
http://www.credit-suisse.com/legal/en/disclaimer_email_ib.html
==========

[redacted]

To: Waknine, Raphael (Avi) <raphael.waknine@credit-suisse.com>
From: Haering, Joseph </O=CREDIT-SUISSE/OU=GL/CN=RECIPIENTS/CN=CR.JOSEPH.HAERING>
Cc:
Bcc:
Received Date: 2008-10-24 10:38:22 EST
Subject: RE: Numbered Accounts

There are other means to do the very same.....

If he wants to put away some funds without his family knowing, that is no problem at all. I can arrange that with a regular account and a retained correspondence.

He needs not to disclose anything to anyone. He has the choice of disclosing it to the US authorities or not. It is his choice! Whatever he does is of no concern to us. If he opts not to disclose his SSN, he is simply barred from purchasing US ISIN instruments (www.sec.com Edgar List).

Naturally, there are reasons to have a full disclosure, especially once one considers a settlemet of her/his (in the far future, we hope) estate. If he calls me, I can explain it all to her/him.

Investments are the easiest part of the deal, although, there are some restrictions. Considering the markets, one wants to sit on the 'fence' anyway.

I'll be off in aboput 20 minutes but I shall reaspond on monday. My team is responsible for US and EU accounts; smaller account from about 250K to max 10Mio.

Looking forward to hearing from you

Joey

From: Waknine Raphael (CS)
Sent: Friday, October 24, 2008 5:08 PM
To: Haering Joseph (SIOA 532)
Subject: RE: Numbered Accounts

I like the Dinosaur metaphore !

In brief, his money is legit but I think he wants to stash some money away and nobody from his family should know about it.

In terms of risk-taking, and taking into consideration the current markets, he doesn't expect high returns; probably a preservation of capital. He's interested in Equities so far with little knowledge about Financial products.

The last time he asked me if it was possible to open an account with Credit Suisse (after mentioning the Dinosaure requirement), I let him know that with the US Regulations, every account opening is associated with full identity disclosure and that it was not possible.

Getting to know you personally Joey can bring me more knowledge about how this works in Zurich.

From: Haering, Joseph
Sent: Friday, October 24, 2008 10:46 AM
To: Waknine, Raphael (Avi)

Permanent Subcommittee on Investigations
EXHIBIT #3

Subject: Numbered Accounts

Hello Raphael,

Yes, those dinosaurs do exist, however, they no longer have the bite they used to have. Le me explain.

Between you and I, these account are more trouble than they are worth. The cost to keep them is exorbitant; 2250.00 Swiss Francs p.A. (about USD 2000). Your identity remains a secret only as long as you deal strictly with cash. You must do the cash deals with the relationship manager and that only in Switzerland. Naturally, the due diligence restricts many cash deals..... to say the least.

The moment you make any transactions, which may involves a correspondence bank outside Switzerland, your privacy may come to an (crashing!) end.

What does the customer expect from such an account? Most still have the notion of the old Tyrannosaurus Rex it used to be prior to 9/11 :)!!

I wish you a great weekend

Joey

Joseph Haering
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International Private Clients, SIOA53
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joseph.haering@credit-suisse.com
http://www.credit-suisse.ch

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Business Trips 2006

Month	RM	Date	Place	Main Purpose	
January	RM29 RH	14. – 21.	Miami, New York	Invitation to Golf Event in West Palm Beach; Retention; RO visit	
February	RM29 RH	09. – 16.	New York	Swiss Ball, organized by Swiss Society of New York; RO visit; Retention	
March	RM29 RH	29. – 31.	LA, SF, Vancouver, Toronto, Montreal	Meetings with PCS – ONE Bank, Retention; Introductions	
April	RM29 RH	01. – 07.	LA, SF, Vancouver, Toronto, Montreal	Meetings with PCS – ONE Bank, Retention; Introductions	
	RM02 Senior	17. – 30.	California (LA, SF, San Diego)	Retention; Introductions	
	RM19	23. – 30.	New York, Chicago	Retention; Introductions	
	RM29 RH	30. – 30.	New York, Boston, Durham	Reconquista; Retention	
May	RM19	01. – 06.	New York, Chicago	Retention; Introductions	
	RM29 RH	01. – 06.	New York, Boston, Durham	Reconquista; Retention	
	RM29 RH	09. – 10.	Budapest	Referral	
	RM22 SH DRH	07. – 20.	Miami, New York	Retention; Introductions	
	RM13 Senior	14. – 25.	Canada (Montreal + Toronto)	Retention; Introductions	
June - August			no trips planned		
September	RM29 RH	*10. – 22.*	*New York, LA, Vancouver*	*RO visit; Retention, Introductions*	*tbc*
	RM13 Senior	*17. – 30.*	*Canada (Montreal + Toronto)*	*Retention; Introductions*	*tbc*
	RM19	*24. – 30.*	*New York*	*Retention; Introductions; Reconquista*	*tbc*
October	RM19	*01. – 07.*	*New York*	*Retention; Introductions; Reconquista*	*tbc*
	RM02 Senior	*15. – 29.*	*California (LA, SF, San Diego)*	*Retention; Introductions; Reconquista*	*tbc*
	RM12	*22. – 28.*	*New York*	*Retention; Introductions*	*tbc*
	RM22 SH DRH	*22. – 31.*	*New York*	*Retention; Introductions*	*tbc*
November	RM22 SH DRH	*01. – 05.*	*New York*	*Retention; Introductions*	*tbc*
	RM29 RH	*03. – 11.*	*Bahamas, New York*	*Invitation to Golf Event in Nassau; Retention*	*tbc*
	RM22 SH DRH	*03. – 11.*	*Bahamas, Miami*	*Invitation to Golf Event in Nassau; Retention*	*tbc*
December	*none*		*no trips will take place in December*		

Permanent Subcommittee on Investigations
EXHIBIT #4a

Business Trips 2006

Month	RM	Date	Place	Main Purpose
January	RM17 Senior	Jan 25-26	Italy	prospecting new clients and retention
February	RM17 Senior	6-8th	Dubai	Acquisition & Introduction
		20th	London	Acquisition & Introduction
	RM20 SH	20-21	South Africa	Retention & Consolidation, NNA, New Investment
March	RM20 SH	17.	Ivrea	Consolidation relation & New Investments
	RM17 Senior	2nd / 13th	Italy	acquisition & Introduction
	RM21	20	Paris	Retention
April	RM20 SH	21	Forte dei Marmi	Retention and proposal for a LP
	RM17 Senior	5-6th	Spain	acquisition
		12-14	Italy	acquisition
May	RM20 SH	25-26	Siena-Pienza	5 visits for new investments & retention
	RM17 Senior	4-5	Italy	Acquisition & Introduction
		26-29	Montecarlo	prospecting new clients and retention
June	RM20 SH	19	Florence & Torino	3 visits New investments and retention
	RM17 Senior	12-13	Spain	prospecting new clients and retention
July	RM20 SH	7	Siena-Florence	New prospect and existing client retention
	RM21	5-19	New York, Toronto, Montreal,	Introduction, and existing client retention
	RM25	5-18	New York, Toronto, Montreal,	Introduction, and existing client retention
August	RM20 SH	14-15	Siena-Florence -Forte dei Marmi	New prospect and existing client retention

September	**RM20 SH** **RM17 Senior**	14-15	Siena-Florence -Forte dei Marmi *London, Italy*	New prospect and existing client retention
October	**RM20 SH** **RM17 Senior**	23-27	New York, LA, Vancouver	Client retention and introduction *Prospecting New clients*
November	**RM20 SH** **RM17 Senior**	1-5	Miami –Bahamas	Retention & Invitation Golf event
December	**RM20 SH** **RM17 Senior**	28-29	Italy Spain – Italy	Introduction

Business Trips SALN und SALN1 2007

Month	RM	Date	Place	Main Purpose
February	RM29 RH	2.-7.	New York	Swiss Ball (SS NY)
March	RM29 RH	18.-1.4	NY, BOS, CHI, TOR, MON	Key Client Visits
April	RM22 SH DRH	29.-11.5	New York, Baltimore, Boston	Client Retention
May	RM13 Senior	13.-24.	Toronto, Montreal	Key Client Visits
June	RM29 RH	20.-1.7.	Buenos Aires, Vancouver	RO Conference, Key Client Visits
	RM22 SH DRH	8.	Barcelona	Client Retention
		20.-28.	Buenos Aires, Miami	SAL Conference in Buenos Aires, Client Retention
	RM02 Senior	6.-18.	Los Angeles	Key Client Visits, Client Retention
July	RM29 RH	29.-1.8.	New York	Key Client Visits, Client Invitation
	RM12	18.-19.	Athen	Retention, Client Invitation
August	RM29 RH	15.-18.	Montreal, Toronto	Key Client Visits
September	RM29 RH	22.-28.	New York, Toronto, Montreal	Key Client Visits
	RM13 Senior	16.-27.	Toronto, Montreal	Key Client Visits
October	RM22 SH DRH	28.-12.11	New York, Miami, Nassau	Client Retention, Golf Event Bahamas
	RM02 Senior	3.-10.	Los Angeles	Client Retention
	RM06	13.-20.	Los Angeles, New York	Client Retention
	RM19	7.-13.	Boston, New York	Client Retention
November	RM29 RH	6.-15.	New York, Nassau	SAL DU, Golf Event, Key Client Visits

RM29 RH

Permanent Subcommittee on Investigations
EXHIBIT #4b

Business Trips SALN und SALN1 2008

Month	RM	Date	Place	Main Purpose
January	RM29 RH	30.-3.2.	New York	Key Client Visits, based on Invitation, Swiss Ball (SS NY)
February	RM29 RH	24.-11.3.	SF, LA, NY, TOR, MON	Key Client Visits, based on Invitation
	RM03	24.-8.3.	San Francisco, Los Angeles, New York	Invitations of Clients, Social Visits, Introduction
March	RM22 SH DRH	30.-12.4	Miami, Cancun, Charlotte, New York	SAL Conference Cancun, Client Retention
May	RM15	14.-21.	Toronto, Montreal	Client Retention
	RM13 Senior	12.-24.	Toronto, Montreal	Client Retention
June	RM29 RH	25.-27.	Vienna	Semi-Final EM with Client
July	RM29 RH	8.-12.(tbd)	New York	SAL Intl. Mgmt Meeting, Key Client Visits
September	RM29 RH	14.-27.	New York, Mexico, tbd	SAL DU, Key Client Visits
	RM13 Senior	tbd	Vancouver, Toronto, Montreal	Client Retention
October	RM29 RH	3.-5.	New York	SALN DU
	RM15	1.-10.	Vancouver, Calgary, Toronto, Montreal	Client Retention
November	RM29 RH	2.-16.	New York, Nassau, tbd	Golf Event, Key Client Visits
	RM22 SH DRH	14.-16.	Nassau, (tbd)	Golf Event

RM29 RH

Permanent Subcommittee on Investigations
EXHIBIT #4c

Business Trips SALN2 2007

Month	RM	Date	Place	Main Purpose
January	RM20 SH	25.	Stresa (I)	Visit Existing Client
	RM17 Senior	7.	Miami	Client Invitation and Retention
February	RM20 SH	22.	Milano	CS Milano and Addvision
	RM17 Senior	1.	Milano, Bari	Client Retention
		19.	Milano	Client Acquisition
March	RM20 SH	22.	Paris	Client Acquisition
	RM18 Senior	30.	UK	Client Retention
April	RM20 SH	5.	Torino	Client Retention
	RM25	26.	London	Client Retention
	RM17 Senior	4.	Miami	Client Invitation
		16.	Basel, Zurich	Client Retention
		24.	Bruxelles	Client Retention
May	RM20 SH	11.	Como	Client Retention
	RM18 Senior	15.-30.	USA, CAN	Client Retention
June	RM18 Senior	26.	France	Client Retention
	RM25	4.-11.	Montreal, Toronto	Client Retention, Formula 1
	RM17 Senior	14.	Paris, Ancona	Client Retention and Acquisition
July	RM20 SH	2.-3.	Italy	Client Retention
		31.	Italy	Client Retention
September	RM20 SH	28.	Italy	New a/c and Existing Clients
	RM17 Senior	21.	London	Client Acqusition, Italian Client Retention
October	RM20 SH	4.	Italy	Client Retention
November	RM20 SH	7.-15.	Miami, Nassau	Client Retention, Golf Event
		28.	Como	Client Retention
	RM17 Senior	22.	Paris	Client Acquisition

RM29 RH

Business Trips SALN2 2008

Month	RM	Date	Place	Main Purpose
January	RM17 Senior	25.-26.	Italy	Client Acquisition
	RM20 SH	12.-16.	France	Client Acquisition, Retention
April	RM20 SH	6.-9.	Miami	Client Retention
May	RM20 SH	14.	Italy	Client Retention
	RM18 Senior	8.	UK	Client Retention
	RM17 Senior	23.-26.	Monte Carlo	Client Retention
November	RM20 SH	14.-16.	Nassau (tbd)	Golf Event

RM29 RH

TRAVEL REPORT SUMMARY

Copy to SWL

GENERAL DATA

Name of RM, Instrad	RM29 RH
Trip number in current year	2
Destination of travel	New York
Date of travel (from ... until ...)	09 - 16.02.2006
Total cost of travel (in CHF)	CHF 8,000
thereof cost for hotel (in CHF)	CHF 4,400
thereof cost for flight (in CHF)	CHF 3,109

CLIENTS / PROSPECTS VISITED

	number	amount in CHF (= AuM with us)
Clients covered	20	CHF 80,000,000
Prospects visited (at least 25% of visits)	2	

SUCCESS STORY

	number	amount in CHF
New clients opened	3	CHF 12,000,000
Referrals received		
NNA		CHF 12,000,000
WF		
WA		
Inhouse Trust		
Sales of funds and similar high-yielding products		
Credits		CHF 2,000,000

COMMENTS, HINTS & TRENDS (eg Competitors, Products, Pricing, Market/Politics)

Invitation to the Swiss Ball in New York

regular RO New York visit

Key Clients visited

successful meetings overall

Retention

new Referrals

Form Dec-2002/ df3275d6-88b2-4044-af6a-a

Permanent Subcommittee on Investigations
EXHIBIT #5a

TRAVEL REPORT SUMMARY — Copy to SWL

GENERAL DATA

Name of RM, Instrad	RM19
Trip number in current year	1
Destination of travel	New York, Philadelphia, Chicago
Date of travel (from ... until ...)	from 23.4 - 03.5.2006
Total cost of travel (in CHF)	CHF 12'700.--
thereof cost for hotel and Div. (in CHF)	CHF 6'350.--
thereof cost for flight (in CHF)	CHF 4'035.--

CLIENTS / PROSPECTS VISITED

	number	amount in CHF (= AuM with us)
Clients covered	42	80'000'000.--
Prospects visited (at least 25% of visits)		

SUCCESS STORY

	number	amount in CHF
New clients opened		
Referrals received		
VVF		
VVA	2	CHF 685'000
Inhouse Trust		
Sales of funds and similar high-yielding products		CHF 1'250'000
Credits		

COMMENTS, HINTS & TRENDS (eg Competitors, Products, Pricing, Market/Politics)

This trip had the following main purposes:

- to see as many clients as possible and to introduce myself
- retention of existing clients and increase NNA's
- to increase participation of Funds

Clients apprec. the visit - for some it was the second time they saw me. Will have follow-up business, in pipline NNA CHF 3'000'000.--.
On client just sent me USD 150'000.--.

Nearly all clients informed me that they are still contacted by RM01 and asked to move the assets to the new bank. (Sends cards as well). Clients are happy with the performance of the mandates. Made as well two profile-changes with clients who had USD - Ex. mandates. However, was informed that UBS has a very good performance in their mandates as well. Noticed that clients in NY and Chicago are unhappy with the existing political situation.
Inflation seems to be a big topic. Many anticipate that the interest-rates in the US are going up much further. People are not really afraid right now of another war - the reason is that the US simply cannot afford it.

Form Dec-2002/ travel_06 rep_Summary.xls

Permanent Subcommittee on Investigations
EXHIBIT #5b

Aktennotiz

Geht an / To RM22 SH DRH	Absender / Sender RM19
Zu Handen / Attention RM22 SH DRH	Direktwahl / Direct line ++ 41 44 334 72 88
Telefon-Nr. / Telefax No	Telefax-Nr. / Telefax No. 01141 1 211 14 10
Betrifft / Re Antrag Geschäftsreise	Anzahl Seiten (inklusive diese Seite): Number of pages (incl. this page):

- ☐ Gemäss Vereinbarung / As agreed
- ☐ Auf Ihren Wunsch / As requested
- x Zur Stellungnahme / Comment required
- ☐ Zum Besprechen / For discussion
- ☐ Wir bitten um Ihren Anruf / Please call

Datum / Date / Data / Date: 15.03.06

Mit freundlichen Grüssen / Yours very truly

Bemerkungen / Comments

Business Trip New York, Philadelphia – Chicago

Ziel der Reise:	Retention, Erhöhung Anteil VVA 3 Mio.CHF; new NNA 3 Mio.CHF, Funds SIP's ca. 2 Mio. CHF, Profilwechsel
Zeitraum:	23.4. – 3.5.2006 in NY-Philadelphia, 4.5. – 5.5.2006 in Chicago
Flug:	noch offen
Teilnehmer:	RM19
Reiseroute:	New York u. Umgebung, Chicago
Anzahl Meetings:	ca. 40
AuM:	80 Mio. CHF
Kosten:	ca. CHF 11'000

MW 242150 1.98

V13 RM29 RH RM22 SH DRH

detailed plan to present

TRAVEL REPORT SUMMARY | **Copy to SWL**

GENERAL DATA

Name of RM, Instrad	RM22 SH DRH
Trip number in current year	1
Destination of travel	Miami, New York, Houston
Date of travel (from ... until ...)	07. - 20.05.2006
Total cost of travel (in CHF)	CHF 13'000
thereof cost for hotel (in CHF)	CHF 5'000
thereof cost for flight (in CHF)	CHF 4'600

CLIENTS / PROSPECTS VISITED

	number	amount in CHF (= AuM with us)
Clients covered	40	CHF 160'000'000
Prospects visited (at least 25% of visits)	3	

SUCCESS STORY

	number	amount in CHF
New clients opened	2	CHF 2'300'000
Referrals received		
NNA DIPs	7	CHF 50'000'000
WF		
WA		
Inhouse Trust		
Sales of funds and similar high-yielding products		
Credits DIPs	1	CHF 6'000'000

COMMENTS, HINTS & TRENDS (eg Competitors, Products, Pricing, Market/Politics)

Goals:
- Discussion of succession planning with regard to retention management
- Retention and strengthening relationship to existing clients
- Generate new DIPs, closing existing DIPs
- 2nd meeting with major prospect client
- Visit of RO NY as deputy of the Regional Head North America Offshore
- Solve Formalities issues as well as APEN pendings

Achievements:
- Key clients visited
- Referral received from Dallas Office
- 2 new a/c opened
- NNA received: CHF 2,3 Mio.
- DIP: NNA 50 Mio. (24,5 Mio. EUR, 10, 5 Mio. USD), Credit 6 Mio CHF
- Formalities issues and APEN Pending solved
- additional business with regard to increased TOIs were achieved
- Visit very appreciated by all clients; it's important to stay close to the clients

Form Dec-2002/ RM22 SH DRH May 2006.xls

1/15

RM29 RH

Permanent Subcommittee on Investigations
EXHIBIT #5c

Reise Chicago, Tampa, Jupiter, Miami, Bahamas, New York
5.11.06 bis 17.11.06

Spesenabrechung RM22 SH DRH

	Amexco USD	Amexco CHF		Total Amexco
Flugkosten				
Zurich-Chicago; New York-Zurich		3'571.50		
Miami-Nassau Chicago-Tampa		377.50		
Miami-Nassau		400.00		
Nassau-New York		605.00	**4'954.00**	
Hotelkosten				
Rith Carlton, Chicago		408.00		
O'Hare Hilton, Chicago		409.55		
The Jupiter Beach Resot		619.15		
Four Season, Miami		603.40		
Atlantis, Bahamas (inkl. Kundenzimmer Bahamas)		3'293.85		
New York Palace, New York		2'225.85	**7'559.80**	
Verpflegungskosten				
Diverse Kundenessen		3'686.38	**3'686.38**	
Diverse Auslagen				
Geschenke		60.55		
Power Boat Bahamas		483.70		
Car Rental Hertz		392.50	**936.75**	
Total Amexco-Belastung Total Amexco Mai / Juni 06 für Reise				**17'136.93**
Vorbezüge				
Vorbezug USD	**800.00**			
Cash Restbestand bei SWLN 1	**-43.40**	756.60		
Diverse Taxis gemäss sep. Belegen	-244.90			
Zug New York-Washington-New York	-49.07	-293.97		
Cash Restbestand bei SWLN 1	**462.63**			
Barauslagen USD		**293.97**		**374.08**
Total Kosten Business Trip November 2006				**17'511.01**

TRAVEL REPORT SUMMARY

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GENERAL DATA

Name of RM, Instrad	**RM25**
Trip number in current year	1
Destination of travel	Miami, New York, Toronto, Montréal
Date of travel (from ... until ...)	04.07.2006 - 19.07.2006
Total cost of travel (in CHF)	CHF 15'750.02
thereof cost for car (in CHF)	
thereof cost for hotel (in CHF)	CHF 7'131.77
thereof cost for flight (in CHF)	CHF 5'160.50

CLIENTS / PROSPECTS VISITED

	number	amount in CHF (= AuM with us)
Clients covered	34	CHF 54'000'000.--
Prospects visited (at least 25% of visits)	10	potential of CHF 15'000'000.--

SUCCESS STORY

	number	amount in CHF
New clients opened	2	CHF 6,000,000
Referrals received	6	
VVF	3	CHF 3'600'000
VVA	0	
Inhouse Trust	0	CHF 0
Sales of funds and similar high-yielding products	2	CHF 600,000
NNA	2	CHF 6,000,000

COMMENTS, HINTS & TRENDS (eg Competitors, Products, Pricing, Market/Politics)

[redacted] Client is happy with the decision to sell the Emerging Funds two months ago. He asks me to invest 300'000 USD in the podium note. I need to contact him when I am back in order to invest some cash in China, India and New Energy Funds.

[redacted] Prospect client. They are introduced by [redacted] client expected to sell some flats in a real estate project they want maybe to work with us. Potential of NNA 2 Millions USD each. Clients show me the plans of the project.

[redacted] Visit of [redacted] to the hotel with five friends (neighbours). The client wants to make in the future some currencies transactions. He expected to send us before the end of the year 500K USD. We make a presentation to the friends (6) [redacted] regarding our services and the possibilities of investments. Prospects are very surprised and 2 clients are really interested to open an account with us but declare.

[redacted] Client is not so happy with the performance of the mandate he expected better results for the next year. I explain him the problems with the corrections of shares market during the last months and the repercussions on the price of the US bonds regarding the political strategy of the FED.

[redacted] Client is coming with his wife. As I understand the money is managed by the husband but the BO is the wife. They are ok with the perf. But they want to change the profile of investments and come more Growth. Client sends me a list of shares that we need to give our recommendations!

[redacted] Client is coming with his mother (B.O) they are very happy with the perf. of the EM

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Permanent Subcommittee on Investigations
EXHIBIT #5d

[redacted] Client is coming with his mother (B.O) they are very happy with the perf. of the PM during the last years. Unfortunately they will need some cash in the future. I propose to to make a loan. Client will thing about this possibility.
[redacted] Client I happy with the structures that he has with us. I need to send him a simulation of loan in CHF hedging by an option CHF/USD. I need also to send him the conditions for the boat leasing because he want to buy a yacht for 2 millions usd. The client was very happy to meet me! He wants to introduce me some friends when I will be in [redacted]
[redacted] Client is happy with the perf. He wants maybe to sell the Pharma Funds. He expects to be in Geneva very soon.
[redacted] The client has created is own company. I need to send him a statement when I am back in Switzerland. The client expects to sell the family house in [redacted] for 1 millions USD and send us the funds.
[redacted] Client has introduce me the director of [redacted] in NY I need to contact him when I am back. He his maybe interested to open an account with us. [redacted] has a lot of connection and relationships in New York.
[redacted] Client is happy with the perf. of the Greece shares and [redacted] He will be in Geneva at the end of September.
[redacted]. Client is coming with her father. We discuss about watches and [redacted] He is ok with the perf. of the mandate.
[redacted]. Client is coming alone. She wants maybe to change some USD again EURO in the future. She will introduce me to her husband before the end of the year. Her husband has a [redacted] company in [redacted] states in the USA.
[redacted] Try to sell a mandate. But she wants to discuss with her son who works with [redacted] in N.Y.
[redacted] New prospect client. Potential of 1'000'000 USD she has an [redacted]
[redacted] Meeting with the asset introductory. He works for a [redacted] This company is used by my biggest client. They are very happy with our service and they will continue to work with us in the future. Next trip I will introduce [redacted] RM20 SH
[redacted] Discussion about the USA. Client is happy with the relation that he has with [redacted] and the PM
[redacted] Client will send you before the end of the year an amount of 4'000'000 USD. He want to change is profile in Growth. Client introduces us to few prospect clients.
[redacted] Famous accountant [redacted] He is the accountant of [redacted] He will send you some new client in the future.
[redacted] Director of the biggest [redacted]. He want to open an account with us for an amount of 3'000'000 USD. We make a presentation of our services.
[redacted] Client is happy with the performance of the mandate. He will contact [redacted] before the end of the year.
[redacted] Client is coming to the hotel in Toronto. He gives me the form regarding the new relation and he signs a Mandate VVF for 570'000 USD.
[redacted] Retention. Happy with the perf. of the Mandate. He wants to call [redacted] during the next week.
[redacted] We make a look over of the portfolio. He is happy about the last rates of the fiduciary.
[redacted]. We sign a new mandate for 500'000 CHF.
[redacted] We make a look over the portfolio and a presentation for the mandate. The client comes in December in order to sign the documents for the mandate (4'000'000 USD).
[redacted] Happy with the perf. of the mandate. After one year he wants to continue the mandate.
[redacted] Not very happy with the rates of the Fiduciary investment. After some discussion he decides to continue to invest with us.
[redacted] Visit of the company and introduction to [redacted] Client still happy with our services and we open an account [redacted]
[redacted] Try to sell some products but the client wants to continue the T-Bill.
[redacted] Sold 100'000 USD of Podium Note. He wants to send us a bank draft for 121'000 USD.
[redacted]. Not very happy with our services. I explain him that he can not have a service of Private Banking with an amount of 100'000 CHF. He will call me back in Geneva in one month.
[redacted] Client introduce me her son. He opens an account with us and he will transfer an amount of 350'000 EURO.
[redacted] Meet the client for the first time and we sign a new Mandate for 2'500'000 USD.
[redacted] Meet the client for the first time. We discuss about the portfolio and the possibility of investment in Taiwan.

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TRAVEL REPORT SUMMARY

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GENERAL DATA

Name of RM, Instrad	**RM21**
Trip number in current year	2
Destination of travel	Houston, L.A., Reno
Date of travel (from ... until ...)	20.09.06 to 02.10.2006
Total cost of travel (in CHF)	CHF 11,500
thereof cost for hotel (in CHF)	CHF 4,000
thereof cost for flight (in CHF)	CHF 5,500

CLIENTS / PROSPECTS VISITED

	number	amount in CHF (= AuM with us)
Clients covered	28	CHF 65,000,000
Prospects visited (at least 25% of visits)	7	

SUCCESS STORY

	number	amount in CHF
New clients opened	3	CHF 4,000,000
Referrals received	3	
NNA		CHF 5,200,000
VVF	2	CHF 3,500,000
VVA		
Inhouse Trust		
Sales of funds and similar high-yielding products		CHF 200,000
Credits		

COMMENTS, HINTS & TRENDS (eg Competitors, Products, Pricing, Market/Politics)

Houston [redacted] Continuation of the July meeting. Saw Ex-wife and Grand-Parents. Opened 2 joint accounts for a total of 4mio usd over 2 years. Very good contact. Offshore/Trust structre to be suggested in 1-2 years. [redacted] First meeting since takeover. Little potential but good brokerage fees in tunover. Good contact. [redacted] Rentention. First meeting since takeover. Bought 30k usd of Total return Asia.
LA: [redacted] RM25 client. Portfolio review. Knows some very wealthy people for future referrals. [redacted] RM30 client. Signed for a VVF of 500k chf. Has the same amount in [redacted]. Have to prepare a closing letter that he'll sign and forward to [redacted] Met his son. [redacted] Visited his company. Added 46k eur to VVF. Potential of 1.6 mio usd in UBS for us. To be followed closely. [redacted] Company is getting bigger. Still in the vitamin and personal kit testers business. Strong development in [redacted]. Asking for a funding through the bank. [redacted] Suggested to sell the european financials and go to the Triamant EUR or Podium Note EUR. Have to send him the docs. [redacted] Has transferred Trust to [redacted] but are still interested with our corporate services. Will call me early next year to talk about a new project. [redacted] RM16 Senior Client. Retention. Very happy with the VV performance. Will come next year to see [redacted] No potential. [redacted] Will come in GE in November to open a reported account of 1.5 mio usd and invest in VVA. Will slowly include the unreported account. [redacted] First meeting since takeover. Retention. No potential. [redacted] Whole afternoon with [redacted] Has a company of carpentry and house renovation. Wants to send me some cash through Amexco TC. Met the whole family with kids. [redacted] Passed the whole week-end in his new house [redacted]. It is no use for him to

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Permanent Subcommittee on Investigations
EXHIBIT #5e

transfer his restricted shares because of our high custodian fees. They are worth now 10mio usd but he certifies me that as soon as he will be resigning from [redacted] the shares or the proceeds of their sale will be sent to his account with me. Introduced me to [redacted] that I couldn't see last time. [redacted] is the biggest shareholder of the company. His stake is equivalent to 33mio shares (more than 200 mio usd). He also is willing to wire a part of the sale's proceeds but for now, he doesn't want to sell any. Very good contact [redacted] Met the two client with RM20 SH [redacted] is going to work in collaboration with [redacted] for the sales of collection [redacted] The commission will stay with us. [redacted] is not yet ready to send us money for he is waiting on private equity returns. But he will put us in contact with [redacted] who needs funding through a loan with us. That would be 60 mio usd. To follow closely.

Form Dec-2002/ c01defce-19f8-4698-b474-87be0ec15732

TRAVEL REPORT SUMMARY

Copy to SAL

GENERAL DATA

Name of RM, Instrad	RM29 RH
Trip number in current year	1
Destination of travel	New York
Date of travel (from ... until ...)	2.2. - 7.2.2007
Total cost of travel (in CHF)	CHF 0
thereof cost for hotel (in CHF)	CHF 0
thereof cost for flight (in CHF)	CHF 0

CLIENTS / PROSPECTS VISITED

	number	amount in CHF (= AuM with us)
Clients covered		
Prospects visited (at least 25% of visits)		

SUCCESS STORY

	number	amount in CHF
New clients opened		
Referrals received		
NNA		
WF		
WA		
Inhouse Trust		
Sales of funds and similar high-yielding products		
Credits		

COMMENTS, HINTS & TRENDS (eg Competitors, Products, Pricing, Market/Politics)

Form Dec-2002/ 56916a1b-3556-4f11-985a-

Permanent Subcommittee on Investigations
EXHIBIT #5f

TRAVEL REPORT SUMMARY

Copy to SAL

GENERAL DATA

Name of RM, Instrad	**RM29 RH**
Trip number in current year	2
Destination of travel	S.F., L.A., NY, TOR, MON
Date of travel (from ... until ...)	24.2.-11.3.2008
Total cost of travel (in CHF)	CHF
thereof cost for hotel (in CHF)	CHF
thereof cost for flight (in CHF)	CHF

CLIENTS / PROSPECTS VISITED

	number	amount in CHF (= AuM with us)
Clients covered	49	CHF 230,000,000
Prospects visited (at least 25% of visits)	5 (Canada, QE)	

SUCCESS STORY

	number	amount in CHF
New clients opened		
Referrals received		
NNA		
Discretionary Managment Mandates		
Inhouse Trust / Succession Planning Structures		
Sales of MIPs		
Credits		

COMMENTS, HINTS & TRENDS (eg Competitors, Products, Pricing, Market/Politics)

visits based on invitations:

[redacted] -> SF, CA
[redacted] -> SF, CA
[redacted] > Irvine, CA
[redacted] LA, CA
[redacted] -> LA, CA
[redacted] -> LA, CA
[redacted] -> NY, NY
[redacted] -> NY, NY
[redacted] -> NY, NY
[redacted] TOR, ON
[redacted] TOR, ON
[redacted] MON, QE
[redacted] MON

Form Dec-2002/ 74951a9b-7843-40fc-a176-5

Permanent Subcommittee on Investigations
EXHIBIT #5g

Business Trip Report RM29 RH SALN

February 24 – March 12, 2008 -> San Francisco, Los Angeles, New York, Toronto, Montreal

-> San Francisco

February 24, 2008
Travelling day

15h00: Meeting with [redacted] @ the hotel

February 25, 2008
12h00: [redacted] the hotel for lunch
14h00: [redacted] @ the hotel for coffee
18h00: [redacted] dinner

February 26, 2008
11h30: [redacted] @ the Meridien Hotel for lunch
17h30: [redacted] @ the hotel for drinks followed by dinner with [redacted]
18h30: [redacted] @ the hotel for dinner

-> Los Angeles

February 27, 2008
13h00: Flight S.F. – L.A.
19h30: [redacted] @ the hotel for dinner; prep for intro to [redacted]

February 28, 2008
08h00: to drive from Beverly Hills to Irvine
09h30: [redacted] @ their offices in Irvine; followed by lunch
14h30: to drive back from Irvine to Beverly Hills
18h30: [redacted] for dinner in Beverly Hills followed by meeting @ his place

February 29, 2008
08h00: [redacted] @ the hotel for breakfast
13h00: [redacted] @ The Palm restaurant for lunch
16h30: [redacted] @ the hotel for drinks
19h30: [redacted] @ Mirabelle Restaurant for dinner; prep for intro to [redacted]

March 1, 2008
11h00: [redacted], intro over the phone
16h00: [redacted] in Venice Beach @ the MBT Building (916 Main St, cnr [redacted]
19h00: [redacted] in Santa Monica @ Casa Del Mar for dinner

-> New York

March 2, 2008
09h00: Leaving from the hotel
11h00: Flight L.A. – New York

Confidential Treatment Requested by Credit Suisse CS-SEN-00081903

Business Trip Report

RM29 RH , SWLN

February 24 – March 12, 2008 -> San Francisco, Los Angeles, New York, Toronto, Montreal

19h29: Arrival in New York

March 3, 2008
08h00: [redacted] @ his office
10h00: [redacted] @ the RO
11h30: [redacted] @ the Palace for coffee
14h00: [redacted] @ the [redacted] (207 West, 25th St, 12th flr, betw 7th + 8th Ave)
15h15: [redacted] @ the Roosevelt Hotel
16h30: [redacted] @ the RO
18h00: [redacted] @ the hotel

March 4, 2008
08h30: [redacted] @ the Diner
10h30: [redacted] @ Ch's office
12h00: [redacted] @ the Italian Restaurant for lunch
14h30: [redacted] @ the RO
15h30: [redacted] @ her private club -> meeting was then postponed to March 10, 2008 (RS)
17h00: [redacted] @ the RO
19h00: RM29 RH A18 [redacted] -> dinner

-> Toronto

March 5, 2008
06h00: leaving the hotel
08h40: Flight from New York (La Guardia) to Toronto
12h15: Arrival in Toronto, *with almost 2 hours delay*
13h30: [redacted] ffice
15h00: [redacted] office
17h00: [redacted] @ the hotel
18h30: [redacted] @ the hotel for dinner

March 6, 2008
08h00: [redacted] @ the hotel
10h30: [redacted] office
12h00: [redacted] @ the hotel; (FS)
14h00: [redacted] office
16h00: [redacted] office
18h00: [redacted] @ the hotel for dinner

-> Montreal

March 7, 2008
05h45: leaving the hotel
08h00: Flight from Toronto to Montreal
09h12: Arrival in Montreal
10h30: [redacted] @ their offices

Confidential Treatment Requested by Credit Suisse CS-SEN-00081904

Business Trip Report RM29 RH SWLN

February 24 – March 12, 2008 -> San Francisco, Los Angeles, New York, Toronto, Montreal

15h00: [redacted] @ the hotel
17h00: [redacted] @ the hotel
19h00: [redacted] @ Liverpool House for dinner

Business Trip Report RM29 RH SWLN

February 24 – March 12, 2008 -> San Francisco, Los Angeles, New York, Toronto, Montreal

March 8, 2008
09h00: [redacted] @ the hotel for breakfast
12h00: [redacted] @ the hotel; intro
18h30: [redacted] @ restaurant Melvios for dinner

March 9, 2008
18h00: [redacted] @ the hotel for drinks

March 10, 2008
08h30: [redacted] @ hotel for breakfast
10h00: Conf.Call BoD CSPA
10h30: [redacted]
12h00: [redacted] @ their offices; continuation of meeting with
[redacted]
14h45: leaving for the airport
17h45: Flight Montreal - Zurich

RM29 RH SWLN
March 18, 2008

Important phone numbers

Main numbers			
Name	Info	Phone	Remarks
Security Building	**Kato International**	**212 759 56 10**	**Fax 212 753 5469**
CS Zuerich	Main number	0041 44 333 11 11	
CS Geneva	Main number	0041 22 393 21 11	
CS New York	Main number	212 325 20 00	Eleven Madison Ave., NY 10010
CS Research		212 317 67 00	40th Floor
SASI		212 612 87 00	
CS Rep. Office Miami		305 995 65 37	Arredondo Jose, Heas RO Miami
CSPA Miami	Main number	305 375 84 00	
CSPA Zuerich		0041 44 334 00 40	Isaini Richard, Head CSPA

Credit Suisse Zurich			
Name	Info	Phone	Remarks
SALN Zurich			
Wiesendanger Christian	Head SAL	0041 44 333 96 80	
Arni Andreas Peter	Special Projects SAL	0041 44 334 01 14	
Bessmer Thomas	Special Projects SAL	0041 44 334 09 91	
Schneider Franz	Business Support SALO	0041 44 332 25 32	
Unternaehrer Ruth	Assistant Head SAL	0041 44 333 96 18	Fax 0041 44 333 75 73
Santander Marianne	Events SAL	0041 44 333 98 30	
Zbinden Matthias	FOS	0041 44 333 23 59	
Kury Daniel	FOS	0041 44 333 67 45	
Fax Zürich			Fax 0041 44 211 14 10
Walder Markus	Head North America	0041 44 334 24 31	079 373 79 21
Rueegg Meier Susanne	Sector Head USA-ZH	0041 44 334 73 44	079 290 81 39
Bergantino Michele	RM USA	0041 44 333 98 17	
Beutler Jacqueline	RM USA	0041 44 333 62 89	
Jacoby Enrique	RM USA	0041 44 333 87 65	
Karadag Cueneyt	RM USA	0041 44 334 28 86	
Koutras Michael	RM USA	0041 44 333 98 20	
Kueng Walter	RM Canada	0041 44 333 27 21	
Lerch-Jordan Nicole	RM USA	0041 44 333 43 74	
Luescher Werner	RM USA	0041 44 334 72 88	
Spoerndli Desiree	Assistant S. Rueegg	0041 44 333 98 23	
Costa Nadine	Assistant M. Walder	0041 44 333 40 26	
Etter Esther Ioide	Assistant USA	0041 44 334 73 66	
Graf Patricia	Assistant USA	0041 44 333 43 62	
Schaerrer Alexa	Assistant USA	0041 44 333 63 74	
Willi Sandra	Assistant Canada	0041 44 333 48 12	
Legal Compliance			
Brunner-Peters Rebecca	US Legal Matters	0041 44 334 78 25	
Sturzenegger Jens	US Legal Matters	0041 44 333 83 12	
Flueckiger Stefan	Licenses Rep. Office	0041 44 333 66 50	
Pavelka Andreas	SWLN Compl. contact person	0041 44 334 81 67	
Unger Barbara	US Legal Matters	0041 44 333 26 61	
HR			
Hotline HR PB Int. Admin.	Hotline HR PB Int. Admin.	0041 44 333 05 40	
Sabathy Jürg	HR PB International	0041 44 332 24 17	
Funk Alexandra	HR Assign. Mgmt	0041 44 333 38 98	
Renfer Karin	HR fuer Trainee	0041 44 334 11 32	
IT Rep. Offices			
Hotline IT	Hotline IT	0041 44 334 25 40	
Horvath Beat	IT Support Rep.Off	0041 44 334 77 12	

Permanent Subcommittee on Investigations
EXHIBIT #6

Confidential Treatment Requested by Cr

Important phone numbers

Credit Suisse Zurich			
Name	Info	Phone	Remarks
Miscellaneous			
CS Airport	Harry Fehr	0041 44 804 38 40	open every day 5.30am-8.45pm
Doerig Josef	Doerig Partner	0041 44 209 60 60	external Trust expert
Fossi Anna	Info Lock	0041 44 333 68 28	Find No Acc.
Frei Michael	Non-PB US Clients	0041 44 333 34 97	from USD 100/-
Haller Thomas	US Corp. Clients	0041 44 268 13 61	US Corp. Clients
Heeb Roman	Credits	0041 44 333 56 57	
Hotline Formalities		0041 44 333 23 20	
Isarin Rick	CS Private Advisors	0041 44 334 00 40	
Maestro Card		0041 44 808 16 25	
Meeting rooms ZH		0041 44 334 11 41	for Room Reserv.
Mosimann Fritz	Tax statements	0041 44 332 24 07	
Parking Reservation ZH		0041 44 332 95 61	
Ruettimann Beat	CS Private Advisors	0041 44 333 41 14	
Singenberger Beda	Sinco AG	0041 44 461 31 54	external Trust expert
Travel Department		0041 44 334 18 88	
Wieser Peter	Head Mexico	0041 44 333 51 57	

Credit Suisse Geneva			
Name	Info	Phone	Remarks
Parenti Adami Marco	Sector Head USA-GE	0041 22 391 21 68	079 611 76 00
Bieri Christian	RM North America	0041 22 391 24 82	
Longinotti Buitoni Andrea	RM North America	0041 22 391 37 66	
Lubomirski Stanislas	RM North America	0041 22 391 38 52	
Schefer Florian	RM North America	0041 22 391 31 98	
Zahnd-Greco Claudia	RM North America	0041 22 391 33 49	
Armengol Nicole F.	Assistant	0041 22 391 23 35	078 710 91 69
Steulet Rachel	Assistant	0041 22 391 35 25	
Iranchahr Mona	Assistant	0041 22 391 26 42	
Söess Marianne	Assistant	0041 22 391 33 55	
Rapin Samuel	Assistant Head	0041 22 391 33 50	
Fax US-Desk		0041 22 391 32 50	Fax 0041 22 391 32 50

Swiss American Securities			
Name	Info	Phone	Remarks
Rodriguez Jorge		212 612 86 01	President
Barbalato Ken		212 612 87 18	COO
Chamberlain Bernadette		212 612 88 14	HR
Colazzo Luigi		212 612 87 05	Trading Floor
DeJesus Lucy		212 612 87 00	Receptionist
Intemicola Mary		212 612 88 05	Assistant HR
Mailing Room		212 612 88 75	41st Floor
Pepper Mark		212 612 87 67	Marketing & Sales
Trading room		212 612 87 05	
Wank Ken		212 612 89 01	
Young Jim		212 612 88 79	Logistik

Credit Suisse Research USA LLC			
Name	Info	Phone	Remarks
Lusbach Philipp	Head	212 317 67 05	
Thomas Duncan		212 317 67 04	
Dimitrova Tania		212 317 67 15	
Lynch Monika		212 317 67 09	
Siegel Gregory		212 317 67 06	
Soranno Steven		212 317 67 02	
Williamson David A.		212 317 67 01	

Confidential Treatment Requested by Credit Suisse

CS-SEN-00011616

Weekly Report – Rep. Office New York

For week 45 (11/05/07 - 11/11/07)

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1. Client activities

- Assisting PB USA in Los Angeles in opening Swiss Franc account
- Meeting with client of Jacqueline (wanted to introduce his son-in law)
- Assisting with client of CS Zurich (needed real estate companies in NY)
- Meeting client of SALN (social contact, retention)
- Contact with prospective client from Edmonton (application pending)
- Contact with client of Walter from Toronto (interest rates)
- Assisting client of Niccole (wire instructions to send additional funds)
- Inquiry regarding old account opened at CS New York before branch was closed
- Assisting client of CS Lausanne (questions regarding estate case)
- Assisting client of Michele (possible introduction to CSPA)
- Contact with client of Jacqueline (meeting scheduled for week 47)

2. Visits / Events

- On-site RO visit of SAL and SALN

3. RO / Staff issues

- RO will be closed on Monday due to Banking Holiday (Veterans Day)

4. Info / News

- No info / news in week 45

5. Upcoming Events / Projects / Visits

- Meeting with client of Jacqueline
- Roger attending SAL BC Conference in Zurich Nov 19 and 20
- Swiss Institute Annual Benefit Dinner on Friday

Permanent Subcommittee on Investigations
EXHIBIT #7

Confidential Treatment Requested by Credit Su

Weekly Report – Rep. Office New York

For week 46 (11/12/07 - 11/18/07)

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1. Client activities

- Assisting client of Susanne (meeting scheduled for December)
- Contact with prospective client from Chicago (US$ 3 – 5 Mio)
- Assisting client of CS Buochs (wire instructions for corporate account)
- RO client of Susanne from Boston wired additional funds (US$ 1 Mio)
- Opening of new account for SALN (US$ 6 Mio)
- Contact with client of Jacqueline (questions regarding PoA, rates)
- Contact with client of Werner (added additional funds > US$ 250'000)
- Opening of new account for Susanne from Chicago (> US$ 2 Mio)
- Follow-up with prospective client from Florida (postponed to 2008)
- Meeting with prospective client for Stan (US$ 1 Mio)
- Contact with client of Claudia (TD and currency rates)

2. Visits / Events

- Town Hall Meeting with Tony DeChellis on November 13
- Roger attending Swiss Institute Benefit Dinner on Friday

3. RO / Staff issues

- Roger will be out of the office in week 47
- Rep. Office will be closed on Thursday, November 22 (Thanksgiving Holiday)

4. Info / News

- No info / news in week 46

5. Upcoming Events / Projects / Visits

- Roger attending SAL BC Conference in Zurich Nov 19 and 20

Confidential Treatment Requested by Credit Suisse

Weekly Report – Rep. Office New York

For week 47 (11/19/07 - 11/25/07)

---

1. Client activities

- Opening of new account for Miachal (US$ 1 Mio)
- Opening of new account (son in law of existing client) for SALN
- Contact with prospective client from Oklahoma (US $ 1 Mio) Conf. Call with Roger scheduled for next Monday
- Assisting client of SALN regarding wire instructions
- Assisting client of CS Zurich Flughafen (regarding contact information)
- Several inquiries regarding opening an account (too small)
- Assisting client of CS Zurich regarding wire instructions
- Inquiry regarding an old account with CS Zurich Flughafen
- Contact with prospective client (meeting scheduled for next Tuesday)
- Inquiry regarding selling gold through CS

2. Visits / Events

- No Visits/Events in week 47

3. RO / Staff issues

- Roger was out of the office in week 47
- Rep. Office was closed on Thursday, November 22 (Thanksgiving Holiday)

4. Info / News

- No info / news in week 47

5. Upcoming Events / Projects / Visits

- No specific event / projects in week 47

Confidential Treatment Requested by Credit Suisse

Weekly Report – Rep. Office New York

For week 48 (11/26/07 - 12/02/07)

---

1. Client activities

- Contact with client of Susanne (questions regarding new fee structure)
- Assisting CS Geneva with referral to PB USA (US$ 1 Mio)
- Assisting Jacqueline with document update for one of her clients
- Referred potential client who is selling his company to SALD
- Opening of new account for Michael (> US$ 500'000)
- Contact with client of Susanne from Connecticut (meeting on Monday)
- Contact with client of Michele regarding closing his account
- Inquiry regarding old Swiss Franc banknotes (snb.ch)
- Contact with client of Susanne (questions regarding Euro/US$)
- Meeting with prospective client for SALN (> US$ 1 -3 Mio)
- Contact with client of CS Biel (wire instructions)

2. Visits / Events

- Redacted

3. RO / Staff issues

- Internal Audit of RO will take place from December 12 -14, 2007
- Sandra on vacation on Friday, November 30

4. Info / News

- No info / news in week 47

5. Upcoming Events / Projects / Visits

- Meeting with client of Susanne on Monday

Confidential Treatment Requested by Credit Suisse

To: Schaerer, Roger <roger.schaerer@credit-suisse.com>; Baldwin, Chris <chris.baldwin@credit-suisse.com>
From: Walder, Markus </O=CREDIT-SUISSE/OU=GL/CN=RECIPIENTS/CN=MARKUS.WALDER>
Cc:
Bcc:
Received Date: 2008-07-01 07:50:28 EST
Subject: RE:

Dear Chris
Pls provide Roger with the contact details of your prospective client. Roger will make sure that "person x" will get the right info and the right impression.
Once Roger had contact to "person x", he can give you a brief feedback.
Thanks and regards,
Markus Walder

From: Schaerer Roger (SALN 3)
Sent: Tuesday, July 01, 2008 2:21 PM
To: Baldwin Chris (CS)
Cc: Walder Markus (SALN)
Subject: Re:

Hi Chris,

We do not have any educational or promotional material we could provide to a US person regarding accounts in Switzerland. We are not allowed to actively solicit or promote offshore accounts from or into the United States. However, if your clients wants to call me to learn more about what services can be offered out of Switzerland - he can do that anytime. Please let me know if I can assist you in this regard,

Kind regards,

Roger Schaerer
Senior Representative

CREDIT SUISSE
Representative Office
12 East 49th Street, 40th floor
New York, NY 10017
Phone: (212) 238-5126
Fax: (212) 238-5128
Email: roger.schaerer@credit-suisse.com

From: Baldwin Chris (CS)
Sent: Friday, June 27, 2008 1:52 PM
To: Schaerer Roger (SALN 3)
Subject:

Hi Roger,

Permanent Subcommittee on Investigations
EXHIBIT #8

Confidential Treatment Requested by Credit S

Can you tell me if you have any educational material or articles you could refer to me regarding why one would want a Swiss bank account. I have a new client, as we discussed, that I think has the wrong impression of what the benefits are and I would like to educate them as well as myself.

Christopher J. Baldwin
Director
CREDIT SUISSE
227 West Monroe, Suite 3100
Chicago, IL 60606
(312) 345-6003 (800) 682-4335
fax - (312) 609-3503
chris.baldwin@credit-suisse.com

==========
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CREDIT SUISSE

CSG Internal Audit

PB Americas

Representative Office New York

Executive Summary

Report CS-2008-22
February 7, 2008

Materiality

	A	B	C	D
4				
3				
2				
1	X			

Rating

Significant Reputational Risk Issues

None

Significant Repeat Issues Not Adequately Addressed

Yes ☐ No ☒

SOX Relevant Matters

N/A

Relevant Divisions/Regions

	PB
Americas	

Audit Contacts

Ronald Ortiger +41 44 333 27 17
André Renggli +41 44 333 31 43

Background Information

The Representative Office (RO) New York operates under a license from the Banking Department of the State of New York. The RO is limited to engaging in representational and administrative functions and is primarily a point of contact for clients and prospective clients of Credit Suisse in the United States. The RO New York is staffed with two employees and is managed by Roger Schaerer, reporting to Markus Walder, Head PB North America International, based in Zurich.

Audit Results and Main Recommendations

The overall control environment was found to be operating effectively.

Comments by Senior Management

Markus Walder, MDR, Head PB North America International, SALN – Management agrees to the content of this report and refers to the respective comments in the appendix.

Chief Auditor

Sector Head

Permanent Subcommittee on Investigations
EXHIBIT #9

Confidential Treatment Requested by Cre

Appendix 1

Detailed Audit Findings

Contents Page

Repeat Issues *1*

New Issues *1*

1. Backup of Server Data *1*

Confidential Treatment Requested by Credit Suisse

CS-SEN-00226720

Repeat Issues

First audit of this entity

N/A

New Issues

1. Backup of Server Data

The backup of local server data is performed locally. However, the backup tapes are stored in the same room, leading to the risk that in an incident, local data (i.e. accounting and reporting files) may be lost. As we understand, no business critical data is stored on the server. Nevertheless, we recommend storing the backup tapes in a secure location outside the RO premises. We further noted some fire hazardous material stored in the server room.

Recommendation

Ensure storage of backup tapes in a secure location outside of the RO premises, and prevent storage of fire hazardous material in the server room.

Comments by Management and Implementation Date of Recommendation

Roger Schaerer, DIR, Head Representative Office New York, SALN 3 – Agreed. In light of the recent news to discontinue the operation of SASI alternate service providing solutions will be found (feasible approach) until December 31, 2008.

Confidential Treatment Requested by Credit Suisse

CS-SEN-00226721

Appendix 2

Audit Scope and Background Information

Audit Scope

1. Organization

1.1 Legal and organizational set-up, allocation of tasks and responsibilities, segregation of duties; and
1.2 Management supervision, MIS.

2. Procedures and Policies

Redacted

3. Security

3.1 Physical security, business continuity planning; and
3.2 IT security, information and client confidentiality.

Audit Period

December 2007 – January 2008 (10 Audit Days)

Audit Team

Auditor	Cindy Landmann
Audit Manager	Markus Roth
Area Head	André Renggli

Systems Overview

System Name	System Description
ROC 2000	Representative Office Connection: workflow tool to request and receive customer information from the booking platform through a secure communication channel.

Overview of Reviewed SOX 404 Processes

N/A; Representative Offices are not SOX relevant.

Confidential Treatment Requested by Credit Suisse

CS-SEN-00226722

Appendix 3

Distribution List

A) Divisional Management

Division CEO *:	Mr. Walter Berchtold
Division COO:	Mr. Christoph Brunner
Responsible Management Committee Member:	Mr. Anthony DeChellis
Responsible Management:	Ms. Manuela Balma Mr. Roger Schaerer Mr. Markus Walder Mr. Christian Wiesendanger

B) Regional Management

Regional CEO *:	Mr. Robert Shafir
Regional COO/CAO:	Mr. Lewis Wirshba
Country/ Sub-Regional Management:	Mr. Dave Chitty

C) Shared Services Management

Head Shared Services Area *:	Mr. Wilson Ervin
Legal:	Mr. Romeo Cerutti Mr. Neil Radey
Compliance:	Mr. Romeo Cerutti Mr. Martin Eichmann Ms. Colleen Graham Mr. Allen Meyer
Risk Management:	Mr. Tobias Guldimann Mr. Mark A. Holmes
ATS Coordinator:	Mr. Marco Valenti

D) CSG Functions

Group CFO *:	Mr. Renato Fassbind
Group COO and General Counsel *:	Mr. Urs Rohner
Senior Legal Counsel GxB *:	Mr. Felix P. Graber
Group CRO *:	Mr. Tobias Guldimann
Corporate Governance Portal:	Mr. Pierre Schreiber Ms. Beatrice Fischer

* Executive Summary only

Confidential Treatment Requested by Credit Suisse

CS-SEN-00226723

Appendix 4

Rating and Materiality Definitions

1. Principles

The Audit Report Ratings ('the rating') provide a mechanism to quickly convey to the reader the Internal Audit's assessment of the overall control environment at the start of the audit fieldwork and the significance of the issues raised in relation to the Audit Unit (see scope) under review. The rating is solely assigned by Internal Audit based on its independent and professional judgment.

A separate materiality ranking is displayed with the rating on the audit report to provide the reader with Internal Audit's assessment regarding the materiality of the Audit Unit reviewed in relation to the overall portfolio of businesses of the Bank.

2. Rating Definitions

Rating A

The Audit Unit's overall control environment was found to be operating effectively. In particular:

- There were no internal control issues, or only minor issues which pose no undue risk; and
- No reputational or compliance risks were identified; and
- No instances of non-adherence to laws and regulations were identified; and
- No high-risk issues were identified.

Rating B

The Audit Unit's overall control environment was generally found to be operating adequately;

- Minor internal control issues were identified, which if not addressed, could pose undue risk to the Bank; and/or
- Deficiencies were identified in application of internal directives, policies or best practices; however:
- No significant reputational or compliance risks were identified; and
- No instances of non-adherence to laws and regulations were noted.

Rating C

The Audit Report identified issues that could expose the Audit Unit to a heightened level of operational, financial or reputational risks. These issues include:

- Internal control issues, which if unresolved could pose undue risk to the Bank; or
- Reputational or compliance risks; or
- Non-compliance with or lack of appropriate internal directives or policies; or
- Issues from prior audits that have not been adequately remedied; or
- Non-adherence to laws and regulations.

Senior Management (one level below Management Committee, or higher) must ensure that these issues are addressed in a timely manner.

Rating D

The Audit Report identified issues that could expose the Audit Unit to a significant level of operational, financial or reputational risks. These issues could include:

- One or more significant internal control issues, which if unresolved could pose significant risk to the Bank; or
- Issues with high potential for exposure to significant reputational risks; or
- Significant non-compliance with existing directives and policies or significant lack of appropriate internal directives or policies; or
- Inadequate remediation of significant issues from prior audits, and/or management focus on such; or
- Numerous findings that, while individually less significant, in the aggregate represent significant unmitigated risks for the unit's internal control environment; or
- Significant non-adherence to laws and regulations; or
- Substantial work outstanding to mitigate significant risks identified and/or implement strategic control initiatives.

Senior Management and the Responsible Management Committee Member must ensure that these issues are addressed in a timely manner.

It is Internal Audit's policy to commence a follow-up review generally within one year of the issuance of all D-rated reports.

3. Materiality Criteria Methodology

The individual risk score and the materiality ranking are the two key dimensions in the Risk Assessment Methodology (RAM) used by the Internal Audit to determine the audit rotation/frequency. As part of the audit report rating, this materiality ranking will be disclosed/ published and will provide management with valuable information about the size/significance of the Audit Unit under review in relation to the entire population of Audit Units within the Bank.

Internal Audit determines the materiality ranking for each Audit Unit, typically as part of the annual planning process. The factors are primarily determined by the Audit Unit type and are assessed at four levels (with 4 being the highest level). These levels are based on specific criteria relevant to the various business activities conducted by the Bank. Not every consideration will apply to a particular Audit Unit within the defined business activity and the criteria include – inter alia – trading revenues, number of transactions and deal volume, assets under management, outstanding loans, number of clients, etc. for business area; more qualitative criteria for functional and topical units.

The individual criteria are periodically reviewed by Internal Audit and discussed with and validated through business management. The applicable materiality ranking for the report rating is reassessed by Internal Audit during the planning phase of an audit and is generally communicated to the responsible line management as part of the opening meeting of an audit.

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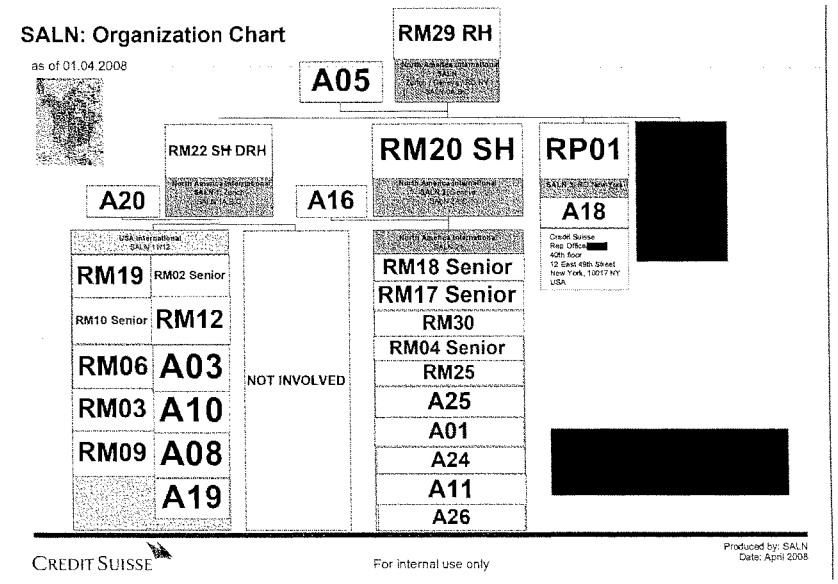
CS-SEN-00226724



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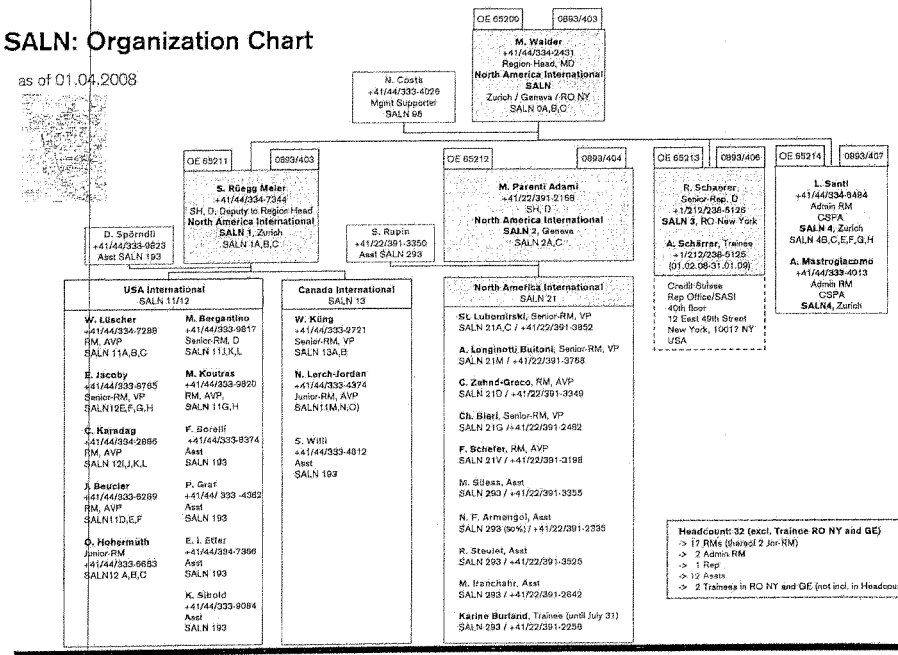
CS-SEN-00080287

Permanent Subcommittee on Investigations
EXHIBIT #10a

SALN: Organization Chart

as of 01.04.2008



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Produced by: SALN
Date: April 2008

Permanent Subcommittee on Investigations
EXHIBIT #10b

Confidential Treatment Requested by C

SWLN ab 12.10.2006

Name	First Name	A-Pid	birthday	age	address	Tel. privat	Tel. office	mobile phone	service date	hire date	5 Year	10 Year	20 Year
Bergantino	Michele												
Beucler	Jadqueline												
Carndram	Sonia												
Dogan-Brunner	Sonja												
Etter	Esther												
Graf	Patricia												
Jacoby	Enrique												
Jäger	Martin												
Karadag	Cüneyt												
Koutras	Michael												
König	Walter												
Lerch-Jordan	Nicole												
Loscher	Werner												
Rüegg Meier	Susanne												
Schärrer	Aleks												
Walder	Markus												

SWLN 21

Name	First name
Parenti	Marco
Armengol	Nicole
Blum	Christian
Eicher	Sabine
Longinotti Buitoni	Andrea
Lubomirski	Stanislas
Negri	Frank
Schiefer	Florian
Visco	Slava
Zahnd-Greco	Claudia

SWLN 3

Name	First Name
Schärer	Roger
Jäckle	André

SWLN 4

Name	First Name
Santi	Loretta

Redacted by the Permanent Subcommittee on Investigations

Confidential Treatment Requested by Credit Suisse

To: Elcock, Bruce <bruce.elcock@credit-suisse.com>
From: Ottiger, Ronald <</O=CREDIT-SUISSE/OU=ZURICH-FB1/CN=RECIPIENTS/CN=ROTTIGER>
Cc:
Bcc:
Received Date: 2006-08-02 03:56:56 EST
Subject: FW: Report Draft North America Offshore

Bruce

Best thanks for your review and comments, which I appreciate. Please see my remarks to your comments and questions in the text. The audit did not cover CSPA with the exception of some administrative task perfomed by SWLN for CSPA clients.

We will have a first discussion of the draft with local management on August 10. We will subsequently forward the report to Mr. Wirshba if you think this is adquate. Shall we put the CEO and COO Americas on the distribution list (together with the CEO/COO Switzerland)?

Best regards, Ronald

Ronald Ottiger
CREDIT SUISSE GROUP
Internal Audit
Sector Head Switzerland
Schuetzengasse 14a
CH-8070 Zurich / Switzerland
Phone +41 44 333 27 17
Fax +41 44 221 24 62
mailto:ronald.ottiger@credit-suisse.com
www.credit-suisse.com

From: Elcock, Bruce
Sent: Tuesday, August 01, 2006 8:55 PM
To: Ottiger, Ronald
Subject: FW: Report Draft North America Offshore

Ronnie

I have added a few questions and comments in the attached. Did the audit also cover CSPA - not clear to me from the scope? May be best to update report as you think appropriate, and then perhaps it would be best to copy/ forward to Lewis Wirshba at the time you send for Summary response? - let me know how you waish to handle this and how I can help.

Best regards

Bruce

-----Original Message-----
From: Ottiger, Ronald
Sent: Friday, July 28, 2006 11:14 AM
To: Elcock, Bruce
Subject: Report Draft North America Offshore

Permanent Subcommittee on Investigations
EXHIBIT #11a

Bruce,

We would like to pre-informe you about our findings in the Region Private Banking North America Offshore. Please let me have your thoughts and comments. Shall we also distribute this report to the Regional Management?

Draft Audit Report SWLN 3 0.do...

Beste regards, Ronald

Ronald Ottiger
CREDIT SUISSE GROUP
Internal Audit
Sector Head Switzerland
Schuetzengasse 14a
CH-8070 Zurich / Switzerland
Phone +41 44 333 27 17
Fax +41 44 221 24 62
mailto:ronald.ottiger@credit-suisse.com
www.credit-suisse.com

Attachments:

Draft Audit Report SWLN 3 0.doc

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CSG Internal Audit

Private Banking Americas

North America Offshore, Latin America and Bahamas

Region North America

Draft Version 2.0

Executive Summary

Report CS-2006-XXX
Month XX, 2006

Materiality

4				
3				
2			X	
1				
	A	B	C	D

Rating

Significant Reputational Risk Issues

Anti-Money Laundering (AML) Client Documentation:

- Certain clients domiciled in risk countries are not supervised as required by the anti-money laundering ordinance.
- We noted weaknesses regarding the KYC documentation (including disclosure of beneficial owner) as well as the identification procedures for PEP clients.

Regulatory and Exchange Requirements:

- Visits and meetings in the United States may lead to regulatory risks.

Significant Repeat Issues Not Adequately Addressed

Yes ☒ No ☐

SOX Relevant Matters

N/A

Relevant Divisions/Regions

PB	
Switzerland	

Background Information

The Region North America (SWLN) with desks in Zurich and Geneva employs about 30 staff (whereof 18 Relationship Managers) and serves as Country Desk for US clients. As of April 2006, SWLN was managing approximately 4,000 client accounts with total assets under management of CHF 4,7bn. SWLN is also responsible for the administration of the Credit Suisse Private Advisors clients.

Audit Results and Main Recommendations

Whilst advisory services are performed in accordance with existing guidelines and client instructions, we noted a substantial number of clients where the documentation of the financial background or their source of funds needs to be improved, which is a repeat issue. As a consequence the purpose of turnovers and transactions that appears unusual cannot always be assessed. In some instances the identity of the beneficial owners was not formally disclosed. In addition, we noted relationships with enhanced due diligence obligations, which are not marked as such in the IT system and therefore, not monitored accordingly. Further, a central review of clients domiciled in high-risk countries regarding possible Politically Exposed Persons requested by the Management Control Framework has not been performed.

Employees of SWLN making visits or holding meetings in the Unites States should not provide investment advice or solicit business, given existing regulations. We acknowledge that the number of employees of SWLN that are allowed to travel to the US is limited and these employees are well aware of their responsibilities and duties in relation to the regulations. Nevertheless, the level of travel activities (in 2005 approximately 500 clients were met in the Unites States and Canada) may entail regulatory risks.

Comments by Senior Management

Markus Walder, D, Head Region North America, SWLN – Start Text Here

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Comment [b1]: Need to explain more clearly.

Comment [RO2]: Account turnovers (movements)

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Comment [b3]: Not very clear to me how we argue to (not) this conclusion. I guess based on the volume of meetings and visits?

Comment [RO4]: This is a highly controversial issue. Management of SWLN has the opinion, that the RMs strictly adhere to the directives (no investment advice). We think it is not reliable to visit our clients and not to provide investment advice on this occasion. In addition, we noted some indications that stock exchange transactions have been taken place after such visits.

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CS-SEN-00406716

CREDIT SUISSE

CSG Internal Audit

Private Banking Americas

North America Offshore, Latin America and Bahamas

Region North America

Draft Version 2.0

Executive Summary

Report CS-2006-XXX
Month XX, 2006

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Audit Contacts

Ronald Ottiger	+41 44 333 37 17
André Renggli	+41 44 333 31 43

Chief Auditor

Sector Head

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Appendix 1

Detailed Audit Findings

Contents Page

Repeat Issues 3

- *Payment Orders (Geneva sector)* 3
- *Client Documentation* 3

New Issues 3

1. *Organization* 3
   1.1 *Business Trips to North America* 3
2. *Asset Management* 3
   2.1 *Shares of the Company Access Devices* 3
   2.2 *Verification of Payment Orders* 3
3. *Due Diligence and Prevention of Money Laundering* 3
   3.1 *Client Documentation and Disclosure of Financial Background* 3
   3.2 *Politically Exposed Persons* 3
   3.3 *Relationships with Beneficial Owners domiciled in a Risk Country* 4
4. *Specific Comments on Relationships* 4
   4.1 *S. Group – Declaration of Beneficial Ownership* 4
   4.2 *F. B. G. Ltd – Joint Securities Account* 4
   4.3 *I. E. & E. – Economic Background of Transactions* 5
   4.4 *R. I. Ltd. – KYC Documentation* 5
5. *Other Issues* 6
   5.1 *Monitoring of Relationships without Contact* 6
   5.2 *Mailing Instructions of Discretionary Mandate Clients* 7

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Repeat Issues

CSFS, Private Banking, Market Area 2, Market Group III, North America, SWLN; Report CSFS-2003-140-S35; issued August 15, 2003; rated 'Action Required'

- *Payment Orders (Geneva sector)*

  In our last audit we noted that internal directives regarding the handling of client payment orders are not systematically adhered to. Although Relationship Mangers have been instructed accordingly, we still noted that the verification of client signatures and/or authenticity of the orders is not always documented as requested by the relevant directive. We refer to issue 2.2 of this report.

- *Client Documentation*

  Our previous audit highlighted lacking documentation of economic background as well as the source of funds in the application FrontNet. Although we noted some progress (e.g. client profiles have been created) the KYC documentation still needs to be improved as detailed under issue 3.1.

New Issues

1. *Organization*

1.1 *Business Trips to North America*

According to directive D-0025 'US Person directive' visits or meetings in the United States (US), may not be used to provide investment advice or solicitation. Therefore, business trips to the US entail reputational and regulatory risks. We acknowledge that the number of employees of SWLN which are traveling to North America is limited and that these employees are well aware of their rights and duties in respect of the regulations. However, according to the travel reports reviewed in 2005 five employees undertook twelve business trips where approximately 500 clients and 50 prospects were met whereof net new assets of CHF 64m have resulted. Business trips from Switzerland to North America may entail regulatory risks.

Recommendation

Restrict traveling and remind traveling relationship managers to strictly adhere to regulatory requirements.

Comments by Management and Implementation Date of Recommendation

Markus Walder, D, Head Region North America, SWLN – Agreed and already implemented. Our Relationships Managers are fully compliant with the Directive D-0025 and the number of RM's out of SWLN traveling to North America is limited. All business trips take place on invitations and have the focus on retention management, reconquista and referral receiving. No active advice is provided.

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Comment [b5]: Suggest this paragraph move follows that to Summary.

Comment [RO6]: Done

Comment [b7]: ??

Comment [RO8]: SWLN slang for reconquest of client relationships; I will delete the word.

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2. *Asset Management*

2.1 *Shares of the Company Access Devices*

At the Geneva sector we noted ten clients and three Relationship Managers with investments in shares of Access Devices (ACDJ, V1881332), a UK-based designer and manufacturer of digital TV equipment which is not followed or recommended by the bank's equity research team. The concentration of ACDJ within SWLN is marked as 13 out of 17 relationships invested in ACDJ within the bank are served by the Geneva client desks. Most of the clients have a considerable portion of ACDJ in regard to their net assets and have lost up to 50 % of the initial investment. In addition, client order and required risk disclosure in regard to jump risk are not documented in FrontNet.

Recommendation

Clarify background of these transactions and ensure appropriate risk disclosure to the clients.

Comments by Management and Implementation Date of Recommendation

Markus Walder, D, Head Region North America, SWLN – Agreed and already implemented. The clients perfectly know the risk involved, but this is not a short term investment and it was not recommended by the bank. The company Access Devices was introduced by one of our referrals who knows the company in depth. This person has recommended several shares (e.g. Canargo, Sky Petroleum, Temenos, Internet Capital Group) to us. We provided the information and a research which was made by financial analyst, and then the clients took the final decision. The clients are looking for research on risky investments including penny stocks and private placements.

2.2 *Verification of Payment Orders*

As already mentioned in our previous report, we have noted that internal guidelines regarding the handling of client payment orders are not always adhered to; in particular the control of the client's signature as well as the verification of authenticity of orders received by fax are not systematically evidenced by the Relationship Managers (D-0175, D-0184).

Recommendation

Ensure adherence to the above mentioned directives.

Comments by Management and Implementation Date of Recommendation

Markus Walder, D, Head Region North America, SWLN – Agreed, verification of authenticity of orders received by fax and the documentation in this regard has to be completed according to the respective directives: BRM within SWL will send a relevant BRM alert to all RM's and Assistants within SWLN. Implementation by September 30, 2006.

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Comment [b9]: Not sure what jump risk is?

Comment [R010]: Close risk; investments of more so e.g. 50% in the same share

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3. *Due Diligence and Prevention of Money Laundering*

3.1 *Client Documentation and Disclosure of Financial Background*

As already mentioned in our previous audit report we noted that the economic background as well as the source of funds was not always consistently and precisely documented in the application FrontNet. We noted, that in various cases (23 out of 68 reviewed clients) the KYC documentation is still not meaningful, is incorrect or is not up-to-date. As a consequence the purpose of turnovers and transactions that appear unusual cannot always be properly assessed (see also relationships mentioned under section 4). Furthermore, also the top client reviews base on information, which are partly not sufficient and/or does not correspond with the KYC documentation in FrontNet.

Recommendation

Improve documentation of economic background and source of funds and ensure adequate documentation of flow of funds as well as substance of top client review.

Comments by Management and Implementation Date of Recommendation

Markus Walder, D, Head Region North America, SWLN – Agreed; further improvement on client documentation has to and will be achieved; relevant KYC profiles will be updated. Implementation is an ongoing task; however, substantial improvements are expected until December 31, 2006.

3.2 *Politically Exposed Persons*

The management control framework (control task A.3) defines a periodic review of relationships from critical countries of risk categories 1 and 2 by Business Risk Management for the detection of possible Politically Exposed Persons (PEP). However, our audit highlighted that such an in depth review has not been performed. In addition, the relationships with two relatives of a former ruler of a Middle East country (Cif 0251-285881-5 and Cif 0251-376319-3 with AUM CHF 616'000), are documented in FrontNet as PEP relationships. However, no PEP assessment and no reporting according to the Global Policy P-0111 has been performed so far.

Recommendations

a) Ensure a systematic PEP review according to the MACO5 control task.
b) Review the two relationships and perform a PEP assessment if necessary; adjust know-your-client documentation accordingly.

Comments by Management and Implementation Date of Recommendations

a) *Matthias Zbinden, VP, Head Business Support, SWLO* – Start Text Here
b) *Markus Walder, D, Head Region North America, SWLN* – Agreed; in one case the PEP assessment was established and signed by line management in July. In the second case the PEP assessment is awaiting to sign; implementation by August 31, 2006.

Comment [b11]: define

Comment [RO12]: see summary

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Comment [b13]: sentence does not make sense to me

Comment [RO14]: According to internal directives clients with assets of > CHF 20m have to be periodically reviewed by management. We noted, that also the information for this review process was often poor and not sufficient to assess these relationships.

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3.3 *Relationships with Beneficial Owners domiciled in a Risk Country*

Relationships with beneficial owners domiciled in a risk country of a risk category 1-2 and not managed by the country desk responsible for the market need to be flagged as relationships with enhanced due diligence ('yellow' relationships) in the application FrontNet according to directive D-2986. In some cases such relationships are not correctly flagged as 'yellow' relationships in FrontNet. As a consequence, these relationships may not be monitored as required by the Swiss Federal Banking Commission's Ordinance concerning the prevention of money laundering of December 18, 2002.

Recommendation

Obtain lacking exceptional approval for beneficial owners domiciled in a risk country, classify them as 'yellow' relationships and monitor them accordingly.

Comments by Management and Implementation Date of Recommendation

Markus Walder, D, Head Region North America, SWLN – Agreed; most of these relationships are connected to US clients. We well mark them as 'yellow' relationships and monitor closely. In some cases, clients will be contacted to suggest closing the CIF's. Implementation by September 30, 2006.

4. *Specific Comments on Relationships*

4.1 *S. Group – Declaration of Beneficial Ownership*

The S. Group consists of different foundations and domiciliary companies with assets of about CHF 0.6bn and three beneficial owners (BO) domiciled in the UK and Hong Kong. The purpose of the companies is wealth management. The BO's are well known and economic background and source of funds are adequately documented. However, the documentation of beneficial ownership is confusing as information in FrontNet, Top Client Review and Infolock do not correspond. Furthermore, one of the BO's died two years ago; and the current beneficial ownership has not been formally disclosed.

Recommendation

Clarify and formally disclose beneficial ownership of all relationships of the S. Group.

Comments by Management and Implementation Date of Recommendation

Markus Walder, D, Head Region North America, SWLN – The relationships as well as the beneficial owners are well known; the whole S. Group is visiting us on a monthly basis. We will clarify the documentation regarding the beneficial owners in FrontNet. Implementation by September 30, 2006.

4.2 *F. B. G. Ltd – Joint Securities Account*

F. B. G. Ltd. (FBG), a licensed bank on Bermuda Islands (non-FATF-member), opened an account in December 2005. FBG initially transferred USD 5m of own assets by the end of April 2006, followed by numerous securities inflows with value of around CHF 20m in May and June 2006 on a segregated safe-keeping account. These transfers originate from 35 different clients of FBG. As we understand, it is planned to transfer the client relationship to the EAM Desk and to open an individual relationship for

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each of these clients. FBG will act as an External Asset Manager and will have limited power of attorney for all these individual accounts. However, we noted the following:

a) FBG provided a list of the names of the beneficial owners. However, neither nationality nor domicile and date of birth of the beneficial owners are documented as requested by the Swiss Bank's Code of Due Diligence (CDB 03).

b) The KYC documentation is not meaningful specifically regarding the source of funds of the beneficial owners.

Recommendations

a) Obtain a Form A for each beneficial owner or a full list of beneficial owners including the data requested by point 27 CDB 03.

b) Improve documentation of economic background and source of funds and ensure adequate documentation of flow of funds.

Comment [R15]: not mentioned in b above

Comment [R16]: Done

Comments by Management and Implementation Date of Recommendations

Markus Walder, D, Head Region North America, SWLN – Agreed; a separate internal memorandum with all BOs has already been established. KYC will be updated with the latest information and flows where pointed out will be documented more precisely. FBG as client will be handed over to the EAM Desk in Zurich during 2nd half 2006 and for each BO a separate account will be opened. Implementation by December 31, 2006.

4.3 *I. E. & E. – Economic Background of Transactions*

The BO of I. E. & E. (IEE) operates in the oil equipment business as stated by the relationship manager. However, according to the KYC documentation the BO operates in the construction business and acts as a hedge fund manager. Although, only little movements are to be expected according to FrontNet, various commercial transactions were processed starting from mid 2005 with increased turnover between February and April 2006 where a total turnover of CHF 10m was processed. The economic background of these transactions is not meaningfully documented.

Recommendation

Assess and document the economic background as well as the source of funds and thoroughly verify background information on the transactions.

Comments by Management and Implementation Date of Recommendation

Markus Walder, D, Head Region North America, SWLN – Agreed; KYC will be updated based on actual information received. The client has already been contacted and it was pointed out, that we can no longer have this type of account. They should either consider to run the account as an investment account or to close the account and to provide us with the wire instructions where we can transfer the money to. Implementation by October 31, 2006.

4.4 *R. I. Ltd. – KYC Documentation*

R. I. Ltd. (RIL) is a Bahamian domiciliary company that opened a relationship in January 2006. The company belongs 100% to O. B. LLC domiciled in St. Kitts and Nevis which belongs 100% to the Cayman Island insurance company A. L. & A. (ALAC) which is the beneficial owner according to the Form A. The relationship is managed by Credit Suisse Private Advisors (CSPA) whilst SWLN administers the accounts. In February and March 2006, various inflows from mainly Swiss banks were processed with a total amount of approximately CHF 5m. According to information from CSPA these funds derive from dividends and interests of ALAC. We noted the following:

a) The purpose of the structure as well as the economic background of the large inflows is not sufficiently assessed and documented.

b) It is not clear whether ALAC is conducting commercial business on the Cayman Islands and – if yes – is subject to adequate supervision as well as an adequate set of anti-money laundering regulations. As a result it remains unclear whether ALAC has to disclose the beneficial owners.

Recommendations

a) Assess the purpose of the structure and the economic background of the inflows and document them accordingly.

b) Assess whether the declaration of beneficial ownership is required of if ALAC can be deemed as the ultimate beneficial owner.

Comments by Management and Implementation Date of Recommendations

Markus Walder, D, Head Region North America, SWLN – Agreed;

a) Will be checked, reviewed, updated and more detailed documented. Implementation by October 31, 2006.

b)

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5. *Other Issues*

5.1 *Monitoring of Relationships without Contact*

According to the directive D-4761 "Dormant Assets" the unit Dormant Accounts compiles an annual list of accounts for which correspondence is retained (RET accounts) and for which no transactions have been executed for a period of four years. The front offices are responsible for investigating whether any communication has been received from a contact person in connection with accounts on this list. However, for RET clients without client contact but with transactions on the account (e.g. rollover of a time deposit or investments based on a StAA), no specific list can be produced by the specialist unit and no systematic monitoring can occur. In our audit we noted such relationships that have not been handled as set forth in the directive.

Recommendation

Improve monitoring procedure in regard to clients without contact, which have standing instructions.

Comment [b17]: what does this mean?

Comment [JR018]: In cases where the bank is acting for the client (e.g. standing instructions, discretionary mandates) the monitoring tools are not able to detect relationships without contact to the client (dormant accounts). I will rewrite the issue.

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Comments by Management and Implementation Date of Recommendation

Markus Walder, D, Head Region North America, SWLN – Agreed; monitoring procedure will be adapted together with BRM within SWL. Regarding detected possible dormant accounts within SWLN action will be taken by the respective SWLN RM until October 31, 2006.

In addition, we will implement a systematic review process on a yearly basis. A separate list with all clients with birthdate before 1920 will be drawn and critically reviewed. CIF's with no contact for at least one year will be checked as well and potential dormant accounts will be handed over systematically to the designated Dormant Account desk with the necessary flags in the HOST. Implementation by December 31, 2006.

5.2 *Mailing Instructions of Discretionary Mandate Clients*

According to directive D-0025 'US Person Directive' no mail may be sent into the United States to US persons with discretionary mandates. As an exception, statements for tax purposes can be provided (AIS year-end statement and tax statement) once per year. However, in some cases we noted that mail has been sent to the United States. As we understand these relationships changed from advisory to discretionary mandates in 2005. Control procedures have not been implemented to avoid such incidents.

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Recommendation

Implement a periodic control for US persons with discretionary mandates to ensure compliance with the relevant directive.

Comments by Management and Implementation Date of Recommendation

Markus Walder, D, Head Region North America, SWLN – Agreed; however, SWLN has 860 Discretionary Mandates with US clients whereof 2 CIF's were identified that correspondence was sent to the US; both cases are already corrected. From now on, a list with all VV-clients with US domicile will be drawn on a quarterly basis. We will review all CIF's and particular focus on CIF's opened since the last review date. Implementation by December 31, 2006.

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Appendix 2

Audit Scope and Background Information

Audit Scope

1. *Organization*

1.1 Segregation of duties, policies and control procedures, management controls, MIS
1.2 Compliance to US specific regulations

2. *Asset Management*

2.1 Non-discretionary Mandates: Client documentation, order transmission and processing, types of assets, use of derivatives
2.2 Discretionary Mandates: adherence to regulations, adherence to relevant asset allocation and client's restrictions, performance, asset quality, client documentation and legal documents
2.3 Use of Derivative Instruments: Risk assessment, risk disclosure, legal documents, and supervision
2.4 Order Execution: Bulk orders, direct orders, collective orders and reversals
2.5 Loans against Securities: monitoring of excesses/overdrafts, legal documents
2.6 External Asset Managers and Intermediaries: Order processing, retrocessions, documentation and formalities
2.7 Intermediaries: Agreements and fees

3. *Due Diligence and Prevention of Money Laundering*

3.1 Code of Due Diligence: Account opening procedures, client identification, disclosure of the beneficial ownership and handling of politically exposed persons
3.2 Unusual Transactions: Assessment and documentation of financial background

4. *Other Aspects*

4.1 Mail: Mailing instructions, hold-mail procedures and e-mail formalities
4.2 Internal Accounts: Competences, turnover and supervision
4.3 Miscellaneous: Employees transactions, handling of complaints and losses, special conditions, dormant account, IT access administration

Audit Period

June 2006 - July 2006 (75 Audit Days)

Audit Team

Auditors	Alexandra Frey	Cindy Landmann	Thierry Rupf
	Vincent Suter		

Confidential Treatment Requested by Credit Suisse CS-SEN-00408726

Audit Manager Dominik Jetzer

Area Head André Renggli

Background Information

The Region North America (SWLN) with desks in Zurich and Geneva employs about 30 staff (whereof 18 Relationship Managers) and serves as Country Desk for US clients. As of April 2006, SWLN was managing approximately 4,000 client accounts with total assets under management of CHF 4,7bn. SWLN is also responsible for the administration of the Credit Suisse Private Advisors clients.

According to the Risk Country Report 14'309 clients with assets of CHF 6,8bn are domiciled in the Unites States. As Country Desk for US clients SWLN is managing 15% of these clients with 35% of the assets. Most of the CIF's and assets outside the Country Desk are served by a Special Desk (SWEM/SWI) or have an exception approval.

Market Purity US Clients
Data as of November 16, 2005; AuM in CHF million

	Clients		AuM	
Country Desk SWLN	2'216	15%	2'381	35%
Special Desks (SWEM/SWI)	10'696	75%	2'672	39%
Exception Approval	1'124	8%	1'331	20%
Not approved	279	2%	399	6%
Total	14'309	100%	6'783	100%

Systems Overview

System Name	System Description
FrontNet (RM Portal, Management Portal)	Relationship management application designed as electronic workplace which allows ongoing client documentation and supports management supervision

Overview of Reviewed SOX 404 Processes

N/A; no SOX 404 processes directly assigned.

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Confidential Treatment Requested by Credit Suisse CS-SEN-00408727

Appendix 3

Distribution List

A) Divisional Management

Division CEO *:	Mr. Walter Berchtold
Division COO:	Mr. Christoph Brunner
Responsible Management Committee Member:	Mr. Anthony Dechellis
Responsible Management:	Mr. Alexander Siegenthaler Mr. Markus Walder Ms. Manuela Huebscher

B) Regional Management

Regional CEO *:	Mr. Ulrich Koerner
Regional COO:	Mr. Hans-Ulrich Mueller
Country / Sub-Regional Management:	Mr. Rolf Schmid

C) Shared Services Management

Head Shared Services Area *:	Mr. Wilson Ervin
Legal:	Mr. Romeo Cerutti Ms. Agnes F. Reicke
Compliance:	Mr. Allen Meyer * Mr. Martin Eichmann
Risk Management:	Mr. Tobias Guldimann Mr. Mark A. Holmes Mr. André Horovitz
ATS Coordinator:	Mr. Marco Valenti

D) CSG Functions

Group CFO *:	Mr. Renato Fassbind
Group COO and General Counsel *:	Mr. Urs Rohner
Group CRO *:	Mr. Tobias Guldimann
Corporate Governance Portal:	Mr. Pierre Schreiber Ms. Beatrice Fischer

* Executive Summary only

CREDIT SUISSE CONFIDENTIAL

Confidential Treatment Requested by Credit Suisse CS-SEN-00408728

Appendix 4

Rating and Materiality Definitions

1. Principles

The Audit Report Ratings ('the rating') provide a mechanism to quickly convey to the reader the Internal Audit's assessment of the overall control environment at the start of the audit fieldwork and the significance of the issues raised in relation to the Audit Unit (see scope) under review. The rating is solely assigned by Internal Audit based on its independent and professional judgment.

A separate materiality ranking is displayed with the rating on the audit report to provide the reader with Internal Audit's assessment regarding the materiality of the Audit Unit reviewed in relation to the overall portfolio of businesses of the Firm.

2. Rating Definitions

Rating A

The Audit Unit's overall control environment was found to be operating effectively. In particular:

- There were no internal control issues, or only minor issues which pose no undue risk; and
- No reputational or compliance risks were identified; and
- No instances of non-adherence to laws and regulations were identified; and
- No high-risk issues were identified.

Rating B

The Audit Unit's overall control environment was generally found to be operating adequately;

- Minor internal control issues were identified, which if not addressed, could pose undue risk to the Firm; and/or
- Deficiencies were identified in application of internal directives, policies or best practices; however:
- No significant reputational or compliance risks were identified; and
- No instances of non-adherence to laws and regulations were noted.

Rating C

The Audit Report identified issues that could expose the Audit Unit to a heightened level of operational, financial or reputational risks. These issues include:

- Internal control issues, which if unresolved could pose undue risk to the Firm; or
- Reputational or compliance risks; or
- Non-compliance with or lack of appropriate internal directives or policies; or
- Issues from prior audits that have not been adequately remedied; or
- Non-adherence to laws and regulations.

Senior Management (one level below Management Committee, or higher) must ensure that these issues are addressed in a timely manner.

Rating D

The Audit Report identified issues that could expose the Audit Unit to a significant level of operational, financial or reputational risks. These issues could include:

- One or more significant internal control issues, which if unresolved could pose significant risk to the Firm; or
- Issues with high potential for exposure to significant reputational risks; or
- Significant non-compliance with existing directives and policies or significant lack of appropriate internal directives or policies; or
- Inadequate remediation of significant issues from prior audits, and/or management focus on such; or
- Numerous findings that, while individually less significant, in the aggregate represent significant unmitigated risks for the unit's internal control environment; or
- Significant non-adherence to laws and regulations; or
- Substantial work outstanding to mitigate significant risks identified and/or implement strategic control initiatives.

Senior Management and the Responsible Management Committee Member must ensure that these issues are addressed in a timely manner.

It is Internal Audit's policy to commence a follow-up review generally within one year of the issuance of all D-rated reports.

3. Materiality Criteria Methodology

The individual risk score and the materiality ranking are the two key dimensions in the Risk Assessment Methodology (RAM) used by the Internal Audit to determine the audit rotation/frequency. As part of the audit report rating, this materiality ranking will be disclosed/published and will provide management with valuable information about the size/significance of the Audit Unit under review in relation to the entire population of Audit Units within the Firm.

Internal Audit determines the materiality ranking for each Audit Unit, typically as part of the annual planning process. The factors are primarily determined by the Audit Unit type and are assessed at four levels (with 4 being the highest level). These levels are based on specific criteria relevant to the various business activities conducted by the Firm. Not every consideration will apply to a particular Audit Unit within the defined business activity and the criteria include – inter alia – trading revenues, number of transactions and deal volume, assets under management, outstanding loans, number of clients, insurance premium volume, etc. for business area; more qualitative criteria for functional and topical units.

The individual criteria (e.g., insurance premium volume) are periodically reviewed by Internal Audit and discussed with and validated through business management. The applicable materiality ranking for the report rating is reassessed by

Confidential Treatment Requested by Credit Suisse CS-SEN-00408729

Internal Audit during the planning phase of an audit and is generally communicated to the responsible line management as part of the opening meeting of an audit.

CREDIT SUISSE

CSG Internal Audit

PB Americas

North America Offshore, Latin America and Bahamas

Region North America

Executive Summary

Report CS-2006-133
August 31, 2006

Materiality

	A	B	C	D
4				
3				
2		X		
1				

Rating

Significant Reputational Risk Issues

None

Significant Repeat Issues Not Adequately Addressed

Yes ☐ No ☒

SOX Relevant Matters

N/A

Background Information

The Region North America (SWLN) with desks in Zurich and Geneva employs about 30 staff (whereof 18 Relationship Managers) and serves as Country Desk for US clients. As of April 2006, SWLN was managing approximately 4,000 client accounts with total assets under management of CHF 4,7bn. SWLN is also responsible for the administration of the Credit Suisse Private Advisors clients.

Directive D-0025 governs relationships with US Persons to ensure uniform adherence to the restrictions applicable under US law to mitigate corresponding risks. Specifically, it rules that communications by mail, telephone, telex, telefax, internet or e-mails into or from the US or visits or meetings in the US, may not be used to provide investment advice or solicitation. It further stipulates that US clients should be managed and monitored by the specific country desks (SWLN) if no exception has been granted.

Audit Results and Main Recommendations

The overall control environment was generally found to be operating adequately. However, we noted a number of clients where the documentation of the financial background or their source of funds needs to be improved. In addition, we noted relationships with enhanced due diligence obligations which are not marked as such in the IT system. Further, in some instances the identity of the ultimate beneficial owners must be clarified and formally disclosed.

Comments by Senior Management

Markus Walder, DIR, Head Region North America, SWLN – Management agrees to the contents of the report and refers to the appendix for detailed comments.

Relevant Divisions/Regions

PB Americas

Audit Contacts

Ronald Ottiger +41 44 333 27 17
André Renggli +41 44 333 31 43

Chief Auditor

Sector Head

Permanent Subcommittee on Investigations
EXHIBIT #11b

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CS-SEN-00418830

Appendix 1

Detailed Audit Findings

Contents **Page**

Repeat Issues 1

New Issues 1

1. *Due Diligence and Prevention of Money Laundering* 1
   - 1.1 *Client Documentation and Disclosure of Financial Background* 1
   - 1.2 *Relationships with Beneficial Owners domiciled in a Risk Country* 1
2. *Specific Comments on Relationships* 2
   - 2.1 *S. Group – Declaration of Beneficial Ownership* 2
   - 2.2 *R. I. Ltd. – Declaration of Beneficial Ownership* 2
   - 2.3 *I. E. & E. – Economic Background of Transactions* 2
3. *Asset Management* 3
   - 3.1 *Shares of the Company Access Devices* 3
4. *Other Issues* 3
   - 4.1 *Monitoring of Relationships without Contact* 3

Repeat Issues

CSFS, Private Banking, Market Area 2, Market Group III, North America, SWLN; Report CSFS-2003-140-S35; issued August 15, 2003; rated Action Required

None

New Issues

1. Due Diligence and Prevention of Money Laundering

1.1 Client Documentation and Disclosure of Financial Background

In our previous audit report we noted that the economic backgrounds as well as the sources of funds of the clients was generally known by the Relationship Managers, but not always consistently and precisely documented in the application FrontNet. In addition, for a larger number of clients transferred to SWLN as a result of the project "risk country transfer" the KYC documentation was missing. We acknowledge that Management has addressed this issue and a correction plan was established to improve the client documentation. Nevertheless, we noted that in some cases the KYC documentation is not meaningful or is not up-to-date and needs further enhancement.

Recommendation

Improve documentation of economic backgrounds and sources of funds of clients.

Comments by Management and Implementation Date of Recommendation

Markus Walder, DIR, Head Region North America, SWLN – Agreed; implementation is an ongoing task; however, substantial improvements are expected until June 30, 2007.

1.2 Relationships with Beneficial Owners domiciled in a Risk Country

Relationships with beneficial owners domiciled in a risk country of a risk category 1-2 and not managed by the country desk responsible for the market need to be flagged as relationships with enhanced due diligence ("yellow" relationships) in the application FrontNet according to directive D-2986. In some cases such relationships are not correctly flagged as "yellow" relationships in FrontNet due to missing exceptional approvals.

Recommendation

Obtain lacking exceptional approval for beneficial owners domiciled in a risk country and classify them as "yellow" relationships.

Comments by Management and Implementation Date of Recommendation

Markus Walder, DIR, Head Region North America, SWLN – Agreed and already implemented.

2. *Specific Comments on Relationships*

2.1 *S. Group – Declaration of Beneficial Ownership*

The S. Group consists of different foundations and domiciliary companies and three beneficial owners (BO) domiciled in the UK and Hong Kong. The purpose of the companies is wealth management. The BOs are well known and economic background and source of funds are adequately documented. However, the documentation of beneficial ownership is confusing as information in FrontNet, Top Client Review and Infolock do not correspond. Furthermore, one of the BO died two years ago; the current beneficial ownership has not been formally disclosed.

Recommendation

Clarify and formally disclose beneficial ownership of all relationships of the S. Group.

Comments by Management and Implementation Date of Recommendation

Markus Walder, DIR, Head Region North America, SWLN – Agreed; implementation by December 31, 2006.

2.2 *R. I. Ltd. – Declaration of Beneficial Ownership*

R. I. Ltd. (RIL) is a Bahamian domiciliary company that opened a relationship in January 2006. The relationship is managed by Credit Suisse Private Advisors (CSPA) whilst SWLN administers the accounts. According to the Form A the beneficial owner is an insurance company on the Cayman Islands. However, as per information received from the Relationships Manager the beneficial owner of the domiciliary company is an irrevocable trust (A. Trustees act as trustee of the S. Trust). In this case the contracting party (RIL) is required to provide a written declaration confirming this fact including information about the settlor and beneficiaries of the trust.

Recommendation

Clarify and formally disclose beneficial ownership of R.I. Ltd.; review all other relationships of similar structure.

Comments by Management and Implementation Date of Recommendation

Markus Walder, DIR, Head Region North America, SWLN – Agreed; implementation by December 31, 2006.

2.3 *I. E. & E. – Economic Background of Transactions*

The BO of I. E. & E. (IEE) operates in the oil equipment business as stated by the relationship manager. However, according to the KYC documentation the BO operates in the construction business and acts as hedge fund manager. Although only little movements are to be expected according to FrontNet, various commercial transactions were processed starting from mid 2005 with increased turnover between February and April 2006 where a total turnover of CHF 10m was processed. The economic background of these transactions is not meaningfully documented.

Recommendation

Assess and document the economic background as well as the source of funds and thoroughly verify background information on the transactions.

Comments by Management and Implementation Date of Recommendation

Markus Walder, DIR, Head Region North America, SWLN – Agreed and already implemented.

3. Asset Management

3.1 Shares of the Company Access Devices

At the Geneva sector we noted ten clients and three Relationship Managers with investments in shares of Access Devices (ACDJ, V1881332), a UK-based designer and manufacturer of digital TV equipment which is not followed or recommended by the bank's equity research team. The concentration of ACDJ within SWLN is noteworthy as 13 out of 17 relationships invested in ACDJ within the bank are served by the Geneva client desks. Most of the clients have a considerable portion of ACDJ in regard to their net assets and they have lost up to 50 % of the initial investment. In addition, required risk disclosure in regard to cluster risk is not documented in FrontNet.

Recommendation

Clarify background of these transactions and ensure appropriate risk disclosure to the clients.

Comments by Management and Implementation Date of Recommendation

Markus Walder, DIR, Head Region North America, SWLN – Agreed and already implemented.

4. Other Issues

4.1 Monitoring of Relationships without Contact

The unit Dormant Accounts compiles an annual list of accounts for which correspondence is retained (RET accounts) and for which no transactions have been executed for a period of four years. The front offices are responsible for investigating whether any communication has been received from a contact person in connection with accounts on this list. However, we noted two RET accounts without client contact but with transactions on the account (e.g. rollover of a time deposit or investments based on a StAA). Although these relationships are deemed to be dormant, they have not been handled as set forth in the directive.

Recommendation

Improve monitoring procedure in regard to clients without contact which have standing instructions.

Comments by Management and Implementation Date of Recommendation

Markus Walder, DIR, Head Region North America, SWLN – Agreed; monitoring procedure will be adapted together with BRM within SWL. Regarding detected possible dormant accounts within SWLN action will be taken by the respective SWLN RM until October 31, 2006.

In addition, we will implement a systematic review process on a yearly basis. A separate list with all clients with birthdate before 1920 will be drawn and critically reviewed. CIFs with no contact for at least one year will be checked as well and potential dormant accounts will be handed over systematically to the designated Dormant Account desk with the necessary flags in the HOST. Implementation by December 31, 2006.

Appendix 2

Audit Scope and Background Information

Audit Scope

1. Organization

1.1 Segregation of duties, policies and control procedures, management controls, MIS
1.2 Compliance to US specific regulations

2. Asset Management

2.1 Non-discretionary Mandates: Client documentation, order transmission and processing, types of assets, use of derivatives
2.2 Discretionary Mandates: adherence to regulations, adherence to relevant asset allocation and client's restrictions, performance, asset quality, client documentation and legal documents
2.3 Use of Derivative Instruments: Risk assessment, risk disclosure, legal documents, and supervision
2.4 Order Execution: Bulk orders, direct orders, collective orders and reversals
2.5 Loans against Securities: monitoring of excesses/overdrafts, legal documents
2.6 External Asset Managers and Intermediaries: Order processing, retrocessions, documentation and formalities
2.7 Intermediaries: Agreements and fees

3. Due Diligence and Prevention of Money Laundering

3.1 Code of Due Diligence: Account opening procedures, client identification, disclosure of the beneficial ownership and handling of politically exposed persons
3.2 Unusual Transactions: Assessment and documentation of financial background

4. Other Aspects

4.1 Mail: Mailing instructions, hold-mail procedures and e-mail formalities
4.2 Internal Accounts: Competences, turnover and supervision
4.3 Miscellaneous: Employees transactions, handling of complaints and losses, special conditions, dormant account, IT access administration

Audit Period

June 2006 - July 2006 (80 Audit Days)

Audit Team

Auditors	Alexandra Frey	Cindy Landmann	Thierry Rupf
	Vincent Suter		
Audit Manager	Dominik Jetzer		
Area Head	André Renggli		

Background Information

The Region North America (SWLN) with desks in Zurich and Geneva employs about 30 staff (whereof 18 Relationship Managers) and serves as Country Desk for US clients. As of April 2006, SWLN was managing approximately 4,000 client accounts with total assets under management of CHF 4,7bn. SWLN is also responsible for the administration of the Credit Suisse Private Advisors clients.

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According to the Risk Country Report 14,309 clients with assets of CHF 6,8bn are domiciled in the Unites States. As Country Desk for US clients SWLN is managing 15% of these clients with 35% of the assets. Most of the CIFs and assets outside the Country Desk are served by a Special Desk (SWEM/SWI) or have an exception approval.

Market Purity US Clients

Data as of November 16, 2005; AuM in CHF million

	Clients		AuM	
Country Desk SWLN	2,216	15%	2,381	35%
Special Desks (SWEM/SWI)	10,690	75%	2,672	39%
Exception Approval	1,124	8%	1,331	20%
Not approved	279	2%	399	6%
Total	14,309	100%	6,783	100%

Systems Overview

System Name	System Description
FrontNet (RM Portal, Management Portal)	Relationship management application designed as electronic workplace which allows ongoing client documentation and supports management supervision.

Overview of Reviewed SOX 404 Processes

N/A; no SOX 404 processes directly assigned.

Appendix 3

Distribution List

A) Divisional Management

Division CEO *:	Mr. Walter Berchtold
Division COO:	Mr. Christoph Brunner
Responsible Management Committee Member:	Mr. Anthony DeChellis
Responsible Management:	Mr. Alexander Siegenthaler Mr. Markus Walder Ms. Manuela Huebscher

B) Regional Management

Regional CEO *:	Mr. Brady W. Dougan
Regional COO:	Mr. Lewis Wirshba

C) Shared Services Management

Head Shared Services Area *:	Mr. Wilson Ervin
Legal:	Mr. Romeo Cerutti Mr. Neil Radey
Compliance:	Mr. Allen Meyer * Mr. Martin Eichmann Ms. Colleen Graham
Risk Management:	Mr. Tobias Guldimann Mr. Mark A. Holmes Mr. André Horovitz
ATS Coordinator:	Mr. Marco Valenti

D) CSG Functions

Group CFO *:	Mr. Renato Fassbind
Group COO and General Counsel *:	Mr. Urs Rohner
Senior Legal Counsel GxB *:	Mr. Felix P. Graber
Group CRO *:	Mr. Tobias Guldimann
Corporate Governance Portal:	Mr. Pierre Schreiber Ms. Beatrice Fischer

* Executive Summary only

Confidential Treatment Requested by Credit Suisse

CS-SEN-00418836

Appendix 4

Rating and Materiality Definitions

1. Principles

The Audit Report Ratings ('the rating') provide a mechanism to quickly convey to the reader the Internal Audit's assessment of the overall control environment at the start of the audit fieldwork and the significance of the issues raised in relation to the Audit Unit (see scope) under review. The rating is solely assigned by Internal Audit based on its independent and professional judgment.

A separate materiality ranking is displayed with the rating on the audit report to provide the reader with Internal Audit's assessment regarding the materiality of the Audit Unit reviewed in relation to the overall portfolio of businesses of the Firm.

2. Rating Definitions

Rating A

The Audit Unit's overall control environment was found to be operating effectively. In particular:

- There were no internal control issues, or only minor issues which pose no undue risk; and
- No reputational or compliance risks were identified; and
- No instances of non-adherence to laws and regulations were identified; and
- No high-risk issues were identified.

Rating B

The Audit Unit's overall control environment was generally found to be operating adequately;

- Minor internal control issues were identified, which if not addressed, could pose undue risk to the Firm; and/or
- Deficiencies were identified in application of internal directives, policies or best practices; however:
- No significant reputational or compliance risks were identified; and
- No instances of non-adherence to laws and regulations were noted.

Rating C

The Audit Report identified issues that could expose the Audit Unit to a heightened level of operational, financial or reputational risks. These issues include:

- Internal control issues, which if unresolved could pose undue risk to the Firm; or
- Reputational or compliance risks; or
- Non-compliance with or lack of appropriate internal directives or policies; or
- Issues from prior audits that have not been adequately remedied; or
- Non-adherence to laws and regulations.

Senior Management (one level below Management Committee, or higher) must ensure that these issues are addressed in a timely manner.

Rating D

The Audit Report identified issues that could expose the Audit Unit to a significant level of operational, financial or reputational risks. These issues could include:

- One or more significant internal control issues, which if unresolved could pose significant risk to the Firm; or
- Issues with high potential for exposure to significant reputational risks; or
- Significant non-compliance with existing directives and policies or significant lack of appropriate internal directives or policies; or
- Inadequate remediation of significant issues from prior audits, and/or management focus on such; or
- Numerous findings that, while individually less significant, in the aggregate represent significant unmitigated risks for the unit's internal control environment; or
- Significant non-adherence to laws and regulations; or
- Substantial work outstanding to mitigate significant risks identified and/or implement strategic control initiatives.

Senior Management and the Responsible Management Committee Member must ensure that these issues are addressed in a timely manner.

It is Internal Audit's policy to commence a follow-up review generally within one year of the issuance of all D-rated reports.

3. Materiality Criteria Methodology

The individual risk score and the materiality ranking are the two key dimensions in the Risk Assessment Methodology (RAM) used by the Internal Audit to determine the audit rotation/frequency. As part of the audit report rating, this materiality ranking will be disclosed/ published and will provide management with valuable information about the size/significance of the Audit Unit under review in relation to the entire population of Audit Units within the Firm.

Internal Audit determines the materiality ranking for each Audit Unit, typically as part of the annual planning process. The factors are primarily determined by the Audit Unit type and are assessed at four levels (with 4 being the highest level). These levels are based on specific criteria relevant to the various business activities conducted by the Firm. Not every consideration will apply to a particular Audit Unit within the defined business activity and the criteria include – inter alia – trading revenues, number of transactions and deal volume, assets under management, outstanding loans, number of clients, insurance premium volume, etc. for business area; more qualitative criteria for functional and topical units.

The individual criteria (e.g., insurance premium volume) are periodically reviewed by Internal Audit and discussed with and validated through business management. The applicable materiality ranking for the report rating is reassessed by Internal Audit during the planning phase of an audit and is generally communicated to the responsible line management as part of the opening meeting of an audit.

CREDIT SUISSE

PB Americas
North America International

CSG Internal Audit

Executive Summary

Report CS-2009-210
December 9, 2009

Materiality

	A	B	C	D
4				
3				
2		X		
1				

Rating

Significant Reputational Risk Issues

None

Significant Repeat Issues Not Adequately Addressed

Yes ☐ No ☒

SOX Relevant Matters

N/A

Background Information

The sub-department North America International (SALN) with desks in Zurich and Geneva serves mainly US and Canadian clients. Dealing with a US Person underlies various restrictions which are stipulated within the Policy P-00025 "Bank relationships with US Persons, US Taxpayers, US EAMs and non-US EAMs with US Persons and/or US Taxpayers clients ("US Person Policy")" since many years. As of September 2009, SALN employed 37 staff and was managing approximately 7,400 client relationships with total assets of CHF 3.5bn.

Audit Results and Main Recommendations

The overall control environment was generally found to be operating adequately and we noted no deficiencies with regard to the Policy P-00025. However, for several relationships the documentation of the economic background and/or source of funds is not appropriate to assess the personal and financial circumstances of the client or beneficial owner with regard to compliance with legal and regulatory requirements. Further, we noted that certain management controls performed are not sufficiently documented respectively control evidence was not retained.

Comments by Senior Management

Markus Walder, MDR, North America International, SALN – Management agrees to the content of the report and refers to the respective comments in the appendix.

Relevant Divisions/Regions

	PB
Americas	

Audit Contacts

Ronald Ottiger + 41 44 333 27 17

Chief Auditor Private Banking

Co-Chief Auditor Switzerland

Permanent Subcommittee on Investigations
EXHIBIT #12

Confidential Treatment Requested by Credit Suisse

CREDIT SUISSE

PB Americas
North America International

CSG Internal Audit

Executive Summary

Report CS-2009-210
December 9, 2009

André Renggli + 41 44 333 32 43

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CS-SEN-00417863

Appendix 1

Detailed Audit Findings

Contents **Page**

Repeat Issues **1**

- *Client Documentation and Disclosure of Financial Background* 1

New Issues **1**

1. *Organization* **1**

1.1 *Management Controls* 1

2. *Wealth Management* **1**

2.1 *Cross Border Activities* 1

3. *Due Diligence and Prevention of Money Laundering* **2**

3.1 *Client Documentation* 2

4. *Specific Comments on Client Relationships* **2**

4.1 *Client Group KYRL and TIL* 2

4.2 *Client Relationship DWW* 3

Confidential Treatment Requested by Credit Suisse CS-SEN-00417864

Repeat Issues

PB Americas, North America Offshore, Latin America and Bahamas; Report CS-2006-133; issued August 31, 2006; rated B2

- *Client Documentation and Disclosure of Financial Background*

  In our previous audit we noted that in some cases the know your client (KYC) documentation was not meaningful or not up-to-date and needed further enhancement. In-between Relationship Managers (RM) have been trained and projects to enhance KYC profiles were initiated. However, we still noted client relationships where the documentation of economic background and/or source of funds was not comprehensive yet. We refer to issue 3.1 of this report.

New Issues

1. Organization

1.1 *Management Controls*

We noted that certain control tasks (coverage period from January to June 2009) have not always been sufficiently documented as required by policy GP-00015 "General Principles of Effective supervision" (e.g. sample size, selection, measures taken) and therefore, control evidence is lacking in certain cases.

Recommendation

Ensure and retain adequate documentation of management controls performed, including sample size and measures taken as set forth by the policy GP-00015.

Comments by Management and Implementation Date of Recommendation

Markus Walder, MDR, North America International, SALN – Agreed and already implemented. Implementation of best practice documentation standards (i.e. comment column in excel spreadsheets with comments on performed activities).

2. Wealth Management

2.1 *Cross Border Activities*

Client-facing employees (CFE) performing cross-border activities must be appropriately certified for the countries of their clients' domiciles. Non-traveling CFEs who provide cross-border services to foreign clients are required to obtain the Advisory Certificates for the countries they deal with. The country-specific Advisory Certificate can be obtained by doing the applicable training and passing the relevant test. Assistants who have contact with clients are also regarded as CFEs. In this respect, we noted that some RMs and various assistants within SALN have not yet obtained all necessary certificates.

Recommendation

Ensure that all CFEs obtain respective certificates for the countries they are servicing clients.

Comments by Management and Implementation Date of Recommendation

Markus Walder, MDR, North America International, SALN – Agreed. Most of the relationship concerned will be transferred to the respective country desks outside SALN. The remaining RMs will be trained according to the countries where client relationship responsibilities stay within SALN. Implementation until June 30, 2010.

3. *Due Diligence and Prevention of Money Laundering*

3.1 *Client Documentation*

Policy P-00163 "Know Your Client/Client Profile" requires a meaningful client profile that must be kept up to date for the full duration of the relationship. The information contained in the client profile must adequately reflect the risk associated with the client relationship, must be complete and, with respect to the origin of the assets deposited and the background of the transactions executed, comprehensible to a competent third party. In our previous audit report we noted that the economic backgrounds as well as the sources of funds of the clients was generally known by the RMs, but not always consistently and precisely documented in the application FrontNet. We acknowledge that RMs have been trained and instructed to review and enhance the client documentation. Further, within SALN a general Client Base Review was started in April 2009 that will be completed in June 2010 the latest. However, we still noted several client relationships, including newly opened client relationships, where the economic background of the client, the origin of assets and the background of flow of funds is not appropriately documented in the IT application FrontNet (including reference to existing physical documentation) to assess the personal and financial circumstances of the client or beneficial owner with regard to compliance with legal and regulatory requirements.

Recommendation

Improve documentation of economic backgrounds and sources of funds of clients.

Comments by Management and Implementation Date of Recommendation

Markus Walder, MDR, North America International, SALN – Agreed. The SALN overall client base review, which started in April 2009, will be finalized as planned by June 30, 2010. As recommended by Audit, SALN will have a specific focus on economic background and source of funds.

4. *Specific Comments on Client Relationships*

4.1 *Client Group KYRL and TIL*

We noted two relationships opened in 2008 with domiciliary companies (KYRL, AUM CHF 8.3m and TIL, AUM CHF 4.3m) where the incoming assets originate from an operating company active in the leather business. For both relationships, the owner and two accountants of the leather company are authorized signatories. However, we noted the following:

- The beneficial owner (BO) of the relationship KYRL is the wife of the owner of the leather company according to documentation in FrontNet and the existing Form A. However, there are doubts regarding correct disclosure of the beneficial ownership due to the authorized signatories. In addition, there is no meaningful documentation of the economic background and the Flow of Funds.

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- The BOs of TIL are the two accountants of the leather company according to the Form A. However, the signatory list may raise doubts with regard to the beneficial ownership. In addition, documentation of the economic background as well as flow of funds is not appropriate to assess the personal and financial circumstances.

Recommendations

a) Reassess the beneficial ownership for the relationships and obtain new Form A if necessary.

b) Clarify the background of the transactions and enhance KYC and Flow of Funds documentation accordingly.

Comments by Management and Implementation Date of Recommendations

a) *Markus Walder, MDR, North America International, SALN* – Agreed. Implementation by March 31, 2010.

b) *Markus Walder, MDR, North America International, SALN* – Agreed. Implementation by March 31, 2010.

4.2 *Client Relationship DWW*

The client is a US person, CEO, and Chairman of a company active in the IT software business. We noted three incoming deposits of company shares of an amount of around CHF 3.5m, each in favor or three other persons into a separated security account of the client relationship. According to documentation in the application FrontNet, the deposited company shares belong to the client's wife and his two children. However, according to KYC documentation the account holder is the sole beneficial owner of the client relationship. Further, available KYC documentation is not meaningful enough to understand the client relationship without verbal explanation of the RM.

Recommendation

Reassess the beneficial ownership, obtain a Form A if necessary and enhance KYC documentation.

Comments by Management and Implementation Date of Recommendation

Markus Walder, MDR, North America International, SALN – Agreed. Cif to be closed. Discussion of Cif closing with client already started in June 2009. Client was not interested to be transferred to CSPA. Client has already opened an account with another bank. Beneficial ownership has been reassessed with new Form A. Implementation by June 30, 2010.

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Appendix 2

Audit Scope and Background Information

Audit Scope

1. *Organization*

1.1 Segregation of duties, policies and control procedures, management controls, MIS

2. *Wealth Management*

2.1 Non-discretionary Mandates: Client documentation, order transmission and processing, types of assets;
2.2 Use of Derivative Instruments: Risk assessment, risk disclosure, legal documents, supervision;
2.3 Order Execution: Bulk orders, direct orders, collective orders and reversals, same day processing, short positions;
2.4 Loans against Securities: Monitoring of excesses/overdrafts, legal documents;
2.5 External Asset Managers: Assessments, order processing, retrocessions, documentation and formalities;
2.6 Intermediaries: Assessments, agreements and fees.

3. *Due Diligence and Prevention of Money Laundering*

3.1 Code of Due Diligence: Account opening procedures, client identification, disclosure of the beneficial ownership and handling of politically exposed persons; and
3.2 Unusual Transactions: Assessment and documentation of financial background.

4. *Other Aspects*

4.1 Mail: Mailing instructions, hold-mail procedures and e-mail formalities;
4.2 Internal Accounts: Competences, turnover and supervision; and
4.3 Miscellaneous: Employees transactions, special tariffs, dormant accounts, complaints and losses, user access administration, travel and expenses.

Audit Period

September 2009 – November 2009 (80 Audit Days)

Audit Team

Auditors	Cindy Berthou-Landmann	Marco Gehrig
Audit Manager	Vincent Suter	
Area Head	André Renggli	

Overview of Reviewed SOX 404 Processes

N/A; no SOX 404 processes directly assigned.

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Appendix 3

Distribution List

A) Divisional Management

Division CEO *:	Mr. Walter Berchtold
Division COO:	Mr. Christoph Brunner
Responsible Management Committee Member:	Mr. Anthony DeChellis
Responsible Management:	Ms. Manuela Balma Mr. Markus Walder Mr. Daniel Weiss Mr. Christian Wiesendanger Mr. Silvan Wyss

B) Regional Management

Regional CEO *:	Mr. Robert S. Shafir
Regional COO:	Mr. Lewis H. Wirshba
Country / Sub-Regional Management:	Mr. Dave Chitty

C) Shared Services Management

Legal:	Ms. Dorothee Locher Chiment Mr. Neil Radey
Compliance:	Ms. Ursula Lang Mr. Allen Meyer Ms. Colleen A. Graham
Risk Management:	Mr. Hans-Joerg Turtschi Mr. Mark A. Holmes
ATS Coordinator:	Mr. Samuel Kessler

D) CSG Functions

Group CFO *:	Mr. Renato Fassbind
General Counsel:	Mr. Romeo Cerutti
General Counsel COO:	Ms. Agnes F. Reicke
Senior Legal Counsel GxB *:	Mr. Felix P. Graber
Group CRO *:	Mr. Tobias Guldimann
Corporate Governance Portal:	Ms. Joan E. Belzer Mr. Andreas Fehrenbach Mr. Pierre Schreiber

* Executive Summary only

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Appendix 4

Rating and Materiality Definitions

1. Principles

The Audit Report Ratings ('the rating') provide a mechanism to quickly convey to the reader the Internal Audit's assessment of the overall control environment at the start of the audit fieldwork and the significance of the issues raised in relation to the Audit Unit (see scope) under review. The rating is solely assigned by Internal Audit based on its independent and professional judgment.

A separate materiality level is displayed with the rating on the audit report to provide the reader with Internal Audit's assessment regarding the materiality of the Audit Unit reviewed in relation to the overall portfolio of businesses of the Bank.

2. Rating Definitions

Rating A

The Audit Unit's overall control environment was found to be operating effectively. In particular:

- There were no internal control issues, or only minor issues which pose no undue risk; and
- No reputational or compliance risks were identified; and
- No instances of non-adherence to laws and regulations were identified; and
- No high-risk issues were identified.

Rating B

The Audit Unit's overall control environment was generally found to be operating adequately;

- Minor internal control issues were identified, which if not addressed, could pose undue risk to the Bank; and/or
- Deficiencies were identified in application of internal directives, policies or best practices; however:
- No significant reputational or compliance risks were identified; and
- No instances of non-adherence to laws and regulations were noted.

Rating C

The Audit Report identified issues that could expose the Audit Unit to a heightened level of operational, financial or reputational risks. These issues include:

- Internal control issues, which if unresolved could pose undue risk to the Bank; or
- Reputational or compliance risks; or
- Non-compliance with or lack of appropriate internal directives or policies; or
- Issues from prior audits that have not been adequately remedied; or
- Non-adherence to laws and regulations.

Senior Management (one level below Management Committee, or higher) must ensure that these issues are addressed in a timely manner.

Rating D

The Audit Report identified issues that could expose the Audit Unit to a significant level of operational, financial or reputational risks. These issues could include:

- One or more significant internal control issues, which if unresolved could pose significant risk to the Bank; or
- Issues with high potential for exposure to significant reputational risks; or
- Significant non-compliance with existing directives and policies or significant lack of appropriate internal directives or policies; or
- Inadequate remediation of significant issues from prior audits, and/or management focus on such; or
- Numerous findings that, while individually less significant, in the aggregate represent significant unmitigated risks for the unit's internal control environment; or
- Significant non-adherence to laws and regulations; or
- Substantial work outstanding to mitigate significant risks identified and/or implement strategic control initiatives.

Senior Management and the Responsible Management Committee Member must ensure that these issues are addressed in a timely manner.

It is Internal Audit's policy to commence a follow-up review generally within one year of the issuance of all D-rated reports.

3. Materiality Criteria Methodology

The individual risk score and the materiality level are the two key dimensions in the Risk Assessment Methodology (RAM) used by the Internal Audit to determine the audit rotation/frequency. As part of the audit report rating, this materiality level will be disclosed/ published and will provide management with valuable information about the size/significance of the Audit Unit under review in relation to the entire population of Audit Units within the Bank.

Internal Audit determines the materiality level for each Audit Unit, typically as part of the annual planning process. The factors are primarily determined by the Audit Unit type and are assessed at four levels (with 4 being the highest level). These levels are based on specific criteria relevant to the various business activities conducted by the Bank. Not every consideration will apply to a particular Audit Unit within the defined business activity and the criteria include – inter alia – trading revenues, number of transactions and deal volume, assets under management, outstanding loans, number of clients, etc. for business area; more qualitative criteria for functional and topical units.

The individual criteria are periodically reviewed by Internal Audit and discussed with and validated through business management. The applicable materiality level for the report rating is reassessed by Internal Audit during the planning phase of an audit and is generally communicated to the responsible line management as part of the opening meeting of an audit.

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PROJECT W9

Kick-Off Meeting

September 29, 2006

(v4 Result)

Date: October 2, 2006
Produced by: SOAM

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Slide 1

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Permanent Subcommittee on Investigations
EXHIBIT #13

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PROJECT W9
Agenda Kick-Off Meeting

- Introduction & Background on W9 Issue
- Overview of Migration Process for US Resident W9 Clients
- CSPA Client Acceptance Process: A Professional & Warm Welcome
- Open Issues
- Next Steps

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Slide 2

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Overview of history and results so far regarding US clients

Risk Situation Regarding US Offshore Business

- Litigation Risks
  → Potential litigation impact for Credit Suisse
- Regulatory Risks → Missing advisory & broker/dealer license for USA issued by SEC

ExB Decision in 2000

- Strict implementation of CS Directive D-0025
- Centralize non-W9 clients to US desk
- Establish Swiss based advisory company with advisory & broker/dealer licenses (CSPA as an EAM of CS)
- Move W9 clients to CSPA

Results as of 2006

- CSPA has been set up and obtained SEC licenses
- Transfer of W9 assets to CSPA did not happen (originally less than 20% of initially CHF ~2.9 billions was transferred to CSPA) → No incentives for asset transfer offered!
- Centralization of US clients in Credit Suisse offshore desk SWL not completed (about 60% of US resident persons' AuM went to SWL) → Exceptions granted by management!
- Aggressive Growth Strategy in CSPA not successful (expected growth of CHF 1.5 to 2.5 bn NNA p.a. has not happened)
  → Critical mass for new business not achieved?

- The One Bank initiative has increased Credit Suisse's exposure regarding US legal risks since the beginning of 2006
- PB USA business development initiatives further increased exposure in the US
- With regulatory requirements generally growing and foreign regulator's monitoring tightening, the room for maneuver decreases constantly (e.g. recent developments in Norway, Sensitive Countries/OFAC, US-WHT, LatAm, Japan...)
- Credit Suisse Private Advisors – our SEC licensed subsidiary – is not fully utilized to the advantage of our US clients as well as of Credit Suisse

Initiation of Project W9 by W. Berchtold

*) SBIP = Swiss Banking IT Platform

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Project W9

Project Order

IPBs out of scope: concern of M. Walder: clients decide to move from CS to IPB's

W9 Project Order

1. Prepare migration of US resident W9 clients to CSPA (Swiss Booking Center / SBIP*)
2. Analyze/propose further scope extensions
3. Gain management and front support

- Identification of relevant W9 clients on Swiss Booking Platform
- Analysis of Swiss booked clients
- Preparation of a roadmap for the migration of affected W9 clients to CS Private Advisors (CSPA) in coordination with the involved stakeholders
- Bring up strategic issues to be decided on

→ Initiate and lead resulting W9 project as decided by Walter Berchtold

Non-W9 clients
- Analysis of Swiss booked clients
- Proposal for next steps

Foreign booking centers
- Analysis of data from int. locations
- Proposal for next steps

Indep. Private Banks / Clariden Leu
- Analysis of Clariden Leu data
- Proposal for next steps

→ Extend W9 project as decided by Walter Berchtold

- Involve relevant stakeholders into planning process
- Optimize transparency regarding risk situation and its mitigation

*) SBIP = Swiss Banking IT Platform

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PROJECT W9

L&C/Tax Input regarding W9 project

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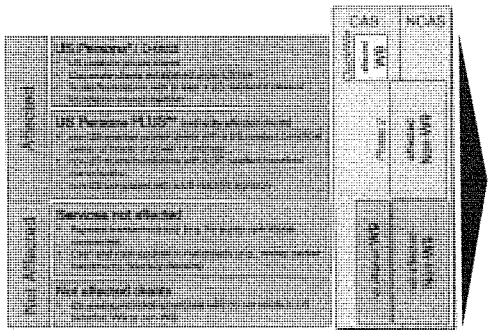
PROJECT W9

The project has two phases: QuickWin (W9 Migration) & Phase 2



1. By migrating affected W9 clients, we can significantly reduce US legal risks
   → **PHASE 1: QuickWin**
2. Affected non-W9 clients need to be tackled in a second phase
   → **PHASE 2: Offshore Country Certification Program for RMs**

*) US Person (according to D-0025) = Basically US resident/US-incorporated clients

**) Affected clients = Includes clients who are indirectly affected because of an affected third-party

OUT OF SCOPE: EAM clients

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Draft Version! August 11, 2006

SWISS BOOKED W9 CLIENTS: AFFECTED UNITS

AFFECTED UNIT		Instr	# CIFs	AuM	Credits	Net Revenue 2005**	
Swiss booked W9 client relations with External Asset Managers (SEM*)		SEM*	88	CHF 176 Mio	-	CHF 1.3 Mio	74 bps
Neue Aargauer Bank		NP*	5	CHF 1.8 Mio	0	CHF 25 k	(139 bps)
PBB CH	Private Banking CH	SR*	134	CHF 171 Mio	CHF 7.5 Mio	CHF 1.7 Mio	99 bps**
	Private Clients CH	SL*	1	CHF 0.2 Mio	CHF 530 k	CHF 9 k	(n/a)
	Corporate Clients CH	SG*	8	CHF 4.1 Mio	CHF 1.3 Mio	CHF 1.2 Mio	(n/a)
PB EMEA	PB EMEA	SI*	564	CHF 194 Mio	CHF 7.7 Mio	CHF 1.7 Mio	84 bps**
	UHNWI EMEA (→ SIDP)	SWI* (→ SIDP)	22	CHF 219 Mio	CHF 32 Mio	CHF 0.4 Mio	16 bps**
			1 (special case)	0 (886M Custody-A)	CHF 998 Mio	CHF 4.8 Mio	37 bps***
PB North America Offshore		SWL*	251	CHF 401 Mio	CHF 5 Mio	CHF 4.2 Mio	103 bps**
SWA, SWB, SWM		SWA/B/M	11	CHF 32 Mio	0	CHF 156 k	49 bps
(without Instradierung)		-	2	0	0	0	0
		TOTAL	998 (without EAMs & special SWI case)	CHF 1'023 Mio (without EAMs)	CHF 54 Mio (without EAMs & special SWI case)	CHF 9.4 Mio (without EAMs & special SWI case)	87 bps** (without EAMs & special SWI case)

Data Source: SOFC 41 & LBM (May-July 2006)

*) USA plus US Territories: Guam, Puerto Rico, American Samoa
**) bps = Net Revenue 2005 / (AuM + Credits)
***) including Custody Assets of CHF 886 Mio & Credits

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PROJECT W9

QuickWin: Migration of affected W9 clients to CSPA

	SBIP SOLUTION SEGMENT	# CIFs	AuM	Net Revenue 2005	SOLUTION PROPOSAL
	Swiss booked W9 client relations with External Asset Managers (SEM*)	88	CHF 175 Mio	CHF 1.3 Mio	no action required
SWISS BOOKED W9 CLIENTS (EAM and CSPA CIFs excluded, SEM* & SWI_N4) – US* DOMICILED PRIVATE CLIENTS	PB3C Clients (i.e. AuM<CHF 25k)	411	CHF 1.1 Mio Credits=294 k	CHF 675 k	Portfolio Blocking!
	PB3B Clients (25k<AuM<CHF 100k)	99	CHF 5.5 Mio Credits=1.5 Mio	CHF 95 k	→ CSPA No Exception!
	PB3A Clients (100k<AuM<CHF 250k)	100	CHF 16.5 Mio Credits=9.2 Mio	CHF 230 k	TOTAL CIFs: 525 AuM: 718 M Revenues: 3.3 M
	PB2 Clients (250k<AuM<CHF 1 Mio)	196	CHF 108 Mio Credits=2 Mio	CHF 1.3 Mio	
	PB1 Clients (AuM>CHF 1 Mio)	130	CHF 586 Mio Credits=37 Mio	CHF 3.7 Mio	
CORPORATE CLIENTS – US* DOMICILED	Corporates with AuM < 25k → operative corporations ?	18	CHF 12.8 k Credits=10.3 Mio Cashin=885 Mio (*)	CHF 6.0 Mio	→ CSPA Exception Rule: Operative companies using payment services only will not be migrated!
	Corporates with AuM=25k...1M → operative corporations ?	17	5.7 Mio	CHF 53 k	
	Corporates with AuM>1M → trusts / foundations ?	24	292 Mio	CHF 2.0 Mio	TOTAL CIFs: 59 AuM: 309 M Revenues: 3.3 M
CORPORATE CLIENTS – NON US* DOMICILED	US domiciled beneficial owner	3	CHF 8.2 Mio	CHF 109 k	
	US domiciled settlor/main shareholder	1 (additional)	CHF 123 k	CHF 1.6 k	
	TOTAL	999 (without EAMs)	CHF 1'023 Mio (without EAMs)	CHF 14.2 Mio (without EAMs)	

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Data Source: SOFC 41 & LBM (May-July 2006)

*) USA plus US Territories: Guam, Puerto Rico, American Samoa

Slide 8

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PROJECT W9

Phase 2: Offshore Country Certification Program for RMs

Objectives Phase 2	Further reduction of SEC inflow risk by...
Proposed Actions	Offshore country certification program for RMs
Future Stages	

PROPOSAL FOR PHASE 2

1. REDACTED
2. Implement program in second half of 2007
3. Extend program to other countries as needed

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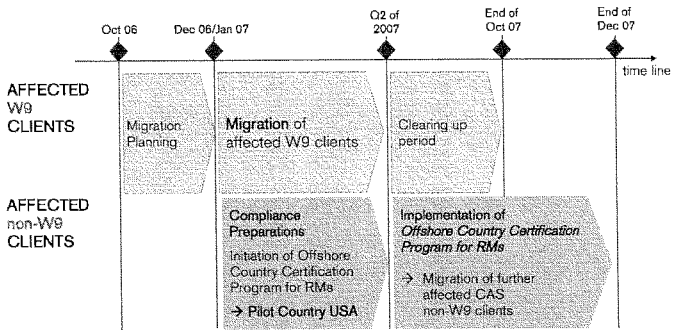
PROJECT W9

Roadmap for QuickWin and Phase 2



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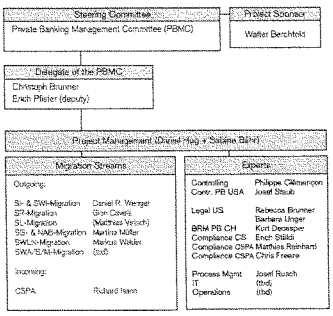
PROJECT W9
Proposed project organization



Project Sponsor
is the CEO Private Banking

Project Steering Committee
consists of the PBMC. It will deliver the necessary strategic decisions.

Delegate of the PBMC
will deliver necessary top level operative decisions to execute the project.

Project lead, migration stream responsibles and experts will form the project core team that will execute the project according to the decisions of the delegate of the PBMC and the PBMC.

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Slide 11

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PROJECT W9
Agenda Kick-Off Meeting

- Introduction & Background on W9 Issue
- Overview of Migration Process for US Resident W9 Clients
- CSPA Client Acceptance Process: A Professional & Warm Welcome
- Open Issues
- Next Steps

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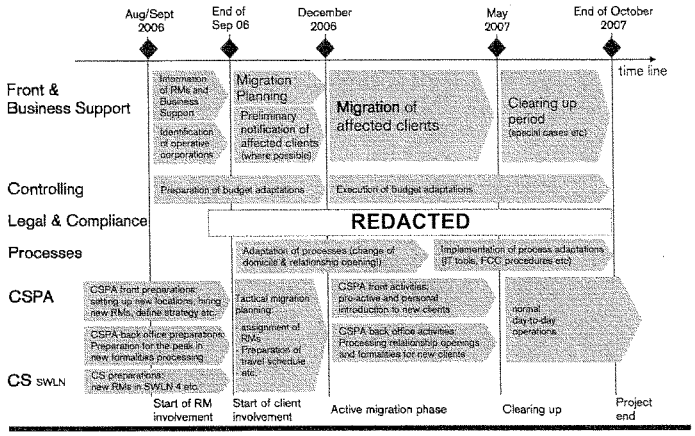
ROADMAP W9 MIGRATION



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In step 2: streams will categorize all CIFs re their 'complexity to transfer': i.e. high or low complexity expected.

REDACTED REDACTED

Project W9
Migration Phase: Steps and Milestones

STEP 1	Identifying operational companies	▪ Identification of purely operative companies by affected stream responsibles (i.e. non domiciliary companies without securities and commodities investments) → SOAM will send out excel list to stream responsibles by Oct 3, 2006 Begin: 3 October 06 Due Date: 13 October 06
STEP 2	Verification of migration list	▪ Check client domicile and other data (W9 flag, beneficial owner domicile) ▪ Connected CIFs – check if two or more CIFs are associated with each other ▪ Add additional CIFs to the migration list if necessary ▪ Check if clients portfolio can be blocked (AuM < CHF 25k) → SOAM will send out excel list to stream responsibles by Oct 16, 2006 Begin: 16 October 06 Due Date: 15 November 06
STEP 3	Migration of clients (for process details see next slide)	▪ Contacting & informing clients ▪ Obtain client's decision: Transfer to CSPA, blocking of portfolio or closing relation (legally sufficiently documented) ▪ Inform SOAM about client's decision not later than March 15, 2007 ▪ Execute client's decision & report to SOAM until May 2007 → SOAM will send out excel list to stream responsibles by Dec 11, 2006 Begin: 11 December 06 Due Date: 15 May 07

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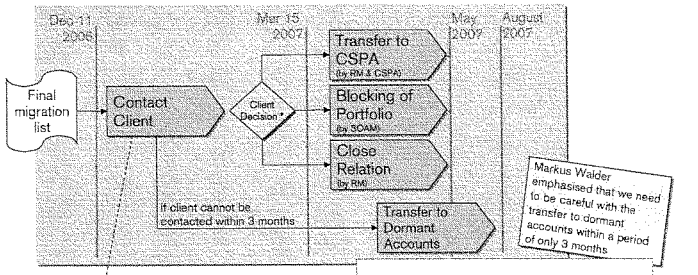
STEP 3: Migration of clients - Process



Contact Client:

1. RM selects clients to be sent a central client letter
2. Central letter to selected clients
3. RM contacts client personally
4. Obtain legally sufficient decision document
5. Inform SOAM about client's decision

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*) Client decision must be legally sufficiently documented

Slide 15

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PROJECT W9
Agenda Kick-Off Meeting

- Introduction & Background on W9 Issue
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Slide 18

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CSPA Client Acceptance Process: A Professional & Warm Welcome

CSPA will hire 2 or 3 more RMs until end of year
Welcome package ready in 2 months / internal roadshows planned
CSPA will have clear business and location strategy until beginning of December 2006 at the latest

- Professional welcome package for new clients
- Pro-actively contacting all new clients within days after client decision
- Introductory hand-over meetings jointly prepared by old & new RM for big clients
- Excellently prepared first meetings with all new clients during first weeks after client decision
- Lean and easy formalities process & support
- Ensuring sufficient CSPA RM capacity to handle expected number of clients to be transferred

Prerequisites for a successful migration are:

- an excellently prepared CSPA
- a supportive business
- a coordinated approach
  (e.g. not switching all clients at the same time etc.)

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CS-SEN-00426154

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PROJECT W9
Agenda Kick-Off Meeting

- Introduction & Background on W9 Issue
- Overview of Migration Process for US Resident W9 Clients
- CSPA Client Acceptance Process: A Professional & Warm Welcome
- Open Issues
- Next Steps

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Slide 18

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Open Issues

Additional issues to be clarified:
- clear exception rules and process
- potential incentives for RMs

Issue	Proposal
▪ Ensure Involvement of Key Stakeholders Business: U.Körner, A.Bättig, U.Dickenmann, C.Wiesendanger Legal&Compliance: M.Eichmann, R.Cerutti BRM; Heads Business Support; etc.	Arrange further information meetings Additional Email by CEO / Regional CEOs
▪ New Data Base as per End of August 2006	Controlling will deliver next week
▪ Central / Decentral Migration Mgmt Centrally (FrontNet campaign functionality, client letters) or decentrally (by Business Support/BRM) managed CIF tracking/monitoring of migration	Feedback from core team The core team members preferred a decentral approach whenever possible (i.e. no central letters, no FrontNet campaign directly addressing RMs etc.) The migration stream responsibles will coordinate all decentral activities

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PROJECT W9
Agenda Kick-Off Meeting

- Introduction & Background on W9 Issue
- Overview of Migration Process for US Resident W9 Clients
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- Next Steps

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Slide 20

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Next Steps

Activities	Responsible	Due Date
▪ Provide Feedback Regarding Migration Processes	All	asap / Oct 6, 2006
▪ Propose Stakeholder Mgmt Presentations	All	asap / Oct 6, 2006
▪ Deliver Results Regarding STEP 1 (identification of purely operational companies) SOAM will send out order by Oct 3, 2006	Affected Streams	Oct 13, 2006
▪ Next Core Team Meeting (~monthly)	All	Oct 13, 2006

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PROJECT W9

6th Core Team Meeting

January 26, 2007
(v2 Sendout)

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Date: 26.01.2007 Slide 1

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CS-SEN-00173686

Permanent Subcommittee on Investigations
EXHIBIT #14

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PROJECT W9
6th Core Team Meeting

- Overall Project Status
  - PBMC Update
  - Status CIF Exclusions in Step 3
  - Status Exceptions
  - W9 Intranet Communication
  - Migration Reporting to PBMC
  - Next Steps

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Date: 26.01.2007 Slide 2

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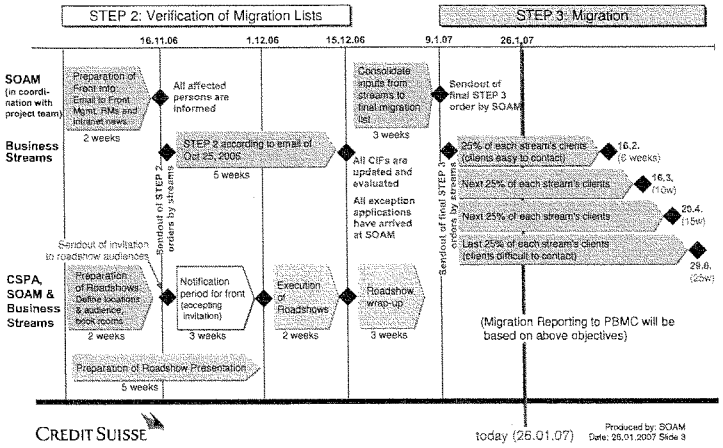
ROADMAP PROJECT W9: STEP 2 + 3



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PROJECT W9
6th Core Team Meeting

- Overall Project Status
- PBMC Update
- Status CIF Exclusions in Step 3
- Status Exceptions
- W9 Intranet Communication
- Migration Reporting to PBMC
- Next Steps

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PROJECT W9 – STATUS OVERVIEW

Project W9

[illegible]

Current Status of Execution

- Roadshow-Presentations in Zürich (2x), Lugano, Chur, Basel, Geneva (2x) and Bern for affected RMs have been held
- In total 87 exception applications have been filed. The W9 decision board will decide on them until Feb 2007.
- Transfer of CIFs to CSPA has started in January 2007

Next steps:

- By mid of 2007, the migration of US domiciled W9 clients will be finished
- Maximum volume to be migrated:
  ~800 CIFs, AuM ~CHF 1b, Revenue 2006 (Jan to Aug) ~CHF 6m

Redacted

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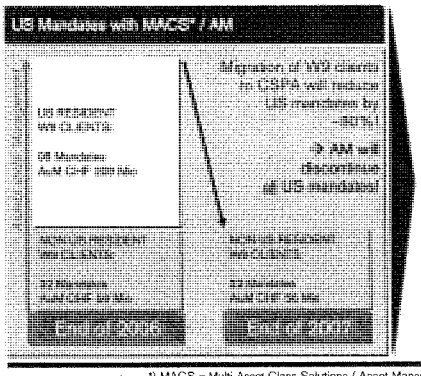
PROJECT W9

As a consequence of the project, the current US discretionary mandates will be discontinued (Decision by MACS Product Board, Nov 7, 2006)



Credit Suisse will not offer any US specific discretionary mandates anymore:

→ No new US mandates will be accepted by AM as of December 2006

→ Existing US mandates need to be transferred to other, non-US mandates or to CSPA

→ Collaterally affected clients (22 mandates which are not in scope of the W9 project) must be informed accordingly

*) MACS = Multi Asset Class Solutions / Asset Management

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REDACTED

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PROJECT W9

After the current exception opportunity, there will be no further possibilities to ask for exceptions regarding US resident W9 clients

Current one-time exception opportunity

- One-time opportunity for existing and significant clients in a long-term relationship with Credit Suisse
- Totally 87 exception applications have been filed
- Final decision by W9 decision committee until Feb 2007

No future exception opportunities for the W9 project

- No exception opportunities for US resident W9 clients newly to be opened at Credit Suisse
- No opportunity for new mixed W9 / non-W9 clients which are US resident
- A domicile change to USA of any W9 client will trigger a "Transfer to CSPA" case with formalities control

There is no future exception process planned because there are no dual relationships allowed and an efficient process would lead to material inefficiencies

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PROJECT W9

Current scope of the project does not include international locations nor Clariden Leu although the associated risks are very similar

Clariden Leu

- US resident W9 clients will not be transferred to CSPA
  (No data on affected clients analyzed: other legal entity)
- Any legal adaptations will only be valid for CS, not for Clariden Leu
- Processes & Applications will be adapted for CS only

Implementation has to be decided by Clariden Leu Management

International Locations

- US resident W9 clients who are booked at an international location will neither be transferred nor closed
  (All US resident W9 clients: ~100 CIFs, ~CHF 300-400M AuM in June 2006)
- No process or application adaptations planned

If the PBMC wishes to extend the scope, the project needs an official order to do so

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PROJECT W9
6th Core Team Meeting

- Overall Project Status
- PBMC Update
- Status CIF Exclusions in Step 3
- Status Exceptions
- W9 Intranet Communication
- Migration Reporting to PBMC
- Next Steps

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Project W9
Status CIF exclusion in Step 3

Next Steps: Name Match, Numbered Accounts, ESOS and Portfolio Blocking

- **Name Match (21 W9 CIFs; AuM CHF 17m) & Numbered Account (8 CIFs; AuM CHF 10.3m)**
  → Current Clients with both, a W9 and a Non-W9 must choose whether they want to transfer their W9 CIF to CSPA or keep their Non-W9 CIF at CS

REDACTED

- **Portfolio Blocking (26 CIFs; AuM CHF 15.7m)**
  → This will be done by SOAM. We are currently looking at technical solutions
  → Until the Portfolio has been blocked it is the responsibility of the RM to ensure that the client does not intend in the meantime to make any securities investments

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PROJECT W9
6th Core Team Meeting

- Overall Project Status
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CS-SEN-00173697

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Project W9
Status Exception Applications

Status Exceptions	▪ 89 exception applications received (w/o 1 special case) ▪ Total AuM CHF 539m ▪ Total revenue CHF 3.1m (w/o 1 special case with revenue CHF 2.4m)
Typical reasons for exceptions	▪ Intermediary with a large AuM ▪ Contact person in CH or outside USA ▪ Returning soon to CH and accordingly just temporarily in USA ▪ Holding company exclusively using cash management function ▪ Strong relationship to RM (e.g. over 10-20 years) ▪ Approval of exception already existing (e.g. D-0027 / UHNWI Strategy) ▪ Others
Next Steps and Number of Exceptions per unit	▪ W9 Decision Board will meet on Friday 02.02.07 ▪ Final decision will be communicated by mid-Feb ▪ SI: 37 + 1 special case; SR: 23; SA: 22; SW: 7

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PROJECT W9
6th Core Team Meeting

- Overall Project Status
- PBMC Update
- Status CIF Exclusions in Step 3
- Status Exceptions
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- Next Steps

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PROJECT W9

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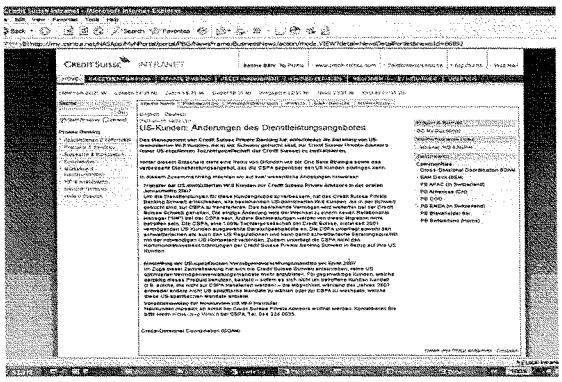
Intranet Page, News Entry and Alert have been published in the last 10 days...



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PROJECT W9
6th Core Team Meeting

- Overall Project Status
- PBMC Update
- Status CIF Exclusions in Step 3
- Status Exceptions
- W9 Intranet Communication
- Migration Reporting to PBMC
- Next Steps

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Project W9
Migration Reporting to PBMC

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Revised Reporting Timetable

- Ensure a timely reporting from PM → Stream-read → SDAM 1
- Migration reporting to PBMC will be based on the migrations indicated on Slide 3
- Upon Request from Mr. Cassell we have revised the reporting timetable as follows:

  Return status reports by:

  1) 16 February 2007 → deadline
  2) 16 March 2007 → deadline
  3) 27 April 2007 → read
  4) 25 May 2007 → deadline
  5) 29 June 2007 → read

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PROJECT W9
6th Core Team Meeting

- Overall Project Status
- PBMC Update
- Status CIF Exclusions in Step 3
- Status Exceptions
- W9 Intranet Communication
- Migration Reporting to PBMC
- Next Steps

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CS-SEN-00173703

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Next Steps

Activities	Responsible	Due Date
▪ Deliver Feedback to any topic of this presentation	Core Team	by mid-Feb 2007
▪ Deliver Status Report optional	Streams	Feb 16, 2007
▪ Next Core Team Meeting	Core Team	March 2, 2007

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CS-SEN-00173704

To: Wyss, Silvan <silvan.wyss@credit-suisse.com>
From: DeChellis, Anthony <anthony.dechellis@credit-suisse.com>
Cc:
Bcc:
Received Date: 2007-03-30 08:38:52 EST
Subject: FW: Risk Country: Yearly Review 2006

Anthony DeChellis
Credit Suisse
Managing Director
CEO Private Banking Americas
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Fax 212-538-4933
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anthony.dechellis@credit-suisse.com
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[redacted] = Redacted by the Permanent Subcommittee on Investigations

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From: Oberhänsli Peter (SOAB 22) [mailto:peter.oberhaensli@credit-suisse.com]
Sent: Friday, March 30, 2007 9:10 AM
To: Bättig Alois (SI); Körner Ulrich (I); Dechellis Anthony (CS); Kreis Marcel (CS)
Cc: Brunner Christoph (SO); Dickenmann Urs (SR); Pfister Erich (SOA); Hübscher Manuela (SOAB); Geissler Peter (SOAB 4); Weiss Daniel (SAOR); Wenger Daniel R. (SIAR); Schmid Rolf (SKR); Wüthrich Ruth (SWOZ 2); Hänni Stefan (SOAB 22)
Subject: Risk Country: Yearly Review 2006

Dear Sirs

Please find enclosed the yearly risk country review for 2006. This review refers to directive no P-00027 and shows the following:

- Number of CIFs and volume of AuM of clients with domicile in a risk country
- CIFs booked outside country desk with approval, special approval resp. without approval
- New openings of CIFS booked outside country desk
- CIFs booked outside country desk that were not centralized after a RM change
- Market Purity

Necessary measures are in discussion and will be communicated in due time.

A draft of this report was sent to the BA-BRMs on January 16, 2007.

Yearly review 2006.pdf

Permanent Subcommittee on Investigations
EXHIBIT #15

For further questions please contact your Business Risk Management.

Yours sincerely

Peter Oberhänsli
CREDIT SUISSE
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Business Risk Management, SOAB 22
Center of Competence Risk Countries
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Attachments:

Yearly review 2006.pdf

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Private Banking
Risk Country Report 2006

Date: March 30, 2007
Produced by: SOAB 22

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Starting Position

Scope to review

- P-00027 (RC) requires BRM / CoC RC to yearly present an overview of all Risk Country relationships managed outside country desks
- Compliance with the policies P-00027 (RC), P-00168 (EE), P-00025 (US) and P-04316 (AUS)
- Statistic of the cases with exception-approval, with special-approval and without approval.

Status

- The report is based on the overall situation Risk Countries, US, Eastern Europe, Hong Kong and Australia as of November 16, 2006
- This is the third report provided to the Business Area Heads

Background of / Details on history of Risk Country handling

- After termination of project "RC transfer 2002" in 03/2003 the primary goal of the risk country review is to ensure a proper risk management, increase the overall market purity, and define actions if necessary
- Since 06/2003 a quarterly control process for RC, US, EE, HK and AUS relationships is established.

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CS-SEN-00409538

Risk Country Overview

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(total number of relationships and total AUM within RC 1-3, HK, US, Eastern Europe and Australia)

		Americas	APAC	EMEA	PBB CH	EAM	Total 2006
RC 1	# of CF	610	340	9'766	316	390	11'424
	AUM	1'096'928'879	1'586'119'708	13'468'520'614	1'314'576'005	677'623'414	18'142'768'618
RC 2	# of CF	1'281	114	8'835	525	602	11'357
	AUM	2'586'661'770	463'681'555	19'529'309'459	611'819'541	1'426'862'920	24'618'360'253
RC 3	# of CF	10'514	1'058	15'474	2'242	2'396	31'686
	AUM	19'797'517'514	2'826'875'520	15'105'535'832	3'810'714'192	3'556'602'114	45'097'245'173
EE 7	# of CF	7	2	2'246	124	56	2'435
	AUM	1'425'275	384'495	1'761'937'035	61'118'035	71'758'000	1'916'626'841
HK	# of CF	5	937	358	74	51	1'425
	AUM	12'740'032	4'128'314'810	342'398'099	97'384'924	124'456'405	4'705'183'272
US	# of CF	2'540	40	10'511	917	527	14'535
	AUM	3'057'271'326	148'690'014	3'427'515'306	1'380'525'700	879'357'173	8'903'359'520
AUS	# of CF	5	999	2'043	113	63	2'523
	AUM	5'560'627	843'296'553	307'253'444	139'778'154	82'965'381	1'078'853'359
Total	# of CF	14'968	2'792	49'233	4'311	4'087	75'395
	AUM	26'556'100'628	9'895'361'658	52'952'403'797	7'425'963'550	6'819'662'408	104'462'392'035

		Americas	APAC	EMEA	PBB CH	EAM	Total
RC 1	# of CF	5.4%	3.0%	85.5%	2.8%	3.4%	100.0%
	AUM	6.0%	8.7%	74.2%	7.2%	3.7%	100.0%
RC 2	# of CF	11.3%	1.0%	77.8%	4.6%	5.3%	100.0%
	AUM	10.5%	1.9%	79.3%	2.5%	5.8%	100.0%
RC 3	# of CF	33.2%	3.3%	48.8%	7.1%	7.6%	100.0%
	AUM	43.9%	6.3%	33.5%	8.4%	7.9%	100.0%
EE 7	# of CF	0.3%	0.1%	92.2%	5.1%	2.3%	100.0%
	AUM	0.1%	0.0%	91.9%	3.2%	3.7%	100.0%
HK	# of CF	0.4%	65.7%	24.9%	5.2%	4.2%	100.0%
	AUM	0.3%	87.7%	7.3%	2.1%	2.6%	100.0%
US	# of CF	17.5%	0.3%	72.3%	6.3%	3.6%	100.0%
	AUM	34.3%	1.7%	38.5%	15.5%	9.9%	100.0%
AUS	# of CF	0.2%	11.9%	81.0%	4.5%	2.5%	100.0%
	AUM	0.5%	50.4%	28.5%	13.0%	7.7%	100.0%

*) EE (incl. following pages)
Countries from Eastern Europe that are not RC 1 - 3 (Slovak Republic, Estonia, Hungary, Slovenia, Czech Republic)

Source: Risk Country Report, as of November 16, 2006

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Produced by: SOAB 22
Date: March 30, 2007, Slide 3

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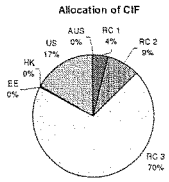
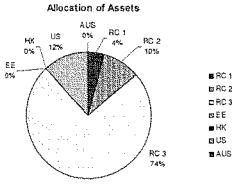
Risk Country Details Americas

Percentage of CIF and AUM per category





Total 17'748 CIFs for the whole BA whereof 14'965 CIFs or 84.3 % in Risk Countries resp. Special Countries

- 70% of the CIF within RC 3
- 13% of the CIF within RC 1 and RC 2
- 0.04% of the CIF within Hong Kong
- 0.05% of the CIF within Eastern Europe
- 17% of the CIF within US
- 0.03 % of the CIF within AUS

Total AUM CHF 31'131 m for the whole BA whereof AUM CHF 26'558 m or 85.3 % in Risk Countries resp. Special Countries

- 74% of AUM booked within RC 3
- 14% of AUM booked within RC 1 and RC 2
- 0.04% of AUM booked within Hong Kong
- 0.01% of AUM booked within Eastern Europe
- 12% of AUM booked within US
- 0.02 % of AUM booked within AUS

Source: Risk Country Report, as of November 16, 2006

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Date: March 30, 2007, Slide 4

Risk Country Details APAC

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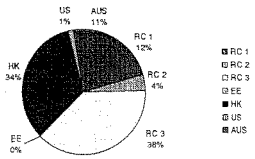
Percentage of CIF and AUM per category

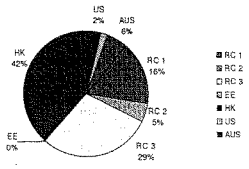
Allocation of CIF



Total 13'581 CIFs for the whole BA whereof 2'790CIFs or 20.5 % in Risk Countries resp. Special Countries

- 38% of the CIF within RC 3
- 16% of the CIF within RC 1 and RC 2
- 34% of the CIF within Hong Kong
- 0.07% of the CIF within Eastern Europe
- 1% of the CIF within US
- 11 % of the CIF within AUS

Allocation of Assets



Total AUM CHF 51'796 m for the whole BA whereof AUM CHF 9'698 m or 18.7 % in Risk Countries resp. Special Countries

- 29% of AUM booked within RC 3
- 21% of AUM booked within RC 1 and RC 2
- 42% of AUM booked within Hong Kong
- 0.003% of AUM booked within Eastern Europe
- 2% of AUM booked within US
- 6 % of AUM booked within AUS

Source: Risk Country Report, as of November 16, 2006

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Date: March 30, 2007, Slide 5

Risk Country Details EMEA

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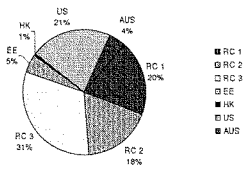
Percentage of CIF and AUM per category

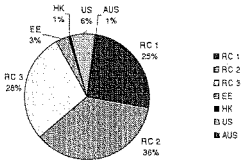
Allocation of CIF



Total 217'137 CIFs for the whole BA whereof 49'233 CIFs or 22.6 % in Risk Countries resp. Special Countries

- 31% of the CIF within RC 3
- 38% of the CIF within RC 1 and RC 2
- 1% of the CIF within Hong Kong
- 5% of the CIF within Eastern Europe
- 21% of the CIF within US
- 4 % of the CIF within AUS

Allocation of Assets



Total AUM CHF 189'034 m for the whole BA whereof AUM CHF 53'962 m or 28.5 % in Risk Countries resp. Special Countries

- 28% of AUM booked within RC 3
- 61% of AUM booked within RC 1 and RC 2
- 1% of AUM booked within Hong Kong
- 3% of AUM booked within Eastern Europe
- 6% of AUM booked within US
- 1 % or AUM booked within AUS

Source: Risk Country Report, as of November 16, 2006

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Date: March 30, 2007, Slide 6

Risk Country Details PBB CH

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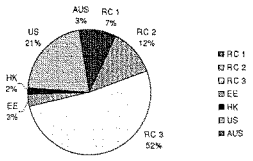
Percentage of CIF and AUM per category

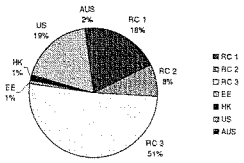
Allocation of CIF



Total 2'012'135 CIFs for the whole BA whereof 4'311CIFs or 0.21 % in Risk Countries resp. Special Countries

- 52% of the CIF within RC 3
- 19% of the CIF within RC 1 and RC 2
- 2% of the CIF within Hong Kong
- 3% of the CIF within Eastern Europe
- 21% of the CIF within US
- 3 % of the CIF within AUS

Allocation of Assets



Total AUM CHF 302'369 m for the whole BA whereof AUM 7'248 m or 1.5 % in Risk Countries resp. Special Countries

- 51% of AUM booked within RC 3
- 26 % of AUM booked within RC 1 and RC 2
- 1% of AUM booked within Hong Kong
- 1 % of AUM booked within Eastern Europe
- 19 % of AUM booked within US
- 2 % of AUM booked within AUS

Source: Risk Country Report, as of November 16, 2006

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Date: March 30, 2007, Slide 7

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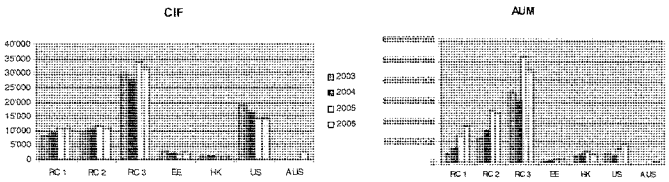
Risk Country Development 2003 - 2006 (1/2)

CIF and AUM over the last years



- Number of CIF within RC 1, RC 2 decreased slightly in 2006 after an increase in the previous years
- Number of CIF within RC 3 decreased by 7 % in 2006
- Number of CIF within EE (+ 7%) and HK (+10 %) increased slightly in 2006
- Number of CIF within US decreased in 2006 for the third time

- AUM significantly increased within RC1 (31 %) and US (21 %) in 2006 after further increases in the previous years
- AUM slightly decreased within RC 2 (-4 %), RC 3 (-13 %) and HK (-12 %) in 2006 after increases in the previous years.
- AUM almost unchanged within EE in 2006

Source: Risk Country Report, as of November 16, 2006

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Date: March 30, 2007, Slide 8

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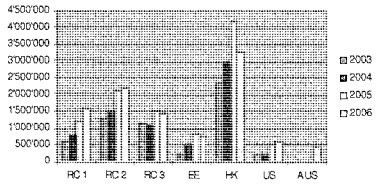
Risk Country Development 2003 - 2006 (2/2)

Average AUM per CIF over the last years

Average AUM per CIF



- Further increase of Average AUM per CIF within RC 1, RC 2 and US after considerable increases in the previous years
- Slight decrease within RC 3 and EE after a substantial increase in 2005
- Significant decrease of Average AUM within HK after high increase in the previous years

Source: Risk Country Report, as of November 16, 2006

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Date: March 30, 2007, Slide 9

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Special Desks – overview *)

Special Desk	Area	Head	Scope
Mixed int. Affluent Clients (PB2 and PB3 clients)	SIOA 5	Michael Schönborn	RC 1-3. US citizen, HK, Eastern Europe Australia
LATAM Desk	SALN 5	Markus Walder (Head Nord America)	LATAM-Kunden mit RC1-3
Thomas Schornstein	SIDD 41		Market Israel (RC 3)
ZH Airport	SIDD 31	Willy Kessler	RC 2-3. US citizen, HK
Asia Offshore CH	SWZ	Rudolf Escher	RC 1-3 in the market responsibility of SWZ (Asia offshore)
Middle East, Egypt, Greece, Turkey	SIHG	Thomas Greter	RC 1-3 in the market responsibility of SIHG (ME, Egypt, Greece, Turkey)
Middle East, Egypt, Greece, Turkey	SIHZ	Remo Maurer	RC 1-3 in the market responsibility of SIHZ (ME, Egypt, Greece, Turkey)
MG Russia, Ukraine, Central Asia	SIOR	M. Vlahovic	RC 1-3 in the market responsibility of SIOR (Russia, Eastern Europe, Central Asia)

*) Approved special desks as per November 16, 2006

Source: Risk Country Report, as of November 16, 2006

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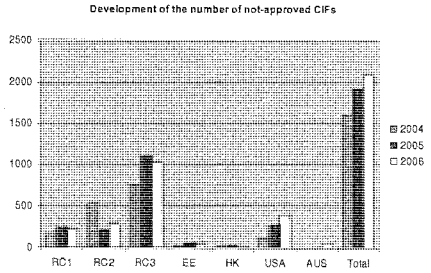
Development of not-approved CIFs 2004 - 2006

Whole PB excl. EAM



- Number of not-approved CIFs in general still increasing
- Development within RC1, 2, 3 and USA unsatisfactory
- For AUS no figures for the past

Source: Risk Country Report, as of November 16, 2006

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Produced by: SOAB 22
Date: March 30, 2007, Slide 11

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Country Desks - Market Purity RC 1

Extract only

	# at CIF						AUM					
	Total PB	At Country Desk	Percentage at Country Desk	Special Approval	Exception Approval	not approved	Total PB	At Country Desk	Percentage at Country Desk	Special Approval	Exception Approval	not approved
Russia	4'532	3'680	81.2%	655	112	85	8'658'952'212	5'163'789'842	59.6%	332'372'887	1'066'166'581	2'096'622'901*)
Georgia	28	23	82.1%	3	1	1	1'807'755'825	1'807'118'076	100.0%	223'393	0	414'354
Philippines	374	201	53.7%	135	27	11	1'247'966'328	1'143'313'906	91.6%	38'765'257	25'342'394	40'489'651 **)
Colombia	747	490	65.6%	215	37	5	1'033'858'661	862'842'841	83.5%	130'118'304	40'369'394	526'122
Islamic Rep. Of Iran	700	428	61.1%	251	11	10	682'201'140	597'806'967	87.6%	27'466'126	39'157'366	17'770'656
Ukraine	358	297	83.0%	46	11	4	572'023'479	565'157'166	98.8%	4'817'492	1'411'490	637'331
Kazakhstan	287	272	94.8%	12	2	1	535'572'520	514'258'865	96.0%	20'660'612	237'000	418'044
Indonesia	253	115	45.5%	93	34	11	533'812'370	406'346'849	76.1%	92'285'885	26'667'835	8'509'702
Pakistan	394	315	79.9%	68	10	1	504'490'533	436'472'671	86.5%	8'135'942	59'882'220	0
Libyan Arab Jamahiriya	804	253	41.9%	309	33	9	336'370'342	262'992'331	78.2%	34'715'651	38'190'509	471'751

*) whereof 40 cases with AUM 1'922 m in SIDP
**) whereof 1 case with AUM 39 m in SIDP

- Many not approved cases regarding Russia, Philippines and Indonesia.
- The market purity is still insufficient for some countries.
- Still room for improvement e.g. regarding Russia, Libya, Indonesia and Iran (Sensitive Country; centralizing ongoing).

Source: Risk Country Report, as of November 16, 2006

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Date: March 30, 2007, Slide 12

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Country Desks - Market Purity RC 2

Extract only

	# of CIF						AUM					
	Total PB	At Country Desk	Percentage at Country Desk	Special Approval	Exception Approval	not approved	Total PB	At Country Desk	Percentage at Country Desk	Special Approval	Exception Approval	not approved
Saudi Arabia	1'320	863	65.4%	274	72	111	8'449'142'281	6'864'188'681	81.2%	317'788'662	354'801'253	912'563'685 *)
Turkey	2'480	1'578	63.6%	651	219	32	4'963'427'221	3'655'748'963	73.6%	449'376'295	827'295'739	36'066'205
Venezuela	1'655	1'113	67.3%	421	97	24	3'561'546'392	2'215'559'621	62.2%	261'571'185	241'620'001	842'495'586 **)
Egypt	2'157	1'421	65.9%	561	163	12	2'755'821'530	2'177'009'063	79.0%	296'578'251	266'313'745	14'140'751
Lebanon	774	527	68.1%	167	71	9	1'932'045'296	1'648'024'927	85.3%	172'351'389	105'209'652	6'468'329
Marocco	391	177	45.3%	150	49	15	941'538'390	814'307'697	86.5%	35'965'814	63'073'450	8'189'430
Thailand	591	92	15.6%	374	108	17	417'090'275	151'020'755	36.2%	84'073'949	174'275'659	7'719'912
Kenya	343	52	15.2%	154	138	19	322'665'561	61'448'893	19.0%	46'615'107	207'573'391	7'028'171
Bulgaria	341	239	70.1%	75	17	10	307'560'493	215'329'167	70.0%	64'137'16	47'941'861	37'275'950 ***)
Ecuador	173	61	35.3%	73	31	8	291'235'163	199'325'017	68.9%	73'71'428	48'598'026	14'540'693

*) whereof 101 cases with AUM 899 m in SIDP
**) whereof 1 case with AUM 794 m in SIDP
***) whereof 1 case with AUM 35 m in SIDP

- The market purity of CIFs is still insufficient for some countries.
- Still room for improvement regarding Turkey, Venezuela, Egypt, Thailand, Kenya, Bulgaria and Ecuador.

Source: Risk Country Report, as of November 16, 2006

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Date: March 30, 2007, Slide 13

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Country Desks - Market Purity RC 3

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Extract only

	# of CIF							ALM						
	Total PB	At Country Desk	Percentage at Country Desk	approved			not approved (opened after 30.09.03 or RM change after 30.09.03)	Total PB	At Country Desk	Percentage at Country Desk	approved			not approved (opened after 30.09.03 or RM change after 30.09.03)
				Special Approval	Exception Approval	Opened before 30.09.03 *)					Special Approval	Exception Approval	Opened before 30.09.03 *)	
Israel	6948	1739	25.0%	3258	717	936	298	8859666648	3559566692	40.2%	1535577473	1025944065	1038505135	1351375263 **)
Argentina	6507	4535	69.7%	1490	172	224	86	8682196254	6926188779	79.8%	6870991012	530186129	471763121	719682131
Brazil	4299	2502	58.2%	1071	363	221	142	6937930476	5373596473	77.5%	4037870657	431726118	314856792	1828974386
Mexico	2152	1459	67.5%	427	97	128	51	4860512803	3512694171	80.5%	2013267390	294202218	362709672	1167995352
India	1542	668	43.3%	486	133	181	74	2314799546	1459229390	63.0%	2371100161	250567684	325967023	421995386
South Africa	3764	774	24.2%	1848	256	224	102	2233087610	973981989	43.6%	552099739	386067443	296952911	1711364627 ***)
Taiwan	738	578	78.3%	96	33	26	11	2044378146	1690191290	82.7%	74563774	207397771	61710537	1048477775
Chile	945	637	67.4%	217	34	33	24	1957786942	1176361964	64.2%	681700499	85677756	41517183	285587726
Bahamas	236	2	0.8%	61	36	84	53	1162200135	1310184	0.1%	64140017	60377121	691552382	344583431
Panama	312	13	4.2%	144	46	72	37	1011678679	17747959	1.8%	501143392	209212721	212924264	71550343

*) can be considered as approved

**) whereof 1 case with AUM 560 m in SIOR 2 and 1 case with AUM 90 m in SIDP

***) whereof 1 case with AUM 107 m in SIOA 6

- A large number of relationship openings are taking place without prior approval of the Market Desk.
- Many not approved cases regarding Israel, Brazil, South Africa, India and Argentina.
- Panama, Bahamas: Many offshore-companies are not flagged correctly and can therefore not be recognized as such.
- Still a large variation in market purity.
- Generally substantial room for improvement.

Source: Risk Country Report, as of November 16, 2006

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Date: March 30, 2007, Slide 14

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Country Desks - Market Purity HK, US and Australia

	# of CIF						AUM					
	Total PB	At Country Desk	Percentage at Country Desk	Special Approval	Exception Approval	not approved	Total PB	At Country Desk	Percentage at Country Desk	Special Approval	Exception Approval	not approved
USA	14'536	2'283	15.7%	10'382	1'465	406	8'903'361'280	2'855'896'121	32.1%	1'747'857'815	2'988'143'077	1'310'464'267 *)
Hong Kong	1'437	907	63.1%	311	118	101	4'705'183'849	4'021'248'928	85.5%	155'729'833	391'250'008	136'955'179
Australia	2'525	299	11.8%	1'996	163	67	1'078'870'657	543'295'553	50.4%	207'736'670	227'728'284	100'110'150 **)

*) whereof 73 cases with AUM 659 m in SIDP

**) whereof 15 cases with AUM 23 m in SIDP

- US – Market purity is still insufficient with regard to the business risk involved
- HK – Market purity in AuM is good, number of CIF's could be further improved
- AUS – Market purity is insufficient (CIF's and AuM) with regard to the business risk involved

- Project W9 regarding centralization of US-clients within CS Private-Advisors ongoing.

Source: Risk Country Report, as of November 16, 2006

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CIFs booked outside Country Desk

Detail per BA - Total of relationships of type RC1-3, EE, HK, US and AUS outside Country Desk

		Americas				APAC				EMEA				PBB CH			
		approved	not approved	whereof > 90 days	special approval	approved	not approved	whereof > 90 days	special approval	approved	not approved	whereof > 90 days	special approval	approved	not approved	whereof > 90 days	special approval
RC1	# of CIF	17	9	89%	2	4	9	50%		330	159	59%	3'074	264	89	35%	
	AUM	20'477'768	17'892'148	38%	2'953'062	3'582'756	681'918	0%		564'498'034	2'288'463'066	27%	223'969'926	11'192'967'143	121'188'862	6%	
RC2	# of CIF	56	61	50%	7	18	0	83%		583	208	98%	2'825	458	67	57%	
	AUM	149'007'416	6'241'306	13%	0	906'522'333	61'38'467	100%		1'044'347'963	1'885'547'957	95%	35'716'014'13	572'678'127	39'141'414	67%	
RC3	# of CIF	429	172	28%	26	1'[illegible]	39	5%		2'[illegible]	5'[illegible]	56%	8'492	1'[illegible]	[illegible]	22%	
	AUM	3'010'423'266	1'320'049'880	26%	78'18'667	8'[illegible]'112'244	858'9'188	0%		4'562'259'268	3'979'456'170	41%	17'00'501'538	3'491'[illegible]'878	399'198'314	61%	
EE	# of CIF	2	1	0%		2	0	0%		86	31	99%	1'190	84	30	47%	
	AUM	1'280'573	144'710	0%		384'495	0	0%		368'867'949	4'368'30[illegible]	77%	108'17'[illegible]31	53'842'421	7'260'014	72%	
HK	# of CIF	2	2	0%		0	0	0%		51	8	13%	299	64	10	25%	
	AUM	1'860'667	10'879'375	0%		0	0	0%		303'268'812	6'023'354	3%	35'154'922	86'128'962	11'206'962	2%	
US	# of CIF	58	36	26%		12	28	37%		592	228	73%	9'667	404	113	60%	
	AUM	87'790'783	54'172'793	61%		673'348'934	81'341'090	93%		1'769'629'324	874'509'2[illegible]6	72%	75'[illegible]0'333[illegible]	1'090'376'276	300'149'424	5%	
AUS	# of CIF	2	3	67%		0	0	0%		65	45	87%	1'[illegible]53	94	19	37%	
	AUM	4'386'962	1'172'269	0%		0	0	0%		111'309'931	71'173'124	90%	124'71'[illegible]268	11'[illegible]0'13'992	27'254'762	53%	
Total	# of CIF	618	178	31%	37	13	71	34%	0	3'995	1'194	89%	27'504	3'663	648	28%	0
	AUM	1'255'026'847	206'381'646	33%	10'77'[illegible]720	844'948'754	153'980'361	53%	0	8'186'987'354	7'117'440'193	55%	8'310'189'282	5'519'949'198	905'914'353	36%	0

- Contains also RC3-relations that were opened before 30.06.2003 and had no RM-change
- Contains also RC3-relations that were opened after 30.06.2003 or had a RM-change
- Whereof 292 CIFs with AUM 4'934'394'230 in SIOP (Investment Partners (AWM) EMEA)
- SIOP has a special approval for 2005 and for 2007 but not for 2006

- In all BAs the number of not approved CIFs > 90 days outstanding is high (total 2'089 CIFs whereof 1'084 CIFs > 90 days).
- Many not approved CIFs within EMEA (1'194) and PBB (648).
- Most clients with special approval within SIOA5 (Mixed international affluent clients).
- Only 20 unapproved cases due the fact that countries became a new "more severe" RC-category (10 cases Trinidad & Tobago; 1 Fiji; 1 Benin; 7 Sri Lanka; 2 Suriname).

CREDIT SUISSE

Source: Risk Country Report, as of November 16, 2006

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New openings 2006 outside country desk

	Americas			APAC			EMEA			PBB CH		
	approved	not approved	special approval	approved	not approved	special approval	approved	not approved	special approval	approved	not approved	special approval
RC 1 # of CIF		5	1				29	63	35	22	21	
AUM		882'454					21'531'011	1'899'432'759	2'122'103	29'746'609	284'302	
RC 2 # of CIF		5	5		2		38	50	29	29	28	
AUM		6'241'509			43'823		26'065'123	61'620'614	2'311'431	48'149'286	9'695'778	
RC 3 # of CIF		53	1	1	4		86	116	209	99	85	
AUM		43'577'924	0	1'278'326	919'365		78'102'343	119'318'700	57'232'477	88'717'876	48'221'070	
EE # of CIF		4					10	0	22	6	22	
AUM		0					1'437'968	521'595	3'569'809	982'144	6'477'917	
HK # of CIF		4					3	2	1	4	2	
AUM		10'879'375					337'195	902'821	16'945	2'208'878	74'527	
USA # of CIF		12			17		31	73	136	87	40	
AUM		14'149'980			3'564'420		21'051'925	54'794'034	20'873'116	36'052'419	9'625'410	
AUS # of CIF		1					3	6	6	7	7	
AUM		1'170'196					159'050	2'118'478	554'148	372'403	2'998'914	
Total # of CIF	0	84	13	1	23	0	200	314	438	234	205	0
AUM	0	76'901'459	0	1'278'326	4'527'609	0	148'684'013	1'937'709'072	86'680'029	206'229'826	77'375'939	0

- Whereof 49 CIFs with AUM 1'575'26'220 in SIDP (Investment Partners UHNWI EMEA)
- SIDP has a special approval for 2005 and for 2007 but not for 2006

- In general the number of not-approved new openings is still too large, especially within EMEA and PBB CH; 41 % of all opened CIFs outside country desk have no approval!
- Most special approvals within EMEA are in SIOA 5 (Mixed intl. affluent clients) and in SIDD 31 (Zurich-Airport).
- ROT cannot avoid the opening of not approved new RC-relationships outside country desk.

Source: Risk Country Report, as of November 15, 2006

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CIFs that were not centralized after a RM change

		Americas			APAC			EMEA			PBB CH		
		approved	not approved	special approval	approved	not approved	special approval	approved	not approved	special approval	approved	not approved	special approval
RC 1	# of CIF	9	1	1	4	1		79	80	2'502	87	19	
	AUM	2'950'666	702'987	2'053'052	3'582'758	58'618		73'518'526	380'612'710	170'097'621	905'426'344	2'630'315	
RC 2	# of CIF	23			5	3		138	72	2'184	187	20	
	AUM	15'509'875			6'830'691	4'993'379		520'888'786	1'391'098'038	255'452'182	150'068'050	6'688'257	
RC 3	# of CIF	243	62	7	8	32		439	325	6'201	404	252	
	AUM	313'991'313	81'494'483	7'818'667	4'773'962	65'777'231		794'846'835	1'389'286'530	689'840'166	728'703'151	286'073'617	
EE	# of CIF				1			22	5	949	28	2	
	AUM				3'884			50'556'919	822'198	91'411'954	15'554'844	62'000	
HK	# of CIF					20		20	50	190	17	2	
	AUM					92'025'211		102'870'147	1'926'031	20'101'741	21'724'679	6'594'450	
USA	# of CIF	24	18		6	23		178	101	8'005	317	36	
	AUM	13'604'247	17'604'191		24'020'124	79'341'351		258'639'078	538'082'311	585'823'653	459'506'703	54'928'009	
AUS	# of CIF		1					24	29	1'900	52	11	
	AUM		1'170'196					45'142'374	51'551'553	119'149'439	53'097'452	18'238'923	
Total	# of CIF	299	82	8	26	79	0	920	642	21'931	1'072	342	0
	AUM	347'340'102	101'171'817	10'771'720	35'211'408	243'018'790	0	1'856'459'866	3'791'376'372	1'931'876'608	2'313'081'257	375'214'971	0

- Whereof 138 CIFs with AUM 2370'565'050 in SIDP (Investment Partners UHNWI EMEA)
- SIDP has a special approval for 2005 and for 2007 but not for 2006

- The number of RC 3-CIFs not centralized after a RM change is still too large.
- RM changes do not trigger an automatic handover to the country desk. Neither Host nor CUBA (-> tool for RM- and BU-changes) can technically avoid RM changes of not approved CIFs to RMs outside country desk.
- Policy does not require a new approval after a RM change for RC 1, 2, EE, HK, US, AUS.

Source: Risk Country Report, as of November 16, 2006

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APPENDIX

General statement

Direct comparison to 2005 mostly not possible due to changes in the organization (OneBank)

Database

- Data status as of 16.11.2006
- Only clients booked within Swiss Booking IT Platform
- Based on Host, FrontNet, and Infolock
- Data of Beneficial Owners (BO) based on KYC, Infolock and CI01 (Host)
- Domiciliary companies selected by segment code PT and/or flag '32' and/or CI01 (Host)
- Domiciliary companies (if correctly flagged) will only be considered as a RC relationship if the BO has a Domicile within a RC or a special country
- In case a CIF has several BOs with different domiciles we counted the CIFs according to the following "ranking":
  1) US
  2) Eastern Europe
  3) Australia
  4) RC 1
  5) RC 2
  6) RC 3
  7) Hong Kong

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CS-SEN-00409555

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US Project – STC #1

Zurich, August 19 2008

GhW

Executive Summary

- UBS (and to a lesser extent LGT) face severe challenges around their US offshore business culminating in Senate hearings and the announcement to close the US offshore business
- CS has stayed out of headlines and with good reason
- However, with further potential tightening of QI rules a full review of the US Intl. business is required
  - Ensuring continued compliance
  - Deciding on appropriate future business model (what?)
  - Selecting the corresponding operating model (how?)
  - Implementing the chosen direction

Permanent Subcommittee on Investigations
EXHIBIT #16

Decisions required from STC

- Short-term measures
  - Alert LC-00014 ☐
  - Way forward with existing 'structures' ☐
  - Way forward with new 'structures' ☐
- Agreement on
  - Project objectives ☐
  - Project scope ☐
  - Governance ☐
  - Timeline ☐

Agenda

- Situation and related issues
  - US Intl. PB market
  - Credit Suisse
- Project objectives, scope & organization

Summary of external events related to PB US Intl. market

	Regulation		Industry incidents	Other
	US	Swiss		
1998	[redacted]			
1999				
2000				
2001	[redacted]			
2002				
2003				
2004				
2005				
2006				
2007				
2008	[redacted]	[redacted]	[redacted]	[redacted]

Main events:
- QI program (2001)
- UBS/LGT case (2007-8)
- US senate report/hearing (2008)

Sources: Management interviews, Legal & Compliance department, press releases

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FM

Qualified Intermediary system

General US tax rules	▪ USA levies a 30%[1] withholding tax on certain types of US-source income (e.g. interest and dividends) paid to non-US recipients (NRA withholding tax) ▪ Foreign beneficial owners have to file a Form W-8BEN with the withholding agent to confirm his foreign status ▪ US-source income payments made to US recipients are not subject to withholding but have to be reported to the US tax authority (1099 reporting) ▪ US recipients have to file a Form W-9 with the withholding agent to confirm his US status ▪ Only when the reporting is not possible, backup withholding applies
QI system Jan 2001	▪ Non-US financial institutions conclude a standard agreement with the US tax authorities (IRS): Status of a QI: US withholding agent with certain exceptions ▪ QI's obligations: – Identification and documentation of clients – Non US-Persons: Ensure application of the correct withholding rates and reporting – US Persons: Collect Forms W-9 and ensure 1099 reporting or (if Form W-9 is not provided) that no US securities are held ▪ Important matters:
Critical issues	Redacted

1) The tax may be reduced or eliminated according to applicable tax treaties or under US internal law.
Sources: Legal & Tax departments, press releases

What went wrong at LGT

Background	▪ Press and tax authorities strongly point out tax abuse/evasion possibilities via 'tax haven banks and off-shore vehicles'
Events & Escalation (02. - 06.2008)	▪ LGT employee hands over to tax authorities ~**12k pages** of **confidential data** (Feb 08) – Data of at least 7 US taxpayer accounts showing evasive structures is disclosed ▪ Several countries **claim information** & take **legal action** (e.g. Mr. Zumwinkel, GER) – Confronted clients partly cooperating with authorities; others are voluntarily coming forward – LGT group limiting its cooperation based on Lichtenstein secrecy laws ▪ Permanent US Senate 'Subcommittee on Investigations' releases **full report** on LGT/UBS cases including **recommendations** (July 08)
Results	▪ LGT accused of: – Helping clients to avoid disclosure to IRS via abusive structures (e.g. offshore companies, trusts) – Helping to 'cover up' tracks of client funds via 'structures' – Hiding assets and/or ownership from courts/relatives/creditors – Enabling bribery in US & elsewhere (LGT Lichtenstein - Marc Rich – US/Panama)

Sources: 'Tax Haven Banks and U.S. Tax Compliance' report (Permanent Subcommittee on Investigations); press releases; mgmt. interviews

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PA

What went wrong at UBS

Background	▪ UBS with extensive US PB domestic presence strengthened after Paine Weber's acquisition in 2000 (26 subsidiaries, several broker/dealer/ advisor licenses) ▪ US-licensed advisor (Swiss Financial Advisors - SFA) formed in CH to service US clients from CH (2003)
Events & Escalation (2007-2008)	▪ After ex-UBS client Olenicoff reaches settlement with IRS, ex-UBS employee (Birkenfeld) provides documentation & testimony about UBS's US offshore banking practices (2007) ▪ UBS announces decision to exit US PB Intl. market due to 'strategic reasons' (Nov' 2007) ▪ UBS releases a US travel ban (Nov' 2007) ▪ Birkenfeld pleads guilty in testimony regarding tax evasion support (June 2008) ▪ UBS head PB Americas (Liechti) held by US authorities as 'material witness' (Apr' to Aug' 2008) ▪ IRS is granted a 'John Doe' summons against UBS to disclose (client) data ▪ UBS (Mr. Branson) announces the full exit from offshore banking for US residents (Jul' 08)
Results	▪ UBS accused of breaking QI agreements by – Opening undeclared accounts for US clients to avoid disclosure (tax evasion) – Targeting US clients onshore (despite SEC restrictions regarding advice & solicitation) ▪ UBS under strong surveillance from DOJ and IRS including ongoing trials ▪ UBS under SEC investigation of acting without license (advice & solicitation) ▪ Additional: Accusations related to abusive tax shelter products

DOJ: Department of Justice, SEC: Securities and Exchange Commission, IRS: Internal Revenue Service
Sources: 'Tax Haven Banks and U.S. Tax Compliance' report (Permanent Subcommittee on Investigations); Hearing July 17, 2008; mgmt. interviews

Summary US Senate subcommittee report

Content
- Press and historic background on U.S. tax abuse investigations
- Profiles of LGT & UBS and detailed case history of account structuring
- Main findings regarding abusive methods & recommendation for US Senate actions

Main findings
- Bank secrecy seen as 'cloak' over misconduct
- LGT & UBS (and other tax haven institutions) accused of
  - Applying bank practices to facilitate tax evasion
  - Maintaining undeclared U.S. clients accounts with billions of USD
  - Proactively assisting the avoidance of QI reporting

Recommendations (by US Senate subcommittee)
1. Strengthen QI reporting of foreign accounts held by US taxpayers
2. Strengthen 1099 reporting
3. Strengthen QI audits
4. Penalize tax haven banks that impede US tax enforcement
5. Attribute presumption of control by US Taxpayers using tax havens
6. Allow more time to combat offshore tax abuses
7. Enact 'Stop tax haven abuse' Act

Sources: 'Tax Haven Banks and U.S. Tax Compliance' report (Permanent Subcommittee on Investigations); mgmt. interviews

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RC

SFBC request and meeting outcome (Aug 14, 2008)

	CS	CL/NAB	TOTAL
1. *Anzahl US Kunden* Darunter verstehen wir natürliche Personen, i. welche ein *Domizil in den USA* haben und *(Konto und Depot)*			
ii. mit ihrem Institut eine *Depotbeziehung* eingegangen sind. *(nur Depot)*	# 6'488 [AuM 3.16]	# 1'278 [AuM 0.89]	# 7'746 [AuM 4.07]
2. Gibt es Kunden gemäß Ziffer 1), welche *US Securities* haben und *kein Form W-9* ausgefüllt haben? Falls ja, wie viele. Wurde die *Backup Withholding Tax* abgeführt?	# 4 [AuM 0.01]	#1 [AuM 0.00]	# 5 [AuM 0.01]
3. *Anzahl Offshore Entities* (z.B. Domiziligesellschaften), welche (kumulativ) i. mit ihrem Institut eine *Depotbeziehung* eingegangen sind, *(nur Depot)*			
ii. eine in den *USA domizilierte* natürliche Person als *Haupt- oder Alleinbegünstigte* haben oder eine in den USA domizilierte natürliche Person als *wirtschaftlich Berechtigter* ausweisen (Form A) und *(Konto und Depot)*			
iii. ein *Form W-8BEN* abgegeben haben.	# 336 [AuM 2.10]	# 262 [AuM 1.17]	# 598 [AuM 3.27]
4. Wie viele der unter Ziffer 3) genannten Beziehungen halten *US Securities*?	# 162 [AuM 0.89]	# 136 [AuM 0.71]	# 298 [AuM 1.54]
5. In zeitlicher Hinsicht interessieren uns die Einführung des QI Regims in den Jahren 2000/2001 sowie die Periode 2002-2008.	Tax	Tax	Tax

Meeting outcome (Aug 14, 2008)
- Brief summary of results by Romeo Gerutti

[ ] Figures communicated to SFBC only orally (in brackets); other figures available in appendix (not communicated to SFBC)
SFBC: Swiss Federal Banking Commission (EBK: Eidgenössische Bankenkommission)
Sources: SFBC request, TTSGR3A0R 1

'Bottom-line' from external assessment

- Issues from a US point of view
  - Combating US tax evasion by transferring responsibility to financial institutions
    - Strengthening of QI program
    - Attributing presumption of control of 'structures' to U.S. taxpayers
    - Applying strong penalties (e.g. fines, threat of QI agreement termination)
  - Foreign bank secrecy laws (competitive advantage) resp. offshore financial centers

- Main points of concerns for international banks
  - Pressure on PB offshore business model
    - Customer reactions (e.g. self-indictments)
    - Employee reactions (e.g. talent attraction, motivation, attrition, employer 'blackmailing')
  - Spill-over effects/set precedence for other markets (e.g. GER, UK, Australia)

Sources: Management interviews, press releases

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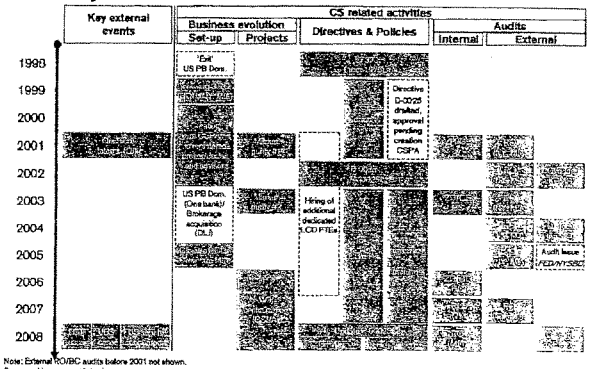
Agenda

- Situation and related issues
  - US Intl. PB market
  - → Credit Suisse
- Project objectives, scope & organization

Summary of CS activities related to PB US Intl. market



Note: External RO/BC audits before 2001 not shown.
Sources: Management interviews

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PA

Recap: Set-up evolution of PB US Intl. business

Set-up evolution	Rationale	Evolution
Licensing of 3 ROs (HOU,NY,MIA)	▪ Build up point of contact within the CSPB franchise ▪ Houston and Miami focused on LatAm markets ▪ New York focused on the US market (1 Rep.)	▪ US onshore branch/agency system closed in the US; business sold to RBC ▪ ROs set-up as point of contact ▪ Closing of the Houston RO in 2005 *) ▪ Downsizing of the Miami RO in 2005 *)
Creation of CSPA as registered broker/dealer and advisor	▪ CSPA established in 2001 to provide advisory and brokerage services to US residents	▪ CSPA started with its head office in Zurich ▪ Opening of the CSPA New York office in 2002; closure in 2003 ▪ Opening of the CSPA Miami office in 2004; closure in June 2006
Closure HOU / downsizing MIA *)	▪ Review of all ROs and particularly the servicing model through the RO Ambassadors ▪ FED Audit in 2005	▪ Houston RO had 4 people; staff was shifted from the RO to CSPA in 2005; CSPA closed Houston in April 2006 ▪ 7 people from Miami RO shifted to CSPA in 2005; Miami RO currently has 1Rep.

Sources: Management interviews

US securities law: Clear rules regarding "Do's & Don'ts" for PB US Intl. market (P-00025)

Summary	Governance of CS bank relationships with **US Persons, US Taxpayers & US/Non-US EAMs (US securities law issues only)**	
	GENERAL	**PRODUCT VIEW**
Do's & Don'ts	**General Rule on Communications** – No communications into/from the US to provide investment advice or solicitation **U.S. travel restrictions, incl.:** – US cross-border training completed – Travel approved (SALN) – Visit of existing clients only if initiated by the client and for social nature only – Visit of prospective clients not permitted **US EAMs and Non-US EAMs** – Restrictive rules on EAMs (US and non-US) – All non-US EAMs must sign special agreement and comply with rules to prevent triggering licenses for Bank – US EAMs: approval by LCD required	**QI tax restrictions/US Taxpayers** – Refer RMs to USWHT website/Swiss Tax **Discretionary mandates/US Persons** – Arrangements & contact only outside US, with retained mail or non-US address **Safekeeping accounts/US Persons** – Unsolicited 'execution only' accounts only, in compliance with General Rule **Cash/savings/current accounts permitted** **Lombard loans restricted** **Product restrictions/US Persons and US Taxpayers:** – Information provided regarding applicable sales restrictions (Host W40/VDPS)
Implementation	Redacted	

Source: P-00025; LCD

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PA

Actions taken in the past to ensure full adherence to regulatory requirements

Project start 2001 — 2002 — 2006 — 2008

	RC 1+2 Market parity wave #1	USA 'OldCO' Market parity wave #2	W9 Project
	Policy D-0025		Policy P-00025
Compliance objectives	▪ Ensure compliance with D-0025 & QI obligations ▪ Ensure efficient audits		▪ Ensure compliance with P-00025 & US regulations
Project objectives	▪ Achieve clear market view & concentrate know-how ▪ Transfer majority of clients to respective Country Desks ▪ Scope: 3'050 CIFs; AuM 5.56m; TOI 56m ▪ Transfer results in CS: 2100 CIFs; AuM 2.4bn; TOI 24m (as per 30.6.02) ▪ Transfer results in CSPA: 110 CIFs; AuM 180m; TOI 1.8m ▪ Define and monitor exceptions closely	▪ Further concentration of US clients into CoC (DH-GE) and/or CSPA - Market expertise - Market strategy ▪ Verification of US specific data ▪ Transfer of identified client CIFs ▪ New openings only at CoC ▪ Adjustments of MIS and transfer of headcount	▪ Identify all W9 clients (930 CIFs, AuM 1.3 bn) ▪ Close or transfer of all affected clients to CSPA (PB USA/Jo Hambro for Int' Locations) ▪ Implement IT changes to prevent new W9 account openings
Results	▪ Precise process from 'RM old' to 'RM new' defined ▪ Overall ~40% of identified assets adjusted to MGs ▪ Exception approvals according to D-0025 handled		▪ Majority of cases solved and all solutions defined ▪ Remaining issues (exceptions & portfolio blocking) taken over by CoC (SOAB 2)

Source: Internal departments

Past audits without major issues/critical findings

Type	Scope	Year	Rating	Main findings/comment
External	[redacted]	2004-5	Some issues	Fed/NYSBD Issue: NY RO LatAm team, activities with Latam (non-US) clients (→ team moved out)
		2005	Relicensing	Granted
		2005	No issues	Fed: satisfactory, full compliance
		2007	**No issues**	NYSBD: Satisfactory; activities in strict compliance with license
	[redacted]	2005	Relicensing	Granted
		2005	No issues	FLA: Satisfactory, no further action
		2007	**No issues**	Fed: Satisfactory; no major issue; action biz contingency plan
	[redacted]	2002	No issues	—
		2004	No final results	Pending findings (delay caused by IRS)
		2008	Upcoming	To be finalized during 2009
Internal	[redacted]	2001	No issues	Investment advice performed in accordance with existing directives
		2003	Minor issues (action required)	Investment Advice performed in accordance with existing directives Action required: Client documentation on financial background and source of funds to be improved (e.g. clients from project "risk country transfer")
		2006	B2 (Minor issues)	Overall control environment generally found to be operating adequately Issues: For some clients documentation of the financial background or their source of funds need to be improved; the ultimate BO in some cases must be clarified and formally disclosed.
	[redacted]	2007	No issues	Overall control environment found to be operating effectively
		2008	**No issues**	Overall control environment found to be operating effectively

Sources: Management interviews

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FA

Short-term measures

	Actions
1 Project mgmt.	✓ Weekly taskforce and SAL meetings
2 Analysis	✓ Data gathering (e.g. structures) ✓ QI analysis regarding formalities ✓ SFBC request ▪ Detailed analysis
3 LC & Tax	✓ Policy Alert (28.07.08) ▪ Ongoing monitoring and assessment of QI, legal and political developments
4 Monitoring	✓ Introduction of GTMT tool ▪ Setup of monitoring system for incoming assets from UBS & LGT ▪ Monitor special cases (e.g. investigate Senate list regarding affected clients)
5 Trainings	▪ Training sessions 'CB+' for RMs (priority: RMs with US clients)
6 Process & product offering	▪ Clarification of EAM process ▪ Clarification of special products (e.g. CS Life, 3rd party products)

Sources: SOAM

Policy Alert (LC-00014): Summary

Rationale

Redacted

Key points

1. Reminder that all new relationships with US residents/US Persons must be approved, opened, monitored by dedicated US Centers of Competence (SAUN); new SAUN pre-clearance requirement extended to "US Person" clients of non-US EAMs
2. No new relationships for US residents/US Persons with cash/assets/securities stemming from UBS/LGT Liechtenstein:
   - Exception: US Residents/Persons who provide W-9 form (but must be opened with CSPA or PB USA)
   - No other new relationships to be approved, incl. non-US structures with US Person/US taxpayer within meaning of P-00025
3. Existing relationships
   - Transfers of cash/assets/securities from UBS/LGT Liechtenstein into an existing US resident/Person account with CS are prohibited (except CSPA or PB USA) → breach of this rule will lead to disregard as NNA and possible disciplinary measures
4. Additional remarks
   - Full compliance with P-00025 is required in all dealings with US Persons/US Taxpayers
   - Rules under P-00025 and Alert LC-00014 also apply to non-US domiciliary companies, non-US trusts, foundations and other non-US structures with a US Person/US Taxpayer within meaning of P-00025
   - Under P-00025, client-related travel to US is only permissible in very limited situations, and only subject to compliance with P-00226, requiring use of GTMT Travel Management Tool, training, travel approval by market head (SAUN), etc.

Assessment

Redacted

Redacted

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RC

Policy Alert (LC-00014): Action items

Decisions of STC

Redacted

US Intl. business can be segmented along 3 different relevant customer groups

Person type	Individual	Individual	Legal	Individual	Individual	Legal	Legal	Legal
Domicile	US	Non-US	US	US	Non-US	US	Non-US	Non-US
Nationality	All	US[1]	---	All	US[1]	---	---	---
A&S @ domicile	Redacted							
Definition (tax view)	'US Person'			'US Person'			'Non US Person'	
US tax status	Taxpayer			Taxpayer			Non Taxpayer	
BO-Definition (Form 'A')[2]							'US Person'	
US securities	Yes			No			Yes	No
Safekeeping a/c	US	Non-US		Non-US			Mixed	Non-US
US Tax form	W-9	---		(VE)			W8-BEN (/DE)	VE (/DE)
US WHT	No	No		No			Yes	
Customer group:	1 W-9			2 Non W-9			3 Non US Person	

1) Includes US greencard holders residing outside the US and US residents with physical presence (>183 days); 2) Beneficial owner information available in 'Form A' not obligatory under US regulations; 3) Not into US with 'US Person' beneficial owner; A&S: Advise & Solicitation; VE: Verzichtserklärung; DE: Documentary evidence
Source: Mgmt. interviews, MIS

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FM

DETAILED VIEW

US Intl. business can be segmented along 3 different relevant customer groups (1/2)

Person type	Individual				Individual				Legal		Legal	
Customer of	CSPA				CS				CSPA		CS	
Domicile	US		Non-US		US		Non-US		US		US	
Nationality	All		US[1]		All		US[1]		---		---	
Solicit. @ Domicile:	Redacted											
Advice @ Domicile:												
Definition (tax view)	'US Person'		'US Person'		'US Person'		'US Person'		'US Person'		'US Person'	
US tax status	Taxpayer		Taxpayer		Taxpayer		Taxpayer		Taxpayer		Taxpayer	
BO-Definition (Form A)[2]												
BO-US tax status (Form A)												
US securities in portfolio	Yes		Yes		Yes		Yes		Yes		Yes	
Depot split	Redacted											
Safekeeping a/c	US	Non-US	US	Non-US	US	Non-US	US	Non-US	US	Non-US	US	Non-US
US tax form	W-9	---	W-9	---	W-9	---	W-9	---	W-9	---	W-9	---
US WHT	No	No	No	No	No	No	No	No	No	No	No	No
Statements (CG/CS)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Report IRS	1099	---	1099	---	1099	---	1099	---	1099	---	1099	---
Info disclosure IRS:	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Customer group:	1 W-9											

1) Includes US greencard holders residing outside the US and US residents with physical presence (>183 days); 2) Beneficial owner information available in 'Form A' not obligatory under US regulations; A&S: Advise & Solicitation; VE: Verzichtserklärung; DE: Documentary evidence
Source: Legal & Tax departments; mgmt. interviews

US Intl. business can be segmented along 3 different relevant customer groups (2/2)

Person type	Individual		Legal	Legal	Legal
Customer of	CS		CS	CS	CS
Domicile	US	Non-US	US	Non-US	Non-US
Nationality	All	US[1]	—	—	—
Advice @ Domicile:	Redacted				
Solicit. @ Domicile:					
Definition (tax view)	"US Person"	"US Person"	"US Person"	"Non US Person"	"Non US Person"
US tax status	Taxpayer	Taxpayer	Taxpayer	Non Taxpayer	Non Taxpayer
BO-Definition (Form A)[2]				"US Person"	"US Person"
BO-US tax status (Form A)				Taxpayer	Taxpayer
US securities in portfolio	No	No	No	Yes	No
Depot split			Redacted		
Safekeeping a/c	Non-US	Non-US	Non-US	Mixed	Non-US
US tax form	(VE)	(VE)	(VE)	W8-BEN(/DE)	VE(/DE)
US WHT	No	No	No	Yes	Yes
Statements (CG/US)	Yes	Yes	Yes	—	—
Report IRS	—	—	—	—	—
Info disclosure IRS	No	No	No	No	No
Customer group	2 Non W-9			3 Non-US Person	

1) Includes US greencard holders residing outside the US and US residents with physical presence (>180 days); 2) Beneficial owner information available at "Form A" not obligatory under US regulations 3) Not into US with US Person beneficial owner; A&S: Advise & Solicitation; VE: Verzichtserklärung; DE: Documentary evidence
Source: Legal & Tax departments, mgmt., Interviews

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FM

W9 | Non-W9 | Non-US Person

Structures – The way forward *(to be presented by F. Müller)*

'Bottom line' of CS situation around PB US Intl. market

- CS with relatively small exposure to US Intl. market
- Bottom line – SEC

Redacted

- Bottom line – Tax
  - 'Structures' (offshore entities)
  - Form 'A'

1) Including US 'structures' and assuming gross margin of 130bps for 'structures': [00/00] = CS Gross/CS only
Sources: Tax & Legal departments, mgmt. interviews

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Agenda

- Situation and related issues
  - US Intl. PB market
  - Credit Suisse
- Project objectives, scope & organization

Project objectives

Not OK

Concept phase (Q3 08)	▪ Ensure continued compliance with applicable US laws, regulations and policies → ***Ongoing***
	▪ Evaluate and decide on appropriate business model around PB US Intl. business → ***STC 2***
	▪ Select appropriate operating model for chosen business model going forward → ***STC 3***
Implementation phase (Q4 08-ongoing)	▪ Derive a seamless implementation plan in line with STC's decision → ***STC 4***
	▪ Implement required organizational changes

Source: Management interviews

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PA

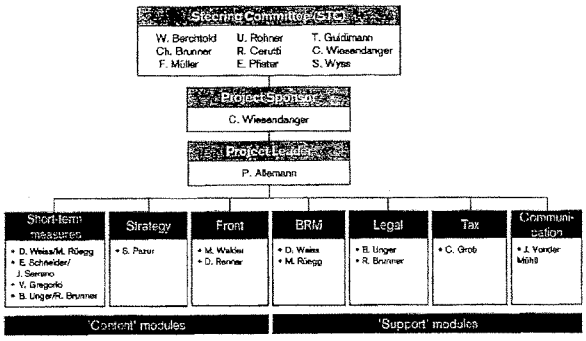
Project scope

Decision of STC: ☐ OK ☐ Not OK

	✓ Scope 2008	Scope 2009+
Client view	▪ All 'US Persons' under both securities and tax law defitions[1)] ▪ All non-US domiciled companies, trusts, foundations or other 'structures' with US Person on Form A or in position of control	▪ Non-US domiciled US greencard holders and other exceptions
Booking center view	▪ All 'US clients' booked at SBIP (Switzerland) ▪ All Clariden Leu US clients[2)]	▪ US Intl. clients booked in other CS booking centers (e.g. Singapore)

1) 'US Person' under SEC law (WM business) already centralized into CSPA in predecessor project; all exceptions granted with regard to WM clients to be reviewed;
2) Clariden Leu required to carry out a parallel project.
Source: Management interviews

Project organization – Concept phase



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ChW

Next steps and open questions

Next steps:

- Ongoing implementation of Short Term Measures
- Implementation of today's STC decisions
- Preparation of 2nd STC
  - Main topic: Evaluation of alternative business models
  - Proposed meeting date: End of week 37/mid September (3-week meeting frequency)

Open questions:

- Inclusion of experts in STC?
- PBMC (Aug 26), BoD (Sept 5), Audit Committee BoD
  - Preparation of presentations?

Appendix

Decisions required from STC

- Short-term measures
  - Alert LC-00014 ☐
  - Way forward with existing 'structures' ☐
  - Way forward with new 'structures' ☐
- Agreement on
  - Project objectives ☐
  - Project scope ☐
  - Governance ☐
  - Timeline ☐

Overview of US Intl. business at CS – US Person under US tax law[1)]

- AuM (05-07; CHF bn):
  - 9.4; 10.1; 11.0 (CAGR 05-07: 8%)
- Revenues[2)] (05-07; CHF mn) :
  - 107; 112; 122 (CAGR: 7%)
- NNA[3)] (05-07; CHF mn)
  - 540; 1'378; 418 (% AuM 06: 14%; % AuM 07: 4%)
- CIFs (05-07; #)
  - Individuals: 23'727; 22'601; 22'886 (CAGR 05-07: -1%)
  - Legal entities[1)]: 816; 1'048; 1'346 (CAGR 05-07: 28%)
- Operating model
  - ~1/3 of business managed centrally (20 RM's located in ZH/GE)[4)]
  - ~2/3 of business managed decentrally (428 RMs located in CH, EMEA, Singapore, etc.)[4)]

1) 'US Person' from tax perspective; excluding Non-US domiciled greencard holders, other special cases (e.g. material physical presence in US) and Non-US legal entities ('structures') with 'US Person' (tax perspective) on Form 'A' or in position of control; 2) Revenues definition (Total Operating Income) modified after 1.1.2008, leading to changes in P&L statements (commission expenses paid to broker/dealers reported on the expense side -> historical figures vs. 1H08 with reduced comparability); 3) Without Commercial and Custody NNA; 4) RMs servicing > 5 US Intl. customers.
Sources: MS; SC analysis

W9 | Non-W9 | Non-US Person

US Intl. business activities spread-out across whole organization – US Person under US tax law[1)]

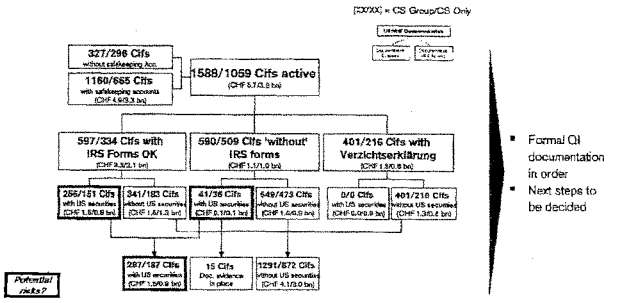
PRELIMINARY

		CIFs (#)[2)] Individuals	Legal entities	Total	Assets (CHF Bn)	Revenues (CHF Mn)[3)]	RM's (#)[4)]
SBIP	PB Americas	2'551	92	2'643	2.7	35	66/22
	w/o CSPA	*367*	*34*	*401*	*0.6*	*2*	6/6
	P&BB CH	6'009	771	6'780	1.8	32	993/44
	PB EMEA	10'283	269	10'552	2.2	35	466/19
	w/o SIOA 5	*9'345*	*91*	*9'436*	*1.1*	*17*	189/62
	PB Asia	84	6	90	0.1	1	38/0
	PB IS&P[5)]	539	35	574	0.7	7	57/3
	Other[6)]	1'191	17	1'208	0.0	1	8/1
Other BCs[7)]		N/A	N/A	337	0.5	4	N/A
Clariden Leu		1'660	240	1'990	1.8	22	239/12
Total		**22'317**	**1'430**	**24'084**	**9.7**	**137**	**1'856/101**

~90% of CIFs, ~80% of AuM and revenues within SBIP

1) 'US Person' from tax perspective; excluding Non-US domiciled greencard holders, other special cases (e.g. material physical presence in US) and Non-US legal entities ('structures') with 'US Person' (tax perspective) on Form 'A' or in position of control; 2) Includes 'Kento & Depot'; 3) Revenues annualized using 2x factor of 1H08; 4) RMs servicing at ≥ 1 US Intl. customer (individuals or companies) respectively servicing ≥ 5 US Intl. customers (in total); 5) Including EAM business; 6) Including PB Technical ISA, EB 0877; 7) Included BCs: Suisse, China (HK), Dubai, Singapore, Australia, Indonesia, Austria, Germany, Luxembourg, Guernsey, UK, France, Bahamas; only US domiciled clients; Sources: MS; SIOAM/SOWA analysis

Non-US structures with 'US Person' on 'Form A' or as in position of control



Sources: TTSG/SAOR 1 (31.03.2006)

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Slide 35

CREDIT SUISSE

Project Tom – STC #5

Zurich, December 19th 2008

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Decisions required from STC

Decisions of STC

- Non-US entities
  - Way forward for unresolved Phase I cases ☐
  - Agree on mandate for L&S ☐
  - Agree on rules of documentation ☐
  - Agree on process for Phase II ☐

Permanent Subcommittee on Investigations
EXHIBIT #17

Confidential Treatment Requested by Credit Suisse

Agenda

- Introduction
- Non-US entities
- Short-term measures
- Non-W9 clients
- Discussion and next steps

CREDIT SUISSE STRICTLY CONFIDENTIAL Slide 3

CHW RC FH

REDACTED

CREDIT SUISSE STRICTLY CONFIDENTIAL Slide 4

Agenda

- Introduction
- Non-US entities
- Short-term measures
- Non-W9 clients
- Discussion and next steps

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CH

Figures Phase I (Prio A&B cases)

Client Status

- ☑ All affected RM's & clients have been contacted and informed
- ☑ 31% of CIFs (65 % of the analyzed assets - 2.3bn CHF) are out of scope
- ☑ 6% of CIFs are closed/completed (101m CHF)
- ☑ 34 % of CIFs (572m CHF) have given the order to transfer & account closure
- ☑ 17 % of CIFs (123m CHF) receive a Termination Letter

YET ...

- ☒ 7 % of CIFs (950m CHF) are pending and being analyzed by LCD and Tax
- ☒ 5 % of CIFs (155m CHF) are waiting for precise client instructions

US Securities

- Nov 30th 2008: CIFs: 171 AuM: 161m CHF
- ~~Dec 17th (MIS): CIFs: 78 (31%) AuM: 88m CHF (2%)~~
- Front estimation per end 2008: CIFs: 40 AuM: 50m CHF

Decision of STC
☐ OK
☐ Not OK

Proposal

- Send Termination Letter until end 2008 for all cases without client instructions
- Front to follow up on all cases until account closure
- Follow-up reporting of Phase I in next STC

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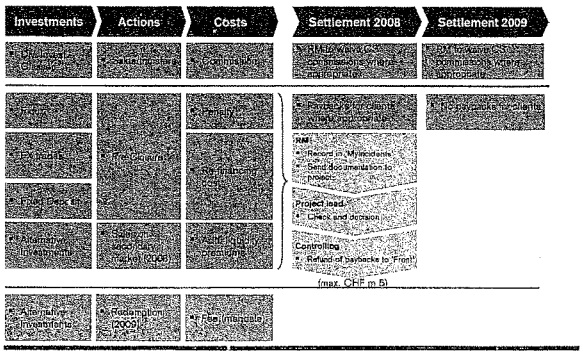
CH

Process for Commissions and Premiums defined



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CH

Phase II – Onboarding of L&S Team

	Action	
Starting position	▪ 4. STC decision: centralized approach for Phase II ▪ Jörg Witmer joins CS Legal (Jan 09): will lead central team ▪ L&S have been mandated by Y/YP: 4 lawyers as central team	
Onboarding process	▪ Three briefings held with L&S Team ▪ Background, mandate & deliverables explained ▪ Infrastructure is mostly arranged	
L&S Deliverables	▪ Dec. 2009: Analytical framework for judgment & decision of escalated cases ▪ 1H 2009: Confirmed solution for all Phase II CIFs	
Timeline	▪ Onboarding, training & instruction to be completed by Jan 14, 2009 ▪ RM contact starting Jan 15, 2009; target: completion in 1H 2009	
Rules for documentation	▪ L&S team to document decisions on escalated cases	Decision of STC ☐ OK ☐ Not OK
Mandate	▪ Contact & instruct RMs of Phase II CIFs ▪ Clarify & decide escalated cases; instruct RMs ▪ Track all Phase II CIFs, report to Project Team via J. Witmer	Decision of STC ☐ OK ☐ Not OK

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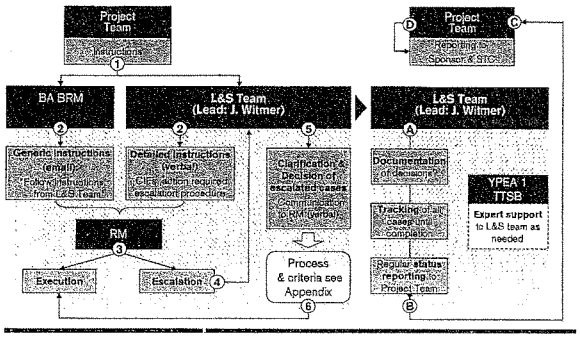
CH

Phase II – Framework & decision process

Decision of KYC
OK
Not OK



CREDIT SUISSE STRICTLY CONFIDENTIAL Slide 9

AL

Overview Clariden Leu

2009

Status as at December 16, 2008 (close of business)							Client									Internal (in analysis)
Case type	CIFs		Out of scope		to deal with		Instructions pending		Sell/Closure order received		Termination Letter		Closed			
A1	40	-	4	+	36		12		13		7		2			2
A2	90	-	13	+	77		36		16		4		3			18
B	17	-	5	+	12		2		4		0		3			3
Identified CL	36	-	10	+	26		9		6		2		0			9
Total	183	-	32	+	151	→	59	+	39	+	13	+	8	+		32
Total Cases in %	100%	-	17%	+	83% (=100%)		39%		26%		9%		5%			21%
Total AuM CHF (bn)	1.48	-	0.35	+	1.13	→	0.32		0.19		0.10		0.10	+		0.42
Total AuM in %	100%	-	24%	+	76% (=100%)		28%		17%		9%		9%			37%

Reasons for "Out of scope":
- Tax forms available (e.g. W-8IMY + W-9)
- Data errors (e.g. KYC not up-to-date)
- Operational Company

Internal (in analysis) covers following cases:
- Tax Forms partially available (or promised to be provided in due time)
- Complex TAUS
- Investment Funds

US Securities perspective

	CIFs	Value CHF
A1	34	28m
A2	59	66m
	93	92m

Status as at 18.12.2008 (close of business)

CREDIT SUISSE STRICTLY CONFIDENTIAL Slide 10

Agenda

- Introduction
- Non-US entities
- Short-term measures
- Non-W9 clients
- Discussion and next steps

CREDIT SUISSE STRICTLY CONFIDENTIAL Slide 11

PA.

Short-term measures (excl. Non-W9 & Non US entities)

	Actions
Project mgmt.	▪ Weekly taskforce and SAL/SAO meetings
Analysis	▪ Data gathering and analysis
LC & Tax	▪ Ongoing monitoring and assessment of QI, legal and political developments
Monitoring	▪ Monthly monitoring list for incoming assets from UBS & LGT (see next slide)
Trainings	▪ Scope: All RMs with at least one US resident client ▪ Status CS-CH: YPEA 1 provided trainings/tests to 550 RMs, 100 RMs pending ▪ Status Int' Locations; Local Compliance have been trained on CB USA+ rules ▪ HR measures regarding LGT/UBS case
Process & product offering	▪ Clarification of special products (e.g. CS Life, 3rd party products)

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PA

Monitoring of incoming assets from UBS & LGT in place

Total volume

	October 2008 (Alert 2)						November 2008 (Alert 2)					
	Payments			Securities			Payments			Securities		
	#	a/c	AuM (CHF mn)	#	a/c	AuM (CHF mn)	#	a/c	AuM (CHF mn)	#	a/c	AuM (CHF mn)
Transfer to CS /CL	253	84	99	58	9	6	203	93	109	29	3	5
- to CS	239	78	97	27	7	1	188	88	102	20	2	4
- to CL	14	6	2	31	2	5	15	5	7	9	1	1

CS accounts for further analysis

	November 2008					
	Payments			Securities		
	#	a/c	AuM (CHF mn)	#	a/c	AuM (CHF mn)
CS total	8	8	3.3	0	0	0
- SI	4	4	3.0			
- SL	1	1	0.2			
- SR	3	3	0.3			

CL / NAB are responsible to analyse their own accounts. Scheduled for w51.

CREDIT SUISSE STRICTLY CONFIDENTIAL Slide 13

Agenda

- Introduction
- Non-US entities
- Short-term measures
- Non-W9 clients
- Discussion and next steps

CREDIT SUISSE STRICTLY CONFIDENTIAL Slide 14

PA

Non W-9 centralization project

Phase I

- Centralization of CS Non W9 clients to US Intl. desk (SALN)
  - US domiciled clients
  - SBIF booking center

Phase II

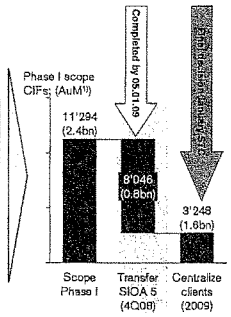
- Analyze centralization of other Non W9 clients
  - EAM business
  - Other booking centers
  - Non US domiciled clients (e.g. CH domiciled)

Clariden Leu

- *To be implemented through parallel project*

Centralization advantages

- Increases operational & regulation control and adds simplicity
- Simplifies compliance to SEC regulations
- Keeps options open & reduces lead time to adapt to regulatory changes



1) AuM in CHF bn, status 30.11.08; Source: MIS

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PA

Quick Win Non W-9 (transfer SIOA 5 to SALN)

Status December

- Quick Win in progress and overall on track

Current Situation

- 6 FTEs, 8'046 CIF's with ~ 800 Mio CHF will be centralized as of January 5th, 2009
- Desk head on board
- 1:1 meeting with team members scheduled in December 2008
- CIF transfer in preparation
- So far no BRM issues

Next Steps

- Transfer of 8'046 CIF's (Aum CHF 0.8bn) as per 05.01.2009
- On-boarding team members

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PA

4 STC: Roadmap Non W-9 centralization project (Phase I)

Activity	2008 Nov	2008 Dec	2009 Jan	2009 Feb	2009 Mar	2009 2Q	2009 3Q	2009 4Q	2010 1Q	2010 2Q
Sender module (central responsibility)	• Identify US clients • Prepare transfer process ("how") • Identify receiver RMs[1] • Prepare communication • Define exception handling			• Communicate to line managers/RMs/clients • Implement centralization – Send customers[2] – Keep (exception) – Close • Adapt budget • Adapt systems (e.g. IT, Mbo, MIS)						
Receiver module (SALN responsibility)	• Define future business strategy • Adapt business model			• Communicate to line managers/RMs/clients • Receive customers • Adapt budget • Adapt systems (e.g. IT, Mbo, MIS)						
	• Build receiver organization • Trainings									

STATUS: Detailed preparation with SALN & affected BA's for implementation 2009 in progress

Today | Go/No-Go centralization | Amendments of CI agreement effective

Phase I – Preparation (incl. Quick-Win) | Phase I – Implementation | Phase II

1) Identification of RMs done by sender and receiver organization together
Sources: MIS; management interviews

CREDIT SUISSE STRICTLY CONFIDENTIAL Slide 17

Agenda

- Introduction
- Non-US entities
- Short-term measures
- Non-W9 clients
- Discussion and next steps

CREDIT SUISSE STRICTLY CONFIDENTIAL Slide 18

ChW Ch

Discussion and next steps

- Communication
- Varia
  - Team
  - Switzerland
- Next STC end of January 2009

Appendix

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Overview Figures Phase I

Client Status

PRID	Data	Out of Scope	Contacted	Order received	Closed/ Completed	Grand Total	Incl. US Securities
A1	AuM	188	134	73	31	406	29
	CIF	7	16	26	6	55	24
A2	AuM	244	176	249	7	676	59
	CIF	49	45	45	6	145	55
B	AuM	1,978	319	250	63	2,610	
	CIF	22	19	14	3	49	
TOTAL AUM		2,390	629	572	101	3,692	88
(in %) CHF		65%	17%	15%	3%	100%	2%
TOTAL CIF		78	71	85	15	249	79
(in %) CHF		31%	29%	34%	6%	100%	31%

Cases under special investigation

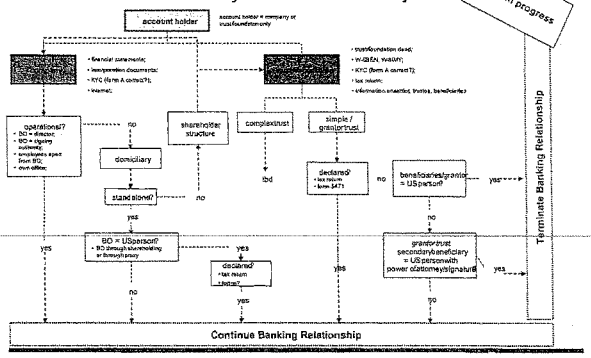
PRID	Data	Termination letters sent	In Analysis	LCD/Tax Declaration	Grand Total
A1	AuM	28,597,991	43,104,982	62,422,013	134,124,976
	CIF	13	1	2	16
A2	AuM	57,007,474	10,472,852	108,527,009	176,007,335
	CIF	27	7	11	45
B	AuM	37,559,891	101,382,292	179,902,065	318,844,198
	CIF	4	4	2	10
TOTAL AUM		123,165,349	154,960,016	350,851,136	628,976,500
(in %) CHF		20%	25%	56%	100%
TOTAL CIF		43	12	17	71
		59%	17%	24%	100%

* Sources: MIS; AIM

CREDIT SUISSE STRICTLY CONFIDENTIAL Slide 21

Phase II - Overview analytical framework by L&S

Work in progress



CREDIT SUISSE STRICTLY CONFIDENTIAL Slide 22

Credit Suisse
Update on Development of AuM and Accounts of U.S. Clients to the Senate Permanent Subcommittee on Investigations

20 April 2012

Confidential Treatment Requested

Permanent Subcommittee on Investigations
EXHIBIT #18

Agenda

Total Private Bank

- *AuM and Accounts for U.S. Clients with AuM ≥ CHF 250k*
- *AuM and Accounts for U.S. Clients with AuM < CHF 250k*

North American Desk (SALN)

- *AuM and Accounts for U.S. Clients with AuM ≥ CHF 250k*
- *AuM and Accounts for U.S. Clients with AuM < CHF 250k*

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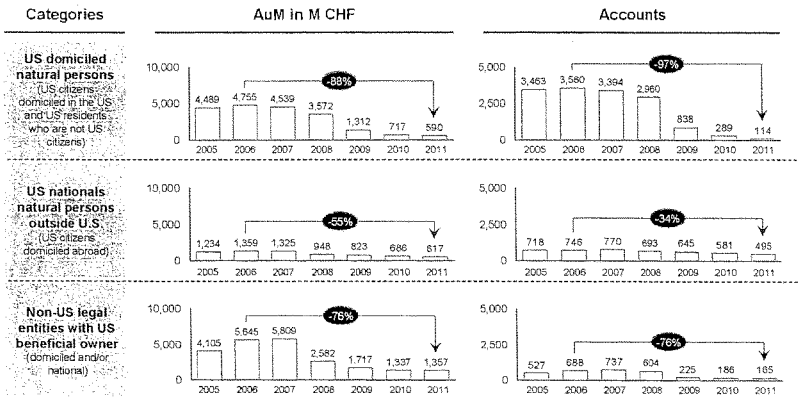
CS-SEN-00189152

Total Private Bank: Development of AuM and Accounts for U.S. Clients with AuM ≥ CHF 250k

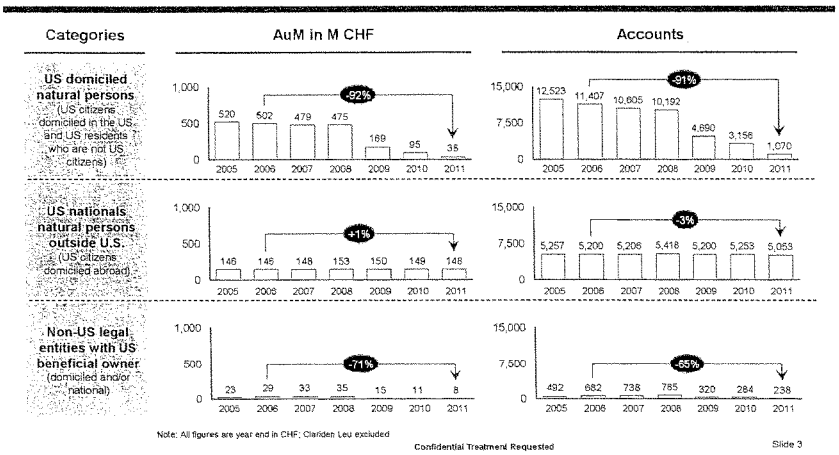


Note: All figures are year end in CHF; Clariden Leu excluded

Confidential Treatment Requested

Slide 2

Total Private Bank: Development of AuM and Accounts for U.S. Clients with AuM < CHF 250k



Note: All figures are year end in CHF; Clariden Leu excluded

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Slide 3

Agenda

Total Private Bank

- *AuM and Accounts for U.S. Clients with AuM ≥ CHF 250k*
- *AuM and Accounts for U.S. Clients with AuM < CHF 250k*

North American Desk (SALN)

- *AuM and Accounts for U.S. Clients with AuM ≥ CHF 250k*
- *AuM and Accounts for U.S. Clients with AuM < CHF 250k*

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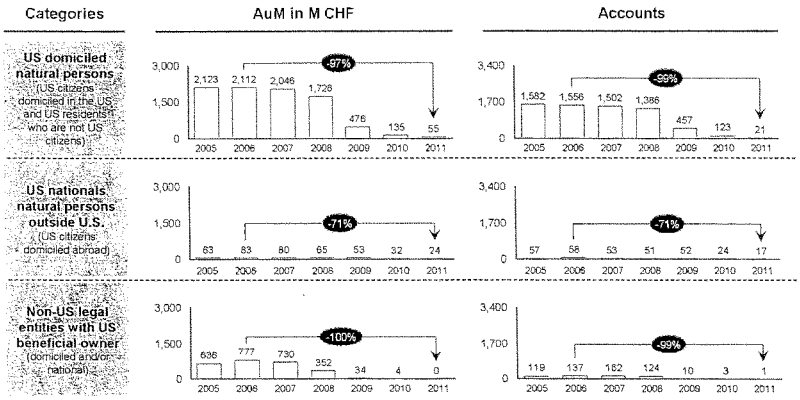
CS-SEN-00189155

North American Desk (SALN): Development of AuM and Accounts for U.S. Clients with AuM ≥ CHF 250k

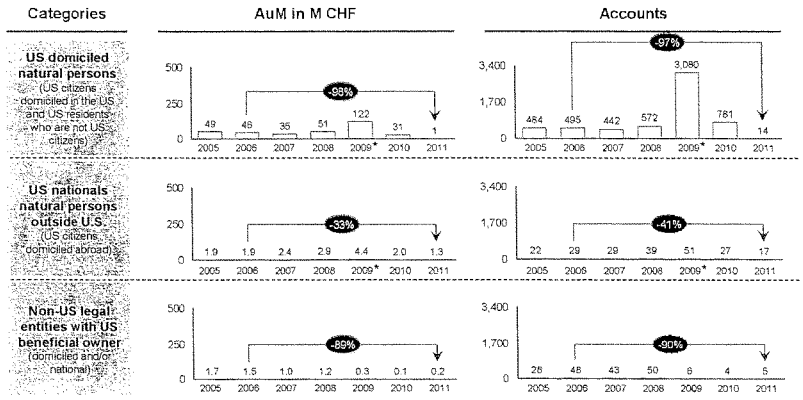


Note: All figures are year end in CHF

Confidential Treatment Requested

Slide 5

North American Desk (SALN): Development of AuM and Accounts for U.S. Clients with AuM < CHF 250k



Note: All figures are year end in CHF * Concentration of U.S. accounts in connection with exit projects

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Slide 6

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August 13, 2013

VIA EMAIL & HAND DELIVERY **CONFIDENTIAL TREATMENT REQUESTED**

Robert L. Roach, Esq.
Allison F. Murphy, Esq.
Permanent Subcommittee on Investigations
Committee on Homeland Security and
Governmental Affairs
United States Senate
SR-199 Russell Senate Office Building
Washington, D.C. 20510

Re: Credit Suisse Group AG

Dear Bob and Allison:

On behalf of Credit Suisse Group AG ("CS" or "the Bank"), I write to thank you for taking the time to meet with us on July 31, 2013, to discuss the Bank's compliance efforts. Based on the breadth and depth of the presentation, we thought it would be worthwhile not only to reiterate some of the key points of our presentation, but also to highlight more broadly the Bank's strategic focus on U.S. regulatory compliance, and its actions to ensure future compliance in any remaining U.S. cross-border business.

It bears reiterating at the outset that compliance with U.S. regulatory requirements is a matter of the utmost importance to CS. Over the past decade, the Bank has undertaken extensive efforts to foster U.S. regulatory compliance, from the implementation of its U.S. Person Policy in 2002, to its unprompted decisions to largely exit the U.S. resident cross-border business in 2009, its tightened compliance as to the U.S. national business in 2011, and its intent to implement a number of controls earlier than required by the Foreign Account Tax Compliance Act ("FATCA"), and with an enhanced diligence standard. The effectiveness of the Bank's efforts is reflected in the extensive reduction of accounts with U.S. residents, and concomitant increase in accounts processed in the exit projects (i.e. closed or verified as tax-compliant). CS's proactive steps to foster compliance with U.S. law – which began long before the investigation of UBS – have transformed the culture of the bank. Along with remediating past wrongdoing by certain bank employees -- about which the Bank has been forthright with the Subcommittee -- CS is

Permanent Subcommittee on Investigations
EXHIBIT #19

focusing on future compliance through early implementation of FATCA procedures as an integral part of the Bank's move to enhanced compliance measures. In short, CS has and will continue to promote an industry-leading approach to U.S. regulatory compliance.

A. Projects to Exit the U.S. Business and Foster Compliance with U.S. Regulations

The following discusses the Bank's early focus on cross-border regulatory compliance, its prompt response to the U.S. government's investigation of UBS, and the extensive measures it has been taking to foster compliance within any remaining U.S. cross-border business.

1. Early Focus on the U.S. Cross-Border Business

CS's compliance efforts have been ongoing for more than a decade. In 2002, the Bank first issued its U.S. person policy, which governed conduct with respect to account holders in the U.S. Beginning in 2006, the Bank reviewed the regulatory structures of the U.S. and over 80 other countries, issued cross-border policy manuals, and tightened its U.S. person policy. In connection with this project, CS initiated a process to review and redefine the already-existing strict internal guidelines applicable to services for U.S. residents. This process culminated in, among other things, more exacting cross-border rules relating to business travel to the United States.

2. Prompt Response to UBS Investigation and Review of U.S. Relationships

When the investigation of UBS and LGT was reported in the media, certain Swiss banks tried to benefit financially by luring U.S. depositors who had been terminated from those banks. CS took the opposite approach, acting promptly to prohibit such deposits, in an effort to prevent the transfer of these assets.

In addition to prohibiting the inflow of U.S. assets from UBS and LGT, and without prompting by U.S. authorities, the Bank began reviewing its own U.S.-linked client relationships. Noting that the UBS conduct involved certain structures with U.S. beneficial owners, beginning in 2008, CS initiated a systematic review of client relationships with non-U.S. domiciliary (non-operating) entities with U.S. beneficial owners. Relationships that met the review criteria were either determined to be tax-complaint or terminated. To conduct this review, the Bank retained a team of tax specialists from a major outside Swiss law firm. This project resulted in the termination of more than 800 relationships, as demonstrated by Slide 23 of our July 31, 2013 presentation. See Presentation by Credit Suisse to the Senate Permanent Subcommittee on Investigations (July 31, 2013), attached hereto as Exhibit A.

On the heels of its review of the entities discussed above, and mindful of the U.S. securities law implications of U.S. resident customers, the Bank decided to prohibit virtually all securities-holding relationships with U.S. residents and their structures, except through the Bank's U.S.-licensed affiliates (CSPA and PB USA), with very few exceptions. U.S. residents who were unable or unwilling to demonstrate compliance were terminated, as were clients who were not eligible to maintain an account at the regulated entity. Recognizing the unique need of

Swiss citizens in the U.S., and employees of Swiss firms assigned to the U.S. temporarily, the Bank permitted these clients to retain a banking relationship with limited services (called the Special Service Offering, or "SSO" program) upon provision of certification of tax compliance and agreement to close existing securities accounts. In this way, the Bank undertook to exit its business with U.S. residents, with limited and responsible exceptions that required tax compliance, at a minimum. As demonstrated by Slide 25 of the July 31 presentation, the Bank has terminated more than 10,000 relationships through this project. See Exhibit A.

Unlike relationships with U.S. residents concentrated in the North America desk ("SALN"), relationships with U.S. nationals in other desks had not been the focus of U.S. indictments. Moreover, whereas many U.S. resident clients were concentrated within SALN, non-resident nationals were scattered across the Bank's thousands of relationship managers; these clients were serviced by the Bank's country desk of domicile, which was familiar with the cross-border rules relating to the domicile country. And as noted in our July 31 presentation, approximately 40,000 U.S. citizens live in Switzerland, many of whom obtain basic banking services at CS. Indeed, in 2008, approximately 70% of the Bank's U.S. clients who resided outside the U.S. resided in Switzerland.

Still, well in advance of the implementation of FATCA rules, beginning in 2011, CS voluntarily embarked on another extensive project designed to confirm (to the extent possible) that such relationships were tax-compliant. In 2011, the Bank first reminded all U.S. national clients about their foreign bank account reporting obligations under U.S. law. In early 2012, when it became apparent that the U.S. would postpone FATCA implementation to 2014, the Bank began requiring U.S. tax compliance certification forms for non-resident nationals. To that end, the Bank requested that non-resident nationals personally certify tax compliance, and submit certifications from paid and approved return preparers. Through these efforts, instead of waiting for FATCA implementation, the Bank is undertaking a voluntary, industry-leading effort to assist in fostering U.S. tax compliance related to these relationships. To be sure, our work continues with the U.S. nationals, but it is worth reiterating that it is permissible under U.S. law for a U.S. national to maintain a foreign bank account, as long as it is disclosed appropriately.

3. Results of the Exit Projects

As we discussed, these exit projects have produced meaningful results. Our efforts have resulted in the processing of more than 15,000 U.S.-linked CIFs, which were either closed or verified (to the extent possible) as tax-compliant, as demonstrated in our July 31 presentation materials. As you requested, we will supplement these figures with year-end totals in the various categories. Based on these voluntary actions, and with the amended Swiss-U.S. tax treaty and full FATCA implementation, we are confident that all identified U.S.-linked relationships at CS will be transparent and available to U.S. tax enforcement officials.

In our July 31 meeting, we discussed the contrast between the diminishing volume of U.S.-linked relationships in SALN and the steady volume of U.S.-linked accounts outside of SALN. The diminishing numbers of SALN-based relationships reflect the exit projects efforts and prioritization of U.S. resident relationships, as discussed above, which were concentrated in

SALN Given the U.S. law enforcement focus on securities solicitations and advice to persons in the U.S., the natural starting point in 2009 for any CS review was U.S. resident relationships, which were concentrated in SALN. For the same reason, it is also not surprising that our investigation found that the North America desk was the focal point of any alleged U.S. securities misconduct, rather than other regional desks that maintained primarily non-resident U.S. national accounts.

Finally, when considering the volume of CS client relationships, it is important to recall the 2009 treaty amendments. In particular, any relationship that was open as of September 23, 2009, will be subject to the amended Treaty between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income. This treaty contemplates that Switzerland will honor so-called "group requests" for information regarding U.S. taxpayers under, for the first time, a new much more relaxed legal standard. While the amendment to the treaty still awaits U.S. Senate ratification, upon its implementation, Swiss-based accounts post-September 2009 will be more transparent than ever before to U.S. enforcement officials. In particular, the amendments obviate the previous problem identified by the Subcommittee during its UBS investigation -- that U.S. authorities were not permitted access to Swiss bank information related to U.S. taxpayers under the old "tax fraud" standard. The combination of the 2009 Treaty amendment and the scheduled full implementation of FATCA will ensure that any U.S.-linked account held at CS after September 2009 will be much more transparent to U.S. authorities.

B. Diligence to Identify U.S. Accounts

Furthermore, the Bank is undertaking painstaking efforts to identify all U.S.-linked client relationships. As we described at the July 31 meeting, the figures in Slides 22 to 33 represent the Bank's U.S.-linked relationships based on residence and nationality over the relevant time period, as reflected in the Bank's client identification systems. In accordance with know-your-customer rules, these systems require the verification of the identity of each of the more than two million bank clients and their beneficial owners, if any. As further described in Slide 34, the Bank has undertaken an additional forensic review to identify any potential residual U.S. relationships. This forensic review uses IRS/FATCA indicia to look past documents provided to the Bank at account opening for other signs of possible U.S. linkage.

The Bank also has identified a number of relationships that were recently re-designated as linked to the U.S, as described in Slide 36. See Exhibit A. In some cases, the cause of the re-designation has been clear and straightforward – where a client moves to the U.S., for example. As we discussed, in other cases – very few in number – the U.S. link is not clear, or was not evident from the know-your-customer file. As we discussed, where the U.S. link was evident from the existing files related to the relationship, responsible relationship managers are being held to account through the Bank's disciplinary procedures. On the separate issue of back testing on newly identified U.S. links that were not evident from the file, we intend to analyze this issue further. Unfortunately, we do know that a large percentage of the relevant relationship managers have already left the bank but we will continue to refer matters to our Disciplinary Committee as

appropriate. At bottom, Slide 36 demonstrates that no large number of newly identified CIFs was being added to the SALN workload as of March 2013.

In addition to assisting with the exit projects, SALN remains responsible for a variety of functions, including the traditional client coverage for resident Canadians and U.S. residents who are clients of PB USA and have custody with the Swiss bank, as well as clients in the SSO programs. In addition to the SALN head, there are 17 people involved in these activities. There are currently numerous personnel involved in the data collection for former (vast majority) and current clients in connection with their IRS Voluntary Disclosure Program submissions and the processing of newly flagged U.S. resident CIFs in the exit projects. With an influx of VDP requests during the course of the third quarter of 2012 (mainly due to the Clariden Leu merger and requests for evidence of tax compliance from U.S. nationals), SALN was requesting greater resources in late February 2013. This was viewed as a legitimate and reasonable request and more resources were immediately applied by the Legal Department.

C. Efforts to Facilitate The Voluntary Disclosure Program

As well as terminating relationships that cannot or will not demonstrate tax compliance, the Bank has also undertaken substantial efforts to encourage clients to enter the VDP, where appropriate. As you know, this IRS program encourages U.S. clients to self-report undeclared bank accounts and pay a substantial penalty to avoid criminal prosecution. To support this effort, in February 2012, the Bank issued a letter informing over 1,600 former clients of the program; the Bank sent similar reminders to U.S. clients who had been terminated through the exit project. CS has provided these letters to the Subcommittee. *See* Exhibits B & C (CS-SEN-00421312 & 421314). In addition to soliciting participation in the program and as mentioned above, CS has assigned designated staff devoted to the time- and resource-intensive project of generating tax statements for current and former clients to provide to the IRS, sometimes dating many years in the past.

D. Early Implementation of the Foreign Account Tax Compliance Act

In addition to addressing compliance as to current and former U.S. accounts, the Bank has taken extensive and forward-looking steps to foster compliance prospectively. As you know, in March 2010, Congress enacted FATCA, which targets compliance by U.S. taxpayers with foreign accounts. In addition to focusing on reporting by U.S. taxpayers about certain foreign financial accounts and offshore assets, FATCA also requires that foreign financial institutions such as CS report information about financial accounts held by U.S. taxpayers or foreign entities in which they hold a substantial ownership interest. After several years of study, the IRS issued final regulations in 2013, to be phased in between 2014 and 2017.

The Bank has been an industry leader in connection with the development and implementation of FATCA. CS testified before Congress in favor of the law, and has supported the IRS during the lengthy regulatory development process by participating in over 100 regulatory meetings. The Bank also chairs an *ad hoc* industry FATCA working group, and the ISDA North America tax committee responding to FATCA issues. And as we discussed during

our July 31 presentation, the Bank is not waiting for 2014 to begin implementing FATCA's requirements; instead, the Bank is moving forward now, adopting requirements that not just meet but exceed those to be required by U.S. law.

E. The Bank's Internal Investigation of the U.S. Cross-Border Business

While the Bank has focused intently on addressing existing U.S. client relationships, as discussed above, as well as planning for the future, it has likewise devoted enormous resources to identifying and remediating violations of U.S. law and Bank policy by CS relationship managers. Upon learning of problems within the North America desk, CS commissioned an extensive internal investigation of the Bank's business with U.S. clients, spearheaded by outside counsel in the U.S. and Switzerland, and supported by an independent public accounting firm. Our team reviewed more than 3.5 million documents and conducted more than 80 interviews, including relationship managers both inside and outside of the North America desk, supervising relationship managers, legal and compliance personnel, tax specialists, internal audit employees, business risk management personnel, and members of executive management.

While the CS bankers named in the indictment were from the North America desk, our investigation was not limited to that desk. Although the U.S. resident business was concentrated in the North America desk, relationships with U.S. clients were scattered among thousands of relationship managers, most of whom had only a small number of U.S. customers, if they had any at all. As to relationship managers with a higher probability of misconduct with regard to U.S. clients (based on factors including the concentration of U.S. clients in terms of total clients and assets under management, the extent of their travel to the U.S., any UBS employment history, and their employment status with the bank), we conducted an in-depth review of these employees' connection with U.S. clients, including reviewing email and conducting interviews. As discussed below, we have discussed the results of this investigation with this Subcommittee and other U.S. authorities.

F. Cooperation with the Subcommittee and Other U.S. Authorities

Since the outset of this matter, CS has endeavored to keep this Subcommittee and other U.S. authorities apprised of both the progress of its exit projects and its internal investigation. At the Subcommittee's request, in January 2009, CS first met with Subcommittee staff to discuss its U.S. cross-border business. In this meeting, the then-Head of Private Bank Americas, Tony DeChellis, provided Subcommittee staff with a detailed presentation outlining the history of the U.S. cross-border business as well as the Bank's efforts to review and maintain only tax-compliant relationships. Following this meeting, the Bank promptly responded to several follow-up requests from the Subcommittee by providing additional requested information and documents. In July 2011, CS again briefed Subcommittee staff, providing an update on the exit projects and a summary of its findings from the internal investigation into the U.S. cross-border business. In February 2012, CS updated Subcommittee staff again, regarding the exit project progress, and its findings from the internal investigation, as expanded to include the U.S. cross-border business outside of the North America desk as well as Clariden Leu. Shortly thereafter, the Bank promptly responded to a series of follow up inquiries made by the Subcommittee staff

regarding these productions, providing additional information to satisfy these requests. And most recently, in 2013, CS briefed Subcommittee staff on three occasions in June and July, addressing the exit projects and other matters about which the staff inquired. CS also has produced to the Subcommittee over 400,000 pages of responsive materials, and over 8,500 pages of files for U.S.-linked accounts held in Singapore, as requested.

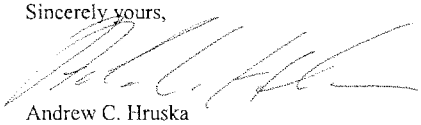
The Bank has provided this substantial cooperation despite the constraints of Swiss law, which in various ways restricts the Bank's ability to provide information to this Subcommittee and other U.S. authorities. In this regard, it is important to note the changes in the political landscape in Switzerland since the resolution of the UBS matter have not facilitated CS's cooperation. In connection with the UBS resolution, the Swiss government undertook the extraordinary step of passing legislation to enable UBS to disclose substantial account records of U.S. clients to U.S. authorities. The Swiss government has not passed similar legislation to facilitate CS's cooperation. Notwithstanding the challenging change in landscape, CS will continue to urge the Swiss authorities to permit additional disclosures of account records.

***

Finally, we are working on your most recent requests, and hope to begin providing materials next month.

As with our other submissions, we request that the Subcommittee maintain this letter as confidential. We appreciate your attention to these matters and we look forward to continued engagement with you on these topics.

Sincerely yours,



Andrew C. Hruska

Enclosures

cc: Stephanie Hall, Esq.
Counsel to the Minority

Joseph L. Seidel, Esq.
Managing Director & Senior Counsel

Exhibit A

SCHELLENBERG WITTMER

KING & SPALDING

Credit Suisse
Report to the Senate Permanent Subcommittee on Investigations

July 31, 2013

Confidential Treatment Requested

Agenda

Introduction

Exit projects slide 3

Updated numbers slide 19

Follow-up on PB Americas issue slide 35

Agenda

Introduction		
Exit projects	**slide**	**3**
Updated numbers	slide	19
Follow-up on PB Americas issue	slide	35

517

Overview of U.S. Regulatory Compliance

- Voluntary efforts sustained over time to comply with U.S. regulations
- Sequencing of priorities based on known risks
- Ongoing overarching objective: identify U.S. client relationships and establish tax and securities law compliance or exit the relationship
- Bank has taken action with respect to all U.S. relationships (based on residence and nationality) reflected in the Bank's client identification systems
- Additional forensic exercise ongoing to identify and review potential residual U.S. relationships as well as to ensure any new U.S. eligible accounts are tax and securities compliant

2001-2007: Responding to U.S. Regulatory Requirements (1 of 2)

- History of compliance initiatives
- Qualified Intermediary Agreement
- U.S. Persons Policy
  - P-00025 issued in 2002; updated and enhanced over time
  - Mandatory training conducted by Legal for all RMs with at least one U.S. client
- CSPA
  - Created in 2001
  - U.S.-regulated, Swiss-based broker/dealer and investment advisor
  - RMs based in Switzerland

2001-2007: Responding to U.S. Regulatory Requirements (2 of 2)

- Cross Border+ Project
  - Global project covering more than 80 countries
  - U.S. procedures already well developed and U.S. Person policy served as model for other country manuals created within the project
  - Goal of project was to ensure that employees in all jurisdictions in which the Bank does business had current guidance on local rules and regulations
- W-9 Project
  - Overseen by Legal
  - Goal of transferring W-9 clients from PB to CSPA and concentrating remaining accounts
- Dedicated U.S. Desk
  - Various efforts over time designed to concentrate U.S. business within the Bank at one desk

2008 – Present: U.S. Regulation and the Exit Projects

- CS's response to news of UBS investigation
- Initiation of exit projects
  - Non-U.S. domiciliary entities with U.S. BOs
  - U.S. residents
  - U.S. nationals
- Investigative, monitoring and testing measures
- Outreach to current and former clients
- FATCA

2008-2009: UBS Investigation and Credit Suisse Response

- UBS investigation
  - Public reports indicated conduct involved fraudulent structures
- CS response to UBS exit announcement
  - Immediate action to prohibit inflows from UBS and LGT (Legal & Compliance Alert LC 00014, July 2008, further extended in September 2008)
  - Proactive and unprompted by U.S. authorities
  - Analysis of foreign structures with U.S. beneficial owners similar to those at issue in UBS investigation
  - Maintain confirmed tax-compliant relationships

Exit Projects: The Focus on Non-U.S. Domiciliary Entities with U.S. Beneficial Owners (BOs)

- Goals
  - Analyze structures with U.S. BOs
  - Exit those that cannot demonstrate tax compliance
- Structure & Resources
  - Directed by Legal, substantial outside counsel support
  - Managed by Steering Committee with members from Private Bank, Legal and Tax Divisions
  - Thousands of CS & outside counsel hours invested
- Execution
  - Identification of U.S. BOs
  - New account openings prohibited for domiciliary entities with U.S. BOs
  - Monitoring of exit process
  - Entities eligible to remain with the Bank:
    - Operating companies
    - Complex trusts
    - Otherwise disclosed to the U.S. tax authorities
- Projects Covering Entities
  - Project names: Entities, Compass I & II, Tim, Legacy E, Argon

Exit Projects: The Focus on U.S. Residents

- Goals
  - Move U.S. residents to CSPA or PB USA or Special Service Offering, or terminate
- Structure & Resources
  - Counsel directed
  - Substantial internal resources devoted to project
- Execution
  - Identification of U.S. residents from Client-ID systems
  - Transfer of eligible customers to U.S.-regulated affiliates
  - Less than a dozen relationships with established tax and securities compliance permitted to remain
- Projects Covering U.S. Residents
  - Project Names: III, Compass III, Argon

Exit Projects: The Focus on U.S. Nationals

- Goals
  - Confirm tax compliance of U.S. nationals residing outside the U.S.
  - Exit relationships where compliance not confirmed
- Structure & Resources
  - External counsel
  - External consulting support
- Execution
  - Tax compliance certifications required from both clients and tax preparers
  - FBAR reminder letter to customers
- Projects Covering U.S. Nationals
  - Project names: Titan, Argon

Investigative, Testing and Monitoring Measures

- Supervision and control of exit process
  - External and internal counsel
  - Bank control functions
  - Outside consultant review
- Analysis of additional populations for potential U.S. links
  - Automated and manual review of potential indications of U.S. nationality or residency
- Development of testing and monitoring procedures
  - Manual and automatic identification and tracking of U.S.-linked relationships
  - Substantial investment in IT infrastructure

Current Control Processes

- Control processes validate compliant regulatory status of each relationship
  - Any opening of relationship or any change of client domicile or nationality triggers a control process governed by client identification unit (Client-ID) within Legal
  - Client-ID verifies all required forms submitted by the client to ensure compliant regulatory status of the new or changed relationship
  - Once confirmed, Client-ID then establishes a system flag
- Process enhanced to ensure compliance with U.S. regulations
  - Any new individual client had to declare U.S. status as of June 2012
  - U.S. persons had to submit a W-9 and a "Tax Compliance Certificate" form
  - FATCA U.S. withholding tax waiver implemented, replacing the former "Tax Compliance Certificate" in January 2013
  - Approval sheets and system flags to document tax compliance of non-U.S. domiciliary structures

Enhanced Monitoring Tools to Advance the FATCA Implementation Process

- Manual monitoring of relationships through regular system reports
  - Monthly reports covering U.S. client relationships
  - Issue Tracking system reports track status of U.S. client relationships
  - Analyze the status of relevant relationships
  - Unresolved cases are addressed and escalated

- CS automated processes
  - Automated control processes implemented for individual relationships in May 2013
  - Newly opened U.S. relationships are now blocked after 10 working days without appropriate documentation
  - In coordination with IRS, CS will be crafting entities tax compliance controls consistent with FATCA
  - Manual compliance monitoring for legal entities pending new IRS-direct controls under FATCA

Outreach to Current and Former Clients

- Letters to current clients
  - June 2011: FBAR reminder letter sent to U.S. national clients of CS (CS-SEN-00421311) and Clariden Leu (CS-SEN-00421316)
  - February 2012: Bank required all clients with U.S. domicile, all citizens, and all other "U.S. persons" for U.S. tax purposes to provide tax certification (CS-SEN-00421313)
- Letters to former clients concerning IRS' Voluntary Disclosure Program
  - February 2012: Letter to over 1,600 former clients informing them of the VDP (CS-SEN-00421312)
  - Since March 2012: Terminated clients reminded of VDP (CS-SEN-00421314)
- Support for VDP processing
- Handling dormant and recalcitrant accounts

FATCA

- CS is a recognized leader in FATCA compliance
  - CS chairs *ad hoc* industry working group on FATCA
  - CS chairs ISDA North America tax committee responding to FATCA
  - CS has testified before Congress in favor of FATCA
- Support for IRS in regulatory drafting and implementation; participated in over 100 regulatory meetings
- Early implementation of FATCA procedures
- Beyond FATCA requirements

U.S. Tax and Securities Compliance: Resource Commitments to Date

- CS has committed extraordinary resources, including major law firms and independent public accounting firms, to U.S. tax and securities compliance
- Average of 150-200 full-time external employees annually
- Multiple internal bank functions dedicated to supporting efforts
  - Legal
  - Tax
  - Business Risk Management
  - Internal Audit
  - Finance
  - Private Banking

CIFs and AuM of Overall PB Business

	2008	2009	2010	2011	2012
Overall private bank					
CIF	2,300,000	2,259,200	2,191,600	2,164,500	2,122,400
AuM (millions - CHF)	788,900	914,900	1,205,300	1,185,200	1,250,800

- The number of Swiss-U.S. offshore CIFs has never exceeded one percent of the total PB business

Agenda

Introduction		
Exit projects	slide	3
Updated numbers	**slide**	**19**
Follow-up on PB Americas issue	slide	35

533

Reasons for a Bank Account Outside the U.S.

- U.S. residents may open bank accounts in any jurisdiction in the world provided they comply with U.S. reporting requirements
- Bank accounts outside the U.S. may be necessary in connection with real estate holdings, e.g., vacation homes, employment assignments abroad, studies abroad, jurisdictional and regional diversification of assets, e.g., Canada, Asian equities, etc.
- According to the U.S. Department of State, approximately 40,000 U.S. citizens live permanently or temporarily in Switzerland

Numbers: Methodology

- Client relationships (CIFs)
  - All CIFs are represented that were active at any month-end during a year
  - CIFs are no longer represented after the year in which they were either closed or reviewed and verified
- Assets under Management (AuM)
  - For represented CIFs, average AuM based on monthly figures is represented in million USD
- The following slides contain numbers assembled in good faith to respond to your specific data request within the desired timeframe; will be revised if needed

Private Bank

Non U.S. domiciliary entities with U.S. BO analyzed for resolution (Client identification systems as of Dec 2012)
Client relationships (CIFs) and Assets under Management (AuM)

	2008	2009	2010	2011	2012
U.S Securities CIF	193	53	29	12	15
U.S Securities AuM	906	327	256	123	70
W-9 CIF	6	5	3	2	4
W-9 AuM	20	17	9	7	8
Non W-9* CIF	187	48	26	10	11
Non W-9* AuM	886	310	247	116	62
Non U.S Securities CIF	440	360	71	39	36
Non U.S Securities AuM	2,181	802	336	248	136
W-9 CIF	2	3	1	0	5
W-9 AuM	106	103	4	0	5
Non W-9 CIF	438	357	70	39	31
Non W-9 AuM	2,075	699	332	248	130
Without Securities CIF (includes non-income producing CIFs)	618	542	134	89	75
Without Securities AuM	1,006	674	121	104	70

Note: All CIFs are represented that were active at any month-end during a year. CIFs are no longer represented after the year in which they were either closed or reviewed and verified. Assets under Management (AuM) for those CIFs is represented in million USD as an average of the months until they were closed or reviewed and verified.
* The categorization relies on a table of securities listing all securities that were classified as being a U.S. security. Changes in that classification over time are not reflected in that table. These results are therefore subject to ongoing analysis and might change.

Private Bank

Non U.S. entities with U.S. BO analyzed for resolution – Details on exit projects
Client relationships (CIFs) and Assets under Management (AuM)

		2008	2009	2010	2011	2012
Domiciliary entities	Closed relationships					
	CIF	197	613	32	21	22
	AuM	388	558	43	9	12
	Reviewed and tax compliance verified					
	CIF	9	80	10	88	35
	AuM	51	147	16	210	91
	U.S. nexus ends before 31 Dec					
	CIF	69	66	22	18	18
	AuM	1,075	130	21	27	47
	Closure, transfer or tax certification pending					
	Additional relationships					
	CIF	112	17	27	4	2
	AuM	186	36	86	3	11
	Dormant relationships					
	CIF	3	5	4	2	2
	AuM	0.02	0.03	0.03	0	0
	Closure/Tax Compliance Verification in process					
	CIF	868	175	143	69	55
	AuM	2,393	933	547	227	116
Operating entities	Analyzed for resolution					
	CIF	41	299	15	80	32
	AuM	237	420	16	355	272

Private Bank

U.S. Residents analyzed for resolution (Client identification systems as of Dec 2012)
Client relationships (CIFs) and Assets under Management (AuM)

		2008	2009	2010	2011	2012
U.S Securities	CIF	180	147	95	18	13
	AuM	352	333	195	31	14
W-9	CIF	164	129	85	11	2
	AuM	341	313	189	28	5
Non W-9*	CIF	16	18	10	7	11
	AuM	11	20	6	3	9
Non U.S Securities	CIF	5,569	4,977	1,486	421	122
	AuM	3,112	2,403	784	568	82
W-9	CIF	314	307	185	23	10
	AuM	185	233	114	16	18
Non W-9	CIF	5,255	4,670	1,301	398	112
	AuM	2,927	2,171	670	552	64
Without Securities	CIF (includes non-income producing CIFs)	8,866	8,208	3,754	1,820	257
	AuM	984	1,108	443	252	1,725

Note: All CIFs are represented that were active at any month-end during a year. CIFs are no longer represented after the year in which they were either closed or reviewed and verified. Assets under Management (AuM) for those CIFs is represented in million USD as an average of the months until they were closed or reviewed and verified.
* The categorization relies on a table of securities listing all securities that were ever classified as being a U.S. security. Changes in that classification over time are not reflected in that table. These results are therefore subject to ongoing analysis and might change.

Private Bank

U.S. Residents analyzed for resolution – Details on exit projects
Client relationships (CIFs) and Assets under Management (AuM)

	2008	2009	2010	2011	2012*
Closed relationships					
CIF	NA	7,332	1,239	1,912	138
AuM		2,075	459	235	50
Reviewed and tax compliance verified					
CIF	NA	246	1,974	405	166
AuM		233	252	443	1,599
U.S. nexus ends before 31 Dec					
CIF	NA	390	175	41	22
AuM		129	45	7	7
Closure, transfer or tax certification pending					
Additional relationships					
CIF	NA	185	79	49	99
AuM		120	10	13	37
Dormant relationships					
CIF	NA	1,330	1,369	6	5
AuM		88	109	0.78	0.54
Closure/Transfer in process					
CIF	NA	3,974	796	52	46
AuM		1,201	548	151	127

Note: * Increase in numbers due to incorporation of Clariden Leu AG into Credit Suisse AG

Private Bank

U.S. Citizens resident outside U.S. analyzed for resolution (Client identification systems as of Dec 2012)
Client relationships (CIFs) and Assets under Management (AuM)

	2008	2009	2010	2011	2012
U.S Securities CIF	112	110	108	100	95
U.S Securities AuM	162	132	145	167	142
W-9 CIF	109	108	107	100	95
W-9 AuM	141	131	145	167	142
Non W-9* CIF	3	2	1	0	0
Non W-9* AuM	21	0.7	0.01	0	0
Non U.S Securities CIF	1,455	1,394	1,189	1,066	940
Non U.S Securities AuM	823	667	557	554	490
W-9 CIF	145	158	158	163	164
W-9 AuM	191	124	140	134	120
Non W-9 CIF	1,310	1,236	1,031	903	776
Non W-9 AuM	632	542	417	420	370
Without Securities CIF (includes non-income producing CIFs)	5,179	5,261	5,223	5,282	5,009
Without Securities AuM	352	343	250	250	326

Note: All CIFs are represented that were active at any month-end during a year. CIFs are no longer represented after the year in which they were either closed or reviewed and verified. Assets under Management (AuM) for those CIFs is represented in million USD as an average of the months until they were closed or reviewed and verified.
* The categorization relies on a table of securities listing all securities that were ever classified as being a U.S. security. Changes in that classification over time are not reflected in that table. These results are therefore subject to ongoing analysis and might change.

Private Bank

U.S. citizens resident outside U.S. analyzed for resolution – Details on exit projects
Client relationships (CIFs) and Assets under Management (AuM)

	2008	2009	2010	2011	2012*
Closed relationships CIF AuM	NA	NA	NA	NA	954 183
Reviewed and tax compliance verified CIF AuM	NA	NA	NA	NA	358 333
U.S. nexus ends before 31 Dec CIF AuM	NA	NA	NA	NA	126 14
Tax compliance verification in progress CIF AuM	NA	NA	NA	NA	690 370
Not in scope of the project* CIF AuM	NA	NA	NA	NA	3,926 58

* Only relationships with AuM above CHF 100,000 and CS staff were included in project

North American Desk (SALN)

Non U.S. domiciliary entities with U.S. BO analyzed for resolution (Client identification systems as of Dec 2012)
Client relationships (CIFs) and Assets under Management (AuM)

	2008	2009	2010	2011	2012
U.S Securities CIF	52	0	0	0	1
U.S Securities AuM	199	0	0	0	3
W- 9 CIF	1	0	0	0	0
W- 9 AuM	3	0	0	0	0
Non W- 9* CIF	51	0	0	0	1
Non W- 9* AuM	196	0	0	0	3
Non U.S Securities CIF	118	101	6	2	5
Non U.S Securities AuM	330	219	5	3	2
W- 9 CIF	0	2	0	0	2
W- 9 AuM	0	55	0	0	2
Non W- 9 CIF	118	99	6	2	3
Non W- 9 AuM	330	164	5	3	0.03
Without Securities CIF (includes non-income producing CIFs)	48	46	5	3	7
Without Securities AuM	108	44	6	0.22	0.3

Note: All CIFs are represented that were active at any month-end during a year. CIFs are no longer represented after the year in which they were either closed or reviewed and verified. Assets under Management (AuM) for those CIFs is represented in million USD as an average of the months until they were closed or reviewed and verified.
* The categorization relies on a table of securities listing all securities that were ever classified as being a U.S. security. Changes in that classification over time are not reflected in that table. These results are therefore subject to ongoing analysis and might change.

North American Desk (SALN)

U.S. Residents analyzed for resolution (Client identification systems as of Dec 2012)
Client relationships (CIFs) and Assets under Management (AuM)

		2008	2009	2010	2011	2012
U.S Securities	CIF	27	33	16	3	10
	AuM	39	24	13	4	13
W- 9	CIF	24	29	14	1	1
	AuM	35	21	8	2	4
Non W- 9*	CIF	3	4	2	2	9
	AuM	4	3	5	2	9
Non U.S Securities	CIF	1,482	3,588	950	257	68
	AuM	1,466	1,506	305	121	58
W- 9	CIF	58	184	96	7	5
	AuM	55	140	49	3	2
Non W- 9	CIF	1,424	3,404	854	250	63
	AuM	1,412	1,366	256	119	56
Without Securities	CIF (includes non-income producing CIFs)	611	5,923	2,386	597	85
	AuM	395	705	172	70	37

Note: All CIFs are represented that were active at any month-end during a year. CIFs are no longer represented after the year in which they were either closed or reviewed and verified. Assets under Management (AuM) for those CIFs is represented in million USD as an average of the months until they were closed or reviewed and verified.
* The categorization relies on a table of securities listing all securities that were ever classified as being a U.S. security. Changes in that classification over time are not reflected in that table. These results are therefore subject to ongoing analysis and might change.

North American Desk (SALN)

U.S. Citizens resident outside U.S. analyzed for resolution (Client identification systems as of Dec 2012)
Client relationships (CIFs) and Assets under Management (AuM)

		2008	2009	2010	2011	2012
U.S Securities	CIF	7	5	4	1	1
	AuM	7	5	5	0.52	0.3
W- 9	CIF	7	5	4	1	1
	AuM	7	5	5	0.52	0.3
Non W- 9*	CIF	0	0	0	0	0
	AuM	0	0	0	0	0
Non U.S Securities	CIF	52	100	53	22	21
	AuM	54	66	29	23	21
W- 9	CIF	1	5	4	1	1
	AuM	4	5	1	0.54	0.3
Non W- 9	CIF	51	95	49	21	20
	AuM	50	62	27	22	21
Without Securities	CIF (includes non-income producing CIFs)	39	85	52	30	30
	AuM	13	24	24	7	6

Note: All CIFs are represented that were active at any month-end during a year. CIFs are no longer represented after the year in which they were either closed or reviewed and verified. Assets under Management (AuM) for those CIFs is represented in million USD as an average of the months until they were closed or reviewed and verified.
* The categorization relies on a table of securities listing all securities that were ever classified as being a U.S. security. Changes in that classification over time are not reflected in that table. These results are therefore subject to ongoing analysis and might change.

Clariden Leu

Non U.S. domiciliary entities with U.S. BO (Client identification systems as of Dec 2012)
Client relationships (CIFs) and Assets under Management (AuM)

		2008	2009	2010	2011	2012
U.S Securities	CIF	139	51	18	11	9
	AuM	664	241	94	75	34
W- 9	CIF	3	13	10	4	3
	AuM	6	20	13	5	4
Non W- 9*	CIF	136	38	8	7	6
	AuM	658	221	80	70	30
Non U.S Securities	CIF	295	259	71	39	25
	AuM	925	408	83	68	59
W- 9	CIF	1	13	12	8	6
	AuM	0.95	3	3	7	6
Non W- 9	CIF	294	246	59	31	19
	AuM	924	405	80	62	53
Without Securities	CIF (includes non-income producing CIFs)	178	176	56	40	16
	AuM	306	37	35	71	18

Note: All CIFs are represented that were active at any month-end during a year. CIFs are no longer represented after the year in which they were either closed. Assets under Management (AuM) for those CIFs is represented in million USD as an average of the months until they were closed. Review for tax compliance not yet considered due to client tracking methodology applied at Clariden Leu.
* The categorization relies on a table of securities listing all securities that were ever classified as being a U.S. security. Changes in that classification over time are not reflected in that table. These results are therefore subject to ongoing analysis and might change.

Clariden Leu

U.S. Residents (Client identification systems as of Dec 2012)
Client relationships (CIFs) and Assets under Management (AuM)

	2008	2009	2010	2011	2012
U.S Securities CIF	84	109	172	163	5
U.S Securities AuM	125	157	261	262	11
W-9 CIF	81	105	171	162	5
W-9 AuM	121	153	260	260	11
Non W-9* CIF	3	4	1	1	0
Non W-9* AuM	3	4	1	1	0
Non U.S Securities CIF	963	921	619	255	44
Non U.S Securities AuM	945	761	507	222	15
W-9 CIF	87	129	86	52	5
W-9 AuM	116	172	156	86	1
Non W-9 CIF	876	792	533	203	39
Non W-9 AuM	830	589	351	137	14
Without Securities CIF (includes non-income producing CIFs)	377	351	292	235	169
Without Securities AuM	82	104	78	53	23

Note: All CIFs are represented that were active at any month-end during a year. CIFs are no longer represented after the year in which they were either closed. Assets under Management (AuM) for those CIFs is represented in million USD as an average of the months until they were closed. Review for tax compliance not yet considered due to client tracking methodology applied at Clariden Leu.
* The categorization relies on a table of securities listing all securities that were ever classified as being a U.S. security. Changes in that classification over time are not reflected in that table. These results are therefore subject to ongoing analysis and might change.

Clariden Leu

U.S. Citizens resident outside U.S. (Client identification systems as of Dec 2012)
Client relationships (CIFs) and Assets under Management (AuM)

		2008	2009	2010	2011	2012
U.S Securities	CIF	14	12	10	11	10
	AuM	23	18	11	18	19
W- 9	CIF	13	12	10	11	9
	AuM	23	18	11	18	18
Non W- 9*	CIF	1	0	0	0	1
	AuM	0.31	0	0	0	0.93
Non U.S Securities	CIF	196	186	172	141	111
	AuM	158	140	131	115	89
W- 9	CIF	14	18	18	18	14
	AuM	7	19	20	18	16
Non W- 9	CIF	182	168	154	123	97
	AuM	151	121	111	97	73
Without Securities	CIF (includes non-income producing CIFs)	94	84	64	54	45
	AuM	32	24	13	3	5

Note: All CIFs are represented that were active at any month-end during a year. CIFs are no longer represented after the year in which they were either closed. Assets under Management (AuM) for those CIFs is represented in million USD as an average of the months until they were closed. Review for tax compliance not yet considered due to client tracking methodology applied at Clariden Leu.
* The categorization relies on a table of securities listing all securities that were ever classified as being a U.S. security. Changes in that classification over time are not reflected in that table. These results are therefore subject to ongoing analysis and might change.

Private Bank

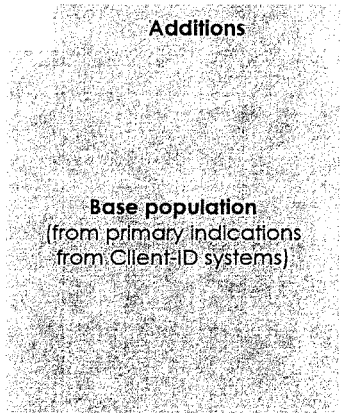
Investigative identification requiring review

Primary indications from Client-ID systems

- U.S. residents
- U.S. nationals
- both including U.S. territories

- On account holder and
- beneficial owner level

U.S. accounts



Secondary indications that CS investigated

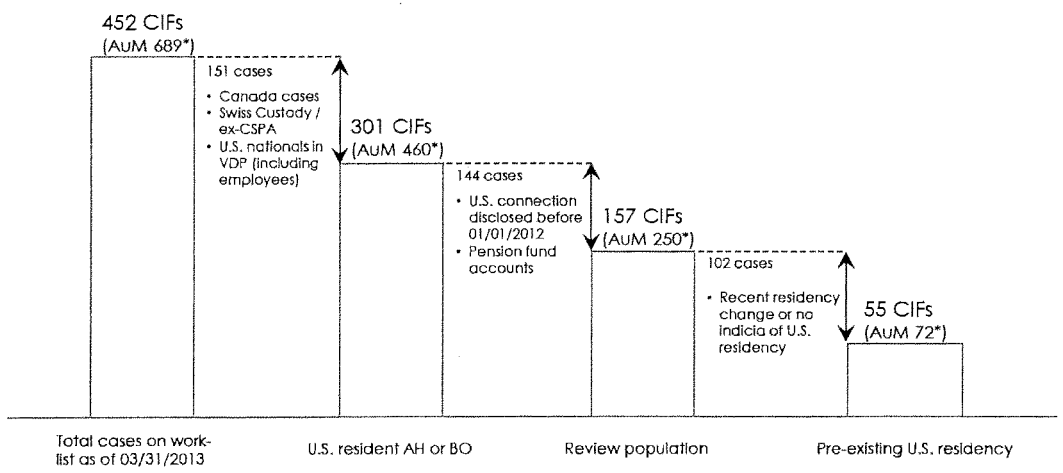
- U.S. indicia flags (green card, other tax liability etc.)
- Additional U.S. mailing address
- Additional U.S. phone number
- U.S. signatories / Power of attorney
- Connected accounts
- Standing orders to the U.S.
- Coming-out of client, incl. self-declaration (VDP)
- Free-text field search in CRM systems

Agenda

Introduction		
Exit projects	slide	3
Updated numbers	slide	19
Follow-up on PB Americas issue	**slide**	**35**

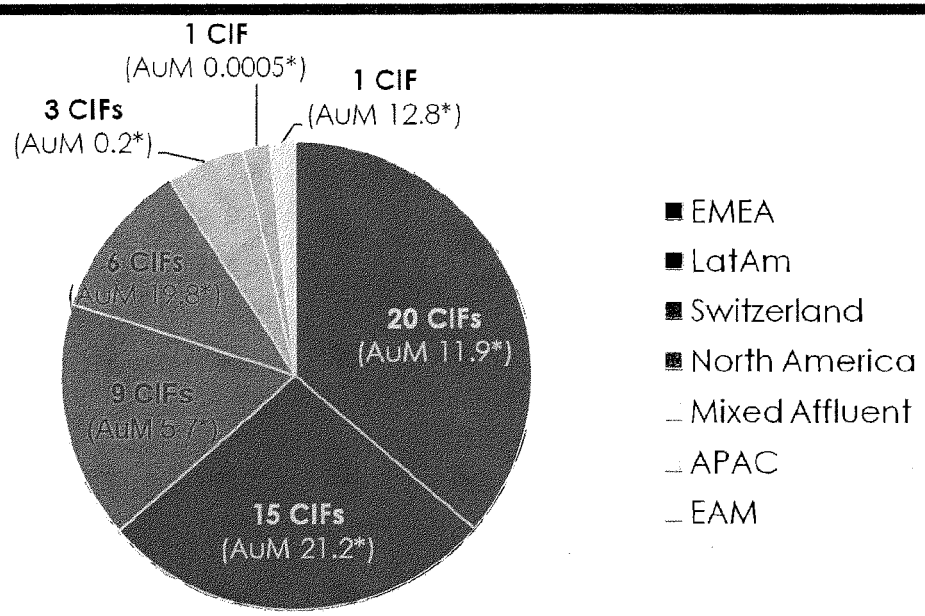
549

Analysis of SALN Worklist (as of March 31, 2013)



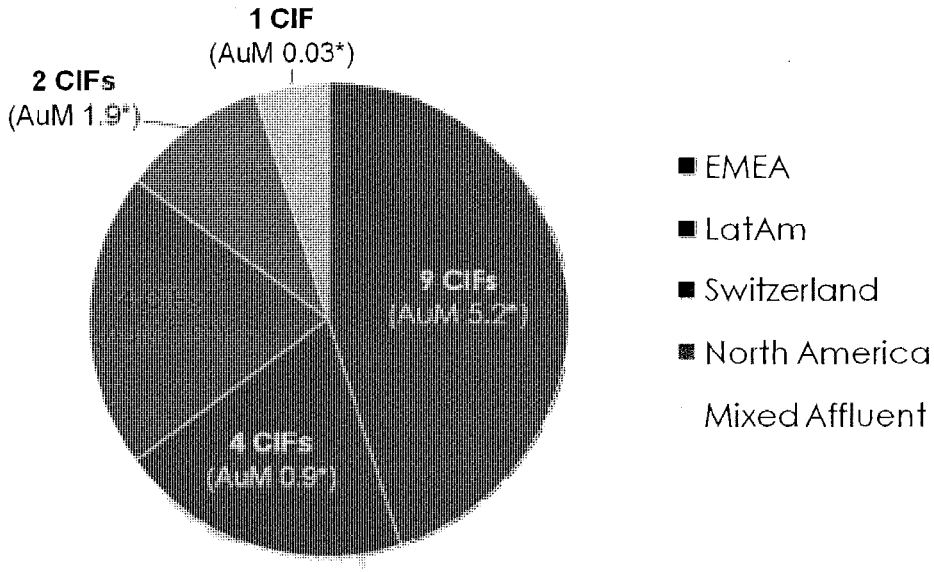
* Sum of average AuM CHF lifetime in millions

Analysis of SALN Worklist: Pre-Existing U.S. Residency



* Sum of average AuM CHF lifetime in millions

Pre-Existing Residency: Strong Indicia



* Sum of average AuM CHF lifetime in millions

Exhibit B

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us.helpline-cs@credit-suisse.com

[address]

February 2, 2012

U.S. Government Tax Investigation and Voluntary Disclosure Opportunity

Dear former Client,

As publicly reported, the U.S. Department of Justice and the Internal Revenue Service have an ongoing investigation of U.S. taxpayers using offshore (that is, non-U.S.) accounts to evade U.S. taxes. U.S. taxpayers with offshore accounts should ensure that they are compliant with applicable U.S. tax responsibilities.

In this regard, Credit Suisse would like to bring to your attention that the U.S. Internal Revenue Service (IRS) has announced the reopening of its offshore voluntary disclosure program. This program enables taxpayers to get current with their outstanding U.S. tax responsibilities. The IRS website (www.irs.gov) contains further information regarding the newly-reopened voluntary disclosure program. Within the next month, the IRS will be updating its website with additional details about the program.

Credit Suisse cannot provide you with any legal or tax advice. Please consult with your own U.S. tax professional to determine whether you have any additional U.S. tax obligations and whether you may benefit from participating in the newly-reopened IRS voluntary disclosure program.

Yours sincerely
CREDIT SUISSE AG

Unsigned document

Exhibit C

CREDIT SUISSE
[Name] Phone +41 44 xxxxxxxxxx
CREDIT SUISSE Fax +41 44 xxxxxxxxxx
[Organisationseinheit, Instr.] www.credit-suisse.com
[Adresse]

Division/Departement
Organisationseinheit, Instradierung

Vorname, Name
Titel/Funktion
+41 (0)44 xxx xx xx
vorname.name@credit-suisse.com

Address
Address
Address
Address
Address
Address
Address

[Date]

Termination of Business Relationship No. [xxxxxxxxxxxx]

Dear [Mr./Mrs./Miss XXXXXXXXXX]

[As discussed], this is to [inform you / confirm to you] that, as of [Date XXXXXX (date that is 20 working days equivalent to 30 calendar days from date of letter)], we are terminating business relationship no. [XXXXXX] in application of Article 12 of the General Conditions. Please note that the decision of Credit Suisse AG to terminate the client relationship with you is based on business strategy and regulatory considerations. The resulting measures are applied consistently. We thank you for your understanding in this matter.

Allow us to highlight Article 12:
"The Bank or the client may terminate the business relationship at any time, either with immediate effect or with effect at a later date. The Bank may in particular cancel credit facilities at any time and declare its balance payable immediately, subject to special agreements and product-specific conditions on termination. If the client fails to inform the Bank as to whether the assets and funds he holds in custody with the Bank are to be transferred, including after a grace period set by the Bank, the Bank may deliver these assets in physical form or liquidate them and send the proceeds and any remaining balances of the client to the client's last known address for correspondence in the form of a check made out in a currency defined by the Bank, with the effect of releasing the Bank from liability."

We therefore request that written instructions, signed by you as authorized signatory on the above-referenced relationship, be provided to us by no later than [Date XXXXXX (date that is 20 working days equivalent to 30 calendar days from date of letter)], instructing us to transfer the assets currently maintained in the above-referenced relationship (or to liquidate the positions currently held in such relationship and transfer any resulting proceeds) to an account at another bank designated by you (together with the relevant bank's name, the account number, the name of the accountholder and IBAN no.).

We would like to take this opportunity to bring to your attention that the U.S. Internal Revenue Service (IRS) has announced the reopening of its Offshore Voluntary Disclosure Program. Taxpayers who are not current with their outstanding U.S. tax obligations may avoid substantial civil penalties, and generally may eliminate the risk of criminal prosecution, by participating in the program. The IRS website (www.irs.gov) contains further information regarding the newly-reopened voluntary disclosure program. While Credit

Suisse cannot provide you with any legal or tax advice, we strongly encourage you to consult, as appropriate, your own tax advisor as to the application of the program to your circumstances.

Yours sincerely

CREDIT SUISSE AG

Name Surname
Title/function

Name Surname
Title/function

KING & SPALDING

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December 20, 2013

VIA ELECTRONIC MAIL

Robert L. Roach, Esq.
Counsel & Chief Investigator
Permanent Subcommittee on Investigations
Committee on Homeland Security and
Governmental Affairs
United States Senate
SR-199 Russell Senate Office Building
Washington, D.C. 20510

CONFIDENTIAL TREATMENT REQUESTED BY CREDIT SUISSE

Re: Credit Suisse Group AG

Dear Mr. Roach,

As we have discussed, on behalf of my client Credit Suisse Group AG ("Credit Suisse"), I am enclosing responses to the Subcommittee's questions regarding Credit Suisse's internal investigation covering its U.S. cross-border business, sent via email on December 2, 2013.

This response may contain highly confidential, trade secret, and/or proprietary information of Credit Suisse provided pursuant to the subpoena. By providing this response, Credit Suisse does not intend to waive any privilege that may be applicable. We also note that the documents in the production may contain proprietary information of Credit Suisse. We request that the Subcommittee treat the information contained in this initial production as confidential within the meaning of Rule XXIX of the Standing Rules of the Senate and, as such, also refrain from authorizing any public disclosure of this information. Accordingly, Credit Suisse has marked the documents produced today with the legend "Confidential Treatment Requested." Credit Suisse respectfully requests that Subcommittee Members, staff, and all those who may review Credit Suisse submissions, including electronic submissions of information and attachments, on behalf of the Subcommittee, protect against the disclosure of this highly confidential information.

Permanent Subcommittee on Investigations
EXHIBIT #20

While Congress may request such information, the law, as reflected in the Trade Secrets Act (18 U.S.C. 1905), recognizes the critical nature of confidential, trade secret, and proprietary information and, as such, protects against the disclosure of such information. The disclosure of information that Credit Suisse has expressly designated as confidential could cause substantial competitive harm. Given the sensitivity and importance of this information, we respectfully request advance notice of any contemplated disclosure of information provided to the Subcommittee by Credit Suisse, and a reasonable opportunity to address this issue with the Subcommittee before any disclosure is made.

Please do not hesitate to contact me should you or your staff have any questions regarding this response.

Very truly yours,

Andrew C. Hruska /MDC

Andrew C. Hruska

Enclosure

cc(w/o enclosure): Henry Kerner
Joseph Seidel
Eleanor Hill
Ted Hester

Questions for King and Spalding

Questions about Findings and Conclusions from Credit Suisse's Internal Investigation

December 2, 2013

The PSI staff is trying to gain as complete information as possible about the following:

1. The purpose / scope of the investigation by Credit Suisse (CS) regarding activities related to US linked accounts in the years 2006 to the present.

2. The activities / knowledge of RMs, senior officials, executives and Board members regarding the number and amount of US linked accounts at CS that were non-compliant with US tax and securities laws, and the activities undertaken to open and service such accounts.

3. The results and status of CS programs to identify and close US linked accounts that were non-compliant with US tax and securities laws, including:

   a. When did CS senior officials, executives and Board members know that there were more US linked accounts (i.e. accounts of all US taxpayers, and accounts of all US taxpayers resident in the US) outside of SALN than in SALN, and what steps were taken to address this situation?

   b. The number (in CIFs and AUM) and status of US linked accounts identified in the past three years (including those that were non-compliant with US tax and securities laws) and where they were located within the bank.

4. What have been identified as the major management, policy and operational weaknesses that contributed to this situation?

5. What reforms have been implemented to correct the operations and policies that which resulted in this situation for CS?

For the following set of questions, wherever there is a request for the number of CIFs and corresponding AuM, please provide the totals for US linked accounts and breakout the totals for the subset of accounts that was undeclared, or non-compliant with US tax laws or US securities laws.

I. Purpose and Scope of Investigation

a. What was the purpose of the investigation?

The purpose of the investigation was to examine the Private Bank's U.S. cross-border banking business – its history, scope, size, policies, control functions, and ultimately exit process. The

purpose was also to investigate the conduct of the business' employees and to determine whether any of the activities violated the Bank's internal policies or regulations governing the business.

b. Please identify the CS employees and officials who were in charge of the investigation and responsible for following up on and correcting the problems identified.

The Bank mandated a Swiss and a U.S. based law firm to conduct an independent forensic investigation and the General Counsel of the Bank put in place a project management office with internal Credit Suisse employees who support the external investigators and ensure that they had access to all the relevant information and data. Any issues identified by the external investigators were reported to the General Counsel of the Bank and several of his direct reports (see answers below). Such issues could either lead to disciplinary proceedings in accordance with the established process within the Bank or were passed on to the persons responsible in the Bank's Legal and Compliance department for amendment of the relevant policies or compliance monitoring procedures, as the case may be.

i. How often were they briefed on the status/findings of the investigation?

The General Counsel of the Bank and several of his direct reports were briefed frequently on the status of the investigation and its findings. Formal briefings occurred on a weekly basis and were supplemented by additional updates as needed.

ii. What was the involvement of senior executives and Board members?

The General Counsel regularly updated senior executives and Board members regarding the investigation. External counsel also provided occasional formal briefings to senior executives and Board members.

c. What CS departments / units participated?

The Bank supported the external investigation team extensively, in particular with regard to the collection of data which was subsequently analyzed and reviewed in the course of the investigation. Specifically, the following teams/departments supported the investigation:

- *Legal and Compliance*
- *Internal Audit*
- *Project Management Regulatory Projects*
- *Tax Department*
- *Human Resources*
- *Various Specialized (IT) Teams in the following areas:*
  - *Core banking systems*
  - *Electronic and physical archive*
  - *E-Mail and other User Data*

d. What outside organizations participated in the investigation and what were their roles and responsibilities?

(1) King & Spalding and Schellenberg Wittmer, outside law firms responsible for document reviews and productions, employee interviews, preparing investigative reports, client briefings and authority presentations.

(2) Deloitte (under the instruction of outside counsel), responsible for forensic and data review and analysis.

(3) Simpson, Thacher & Bartlett, outside law firm handling issues relevant to the SEC's investigation, responsible for document reviews and productions, employee interviews, preparing investigative reports.

(4) Two other Swiss law firms and an audit company working under the instructions of the above-mentioned outside counsel.

e. What was the scope of the investigation?

i. Issues

As we have previously reported, beginning with its exit and compliance projects and continuing after inquiries were made by the various government agencies, Credit Suisse has made and continues to make the investigation into its U.S. cross-border business a top priority and primary focus.

For almost three years now, the Bank has undertaken extraordinary and extensive efforts to cooperate with you and the other investigating authorities to the fullest extent allowed by the various countries' laws.

The Bank has dedicated an enormous amount of resources, both internal and external, to this investigation. External resources from King & Spalding, Schellenberg Wittmer, Deloitte (under the instruction of outside counsel), and other law firms and auditors were retained to review and analyze materials, prepare productions, interview employees, analyze travel statistics and an enormous number of client files, and conduct other various data analyses. This was all done in an effort to better understand the business and the conduct of those employees involved, evaluate the allegations against the Bank and these individuals, prepare data and summary reports for presentations to you and the other authorities, and discipline those employees found to have violated Bank policies.

To date, our team has reviewed more than 3.5 million documents and conducted more than 100 interviews, including a host of relationship managers both inside and outside of the North America desk, supervising relationship managers, legal and compliance personnel, tax specialists, internal audit employees, business risk management personnel, and executive management.

The scope of the investigation covered the conduct of employees in the Private Bank's U.S. cross-border business and control measures in place surrounding the business, specifically

addressing whether any of the conduct violated SEC regulations surrounding the business and whether employees assisted U.S. clients with their attempts to avoid U.S. taxes.

ii. Departments/units covered, including:

The departments/units covered by the investigation were Credit Suisse's Swiss based Private Bank, including North America International desk of Credit Suisse (SALN), New York and Miami representative offices, other business areas within the Private Bank whose relationship managers handled U.S. accounts, Credit Suisse Private Advisors ("CSPA"), Internal Audit, Legal & Compliance, Business Risk Management, Client Identification, Tax, Airport team (SIOA 5), Travel Cash Card department, Singapore, Clariden Leu, and NAB.

a. units in PB Americas in addition to SALN

b. other offices/desks on the Swiss booking platform that were not part of PB Americas

c. offices/desks on platforms other than Switzerland, such as APAC

d. other CS institutions such as Clariden Leu and NAB

e. were the scope and issues the same for all departments/units? If not what were the differences?

The investigation into these units generally covered the same scope and issues, with the exceptions of the Miami representative office, NAB, and the Singapore branch. The main focus of the investigation was the Swiss booking platform for U.S. clients within Credit Suisse and Clariden Leu. For other units, the investigation was limited to selective issues, such as internal bank policies and the exit projects.

iii. Timeframe covered by the investigation

The main focus of the investigation was the period 2002 through 2012, although in many instances the investigation reviewed documents and addressed issues that dated from earlier periods.

iv. Length of the investigation.

Credit Suisse has been analyzing issues concerning the proper handling of U.S. linked accounts since the initiation of the exit projects in 2008. The independent forensic investigation has been conducted since February 2011.

II. Conduct of Credit Suisse Private Bankers in Switzerland

a. Did Swiss-based employees of Credit Suisse advise holders of US linked accounts to avoid maintaining paper records of their accounts in the United States or assist them in this activity in any way?

Our investigation did not find any evidence of employees advising account holders to avoid maintaining paper records or assisting them in this activity.

b. Did Swiss-based employees of Credit Suisse advise holders of US linked accounts to avoid email about their CS accounts or assist them in this activity in any way?

SEC regulations and the Bank's internal policy permit account-related email communications between Swiss-based employees and account holders located in the U.S., with limited exceptions. For example, the SEC rules and regulations do not prohibit communications about previously executed brokerage transactions, confirmations of the transactions and periodic account statements, or communications to arrange the logistics of an upcoming client meeting. Further, any account-related communications via email are permissible for U.S. linked accounts where the account holder was outside of the U.S.

Consistent with SEC regulations governing cross-border communications, the Bank's internal policy prohibited employees from emailing investment advice to or soliciting securities transactions from an account holder located in the U.S. Our investigation identified situations in which employees recommended to clients that they not communicate over email regarding their accounts and instead communicate via alternative methods such as over the telephone. However, because evidence on this topic is necessarily anecdotal, it is not possible to quantify the frequency and asset amounts of these occurrences – but based on the available information, our view is that this conduct was infrequent.

c. Did Swiss-based employees of Credit Suisse advise holders of US linked accounts to use phone calls or phone texts as a means of communication or assist them in this activity in any way?

SEC regulations and the Bank's internal policy permit account-related phone conversations between Swiss-based employees and account holders located in the U.S, with limited exceptions. For example, the SEC rules and regulations do not prohibit communications about previously executed brokerage transactions, confirmations of the transactions, or communications to arrange the logistics of an upcoming client meeting. Further, any account-related telephone communications are permissible for U.S. linked accounts where the account holder was outside of the U.S.

The Bank's internal policy covering telephone communications was the same as for emails in that it prohibited employees from providing investment advice relating to securities with or soliciting securities transactions from an account holder located in the U.S. We concluded, however, that prohibited conversations did occur in some instances, and we identified some email communications suggesting that the employee recommended a telephone conversation instead of email to discuss the account. However, because evidence on this topic is necessarily

anecdotal, it is not possible to quantify the frequency and asset amounts of these occurrences – but based on the available information, our view is that these calls occurred occasionally.

d. Did Swiss-based employees of Credit Suisse advise holders of US linked accounts to make withdrawals in amounts less than $10,000 or assist them in this activity in any way?

As is typical in the ordinary course of banking, Credit Suisse clients were frequently withdrawing varying amounts of money from their accounts including in amounts less than $10,000. Withdrawal requests from clients were common and Swiss-based employees assisted with these requests, including those under $10,000 for clients holding U.S. linked accounts, as a part of providing standard banking services to any client regardless of nationality.

Our investigation identified some instances where Swiss-based employees went further and informed their clients that cash withdrawals of amounts above $10,000 might receive additional scrutiny in the U.S. Our investigation also identified very few instances where employees suggested that their clients make withdrawals under $10,000. Due to the necessarily anecdotal nature of the evidence collected on this topic in our investigation, however, it is not possible to quantify the frequency and asset amounts of these occurrences.

e. Did Swiss-based employees of Credit Suisse offer or establish with holders of US linked accounts any credit cards, charge cards, and debit cards linked to their accounts?

As we explained in our July 12, 2013 letter to the Subcommittee, Credit Suisse offered credit card services through third party providers that were able to be linked to their accounts. Further, clients may also link credit cards issued by any other financial institution to their accounts at the Bank.

The Bank also offered clients the use of travel cash cards. A travel cash card ("TCC") is a prepaid card that gradually came into use around 2005 as an alternative to travelers' checks. In order to add credit on the card, the client would request that the Bank wire a certain amount from his bank account to the issuer of the card (a third party) who would then load that amount onto the card. The SALN desk did not offer TCCs to its clients after spring 2007.

We are not able to quantify the number of credit cards and TCCs for U.S. linked accounts, as the Bank's systems do not systematically flag accounts where the client uses a credit card or TCC. As mentioned before, the credit cards can be issued by any financial institution and there are third party service providers who perform all processing services and maintain their own IT systems for these credit cards.

Within Credit Suisse, we understand that the use of credit cards was not widespread among U.S. domiciled clients.

Within Clariden Leu, TCCs were in use until late 2010-early 2011. Our analysis of email correspondence with Clariden Leu's Travel Cash Card administration desk suggests only a small minority of client relationships with U.S. domicile or nationality that used these cards at least once.

f. Did Swiss-based employees of Credit Suisse provide cash to holders of US linked accounts as withdrawals from their accounts while US accountholders were physically in Switzerland? When Swiss employees were traveling in the US?

Swiss-based Private Bank employees frequently provided cash to clients of all nationalities upon request in the ordinary course of their banking responsibilities in Switzerland. This included providing cash withdrawals to holders of U.S. linked accounts while U.S. account holders were physically in Switzerland, as nothing in applicable rules and regulations nor internal Bank policy prohibited this activity.

Based on internal Bank policy, Swiss-based employees were not allowed to provide cash to clients while traveling in the U.S. but our investigation identified a small number of instances where this occurred with small amounts of cash (less than $10,000 each instance), involving two employees before 2005.

g. Did Swiss-based employees of Credit Suisse solicit or accept cash from holders of US linked accounts to deposit on their behalf in accounts in Switzerland?

The Bank's policy regarding anti-money laundering outlines the conditions under which a Swiss-based Private Bank employee may accept cash from existing clients—regardless of nationality—for deposit into their accounts in the ordinary course of their banking responsibilities, provided that it was permissible under the Bank's policy regarding anti-money laundering. We saw instances of cash deposits involving holders of U.S. linked accounts when both the client and employee were physically in Switzerland. We only found one instance, dating back to 2001, of an employee accepting cash from a client while in the U.S. for deposit into the client's account in Switzerland.

h. Did Swiss-based employees of Credit Suisse advise holders of US linked accounts to avoid transferring funds to the US or US banks or limit the size or frequency of such withdrawals or transfers or assist them in this activity in any way?

As noted above, Swiss-based employees frequently received requests from clients to transfer funds to and from their accounts, as fulfilling such requests was a typical responsibility of relationship managers and part of standard banking services provided. Our investigation found that funds were frequently transferred to and from the U.S. and using U.S. banks. However, we also discovered a number of instances where clients with U.S. linked accounts requested that funds not be transferred to the U.S. or U.S. banks and where clients requested transfers of amounts under $10,000.

While we did not find any instances where Swiss-based employees advised clients to avoid sending funds into the U.S. or to U.S. banks, we identified several instances where Swiss-based employees advised clients of the risks of identity disclosure with direct transfers into the U.S. and facilitated indirect transfers into the U.S. upon a client's request. However, because evidence on this topic is necessarily anecdotal, it is not possible to quantify the frequency and asset amounts of these occurrences – but based on the available information, our view is that this occurred infrequently.

i. Did Swiss-based employees of Credit Suisse advise holders of US linked accounts to avoid transferring funds in US dollar currency or assist them in this activity in any way?

We did not find any evidence of this in our investigation.

j. Did Swiss-based employees of Credit Suisse advise or facilitate the transfer of assets in Swiss-based US linked accounts into precious metals?

The purchase of funds denominated in precious metal quantities as well as the physical commodities themselves was a standard offering for bank clients. Moreover, advice concerning the purchase of precious metals is not regulated by the SEC.

Nonetheless, we have not found any evidence that relationship managers advised clients to transfer assets in Swiss-based U.S. linked accounts into precious metals or facilitated such conversions as a tactic to hide undeclared funds.

k. Did Swiss-based employees of Credit Suisse advise or refer holders of US linked accounts to other financial institutions or to individuals with connections to other Swiss financial institutions?

Following Credit Suisse's decision to exit its U.S. cross-border business, Swiss-based relationship managers were prohibited during the implementation of the exit project in 2009 from referring exiting clients with U.S. linked accounts to other Swiss financial institutions that were not registered U.S. broker-dealers and investment advisors.

Our investigation identified many instances where Swiss-based employees referred their exiting clients to U.S. registered financial institutions, including Credit Suisse Private Advisors. Our investigation of Clariden Leu found a list of registered U.S. broker-dealers and investment advisors that Swiss-based employees both used in their conversations with exiting clients as well as provided to their U.S. linked clients. Our investigation also identified several instances in which relationship managers did not adhere to the Bank's policy and referred clients to other financial institutions that were not registered in the U.S. However, because evidence on this topic is necessarily anecdotal, it is not possible to quantify the frequency and asset amounts of these occurrences – but based on the available information, our view is that these referrals occurred occasionally, only.

l. Did any Swiss-based employees of Credit Suisse use tactics to hide undeclared or non-tax compliant funds, such as, opening an account with reported funds, and slowly filtering in unreported amounts, or aiding or abetting external asset managers or intermediaries in the opening of such accounts? If so, describe this or other tactics that were employed.

In the vast majority of cases, Swiss-based employees were unaware of the tax status of their clients, as this information was not available to the Bank. In rare cases, clients actually stated to their relationship managers that the funds in their accounts were undeclared or that they did not wish to pay taxes on the income from their accounts.

Some clients did, however, make certain decisions that seemed designed to prevent disclosure of their identity or the existence of their accounts. These decisions, most of which were made without a reason being given, included not holding U.S. securities and not receiving any account information in the U.S. These decisions may have been motivated by a variety of concerns, including the desire to hide undeclared funds, but in many cases by other reasons, including a desire to diversify the currencies of funds or a desire to conceal the existence of funds from others such as parties in a litigation or ex-spouses or out of a concern over personal security.

As described above, our investigation also identified several instances in which clients requested repeated payments in amounts just under $10,000. In addition, we found some instances where Swiss-based employees informed their clients that transfers of amounts above $10,000 might receive additional scrutiny in the U.S. We identified very few instances where employees went further and suggested that their clients make withdrawals under $10,000.

As we also describe below, Swiss-based employees, pre-2009, occasionally recommended that clients hold assets in non-U.S. entities when they had knowledge that the funds were undeclared.

Finally, in rare cases, our investigation revealed instances of a relationship manager being involved in discussions with clients about other tactics to hide undeclared funds. However, because evidence on this topic is necessarily anecdotal, it is not possible to quantify the frequency and asset amounts of these occurrences.

m. Did Swiss-based employees of Credit Suisse accept purchase orders for US securities while their US clients were in the US?

Yes, Swiss-based employees of Credit Suisse accepted purchase orders for U.S. securities while their clients were in the U.S. in reliance on the unsolicited transaction exception found in the Securities and Exchange Commission Rule 15a-6(a)(1). Unsolicited securities transactions as allowed under Rule 15a-(6) were specifically permitted under the Bank's internal policy.

U.S. securities, however, could only be booked to U.S. clients who provided a Form W-9 and, thus, income deriving from such securities was reported to the IRS under the QI agreement.

Please provide information obtained on the extensiveness of each activity, such as the number of RMs involved in each activity, the amount of times they engaged in each activity, the time period over which they engaged in the activities, and – where appropriate - the amount of funds involved with each activity.

n. Travel

i. Did holders of US linked accounts travel to Switzerland or other jurisdictions outside the United States, such as the Bahamas, to receive banking services or financial advice related to Swiss-based accounts?

Yes, holders of U.S. linked accounts traveled to Switzerland to receive standard banking services or financial advice relating to their Swiss-based accounts. This travel was permissible under

relevant U.S. regulations and internal Bank policy and relationship managers encouraged their clients to visit them in Switzerland as this would allow them to render investment advice otherwise prohibited under the SEC restrictions if provided in the U.S.

Our investigation also determined that holders of U.S. linked accounts would occasionally travel to other jurisdictions in order to receive banking or financial services but this travel was not routine.

ii. Identify the number of trips that non-SALN Swiss-based employees of CS took to the US for soliciting or servicing US linked Swiss accounts.

Our investigation identified around 50 business trips of non-SALN relationship managers to the U.S. for the years 2002 to 2008. Not all of these trips were client-related. Some were undertaken for other reasons, e.g., the attendance of seminars or team meetings. The Bank's policy that prohibited solicitation of securities transactions or servicing that could create potential SEC licensing issues during any U.S. travel became effective in 2002. We have not identified any client-related trips to the U.S. after 2008.

iii. Identify the number of times when a potential US client was solicited by a Swiss-based employee while on travel in the US.

Travel reports handed in by SALN relationship managers suggest, and information gathered in interviews confirms, that SALN relationship managers met a certain number of prospective clients during business trips to the U.S. in 2008 or earlier. However, we cannot provide exact numbers as the numbers regarding visits with prospective clients in the travel reports seem to include instances that do not involve any direct contact between the prospective client and the relationship manager (e.g., when an existing client provided only the name of a prospective client to the relationship manager). Moreover, information from interviews of these relationship managers suggests that the number of prospective clients listed in travel reports was inflated by the relationship managers themselves. We also cannot quantify the number of instances in which the solicitation of new clients in the U.S. was successful. Meeting prospective clients was expressly prohibited by internal Bank policy in 2006.

iv. Provide the number of instances when Swiss-based employees of Credit Suisse purchased US securities on behalf of a client while in the US.

The acceptance of client orders on an "execution only" basis in reliance on SEC Rule 15a-(6) was allowed under SEC regulations and internal Bank policy. Solicitation of securities transactions and investment advice involving securities, on the other hand, was prohibited. Our investigation identified several pre-2009 instances where Swiss-based employees violated internal Bank policy in this regard while on business trips in the U.S. However, because evidence on this topic is necessarily anecdotal, it is not possible to quantify the frequency and asset amounts of these occurrences – but based on the available information, our view is that this did not occur frequently and did not happen after 2008.

In any event, U.S. securities could only be booked into accounts of U.S. clients if they had signed a Form W-9 and, thus, income generated by U.S. securities was reported to the IRS under the QI agreement.

i. Did Swiss-based employees of Credit Suisse travel to the US to attend any events for meeting, soliciting, potential or existing US clients? If so, identify the number of instances.

Under the Bank's internal policy and in reliance on SEC Rule 15-a(6), Swiss-based employees were permitted to travel to the U.S. to visit existing and prospective clients, provided that client interaction did not involve any solicitation or investment advice relating to securities and that the trip was approved by the market area head and the line manager. In 2006, these rules became more restrictive. Trips were forthwith only permissible if the visit was initiated by the client and was for a purely and exclusively social nature.

Our investigation did not reveal any instances in which Swiss-based relationship managers organized or visited special events in the U.S. for the purpose of meeting existing or prospective clients, except for an isolated trip to a golf event in Florida and the occasional attendance of the annual Swiss Ball in New York, a social event of the Swiss community which bank clients may also have attended.

ii. Did Swiss-based employees of Credit Suisse fill out travel requests or reports inaccurately? If so, how often, and were they directed to do so, or were their supervisors or senior official aware they were doing so? If so, which supervisors or senior officials were aware of such activity?

Yes, our investigation identified situations in which Swiss-based SALN employees of Credit Suisse filled out travel requests and reports inaccurately. With respect to travel requests, certain SALN supervising relationship managers advised employees on their team to emphasize the social nature of the trip. With respect to travel reports, our investigation revealed that one SALN supervising relationship manager instructed the employees to remove details from the summaries of the visits that would suggest non-compliant behavior. In several cases, the SALN supervising relationship manager also altered the reports. Our investigation did not identify that this practice was known to anyone senior to the SALN supervising relationship manager.

iii. When Swiss-based employees of Credit Suisse traveled to the US, did they coordinate or notify anyone in CS in the US? Who in the US was made aware of such trips? Who in Switzerland had knowledge of such trips?

When Swiss-based employees of Credit Suisse traveled to the U.S., some would notify the New York representative office in advance of the trip, particularly if they intended to use the representative office's facilities. However, this notification was not required and was therefore not done systematically.

According to internal Bank policy, any business trip to the U.S. required pre-approval by the line manager and the head of SALN as the market area head.

iv. When Swiss-based employees of Credit Suisse traveled to the US, did any notify the NY Representative Office?

Please see answer above.

o. US Beneficial owners

i. Were there instances in which a W8-BEN was filed for a Swiss account stating the owner was not a US person, yet the beneficial owner was a US person? Identify the amount of CIFs/AuM. How many RMs serviced accounts in which this happened?

Due to the differences in scope, definition and focus between the QI rules and Swiss legal AML/KYC rules, there will always be different identification of beneficial owners between Form W8-BENs and Form As with particular structures. Through its proper implementation of both those rules, it was regularly the case for entity accounts that the information on beneficial ownership as per the Bank's Form A on the one hand and the IRS Form W8-BEN on the other hand did not match. Therefore, a discrepancy between the information given on these two forms as to the ultimate beneficiary may have been required and been perfectly legitimate, depending on the nature of the entity involved, its qualification for U.S. tax purposes, and the relevant facts and circumstances. See also our answer to question VI.b. hereafter.

Of the total 1,187 (with AuM of USD 2.219 billion) relationships with non-U.S. domiciliary entities with U.S. beneficial owners at Credit Suisse that were either reviewed and verified or closed in 2008 or still in process at the end of 2008 (as displayed on slide 10 of the October 2013 presentation), 360 relationships (accounting for AuM of USD 1.240 billion) had filed an IRS Form W-8BEN. There were 222 relationship managers associated with these relationships throughout 2008. Please note that one relationship could have been managed by several relationship managers at different points in time during the year.

For Clariden Leu, the corresponding numbers are that 268 relationships (with AuM of USD 713 million) out of a total of 559 relationships (with AuM of USD 1.070 billion) had filed an IRS Form W-8BEN with the Bank. There were 114 relationship managers associated with these relationships throughout 2008. Please note that one relationship could have been managed by several relationship managers at different points in time during the year.

ii. Were there instances in which CS personnel knew that the beneficial owner was a US person, even though a W8-BEN was filed stating the owner was not a US person? Identify the amount of CIFs/AuM. How many RMs serviced accounts in which this happened?

In compliance with Swiss AML standards, domiciliary companies had to identify the ultimate natural person beneficial owner of their account on Form A. Under U.S. tax rules, entities are allowed to classify themselves as beneficial owners and do not require ultimate natural persons to be identified as beneficial owners of such entities on Form W-8BEN. As pointed out above, the Form A on the one hand and the Form W-8BEN on the other serve different purposes. There were many cases in which there was a discrepancy between the information given on the Form A and the Form W8-BEN as to the ultimate beneficiary and these discrepancies—of which relationship managers were often aware—were perfectly legitimate. We found only a few cases during our investigation suggesting that Swiss based relationship managers may have been aware, or suspected, that non-U.S. entities were used by their U.S. owners to evade taxes.

iii. Were there instances where a US beneficial owner or beneficiary ordered the transfer of assets into an account held by a non-US entity or person? If so, identify the amount of CIFs/AuM. How many RMs serviced accounts in which this happened?

As part of its ongoing analyses relating to the closure of U.S. relationships, we have reviewed cases where non-U.S. entities with U.S. beneficial owners upon account closure transferred the assets to another relationship in the Bank that was not flagged as U.S. The review included relationships with AuM above USD 50,000 that were closed between January 2008 and March 2013 and considered the five largest outflows of above USD 10,000 in the 90 days before the account was closed.

While we did find a number of such transactions for example to lawyers, fiduciaries, or asset managers, we have only found very few instances where it appears that the assets of the U.S. beneficial owner continued to be held with the Bank in a non-U.S. flagged account on behalf of a U.S. person. Out of a total of more than 250 relationships we analyzed, we found indications of such patterns in only 3.5% of the transfers. The Bank is following up on these cases.

p. Securities

v. Please provide the number of instances when Swiss-based employees of Credit Suisse advised US clients about US securities in their accounts without a license.

According to the Bank's internal policy, employees were not allowed to engage in discussions with U.S. domiciled clients relating to securities or investments when on client visits in the U.S. These same prohibitions applied when Swiss-based employees were not located in the U.S.: communications by mail, telephone, telex, telefax, internet, or emails into the U.S. were not allowed to be used to provide securities related investment advice or solicitation of securities transactions.

Based on our investigation, we concluded that U.S. clients frequently visited their relationship managers in Switzerland and other locations outside of the U.S. and that employees advised the clients about securities in these situations. Further, Swiss-based employees frequently communicated with U.S. citizens who were not U.S. residents – and therefore not U.S. Persons under the securities laws - by mail, telephone, telex, telefax, internet, and emails when these clients were not located in the U.S. Such communications in both of these scenarios are allowed under applicable U.S. regulations and internal Bank policy and do not require a U.S. issued license. See Investment Advisers Act of 1940 § 203(a) and id. at § 202(a)(10) and SEC Rule 15a-6(a)(1).

We also identified instances where Swiss-based employees within the SALN group traveled to the U.S. and advised clients about their securities against Bank policy. Certain SALN and Clariden Leu employees also provided securities related investment advice to their clients in the U.S. We identified instances where Swiss-based employees outside of SALN advised clients located in the U.S. on securities but on a much less frequent basis. These situations generally occurred in the early years of the Bank's policy, which was put in place in 2002, and we are not aware of any

instances occurring after 2008. However, because evidence on this topic is necessarily anecdotal, we cannot quantify the frequency with which this occurred.

vi. Please provide the number of instances when Swiss-based employees of Credit Suisse sold securities to or from US linked accounts without a license.

Swiss-based employees are permitted under applicable U.S. laws and the Bank's internal policy to sell securities to or from U.S. linked accounts and no license is required to do so, provided that the transactions are made on an "unsolicited" basis under SEC Rule 15a-6 and no sales restriction applies to the product itself. We concluded from our investigation that such permissible sales of securities to or from U.S. linked accounts occurred frequently in the ordinary course of business. Furthermore, most U.S. resident securities accounts had either been closed or transferred to CSPA by year end 2009.

vii. How many Swiss-based employees of Credit Suisse provided US clients with information on their accounts (securities or non-securities accounts), the years in which this information was provided, and whether the information was transmitted from Switzerland or carried to the US by the employee.

Swiss-based employees frequently provided U.S. clients with account statements containing information on the past performance of the account. Nothing in the applicable U.S. regulations prohibit this activity and the Bank's internal policy specifically states that statements may be sent to the client in the U.S. which refer to securities transactions already effected, including statements of safekeeping accounts and statements of investments, as well as statements relating to current cash or savings accounts.

While internal Bank policy prohibited discretionary mandate account information from being sent to the U.S. in order to ensure compliance with SEC rules (with the exception of year-end statements for tax purposes), our investigation identified occasional instances where Swiss-based employees violated this policy. However, because evidence on this topic is necessarily anecdotal, it is not possible to quantify the number of employees and the corresponding years – but based on the available information, our view is that this conduct occurred occasionally.

q. Helping US clients move funds

viii. Were there any instances where a Swiss-based employee of CS discouraged a holder of a US linked account from entering the IRS Voluntary Disclosure Program? If so, identify the number of instances, the year in which each instance occurred, and the name and location of the office of the employee who was involved.

We are not aware of any instances where a Swiss-based employee of Credit Suisse discouraged a holder of a U.S. linked account from entering the IRS Voluntary Disclosure Program. To the contrary, as we informed you in our July 12, 2013 letter, the Bank proactively and on its own initiative informed more than 1,600 former U.S. linked account holders of the Offshore Voluntary Disclosure Initiative in February 2012. See CS-SEN-00421312.

ix. How many instances were there when Swiss-based employees of CS referred a holder of a US linked account to another Swiss bank or financial institution?

As mentioned before, the investigation revealed instances where referrals occurred in breach of internal Bank policy in or after 2009 and prior to the Bank having decided to exit the U.S. cross-border business, neither internal Bank policy nor U.S. laws prohibited the referral of U.S. linked accounts to another bank or financial institution in Switzerland or elsewhere.

x. How many instances where Swiss-based employees of CS helped US account holders transfer assets to other Swiss banks? To banks in other foreign jurisdictions?

Assisting U.S. account holders to transfer assets to other financial institutions, including other Swiss banks, on the request of a client is a typical responsibility of a relationship manager and part of standard banking services. This assistance was never prohibited by internal policies or U.S. laws, and was also allowed during the implementation of the exit when the Bank insisted that funds are transferred to another bank rather than withdrawn in cash.

II. Conduct of units/ desks/offices outside SALN

a. SIOA 5: Zurich airport branch

i. Why did Credit Suisse have an office at the airport that established and serviced US linked CIFs? How many US linked accounts were located at that office and, of those, how many were accounts of clients who were resident in the U.S, how many were accounts of clients who were US citizens living outside of the US and how many of those were account of non-US legal entities?

In fall 2006, two existing teams within the "Mixed International Clients" desk in the EMEA region that were located in the city of Zurich joined other teams already present in a business center building at the Zurich airport to offer better client service for a broader range of clients and have appropriate contacts at the airport for walk-ins. The "Mixed International Clients" teams had been formed in connection with the 2003 concentration of small clients previously scattered across the Bank.

One of the two teams was servicing predominantly U.S. resident natural persons. The relationship managers on the U.S. team (on average around seven) were handling a large number of small accounts, including many retail clients who only held a cash account:[1]

[1] **CIFs** (client relationships) identified based on residence or nationality of the account holder / beneficial owner as flagged in the bank's IT systems as of December 31 of each year.

AuM (client assets) represented as of December 31 for each year. Converted from CHF to USD using yearly average exchange rates. Does not include Swiss pension fund accounts and assets. For CIFs with both U.S. and

Category		31.12.2006	31.12.2007	31.12.2008
U.S. resident natural persons	CIF	7,647	7,717	7,821
	AuM (USD)	252,705,007	418,291,632	588,396,419
	Average AuM per CIF	[illegible]	[illegible]	[illegible]
U.S. citizens resident outside the U.S.	CIF	547	565	513
	AuM (USD)	36,259,286	44,512,318	43,302,862
	Average AuM per CIF	[illegible]	[illegible]	[illegible]
Non-U.S. domiciliary entities with U.S. BO	CIF	5	11	12
	AuM (USD)	2,399,570	2,522,959	2,144,513
	Average AuM per CIF	[illegible]	[illegible]	[illegible]

While the number of U.S. linked CIFs handled by relationship managers located at Zurich Airport remained stable throughout the years, the AuM of U.S. resident natural persons increased. An analysis of the account data shows that (i) there were several hundred CIFs that were closed during 2007 and 2008 and (ii) the closure of these CIFs was counteracted by the transfer of existing higher AuM relationships to the Zurich Airport team:

	CIF	AuM (USD)
CIFs Opened in 2007	113	15,824,695
Existing CIFs Transferred to Airport RMs in 2007	999	156,510,883
CIFs Opened in 2008	150	27,256,427
Existing CIFs Transferred to Airport RMs in 2008	975	163,133,429

The transfer of existing relationships to the Zurich Airport team (SIOA 53) occurred predominantly from another small "Mixed International Clients" sub-team located in Zurich City (SIOA 51). An analysis of the account data shows that the combined total AuM relating to U.S. resident natural persons handled by the two sub-teams of "Mixed International Clients" at Zurich Airport and in Zurich City, respectively, remained stable throughout the three years, while the number of accounts decreased:

Category		31.12.2006	31.12.2007	31.12.2008
U.S. resident natural persons	CIF	9,441	8,716	7,971
	AuM (USD)	626,731,358	678,700,696	657,724,721

non-U.S. account holders / beneficial owners, AuM is pro-rated using the ratio of U.S. account holders / beneficial owners to all account holders/beneficial owners.

ii. How often were accounts for US linked CIFs serviced, for accounts that were established at airport? Over what period of time were US linked accounts serviced out of that office?

Only a few new accounts with U.S. residents were opened at the airport: between the end of August 2006 when the move to the airport location occurred and the end of May 2009 when the unit was integrated into SALN due to the bankwide implementation of the exit project for U.S. resident clients, i.e., during a period of almost 3 years, relationship managers located at the airport opened only 317 relationships for U.S. resident clients. This means that on average, less than 10 new relationships were opened per month. However, not all of these were actually "new accounts." Rather, a large percentage resulted from changes in circumstances for already existing clients, such as opening of accounts for heirs of deceased clients or in the name of both husband and wife due to marriage. The vast majority of these new accounts was small with AuM below USD 250,000, and only a handful of accounts had assets above USD 1 million.

Finally, our review of account files and the analysis of transaction data relating to almost half of these accounts showed that the vast majority of the newly opened accounts were funded through electronic transfer, i.e., wire transfers (frequently from accounts in the U.S.) and/or transfer of securities. Only a few accounts were funded with cash.

iii. What types of services were provided to US linked CIFs that were established or serviced at SIOA 5?

In principle, the full range of banking services as offered by Credit Suisse to all of its clients in line with applicable laws and internal policies and guidelines was also available to clients handled at the airport. However, due to the large number of clients assigned to each relationship manager and the smaller size of the accounts, there was much less client interaction. In particular, no relationship manager travel to the U.S. occurred.

b. Confirm that the statistics of US linked accounts in CS' October 2013 presentation to the Subcommittee were from the Swiss Booking Platform.

The statistics of U.S. linked accounts in the October 2013 presentation included private banking relationships booked on the Swiss Booking Platform, i.e., they were not limited to any specific regions or desks.

c. Identify the number of US linked CIFs and corresponding AUM located outside the Swiss Booking Platform, such as APAC, EMEA, etc. for the years 2006 – 2013.

In response to the Subcommittee's September 2011 subpoena, Credit Suisse already provided such data for Singapore, Hong Kong and India. For the period of January 1, 2005 to August 4, 2011, Singapore reported and submitted information on 221 U.S. linked accounts. Hong Kong reported 33 U.S. linked accounts. India reported 2 U.S. linked accounts.

In Spring 2012, as part of the preparation work for FATCA, the Bank collected information as to active U.S. linked accounts (under FATCA rules) of natural persons from all Private Banking locations outside of Switzerland. The 23 legal entities located in 20 different countries reported a

total of 717 U.S. linked accounts with natural persons. The majority of these (398 accounts), are accounts of U.S. nationals residing outside of the United States. Given that the U.S. Person Policy P-00025 was applicable globally, all of these locations had ensured compliance with that policy and, if necessary, exited all U.S. linked accounts.

It should be noted that these onshore accounts were not part of the Swiss booking platform and that onshore accounts in these countries are governed by local laws, including possible local bank-client related confidentiality laws, but are not subject to Swiss banking secrecy or any other nuances of Swiss law or oversight by the Swiss government.

d. Please provide answers to the questions in I. a -q., above, for CS RMs who worked at any of the units/offices/desks included in each of the categories in a, b, or c above.

The questions in Section II. a-q focus on the conduct of relationship managers and the answers provided to these questions relate to the examination of the employee conduct in the above described regions and desks located in Switzerland.

III. Conduct of Roger Schaerer, and New York Representative Office

a. Did the representative office service undeclared accounts? If so, please describe the ways in which this was accomplished.

Our investigation included a comprehensive, in-depth review of archived hard copy materials, emails and backup tapes of representative office employees and those who interacted with them, and files related to the initial opening and subsequent monitoring of the office. We also conducted interviews of the representative officer, all former rep office trainees still employed with the Bank, and other employees who regularly interacted with the rep office.

The New York rep office provided its limited representation and administrative services, outlined in its Statement of Scope of Activities, to prospective clients and existing clients who held Swiss-based bank accounts. The Statement of Scope of Activities, which contained the general "dos and don'ts" for the rep office, was reviewed and approved by reputable outside counsel as well as U.S. federal and state regulators and was updated over time in order to adapt to tightening regulations and clarifications over the permissibility of certain activities.

Regulators also frequently visited the rep office and the activities of the rep office were disclosed and authorized by the regulators during these visits and other regular correspondence. The rep office was also subject to routine audits by the Federal Reserve Bank of New York and New York State Banking Department and passed each audit exam.

In accordance with its Statement of Scope of Activities, the rep office did not retain client account information or data and was only permitted to retain limited client details to assist in client contacts and communications. The rep office was not permitted to have online capabilities

or online access to cash, safekeeping, or related client accounts at booking centers. Thus, New York rep office employees did not have any access to information that would provide them with any information about a client's tax status.

The Statement of Scope of Activities instructed all rep office employees to decline any prospective client's request to open an account if the client indicated that he/she intended to avoid paying taxes. It further stated that it is the policy of Credit Suisse not to provide any assistance in the evasion of taxes.

While the indictments of employees reference six instances where a rep office employee assisted clients with accounts that the grand jury has asserted were not declared, our investigation has not indicated that the rep office employees were aware of a client's tax status.

b. Did the representative office provide investment advice? If so, how was this accomplished and how often did this happen?

The New York rep office's Statement of Scope of Activities prohibited employees of the rep office from providing investment advice or soliciting any securities transactions from prospective or existing clients.

Our investigation did not identify any instances where rep office employees provided clients with investment advice, though general discussions with clients about the economy and markets occasionally occurred.

c. Did the representative office forward account instructions to CS employees in Switzerland?

The Statement of Scope of Activities prohibited rep office employees from accepting, transmitting, and/or passing on securities orders or wire transfer instructions received from client to the account manager at the relevant branch location. However, our investigation revealed that the rep office did, on rare occasions, forward wire transfer instructions and check requests to relationship managers in Switzerland on behalf of U.S. clients prior to its closure in January 2009.

d. Did the representative office have any role in transmitting account records of offshore US linked accounts to clients located in the US?

The Statement of Scope of Activities, which had been reviewed and approved by U.S. regulators as mentioned above, permitted the rep office to provide clients with statements of their accounts and explain them. As the rep office had no direct access to client account information, statements were sent to the rep office from Switzerland, initially by pouch or fax, since late 2005 by secure electronic mail. We have analyzed the secure e-communication sent to the rep office between 2005 and 2008 and found that this communication channel had been used almost exclusively for that purpose.

e. Was the representative office ever a meeting location for US clients and employees of CS who were based outside of the US? If so, how often did such

meetings take place and where were most of the non-US based employees located?

Our investigation has not identified instances where Swiss-based Clariden Leu employees used the rep office for meetings or any client services.

Swiss-based Credit Suisse employees who traveled to the U.S. often visited and occasionally worked out of the New York rep office during their trips. These Swiss-based employees did meet with their clients at the rep office on occasions and not at all after 2006, but we cannot quantify the meetings as a systematic log was not maintained for visitors to the office.

f. Were account documents located in, or that passed through the representative office, destroyed?

As described above, in accordance with its Statement of Scope of Activities, the rep office did not retain client account information or data and was only permitted to retain limited client details to assist in client contacts and communications. However, the Statement of Scope of Activities also permitted the rep office to provide clients with statements of their accounts, as appropriate. Therefore, the account statements provided to clients in order for them to review them in the rep office were not retained, in accordance with the Bank's internal policy. This retention policy in relation to client account data for the New York rep office was in line with the Bank's global policy on document retention in foreign rep offices, irrespective of location.

As also described above, the New York State Banking Department explicitly approved the Statement of Scope of Activities, which (i) authorized clients reviewing their account statements in the rep office, and (ii) established the rep office's document retention policy.

IV. External Asset Managers and Intermediaries

a. Define and distinguish External Asset Managers (EAMs) and Intermediaries (aka corporate formation agent, counsel, service provider, or fiduciary.)

An EAM is an unaffiliated person/entity acting as an asset manager and investment advisor for third parties by investing assets belonging to the third parties on a professional basis or by providing assistance for this purpose. Typically, an EAM will be granted a limited power of attorney over an account permitting trading in bankable assets but not the withdrawal of funds.

The term intermediary has different meanings in different contexts. For example, a (financial) intermediary is defined in Article 2(2) and (3) of the Swiss Anti-Money Laundering Act. In this context, the term intermediary includes, among others, banks, EAMs as well as others who on a professional basis assist in the investment or transfer of assets.

In the context of the Bank's policies, an intermediary or "finder" is an unaffiliated person/entity who refers clients to the Swiss bank in exchange for referral compensation. A finder essentially introduces a client and walks away. The sole task of the intermediary is to refer clients. If the intermediary intends to go beyond introducing clients, he must become an EAM.

In the context of service providers that form and maintain legal entities we do not refer to them as EAMs, but rather as intermediaries or fiduciaries.

b. What role(s) did CS employees in (1) in SALN and (2) offices/desks other than SALN that were in Switzerland, have, including, but not limited to:

i. Assisting or facilitating the creation of any non-US entity;

ii. Assisting or facilitating the transfer of assets into any non-US entity;

iii. Suggesting the creation of non-US entity to hold account assets;

iv. Referring a US client to an intermediary Establishing, maintaining work, or providing compensation pursuant to a referral agreement with an intermediary;

v. Engage in any other conduct involving an intermediary to maintain the secrecy of a US account.

Please break out the response for EAMs and intermediaries. Also, identify the number of instances as well as affected CIFs / AuM, and the years in which such instances occurred.

As discussed below, Credit Suisse employees in SALN had relationships with several commonly used fiduciaries, two of which had referral agreements with the Bank that were terminated in 2008. Most of these relationships involved a referral by the employee to the fiduciary once a client expressed an interest in establishing a structure to hold assets. Clients expressed interest in establishing non-U.S. entities for a variety of legitimate reasons, most commonly for inheritance and succession planning but also for general asset protection and family disputes.

If the non-U.S. entity was eventually established, Bank employees routinely assisted with transferring assets to and from the accounts held by such entities as they would with any other client, if requested in the proper manner.

Our investigation also identified instances of Clariden Leu employees referring clients to fiduciaries, which occurred on a number of occasions.

We further found that occasionally the involvement of Swiss-based employees went beyond a referral to a fiduciary and involved assisting a client in creating an entity, working directly with the fiduciary and/or client to establish the entity. The level of involvement varied by employee, with some having more interaction and relationships with fiduciaries than others.

EAMs and intermediaries, as defined above, were not involved in the creation and use of non-U.S. entities.

vi. How many CS employees advised or referred US clients to any intermediary for the purpose of establishing a non-US entity? Identify CIFs / AuM, and the years in which such instances occurred.

Because evidence on this topic is necessarily anecdotal, it is not possible to quantify the frequency and asset amounts of these occurrences in the earlier years, but we have found no evidence of any occurring after 2008.

c. Please provide answers to the questions in IV.a., above, for CS employees in booking centers other than Switzerland.

As mentioned above, the scope of our investigation did not cover the conduct of employees outside of the Swiss booking platform. It should be noted that employees outside of the Swiss booking platform in other countries are governed by local laws, including possible local confidentiality laws, but are not subject to Swiss banking secrecy or any other nuances of Swiss law or oversight by the Swiss government

d. K&S said there were 3 firms that CS used:

For Swiss criminal and data protection law reasons, the Bank cannot answer the series of questions below relating to a specific individual or corporation without giving advance notice to the person concerned and providing an opportunity to seek court protection. If a contractual or legal business secret is at stake, no information can be disclosed absent consent by the person concerned.

i. Josef Doerig.

1. Over what period of time did CS employees work with Mr. Doerig and/or his firm?
2. Did CS refer clients to Josef Doerig?
3. Did CS have a referral agreement?
4. How many US linked accountholders of CS worked with Josef Doerig?
5. Did he rent or maintain office space in CS? If so, when?
6. Does CS still work with him?
7. If not, when did work stop? Why?
8. What due diligence efforts were taken by CS to ensure the US linked accounts opened by Mr. Doerig's firm were compliant with US tax and securities laws?

Regardless of the manner in which a client is introduced to the Bank, standard Swiss KYC due diligence must be performed to identify the beneficial owner of the account. When a client's assets are managed by an EAM, the EAM is responsible under the EAM agreement for performance of the due diligence requirements. When an EAM agreement is not in place, the due diligence procedures are performed by the Bank. The due diligence procedures for client

relationships that involve fiduciaries do not differ in any material way from the procedures used for those that do not.

With regard to compliance with QI rules, tax forms have to be completed and filed by the account holder, regardless of how a client was introduced to the Bank.

Since 2005, the Bank has had a continuous internal policy to prohibit business relationships with U.S. EAMs with regard to clients domiciled in the U.S. Non-U.S. EAMs with U.S. Persons as clients have been required to sign a standard agreement with the Bank in which they undertook to comply with the rules in the U.S. Persons Policy (no securities advice or solicitation).

ii. A lawyer: please identify.

For the reasons identified above, the Bank cannot provide answers relating to specific persons.

1. Over what period of time did CS employees work with this attorney and/or his firm?
2. Did CS refer clients to this attorney?
3. Did CS have a referral agreement?
4. How many US linked accountholders of CS worked with this attorney?
5. Did the attorney rent or maintain office space in CS? If so, when?
6. Does CS still work with the attorney?
7. If not, when did work stop? Why?
8. What due diligence efforts were taken by CS to ensure the US linked accounts opened by this attorney's firm were compliant with US tax and securities laws?

iii. Third firm: please identify.

For the reasons identified above, the Bank cannot provide answers relating to specific persons.

1. Over what period of time did CS employees work with this firm?
2. Did CS refer clients to the firm?
3. Did CS have a referral agreement?
4. How many US linked accountholders of CS worked with this firm?
5. Did the firm rent or maintain office space in CS? If so, when?

6. Does CS still work with the firm?

7. If not, when did work stop? Why?

8. What due diligence efforts were taken by CS to ensure the US linked accounts opened by this firm were compliant with US tax and securities laws?

e. Were there any other intermediaries that CS used to refer, advise, or assist US clients, including, but not limited to:

For the reasons identified above, the Bank cannot provide answers relating to specific persons.

i. Matthias Rickenbach

ii. Beda Singenberg?

iii. Any other employees of Sinco Truehand?

iv. Centrapriv?

For any EAM or intermediary identified in IV.e., please respond to the following questions:

For the reasons identified above, the Bank cannot provide answers relating to specific persons.

1. Over what period of time did CS employees work with this individual or firm?

2. Did CS refer clients to the intermediary?

3. Did CS have a referral agreement?

As mentioned above, there was a referral agreement in place with two of the fiduciaries identified in question IV.d. above.

4. How many US linked accountholders of CS worked with the intermediary?

5. Did the intermediary rent or maintain office space in CS? If so, when?

6. Does CS still work with the intermediary?

7. If not, when did work stop? Why?

8. What due diligence efforts were taken by CS to ensure the US linked accounts opened by this individual or firm were compliant with US tax and securities laws?

9. Does CS still accept US linked accounts from EAMs or intermediaries? If so, how many have been accepted 2010 to the present? What due diligence efforts were taken by CS to ensure that those US linked accounts were compliant with US tax and securities laws?

Since 2005, the Bank has had a continuous internal policy to prohibit business relationships with U.S. EAMs with regard to clients domiciled in the U.S. Non-U.S. EAMs with U.S. Persons as clients have been required to sign a standard agreement with the Bank in which they undertook to comply with the rules in the U.S. Persons Policy (no securities advice or solicitation). The Bank's decision to exit the U.S. cross-border business also fully applied to U.S. clients of EAMs.

V. Numbered accounts

a. Please define and distinguish:

i. numbered account;

A numbered bank account is a type of bank account where instead of the name of the account holder, a number is displayed as the client's name in the bank's ordinary system. The account holder is not anonymous, but only a limited number of persons within the bank have access to the client identification details. A numbered account is not treated any differently than an ordinary account for purposes of information requests under a double taxation treaty or any other regulatory purpose. Further, the same AML/KYC standard applies to such an account as to an ordinary account.

ii. dual account;

The term "dual account" is used, for example, when the same account holder has accounts with two different legal entities of the same group. An example may be to have a brokerage account with CSPA and a brokerage / safekeeping account with Credit Suisse. These "dual account" relationships were prohibited due to the securities law considerations, since it could not be ensured that a client would not use any CSPA related investment advice for trades on his Credit Suisse brokerage account, thereby risking the "unsolicited" nature of the Credit Suisse accounts. Dual accounts with CSPA and Credit Suisse were prohibited from CSPA's inception. This prohibition was reviewed and expressly reconfirmed again as part of the W-9 project in 2007.

iii. double account;

In some limited circumstances the term "double account" may have been used instead of "dual account" as described above, but otherwise the term is unknown to Credit Suisse.

iv. pseudonym account.

A pseudonym account is the same as a numbered account (see above) with the only difference that a pseudonym is used instead of a number. Therefore, pseudonym accounts also did not provide anonymity to the holder of the account. Pseudonym accounts (relationships) were no

longer allowed after December of 1997 and existing pseudonym accounts had to be changed to a named or numbered relationship. This change in policy was applicable to all clients of the bank and not specific to U.S. clients.

b. CS has stated that its policy did not permit US persons to have numbered accounts.

i. Why?

We believe that a misunderstanding has occurred here: Credit Suisse allowed U.S. Persons to have numbered accounts under the U.S. Persons Policy, as this was specifically allowed as a permissible product in the product chart in the first version of the policy from 2002. However, as outlined above, pseudonym accounts were not permitted (for any category of clients) after December 1997.

As we explained to you in our July 12, 2013 letter, a numbered account is a standard type of account within the Swiss banking industry and has never been banned by Credit Suisse.

ii. Exceptions to this policy, however, appear to have existed. In the context of the W9 project in 2006, CS searches for numbered accounts gave rise to ~128 matching accounts. Were any US linked accounts numbered accounts?

1. If so, identify the number of CIFs/AuM.

As described above, Credit Suisse never prohibited U.S. Persons from having numbered accounts.

VI. W9

a. Were US persons seeking a Swiss CS account required to fill out a W9 form, as a condition of opening the account? If so, when was this policy implemented? Were exceptions identified to this policy and if so, how many instances and in what years?

Under the QI rules and the QI Agreement as implemented in 2001, the Bank was only required to obtain a Form W-9 from U.S. clients if the client held a safekeeping account and sought to own U.S. securities. Therefore, no Form W-9 was required as a condition to open any other type of account. As part of its QI obligation, the Bank is audited by its external statutory auditor every three years. Until now, the Bank has been audited four times with the last time in 2012 for the year 2011, and no substantial findings have ever been reported.

Since 2008, the Bank has extended the scope of its W-9 requirements beyond the scope required by the QI agreement to include all kinds of accounts, including cash accounts and securities accounts that did not hold U.S. securities, to require all U.S. residents, both direct clients and beneficial owners of non-U.S. domiciliary entities, to provide Form W-9s and to be transferred to an SEC registered subsidiary (CSPA or the U.S. operations) if they held securities accounts

(starting in 2009), as well as to notify all identified U.S. citizens, dual citizens, and greencard holders resident outside the U.S. of their Foreign Bank Account Report ("FBAR") filing obligations (in 2011) and subsequently requiring them (starting in 2012) to provide Form W-9s for all accounts. In all cases, not only were Form W-9s required, but clients and/or beneficial owners were also required to sign waivers of Swiss bank secrecy objections to allow full transparency with regard to such accounts. Clients or beneficial owners who failed to provide the requested documentation were terminated by the Bank.

Furthermore, the Bank's IT processes automatically prevent an employee from booking U.S. securities into a safekeeping account of a U.S. person where no Form W-9 was filed.

b. Has CS ever identified US linked accounts that did not have W9 forms? What was the amount of CIFs/AuM?

As discussed above in question II.o. in connection with the discussion of U.S. beneficial owners, due to the differences in scope, definition, and focus between the QI rules and Swiss legal AML/KYC rules, there will always be different identification of beneficial owners between the QI forms and Form As with particular structures. In compliance with Swiss AML standards, the Bank required domiciliary companies to identify the ultimate natural person beneficial owners of the accounts on Form A. Under U.S. tax rules, entities are allowed to classify themselves as beneficial owners and do not require ultimate natural persons to be identified as beneficial owners of such entities on Form W-8BEN or to provide Form W-9s. As pointed out above, the Form A on the one hand and the Form W-8BEN on the other serve different purposes. There were many cases in which a U.S. person may have been identified under Swiss law on Form A and was not required under the QI rules to provide a Form W-9 because the non-U.S. domiciliary entity had classified itself as the beneficial owner and properly provided the Form W8-BEN. These discrepancies—of which relationship managers were often aware—were the result of proper implementation of the two legal requirements and were perfectly legitimate.

c.

i. How many US linked accounts that did not have W9 forms held or hold US securities? Identify the amount of CIFs/AuM.

In the course of doing business, Credit Suisse (similar to other banks) has encountered very few exceptional situations where a U.S. linked account may have held U.S. securities without having a Form W-9 for the following reasons:

- *A non-U.S. citizen residing outside of the U.S. moves to the U.S. and provides the Form W-9 only after the account has been flagged as U.S. within the Bank's IT systems. This will automatically trigger an alert within the Bank's formality control system and will require the relationship manager to follow-up. Under the QI rules, the Bank has 60 days to obtain the Form W-9. Furthermore, the relationship will be handled according to the U.S. Persons Policy P-00025.*

- *In rare occasions, a non-U.S. security may be reclassified as U.S. security. This will automatically trigger a blockage of the safekeeping account until the situation is resolved, i.e., U.S. securities are sold or client provides a Form W-9.*

We have provided you with the numbers of U.S. residents and U.S. citizens resident outside of the United States holding U.S. securities without a Form W-9 on slides 24 and 26 of our July 2013 presentation. You will see that, in line with what we outlined above, these numbers are very low:

- *For U.S. residents we are displaying between 7 and 18 clients which can be triggered by either a change of the U.S. status of the account holder (move to the United States) or the reclassification of a security.*

- *For U.S. citizens resident outside the United States where no change of their U.S. person status is to be expected, the number is even smaller and between only one and a maximum of three clients.*

ii. What corrective action was taken, and when?

As noted above, external auditors have been appointed to perform audits in line with the requirements as per section 10 of the QI agreement. Such audits have been performed for the years 2002, 2005, 2008 and 2011. No material defects were detected during these audits, which confirms that Credit Suisse is fully compliant with the documentation requirements under the QI agreement. The above-described rare cases of change in status of the client or the securities classification are part of normal day-to-day business activities, are automatically programmed for handling under the Bank's control systems and are promptly remediated as required by the QI rules.

iii. Were there situations in which U.S. beneficial owners of accounts had both declared and undeclared accounts? If so, please identify the amount of CIFs/AuM.

Our investigation did not confirm that clients held both declared and undeclared accounts, although we identified suggestions that such an arrangement may have occurred in rare instances, despite extensive analysis we have not be able to confirm that this, in fact, happened. In the context of the Bank's W-9 Project, during which the Bank identified accounts eligible for transfer to CSPA (i.e., those accounts with a Form W-9 on file), the Bank had a strict policy prohibiting clients from holding accounts with both CSPA and the Private Bank.

iv. What corrective action was taken, and when?

Since we did not confirm that clients held both declared and undeclared accounts, no corrective action was needed.

VII. <u>Clariden Leu</u>

a. Describe the Exit Project(s) that was implemented at Clariden Leu.

i. Identify the start and end dates regarding any exit project or any iteration of a project to identify and exit US-linked CIFs.

ii. Define the groups of US linked accounts that it addressed, and when they were addressed.

As we described in our July 12, 2013 correspondence, Clariden Leu commenced several projects to address U.S. related persons and to implement Credit Suisse's updated policies relating to these client groups.

Clariden Leu launched analogous exit projects to those at Credit Suisse in 2008 and 2009 to address issues relating to non-U.S. domiciliary companies and trusts with U.S. beneficial owners, known as Compass I and Compass II at Clariden Leu (Entities or E projects at Credit Suisse). Compass I (Fall 2008 to July 2012) focused on the highest risk category: non-U.S. entities with U.S. beneficial owners—the largest accounts and those holding U.S. securities—with the objective of ensuring tax compliance or exit. Compass II (March 2009 to July 2012) covered the remaining non-U.S. entities with U.S. beneficial owners not covered by Compass I.

U.S. resident natural persons were dealt with next in Compass III (May 2009 to March 2011), which succeeded Alert CL-02808 that had required new relationships with U.S. residents, citizens, or green card holders to be centralized and account holders to provide a Form W-9. The alert also included a travel ban. The project was a combination of centralization, training and establishment of tax compliance or exit, and therefore not a pure exit project per se.

Compass IV and V (March 2011 to July 2012) focused on the exit of the business with U.S. residents. Clariden Leu decided in March 2011 to exit the business (rather than creating a CSPA-like entity or Special Service Offering-like desk to service these clients), and Compass V was the process set up to handle forced closures (not a separate project). Compass V could not be completed by Clariden Leu before it was merged into Credit Suisse, so the project was passed on to the Credit Suisse project team for merger into the ongoing Credit Suisse projects and completion.

iii. Prior to CL's integration into CS, from 2006 – 2011, quantify the number of US linked accounts that were identified each year, the number that were determined to be compliant, and the number that that left CL. Quantify CIFs/AuM per year.

Please see the attached slides titled Clariden Leu Report to the Senate Permanent Subcommittee on Investigations, dated December 2013.

b. When Clariden Leu was integrated in 2012 into Credit Suisse, quantify the number of US linked accounts at Clariden Leu were identified as US-linked, the number that were determined to be compliant with US securities and tax laws, the number that were determined to be non-compliant, and the number that that left the bank.

At the time the merger was announced on November 15, 2011, Clariden Leu had substantially completed its remaining Compass cases. Therefore, by the time the merger was announced, essentially the only remaining task was to ensure the relationships were actually closed and address any newly identified relationships.

In late November, Clariden Leu decided to follow Credit Suisse's newly implemented policy to actually force the closure of the uncooperative and dormant accounts, to liquidate the assets and to issue checks. These tasks were commenced in December 2011.

At Credit Suisse, all such cases were centralized in the Client Task Force, which became the relationship manager of record for the clients and was thus able to implement the closure. In January 2012, it became clear that more relationship managers were leaving Clariden Leu and the resources were diminishing to be able to implement the forced closure policy. Clariden Leu reached out to Credit Suisse for temporary support to help Clariden Leu implement the forced closures, and Credit Suisse promptly seconded a key member of the Credit Suisse Client Task Force to act as the relationship manager at Clariden Leu to centralize and implement the forced closures. Through these efforts, Clariden Leu was able to continue with its forced closure processes with full resources despite the merger.

In addition, employees in the Legal, Compliance and Formalities departments as well as Business Risk Management remained with Clariden Leu after the announcement and were integrated into Credit Suisse, allowing a smooth transition and completion of Clariden Leu's pre-integration exit efforts. In fact, as noted above, as former relationship managers were leaving before the integration, new relationship managers who were reviewing files became aware of possible U.S. connections of some clients. These relationship managers referred such cases to the Legal department for additional investigation to determine if there was any U.S. connection and, if so, to obtain demonstration of tax compliance from such clients and/or beneficial owners, or to put the clients into the forced exit process. Under these circumstances, more due diligence was likely conducted than would otherwise have been possible if the merger had not been announced. Management was fully supportive of these expanded pre-integration exit efforts; staffing and resources were adequate to address and handle the issues as they arose.

When the merger of Clariden Leu into Credit Suisse occurred, there were 24 relationships flagged as U.S. resident (with total AuM of USD 8 million) still awaiting resolution under the applicable exit project guidelines and thus transferred to Credit Suisse for resolution. Sixteen of these were subsequently closed, five are currently in forced liquidation, one client no longer lives in the U.S., and two clients either are eligible for or already moved to the special service offering (cash-only and Swiss retirement plans for Swiss nationals living in the U.S. and expats of Swiss-based firms on an assignment in the U.S.).

With regard to non-U.S. entities with U.S. beneficial owners (identified through domicile and nationality flags in the systems), there were 37 relationships (with total AuM of USD 94 million) that were transferred to Credit Suisse as a result of the merger and addressed in line with the applicable exit project guidelines. Twenty of these were subsequently closed, three were reviewed and verified, seven are currently in (forced) liquidation and five no longer have or had

never had a U.S. nexus. Only two of the CIFs transferred to Credit Suisse during the merger are still open, whereas one of them cannot be closed due to a pending legal case.

i. Describe the reasons that CS continued to identify US linked former CL CIFs after Jan. 2012 including, but not limited to, any gaps in scope of CL's pre-integration exit efforts, staffing, resources, management or other reason.

Please see above response.

ii. What knowledge did Mr. Cerutti and Mr. Meister – as members of the Board of CL – have about the number and related AUM of US-linked, accounts that were determined to be non-compliant with US securities and tax laws, and what actions did they take to address the matter and increase the effectiveness and pace of CL exit efforts?

The objective of the Credit Suisse and Clariden Leu exit projects was to verify tax compliance of U.S. linked accounts in order to allow these accounts to remain at the banks. The projects were never intended to identify non-compliant behavior. Clients may have left the bank in the course of the exit projects for any number of reasons other than not being compliant including (1) choosing not to provide proof of compliance, (2) not meeting the minimum asset level in order to transfer to CSPA, or (3) leaving the bank for reasons unrelated to the tax status of the account. Additionally, our investigation showed that clients tended to switch banks during times of change in services, particularly with respect to regulatory changes or changes in relationship managers.

Board members were aware that U.S. linked accounts were being closed in the course of the exit project. As the projects were a priority of the banks and their respective boards, board members continued to encourage the progress and completion of the projects by offering their support as well as resources to assist with the project. For example, as described above, Credit Suisse's Client Task Force, a group in the Compliance department dedicated to ensuring that non-cooperative U.S. linked accounts were closed, seconded an employee to Clariden Leu to assist with the same task.

c. Identify the number and names of relationship managers that became part of Metropol partners

For the reasons identified above, the Bank cannot provide answers relating to specific persons.

~~i. Describe the agreement that resulted in former CL RMs (who joined~~ Metropol) maintaining former CL accounts at CL?

Agreements with EAMs are standard agreements at arm's length. The nature of, value of, support or investment provided by Credit Suisse to encourage former Clariden Leu relationship managers to maintain their client accounts at Credit Suisse after they left to join an EAM is nothing more than the Bank would provide to any other EAM whose contracts were negotiated at arm's length basis.

ii. What was the nature of, value of support, or investment provided by CS or CL to encourage the former CL RMs to maintain their client accounts at CL after they left to join Metropol?

Please see above response.

iii. What was the role of Mr. Cerutti, Mr. Meister, and Mr. Boegli in those negotiations and settlement?

The negotiations involved senior management as appropriate in terms of corporate governance rules.

iv. Identify the number of US linked CIFs and AuM of former CL RMs who joined Metropol.

1. Identify the number of accounts that were subsequently exited because the accountholder was unwilling or unable to demonstrate tax compliance.

For the reasons identified above, the Bank cannot provide answers relating to specific persons. Generally speaking, and as already mentioned, however, Clariden Leu's U.S. client base had been substantially exited before the merger of Clariden Leu into Credit Suisse was announced in 2012 and relationship managers had very few (if any) U.S. clients left.

v. What due diligence efforts were taken by Clariden Leu to ensure the US linked accounts opened by Metropol RMs were compliant with US tax and securities laws?

Relationships opened by EAMs are subject to the Bank's standard know-your-client requirements imposed by Swiss law to properly identify both the client and any potential beneficial owners. Furthermore, relationships opened by external asset managers are also subject to the Bank's policies prohibiting relationships with U.S. clients or beneficial owners unless they meet the Bank's strict requirements (e.g., no account openings for U.S. residents except special service offering with limited range of services (excluding in particular securities-related services and credit cards) for Swiss citizens resident in the U.S. and assignees of Swiss companies in the U.S., tax compliance and waivers of U.S. taxpayers required, etc.).

Adherence to these policies is enforced through the Bank's enhanced new relationship opening tool and procedures (implemented in July 2012, i.e., very shortly after Metropol became operational) where any U.S. related link is captured in case of new openings (including U.S. place of birth) and the systems automatically block the opening if proper tax compliance documentation is not provided or if the relationship does not fit within the policy (e.g., a relationship with a U.S. resident who does not qualify for the special service offering).

VIII. Employment of Swiss-based RMs

a. How many Swiss-based RMs left the bank 2006 – 2013?

For the above mentioned period, the attrition rate of Credit Suisse relationship managers in Switzerland has been between 10% and 12% annually. In Clariden Leu, the rate, in some years, was more than double.

However, for businesses undergoing restructuring—for example a merger of legal entities, or an exit from a business line—the rate may well exceed 50% and could come close to 100%.

i. Of those, how many RMs serviced US linked accounts?

ii. How many US linked accounts were serviced by them?

iii. How many of those accounts and related AUM were determined to be non-compliant with US tax or securities laws?

b. Has Credit Suisse imposed any disciplinary action on any Swiss-based employees based on conduct related to US linked accounts? Identify the number of employees, the dates, and the disciplinary action imposed. Please answer the same question for employees based in locations outside of Switzerland.

In early 2012, the Bank formed a special task force to follow up on potential breaches of its internal policies identified in the investigation, and to determine the need to impose disciplinary action against employees still with the Bank at the time of the review. The task force is led by legal and supported by human resources as well as outside counsel (Schellenberg Wittmer).

Under review by the task force so far was a total of 41 cases. If the initial suspicion of a policy breach could not be removed otherwise, the employees concerned were (again) interviewed to give them an opportunity to be heard and defend themselves. Upon completion of the review, the task force submitted the remaining cases for decision to a special disciplinary review committee, together with its recommendations.

The disciplinary review committee, which is chaired by the divisional CEO, met three times so far to deliberate and decide on the cases submitted by the task force. The committee followed the recommendations of the task force in most cases and imposed disciplinary action against a total of 10 Swiss based employees (6 in 2012 and 4 in 2013).

The sanctions imposed were for the following policy breaches: Failure to prevent UBS-inflows (3); ~~providing securities advice and solicitation to a person in the U.S. (2); breach of KYC~~ rules/failure to identify U.S. beneficial owner (1); failure to record domicile change to U.S. (2); opening U.S. linked account without required approval (1); failure to verify change of citizenship from U.S. to other nationality (1).

The above policy breaches were sanctioned with formal warnings that go into the HR file of the employee concerned for a retention period of between 1 and 6 years, plus substantial bonus cuts. None of the employees were terminated.

Additionally, the three indicted relationship managers still employed with the Bank were removed from their positions and placed on administrative leave.

IX. Other locations outside Switzerland

a. How many US-linked accounts (CIFs and AUM) that were identified in 2012/13 as part of ongoing exit projects, were from the SALN desk?

We are currently still working on the information requested in this section. The Bank is very committed to following up on CIFs that are newly identified as U.S. which requires a time-consuming manual review into whether a client has just recently moved to the U.S. or whether he or she had been resident there for a longer period of time. This review is not yet fully completed, but it will include answers to questions a, b and d.

b. How many (CIFs and AUM) were from other desks in the Swiss booking system, and which desks were they from?

c. How many (CIFs and AuM) were from outside the Swiss booking system according to location.

As we noted earlier, accounts outside of the Swiss booking platform in other countries are captured and reviewed as part of the preparation for FATCA.

d. Annually between 2003 and 2007, how many accounts (CIFs and AUM) of US citizens were located in the US?

X. UBS/LGT

a. Did Credit Suisse identify inflows into US linked accounts from UBS or LGT after July 2008? Provide the amount of CIFs/AUM per institution.

After the relevant Legal & Compliance Alerts had been enacted in July 2008 by both Credit Suisse and Clariden Leu prohibiting inflows from UBS to accounts of U.S. persons/U.S. taxpayers who had not filed a Form W-9, a monitoring process was implemented in December 2008 with the aim of identifying clients closing their UBS or LGT relationships and transferring their assets to Credit Suisse or Clariden Leu.

When transfers were coming into the Bank from UBS/LGT, they contained no information as to whether they were coming from U.S. related accounts that were being closed or for other normal commercial transactions and—due to the large volume of transactions executed daily between Credit Suisse and UBS—it was impossible to implement any automatic blocking of incoming UBS transfers. Rather, a manual screening process had to be implemented to separate normal business transactions from transactions in the context of U.S. clients trying to move their assets to Credit Suisse or Clariden Leu.

Accordingly, inflows from UBS and/or LGT of more than CHF 50,000 (including also securities transfers) to accounts of non-W-9 U.S. clients were monitored manually and sent back to the originating banks if they were in breach of the alerts. As already described above, however,

Credit Suisse/Clariden Leu was not in a position to identify transactions originating from exited U.S. linked accounts at UBS and LGT. Hence, incoming transactions could only be identified as potentially in breach of the alert if inflows to existing relationships of U.S. persons could be identified as coming from an account of the same person at UBS/LGT (whereas the identity of the sender of a payment is not always visible to the receiver bank, however) or if in case of an account opening, a new client informed the Bank of his or her U.S. status.

In 2011, UBS provided a list to Credit Suisse consisting of over 3,000 transactions (wire transfers and security deliveries) to Credit Suisse and Clariden Leu in the aggregate amount of over CHF 600 million. According to UBS, all of these transactions originated from the UBS "exit population." However, an analysis undertaken by Schellenberg Wittmer found only very few policy violations. Rather, the bulk of the transactions were transfers to non-U.S. accounts and frequently commercial transactions. Policy violations were only found with regard to 30 relationships accounting for transactions in the aggregate amount of CHF 25.6 million.

These policy violations were followed up on in the disciplinary process.

XI. FATCA

a. Did Credit Suisse fill out the "decision template" on FACTA opt in or opt out? See business impact analysis in FATCA International Transparency Phase presentation CS-SEN-00408837, at CS-SEN-00408852.

Yes, in 2011, the relevant Private Banking locations completed the decision template.

XII. General Findings

a. Describe the knowledge, and if so, involvement, of senior executives, officers and directors of Credit Suisse with respect to US Linked accounts that were not compliant with US tax and securities laws in Switzerland and elsewhere.

The investigation did not reveal any evidence demonstrating that, prior to the exit projects, senior executives, officers, and directors of Credit Suisse had any knowledge of U.S. linked accounts that were not compliant with U.S. tax and securities laws in Switzerland and elsewhere.

During the exit projects, senior executives, officers, and directors of Credit Suisse were aware of and supported the project and its objective of reviewing and allowing only clients who demonstrated proof of tax compliance to remain at the Bank. As noted above, however, the objective of both the Credit Suisse and Clariden Leu exit projects was to collect proof of compliance of U.S. linked accounts as a condition of allowing these accounts to remain at the banks. The projects were never intended to determine the non-compliance, nor could they have, given the information available to the Bank. Clients may have left the Bank in the course of the exit projects for any number of reasons besides not being compliant including (1) choosing not to provide proof of compliance, (2) not meeting the minimum asset level in order to transfer to CSPA, or (3) leaving the Bank for reasons unrelated to the tax status of the account. Additionally, our investigation showed that clients tended to switch banks during times of change in services, particularly with respect to regulatory changes or changes in relationship managers.

b. Describe the effectiveness of the legal, compliance and audit functions with respect to identifying and stopping the solicitation, opening and servicing of US linked accounts that were not disclosed or not compliant with US tax and securities laws, and RM activity related to those accounts.

As we have reported in previous presentations and correspondence, long before any investigations or public scrutiny of the U.S.-Swiss cross border-business, Credit Suisse was focused on compliance with the applicable rules and regulations governing this business. In 2001 and 2002, the Tax and Legal & Compliance departments were already heavily focused on compliance with the U.S. QI Agreement and promulgating a policy requiring compliance with SEC regulations governing the cross-border business, respectively.

The Legal & Compliance department along with the Bank's Business Risk Management and audit functions continued to focus on the issues of solicitation and investment advice in the cross-border business, addressing these issues in their training and policies and subsequent monitoring of the various sub businesses. Additionally, the Bank's Formalities department focused on related issues, including ensuring that accounts holding U.S. securities had a Form W-9 on file and formalities surrounding account openings, such as ensuring that discretionary mandates for U.S. accounts were not signed in the U.S.

These control functions effectively detected instances of non-compliance in these areas over the years but did not monitor issues of tax compliance, as information about the clients' tax status was not available to the Bank and was not requested by the Bank. However, as we have reported to you in the past, some improper activities were not detected by the control functions because of the actions undertaken by certain employees designed to conceal their non-compliance. One example of this occurred when the internal audit function had correctly suspected instances in which SALN employees solicited clients and provided investment advice on their trips to the U.S. The SALN supervising relationship manager took extraordinary measure to conceal these policy violations, however, by altering travel reports that contained evidence of this misconduct.

c. In the Deloitte & Touche briefing of its review of US linked account relationships at CS, D&T noted that, "For local regulatory reasons (e.g., bank secrecy) Swiss banks were **never designed** to centralize their client relationships' data." Please describe:

i. the regulatory reasons (and the requirements they effected) that D&T identified

- *The regulatory requirement for an application of the strict "need-to-know" principle is set out in the FINMA Circular RS08/21 of November 20, 2008 which is applicable to all banks in Switzerland. Appendix 3.I.C principle 3 reads as follows:*

  Margin no. 15: The bank must know at all times where CID (Client Identifying Data) is stored, which applications and IT systems are used to process it and through which path it can be electronically accessed. Adequate controls must be in place to ensure that data is processed as stipulated in art. 8 et seq. of the Swiss Federal Data Protection Ordinance (DPO). Special controls are necessary to cover physical locations (e.g. server rooms) or

network segments that store or make accessible large quantities of CID. Data access must be clearly regulated and must only take place on a strict "need-to-know" basis.

(...)

Margin no. 21: Staff may only have access to data or functionalities which are necessary for the execution of their job.

Margin no 22: Access to CID must be allocated according to the function (type of job) the person has in relation to CID. If the function does not require any processing of CID (e.g. is limited to the preparation of reports, data analysis, advisory services), the access rights are to be limited (e.g. by providing read-only rights).

- *Article 47 of the Swiss Federal Law on Banks and Savings Banks reads as follows:*

  "1. Whoever intentionally:

  a. divulges a secret that was either entrusted to him/her or that he/she became aware of in his/her capacity as a member of a bank's governing body, as an employee, mandatory or liquidator of a bank, as an officer or employee of an audit firm; or

  b. seeks to induce others to violate such professional confidentiality; will be sentenced to imprisonment of up to three years or punished with a fine.

  2. Offences committed through negligence are punished by a fine of up to CHF 250,000.

  3. In case of recurrence within 5 years after a conviction has entered into force, the applicable fine will be of at least 45 day rates.

  4. Violation of professional secrecy remains punishable even after termination of the official relationship, employment or the exercise of the profession.

  5. This will be without prejudice to the federal and cantonal regulations concerning the obligation to testify and to disclose information to the authorities.

  6. The persecution and judgment of actions punishable under the present provisions is incumbent on the Cantons. The general provisions of the Penal Code apply."

- *Further, Article 35 of the Swiss Federal Law on Data Protection reads as follows:*

  "Whoever intentionally and without proper authorization discloses particularly sensitive personal data or personality profiles that he/she acquires knowledge of in the course of exercising his/her profession, such exercise requiring knowledge of said data, will, on application, be punished by imprisonment or with a fine.

  Whoever intentionally and without proper authorization discloses secret and particularly sensitive personal data or personality profiles which he/she acquires knowledge of in the course of any activity on behalf of or while undergoing training with a party subject to the duty of confidentiality will be punished likewise. The unauthorized disclosure of secret and particularly sensitive personal data or personality profiles will remain punishable even after termination of the exercise of the profession or of the training period."

ii. which of those were related to secrecy;

See Article 47 of the Swiss Federal Law on Banks and Savings Banks above.

iii. how and why the regulatory reasons (and the requirements they effected) resulted in CS not centralizing its client relationship data;

Due to the size of its business—approximately 2 million active client relationships—Credit Suisse has built its applications along the business processes and based on the diverging needs of the various departments involved in managing and administering a client relationship, e.g., relationship management, marketing, credit department, operations, etc. For speed and efficiency reasons, the IT landscape is therefore designed to ensure that each involved department has access to the data required to discharge the relevant duties and responsibilities. This design also takes into account the legal and regulatory requirements for compliance with the "need-to-know" principle and bank client confidentiality.

iv. how, as a result, CS client data was organized; and

See response provided above.

v. what changes or reforms have been made in the way CS organizes and centralizes its client data.

Each time Credit Suisse has gone through an acquisition or a merger there has been a focus on systems including those relating to client data, to try to centralize the relevant data in one of the existing applications. Recent examples include the change of the main systems of the five banks that were brought together under Clariden Leu in 2007. As of then, Clariden Leu used the same main systems for its client data as Credit Suisse. In 2012, when Clariden Leu was merged into Credit Suisse, the remaining system that Clariden Leu had used for the data on beneficial owners was also replaced and the beneficial owner data was integrated in the relevant Credit Suisse application.

SCHELLENBERG WITTMER

KING & SPALDING

Clariden Leu
Report to the Senate Permanent Subcommittee on Investigations

December 2013

Confidential Treatment Requested

Clariden Leu – End of year

U.S. Residents

Relationships in process, and Reviewed, verified and active

	31 Dec 2008	31 Dec 2009 *	31 Dec 2010 *	31 Dec 2011 *	31 Dec 2012 *
Relationships in process					
CIF	1,308	1,070	397	191	0
AuM (USD in millions)	901	819	168	41	0
Reviewed, verified and active					
CIF	NA	6	265	24	0
AuM (USD in millions)		6	383	24	0

Note: AuM (USD in millions) may not add up due to rounding to Million USD

* Accounts open at any time after Sept. 2009 will be subject to group requests and disclosed to IRS, provided the US adopts the rev'd US-Swiss treaty and the accounts meet the criteria set out in the IRS group request.

Clariden Leu

U.S. Residents

Closed relationships, and Loss of category specific U.S. nexus by 31 Dec

	2008	2009*	2010*	2011*	2012* **
Closed relationships					
CIF	84	275	386	195	173
AuM (USD in millions)	37	146	232	117	31
Loss of category specific U.S. nexus by 31 Dec					
CIF	32	30	33	9	2
AuM (USD in millions)	28	37	27	4	0

Note: AuM (USD in millions) may not add up due to rounding to Million USD

* Accounts open at any time after Sept. 2009 will be subject to group requests and disclosed to IRS, provided the US adopts the rev'd US-Swiss treaty and the accounts meet the criteria set out in the IRS group request.

** For 2012 only data until 30 June 2012 is used to identify the "Loss of category specific U.S. nexus"

Clariden Leu – End of year

U.S. Citizens resident outside U.S.

Relationships in process, and Reviewed, verified and active

	31 Dec 2008	31 Dec 2009*	31 Dec 2010 *	31 Dec 2011 *	31 Dec 2012 *
Relationships in process					
CIF	275	239	201	164	0
AuM (USD in millions)	172	156	119	116	0
Reviewed, verified and active					
CIF	NA	NA	NA	NA	0
AuM (USD in millions)					0

Note: AuM (USD in millions) may not add up due to rounding to Million USD

* Accounts open at any time after Sept. 2009 will be subject to group requests and disclosed to IRS, provided the US adopts the revised US-Swiss treaty and the accounts meet the criteria set out in the IRS group request.

Clariden Leu – End of year

U.S. Citizens resident outside U.S. with max AuM (USD in millions) >= USD 50k from 1 August 2008
Relationships in process, and Reviewed, verified and active

	31 Dec 2008	31 Dec 2009*	31 Dec 2010*	31 Dec 2011*	31 Dec 2012*
Relationships in process					
CIF	202	188	154	126	0
AuM (USD in millions)	171	156	119	116	0
Reviewed, verified and active					
CIF	NA	NA	NA	NA	0
AuM (USD in millions)					0

Note: AuM (USD in millions) may not add up due to rounding to Million USD
* Accounts open at any time after Sept. 2009 will be subject to group requests and disclosed to IRS, provided the US adopts the revised US-Swiss treaty and the accounts meet the criteria set out in the IRS group request.

Clariden Leu

U.S. Citizens resident outside U.S.

Closed relationships, and Loss of category specific U.S. nexus by 31 Dec

	2008	2009*	2010*	2011*	2012* **
Closed relationships					
CIF	22	37	43	39	60
AuM (USD in millions)	7	7	20	14	27
Loss of category specific U.S. nexus by 31 Dec					
CIF	6	6	2	3	1
AuM (USD in millions)	7	3	0.73	6	0.84

Note: AuM (USD in millions) may not add up due to rounding to Million USD

* Accounts open at any time after Sept. 2009 will be subject to group requests and disclosed to IRS, provided the US adopts the revised US-Swiss treaty and the accounts meet the criteria set out in the IRS group request.

** For 2012 only data until 30 June 2012 is used to identify the "Loss of category specific U.S. nexus"

Clariden Leu – End of year

Non U.S. domiciliary entities with US BOs

Relationships in process, and Reviewed, verified and active

	31 Dec 2008	31 Dec 2009*	31 Dec 2010*	31 Dec 2011*	31 Dec 2012*
Relationships in process, with CIF	480	60	20	15	0
AuM (USD in millions)	857	26	37	38	0
Reviewed, verified, and active, CIF	0	87	64	33	0
AuM (USD in millions)	0	151	127	77	0

Note: AuM (USD in millions) may not add up due to rounding to Million USD

* Accounts open at any time after Sept. 2009 will be subject to group requests and disclosed to IRS, provided the US adopts the revised US-Swiss treaty and the accounts meet the criteria set out in the IRS group request.

Clariden Leu

Non U.S. domiciliary entities with US BOs

Closed relationships, and Loss of category specific U.S. nexus by 31 Dec

	2008	2009*	2010*	2011*	2012* **
Closed relationships					
#CIF	79	305	29	10	4
AuM (USD in millions)	213	386	10	38	0.84
Loss of category specific U.S. nexus by 31 Dec					
#CIF	53	34	5	0	1
AuM (USD in millions)	428	98	4	0	0.79

Note: AuM (USD in millions) may not add up due to rounding to Million USD

* Accounts open at any time after Sept. 2009 will be subject to group requests and disclosed to IRS, provided the US adopts the revised US-Swiss treaty and the accounts meet the criteria set out in the IRS group request.

** For 2012 only data until 30 June 2012 is used to identify the "Loss of category specific U.S. nexus"

To: Miller, Dale <dale.miller@credit-suisse.com>
From: Studer, Adrian </O=CREDIT-SUISSE/OU=GL/CN=RECIPIENTS/CN=ASTUDER>
Cc:
Bcc:
Received Date: 2012-02-28 07:46:32 EST
Subject: RE: Important - NNA, PBMC

We are contacting Gassman and Besmer now to get LATAminput and we are contacting the BMs w/o response so far. I plan to have a first estimate around 10:00AM and hopefully better data later in the day including LA.

Adrian G. Studer
Managing Director
Private Banking | Head Business Information Americas & Programs
CREDIT SUISSE AG
Eleven Madison Avenue | 10010-3629 New York | United States
Phone +1 212 325 2892 | Fax +1 212 322 1833 | Mobile [redacted]
adrian.studer@credit-suisse.com

[redacted] = Redacted by the Permanent Subcommittee on Investigations

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From: Miller, Dale
Sent: Monday, February 27, 2012 6:30 PM
To: Studer, Adrian
Subject: RE: Important - NNA, PBMC

Adrian - this is what I have so far - need the Latam numbers and then would you please consolidate and send back to me ASAP.

Boston
Ross Kennedy is working with solution partners on a loan v.s. $100MM OP units. We should no if it's a go in the next two weeks. If so, it would result in $100MM in NNA.

Greenwich
Normal flows anticipated. That would be somewhere in the $3 - $10 million range net.

New York
?

Philadelphia
[redacted] $30 million - RFP Will be submitted 3/1/12 - we are well positioned.
[redacted] - $25 million - Accounts are open, awaiting assets from [redacted]
[redacted] New Commitments: $30 million in commitments that will arrive over the next 3 or 4 weeks
That totals $85 milling by end of Q1

[redacted] the last we heard [redacted] will be a US citizen which means we will ultimately categorize those assets as NNA for PBUSA.
[redacted] assets currently held at Pershing as custody only: $6.490 billion

Permanent Subcommittee on Investigations
EXHIBIT #21

[redacted] = Redacted by the Permanent Subcommittee on Investigations

[redacted] Charitable Assets Currently Held at Pershing as custody only : $1.731 billion ($1.2 billion is in the Fidelity DAF we opened 12/2011)
[redacted] Assets to be transferred to CS from GS once agreements are approved: $1.8 billion (Truly new to CS)

According to Sam P. there are no new assets from the owner of [redacted] or his daughter. There are about $1.2bn in the DAF and there is a possibility to get and additional $200 to $500mm added later this year. Currently these assets are still classified as custody assets until the mandate changes and we start to actively manage the portfolio including e.g. investments in AI. The DAF is booked in Philadelphia. No activity in Boston at this point in time.

Atlanta
Andy Thompson has $20 million that should arrive this week.

Miami Domestic
We are expecting around $50mm in NNA from the [redacted], but it would come as REIT OP units for a volaris strategy. The NNA would probably not hit "automatically" There has been paperwork going back and for 3 months so hope to close this one within 30 days .

Houston/Dallas
?

Chicago/Northbrook
?

LA
?

SF
[redacted] brought in +/- $1.4 Billion (depending on final pricing of [redacted] stock, wrestled away from GS)
[redacted] et.al look to be getting $75MM from their big Canadian account (which we share with LA) in a HOLT strategy
Dagny's team is expecting $12MM
[redacted] are doing the DSP for [redacted] If the deal prices in the range, it will be $50MM of NNA (mid- March).
[redacted] close to opening an account with [redacted] - should be around $50MM

Mexico Domestic
A potential IPO where we could capture accounts from the selling shareholders -- estimate 50 mm - An investment/extension of credit for 40/50 mm total

Brazil Domestic
?

PBUSA Latam
?

Latam

Dale E. Miller
Managing Director
Chief Operating Officer of the Americas
Private Banking Americas
CREDIT SUISSE SECURITIES (USA) LLC

Redacted by the Permanent Subcommittee on Investigations

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==========

From: DeChellis, Anthony
Sent: Monday, February 27, 2012 2:23 PM
To: Miller, Dale
Subject: FW: Important - NNA, PBMC

Please send me some rough figures

Thanks

T

Anthony DeChellis
Credit Suisse
Managing Director
CEO Private Banking Americas
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==========

From: Bögli, Rolf
Sent: Monday, February 27, 2012 10:29 AM
To: Bättig, Alois; Brunner, Christoph; DeChellis, Anthony; de Ferrari, Francesco; Fruithof, Barend; Lacher, Romeo; Vayloyan, Arthur
Cc: Meister, Hans-Ulrich; Pauli, Nicole; Schneider, Karel; Schüepp, Patrick; Kurzmeyer, Hanspeter
Subject: Important - NNA, PBMC

Colleagues,

I'm looking forward to seeing all of you tomorrow for the PB RMC and on Wednesday for the PBMC. In the PBMC, we will talk about our results in the first weeks of 2012. In this context, we will again discuss our **NNA results which have been very disappointing up until now**. As our capability to attract clients and new assets is of utmost importance - also externally - we need to take all possible measures in order to change this into a positive story within the next weeks.

In order to get a better feeling about our expected Q1 NNA numbers, can I please ask you to **be prepared to deliver a respective forecast number for your BA** during the PBMC discussion? You should also be prepared to talk about the 3-4 biggest deals in pipeline for the next weeks until the end of Q1.

Thank you!

Best regards,
Rolf Bögli

Rolf Bögli
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Internet: www.credit-suisse.com

To: de David, Gilbert <gilbert.dedavid.2@credit-suisse.com>
From: Martin, James </O=CREDIT-SUISSE/OU=GL/CN=RECIPIENTS/CN=JMARTI28>
Cc:
Bcc:
Received Date: 2012-03-12 16:29:41 EST
Subject: RE: Major flows last week

No problem and my understanding is that none of these assets are currently categorized as AUM and I would caution against it before speaking with me as I am very knowledgeable about the plans for the assets. While I am extremely comfortable that we can eventually categorize most assets as NNA, I need further client guidance before doing so.

[redacted] = Redacted by the Permanent Subcommittee on Investigations

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HYPERLINK "mailto:james.martin@credit-suisse.com"james.martin@credit-suisse.com
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610-397-7066 (desk fax)
[redacted] (cell)

==========

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==========

From: de David, Gilbert
Sent: Monday, March 12, 2012 5:27 PM
To: Martin, James
Cc: Parekh, Minesh; Lee, Robyn
Subject: RE: Major flows last week

Dear James

Thanks for the details.

Permanent Subcommittee on Investigations
EXHIBIT #22

Regards,

Gilbert

[redacted] = Redacted by the Permanent Subcommittee on Investigations

Gilbert de David

Programs, Concepts & Solutions

+1 212 538 0879 (*106 0879)

From: Martin, James
Sent: Monday, March 12, 2012 12:23 PM
To: de David, Gilbert
Cc: Parekh, Minesh; Lee, Robyn
Subject: RE: Major flows last week

The transfer was part of their [redacted] strategy to effectively eliminate the [redacted] by accelerating the gifting from this foundation and folding any residual balances into the other 3 foundations. Although a large gift, not a significant % of his total holdings.

Please fee free to contact me for any further clarification needed.

James F. Martin, Director
Private Banking USA
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West Conshohocken, PA 19428
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[redacted] (cell)

==========

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==========

—— = Redacted by the Permanent Subcommittee on Investigations

From: de David, Gilbert
Sent: Monday, March 12, 2012 12:11 PM
To: Martin, James
Cc: Parekh, Minesh; Lee, Robyn
Subject: Major flows last week

Dear James

Last week there were [redacted] shares delivered out of account number [redacted] Do you have more details on this transaction? Specifically I would need the following information:

- Where did the shares go?
- What is the reason for this transfer?

Many thanks,

Gilbert

Gilbert de David

CREDIT SUISSE AG

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From: Studer, Adrian <astuder@credit-suisse.com>
Sent: Thursday, March 29, 2012 6:11 PM
To: DeChellis, Anthony <anthony.dechellis@credit-suisse.com>; Zollinger, Marco <marco.zollinger@credit-suisse.com>; Miller, Dale <dale.miller@credit-suisse.com>
Subject: RE: Project [redacted]

Tony,

As far as we know from Jim Martin and Rich Jaffe, the client will not put to work more of his assets until the Services Agreement is completed and signed. I expect the ultimate decision to count additional assets as NNA will be made by Rolf, Hans Ueli and you.

Regards
Adrian

[redacted] = Redacted by the Permanent Subcommittee on Investigations

Adrian Studer
Managing Director
Private Banking
Business Information Americas
+1 212 325 2892 (*105 2892)

From: DeChellis, Anthony
Sent: Thursday, March 29, 2012 5:29 PM
To: Studer, Adrian; Zollinger, Marco; Miller, Dale
Subject: RE: Project [redacted]

There is no agreement at this time

Rolf and I agreed that he would first check with our CFO's office to see what is appropriate and reportable as Swiss booked assets

Again, the only previous discussion was surrounding scorecard recognition for the efforts contributed by the Swiss PCS team. However, I personally can not answer how we will book AuM that are and always have been in the US; this is beyond my accounting expertise, so I think it's a good idea to be advised by KPMG or our CFO. As for revenue, there are none yet, so there are none to split. Any revenues that are ultimately generated will be those generated by the US team proposals (each team presented separate proposals), so the revenues will be attributed to them, but for score card purposes perhaps there should be some consideration. I also think we should consider an SGC type payment for the RM's in CH given their efforts.

Does anyone know how much the client has already agreed to put to work outside the DAF? There have been suggestions that we count as much as 5B CHF.....this is not a number I want to risk having to reverse, so let's be sure we are VERY confident in what we count.

Thanks

Tony

-----Original Message-----
From: Studer, Adrian
Sent: Thursday, March 29, 2012 11:33 AM Eastern Standard Time
To: Zollinger, Marco; Miller, Dale; DeChellis, Anthony

Permanent Subcommittee on Investigations
EXHIBIT #23

Subject: Re: Project [redacted]

Please note, that the message (in German) from Gaetzi is expicitly referring to NNA only and not revenue

Adrian

Adrian Studer
Managing Director
Private Banking
Credit Suisse

Tel +1 212 325 2892
Mobile [redacted]

[redacted] = Redacted by the Permanent Subcommittee on Investigations

---

From: Zollinger, Marco
To: Miller, Dale; DeChellis, Anthony
Cc: Studer, Adrian
Sent: Thu Mar 29 11:22:26 2012
Subject: RE: Project [redacted]

Understand that PBS would like to have NNA but do we really want to share revenues as well having in mind that we need every dime to reach the FuturePB case for PB USA?

Marco

Marco Zollinger
Director
CREDIT SUISSE AG
Head Financial Mgmt PB Americas &
Controlling Services PB
SOFU/SOFW
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From: Miller Dale (CS)
Sent: Thursday, March 29, 2012 3:49 PM
To: Dechellis Anthony (CS)
Cc: Studer Adrian (CS); Zollinger Marco (SOFU)
Subject: Re: Project [redacted]

FYI

Dale E. Miller
Managing Director
Chief Operating Officer of the Americas

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dale.miller@credit-suisse.com

[redacted] = Redacted by the Permanent Subcommittee on Investigations

From: Studer, Adrian
To: Miller, Dale
Sent: Thu Mar 29 09:46:44 2012
Subject: FW: Project [redacted]

Dale,

I have received information from Rolf Gaetzi that an agreement has been reached between Tony, Arthur and Rolf on how to share NNA and revenues between PBS and PB USA on [redacted] Please let me know if you have more details so that we can reflect the agreement in MIS.

Regards
Adrian

From: Studer, Adrian
Sent: Friday, March 09, 2012 9:15 AM
To: DeChellis, Anthony
Cc: Miller, Dale; Skoglund, Peter
Subject: RE: Project [redacted]

Thank you for the update.

From: DeChellis, Anthony
Sent: Friday, March 09, 2012 8:59 AM
To: Studer, Adrian; Miller, Dale; Skoglund, Peter
Subject: RE: Project [redacted]

The remaining assets would not be split, rather we would recommend some level of credit be given to PBS for scorecard purposes

-----Original Message-----
From: Studer, Adrian
Sent: Friday, March 09, 2012 08:16 AM Eastern Standard Time
To: DeChellis, Anthony; Miller, Dale; Skoglund, Peter
Subject: Project [redacted]

Gentlemen,

As communicated earlier we have gathered and analyzed critical facts from involved business representatives and and obtained sign off from headoffice to include the assets in the Fidelity DAF in NNA for Feb month end for PB USA.

We continue to be in close contact with RMs and Management to stay abreast on developments of the situation of the remaining

custody assets.

With respect to the assets in possession of the daughter, we are awaiting the transfer from Goldman.

Based on my information the DAF will be an exclusive PB USA asset, however there might be a split with PBS for parts of the remaining assets.

If such split would be agreed (or not) please let me know so that I can ensure accurate MIS.

Best regards
Adrian

[redacted] = Redacted by the Permanent Subcommittee on Investigations

Adrian Studer
Managing Director
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Mobile [redacted]

To: Quintella, Antonio <antonio.quintella@credit-suisse.com>
From: Onis, Carlos </O=CREDIT-SUISSE/OU=GL/CN=RECIPIENTS/CN=CONIS>
Cc: Wirshba, Lewis <lewis.wirshba@credit-suisse.com>
Bcc:
Received Date: 2012-04-05 16:07:48 EST
Subject: RE: PB NNA

Antonio – wearing my FP&A hat I unfortunately have to review the global NNA disclosure – that is one the least favorite part of my roles

Happy Easter!

Lewis – have a great Passover

Carlos Onis
CFO Regional Americas
+1 212 325 7023 (*105 7023)

From: Quintella, Antonio
Sent: Thursday, April 05, 2012 11:38 AM
To: Onis, Carlos
Cc: Wirshba, Lewis
Subject: RE: PB NNA

Carlos,

Re below, can you also check the disclosure issue re NNA in Switzerland vs US PB ? As we know, investors are keeping a close eye on this and of course it is key that finance be comfortable with how we present this externaly.

Regards

---Original Message---
From: Quintella, Antonio
Sent: Tuesday, April 03, 2012 3:18 PM
To: Onis, Carlos
Cc: Wirshba, Lewis
Subject: Re: PB NNA

That's right, so we're on the same pg. Thanks.

--- Original Message ---
From: Onis, Carlos
To: Quintella, Antonio
Cc: Wirshba, Lewis

Permanent Subcommittee on Investigations
EXHIBIT #24

Sent: Tue Apr 03 15:15:52 2012
Subject: RE: PB NNA

As I said not a slam dunk - one of the items PB had represented in the deck I forwarded is that the client would sign the agreement before q1 ended. If as you note that hasn't happened then the rationale for counting them in q1 gets weaker, I had actually asked my guys in Zurich today to find out if they are signed. If not but they get signed in the next week or so we may still be ok. If we don't have something signed soon, I think we will seriously need to reevaluate whether we can report this as a q1 event CO

-----Original Message-----
From: Quintella, Antonio
Sent: Tuesday, April 03, 2012 3:11 PM
To: Onis, Carlos
Cc: Wirshba, Lewis
Subject: Re: PB NNA

Thanks Carlos. I got the background and this is why I wanted to make sure finance agrees that we can count these asset as NNA simply on an expectation that we will be performing on a future date services we don't perform today. The client, I believe, has not signed any docs to that effect. Of course we are always gaining and losing assets, so NNA being up or down is not the issue. The question is if we are reasonably and appropriately representing a reclassification of custody into NNA. Maybe we don't need any docs, etc, signed to give us the level of certainty we need for this to be part of our quarterly disclosure as this always attracts investor interest. And as you say, maybe there is a lot of leeway and this is fairly judgmental, I don't know. I guessed you'd know.

----- Original Message -----
From: Onis, Carlos
To: Quintella, Antonio
Cc: Wirshba, Lewis
Sent: Tue Apr 03 14:49:40 2012
Subject: RE: PB NNA

Antonio - the "assets" are actually already in house. We have been holding the shares in the company (ie the entity being sold) as custody assets for a while(since 2002). The proposal that PB has submitted is to shift some of the assets from custody to aum (hence the nna). As I understood it, [redacted] and they have had significant discussions with the client on investing the [redacted] and reinvesting some [redacted] The proposal form PB is to "count" as NNA app chf 4bil out of the total anticipated proceeds of chf 6.4bil. The questions I asked were what are the risks [redacted] or if the client sends all the assets to another PB then q2 will have a negative (outflow) of NNA, so we need to be very comfortable that the client is agreed to bring the assets in.
We have a little bit of leeway here since we have the existing asset in house. There is a level of judgment in what we count as aum vs custody and it typically revolves around what sort of fees we earn from the client. In this case we have historically earned less than 1bp from the client historically and the expectation is that given the projected services going forward we will earn app 10-15bps in the future. We have already provided advice this quarter (the m&a transaction itself, hedging and fx advice as well as investment advice on potential alternatives as to how to invest the funds received from the transaction. This is not a slam dunk in any way and we do have until the quarter end release to decide whether we make it a q1 event or wait for q2. But if the description plays out as PB proposed I think we have an opportunity to count this as a q1 event.

= Redacted by the Permanent Subcommittee on Investigations

CO

-----Original Message-----
From: Quintella, Antonio
Sent: Tuesday, April 03, 2012 9:53 AM
To: Onis, Carlos
Cc: Wirshba, Lewis
Subject: PB NNA

Carlos,

A significant reclassification of PB custody assets into NNA (project [redacted] was mentioned by H-U Meister this morning in the ExB meeting. I asked him to get me some back up info as I understood the clients had not yet signed docs, etc. I just wanted to make sure that Finance had gone thru this as well and agree that we have everything we need to show this as NNA for Q1, so assume you have seen and signed off too, right ? Please confirm.

From: Studer, Adrian <adrian.studer@credit-suisse.com>
Sent: Thursday, October 25, 2012 1:55 PM
To: Parekh, Minesh <minesh.parekh@credit-suisse.com>; Steiner, Thomas <thomas.steiner@credit-suisse.com>
Subject: FW: NNA Q3 2012

FYI

From: Aeschlimann, Richard
Sent: Thursday, October 25, 2012 12:57 PM
To: Miller, Dale
Cc: Skoglund, Peter; Studer, Adrian; Zollinger, Marco; Hirsch, Michele
Subject: NNA Q3 2012

[redacted] = Redacted by the Permanent Subcommittee on Investigations

Dale

As per your request please find below the bridge for the NNA for Q3 2012, as reported internally for PB Americas (CHF 2.4bn) vs. the externally released figure (CHF 0.2bn):

CHF [illegible]	NNA Q3 2012
PB USA (no LatAm JS)	[illegible]
PB LatAm (no LatAm JS)	[illegible]
Elimination of LatAm JS [illegible]	-0.5
PB Americas	**2.4**
ex Clariden Leu [illegible]	-0.5
50% of NNA from [redacted] [illegible]	[illegible]
Region Americas (as shown in the earnings release)	**0.2**

There are two cases that lead to the deviation between PB Americas and the Region Americas:
1) A customer transferred to us in connection with the Clariden Leu integration, left in August. It was decided that the outflow should not be performance relevant for PB Americas, i.e. the outflows were booked as a top-side on regional level.
2) 50/50 Split of the NNA generated with project [redacted] between Americas and PB Switzerland. CHF 1.6bn was deducted top-side on a regional level (credit to Region Switzerland).

Let me know if you have any further questions.

Regards,
Richard

Richard Aeschlimann
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Phone +1 212 538 9148 | Fax +1 212 322 3154
richard.aeschlimann@credit-suisse.com | www.credit-suisse.com

Permanent Subcommittee on Investigations
EXHIBIT #25

From: DeChellis, Anthony <anthony.dechellis@credit-suisse.com>
Sent: Monday, December 17, 2012 7:50 AM
To: Shafir, Robert <robert.shafir@credit-suisse.com>; Wirshba, Lewis <lewis.wirshba@credit-suisse.com>
Subject: FW: NNA 4Q12 Forecast

Sent with Good (www.good.com)

-----Original Message-----
From: Bögli, Rolf
Sent: Monday, December 17, 2012 05:14 AM Eastern Standard Time
To: Lacher, Romeo; de Ferrari, Francesco; DeChellis, Anthony; Vayloyan, Arthur; Brunner, Christoph; Bättig, Alois; Pauli, Nicole
Cc: Arni, Paul.H; Schüepp, Patrick; Rüst, Urs; Meister, Hans-Ulrich; Fruithof, Barend
Subject: NNA 4Q12 Forecast

Dear all,

Based on reported November NNA and the result of the first December week, our ambition to deliver WMC NNA of around CHF 6-7bn in 4Q12 is at risk.
With 3 weeks to go until the year comes to a close and QTD actuals of CHF 2.5bn, we still need CHF 3.5bn to reach the lower end of this ambition. This requires continued efforts on all levels and your support is very important.

In preparation of next week's PBMC meeting, please confirm/adjust your 4Q12 Forecast to Patrick Schüepp until Monday, 17.12.

Best regards,

Permanent Subcommittee on Investigations
EXHIBIT #26

Rolf

NNA-Forecast 4Q12

in CHF mn

	Actuals					
	Oct12	Nov12	Dec MTD	QTD	4Q12 FC	QTD vs. FC
Total CIC	46	706	133	884	1051	-167
Total WMC	3669	40	-1128	2581	[illegible]	-3016
o/w PBS	-127	-644	-561	-1332	0	-1332
o/w PCS	58	327	-142	243	500	-257
o/w NAB	-31	157	-10	117	162	-45
o/w CL remainder (CLEL)	-117	0	0	-117	-117	0
o/w Western Europe	-583	-1168	-511	-2262	[illegible]	-542
o/w EEMEA	786	1133	150	2069	[illegible]	-491
o/w APAC	1870	285	-34	2124	[illegible]	158
o/w Americas	2570	121	-80	2610	[illegible]	620
o/w BA other	-294	-172	0	-466	-466	0
Private Banking Total	[illegible]	744	-995	3404	[illegible]	3163

I

From: DeChellis, Anthony <anthony.dechellis@credit-suisse.com>
Sent: Saturday, December 22, 2012 10:08 AM
To: Bögli, Rolf <rolf.boegli@credit-suisse.com>
Subject: RE: Confidential : Global Client Segments metrics

Ok
Thank you
It's important that externally we show a good full year NNA for the Americas; our people are being intensely recruited.

Sent with Good (www.good.com)

-----Original Message-----
From: Bögli, Rolf
Sent: Saturday, December 22, 2012 09:27 AM Eastern Standard Time
To: DeChellis, Anthony
Subject: RE: Confidential : Global Client Segments metrics

[redacted] = Redacted by the Permanent Subcommittee on Investigations

Toni,

Let me check on this. I understand your position. To my knowledge, we are only looking into positive potential R-cases without regional shift impacts. I will get back to you.

Best,
Rolf

From: Dechellis Anthony (CS)
Sent: Samstag, 22. Dezember 2012 01:31
To: Bögli Rolf (SO)
Subject: FW: Confidential : Global Client Segments metrics

Rolf

Below you will read that we have an indication that our NNA may be restated/reduced again. i can not have a repeat of the third quarter. As I mentioned last time, besides my other concerns , we need to show the accurate growth figures for the Americas as it has an impact on employee moral and our ability to recruit. If you would like to discuss please let me know. Of course, I would also have to advise Rob who has been informed we will post NNA of $3 Billion this quarter.

Thanks

T

-----Original Message-----
From: Parekh, Minesh
Sent: Friday, December 21, 2012 12:16 PM Eastern Standard Time
To: DeChellis, Anthony
Cc: Müller, Dale; Studer, Adrian
Subject: FW: Confidential : Global Client Segments metrics

Hi Tony, see below for the answers to your questions.

On a separate not, Zurich is looking for more potential NNA positions to support the global 2012 year-end disclosure. As a consequence they are looking to transfer more of [redacted] balance into AUM. Currently the custody balance is USD 2bn of which up to USD 800m will leave the firm for tax payments in April 2013.

Best Regards and Happy Holidays.
Minesh

From: DeChellis, Anthony
Sent: Thursday, December 20, 2012 6:44 PM
To: Parekh, Minesh; Miller, Dale
Cc: Studer, Adrian
Subject: RE: Confidential : Global Client Segments metrics

What are we supposed to learn from this? MP - This is how the region is seen in Zurich, analysis was meant as a feeder into Padman's analysis

We have 14% of RM's and 15% of CIF's over 5MM? MP - In total, APAC has the greatest concentration on U/HNWI clients compared to total AuM and total number of CIFs.
APAC has the greatest concentration of U/HNW accounts per RM? MP – not available

Which region has the highest median CIF size? Household? MP - APAC has on average CHF 4.1MM per CIF versus Americas which is ranked third with 1.4MM.

Anthony DeChellis
Private Banking Americas
+1 212 538 7078 (*106 7078)

From: Parekh, Minesh
Sent: Donnerstag, 20. Dezember 2012 21:58
To: DeChellis, Anthony; Miller, Dale

Permanent Subcommittee on Investigations
EXHIBIT #27

Cc: Studer, Adrian
Subject: Confidential : Global Client Segments metrics

Hi Tony/Dale, please find below how PB America's AUM client segments compare to other Business Area's globally. This is based Assets at the bank as opposed to other views that pertain to Net Worth. The analysis was requested by Padman Perumal. Best Regards Minesh

Global Private Banking Client Segment > CHF 5m AUM Overview - October 2012

Business Area[1]	PB Americas		Private Clients Switzerland		PBS		PB APAC		PB EMEA		PB Western Europe		Total	
AUM (chf) Client Segment	CIF	% Total	CIF	% Total	CIF	% Total	CIF	% Total	CIF	% Total	CIF	% Total	CIF	% Total
>= 5m < 10m	2,334	8.1%	77	0.3%	3,490	12.2%	3,148	11.0%	1,349	4.7%	2,646	9.2%	13,044	45.4%
>= 10m < 25m	1,336	4.7%	17	0.1%	2,142	7.5%	2,886	10.1%	909	3.2%	1,618	5.6%	8,907	31.0%
>= 25m < 50m	352	1.2%	5	0.0%	642	2.2%	1,293	4.5%	357	1.2%	566	2.0%	3,215	11.2%
>= 50m < 75m	98	0.3%	1	0.0%	266	0.9%	502	1.7%	122	0.4%	117	0.4%	1,106	3.9%
>= 75m < 100m	74	0.3%	1	0.0%	101	0.4%	357	1.2%	79	0.3%	51	0.2%	663	2.3%
>= 100m < 250m	96	0.3%	0	0.0%	242	0.8%	625	2.2%	100	0.3%	83	0.3%	1,146	4.0%
>= 250m < 1b	36	0.1%	0	0.0%	71	0.2%	346	1.2%	56	0.2%	32	0.1%	541	1.9%
>= 1b	6	0.0%	0	0.0%	4	0.0%	50	0.2%	9	0.0%	11	0.0%	80	0.3%
Total	4,332	15.1%	101	0.4%	6,958	24.2%	9,207	32.1%	2,980	10.4%	5,124	17.9%	28,702	100.0%

[1] Excludes Swiss Corporate Client and Pension Fund Business

Minesh Parekh
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minesh.parekh@credit-suisse.com | www.credit-suisse.com

[redacted] = Redacted by the Permanent Subcommittee on Investigations

From: Bögli, Rolf <rolf.boegli@credit-suisse.com>
Sent: Wednesday, January 9, 2013 4:06 AM
To: DeChellis, Anthony <anthony.dechellis@credit-suisse.com>
Cc: Meister, Hans-Ulrich <hans-ulrich.meister@credit-suisse.com>; Shafir, Robert <robert.shafir@credit-suisse.com>
Subject: RE: Americas / [redacted]

Thank you, Tony.

We will include the amount in the NNA numbers. I have checked accounting guidelines and have given sign-off for this case.

Best regards,
Rolf Bögli

[redacted] = Redacted by the Permanent Subcommittee on Investigations

From: Dechellis Anthony (CS)
Sent: Dienstag, 8. Januar 2013 23:33
To: Bögli Rolf (SR)
Cc: Meister Hans-Ulrich (I); Shafir Robert (CS)
Subject: RE: Americas [redacted]
Sensitivity: Private

Dear Rolf,

Sorry for the late reply, in client meetings and client discussions until now. The meeting I just had was with Jim Garrity to review [redacted] and specifically how we can broaden our current relationship with all the entities that are connected to the family.
You can count on my support for whatever is in my power and ability. The request regarding [redacted] seems more of an accounting and governance question, changing or making exceptions to these sorts of policies clearly fall outside my scope of authority. If what you propose falls within the firms guidelines and policies, then I leave the decision to you and the CFO's office.
Again, if we can constructively assist, you have my support. It does put downward pressure on our gross margin as this client is skew to put money to work, the return is essentially T-Bills at the moment, but I will deal with margin issue as long as we all understand the underlying reasons for a decreasing gross margin.
Just as an update, of the 10B, only 250MM has been put to work in a Holt portfolio (at 40bps), the rest (many proposals and pending investments) is still on hold.....the foundation established with Fidelity for example still has 2B in cash, pending final instruction to begin investment. Roughly 1.5B is still in [redacted] stock and we hold 7B in treasury securities.
I hope this helps.

Best,

Tony

Anthony DeChellis
Private Banking Americas
+1 212 538 7078 (*108 7078)

From: Bögli, Rolf
Sent: Tuesday, January 08, 2013 11:02 AM
To: DeChellis, Anthony
Cc: Miller, Dale; Meister, Hans-Ulrich
Subject: RE: Americas [redacted]
Sensitivity: Private

Dear Tony

Currently - for Q4 reporting - WMC runs for NNA substantially below expectations. In terms of your region, latest indication from your regional BI&S team estimates approx. 2.8bn NNA compared to a predicted Forecast of 3.0bn which is an excellent result in stormy times. However, in order to support the PB division, a further [redacted] portion of 0.9bn CHF – fully reported internally and externally in the Americas region – would be a great favour for our division. Hans-Ueli would be extremely happy if you could support this. I therefore would like to ask you to review this position for Q4 classification once again. A guarantee for performance neutralization in case of future outflows for this portion can be taken for granted. For questions please feel free to contact either directly Hans-Ueli or myself.

Thank you for your cooperation and prompt feedback!

Best regards

Rolf

From: Bögli Rolf (SR)
Sent: Montag, 7. Januar 2013 18:27
To: Dechellis Anthony (CS)
Cc: Miller Dale (CS)
Subject: RE: Americas [redacted]
Sensitivity: Private

Will get back with the numbers you are asking for.

Best,
Rolf

From: Dechellis Anthony (CS)
Sent: Montag, 7. Januar 2013 18:22
To: Bögli Rolf (SR)
Cc: Miller Dale (CS)
Subject: RE: Americas [redacted]
Sensitivity: Private

Permanent Subcommittee on Investigations
EXHIBIT #28

Rolf

I'm not sure I understand. I have not approved any restatement of AuM from PB Americas. What will be reported externally for PB Americas Q4? Please advise.

Thanks

Tony

Anthony DeChellis
Private Banking Americas
+1 212 538 7078 (*108 7078)

[redacted] = Redacted by the Permanent Subcommittee on Investigations

From: Bögli, Rolf
Sent: Monday, January 07, 2013 12:05 PM
To: DeChellis, Anthony
Subject: FW: Americas [redacted]
Sensitivity: Private

Toni,

To start with: Happy New Year and all the best for 2013!!

I'm following up on the e-mail below and would like to confirm that we have a restatement posting for [redacted] in the magnitude of roughly 1bn. This seems to be already part of the forecasted 3bn for Americas. There will be no regional shifts from this case. Please don't hesitate to contact me should there be any questions.

Best regards,
Rolf Bögli

From: Bögli Rolf (SO)
Sent: Samstag, 22. Dezember 2012 15:28
To: Dechellis Anthony (CS)
Subject: RE: Confidential : Global Client Segments metrics

Toni,

Let me check on this. I understand your position. To my knowledge, we are only looking into positive potential R-cases without regional shift impacts. I will get back to you.

Best,
Rolf

From: Dechellis Anthony (CS)
Sent: Samstag, 22. Dezember 2012 01:31
To: Bögli Rolf (SO)
Subject: FW: Confidential : Global Client Segments metrics

Rolf

Below you will read that we have an indication that our NNA may be restated/reduced again. i can not have a repeat of the third quarter. As I mentioned last time, besides my other concerns , we need to show the accurate growth figures for the Americas as it has an impact on employee moral and our ability to recruit. If you would like to discuss please let me know. Of course, I would also have to advise Rob who has been informed we will post NNA of $3 Billion this quarter.

Thanks

T

-----Original Message-----
From: Parekh, Minesh
Sent: Friday, December 21, 2012 12:16 PM Eastern Standard Time
To: DeChellis, Anthony
Cc: Miller, Dale; Studer, Adrian
Subject: FW: Confidential : Global Client Segments metrics

Hi Tony, see below for the answers to your questions.

On a separate not, Zurich is looking for more potential NNA positions to support the global 2012 year-end disclosure. As a consequence they are looking to transfer more of [redacted] balance into AUM. Currently the custody balance is USD 2bn of which up to USD 800m will leave the firm for tax payments in April 2013.

Best Regards and Happy Holidays.
Minesh

From: DeChellis, Anthony
Sent: Thursday, December 20, 2012 6:44 PM
To: Parekh, Minesh; Miller, Dale
Cc: Studer, Adrian
Subject: RE: Confidential : Global Client Segments metrics

What are we supposed to learn from this? MP - This is how the region is seen in Zurich. analysis was meant as a feeder into Padman's analysis

We have 14% of RM's and 15% of CIF's over SMM? MP - In total, APAC has the greatest concentration on U/HNWI clients compared to total AuM and total number of CIFs.

APAC has the greatest concentration of U/HNW accounts per RM? MP – not available

Which region has the highest median CIF size? Household? MP - APAC has on average CHF 4.1MM per CIF versus Americas which is ranked third with 1.4MM.

Anthony DeChellis
Private Banking Americas
+1 212 538 7078 (*108 7078)

[redacted] = Redacted by the Permanent Subcommittee on Investigations

From: Parekh, Minesh
Sent: Donnerstag, 20. Dezember 2012 21:58
To: DeChellis, Anthony; Miller, Dale
Cc: Studer, Adrian
Subject: Confidential : Global Client Segments metrics

Hi Tony/Dale, please find below how PB America's AUM client segments compare to other Business Area's globally. This is based Assets at the bank as opposed to other views that pertain to Net Worth. The analysis was requested by Padman Perumal. Best Regards Minesh

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>= 250m < 1b	36	0.1%	0	0.0%	71	0.2%	346	1.2%	56	0.2%	32	0.1%	541	1.9%
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Total	4,332	15.1%	101	0.4%	6,958	24.2%	9,207	32.1%	2,980	10.4%	5,124	17.9%	28,702	100.0%

1. Excludes Swiss Corporate Client and Pension Fund Business

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minesh.parekh@credit-suisse.com | www.credit-suisse.com

From: Bluntschli, Thomas <thomas.bluntschli@credit-suisse.com>
Sent: Friday, January 11, 2013 11:09 AM
To: Studer, Adrian <adrian.studer@credit-suisse.com>
Subject: AW: RE: WG: NNA

Thanks Adrian
I am convinced that with this enhanced story we will get approval soon from Carlos.
Nice Weekend
Thomas

----- Originalnachricht -----
Von: Studer Adrian (CS)
An: Bluntschli Thomas (SOI)
Gesendet: Fri Jan 11 16:20:28 2013
Betreff: RE: WG: NNA

[redacted] = Redacted by the Permanent Subcommittee on Investigations

Hoi Thomas,

We have performed additional analysis on the accounts and enhanced the write up, including the term spread revenues on the cash in Swiss accounts. Minesh has sent the an early version of the write up to Roli, followed by a couple of edits from my side not included by the initial version. Minesh is in conversation with Roli now to ensure that have all we need.

Regards
Adrian

-----Original Message-----
From: Bluntschli, Thomas
Sent: Friday, January 11, 2013 12:58 AM
To: Parekh, Minesh; Späh, Roland; Studer, Adrian
Cc: Steiner, Thomas
Subject: RE: WG: NNA
Sensitivity: Private

Minesh, Roli

This is quite difficult to communicate. Given the rather weak granularity, we need to create a more powerful story in the sense of making more around the existing weak figures in the sense of: [redacted] consists of xx accounts, all held in the xx branch, covered by 2 senior RMs xx and yy which do high interaction level.....blabla. Might not be relevant but sounds rather good. Furthermore, story has to include explanations for Carlos in the sense of: PB USA does not yet have a granular client level profitability calculation, hence a couple of revenue components are not directly attributable to accounts. Nevertheless, for [redacted] directly attributable commission and fees as well as trading revenues amount to USD 7.5bn on an average asset size of xxbn, amounting to 13 bps GM in 2012. Please note that the overall profitability - including revenues not attributable on client level - will be significantly higher. Blabla, also mentioning IB revenues thanks to [redacted] relation.

I have a question re term spread. Don't we have lot of cash deposits? If yes, don't we get a huge credit for the term spread out of treasury revenues? If yes, can't we allocate this benefit to the client pushing GM significantly up?

I guess with this story we might be able to conclude the case.

Thanks for your efforts
Thomas

Permanent Subcommittee on Investigations
EXHIBIT #29

-----Original Message-----
From: Parekh Minesh (CS)
Sent: Donnerstag, 10. Januar 2013 23:34
To: Späh Roland (SOIF 2); Studer Adrian (CS)
Cc: Steiner Thomas (CS); Bluntschli Thomas (SOI)
Subject: RE: WG: NNA

Hi Roli, per your request copying in Thomas,

We do not have the account break-down for all the FY 2012 revenues since most of the revenues were generated in IB for the FX trades USD 7-8m (source RM) and a further USD 3m in PB. We could assume the custody revenue is nominal. If we do this then this would mean using the USD 7.5bn as the denominator which on a conservative basis gives 13bp Gross Margin.

Best Regards
Minesh

-----Original Message-----
From: Späh, Roland
Sent: Thursday, January 10, 2013 3:12 PM
To: Studer, Adrian; Parekh, Minesh
Cc: Steiner, Thomas
Subject: RE: WG: NNA

Hi there,

Sorry, but I have to bother you again... Carlos asks for further details with regards to the revenues and assets.

For the discussion with Carlos we split the assets of the client into an AuM and a Custody leg. Within the AuM and Custody leg we made an additional differentiation as you can see below. Is it possible to get the effective revenues split into these structure somehow?

AuM-leg (USD 7.5bn) / actively advised
1) USD 1.3bn DAF - charity vehicle
2) USD 4.4bn advisory assets reclassified from Custody to AuM earlier this year; approved by Group Finance
3) USD 1.8bn belong to client's danghter – initial inflow classified as AuM based on active portfolio management (Q2/2012)

Custody-leg (USD 2.0bn)
4) USD 1bn: No advisory services provided, assets will leave the bank in Q1/Q2 for a tax payment
5) USD 1bn: Investible assets which will be used to fund new investments based on Credit Suisse's advise

Revenues
1)
2)
3)
4)
5)

Best regards
Roland

-----Original Message-----
From: Studer Adrian (CS)
Sent: Donnerstag, 10. Januar 2013 17:41

To: Späh Roland (SOIF 2); Parekh Minesh (CS)
Cc: Steiner Thomas (CS)
Subject: RE: WG: NNA

Roli, thank you.
Rgds
Adrian

-----Original Message-----
From: Späh, Roland
Sent: Thursday, January 10, 2013 12:13 PM
To: Parekh, Minesh
Cc: Studer, Adrian; Steiner, Thomas
Subject: RE: WG: NNA

Great. Thank you! I will inform you as soon as the final decision has been communicated.

-----Original Message-----
From: Parekh Minesh (CS)
Sent: Donnerstag, 10. Januar 2013 16:50
To: Späh Roland (SOIF 2)
Cc: Studer Adrian (CS); Steiner Thomas (CS)
Subject: RE: WG: NNA

Hi Roli, 12.5bp is confirmed for 2012 AUM. Thanks Minesh

-----Original Message-----
From: Späh, Roland
Sent: Thursday, January 10, 2013 9:48 AM
To: Parekh, Minesh
Cc: Studer, Adrian; Steiner, Thomas
Subject: RE: WG: NNA

Hi Minesh

Thank you for this. We just had the call with Carlos. Basically it looks good. Two things where we need to follow-up:

1) What is the overall profitability on the AuM? We told Carlos it is between 12-15bps as we mentioned in the Q1 discussion. Can you confirm this?

2) Confirmation that PB USA management is still fine with the reclassification. Rolf Bögli is in charge to confirm this - so no need for action from your side.

Best regards
Roli

-----Original Message-----
From: Parekh Minesh (CS)
Sent: Donnerstag, 10. Januar 2013 01:00
To: Späh Roland (SOIF 2)
Cc: Studer Adrian (CS); Steiner Thomas (CS)
Subject: RE: WG: NNA

Note there are around 50 accounts of which 10 have [redacted] stock.

[redacted] = Redacted by the Permanent Subcommittee on Investigations

-----Original Message-----
From: Parekh, Minesh
Sent: Wednesday, January 09, 2013 6:44 PM
To: Späh, Roland
Cc: Studer, Adrian; Steiner, Thomas
Subject: RE: WG: NNA

Roland

Longstanding and strategic client relationship with Credit Suisse which now has new dynamics with the [redacted]

Investments have now occurred in Holt, Treasuries and Equities from the proceeds of the [redacted] stock position that the RM has been liquidating over the past 6 months.

The key event for PB USA, the clients wealth manager of choice, occurred on February 22, when the client [redacted]

We did not include all the client assets as Net New Assets for Credit Suisse at that time due to the undefined nature of the tax liability and the potential for the clients to withdraw assets to diversify their risk. We now have more information on the tax liability which is expected to be in the region of USD 800m. This leaves a potential additional USD 1.2 bn in assets classified as custody. This is currently held in [redacted] stock which will be liquidated to reduce concentration risk as well as to fund other investments. We request to re-classify USD 1 bn to AUM based on this defined tax liability being more tangible and the PB opportunity to further invest the assets into the Holt programs as well as other assets.

Let me know if you need more.

Regards
Minesh

-----Original Message-----
From: Studer, Adrian
Sent: Wednesday, January 09, 2013 4:05 PM
To: Parekh, Minesh; Steiner, Thomas
Cc: Späh, Roland
Subject: RE: WG: NNA

Just got off the phone with Thomas - the plan is to present the case to Group Controlling tomorrow and thus the work as outlined below is critical.

The tenor of the message should be that the relationship with [redacted] has evolved in a positive way and fully supports the advisory role of the bank. We feel comfortable, after a more conservative assessment earlier in the year, that the remaining free investable assets can be reclassified to AuM. The listed trigger events and investment activities (emphasis on the different events rather than the absolute amounts) are supporting the conclusion that this is a very strong client relationship. We are deciding to keep $900mm in custody for anticipated tax payments and other miscellaneous expenses. The whole client relationship and thus all freely investable assets are now considered AuM.

In addition to the write up it is important to provide an over view of the number of CIFs or asset positions and type of investments they represent. Also information has to be provided on how many additional asset positions we are now re-classing. This information should be readily available from the monthly spreadsheets and should be included as part of the material forming the basis for the discussion with Group Controlling

[redacted] = Redacted by the Permanent Subcommittee on Investigations

-----Original Message-----
From: Studer, Adrian
Sent: Wednesday, January 09, 2013 4:45 PM
To: Parekh, Minesh; Steiner, Thomas; Späh, Roland
Subject: RE: WG: NNA

As discussed with Minesh a few minutes ago, the amount is $1bn and not CHF.

Separately, we have been asked to prepare documentation for a possible presentation of the case to Group Controlling.

Minesh will lead the preparation of a document containing trigger events in Q3 and Q4 of 2012 that support the reclassification of the remaining free investable assets in the [redacted] relationship. We have to provide a list of investment events including HOLT investments, sales of [redacted] shares, reinvestment in Treasury securities, and other investment activities. Input from Jim H and Jim M might be critical. Key is the message that of the remaining custody assets, after subtracting anticipated tax payments and other expenses of about $900mm, represent freely investable assets that we can reclassify from custody to AUM based on the overall relationship and the listed trigger events. A key comment would also be the statement that the relationship is evolving according to plan, providing evidence of a strong customer relationship.

If necessary, Roli can then finalize the documentation tomorrow morning NY time and first thing in the morning NY business hours we can then touch base one more time before Roli and or Thomas approach Group Controlling.

Regards
Adrian

-----Original Message-----
From: Studer, Adrian
Sent: Wednesday, January 09, 2013 1:59 PM
To: Parekh, Minesh; Steiner, Thomas; Späh, Roland
Subject: Fw: WG: NNA

Please execute and confirm execution with chf 1 bn.

Thank you

Adrian Studer
Managing Director
Private Banking
Credit Suisse

Tel +1 212 325 2892
Mobile [redacted]

----- Original Message -----
From: Bluntschli, Thomas
To: Studer, Adrian; Späh, Roland
Sent: Wed Jan 09 12:42:11 2013
Subject: WG: NNA

Pls find below instructions
Many thanks for execution

Regards
Thomas

----- Originalnachricht -----
Von: Schüepp Patrick (SOPF)
An: Bluntschli Thomas (SOI)
Gesendet: Wed Jan 09 18:23:41 2013
Betreff: NNA

Thomas

Bitte gemaess CEO/CFO Call-Besprechung von HUM/Rolf NNA PB Americas-Verbuchung (1.0bn) ausloesen, danke
Patrick Schuepp
sent by Blackberry

To: Shafir, Robert <robert.shafir@credit-suisse.com>
From: Vasan, Philip </O=CREDIT-SUISSE/OU=GL/CN=RECIPIENTS/CN=PVASAN>
Cc:
Bcc:
Received Date: 2013-06-10 18:21:15 EST
Subject: RE: Feedback from new RMs

Agreed. Turning heat up on NNA. Although most of the gross outflows are due to special sits [redacted] tax payment, deal rolloffs) rather than transfers to competitors (two RMs aside), the small net increase is still not OK. I don't think this team really campaigns for the business – yet.

Phil

[redacted] = Redacted by the Permanent Subcommittee on Investigations

From: Shafir, Robert
Sent: Monday, June 10, 2013 7:13 PM
To: Vasan, Philip
Subject: RE: Feedback from new RMs

That is good to hear. We need some fresh blood and some nna.

---Original Message---
From: Vasan, Philip
Sent: Monday, June 10, 2013 05:41 PM Eastern Standard Time
To: Shafir, Robert
Subject: Feedback from new RMs

Rob

Met with new lateral RM recruits on their first day to get them to think differently from the start. Feedback below

From: Allen, Penelope
To: Vasan, Philip
Subject: Feedback from PBUSA QuickStart!

Philip, I thought you would like to see the comments and overall score (on a 1-5 scale) from last week's QuickStart. The comments are very high praise indeed.

Permanent Subcommittee on Investigations
EXHIBIT #30

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

Permanent Subcommittee on Investigations
EXHIBIT #31a

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.

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.

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-l, 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-l 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-l 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-l.

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-l 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;

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

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

112TH CONGRESS, 1st Session | SENATE | TREATY DOC. 112–1

PROTOCOL AMENDING TAX CONVENTION WITH SWISS CONFEDERATION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL AMENDING 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

JANUARY 26, 2011.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
99–112 WASHINGTON : 2011

Permanent Subcommittee on Investigations
EXHIBIT #31b

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 26, 2011.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to their ratification, the Protocol Amending 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, signed on September 23, 2009, at Washington, as corrected by an exchange of notes effected November 16, 2010 (the "proposed Protocol") and a related agreement effected by an exchange of notes on September 23, 2009 (the "related Agreement"). I also transmit for the information of the Senate the report of the Department of State, which includes an Overview of the proposed Protocol and related Agreement.

The proposed Protocol and related Agreement provide for more robust exchange of information between tax authorities in the two countries to facilitate the administration of each country's tax laws. They generally follow the current U.S. Model Income Tex Convention and the Organization for Economic Cooperation and Development standards for exchange of tax information. The proposed Protocol and related Agreement also provide for mandatory arbitration of certain cases that the competent authorities of each country have been unable to resolve after a reasonable period of time.

I recommend that the Senate give early and favorable consideration to the proposed Protocol and related Agreement and give its advice and consent to their ratification.

BARACK OBAMA.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, December 8, 2010.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to their transmission to the Senate for advice and consent to ratification, the Protocol Amending 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, signed on September 23, 2009, at Washington, as corrected by an exchange of notes effected November 16, 2010 ("proposed Protocol"), together with a related agreement effected by an exchange of notes on the same day ("related Agreement"). The proposed Protocol and related Agreement were negotiated to bring the existing income tax Convention with Switzerland into closer conformity with current U.S. tax treaty policy, and in recognition of the importance of the United States' economic relations with Switzerland. I recommend that the proposed Protocol and related Agreement be transmitted to the Senate for its advice and consent to ratification.

The proposed Protocol and related Agreement provide for more robust exchange of information between tax authorities in the two countries to facilitate the administration of each country's tax laws. They generally follow the current U.S. Model Income Tax Convention and the current Organization for Economic Cooperation and Development standards for exchange of information. The proposed Protocol and related Agreement also provide for mandatory arbitration of certain cases that the competent authorities of each country have been unable to resolve after a reasonable period of time. An overview of key provisions of the proposed Protocol and related Agreement is enclosed with this report.

The proposed Protocol is self-executing. The Department of the Treasury and the Department of State cooperated in the negotiation of the proposed Protocol and related Agreement, and the Department of the Treasury joins the Department of State in recommending that the proposed Protocol and related Agreement be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted.

HILLARY RODHAM CLINTON.

Enclosures: as stated.

OVERVIEW

The proposed Protocol amending the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income ("proposed Protocol") and the related agreement effected by exchange of notes ("related Agreement") were negotiated to bring the existing convention ("existing Convention"), signed in 1996, into closer conformity with current U.S. tax treaty policy regarding exchange of information and to include mandatory arbitration procedures for certain cases that the competent authorities of the countries have been unable to resolve after a reasonable period of time. There are, as with all bilateral tax conventions, some variations from the language of the current U.S. Model Income Tax Convention. In the proposed Protocol and related Agreement, these minor differences reflect particular aspects of Swiss law and treaty policy. However, the proposed Protocol and related Agreement and generally follow the current U.S. Model Income Tax Convention and the Organization for Economic Cooperation and Development standard for exchange of tax information.

EXCHANGE OF INFORMATION

The proposed Protocol and related Agreement would replace the existing Convention's tax information exchange provisions with updated rules that are consistent with current U.S. tax treaty practice. The proposed Protocol and related Agreement allow the tax authorities of each country to exchange information relevant to carrying out the provisions of the Convention or the domestic tax laws of either country, including information that would otherwise be protected by the bank secrecy laws of either country.

DISPUTE RESOLUTION THROUGH MANDATORY BINDING ARBITRATION

The proposed Protocol and related Agreement update the provisions of the existing Convention with respect to the mutual agreement procedure by incorporating mandatory arbitration of certain cases that the competent authorities of the United States and the Swiss Confederation have been unable to resolve after a reasonable period of time. The arbitration provisions in the proposed Protocol and related Agreement are similar to other mandatory arbitration provisions that have recently been included in other U.S. bilateral tax treaties and that are currently in force.

INDIVIDUAL RETIREMENT ACCOUNTS

The proposed Protocol updates the provisions of the existing Convention to provide that individual retirement accounts are eligible for the benefits afforded a pension under the Convention.

VIII

ENTRY INTO FORCE

The proposed Protocol would enter into force when the United States and the Swiss Confederation exchange instruments of ratification. The proposed Protocol would have effect, with respect to taxes withheld at source, for amounts paid or credited on or after the first day of January of the year following entry into force of the Protocol. With respect to tax information exchange, the proposed Protocol would have effect with respect to requests for bank information to information that relates to any date beginning on or after the date of signature of the proposed Protocol and, with respect to all other cases, would have effect with respect to requests for information that relate to taxable periods beginning on or after the first day of January of the year following the date of signature. The mandatory arbitration provision would have effect with respect both to cases that are under consideration by the competent authorities as of the date on which the Protocol enters into force and to cases that come under consideration after that date. The related Agreement would enter into force on the date of entry into force of the proposed Protocol and would be annexed to the Convention as Annex A thereto and would be an integral part of the Convention.

PROTOCOL

AMENDING 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 UNITED STATES OF AMERICA

AND

THE SWISS CONFEDERATION

Desiring to conclude a Protocol to amend 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 (hereinafter referred to as the "Convention"),

Have agreed as follows:

Article 1

Paragraph 3 of Article 10 of the Convention shall be deleted and replaced by the following:

"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 pension or other retirement arrangement which is a resident of the other Contracting State, or an individual retirement savings plan set up in, and owned by a resident of, the other Contracting State, and the competent authorities of the Contracting States agree that the pension or retirement arrangement, or the individual retirement savings plan, in a Contracting State generally corresponds to a pension or other retirement arrangement, or to an individual retirement savings plan, recognized for tax purposes in the other Contracting State. This paragraph shall not apply if such pension or retirement arrangement, or such individual retirement savings plan, controls the company paying the dividend."

Article 2

Paragraph 6 of Article 25 of the Convention shall be deleted and replaced by the following paragraphs:

"6. Where, pursuant to a mutual agreement procedure under this Article, the competent authorities have endeavored but are unable to reach a complete agreement, the case shall be resolved through arbitration conducted in the manner prescribed by, and subject to, the requirements of paragraph 7 and any rules or procedures agreed upon by the Contracting States if:

a) tax returns have been filed with at least one of the Contracting States with respect to the taxable years at issue in the case;

b) the case is not a particular case that both competent authorities agree, before the date on which arbitration proceedings would otherwise have begun, is not suitable for determination by arbitration; and

c) all concerned persons agree according to provisions of subparagraph d) of paragraph 7.

An unresolved case shall not, however, be submitted to arbitration if a decision on such case has already been rendered by a court or administrative tribunal of either Contracting State.

7. For the purposes of paragraph 6 and this paragraph, the following rules and definitions shall apply:

a) the term "concerned person" means the presenter of a case to a competent authority for consideration under this Article and all other persons, if any, whose tax liability to either Contracting State may be directly affected by a mutual agreement, arising from that consideration;

b) the "commencement date" for a case is the earliest date on which the information necessary to undertake substantive consideration for a mutual agreement has been received by both competent authorities;

c) arbitration proceedings in a case shall begin on the later of:

i) two years after the commencement date of that case, unless both competent authorities have previously agreed to a different date, and

ii) the earliest date upon which the agreement required by subparagraph d) has been received by both competent authorities;

d) the concerned person(s), and their authorized representatives or agents, must agree prior to the beginning of arbitration proceedings not to disclose to any other person any information received during the course of the arbitration proceeding from either Contracting State or the arbitration panel, other than the determination of such panel;

e) unless any concerned person does not accept the determination of an arbitration panel the determination shall constitute a resolution by mutual agreement under this Article and shall be binding on both Contracting States with respect to that case only; and

f) for purposes of an arbitration proceeding under paragraph 6 and this paragraph, the members of the arbitration panel and their staffs shall be involved "persons or authorities" to whom information may be disclosed under Article 26 of the Convention."

Article 3

Article 26 (Exchange of Information) of the Convention shall be deleted and replaced by the following provisions:

"ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as may be relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration, assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of such functions. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the requested State authorizes such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic use.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information, the tax authorities of the requested Contracting State, if necessary to comply with its obligations under this paragraph, shall have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws."

Article 4

Paragraph 10 of the Protocol to the Convention shall be deleted and replaced by the following new paragraph 10.

"10. With reference to Article 26 (Exchange of Information)

a) It is understood that the competent authority of a Contracting State shall provide the following information to the competent authority of the requested State when making a request for information under Article 26 of the Convention:

i) information sufficient to identify the person under examination or investigation (typically, name and, to the extent known, address, account number or similar identifying information);

ii) the period of time for which the information is requested;

iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;

iv) the tax purpose for which the information is sought; and

v) the name and, to the extent known, the address of any person believed to be in possession of the requested information.

b) The purpose of referring to information that may be relevant is intended to provide for exchange of information in tax matters to the widest possible extent without allowing the Contracting States to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While paragraph 10(a) contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, subparagraphs (i) through (v) of paragraph 10(a) nevertheless are to be interpreted in order not to frustrate effective exchange of information.

c) If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under Article 26 of the Convention in the form of authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings).

d) Although Article 26 of the Convention does not restrict the possible methods for exchanging information, it shall not commit a Contracting State to exchange information on an automatic or spontaneous basis. The Contracting States expect to provide information to one another necessary for carrying out the provisions of the Convention.

e) It is understood that in the case of an exchange of information under Article 26 of the Convention, the administrative procedural rules regarding a taxpayer's rights (such as the right to be notified or the right to appeal) provided for in the requested State remain applicable before the information is exchanged with the requesting State. It is further understood that these rules are intended to provide the taxpayer a fair procedure and not to prevent or unduly delay the exchange of information process."

Article 5

1. This Protocol 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. This Protocol shall enter into force upon the exchange of instruments of ratification. Its provisions shall have effect:

a) in respect of tax withheld at source, for amounts paid or credited on or after the first January of the year following the entry into force of this Protocol;

b) in respect of Articles 3 and 4 of this Protocol, to requests made on or after the date of entry into force of this Protocol:

i) regarding information described in paragraph 5 of Article 26 of the Convention, to information that relates to any date beginning on or after the date of signature of this Protocol, and

ii) in all other cases, to information that relates to taxable periods beginning on or after the first January of the year following the date of signature of this Protocol.

c) in respect of paragraphs 6 and 7 of Article 25 of the Convention, with respect to

i) cases that are under consideration by the competent authorities as of the date on which this Protocol enters into force, and

ii) cases that come under such consideration after that time,

and the commencement date for a case described in clause i) of this subparagraph shall be the date on which this Protocol enters into force.

DONE at Washington, in duplicate, this 23rd day of September, 2009, in the English and German languages, the two texts having equal authenticity.

FOR THE UNITED STATES OF AMERICA: FOR THE SWISS CONFEDERATION:

XIV

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Schweizerische Botschaft in den Vereinigten Staaten von Amerika

The Embassy of Switzerland presents its compliments to the United States Department of State and, referring to the Protocol (the "Protocol") signed today between the Swiss Confederation and the United States of America amending the Convention for the Avoidance of Double Taxation with Respect to Taxes on Income signed in Washington on October 2, 1996, and the protocol signed in Washington on October 2, 1996, (the "Convention"), and on behalf of the Government of Switzerland has the honor to propose the following:

1. In respect of any case where the competent authorities have endeavored but are unable to reach an agreement under Article 25 of the Convention regarding the application of the Convention, binding arbitration shall be used to determine such application, unless the competent authorities agree that the particular case is not suitable for determination by arbitration. If an arbitration proceeding under paragraph 6 of Article 25 commences (the Proceeding), the following rules and procedures shall apply.

a) The Proceeding shall be conducted in the manner prescribed by, and subject to the requirements of, paragraphs 6 and 7 of Article 25 and these rules and procedures, as completed by any other rules and procedures agreed upon by the competent authorities pursuant to subparagraph q) below.

b) The determination reached by an arbitration panel in the Proceeding shall be limited to a determination regarding the amount of income, expense or tax reportable to the Contracting States.

c) Notwithstanding the initiation of the Proceeding, the competent authorities may reach a mutual agreement to resolve a case and terminate the Proceeding. Correspondingly, a concerned person may withdraw a request for the competent authorities to engage in the Mutual Agreement Procedure (and thereby terminate the Proceeding) at any time.

d) The requirements of subparagraph d) of paragraph 7 of Article 25 shall be met when the competent authorities have each received from each concerned person a statement agreeing that the concerned person and each person acting on the concerned person's behalf shall not disclose to any other person any information received during the course

of the Proceeding from either Contracting State or the arbitration panel, other than the determination of the Proceeding. A concerned person that has the legal authority to bind any other concerned person(s) on this matter may do so in a comprehensive statement.

e) Each Contracting State shall have 90 days from the date on which the Proceeding begins to send a written communication to the other Contracting State appointing one member of the arbitration panel. The members appointed shall not be employees of the tax administration of the Contracting State which appoints them. Within 60 days of the date on which the second such communication is sent, the two members appointed by the Contracting States shall appoint a third member, who shall serve as Chair of the panel. If the members appointed by the Contracting States fail to agree upon the third member, these members shall be regarded as dismissed and each Contracting State shall appoint a new member of the panel within 30 days of the dismissal of the original members. The competent authorities shall develop a non-exclusive list of individuals with familiarity in international tax matters who may potentially serve as the Chair of the panel. In any case, the Chair shall not be a citizen or resident of either Contracting State.

f) The arbitration panel may adopt any procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Article 25 or of this note.

g) Each of the Contracting States shall be permitted to submit, within 60 days of the appointment of the Chair of the arbitration panel, a Proposed Resolution describing the proposed disposition of the specific monetary amounts of income, expense or taxation at issue in the case, and a supporting Position Paper, for consideration by the arbitration panel. Copies of the Proposed Resolution and supporting Position Paper shall be provided by the panel to the other Contracting State on the date on which the later of the submissions is submitted to the panel. In the event that only one Contracting State submits a Proposed Resolution within the allotted time, then that Proposed Resolution shall be deemed to be the determination of the panel in that case and the Proceeding shall be terminated. Each of the Contracting States may, if it so desires, submit a Reply Submission to the panel within 120 days of the appointment of its Chair, to address any points raised by the Proposed Resolution or Position Paper submitted by the other Contracting State. Additional information may be submitted to the arbitration panel only at its request, and copies of the panel's request and the Contracting State's response shall be provided to the other Contracting State on the

date on which the request or the response is submitted. Except for logistical matters such as those identified in subparagraphs l), n) and o) below, all communications from the Contracting States to the arbitration panel, and vice versa, shall take place only through written communications between the designated competent authorities and the Chair of the panel.

h) The presenter of the case to the competent authority of a Contracting State shall be permitted to submit, within 90 days of the appointment of the Chair of the arbitration panel, a Position Paper for consideration by the arbitration panel. Copies of the Position Paper shall be provided by the panel to the Contracting States on the date on which the later of the submissions of the Contracting States is submitted to the panel.

i) The arbitration panel shall deliver a determination in writing to the Contracting States within six months of the appointment of its Chair. The panel shall adopt as its determination one of the Proposed Resolutions submitted by the Contracting States.

j) The determination of the arbitration panel shall pertain to the application of the Convention in a particular case, and shall be binding on the Contracting States. The determination of the panel shall not state a rationale. It shall have no precedential value.

k) As provided in subparagraph e) of paragraph 7 of Article 25, the determination of an arbitration panel shall constitute a resolution by mutual agreement under Article 25. Each concerned person must, within 30 days of receiving the determination of the panel from the competent authority to which the case was first presented, advise that competent authority whether that concerned person accepts the determination of the panel. In the event the case is in litigation, each concerned person who is a party to the litigation must also advise, within the same time frame, the relevant court of its acceptance of the determination of the panel as the resolution by mutual agreement and withdraw from the consideration of the court the issues resolved through the Proceeding. If any concerned person fails to so advise the relevant competent authority and relevant court within this time frame, the determination of the panel shall be considered not to have been accepted in that case. Where the determination of the panel is not accepted, the case may not subsequently be the subject of a Proceeding.

l) Any meeting(s) of the arbitration panel shall be in facilities provided by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case.

m) The treatment of any associated interest or penalties is outside the scope of the Proceeding and shall be determined by applicable domestic law of the Contracting State(s) concerned.

n) No information relating to the Proceeding (including the panel's determination) may be disclosed by the members of the arbitration panel or their staffs or by either competent authority, except as permitted by the Convention and the domestic laws of the Contracting States. In addition, all material prepared in the course of, or relating to, the Proceeding shall be considered to be information exchanged between the Contracting States. All members of the arbitration panel and their staffs must agree in statements sent to each of the Contracting States in confirmation of their appointment to the arbitration panel to abide by and be subject to the confidentiality and nondisclosure provisions of Article 26 (Exchange of Information) of the Convention and the applicable domestic laws of the Contracting States. In the event those provisions conflict, the most restrictive condition shall apply.

o) The fees and expenses shall be borne equally by the Contracting States. In general, the fees of members of the arbitration panel shall be set at the fixed amount of $2,000 (two thousand United States dollars) per day or the equivalent amount in Swiss francs, subject to modification by the competent authorities. In general, the expenses of members of the arbitration panel shall be set in accordance with the International Centre for Settlement of Investment Disputes (ICSID) Schedule of Fees for arbitrators (as in effect on the date on which the arbitration proceedings begin), subject to modification by the competent authorities. Any fees for language translation shall also be borne equally by the Contracting States. Meeting facilities, related resources, financial management, other logistical support, and general administrative coordination of the Proceeding shall be provided, at its own cost, by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case. Any other costs shall be borne by the Contracting State that incurs them.

p) For purposes of paragraphs 6 and 7 of Article 25 and this paragraph, each competent authority shall confirm in writing to the other competent authority and to the concerned person(s) the date of its receipt of the information necessary to undertake substantive consideration for a mutual agreement. Such information shall be submitted to the competent authorities under relevant internal rules and procedures of each of the Contracting States. However, this information shall not be considered received until both competent authorities have received copies of all materials submitted to either

Contracting State by the concerned person(s) in connection with the mutual agreement procedure.

q) The competent authorities of the Contracting States may complete the above rules and procedures as necessary to more effectively implement the intent of paragraph 6 of Article 25 to eliminate double taxation.

2. It is understood that paragraph 5 of Article 26 of the Convention does not preclude a Contracting State from invoking paragraph 3 of Article 26 to refuse to supply information held by a bank, financial institution, a person acting in an agency or fiduciary capacity or information relating to ownership interests. However, such refusal must be based on reasons unrelated to the person's status as a bank, financial institution, agent, fiduciary, nominee, or the fact that the information relates to ownership interests. For instance, a legal representative acting for a client may be acting in an agency capacity but for any information protected as a confidential communication between attorneys, solicitors or other admitted legal representatives and their clients, paragraph 3 of Article 26 continues to provide a possible basis for declining to supply the information.

If the above proposal is acceptable to the Government of the United States of America, the Embassy of Switzerland proposes that this Note and the Department of State's reply reflecting such acceptance shall constitute an agreement between the two Governments that shall enter into force on the date of entry into force of the Protocol and shall be annexed to the Convention as Annex A thereto and shall therefore be an integral part of the Convention.

The Embassy of Switzerland avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration.

Washington, D.C. September 23, 2009

United States Department of State
Washington, D.C.

XIX

The Department of State acknowledges receipt of the note dated September 23, 2009, from the Embassy of Switzerland which states:

"The Embassy of Switzerland presents its compliments to the United States Department of State and, referring to the Protocol (the "Protocol") signed today between the Swiss Confederation and the United States of America amending the Convention for the Avoidance of Double Taxation with Respect to Taxes on Income signed in Washington on October 2, 1996, and the protocol signed in Washington on October 2, 1996, (the "Convention"), and on behalf of the Government of Switzerland has the honor to propose the following:

1. In respect of any case where the competent authorities have endeavored but are unable to reach an agreement under Article 25 of the Convention regarding the application of the Convention, binding arbitration shall be used to determine such application, unless the competent authorities agree that the particular case is not suitable for determination by arbitration. If an arbitration proceeding under paragraph 6 of Article 25 commences (the Proceeding), the following rules and procedures shall apply.

a) The Proceeding shall be conducted in the manner prescribed by, and subject to the requirements of, paragraphs 6 and 7 of Article 25 and these rules and procedures, as completed by any other rules and procedures agreed upon by the competent authorities pursuant to subparagraph q) below.

b) The determination reached by an arbitration panel in the Proceeding shall be limited to a determination regarding the amount of income, expense or tax reportable to the Contracting States.

c) Notwithstanding the initiation of the Proceeding, the competent authorities may reach a mutual agreement to resolve a case and terminate the Proceeding. Correspondingly, a concerned person may withdraw a request for the

competent authorities to engage in the Mutual Agreement Procedure (and thereby terminate the Proceeding) at any time.

d) The requirements of subparagraph d) of paragraph 7 of Article 25 shall be met when the competent authorities have each received from each concerned person a statement agreeing that the concerned person and each person acting on the concerned person's behalf shall not disclose to any other person any information received during the course of the Proceeding from either Contracting State or the arbitration panel, other than the determination of the Proceeding. A concerned person that has the legal authority to bind any other concerned person(s) on this matter may do so in a comprehensive statement.

e) Each Contracting State shall have 90 days from the date on which the Proceeding begins to send a written communication to the other Contracting State appointing one member of the arbitration panel. The members appointed shall not be employees of the tax administration of the Contracting State which appoints them. Within 60 days of the date on which the second such communication is sent, the two members appointed by the Contracting States shall appoint a third member, who shall serve as Chair of the panel. If the members appointed by the Contracting States fail to agree upon the third member, these members shall be regarded as dismissed and each Contracting State shall appoint a new member of the panel within 30 days of the dismissal of the original members. The competent authorities shall develop a non-exclusive list of individuals with familiarity in international tax matters who may potentially serve as the Chair of the panel. In any case, the Chair shall not be a citizen or resident of either Contracting State.

f) The arbitration panel may adopt any procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Article 25 or of this note.

g) Each of the Contracting States shall be permitted to submit, within 60 days of the appointment of the Chair of the arbitration panel, a Proposed Resolution describing the proposed disposition of the specific monetary amounts of income, expense or taxation at issue in the case, and a supporting Position Paper, for consideration by the arbitration panel. Copies of the Proposed Resolution and supporting Position Paper shall be provided by the panel to the other Contracting State on the date on which the later of the submissions is

submitted to the panel. In the event that only one Contracting State submits a Proposed Resolution within the allotted time, then that Proposed Resolution shall be deemed to be the determination of the panel in that case and the Proceeding shall be terminated. Each of the Contracting States may, if it so desires, submit a Reply Submission to the panel within 120 days of the appointment of its Chair, to address any points raised by the Proposed Resolution or Position Paper submitted by the other Contracting State. Additional information may be submitted to the arbitration panel only at its request, and copies of the panel's request and the Contracting State's response shall be provided to the other Contracting State on the date on which the request or the response is submitted. Except for logistical matters such as those identified in subparagraphs l), n) and o) below, all communications from the Contracting States to the arbitration panel, and vice versa, shall take place only through written communications between the designated competent authorities and the Chair of the panel.

h) The presenter of the case to the competent authority of a Contracting State shall be permitted to submit, within 90 days of the appointment of the Chair of the arbitration panel, a Position Paper for consideration by the arbitration panel. Copies of the Position Paper shall be provided by the panel to the Contracting States on the date on which the later of the submissions of the Contracting States is submitted to the panel.

i) The arbitration panel shall deliver a determination in writing to the Contracting States within six months of the appointment of its Chair. The panel shall adopt as its determination one of the Proposed Resolutions submitted by the Contracting States.

j) The determination of the arbitration panel shall pertain to the application of the Convention in a particular case, and shall be binding on the Contracting States. The determination of the panel shall not state a rationale. It shall have no precedential value.

k) As provided in subparagraph e) of paragraph 7 of Article 25, the determination of an arbitration panel shall constitute a resolution by mutual agreement under Article 25. Each concerned person must, within 30 days of receiving the determination of the panel from the competent authority to which the case was first presented, advise that competent authority whether

that concerned person accepts the determination of the panel. In the event the case is in litigation, each concerned person who is a party to the litigation must also advise, within the same time frame, the relevant court of its acceptance of the determination of the panel as the resolution by mutual agreement and withdraw from the consideration of the court the issues resolved through the Proceeding. If any concerned person fails to so advise the relevant competent authority and relevant court within this time frame, the determination of the panel shall be considered not to have been accepted in that case. Where the determination of the panel is not accepted, the case may not subsequently be the subject of a Proceeding.

l) Any meeting(s) of the arbitration panel shall be in facilities provided by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case.

m) The treatment of any associated interest or penalties is outside the scope of the Proceeding and shall be determined by applicable domestic law of the Contracting State(s) concerned.

n) No information relating to the Proceeding (including the panel's determination) may be disclosed by the members of the arbitration panel or their staffs or by either competent authority, except as permitted by the Convention and the domestic laws of the Contracting States. In addition, all material prepared in the course of, or relating to, the Proceeding shall be considered to be information exchanged between the Contracting States. All members of the arbitration panel and their staffs must agree in statements sent to each of the Contracting States in confirmation of their appointment to the arbitration panel to abide by and be subject to the confidentiality and nondisclosure provisions of Article 26 (Exchange of Information) of the Convention and the applicable domestic laws of the Contracting States. In the event those provisions conflict, the most restrictive condition shall apply.

o) The fees and expenses shall be borne equally by the Contracting States. In general, the fees of members of the arbitration panel shall be set at the fixed amount of $2,000 (two thousand United States dollars) per day or the equivalent amount in Swiss francs, subject to modification by the competent authorities. In general, the expenses of members of the arbitration panel shall be set in accordance with the International Centre for Settlement of

Investment Disputes (ICSID) Schedule of Fees for arbitrators (as in effect on the date on which the arbitration proceedings begin), subject to modification by the competent authorities. Any fees for language translation shall also be borne equally by the Contracting States. Meeting facilities, related resources, financial management, other logistical support, and general administrative coordination of the Proceeding shall be provided, at its own cost, by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case. Any other costs shall be borne by the Contracting State that incurs them.

p) For purposes of paragraphs 6 and 7 of Article 25 and this paragraph, each competent authority shall confirm in writing to the other competent authority and to the concerned person(s) the date of its receipt of the information necessary to undertake substantive consideration for a mutual agreement. Such information shall be submitted to the competent authorities under relevant internal rules and procedures of each of the Contracting States. However, this information shall not be considered received until both competent authorities have received copies of all materials submitted to either Contracting State by the concerned person(s) in connection with the mutual agreement procedure.

q) The competent authorities of the Contracting States may complete the above rules and procedures as necessary to more effectively implement the intent of paragraph 6 of Article 25 to eliminate double taxation.

2. It is understood that paragraph 5 of Article 26 of the Convention does not preclude a Contracting State from invoking paragraph 3 of Article 26 to refuse to supply information held by a bank, financial institution, a person acting in an agency or fiduciary capacity or information relating to ownership interests. However, such refusal must be based on reasons unrelated to the person's status as a bank, financial institution, agent, fiduciary, nominee, or the fact that the information relates to ownership interests. For instance, a legal representative acting for a client may be acting in an agency capacity but for any information protected as a confidential communication between attorneys, solicitors or other admitted legal representatives and their clients, paragraph 3 of Article 26 continues to provide a possible basis for declining to supply the information.

XXIV

If the above proposal is acceptable to the Government of the United States of America, the Embassy of Switzerland proposes that this Note and the Department of State's reply reflecting such acceptance shall constitute an agreement between the two Governments that shall enter into force on the date of entry into force of the Protocol and shall be annexed to the Convention as Annex A thereto and shall therefore be an integral part of the Convention.

The Embassy of Switzerland avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration."

The Department of State confirms that the proposal set forth in the Embassy of Switzerland's note is acceptable to the Government of the United States of America and agrees that this note and the Government of Switzerland's note shall constitute an agreement between the two Governments that shall enter into force on the date of entry into force of the Protocol and shall be annexed to the Convention as Annex A thereto and shall therefore be an integral part of the Convention.

Department of State,

Washington, September 23, 2009.

XXV

The Department of State presents its compliments to the Embassy of Switzerland and refers the Embassy of Switzerland to the Protocol signed in Washington on September 23, 2009, entitled Protocol Amending 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 on October 2, 1996 (hereinafter "Protocol").

Some errors were discovered in the English language version of the Protocol which the Department of State proposes to rectify as follows:

1. Subparagraph a) of paragraph 2 of Article 5:

   In the English version the words "the first January" shall be replaced by the words "the first of January".

2. Subsection ii) of subparagraph b) of paragraph 2 of Article 5:

   In the English version the words "the first January" shall be replaced by the words "the first of January".

In order to correct the Protocol, the Department of State proposes, on behalf of the Government of the United States of America, that:

I. The English language version be corrected as set out above; and

XXVI

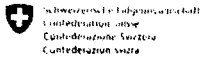
II. The corrected texts replace the defective texts as from the date on which the Protocol was signed.

If the Government of Switzerland concurs with the proposals contained in paragraphs I. and II. above, the Department of State further proposes that this note and the note in reply thereto expressing the approval of the Government of Switzerland shall constitute the correction of the English language version of the Protocol, and shall become part of the original thereof.

Department of State,

Washington, November 16, 2010.

XXVII



Embassy of Switzerland in the United States of America

Note No. 75/2010

The Embassy of Switzerland presents it compliments to the United States Department of State and acknowledges receipt of the note dated November 16, 2010 which reads as follows:

"The Department of State presents its compliments to the Embassy of Switzerland and refers the Embassy of Switzerland to the Protocol signed in Washington on September 23, 2009, entitled Protocol Amending 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 on October 2, 1996 (hereinafter "the Protocol").

Some errors were discovered in the English language version of the Protocol which the Department of State proposes to rectify as follows:

1. Subparagraph a) of paragraph 2 of Article 5:

   In the English version the words "the first January" shall be replaced by the words "the first of January".

2. Subsection ii) of subparagraph b) of paragraph 2 of Article 5:

   In the English version the words "the first January" shall be replaced by the words "the first of January".

In order to correct the Protocol, the Department of State proposes, on behalf of the Government of the United States of America, that:

I. The English language version be corrected as set out above; and

II. The corrected texts replace the defective texts as from the date on which the Protocol was signed.

XXVIII

If the Government of Switzerland concurs with the proposals contained in paragraphs I. and II. above, the Department of State further proposes that this note and the note in reply thereto expressing the approval of the Government of Switzerland shall constitute the correction of the English language version of the Protocol, and shall become part of the original thereof."

The Embassy of Switzerland confirms that the Government of Switzerland agrees with the corrections proposed by the Government of the United States of America. Accordingly, the note of the United States Department of States of November 16, 2010, and this note in reply shall constitute the correction of the English language version of the Protocol and shall become part of the original thereof.

The Embassy of Switzerland avails itself of this opportunity to renew to the United States Department of State the assurances of its highest consideration.

Washington, D.C., November 16, 2010

United States Department of State
Washington, D.C.

○

Switzerland: Translation of a Parliamentary Resolution

Edith Palmer
Chief, Foreign, Comparative, and International Law Division II

* * * * *

Expiration of Referendum Period: July 5, 2012

Federal Resolution
Concerning a Supplement to the Double Taxation Treaty between Switzerland and the United States of America.*

March 16, 2012

The Federal Assembly of the Swiss Confederation,
in accordance with article 54 paragraph a and article 166 paragraph 2 of the Federal Constitution,[1] after considering the Message of the Federal Council of April 6, 2011,[2] and the Supplementary Report of August 8, 2011,[3] Concerning the Double Taxation Treaty with the United States of America,
resolves:

Art. 1

(1) Number 10 letter b of the Protocol to the Agreement of October 2, 1996[4] between the Swiss Confederation and the United States of America for the Avoidance of Double Taxation with respect to Taxes on Income, inserted through article 4 of the Protocol of September 23, 2001[5] on the Amendment of this Agreement, signifies that Switzerland complies with a request for administrative assistance when it is demonstrated that a "fishing expedition" is not involved and the United States:

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* Bundesbeschluss über Eine Ergänzung des Doppelbesteuerungsbkommens zwischen der Schweiz und den Vereinigten Staaten von Amerika, Mar. 16, 2012, BUNDESBLATT 3511 (2012), http://www.admin.ch/opc/de/federal-gazette/2012/3511.pdf.

[1] SR [Systematische Sammlung des Bundesrechts] 101.

[2] BBl [Bundesblatt] 2011, 3749.

[3] BBl 2011, 6663.

[4] SR 0.672.933.61.

[5] BBl 2010, 247.

Permanent Subcommittee on Investigations
EXHIBIT #31c

a. Identify the person subject to taxation, whereby this identification may be accomplished also in other ways besides statement of name and address; and
b. Provide the name and address of the probable holder of the information, to the extent known to the United States.

(2) The identification according to paragraph 1 letter a may also be accomplished through the description of a pattern of conduct on the basis of which it can be assumed that persons subject to taxation who behaved according to this pattern have not lived up to their statutory obligations. Persons subject to taxation may only be identified in this manner, however, if the holder of the information or his coworkers has contributed significantly to such conduct.
(3) The Swiss Tax Administration is hereby delegated to work toward a mutual recognition of the interpretation presented in paragraphs 1 and 2.
(4) In the application of the requirements of paragraph 1 letter b, Switzerland, as the requested state, observes the principles of proportionality and practicability.

Art. 2.

This Resolution is subject to the optional referendum for international treaties applicable to treaties that, in accordance with article 141 paragraph 1 letter d number 4 of the Federal Constitution, contain important legislative provisions or whose implementation requires the enactment of federal legislation.

Council of States, March 16, 2012
The President: Hans Altherr
The Secretary: Philippe Schwab

National Council, March 16, 2012
The President: Hansjörg Walter
Der Sekretär: Pierre-Hervé Freléchoz

Date of Publication: March 27, 2012[6]

[6] BBl 2012, 3511

In connection with the Agreement between the Internal Revenue Service of the United States of America ("IRS") and The Swiss Confederation on the request for information from IRS regarding certain Swiss Financial Institutions ("the Agreement"), and contingent upon the those parties' entering into and implementing the Agreement, the U.S. Department of Justice ("DOJ") and The Swiss Confederation intend to undertake the following steps:

1. Under the Agreement, any Swiss bank currently under investigation by DOJ ("a Targeted Bank") will not be eligible for the benefits of the Agreement unless and until that bank negotiates a separate resolution of its potential liability with DOJ. To progress in those negotiations, DOJ needs complete information on such critical issues as how the banks operated and supervised the U.S. cross-border businesses, including internal reporting and other communications with management, how the banks set up their off-shore businesses, what they communicated to attract and service account-holders, and which bank employees or outside advisors were involved, among other things. DOJ therefore has adopted and will inform the Targeted Banks of the following prerequisites for such negotiations:

    a. In order to participate with DOJ in negotiations toward a resolution of potential criminal liability, a Targeted Bank must promptly and fully cooperate with DOJ by producing all requested documents and providing complete information on those subjects by December 31, 2011.

    b. In this production, the records provided to DOJ by the banks need not include names of account holders. The banks also may redact the names of bank employees and outside advisors from the materials produced to DOJ, but the banks will provide unredacted copies of the documents to FINMA.

2. FINMA will promptly, and no later than December 31, 2011, provide U.S. regulatory agencies records received from Targeted Banks without redactions of the names of bank employees and outside advisers, at the request of those agencies. The Swiss government will authorize the U.S. regulatory agencies to provide the unredacted documents to DOJ. Further, FINMA will authorize the Targeted Banks to cooperate with DOJ by producing all records requested by DOJ, as set forth above.

3. Production of account records which identify account holders will be necessary to any agreement resolving the potential liability of a Targeted Bank. To demonstrate the intent and ability of the Swiss government to produce complete, unredacted account records pursuant to the treaty process, the Swiss taxing authority (SFTA) will issue final decrees by January 2, 2012, as to 200-250 accounts covered by the treaty request submitted on September 26, 2011, and will produce to the U.S. at least 100-150 accounts by February 14, 2012.

4. Based upon the Swiss Confederation's stated intention to implement these steps, and contingent upon the Confederation's actually implementing these steps and the Targeted

Permanent Subcommittee on Investigations
EXHIBIT #32a

Banks' cooperating, DOJ will refrain until December 31, 2011, from seeking an indictment or enforcing a grand jury subpoena against a Targeted Bank that commences or continues good faith negotiations with DOJ relating to past violations of U.S. tax laws and related provisions. DOJ's forbearance extends only to the banks, not to other entities or to individuals. Further, DOJ may proceed before the end of 2011 against any Targeted Bank that fails to take the steps set forth in Paragraph 1 or otherwise to cooperate with DOJ.

5. Upon obtaining the information described above, and DOJ being satisfied that the further account information, containing the identity of the account holders, to be produced under the Agreement will satisfy U.S. law enforcement interests, DOJ will move toward finalizing the resolution of the potential liability of the Targeted Banks. Under those circumstances, DOJ will continue to refrain through March 2012 from seeking an indictment or enforcing a subpoena against a Targeted Bank that continues to negotiate in good faith with DOJ toward a resolution of its potential criminal liability. Any resolutions as to particular banks will be contingent upon continued cooperation, including production of account records.

Assuming that the negotiations between the U.S. Internal Revenue Service ("IRS") and The Swiss Confederation regarding bank secrecy continue productively, the U.S. Department of Justice ("DOJ") intends to take the following steps:

1. The proposed agreement between the Swiss government and the IRS provides that any Swiss bank now under investigation by DOJ ("a Targeted Bank") will be eligible for the benefits of the Agreement only if that bank separately negotiates resolution of its potential liability with DOJ. To progress in those negotiations, DOJ needs complete and accurate information on such critical issues as how the banks operated and supervised the U.S. cross-border businesses (including internal reporting and other communications with management), who was involved, how they set up the off-shore businesses, and how they attracted and serviced accountholders.

   - Therefore, as indicated previously to Ambassador Sager, any Targeted Bank wishing to participate in such negotiations must promptly and fully cooperate with DOJ by coming forward, no later than December 31, 2011, with a detailed explanation of its off-shore business, supported by key documents DOJ has requested, and by making arrangements with DOJ for production of the balance of the requested materials. The Swiss government has authorized this cooperation.

   - The records need not identify accountholders, bank employees or outside advisors, but the banks will provide FINMA copies, without redacting names of employees and advisors. FINMA has stated that it intends to transmit those unredacted records to U.S. regulatory agencies that assert a supervisory interest in them. FINMA has further stated that it intends to authorize the agencies to share the unredacted records with DOJ, upon the consent of the Swiss Federal Office of Justice.

2. If the Swiss government commits to implementing these steps, and contingent upon receiving the information described above, DOJ intends to refrain until December 31, 2011, from indicting or enforcing a grand jury subpoena against a Targeted Bank seeking to engage in good faith negotiations with DOJ regarding past violations of U.S. tax laws and related provisions. By that time, DOJ expects to have substantial information from any such bank and to know whether FINMA will provide the unredacted documents described above. DOJ's forbearance extends only to cooperating banks, not to other entities or to individuals, nor to any Targeted Bank that fails to take the steps set forth in Paragraph 1 or otherwise to cooperate.

3. Production of records that identify accountholders is essential to any agreement with a Targeted Bank resolving its potential liability. To assess the feasibility of such agreements, DOJ needs – and the Swiss government reasonably expects to produce by February 14, 2012 - complete, unredacted account records for 100-150 accounts covered by the September 26, 2011 treaty request. Assuming that as of mid-February, these account records, along with the information described in paragraph 1above, confirm the reasonable expectation that

Permanent Subcommittee on Investigations
EXHIBIT #32b

unredacted records for both structured and individual accounts will be produced according to the terms of the Agreement and will satisfy U.S. law enforcement interests, DOJ intends to continue moving toward resolution of the potential liability of cooperative Targeted Banks. DOJ further intends under those circumstances to refrain from seeking an indictment or enforcing a subpoena against a Targeted Bank while that bank engages in good faith negotiations. Any resolutions or forbearance as to particular banks will require those banks' continued cooperation, by providing, among other things, unredacted account records and truthful information on the nature and scope of the off-shore business.

U.S. Department of Justice

Tax Division

601 D Street, N.W.
Washington, D.C. 20579

(202) 514-5196
Telefax: (202) 616-1786

December 9, 2011

By Electronic Mail and First Class Mail

Re:

Dear

Reference is made to the letter dated November 17, 2011, from Dr. Urs Zulauf, General Counsel, FINMA, and Jan Blochinger of the FINMA General Counsel's Office, to you in which they stated that "the institutions concerned are explicitly recommended to cooperate with the US authorities" regarding the latter's investigation of cross-border business with U.S. clients.

As the United States has made clear in discussions with Dr. Michael Ambühl, State Secretary for International Financial Matters, and Dr. Michael Leupold, director of the Swiss Federal Office of Justice, in order to determine whether it will be fruitful for the United States Department of Justice to discuss with your institution the possibility of an agreement with us that could avoid indictment, the Department of Justice must have complete and accurate information and must have that information quickly. We have previously discussed the categories of documents that need to be produced as evidence of the bank's cooperation. I have attached, as Appendix A, a list of records and documents which must be produced if your institution wishes to attempt to reach an agreement with us by which it could avoid indictment. Please note that you must also provide an English translation of each of the listed records and documents.

We must hear from you immediately if you wish to engage in these negotiations. Participation in these negotiations requires that, by December 31, 2011, you provide us with documents (together with English translations) responsive to the Appendix A requests. We understand that the document production with English translations may present an occasional logistical issue. In such event, it is essential that you contact us immediately to make satisfactory arrangements for the production of those particular documents. In addition, by December 31, 2011, it is expected that you will have made firm arrangements to meet with us to give us a detailed oral presentation explaining your institution's U.S. cross-border businesses (including

Permanent Subcommittee on Investigations
EXHIBIT #33

who was involved, how the business was set up, and how the institution attracted and serviced account holders).

The material listed on Appendix A should be delivered to:

You cooperation in this matter is appreciated.

Sincerely yours,

JOHN A. DICICCO
Principal Deputy Assistant Attorney General
Tax Division

Enclosure: Appendix A

APPENDIX A

From its affiliates, branches and wholly owned subsidiaries, including, but not limited to, for the period January 1, 2000, to the present:

All business records relating to the U.S. cross-border banking business, including but not limited to the following:

a. All records related to contacts or communications between employees of its affiliates, branches and wholly owned subsidiaries, including, but not limited to, . and U.S. clients in the United States including, among other things, e-mails, correspondence, faxes, meeting notes, memoranda, telephone logs;

b. All records related to contacts or communications between employees regarding communications with U.S. clients in the United States, including, among other things, e-mails, correspondence, faxes, meeting notes, memoranda, telephone logs;

c. All records regarding contacts or communications between employees and third parties (including intermediaries, asset managers, fiduciaries, attorneys, etc.) concerning communications with U.S. clients in the United States including, among other things, e-mails, correspondence, faxes, meeting notes, memoranda, telephone logs;

d. All records related to travel by . employees to the United States including, among other things, emails, travel itineraries, travel requests, travel authorizations, memoranda of activities in the United States, statements of the purpose of the travel, expense reports;

e. All documents related to transferring accounts held by United States persons from to any of its affiliates or to any other entity;

f. All documents related to allegations of violations of law or policies and procedures involving the bank, its affiliates, wholly owned subsidiaries and/or the employees thereof, in connection with the operation of the U.S. cross-border banking business;

g. All meeting minutes, presentations, memoranda, reports and correspondence relating to the U.S. cross-border banking business by or to and from management, executives, and board of directors; and

h. All personnel files for the executives, management and employees involved in the U.S. cross-border banking business.

Switzerland: Translation of Newspaper Article

Edith Palmer
Chief, Foreign, Comparative, and International Law Division II

* * * * *

Tax Dispute with the US is Escalating[*]

Bern/Washington. The United States demands immediate and detailed information about the extent of tax evasion by US citizens through Swiss banks. If Switzerland opposes, the United States threatens criminal charges against Credit Suisse (CS) and nine other banks. This escalation concerning the disclosure of customer names becomes apparent from an exchange of letters that are on file with the *SonntagsZeitung*. Among other things, the US demands detailed numbers on tax evasion involving CS, [to be obtained] by Tuesday.

The US ultimatum comes after a letter from State Secretary Michael Ambühl of last Tuesday. Ambühl proposes to an office-holder of the US tax agency to negotiate "a top-down approach" in a meeting in Washington. Ambühl sketches a two-pronged process "in the first part, conceptual topics must be resolved, in the second (...) aggregated and consolidated statistical data could follow."

USA: "Significant" number of accounts, and "quickly."

Ambühl refers furthermore to an Additional Protocol of the Federal Council to the US Tax Convention that should allow for group requests without specifying individual names. According to Ambühl, with the "new instrument" the US would obtain administrative assistance in "more cases than before." It would require, however, "mutual will and an agreement on the key points." Otherwise, the Swiss Parliament would not go along.

The US responded by return mail and harshly. In three pages, Deputy Attorney General James Cole demanded an immediate and extensive disclosure of the type and extent of the tax evasion. "Without these data I do not see how we can actually progress," Cole states in the letter of August 31. The course of action is reminiscent of the UBS case, when US pressure also emanated from the criminal authority (DOJ) and Switzerland ended up disclosing the names of 5,000 US customers.

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[*] Translator's Note: This is a translation of Lukas Hässig & Martin Spieler, *Steuerstreit mit den USA eskaliert [Tax Dispute with the US is Escalating]*, SONNTAGSZEITUNG, Sept. 4, 2011, as available on Lexis by subscription. The article is followed by a short interview with Federal Councilor Eveline Widmer-Schlumpf, which is also translated. The *SonntagsZeitung* is a Zürich-based, German-language newspaper.

The information contained in the article is based on correspondence between State Secretary Michael Ambühl, a high-ranking Swiss government official, and US Deputy Attorney General James Cole that allegedly was leaked to the *SonntagsZeitung*. The quotation marks appear to indicate direct quotations from the letters of Mr. Cole and Mr. Ambühl.

Permanent Subcommittee on Investigations
EXHIBIT #34

According to Deputy Attorney General Cole the US demands the data of a "significant" number of US accounts, and "speedily and with certainty." In return the US would be willing to "test" the Swiss plan with group requests, yet only under the following conditions: First, the US wants comprehensive "statistical information." According to Swiss negotiator circles, the US demands detailed information from ten banks concerning their US customers and assets. In addition to CS, Julius Bär, Wegelin, and the Zürich and Basel Cantonal Banks are affected. In this context, the number of all US private customers and foundations with investments of at least 50,000 dollars are to be disclosed for the period 2002 through July 2010. Tens of thousands of customers could be affected, more than Switzerland could disclose through group requests. The latter would only apply as of the fall of 2009.

Second, Switzerland has so far refused to hand over to the US the requested amount structure [sic]. Yet only after they have received it would the Americans be willing, according to Cole, to veer toward the path of administrative assistance that the Swiss government has proposed.

Third, to be on the safe side, the US wants to simultaneously issue a "grand jury subpoena" and possibly also a "John Doe Summons" against the affected banks. Intended are court-ordered coercive measures for the disclosure of customer data. According to DOJ Deputy Cole, Switzerland would have to do everything possible to facilitate and accelerate the "delivery of account information and any other form" of a global deal. Otherwise, Cole threatens, "I am afraid that we will hardly have a choice other than to apply the measures that are at our disposal." Fifth [sic], individual deals would be negotiated with the ten banks. There is no promise, however, of not suing them.

Finally the Americans demand an agreement for other banks that would ensure that "certain customer information" is disclosed, evaded taxes are paid, and correct behavior is guaranteed.

A speaker for Finance State Secretary Michael Ambühl did not want to comment. "We do not discuss negotiations publicly," said Mario Tuor. CS referred to the federal government.

The Swiss Banks Fears Billions of Fines in US Tax Dispute

Behind the scenes the Swiss banks are discussing who would have to pay how much in the potential billion dollar fines.

"There is an enormous fear of US justice," a banker said in the context of the escalation of the tax dispute. Another source speaks of a climate of alarm and he complains: "This is now going to hurt." The financial institutions expect that the conflict between the US and Switzerland will have much more serious consequences than those of the UBS tax *affaire*. "For us it will be significantly more expensive than it was for UBS, which had to pay a fine of 780 million dollars," confirmed a well-informed source. "We figure that the Swiss banks must pay fines of up to 2 billion [Swiss] Francs and must deliver a multiple of the customer data of the UBS case." Even though the federal government is still negotiating with the US, the banks have reconciled themselves [to the fact] that "there is no possibility that we will not have to pay and deliver data." Otherwise the involved banks will be in jeopardy. Because large fines could bring

individual institutions to the brink of disaster, bankers are demanding a solidarity fund for participation by all banks. "Now the financial market must stick together," demands one bank president.

* * * * *

Widmer-Schlumpf: Existing Laws are Sufficient [Interview in Q&A Format]

You have submitted to the Foreign Policy Committee an Additional Report (*Zusatzbericht*) on the double-taxation treaty (DTT) with the US. What is your intended purpose?

> We start out from the assumption that the problems with the US can be resolved on the basis of current law. We would like to make it clear to the Parliament that this, as already in the old DTT, could include group requests.

Is the adjustment sufficient for the US?

> Nothing is certain as yet. Yet we would not make such proposals to the Parliament, had we not conducted discussions with the US.

What is the content of the Additional Report?

> The Report clarifies that according to the Federal Administrative Court, group requests were already possible under the old DTT under certain, clearly circumscribed conditions, and that this should also prevail for the new DTT.

Bundesgericht
Tribunal fédéral
Tribunale federale
Tribunal federal

CH-1000 Lausanne 14
File number. 11.5.2/8_2013

Lausanne, 5 July 2013

Press Release of the Swiss Federal Supreme Court

Judgement of 5 July 2013 (2C_269/2013)

Exchange of information in Tax Matters with the United States – The Federal Supreme Court rejects a first appeal

Group requests are permitted under the 1996 Double Taxation Agreement with the United States, provided that the facts are described with sufficient detail so as to provide grounds for suspicion of fraud and the like and to enable the identification of the taxpayers involved.

In November 2012, in response to a request for administrative assistance issued by the American tax authorities, the Swiss Federal Tax Administration decided to transfer the bank records of a United States resident, who was the beneficial owner of a company holding an account with Credit Suisse. In a decision rendered on the 13th March 2013, the Federal Administrative Court rejected an appeal against this decision (A-6011/2012).

Today, the Federal Supreme Court rejected the appeal against the decision of the Federal Administrative Court. It held that requests for administrative assistance in relation with fraud and the like are in principle admissible under the 1996 Double Taxation Agreement with the United States, regardless of whether the suspicion falls on one or more persons and whether the said persons are explicitly named in the request. As the Double Taxation Agreement contains no express provision concerning the minimum content of a request for administrative assistance, the content had to be assessed by interpretation. The Federal Supreme Court thus considered that the mere absence of indications relating to the identity of the persons involved did not constitute an inadmissible fishing expedition, provided that the request for administrative

Permanent Subcommittee on Investigations
EXHIBIT #35a

assistance fullfills the strict requirements concerning the degree of detail in the description of the facts.

Regarding the actual facts presented by the American tax authorities, the Federal Supreme Court held that the method chosen by the clients of the bank involved, by which the financial assets held by a domiciliary company which was not subject to United States taxes, sought not only to avoid income tax owed by the beneficial owner of the company, but was also a way to escape American fiscal procedures put in place in order to ensure the payment of this tax. The process was described with sufficient detail to render the presence of tax fraud plausible.

Contact: Lorenzo Egloff, Deputy of the Secretary General
Tel. 021 318 97 16; Fax 021 323 37 00
E-mail: presse@bger.ch

NB: The judgment will be published on our website as soon as the legal considerations have been redacted: www.bger.ch / "Rechtsprechung gratis" / "Weitere Urteile ab 2000" (Insert the reference of the judgment into the search field 2C_269/2013). When exactly the legal considerations will be available is not yet known.

Bundesverwaltungsgericht
Tribunal administratif fédéral
Tribunale amministrativo federale
Tribunal administrativ federal

Media relations
A-5390/2013, A-5540/2013

Press Release – Communiqué de presse – Medienmitteilung – Comunicato stampa

St. Gallen, January 8, 2014

Julius Baer: IRS request for administrative assistance not sufficient for the disclosure of client data

Decision A-5390/2013 of January 6, 2014:
The Swiss Federal Tax Administration has unlawfully granted the request for administrative assistance submitted on April 17, 2013, by the IRS concerning the disclosure of bank account data of clients of Julius Baer. The facts, as set out in the IRS request for administrative assistance, do not meet the level of detail which is required for the demarcation between group requests, for which administrative assistance can be granted, and forbidden 'fishing expeditions'. Therefore, in its decision of January 6, 2014, the Federal Administrative Court affirmed the appeal of a Julius Baer client. As a consequence his bank account data must not be disclosed to the IRS.

On April 17, 2013, based on the Double Tax Agreement between Switzerland and the USA of 2 October 1996 (DTA Switzerland-USA 96), the IRS submitted a request for administrative assistance, in which it accused Julius Baer of having had employees that actively assisted their clients, subject to US tax law, in concealing their income and assets from the US tax authority. In the request, the IRS abstractly describes the alleged conduct of the Julius Baer clients. Furthermore, the request gives a concrete example: a married couple used debit cards linked to an account of a company which is domiciled in a country outside the US (domiciliary company).

According to the decision of the Federal Administrative Court, the above mentioned conduct and the example given in the request do not provide sufficient evidence that they are covered by the term 'tax fraud or the like' in article 26 of the DTA Switzerland-USA. In the example given, the IRS does neither state that the married couple has not respected the company's separate legal existence ('they have not played the game of the legal entity') nor that the withdrawal of cash served private purposes. Furthermore, the enclosed indictment against employees of Julius Baer ('Casadei Indictment') does not set forth any conduct that could be considered as 'tax fraud or the like'. Hence, the IRS request of April 17, 2013, does not give enough indication of 'tax fraud or the like'. Therefore, the appeal of the Julius Baer client has to be granted.

The Court reaffirms its case law that, under the DTA Switzerland-USA 96, administrative assistance shall not be granted for presumed tax evasion, even if high amounts are at stake. It also confirms that the mere failure to declare a bank account may be qualified - at the utmost - as a tax evasion, which is not subject to administrative assistance.

Permanent Subcommittee on Investigations
EXHIBIT #35b

In a further proceeding **(A-5540/2013)**, the Federal Administrative Court did not enter into the substance of an appeal by a Julius Baer client because the deadline for submission of the appeal against the final decision of the Swiss Federal Tax Administration (SFTA) had not been complied with. The Court states that the SFTA had rightfully sent its final decision to the authorised recipients which were mentioned in the official federal publication ('Bundesblatt'). The point in time at which the final decision was received by the authorised recipients is decisive for the issue of the final decision and marks the beginning of the period for the appeal. Since the Court did not enter into substance of the appeal, the bank account data of the appellant may be transferred to the US.

According to article 84a of the Federal Act of 17 June 2005 on the Swiss Federal Supreme Court (BGG), decisions of the Federal Administrative Court in the field of international administrative assistance in tax matters can be referred to the Federal Supreme Court within 10 days, if the legal question at stake is of fundamental importance or if certain circumstances outlined in article 84 paragraph 2 BGG which imply that the case is of special importance are present. The Federal Supreme Court will decide if that is the case or not. Within these restrictions, both described decisions of the Federal Administrative Court can be referred to the Federal Supreme Court.

The Swiss Federal Administrative Court

The Federal Administrative Court renders judgment in cases of appeal against decrees issued by Swiss federal authorities. In certain matters the court is also authorized to examine decisions rendered by cantonal authorities and issue judgments on complaints filed against cantonal decisions. Where the Federal Administrative Court is lower instance court, its judgments can be appealed before the Federal Supreme Court. Based in St. Gallen, the Federal Administrative Court accommodates five divisions and a General Secretariat. Approximately 75 judges and 320 members of staff constitute the largest Swiss federal court.

Contact:

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Switzerland: Translation of the "Lex USA"

Edith Palmer
Chief, FCIL II

* * * * *

(Measures to facilitate the resolution of the tax dispute between the Swiss banks and the United States.)[1, 2]

Date. . .

The Federal Assembly of the Swiss Confederation,
based on article 98 paragraph 1 of the Federal Constitution
having considered the Federal Council Dispatch of May 29, 2013
decrees:

I.

Art. 1 Cooperation Authorization for Banks

[1] The banks according to the Banking Act of November 8, 1934 are [herewith] authorized to fulfill all obligations arising from their cooperation with the United States to resolve the tax dispute.

[2] Included in this authorization is information relating to business relationships that have a connection to a U.S. Person within the meaning of article 2 paragraph 1 number 26 of the Agreement of February 14, 2013 between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA, including the names and functions of persons who organized, serviced or supervised such business relationships within the bank as well as [the names and functions] of third persons who worked for such business relationships in a similar way.

[3] Not included in this authorization are data of customers and account information. The banks are authorized, however, to make available to the United States the necessary information for a

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[1] Mesures visant à faciliter le règlement du différend fiscal entre les banques suisses et les Etats-Unis d'Amérique. Loi urgente (Measures to facilitiate the resolution of the tax dispute between the Swiss banks and the United States. Urgent Act), May 29, 2013, CURIA VISTA (Database of the Swiss Federal Parliament), *at* http://www.parlament.ch/f/suche/pages/geschaefte.aspx?gesch_id=20130046. This draft was rejected on June 18 by the National Council, the representative chamber of the federal legislature. *Id.*

[2] In translating this law from the German text, footnotes referring to statutes cited in the text were omitted.

Permanent Subcommittee on Investigations
EXHIBIT #36a

request according to article 26 of the Agreement of October 2, 1996 for the Avoidance of Double Taxation with respect to Taxes on Income and the Protocol of September 23, 2009 amending the Agreement.

Art. 2 Protection of Bank Employees and Third Parties

[1] Each bank that fulfills obligations according to Article 1 takes the best possible care to protect its employees. For this purpose, the banks and the associations representing the employees enter into agreements.

[2] [Such] an agreement must:

a. set forth information duties that notify the affected employees in advance of the scope and type of documents to be transferred as well as of the period from which they arise;

b. allow the employees to obtain information about all the documents relating to them;

c. give a more detailed explanation of the [employer's] duties of loyalty arising from the law of labor contracts, and in particular, call for the absorption of attorney fees to protect the interests of the employees;

d. provide hardship rules for employees who, through the fulfillment of the obligations according to article 1, end up in a personally, financially, or economically difficult situation;

e. provide protection against discrimination according to which the banks waive, in their own name, [the right] to ask job applicants questions relating to their being affected through the transfer of data to the American authorities;

f. provide protection against dismissal if an employee furnishes prima facie evidence of discrimination in connection with a business relationship with a U.S. Person.

[3] If a bank intends to fulfill obligations according to article 1 that affect employees, the bank is obligated to join an agreement in advance.

[4] If a bank intends to fulfill obligations according to article 1 that affect third parties, the bank is obligated to observe the duties of information according to paragraph 2 letter a also against these third parties.

Art. 3 Penal Provisions

[1] Whoever intentionally violates the duty of joinder according to article 2 paragraph 3 or the duty of information according to article 2 paragraph 4 shall be punished with up to three years' imprisonment or a fine.

[2] The Federal Finance Ministry [Eidgenössisches Finanzdepartment] is the prosecuting and adjudging authority.

II.

[1] This Act is being declared as urgent in accordance with article 165 paragraph 1 of the Federal Constitution.

[2] This Act enters into effect on July 1, 2013 and remains in effect until June 30, 2014.

Switzerland: Summarized Translation of the Dispatch (Message) to the "Lex USA"

Edith Palmer
Chief, FCIL II

Message on a Federal Act concerning Measures to Facilitate a Resolution of the Tax Dispute between the Swiss Banks and the United States[1]

May 29, 2013[2]

[The Federal Council (Bundesrat, Federal Cabinet) addresses the two chambers of Parliament for the purpose of submitting this Message and the Draft Act for the Lex USA]

Overview

For the past two years, discussions have been held with the American justice and tax authorities on how the tax dispute could be resolved. Involved in the tax dispute are Swiss banks who are accused of having violated American law by assisting U.S. customers in evading American taxes. Affected are therefore not only banks against which the U.S. has already opened a criminal proceeding, but also all banks that potentially could have violated American law.

Based on an order issued by the Federal Council on October 26, 2011, negotiations have been carried out since then that have aimed at resolving the tax dispute between the Swiss banks and the United States in conformity with current Swiss law and in particular with the double taxation treaty that is currently in effect.

The negotiations were first carried out under the leadership of the U.S. tax authority. In the fall of 2012, leadership over this dossier shifted to the Department of Justice (DoJ). The proposed solution envisions that banks that intend to clear up their relationship with the U.S. authorities do this directly within a framework provided by DoJ. Within this framework it should also be possible to obtain a declaration that American law has not been violated.

The proposed solution would allow the banks that desire to obtain closure to accomplish this through a regime applying to past conduct that would eliminate the risk of becoming embroiled in an American court proceeding while "continuing to hold the banks responsible for

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[1] When the Swiss Federal Cabinet introduced the "Lex USA" in Parliament, it also submitted an explanation of the Act in the following message: Message relatif à la loi fédérale sur des mesures visant à faciliter le règlement du différend fiscal entre les banques suisses et les Etats-Unis d'Amérique [Message on the Federal Act concerning Measures to facilitate the resolution of the tax dispute between the Swiss banks and the United States]. The French version of the Message and of Lex USA is available at http://www.efd.admin.ch/dokumentation/gesetzgebung/00570/02724/index.html?lang=fr.

[2] This translation is "summarized," that is, the test is paraphrased, conveying the full meaning, but not necessarily the exact wording of the vernacular text. Footnotes in the text that refer to cited legislation are omitted.

Permanent Subcommittee on Investigations
EXHIBIT #36b

themselves." Such a solution would only be possible under the prerequisite that the banks cooperate extensively with the American authorities by furnishing in particular statistical data on the behavior of their customers and on financial streams (closure of accounts and transfer of funds). The furnishing of customer data is excluded. Instead, information must be furnished about persons who organized, serviced, and monitored customer transactions within the bank. Also to be transferred are data concerning third persons with a connection to a business relationship with U.S. Persons.

The banks intending to cooperate with the DoJ must ensure the greatest possible protections for their employees, including advance information, continuing rights of information, employer's loyalty measures, and protection against discrimination and dismissal.

The proposed Act lives up to responsibilities vis-à-vis Switzerland as a financial center, as well as to responsibilities toward banks, bank customers, and bank employees. If no statutory basis for such cooperation were to be enacted, banks could not sufficiently cooperate and further prosecutions could be expected, also against larger banks. In addition, a speedy opening of a large number of prosecutions against banks not already affected could be expected. This would lead to continued uncertainty for Switzerland as a financial center.

Message

1. Starting Point

1.1. Proceedings against Swiss Banks

Swiss banks are involved in a tax dispute with the United States of America and they are being accused of having assisted U.S. customers in tax evasion in violation of U.S. law. Included are not only banks against which the U.S. has already opened a criminal proceeding, but all banks that potentially could have violated American law.

If a quick solution is not found, the dispute may flare up again and the American authorities may target additional banks. The *DoJ* (Department of Justice) has not only authorized investigations against fourteen banks, but it has also indicated to the Swiss authorities that it has obtained information about several other banks through a program that allowed U.S. citizens to report themselves. The *DoJ* could try to punish one bank severely to set an example. In other words, if a solution is not found soon, Switzerland is in danger of further escalation.

1.2. Negotiations with U.S. Authorities

Based on an order of the Swiss Cabinet (Bundesrat) of Oct. 12, 2011, negotiations have been conducted since then that aim at resolving the conflict with the U.S. in a manner compatible with current Swiss law, in particular the Double Taxation Treaty, as currently in effect. These discussions were originally carried out with the U.S. Tax Authority and they aimed at a solution that would have cleared the past conduct of each bank through an individual *Closing Agreement*.

Such an Agreement would have required an Adjustment of the Qualified Intermediary Agreement and a payment.

Initially, the U.S. Tax Authority led the negotiations on behalf of the U.S. In the fall of 2011, leadership was transferred to the *DoJ*. The solution now envisioned calls for an individual solution for each bank that wants to clear up its relationship with the U.S. authorities. Within this framework it should also be possible for a bank to obtain a declaratory statement of its compliance with American law.

1.3. Cooperation with the U.S. Authorities

The *DoJ* requests that the banks provide "leaver lists," that is, generic data on the closure of accounts and the transfer of funds to other banks in Switzerland or abroad. From the Swiss perspective, furnishing such lists is a criminal offense according to article 271 of the Penal Code, unless permission has been granted. In addition, data protection issues are raised in that Swiss banks may only find out from disclosure by other banks that they are holding untaxed moneys of U.S. citizens.

The furnishing of personal data must be carried out under observance of data protection law. The furnishing of data of (former and current) employees and third parties requires advance notification about the scope and type of the information to be transferred (Data Protection Act, art. 4). The delivery of personal data is legal if the data subject consents or if it is justified by a preponderant public interest or statutory provision. If a court were to deny disclosure, which possibility cannot be excluded particularly for third parties, the bank at issue would not be able to comply with its obligations toward the *DoJ*. As a result such a bank might not be able to enter into a no prosecution agreement or deferred prosecution agreement with the *DoJ* and would not be able to clear its past within the opportunities offered by the *DoJ*. Consequently, the definitive solution that the banks request and that would comply with Swiss law could not be provided..

In addition, if violations of U.S. law are involved, the U.S. authorities request the disclosure of U.S. customer data. According to Swiss law, a disclosure of customer data may be carried out only by governmental authorities on the basis of a mutual assistance request pursuant to a valid double taxation treaty, and not through direct transfers by a bank, and the U.S. recognizes this. The banks must, however, be allowed to furnish the necessary information in response to a group request as is regulated analogously in the FATCA Agreement between the U.S. and Switzerland.

On April 4, 2012, the Federal Council allowed the Swiss banks involved in a proceeding with the U.S. authorities to intensify their cooperation and to furnish the requested data directly, including (to the extent required) data about employees and third parties. At the same time, the Federal Council gave these banks an authorization according to art. 271 of the Penal Code, in order to protect them. The transfer of customer data was specifically prohibited and reservations were made that Swiss law had to be observed. After all, protecting a bank against a criminal prosecution that may endanger the bank's existence is also in the best interest of the employees. Despite this authorization one bank was unable to clear up its past with the U.S. authorities, in particular because a deferred prosecution agreement could not be reached without the delivery of the requested leaver lists and the full delivery of the requested data.

1.4 Principles of the Act

The submitted Draft Act aims at creating a generally applicable abstract legal basis that would allow all banks to clear up their situations with the competent American authority, irrespective of whether the bank is already under investigation or would like to cooperate in order to find out where they stand with the *DoJ*.

This Message therefore proposes legislation that allows the banks sufficient cooperation with U.S. authorities, in particular, by

- allowing the Swiss banks to deliver the necessary information to the U.S. authorities to protect their own interests including the information necessary to reach a deferred prosecution agreement, that is, the leaver lists as well as information about persons who organized, serviced, or monitored the border crossing business with U.S. customers within the banks as well as information about third persons who have a connection to such a business relationship; [and]
- creating rules granting the best possible protection for the bank employees affected by the data transfers.

1.5 Evaluation of the Approach to a Resolution

The proposed approach toward a resolution that, without releasing the Swiss banks from responsibility, would allow them to find closure for the tax dispute with the United States if this is their desire, by finding a solution for past conduct and thereby eliminating the risk of being involved in an American criminal proceeding. Such an approach toward a resolution would only be possible if the banks cooperate extensively with the American authorities, in particular by providing statistical data about the conduct of their customers and financial streams (*leaver* lists).

The transfer of customer data is ruled out. With respect to customer data, only mutual administrative assistance is applicable, as based on the currently effective double taxation agreement.

However, information about persons who, within the bank, organized, serviced, and monitored customer transactions must be transferred. Nevertheless, the banks wanting to cooperate with the *DoJ* within this proposed framework must take care that they provide the greatest possible protection to their employees. Also to be transmitted are data of third persons that have a connection to a business relationship with a U.S. Person.

The chosen approach toward a resolution allows legal harmony to be reestablished without having to create retroactive law or resort to extraordinary measures according to article 184 ~~paragraph 5 or article 185 paragraph 3 of the Federal Constitution.~~

2 Explanations of the individual Articles

Art. 1 *Cooperation Authorization for Banks*

Paragraph 1

This paragraph contains the basic authorization for banks to cooperate with the U.S. authorities in connection with clearing up their past. To protect the interests of the banks within the framework of Swiss law, it contains an authorization according to article 271 number 1 of the Penal Code in a general and abstract form.

Paragraph 2

This paragraph describes the information that may be transferred. A connection between the information and a business relationship with a U.S. Person is presupposed and this relationship is defined according to the FATCA Agreement. Covered by the authorization are transfers of aggregated data on the closing of accounts and the transfer of the funds to another bank in Switzerland or abroad (*leaver* lists). With respect to the transfer of personal data, the circle of affected persons and the scope of the data are defined. Included are also the names and functions of persons who are or were directly occupied within a bank with the organization, servicing, and monitoring of border-crossing transactions of U.S. customers as well as third parties who are connected in a similar way to such business relationships. Third parties are to be understood to encompass trustees, property administrators, and attorneys who had an active role in the shaping of the business relationship.

Paragraph 3

Not covered by the authorization are customer data including account information. These can be transferred only within the framework of administrative tax assistance based on the currently effective double taxation agreement and under observation of procedural rights. In their cooperation with U.S. authorities the banks are authorized, however, to furnish to the U.S. the information required for a group request. This authorization corresponds to an analogous rule in the FATCA Agreement.

Art. 2 *Protection of Bank Employees and Third Parties*

Paragraph 1

Banks cooperating with American authorities to protect their interests must ensure the observance of the rights of their employees. This paragraph obligates the banks to safeguard the greatest possible protection of their employees. For this purposes, the banks or the representatives of their interests must enter into an agreement with the affected employee associations which must contain mandatory elements.

Paragraph 2

Aside from the duty of information by which the affected employees must be notified in advance of the type and scope of the data to be transferred, the mandatory elements of an agreement are the right of obtaining information, the duty of loyalty of the employer including the duty to absorb attorney fees to protect the interest of the affected employees as well as the protection against discrimination and dismissal related to business relationships with U.S. Persons.

Paragraphs 3 and 4

[These paragraphs restate the wordings of article 2, paragraphs 3 and 4 of the Lex USA.]

Art. 3 Penal Provisions

The penal provisions criminalize intentional violations of the duties against employees and third parties described in article 2 paragraph 3 (joinder to an agreement and duties of information). The prosecuting and adjudging authority is the Federal Finance Ministry. The proceeding is governed the Federal Act on Administrative Penal Law of March 22, 1974.

3. Effects

3.1 Effects on the Federation

The aggregated reports by the individual banks could lead to additional requests for administrative assistance because the U.S. authorities could request detailed information about such accounts through group requests. The processing of such requests by the Federal Tax Administration will lead to increased personnel expenditures. No specifics can be given at the moment because it is not known how many aggregated reports will be given. Because of the costs accruing to the individual banks in connection with the clearing up of their past, tax revenue will be slightly decreased for a short period.

3.2 Effects on Cantons and Municipalities

The proposed bill will allow cantonal banks desirous of straightening out their relationship with American authorities to furnish the requested information and reduce their risk of being subjected to litigation in the U.S. The costs involved in clearing up the past of banks will for a short time lead to a decrease in cantonal revenue and in reduced profit sharing in cantonal banks.

3.3. Effects on the Economy

The proposed bill allows the Swiss banks to cooperate with the U.S. authorities to clear up their past. Such an extensive cooperation allows a final solution for proceedings that in part have been pending for years. Therefore, legal certainty and stability will be created for an important part of business of Switzerland as a financial center.

4. Relationship to Legislative Planning

The proposed Draft Act was not foreseen in legislative planning. The reasons therefore are found in the previous explanations.

5. Legal Aspects

5.1. Constitutionality

The submitted Draft Act is based on article 98 of the Federal Constitution.

5.2. Urgency

The change in legislation has a sunset date of June 30, 2014. According to current estimates, the Swiss banks should be able to fulfill their obligations toward U.S. authorities and thereby protect their interests by that date.

The urgency of the Act is based on article 165 paragraph 1 of the Federal Constitution. The urgency is a result of the purposes of the proposed bill. If the banks are not given an opportunity to protect their interests, the danger exists that the tax dispute will break out anew and that the American authorities will target additional banks. Not only has the *DoJ* already authorized investigations against fourteen banks; it has also indicated that it has collected information about several other banks. If the banks are not immediately given a general permission to cooperate with the American authorities in order to protect their interests, Switzerland risks the escalation of further measures against which a defense would hardly be possible and that would have serious consequences for the reputation and stability of Switzerland as a financial center and for the Swiss economy, at the political and economic level. For the problems arising from this issue, the ordinary rules of international cooperation would not be able to provide a sufficiently speedy resolution.

Therefore, this Act should become effective on July 1, 2013, after approval by the parliamentary chambers. In accordance with article 141, paragraph 1, letter b of the Federal Constitution, this federal law that has been declared as urgent is not subject to optional referendum because its term of validity does not exceed one year.

Joint Statement

between the U.S. Department of Justice

and

the Swiss Federal Department of Finance

1. The United States Department of Justice has been and continues to be engaged in law enforcement action against individuals and entities that use foreign bank accounts to evade U.S. taxes and reporting requirements, and individuals and entities that facilitate the evasion of U.S. taxes and reporting requirements. In announcing today the Program for Swiss banks the Department of Justice intends to provide a path for Swiss Banks that are not currently the target of a criminal investigation authorized by the U.S. Department of Justice, Tax Division, to obtain resolution concerning their status in connection with the Department's overall investigations, and to assist the Department of Justice in its law enforcement efforts. The Program does not apply to individuals and is not available to any Swiss bank as to which the Tax Division has authorized a formal criminal investigation concerning its operations.

2. Switzerland welcomes the efforts of the Department of Justice to provide the Program and intends to draw the attention of the Swiss Banks to the terms of the Program and encourages them to consider participating therein. Switzerland notes that the Swiss Parliament by Declaration of 19 June 2013 stated its expectation that the Swiss Federal Council will take all measures within existing legal framework to put Swiss banks in a position to cooperate with the Department of Justice. Switzerland represents that applicable Swiss law will permit effective participation by the Swiss Banks on the terms set out in the Program.

3. The signatories take note that the Swiss Financial Market Supervisory Authority intends to encourage, within its supervisory powers, all Swiss Banks to send a letter to U.S. Persons or Entities with U.S. Related Accounts at those Swiss Banks informing them of the Program and drawing their attention to the Internal Revenue Service Offshore Voluntary Disclosure Initiative.

4. Switzerland intends to process treaty requests according to 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, and the Protocol Amending the Convention, signed at Washington on September 23, 2009, if and when it is in force and applicable, as may be amended, and intends to do so on an expedited basis, including by providing additional personnel and the other necessary resources to process the requests.

5. Noting the importance attached by both sides to providing a high level of personal data and privacy protection for all individuals as provided in their laws, the signatories understand that, if personal data are provided, they should only be used for purposes of law enforcement (which may include regulatory action) in the United States or as otherwise permitted by U.S. law. Personal data should only be retained for so long as necessary for these purposes.

Permanent Subcommittee on Investigations
EXHIBIT #37a

6. The signatories intend to resolve any difficulties or doubts arising from this Joint Statement by way of consultations.

Signed at Washington, D.C., this 29th day of August, 2013, in duplicate in English.

JAMES M. COLE Deputy Attorney General United States Department of Justice	MANUEL SAGER Ambassador Extraordinary and Plenipotentiary of Switzerland to the United States

PROGRAM FOR NON-PROSECUTION AGREEMENTS OR NON-TARGET LETTERS FOR SWISS BANKS

I. Scope and Definitions

A. Scope of the Program

This Program is available to any Swiss Bank

1. requesting a Non-Prosecution Agreement on the terms set out in Paragraph II, below (Category 2 Bank);

2. requesting a Non-Target Letter on the terms set out in Paragraph III, below (Category 3 Bank); or

3. requesting a Non-Target Letter on the terms set out in Paragraph IV, below (Category 4 Bank).

This Program does not apply to individuals and shall not be available to any Swiss Bank as to which the Tax Division has authorized a formal criminal investigation concerning its operations (Category 1 Bank) as of the date of the announcement of this Program. All Category 1 Banks either have already been notified that the Tax Division has authorized a formal criminal investigation concerning its operations, or will be so notified through its counsel by certified mail issued in conjunction with the announcement of this Program.

B. Definitions

1. "Department" means the United States Department of Justice.

2. "Tax Division" means the Tax Division of the United States Department of Justice.

3. "FATCA Agreement" means the Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA signed on February 14, 2013.[1]

4. "Swiss Bank" has the same meaning as the term "Swiss Financial Institution" in the FATCA Agreement, except that it shall exclude any "Investment Entity" or "Specified Insurance Company" that does not independently meet the definition of "Custodial Institution" or "Depository Institution."

5. "FFI Agreement" has the same meaning as in the FATCA Agreement.

6. "Applicable Period" shall mean the period between August 1, 2008, and either (a) the later of December 31, 2014, or the effective date of an FFI Agreement,

[1] References to the FATCA Agreement are for definitional purposes only and apply for the purpose of this Program without regard to any subsequent amendments to the FATCA Agreement and regardless of whether or when the FATCA Agreement is ratified or becomes effective.

Permanent Subcommittee on Investigations
EXHIBIT #37b

or (b) the date of the Non-Prosecution Agreement or Non-Target Letter, if that date is earlier than December 31, 2014, inclusive.

7. "U.S. person" has the same meaning as in the FATCA Agreement.

8. "Entity" has the same meaning as in the FATCA Agreement.

9. "U.S. Related Accounts" means accounts which exceeded $50,000 in value at any time during the Applicable Period, as measured by the account balance on the last day of each month during the Applicable Period, and as to which indicia exist that a U.S. Person or Entity has or had a financial or beneficial interest in, ownership of, or signature authority (whether direct or indirect) 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) over the account, as determined by applying the due diligence procedures applicable to "Lower Value Accounts" in the FATCA Agreement, Annex I, Part II, for accounts with $250,000 or less in value at all times during the Applicable Period, and by applying the due diligence procedures applicable to "High-Value Accounts" in the FATCA Agreement, Annex I, Part II, for accounts with more than $250,000 in value at any time during the Applicable Period, notwithstanding the amounts and dates set out in the FATCA Agreement, Annex I, Part II.

10. "Independent Examiner" means a qualified independent attorney or accountant; the Tax Division reserves the right to object to a particular attorney or accountant, but will not unreasonably withhold approval.

11. "Non-Target Letter" means a letter from the Tax Division stating that, as of the date of the letter and based upon information then known to the Tax Division, the Swiss Bank to which the letter is addressed is not the target of a criminal investigation authorized by the Tax Division for violations of any tax-related offenses under Titles 18 or 26, United States Code, or for any unreported monetary transactions under §§ 5314 or 5322, Title 31, United States Code, in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period.

II. Swiss Banks Requesting A Non-Prosecution Agreement (Category 2 Banks)

A. Any Swiss Bank

1. as to which the Tax Division has not authorized a formal criminal investigation concerning its operations as of August 29, 2013 (i.e., that is not a Category 1 Bank);

2. that is not a Category 4 Bank; and

3. that has reason to believe it may have committed tax-related offenses under Titles 18 or 26, United States Code, or monetary transactions offenses under §§ 5314 or 5322, Title 31, United States Code, in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period,

may request a Non-Prosecution Agreement ("NPA") on the terms set out in Paragraphs II.B through K, below.

B. Each Swiss Bank requesting an NPA must provide a letter to the Tax Division, expressing its intent, no later than December 31, 2013. The letter must:

1. include a plan for complying with the requirements set out herein, within a reasonable time, but not to exceed 120 days from the date of the letter of intent;

2. provide the identity and qualifications of the Independent Examiner;

3. state that the Swiss Bank will maintain all records required for compliance with the terms of an NPA as set out in this Program, including all records that may be sought by treaty requests; and

4. state that the Swiss Bank agrees that with respect to any applicable statute of limitations that has not expired as of the date of the announcement of this Program, the Bank waives any potential defense based on the statute of limitations for the period from the date of the announcement of this Program to the issuance of an NPA or a DPA.

If such Bank is not able to comply with the requirements set out in this Program within 120 days from the date of the letter of intent, the Tax Division will grant a one-time extension of 60 days upon a showing of good cause.

C. If the Tax Division concludes that a Swiss Bank has met all obligations set forth in the NPA, the Department will not prosecute the Swiss Bank for any tax-related offenses under Titles 18 or 26, United States Code, or for any unreported monetary transactions under §§ 5314 or 5322, Title 31, United States Code, in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period.

D. Each Swiss Bank requesting an NPA must fully cooperate in the disclosure of the following evidence and information.

1. Prior to the execution of an NPA, the Swiss Bank must provide information including:

a. how the cross-border business for U.S. Related Accounts was structured, operated, and supervised (including internal reporting and other communications with and among management);

b. the name and function of the individuals who structured, operated, or supervised the cross-border business for U.S. Related Accounts during the Applicable Period;

c. how the Swiss Bank attracted and serviced account holders;

d. an in-person presentation and documentation, properly translated, supporting the disclosure of the above information, as well as cooperation and assistance with further explanation of information and materials so presented, upon request, or production of additional explanatory materials as needed; and

e. the total number of U.S. Related Accounts and the maximum dollar value, in the aggregate, of the U.S. Related Accounts that:

i. existed on August 1, 2008;

ii. were opened between August 1, 2008, and February 28, 2009; and

iii. were opened after February 28, 2009.

2. Upon execution of an NPA, for all U.S. Related Accounts that were closed during the Applicable Period, the Swiss Bank must provide information including:

a. the total number of accounts; and

b. as to each account:

i. the maximum value, in dollars, of each account, during the Applicable Period;

ii. the number of U.S. persons or entities affiliated or potentially affiliated with each account, and further noting the nature of the relationship to the account of each such U.S. person or entity or potential U.S. person or entity (e.g., a financial interest, beneficial interest, ownership, or signature authority, whether directly or indirectly, or other authority);

iii. whether it was held in the name of an individual or an entity;

iv. whether it held U.S. securities at any time during the Applicable Period;

v. the name and function of any relationship manager, client advisor, asset manager, financial advisor, trustee, fiduciary, nominee, attorney, accountant, or other individual or entity functioning in a similar capacity known by the Bank to be affiliated with said account at any time during the Applicable Period; and

vi. information concerning the transfer of funds into and out of the account during the Applicable Period on a monthly basis, including (a) whether funds were deposited or withdrawn in cash; (b) whether funds were transferred through an intermediary (including but not limited to an asset manager, financial advisor, trustee, fiduciary, nominee, attorney, accountant, or other third party functioning in a similar capacity) and the name and function of any such intermediary; (c) identification of any financial institution and domicile of any financial institution that transferred funds into or received funds from the account; and (d) any country to or from which funds were transferred.

3. Prior to the execution of an NPA, the Swiss Bank will, at its expense, have the information described in Paragraph II.D.2, above, verified by an Independent Examiner. The verification will include a statement that the Independent Examiner has confirmed that the due diligence standards set out in Paragraph I.B.9, above, were applied in collecting the information described in Paragraph II.D.2, above.

4. As a condition of any NPA, the Swiss Bank will provide all necessary information for the United States to draft treaty requests to seek account information; such cooperation will include but not be limited to the development of appropriate search criteria.

5. As a condition of any NPA, the Swiss Bank will collect and maintain all records that are potentially responsive to such treaty requests to facilitate prompt responses.

E. Retention of records

The terms of an NPA will include that the Swiss Bank agrees to retain all records relating to its U.S. cross-border business, including records relating to all U.S. Related Accounts closed during the Applicable Period, for a period of 10 years from the termination date of the NPA.

F. Assistance in Related Matters

The terms of an NPA will include that the Swiss Bank, upon request, will provide:

1. testimony of a competent witness or information as needed to enable the United States to use the information and evidence obtained pursuant to a provision of this Program or separate treaty request in any criminal or other proceeding; and

2. assistance in identification and translation of significant documents at the expense of the Swiss Bank.

G. Closure of Accounts of Recalcitrant Account Holders

The terms of an NPA will provide that the Swiss Bank agrees to close any and all accounts of recalcitrant account holders, as defined in Section 1471(d)(6) of the U.S. Internal Revenue Code. The terms of the NPA will require that the Swiss Bank implement procedures to prevent its employees from assisting recalcitrant account holders to engage in acts of further concealment in connection with closing any account or transferring any funds. The terms of the NPA will also provide that the Swiss Bank agrees not to open any U.S. Related Accounts (as defined in Paragraph I.B.9, above, but without regard to the dollar limit or the reference to the Applicable Period) except on conditions that ensure that the account will be declared to the United States and will be subject to disclosure by the Swiss Bank.

H. Payment

Upon execution of an NPA, the Swiss Bank will agree to pay as a penalty:

1. for U.S. Related Accounts that existed on August 1, 2008, an amount equal to 20% of the maximum aggregate dollar value of all such accounts during the Applicable Period;

2. for U.S. Related Accounts that were opened between August 1, 2008, and February 28, 2009, an amount equal to 30% of the maximum aggregate dollar value of all such accounts; and

3. for U.S. Related Accounts that were opened after February 28, 2009, an amount equal to 50% of the maximum aggregate value of all such accounts.

The determination of the maximum dollar value of the aggregated U.S. Related Accounts may be reduced by the dollar value of each account as to which the Swiss Bank demonstrates, to the satisfaction of the Tax Division, was not an undeclared account, was disclosed by the Swiss Bank to the U.S. Internal Revenue Service, or was disclosed to the U.S. Internal Revenue Service through an announced Offshore Voluntary Disclosure Program or Initiative following notification by the Swiss Bank of such a program or initiative and prior to the execution of the NPA.

I. This Program sets out the framework for the proposed NPAs. Each NPA may take into account factors specific to the particular Swiss Bank.

J. If the Department determines, in its sole discretion, that any information or evidence provided by the Swiss Bank is materially false, incomplete, or misleading, it may decline to enter into an NPA; or if after entering into an NPA, the Department, in its sole discretion, determines that the Swiss Bank has provided materially false, incomplete, or misleading information or evidence, or has otherwise materially violated the terms of the NPA, the United States may pursue any and all legal remedies available to it, including investigating and instituting criminal charges against the Swiss Bank, without regard to any other provision of the NPA or this Program. For purposes of this provision, by executing the NPA, the Swiss Bank will agree that any prosecutions under statutes included in Paragraph II.C, above, that are not time-barred by the applicable statute of limitations on the date of the announcement of the Program may be commenced against the Swiss Bank, and the Swiss Bank will agree to waive any defenses premised upon the expiration of the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay, and will agree that such waiver is knowing, voluntary, and in express reliance upon the advice of the Swiss Bank's counsel.

K. If the Tax Division determines, upon review of the information provided by a Swiss Bank under Paragraph II.D, above, or other information available to the Tax Division, that the Swiss Bank's conduct demonstrates extraordinary culpability, the Tax Division reserves the right to require that the Swiss Bank enter a Deferred Prosecution Agreement ("DPA") instead of an NPA.

III. Swiss Banks Requesting A Non-Target Letter As A Category 3 Bank

A. Any Swiss Bank

1. as to which the Tax Division has not authorized a formal criminal investigation concerning its operations as of the date of this Program (i.e., that is not a Category 1 Bank);

2. that is not a Category 4 Bank; and

3. that has not committed any tax-related offenses under Titles 18 or 26, United States Code, or monetary transactions offenses under §§ 5314 or 5322, Title 31, United States Code, in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period (i.e., that is not a Category 2 Bank),

may request a Non-Target Letter on the terms set out in Paragraphs III.B through H, below.

B. Each Swiss Bank requesting a Non-Target Letter as a Category 3 Bank must provide a letter to the Tax Division, expressing its intent no earlier than July 1, 2014 and no later than October 31, 2014. The letter must:

   1. include a plan for complying with the requirements set out herein, within a reasonable time, but not to exceed 120 days from the date of the letter of intent;

   2. provide the identity and qualifications of the Independent Examiner;

   3. state that the Swiss Bank will maintain all records required for compliance with the terms set out below; and

   4. state that the Swiss Bank agrees that with respect to any applicable statute of limitations that has not expired as of the date of the announcement of this Program, the Bank waives any potential defense based on the statute of limitations for the period from the date of the announcement of this Program to the issuance of a Non-Target Letter.

C. If a Swiss Bank, after having undertaken an investigation in a timely and good faith manner, belatedly determines, based on the discovery of information that in good faith could not have been discovered previously, that it should instead have requested an NPA as a Category 2 Bank, the Tax Division may consider whether to enter into discussions with the Swiss Bank as if the Swiss Bank had timely requested an NPA under the terms of Paragraph II, above. A request for relief under this provision must be made before October 31, 2014. Relief will be granted at the sole discretion of the Tax Division, and only under extraordinary circumstances. Under no circumstances will such relief be considered if the Tax Division has authorized a formal criminal investigation concerning the operations of the Swiss Bank, or has received information concerning wrongful conduct by the Swiss Bank.

D. A Swiss Bank requesting a Non-Target Letter under Paragraph III.B, above, must, at its expense, engage an Independent Examiner to conduct an independent internal investigation.

E. At the conclusion of the independent internal investigation, the Swiss Bank and the Independent Examiner must:

   1. verify the percent of the Swiss Bank's account holdings and assets under management that are U.S. Related Accounts;

   2. verify that the Swiss Bank has an effective compliance program, accompanied by a description of the compliance program; and

   3. provide the Tax Division with a report of the Independent Examiner's internal investigation, prepared in English, that includes: (i) a list of the witnesses, including titles, interviewed by the Independent Examiner and a summary of the information provided by each witness; (ii) identification of the files reviewed by the Independent Examiner; (iii) the factual findings of the Independent Examiner; and (iv) the conclusions reached by the Independent Examiner.

F. A Swiss Bank requesting a Non-Target Letter under Paragraph III.B, above, must agree:

1. to maintain all notes, drafts, correspondence, reports, and other documents or records created or prepared in any manner by the Independent Examiner, or reviewed by or provided to the Independent Examiner, for a period of ten years from the date of the Non-Target Letter;

2. to close any and all accounts of recalcitrant account holders, as defined in Section 1471(d)(6) of the U.S. Internal Revenue Code, and to implement procedures to prevent its employees from assisting recalcitrant account holders to engage in acts of further concealment in connection with closing any account or transferring any funds;

3. not to open any U.S. Related Accounts (as defined in Paragraph I.B.9, above, but without regard to the dollar limit or the reference to the Applicable Period) except on conditions that will ensure that the account will be declared to the United States and will be subject to disclosure by the Swiss Bank; and

4. that, if the Department, in its sole discretion, determines that the Swiss Bank has provided materially false, incomplete, or misleading information or evidence to the United States, or has otherwise materially violated the terms of any agreement with the United States, the United States may pursue any and all legal remedies available to it, including investigating and instituting criminal charges against the Swiss Bank, without regard to any other provision of the Non-Target Letter or this Program. For purposes of this provision, the Swiss Bank will agree that any prosecutions that are not time-barred by the applicable statute of limitations on the date of the announcement of the Program may be commenced against the Swiss Bank, and the Swiss Bank will agree to waive any defenses premised upon the expiration of the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay, and will agree that such waiver is knowing, voluntary, and in express reliance upon the advice of the Swiss Bank's counsel.

G. Following the submission of the report of an Independent Examiner's internal investigation on the terms set out in Paragraph III.E.3, above:

1. The Tax Division may either (a) inform the Swiss Bank that the Swiss Bank is eligible for a Non-Target Letter as a Category 3 Bank or (b) seek additional information from the Swiss Bank prior to making its determination. The Tax Division may decline to provide a Non-Target Letter if the requested information is not provided.

2. The Tax Division will endeavor to provide the determination or the request for information set out in Paragraph III.G.1, above, within a period of 270 days from receipt of the report of the Independent Examiner's internal investigation. Should the Tax Division seek additional information, the Tax Division will endeavor to provide a determination within 90 days of the receipt of all such additional information. If the Tax Division is unable to act within these time periods, the Tax Division will provide notice to the Swiss Bank of its expectation as to the additional time that will be needed to complete its review.

H. The Tax Division may decline to provide a Non-Target Letter to any Swiss Bank if it determines that the Swiss Bank has failed to meet the standard set out in Paragraph III.A.3, above, or that any information or evidence provided by the Swiss Bank is materially false, incomplete, or misleading, or it has information that contradicts the verification or report of the Independent Examiner under Paragraph III.E, above, or that otherwise demonstrates criminal culpability by the Swiss Bank.

IV. Swiss Banks Requesting A Non-Target Letter As A Category 4 Bank

A. Any Swiss Bank

1. as to which the Tax Division has not authorized a formal criminal investigation concerning its operations as of the date of this Program (i.e., that is not a Category 1 Bank); and

2. that is a "Deemed Compliant Financial Institution" as a "Financial Institution with Local Client Base" under the FATCA Agreement, Annex II Paragraph II.A.1, as if the FATCA Agreement were in force during the Applicable Period (except that the Swiss Bank must meet the terms of Annex II, Paragraph II.A.1.e on December 31, 2009, and the date of the announcement of this Program),

may request a Non-Target Letter on the terms set out in Paragraphs IV.B through E, below.

B. A Swiss Bank requesting a Non-Target Letter as a Category 4 Bank must provide a letter to the Tax Division, expressing its intent no earlier than July 1, 2014 and no later than October 31, 2014. The letter must:

1. include a plan for complying with the requirements set out herein, within a reasonable time, but not to exceed 120 days from the date of the letter of intent;

2. provide the identity and qualifications of the Independent Examiner;

3. state that the Swiss Bank will maintain all records required for compliance with the terms set out below; and

4. state that the Swiss Bank agrees that with respect to any applicable statute of limitations that has not expired as of the date of the announcement of this Program, the Bank waives any potential defense based on the statute of limitations for the period from the date of the announcement of this Program to the issuance of a Non-Target Letter.

C. To obtain a Non-Target Letter as a Category 4 Bank, a Swiss Bank must:

1. provide verification executed by the Swiss Bank and an Independent Examiner that it has satisfied the requirements of Paragraph IV.A, above;

2. agree to maintain records sufficient to establish the basis for verification of its status as a Category 4 Bank for a period of ten years from the date of the Non-Target Letter; and

3. agree that, if the Department, in its sole discretion, determines that the Swiss Bank has provided materially false, incomplete, or misleading information or evidence to the United States, or has otherwise materially violated the terms of any agreement with the United States, the United States may pursue any and all legal remedies available to it, including investigating and instituting criminal charges against the Swiss Bank, without regard to any other provision of the Non-Target Letter or this Program. For purposes of this provision, the Swiss Bank will agree that any prosecutions that are not time-barred by the applicable statute of limitations on the date of the announcement of the Program may be commenced against the Swiss Bank, and the Swiss Bank will agree to waive any defenses premised upon the expiration of the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay, and will agree that such waiver is knowing, voluntary, and in express reliance upon the advice of the Swiss Bank's counsel.

D. Upon acceptance of verification of a Swiss Bank's status as a Category 4 Bank by the Tax Division, and the agreement by the Swiss Bank to the terms set out in Paragraph IV.C, above, the Tax Division will provide the Swiss Bank with a Non-Target Letter.

E. The Tax Division may decline to provide a Non-Target Letter if it determines that any information or evidence provided by the Swiss Bank is materially false, incomplete, or misleading, or if it has evidence that contradicts the verification of the Independent Examiner under Paragraph IV.C, above, or otherwise demonstrates criminal culpability by the Swiss Bank.

V. Other Provisions

A. The Tax Division will not authorize formal criminal investigation of any additional Swiss Banks in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period before January 1, 2014.

B. The personal data provided by the Swiss Banks under this Program will be used and disclosed only for purposes of law enforcement (which may include regulatory action) in the United States or as otherwise permitted by U.S. law.

C. This Program is conditioned on the intention of Switzerland, as stated in the Joint Statement between the U.S. Department of Justice and the Swiss Federal Department of Finance dated August 29, 2013, to encourage Swiss Banks to consider participation in the Program. Should Switzerland fail to provide or act to withdraw such encouragement, or should legal barriers prevent effective participation by the Swiss Banks on the terms set out in this Program, this Program may be terminated by the Department.

Announced on August 29, 2013.

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 #38

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

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Counsel to UBS AG

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By: _____
Markus Diethelm, Esq.
Group General Counsel

Wachtell, Lipton, Rosen & Katz
Counsel to UBS AG

By: _____
John F. 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:

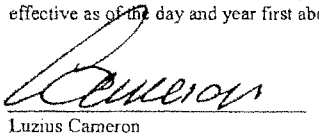
1. The Company (i) consent to the filing in the United State District Court for the Southern District of Florida of an Information charging the Company with one count of participating in a conspiracy in violation of 18 U.S.C. § 371 to defraud the United States and its agency the Internal Revenue Service 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

09-60033-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. (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. 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)

AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA

AND

THE SWISS CONFEDERATION

on the request for information from the Internal Revenue Service of the United States of America regarding UBS AG, a corporation established under the laws of the Swiss Confederation

Permanent Subcommittee on Investigations
EXHIBIT #39a

THE UNITED STATES OF AMERICA

and

THE SWISS CONFEDERATION

hereinafter referred to as "the Contracting Parties",

WHEREAS,

the Contracting Parties seek to reaffirm and strengthen the long-standing and close friendship between their peoples and to continue and enrich the cooperative relationship which exists between the two countries;

the Contracting Parties share a mutual respect for each other's sovereignty and democratic traditions, and for the rule of law;

the Contracting Parties equally share a desire to amicably resolve disputes in a manner consistent with the laws of both nations;

Article 26 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 of October 2, 1996 (the "Tax Treaty"), the Protocol accompanying and forming an integral part of the Tax Treaty (the "Protocol"), and the Mutual Agreement of January 23, 2003 regarding the administration of Article 26 of the Treaty (the "Mutual Agreement"), provide a mutually agreed-upon mechanism pursuant to which competent authorities of the Contracting Parties are able to exchange information, as is necessary for the prevention of "tax fraud or the like";

on July 21, 2008, the Internal Revenue Service ("IRS"), pursuant to its authority under 26 U.S.C. §7602(a), issued a "John Doe Summons" (the "JDS") to UBS AG seeking information concerning client accounts;

on or about the date of the signing of this Agreement, the IRS and UBS AG entered into a separate agreement; and

the Contracting Parties wish to establish understandings that will avoid future disputes regarding requests for information;

NOW, THEREFORE, pursuant to Articles 25 and 26 of the Tax Treaty, the Contracting Parties have agreed as follows:

Article 1 Treaty Request

1. The Swiss Confederation shall process, pursuant to the existing Tax Treaty, a request by the United States for information regarding US clients of UBS AG, incorporating the criteria set forth in the Annex to this Agreement (the "Treaty Request"). Based on the criteria set forth in the Annex, the Contracting Parties estimate and expect that the number of open or closed accounts falling under the Treaty Request is approximately 4'450.[1]
2. The Swiss Confederation shall establish a special task force enabling the Swiss Federal Tax Administration ("SFTA") to render its final decisions (as described in Section 4.a., Art. 20j, of the Ordinance of the Swiss Federal Council of June 15, 1998) pursuant to the Treaty Request on an expedited basis according to the following time frames:
   - the first 500 decisions within 90 days from receipt of the Treaty Request; and
   - the remaining decisions on a continuing basis concluding no later than 360 days from receipt of the Treaty Request.
3. The SFTA shall notify UBS AG that it has received the Treaty Request immediately upon receipt of the Treaty Request by the SFTA and shall support the Treaty Request process according to this Article and the criteria set forth in the Annex with the highest priority, and is committed to discuss any issues that might arise in this regard according to the mechanism established in Article 5 of this Agreement.
4. With a view to accelerating the processing of the Treaty Request by the SFTA, the IRS will promptly request all UBS clients who enter into the voluntary disclosure program on or after the signing of this Agreement to give a waiver to UBS AG to provide account documentation to the IRS.
5. The Swiss Confederation is prepared to process additional requests for information by the IRS under Article 26 of the existing Tax Treaty regarding the UBS AG case if a future decision of the Swiss Federal Administrative Court broadens the criteria set forth in the Annex to this Agreement.

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[1] For these accounts UBS will provide a notice to account holders under the Treaty Request. They will (i) be subject to a final decision of the SFTA under the treaty process, or (ii) be transmitted to the IRS as a result of the accountholder having provided UBS or the SFTA with a waiver to submit such account information directly, or (iii) fall out of the treaty process after the account holders have provided consent to the SFTA to request copies of the taxpayer's FBAR returns from the IRS for the relevant years as described in the Annex under paragraph 2.A.b. and 2.B.b.

Article 2 Revised Tax Treaty

The Contracting Parties are committed to the signing of the new protocol amending Article 26 (and certain other provisions) of the Tax Treaty, initialed on June 18, 2009, as soon as possible, but no later than September 30, 2009, and shall use their best efforts, consistent with their respective constitutional processes, to have the new protocol ratified promptly.

Article 3 Withdrawal of the John Doe Summons

1. Immediately after the signing of this Agreement, the United States and UBS AG shall file a stipulation of dismissal with the United States District Court for the Southern District of Florida with respect to the enforcement action concerning the JDS.
2. Subject to the terms of Article 5 of this Agreement, the United States shall not seek further enforcement of the JDS while this Agreement remains in force.
3. Subject to UBS AG's compliance with Article 4 of this Agreement, the United States shall withdraw the JDS with prejudice no later than December 31, 2009 with respect to accounts not covered by the Treaty Request.
4. The United States shall withdraw the JDS with prejudice with respect to the accounts covered by the Treaty Request on or after January 1, 2010 when it has received all relevant account information, submitted on or after February 18, 2009, concerning 10'000 open or closed undisclosed UBS AG accounts from any source.[2] The United States shall provide the SFTA with regular updates about the number of such disclosures.
5. Subject to UBS AG's compliance with Article 4 of this Agreement and subject to the terms of Article 5 of this Agreement, the United States shall withdraw the JDS with prejudice with respect to the accounts covered by the Treaty Request no later than 370 days from the signing of this Agreement.

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[2] For purposes of this paragraph, the term "any source" means account information disclosed (i) under the Treaty Request, (ii) under the IRS's voluntary disclosure practice, (iii) as a result of waivers for UBS or the SFTA to submit account information to the IRS, or (iv) under the Deferred Prosecution Agreement between UBS AG and the United States of America, dated February 18, 2009. Furthermore, the IRS shall to the extent feasible, include account information disclosed through FBAR filings made after the signing of this Agreement and for which the IRS has determined that such filings are attributable to the fact that the Contracting Parties entered into this Agreement.

Article 4 Compliance by UBS

1. In the separate agreement with the IRS, UBS AG has committed itself to comply with the SFTA order requesting the information covered by the Treaty Request according to the following time frames:
   - within 60 days after UBS AG receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall have submitted to the SFTA the first 500 cases;
   - within 180 days after UBS AG receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall have submitted to the SFTA the remaining cases referred to in the Annex under paragraphs 2.A.b and 2.B.b, respectively; and
   - within 270 days after UBS AG receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall have submitted to the SFTA all remaining cases.
2. In the separate agreement with the IRS, UBS AG has committed itself to continue its support for the IRS voluntary compliance practice.
3. The Swiss Federal Office of Justice (SFOJ), which shall seek the assistance of the Swiss Financial Market Supervisory Authority (FINMA), shall oversee UBS AG's strict compliance with the commitments.

Article 5 Assessment, Consultations and other Measures

1. The SFTA, the SFOJ, and the IRS shall meet together with UBS on a quarterly basis to assess the progress of the process established in this Agreement, including evaluation of maximum effectiveness of the voluntary compliance of UBS US clients and additional measures that the Contracting Parties can reasonably undertake to promote the legitimate enforcement interest of the IRS.
2. Either Contracting Party may at any time request further consultations on the implementation, interpretation, application, or amendment of this Agreement. Such consultation (through discussion or correspondence) shall take place within a period of 30 days of the date of receipt of such a request, unless otherwise mutually decided.
3. If a Contracting Party fails to fulfill its obligations contained in this Agreement, the other Contracting Party may request immediate consultations in view of taking the appropriate measures to ensure the fulfillment of the Agreement.
4. If 370 days after the signing of this Agreement the actual and anticipated results differ significantly from what can reasonably be expected at that time according to the purpose of this Agreement and if the matter cannot be resolved mutually either (1) by the consultation measures according to paragraphs 2 and 3 of this Article or (2) by an amendment according to Article 9 of this Agreement, then either Contracting Party may take proportionate rebalancing measures to remedy the

effected imbalance between the rights and obligations under this Agreement. However, such measures may not go beyond preserving the legal situation of either Contracting Party, which existed immediately before they were taken.

5. Possible measures taken under this Article shall not impose any financial or new non-financial obligations on UBS AG.

Article 6 Confidentiality

The initial public statements shall be made simultaneously on August 19, 2009 at 9:30 a.m. Eastern Daylight Time. To avoid impairment of tax administration in both the United States and Switzerland, the Contracting Parties agree not to publicly discuss or publish the Annex of this Agreement earlier than 90 days from the date of signing of this Agreement.[3] However, nothing in this Agreement shall prevent the SFTA from explaining to a particular accountholder the specific facts upon which a final determination is based. Such individuals will be under the criminally enforceable obligation under Swiss law not to disclose such facts to any third party prior to the date of publication of the Annex.

Article 7 Third Party Rights

This Agreement does not confer any rights or benefits on any third party other than as provided in this Agreement with respect to UBS AG.

Article 8 Entry into Force

This Agreement shall enter into force upon signature.

Article 9 Amendment

This Agreement may be amended by written agreement between the Contracting Parties. Amendments shall enter into force according to Article 8 of the present Agreement.

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[3] The Annex will be disclosed to UBS AG under the same confidentiality requirements.

Article 10 Duration and Termination

This Agreement shall remain in force until both Contracting Parties have confirmed in writing the fulfillment of their obligations contained under this Agreement.

IN WITNESS THEREOF, the undersigned, duly authorized thereto by their respective governments, have signed this Agreement.

Done at Washington, DC this 19th day of August 2009, in duplicate, in English.

For the
United States of America:

by: _____
Barry B. Shott
United States Competent Authority
Deputy Commissioner (International)
Internal Revenue Service
Large & Mid-Size Business

For the
Swiss Confederation:

by: _____
Guillaume Scheurer
The Chargé d'Affaires a.i. of Switzerland

Annex

Criteria for Granting Assistance Pursuant to the Treaty Request

1. It is understood that a request for exchange of information generally requires the clear identification of the person(s) concerned. However, in light of (i) the identified specific wrongful conduct by certain individual US taxpayers who maintained non-W-9 accounts at UBS AG Switzerland (UBS) in their name or in the name of an offshore non-operating company of which they were a beneficial owner, (ii) the specificity of the concerned group of individuals as described in paragraph 4 of the Statement of Facts to the Deferred Prosecution Agreement between the United States of America and UBS of February 18, 2009 (the "DPA"), and (iii) consistent with the conditions set by the judgment of the Swiss Federal Administrative Court on March 5, 2009, the names of the UBS United States clients do not need to be mentioned in this request for information exchange.

   Thus, consistent with paragraph 4 of the Statement of Facts to the DPA, the general requirement to identify the persons subject to the request for information exchange is considered to be satisfied for the following individuals:

   A. US domiciled clients of UBS who directly held and beneficially owned "undisclosed (non-W-9) custody accounts" and "banking deposit accounts" in excess of CHF 1 million (at any point in time during the period of years 2001 through 2008) with UBS and for which a reasonable suspicion of "tax fraud or the like" can be demonstrated, or

   B. US persons (irrespective of their domicile) who beneficially owned "offshore company accounts" that have been established or maintained during the period of years 2001 through 2008 and for which a reasonable suspicion of "tax fraud or the like" can be demonstrated.

2. The agreed-upon criteria for determining "tax fraud or the like" for this request pursuant to the existing Tax Treaty are set forth as follows:

   A. For "undisclosed (non-W-9) custody accounts" and "banking deposit accounts" (as described in paragraph 1.A of this Annex) where there is a reasonable suspicion that the US domiciled taxpayers engaged in the following:

      a. Activities presumed to be fraudulent conduct (as described in paragraph 10, subparagraph 2, first sentence of the Protocol) including such activities that led to a concealment of assets and

underreporting of income based on a "scheme of lies"[1] or submission of incorrect and false documents. Where such conduct has been established, persons with accounts of less than CHF 1 million in assets (except those accounts holding assets below CHF 250,000) during the relevant period would also be included in the group of US persons subject to this request; or

b. Acts of continued and serious tax offense for which the Swiss Confederation may obtain information under its laws and practices (as described in paragraph 10, subparagraph 2, third sentence of the Protocol), which based on the legal interpretation of the Contracting Parties includes cases where (i) the US-domiciled taxpayer has failed to provide a Form W-9[2] for a period of at least 3 years (including at least 1 year covered by the request) and (ii) the UBS account generated revenues of more than CHF 100,000 on average per annum for any 3-year period that includes at least 1 year covered by the request. For the purpose of this analysis, revenues are defined as gross income (interest and dividends) and capital gains (which for the purpose of assessing the merits of this administrative information request are calculated as 50% of the gross sales proceeds generated by the accounts during the relevant period).

B. For "offshore company accounts" (as described in paragraph 1.B of this Annex) where there is a reasonable suspicion that the US beneficial owners engaged in the following:

a. Activities presumed to be fraudulent conduct (as described in paragraph 10, subparagraph 2, first sentence of the Protocol) including such activities that led to a concealment of assets and underreporting of income based on a "scheme of lies"[3] or

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[1] Such "scheme of lies" may exist where, based on the Bank's records, beneficial owners (i) used false documents; (ii) engaged in a fact pattern that has been set out in the "hypothetical case studies" in the appendix to the Mutual Agreement concerning Art. 26 of the Tax Treaty (for example, by using related entities or persons as conduits or nominees to repatriate or otherwise transfer funds in the offshore accounts); or (iii) used calling cards to disguise the source of trading. These examples are not exhaustive, and depending on the applicable facts and circumstances, certain further activities may be considered by the SFTA as a "scheme of lies".

[2] For "banking deposit accounts" based on the Contracting Parties' legal interpretation a reasonable suspicion for such tax offence would be met if the US persons failed to prove upon notification by the Swiss Federal Tax Administration that they have met their statutory tax reporting requirements in respect of their interests in such accounts (i.e., by providing consent to the SFTA to request copies of the taxpayer's FBAR returns from the IRS for the relevant years).

[3] Such "scheme of lies" may exist where the Bank's records show that beneficial owners continued to direct and control, in full or in part, the management and disposition of the assets held in the offshore company account or otherwise disregarded the formalities or substance of the purported corporate ownership (i.e., the offshore corporation functioned as nominee, sham entity or alter ego of the US

submission of incorrect or false documents, other than US beneficial owners of offshore company accounts holding assets below CHF 250,000 during the relevant period; or

b. Acts of continued and serious tax offense for which the Swiss Confederation may obtain information under its laws and practices (as described in paragraph 10, subparagraph 2, third sentence of the Protocol), which based on the legal interpretation of the Contracting Parties includes cases where the US person failed to prove upon notification by the Swiss Federal Tax Administration that the person has met his or her statutory tax reporting requirements in respect of their interests in such offshore company accounts (i.e., by providing consent to the SFTA to request copies of the taxpayer's FBAR returns from the IRS for the relevant years). Absent such confirmation, the Swiss Federal Tax Administration would grant information exchange where (i) the offshore company account has been in existence over a prolonged period of time (i.e., at least 3 years including one year covered by the request), and (ii) generated revenues of more than CHF 100'000 on average per annum for any 3-year period that includes at least 1 year covered by the request. For the purpose of this analysis, revenues are defined as gross income (interest and dividends) and capital gains (which for the purpose of assessing the merits of this administrative information request are calculated as 50% of the gross sales proceeds generated by the accounts during the relevant period).

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beneficial owner) by: (i) making investment decisions contrary to the representations made in the account documentation or in respect to the tax forms submitted to the IRS and the Bank; (ii) using calling cards / special mobile phones to disguise the source of trading; (iii) using debit or credit cards to enable them to deceptively repatriate or otherwise transfer funds for the payment of personal expenses or for making routine payments of credit card invoices for personal expenses using assets in the offshore company account; (iv) conducting wire transfer activity or other payments from the offshore company's account to accounts in the United States or elsewhere that were held or controlled by the US beneficial owner or a related party with a view to disguising the true source of the person originating such wire transfer payments; (v) using related entities or persons as conduits or nominees to repatriate or otherwise transfer funds in the offshore company's account; or (vi) obtaining "loans" to the US beneficial owner or a related party directly from, secured by, or paid by assets in the offshore company's account. These examples are not exhaustive, and depending on the applicable facts and circumstances, certain further activities may be considered by the SFTA as a "scheme of lies".

SETTLEMENT AGREEMENT

WHEREAS,

The United States of America (the "United States"), the U.S. Internal Revenue Service ("IRS") and UBS AG ("UBS") (singularly a "Party" and collectively the "Parties") desire to resolve their dispute over the John Doe summons that was served upon UBS by the IRS on or about July 21, 2008 (the "UBS Summons") and that is the subject of the matter pending in the United States District Court for the Southern District of Florida, Miami Division, entitled United States of America v. UBS AG, Case No. 09-20423-CIV-GOLD/MCALILEY (the "Action");

the United States and the Swiss Confederation have entered into a separate agreement dated August 19, 2009, in which the United States and the Swiss Confederation have agreed on an information exchange mechanism that is intended to achieve the U.S. tax compliance goals of the UBS Summons while also respecting Swiss sovereignty (the "US-Switzerland Agreement"); and

as contemplated in the US-Switzerland Agreement, the IRS will deliver to the Swiss Federal Tax Administration (the "SFTA") a request for administrative assistance, pursuant to Article 26 of the 1996 Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (the "1996 Convention"), seeking information with regard to accounts of certain U.S. persons maintained at UBS in Switzerland (the "Treaty Request").

NOW, THEREFORE, the Parties have agreed to the settlement of the Action on the terms set forth below:

1. Immediately upon the execution of this Settlement Agreement, and in no event more than 5 business days after its execution, UBS and the United States will file a Stipulation of Dismissal, pursuant to Fed.R.Civ.P. 41(a)(1)(A)(ii), with the United States District Court for the Southern District of Florida. (A copy of the proposed joint stipulation dismissing the Action is attached hereto as Exhibit A.) The Parties understand that the dismissal of the Action pursuant to this paragraph 1 shall, in and of itself, have no effect on the UBS Summons or its enforceability.

2. In order to facilitate and support the information exchange mechanism being established under the US-Switzerland Agreement, UBS agrees that it shall produce, on a rolling basis, account information to the SFTA on the following schedule: (i) within 60 days after UBS receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall submit to the SFTA the first 500 cases described in paragraphs 2.A.b and 2.B.b of the Annex to the US-Switzerland Agreement; (ii) within 180 days after UBS receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall submit to the SFTA the remaining cases described in paragraphs 2.A.b and 2.B.b of the Annex to the US-Switzerland Agreement; and (iii) within 270 days after UBS receives notice from the SFTA

Permanent Subcommittee on Investigations
EXHIBIT #39b

that the Treaty Request has been received by the SFTA, UBS shall submit to the SFTA all the remaining cases subject to the Treaty Request. As a result, UBS shall complete the production to the SFTA of all cases responsive to the Treaty Request no later than 270 days after UBS receives notice from the SFTA that the Treaty Request has been received by the SFTA. The account information referred to in this paragraph is the information that UBS is ordered to produce to the SFTA pursuant to the Treaty Request. Based on an analysis conducted by UBS, the Parties estimate that information concerning approximately 4,450 accounts shall be provided by UBS to the SFTA in response to the Treaty Request.

3. In order to further expedite the process, UBS agrees to send notices based on currently available contact information to U.S. persons whose accounts with UBS are subject to the Treaty Request informing such U.S. persons that they should promptly designate an agent in Switzerland for the receipt of communications concerning the Treaty Request with respect to their accounts as soon as such accounts are identified by UBS but, with respect to accounts described in paragraphs 2.A.b and 2.B.b of the Annex to the US-Switzerland Agreement, beginning immediately upon UBS receiving notice from the SFTA that the Treaty Request has been received by the SFTA and continuing on a rolling basis, UBS shall send notices to holders of 500 such accounts within 15 days of receiving notice from the SFTA; shall send notices to holders of 1,000 additional such accounts within 30 days of receiving notice from the SFTA; shall send notices to holders of 1,000 additional such accounts within 45 days of receiving notice from the SFTA; and shall complete notifying all such accounts identified at that time within 90 days of receiving notice from the SFTA. The Parties recognize that certain unavoidable system limitations and technical issues with respect to a de minimis number of accounts relating, for example, to the identification of addresses for old and/or closed accounts, may cause delays with respect to notification. The Parties agree that any delay in sending notices to a de minimis number of account holders requiring notification within the timeframes set forth in this paragraph 3 shall not be considered a violation of this paragraph 3. The Parties will consult regularly with respect to any such issues that arise. If such U.S. persons do not designate an agent in Switzerland, communications with respect to their accounts shall be sent to such persons' last known mailing address. UBS agrees that the notice will advise such U.S. persons that if they choose to appeal to the Swiss Federal Administrative Court any SFTA administrative decision authorizing the providing of account information to the IRS, they may have an obligation under 18 U.S.C. §3506 to serve the notice of any such appeal and/or other documents relating to the appeal on the Attorney General of the United States at the time such notice of appeal or other document is submitted. UBS agrees that the notice shall encourage such U.S. persons to consult with qualified counsel concerning any obligations they may have under 18 U.S.C. §3506 should they choose to appeal. UBS agrees that the notice shall encourage such U.S. persons to execute a written instruction directing that the relevant account information (i.e., account opening and closing documentation and account statements) in respect of any accounts they maintained with UBS in Switzerland be transmitted to the IRS; in accordance with all valid instructions received from such U.S. persons, UBS shall transmit, at the earliest opportunity and on a rolling basis, all such information to the IRS. Finally, UBS agrees that the notice provided by UBS shall encourage such U.S. persons to consult with a qualified U.S. tax advisor regarding their account with UBS and, if appropriate, to take advantage of the IRS's

Voluntary Disclosure Practice. (Such notice shall be substantially in the form attached hereto as Exhibit B.)

4. UBS agrees that, in connection with its ongoing exit from its U.S. cross-border business, UBS shall send a written communication to all exiting U.S. clients encouraging such clients to execute a written instruction directing that account information substantially similar to the account information ordered to be produced to the SFTA with respect to any accounts they maintained with UBS in Switzerland be transmitted to the IRS, and UBS shall continue to maintain instructions and proposed forms relating to such waivers on UBS's website. In accordance with all valid instructions received from exiting U.S. clients, UBS shall transmit, at the earliest opportunity and on a rolling basis, all such account information to the IRS. In addition, the IRS has stated, in the US-Switzerland Agreement, that it intends to ask UBS clients who wish to participate in the IRS's voluntary disclosure practice to submit written instructions to UBS directing that UBS provide relevant account information directly to the IRS. UBS commits to process such instructions promptly and, in accordance with all valid instructions received from such accountholders, UBS shall promptly transmit such account information to the IRS.

5. The Parties understand that the Swiss Federal Office of Justice (the "SFOJ"), which shall seek the assistance of the Swiss Financial Market Supervisory Authority (the "FINMA"), shall oversee UBS's compliance with its commitments under this Settlement Agreement, including but not limited to the commitments set forth in paragraphs 2 and 3 of this Settlement Agreement.

6. The IRS and UBS hereby agree to amend UBS's Qualified Intermediary ("QI") Agreement, and to amend the QI audit guidance (applicable to UBS with respect to tax years for which the QI Agreement has been amended) to implement the provisions set forth in IRS Announcement 2008-98 effective for QI audit year 2010; provided, however, that in the event the IRS or the U.S. Department of Treasury issues temporary or final regulations or other guidance with respect to the QI program that modify or supersede, in whole or in part, the provisions set forth in IRS Announcement 2008-98, UBS agrees to be bound by such guidance, and the QI Agreement and the applicable QI audit guidance shall be further amended as necessary to give effect to such subsequent regulations or other guidance. The IRS and UBS further agree that the amendment to UBS's QI Agreement shall provide that the first QI audit year shall be 2010, and that such QI audit shall be conducted during the year 2011. UBS agrees to provide the IRS U.S. Competent Authority with copies of the periodic reports on the progress of the Exit Program it makes to the U.S. Department of Justice pursuant to paragraph 5 of the Deferred Prosecution Agreement between the United States and UBS dated February 18, 2009 ("DPA") at the same time it provides them to the U.S. Department of Justice. The IRS and UBS further agree that upon execution of the amended QI Agreement and adoption of the amended QI audit guidance, the IRS shall withdraw with prejudice the Notice of Default dated May 15, 2008 served on UBS by the IRS, and that such withdrawal constitutes the final resolution of any and all deficiencies, breaches, defaults and liabilities relating to or arising out of UBS's QI Agreement. Nothing in this Settlement Agreement shall serve to limit the IRS's ability to amend the QI program or audit guidance in

the future with respect to all QIs and to apply such program-wide amendments or guidance tc UBS's QI Agreement.

7. With respect to UBS accounts that are covered by the UBS Summons but that will not be described in and subject to the Treaty Request, the IRS agrees to withdraw with prejudice no later than December 31, 2009 the UBS Summons with respect to those accounts; provided, however, if UBS fails to timely meet in any material respect any of its obligations under paragraphs 2 and 3 of this Settlement Agreement that are required to be performed on or before December 31, 2009, the IRS is not obligated to withdraw the UBS Summons with respect to those accounts.

8. With respect to UBS accounts that are covered by the UBS Summons and that will be described in and subject to the Treaty Request, the IRS agrees to withdraw the UBS Summons with respect to those accounts, subject to Article 5.4 of the US-Switzerland Agreement, with prejudice upon the earlier of:

   (a) the date on or after January 1, 2010 when the IRS has received, subsequent to February 18, 2009, information concerning 10,000 UBS accounts pursuant to the Treaty Request, the IRS's voluntary disclosure practice, from UBS clients who have waived their right to secrecy and instructed UBS or the SFTA to provide their account information to the IRS, or under the DPA, or

   (b) no later than 370 days from the date of this Settlement Agreement; provided, however, (i) if UBS fails to comply in any material respect with any of its obligations under paragraphs 2 and 3 of this Settlement Agreement, the IRS is not obligated to withdraw the UBS Summons under this paragraph 8(b) with respect to those accounts that will be described in and subject to the Treaty Request and which have not been disclosed to the IRS as of that time as a result of the Treaty Request, the IRS's voluntary disclosure practice, or from UBS clients who have waived their right to secrecy and instructed UBS or the SFTA to provide their account information to the IRS, or (ii) if Article 5.4 of the US-Switzerland Agreement is triggered, and after all other alternatives under such Article have been exhausted, the IRS is not obligated to withdraw the UBS Summons under this paragraph 8(b) with respect to those accounts that will be described in and subject to the Treaty Request and which have not been disclosed to the IRS as of that time as a result of the Treaty Request or UBS clients waiving their right to secrecy and instructing UBS or the SFTA to provide their account information to the IRS.

   For purposes of subparagraph (a) of this paragraph 8, the IRS shall assess the feasibility of including account information disclosed through FBAR filings made after the signing of this Agreement and for which the IRS has determined that such filings are attributable to the fact that the Parties entered into this Agreement.

   In no event shall this Settlement Agreement or the alternatives provided for under Article 5.4 of the US-Switzerland Agreement require any financial payment or create any financial liability by UBS to the IRS.

9. Provided that the UBS Summons is withdrawn with prejudice in accordance with paragraphs 7 and 8 of this Settlement Agreement, the IRS agrees that it will not issue or seek to issue against UBS any John Doe summons or other similar process or request in respect of any accounts at UBS within the subject matter and time periods covered by the UBS Summons and this Settlement Agreement (including the Treaty Request).

10. The IRS and UBS agree to meet with SFTA and SFOJ on a quarterly basis to assess the progress of the process established in this Settlement Agreement, including evaluation of maximum effectiveness of the voluntary compliance of UBS U.S. clients and additional measures that the Parties can reasonably undertake to promote the enforcement interests of the IRS.

11. The initial public statements shall be made simultaneously on August 19, 2009 at 9:30 a.m. Eastern Daylight Time. The Parties agree that the following are confidential and shall not be disclosed to any person or persons not engaged in the implementation or interpretation of this Settlement Agreement: (i) any and all discussions leading up to the execution of this Settlement Agreement and which may take place subsequent to its execution (and any and all documents and communications reflecting the same other than this Settlement Agreement); and (ii) the criteria used to identify the accountholders that are subject to the Treaty Request, prior to the public release of such information under the terms of the US-Switzerland Agreement. Provided, however, that the Parties agree that the IRS and the U.S. Department of Justice may disclose the total number of direct accounts and the total number of offshore company accounts expected to be provided by UBS to the SFTA pursuant to the Treaty Request, the maximum value in such accounts at any point in time, and the total value of such accounts as of September 30, 2008 and December 31, 2008 (or the last available value prior to such dates). The Parties further agree that any Party may disclose other information related to this Settlement Agreement with the consent of the other Parties, which consent shall not be unreasonably withheld. For purposes of this paragraph 11, the IRS, UBS, SFTA, SFOJ, FINMA, the Swiss Federal Council, and the U.S. Department of Justice are engaged in the implementation or interpretation of this Settlement Agreement.

12. UBS agrees not to make any public statement that contradicts any statement made by the Swiss Confederation, the U.S. Department of Justice, or the IRS with respect to this Settlement Agreement, unless any such statement materially mischaracterizes the terms of this Settlement Agreement, but in no event shall UBS make such public statement before UBS brings the public statement to the attention of the governmental entity described in this paragraph 12 (and specifically to the attention of the IRS U.S. Competent Authority if the governmental entity is the IRS) and provides that governmental entity with a reasonable opportunity to explain or cure the public statement.

13. UBS AG shall provide a written consent in appropriate form meeting the requirements of IRC §6103 and Treas. Reg. §301.6103(c)(1) to permit the IRS and the U.S. Department of Justice to publicly discuss this Settlement Agreement, subject to the terms of paragraph 11.

14. The Parties further agree that:

(a) This Settlement Agreement contains all the agreements, conditions, promises and covenants among and between the signatories regarding the matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations or understandings, either written or oral, with respect to the subject matter of the present Settlement Agreement, except that this Settlement Agreement does not affect the terms of the DPA (or the Agreement between the IRS and UBS referred to therein) or the Consent Order between UBS and the U.S. Securities and Exchange Commission in SEC v. UBS AG, No. 1:09-cv-00316 (D.D.C.), Docket Entry No. 6;

(b) This Settlement Agreement may be amended or modified only by a written instrument signed by, or on behalf of, all of the undersigned signatories or their successors in interest;

(c) All counsel executing this Settlement Agreement warrant and represent that they have the full authority to do so;

(d) This Settlement Agreement shall be binding upon and inure to the benefit of the signatories hereto and their respective successors and assigns; and

(e) This Settlement Agreement may be executed in one or more original, photocopied, electronically scanned or facsimile counterparts. All executed counterparts and each of them shall be deemed to constitute an original and to be one and the same.

Dated at Washington, DC this day of , 2009.

For
UBS AG

By: _____
Marcus Diethelm, Esq.
Group General Counsel

For the
United States of America

By: _____
John A. DiCicco
Acting Assistant Attorney General
Tax Division
United States Department of Justice

For
UBS AG

By: _____
John F. Savarese
Wachtell, Lipton, Rosen & Katz

For the
Internal Revenue Service

By: _____
Barry B. Shott
United States Competent Authority
Deputy Commissioner (International)
Internal Revenue Service
Large & Mid-Size Business

For
UBS AG

By: _____
Ralph M. Levene
Wachtell, Lipton, Rosen & Katz

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

Case No. 09-20423-CIV-GOLD/MCALILEY

UNITED STATES OF AMERICA,		)
	Petitioner,	)
		)
v.		)
		)
UBS AG,		)
	Respondent.	)

STIPULATION OF DISMISSAL

Pursuant to Fed.R.Civ.P. 41(a)(1)(A)(ii), the parties stipulate that the action is dismissed, with each party to bear its own costs and attorneys' fees.

Dated:

The United States of America

By: _____

UBS AG

By: _____

SO ORDERED

Dated:

_____
ALAN S. GOLD USDJ

EXHIBIT B

PROPOSED DRAFT NOTICE TO UBS ACCOUNTHOLDERS

[Address Block]

Dear _____:

We have been informed that the U.S. Internal Revenue Service ("IRS") has submitted a request for administrative assistance to the Swiss Federal Tax Administration (the "SFTA"), pursuant to Article 26 of the 1996 Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (the "1996 Convention"), seeking information with regard to accounts of certain U.S. persons owned either directly or through an offshore company that are or have been maintained with UBS AG ("UBS") in Switzerland.

This letter provides notice to you that your account with UBS appears to be within the scope of the above-referenced IRS request. If the SFTA were to make a determination that information relating to your UBS account is required to be provided to the IRS pursuant to the 1996 Convention, the SFTA would make available to the IRS information and records relating to your account with UBS.

UBS has been directed to convey to you the following information:

1. Appointment of an agent in Switzerland. The SFTA requests that you appoint a person authorized to receive notifications in Switzerland concerning these matters and to inform the SFTA of the person you have appointed and his/her address in Switzerland. Within **20 days** of the receipt of this notification, please send this information to: Swiss Federal Tax Administration, Abteilung für Internationales, Eigerstrasse 65, CH-3003 Bern, Switzerland. If needed, you may obtain assistance in identifying a person who could serve as your agent in Switzerland by calling the [Swiss Bar Association] at [---].

2. Obligations in respect of any appeal. If the SFTA were to authorize the providing of information concerning your UBS account to the IRS pursuant to the 1996 Convention, the SFTA would notify your agent in Switzerland and the SFTA also would advise your agent that you would have a right under Swiss law to appeal such a decision by the SFTA to the Swiss Federal Administrative Court. It is important to note that if you choose to appeal such a decision, you may have an obligation, pursuant to Title 18 United States Code Section 3506, to serve the notice of appeal or other documents relating to the appeal on the Attorney General of the United States at the time such notice of appeal or other pleading is submitted. UBS urges you to consult with a qualified lawyer concerning whether to appeal any such decision of the SFTA and concerning any obligations you may have under Section 3506 of Title 18 of the United States Code should you choose to appeal such SFTA decision.

   Please be advised that we are not authorized to provide any information on whether or not information with respect to a specific account will be provided to the IRS before the overall process has been concluded.

3. Consent to disclosure. Alternatively, you may 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 IRS request. 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 U.S. tax lawyer should you have questions.

   If you would like to give this consent, please include the account number on your consent and please note the following:

   - If you hold or held the account together with one or more other person(s), all persons should sign the consent.
   - If you hold or held more than one account, please provide a separate form for each account.
   - If you have changed your name, for example, by marriage, please provide documentation of such name change.
   - If you hold or held this account through an offshore company, please have those who are authorized to act on behalf of the company (directors or other signatories or holders of power of attorney) sign the Instruction Letter.
   - If the account holder is deceased, please submit valid inheritance documents and the contact details of the executor.

   If you have filed FBAR forms with the United States Government with respect to your account, you may also provide the SFTA with permission to request from the IRS copies of your FBAR forms. To do so, please send permission for such a request to: [Swiss Federal Tax Administration, Abteilung für Internationales, Eigerstrasse 65, CH-3003 Bern, Switzerland.]

4. IRS Voluntary Disclosure Practice. The IRS has a longstanding voluntary disclosure practice to encourage U.S. taxpayers to bring themselves voluntarily into full compliance with the U.S. tax laws. Making voluntary disclosure enables taxpayers to become compliant, avoid substantial civil penalties and generally eliminates the risk of criminal prosecution. As part of this voluntary disclosure practice, on March 23, 2009, the IRS announced a penalty framework applicable to voluntary disclosure requests regarding unreported offshore accounts and entities. This initiative offers greater certainty regarding the applicable penalty structure and is designed to encourage U.S. taxpayers with offshore assets to take advantage of the IRS's voluntary disclosure practice.

   The IRS has announced that this new initiative will be in place for six months, ending on September 23, 2009. As a general matter, in order to take advantage of the IRS's voluntary disclosure practice (including the penalty framework described above), a U.S. taxpayer must make a voluntary disclosure to the IRS before the IRS identifies the taxpayer's potential non-compliance with U.S. tax laws through a civil examination, criminal investigation or other means.

Under the terms of the voluntary disclosure initiative, as explained by the IRS in subsequent guidance, there is still an opportunity for you to make a voluntary disclosure, but that opportunity will be lost upon the provision of your account data to the IRS in response to the treaty request. Accordingly, if you are considering making a voluntary disclosure, it is important for you to do so now. The IRS has stated that a voluntary disclosure will be considered timely as soon as a taxpayer identifies himself and expresses an intent to disclose, even if the taxpayer has not yet completed amended or delinquent returns. For details and further information on this offshore voluntary disclosure practice or the more general voluntary disclosure practice, please visit the IRS website, including at: http://www.irs.gov/newsroom/article/0,,id=210027,00.html.

Upon request, UBS will provide you with account information that you may need in order to make a voluntary disclosure.

UBS encourages you to consult with a qualified U.S. tax advisor regarding your account and, if appropriate, to consider taking advantage of the IRS's voluntary disclosure practice.

Sincerely yours,

UBS AG

[Signature Block]

CONSENT TO PUBLICLY DISCLOSE SETTLEMENT AGREEMENT AND RELATED INFORMATION

The undersigned authorized representative of UBS AG hereby consents to the disclosure by the Internal Revenue Service and/or the Tax Division, U.S. Department of Justice, through official publication such as in the Internal Revenue Bulletin (by the IRS) or a through a press release or in a public setting such as a press conference, of: (1) the name of UBS AG; (2) subject to its terms, the Settlement Agreement between UBS AG, the Tax Division, U.S. Department of Justice and the Internal Revenue Service dated August 19, 2009; and (3) as described in paragraph 11 of the Settlement Agreement, the total number of direct accounts and the total number of offshore company accounts expected to be provided by UBS AG to the Swiss Federal Tax Administration pursuant to a Treaty Request that will be made by the IRS to the SFTA pursuant to Article 26 of the 1996 Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, as well as the maximum value in such accounts at any point in time and the total value of such accounts as of September 30, 2008 and December 31, 2008 (or the last available value prior to such dates). The undersigned understands that this information might be published, broadcast, discussed, or otherwise disseminated in the public record.

This authorization shall become effective upon the later of (i) the execution hereof, or (ii) the execution of the Settlement Agreement. The returns and return information of UBS AG are confidential and are protected by law under the Internal Revenue Code.

I certify that I have the authority to execute this consent to disclose on behalf of the taxpayer named below.

Date: 8-19-09 Signature: [illegible]

Print name: Markus U. Diethelm

Title: Group General Counsel
Member of the Executive Committee

Name of Taxpayer: UBS AG

Taxpayer Identification Number: QI-EIN 98-0235527

Taxpayer's Address: BAHNHOFSTRASSE 45, 8001 ZURICH, SWITZERLAND

FILED
IN OPEN COURT
JUL 21
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	CRIMINAL NO. 1:11-CR-95
v.	)	
	)	Count 1: 18 U.S.C. § 371 (Conspiracy)
MARKUS WALDER,	)	
MARCO PARENTI ADAMI,	)	
SUSANNE D. RÜEGG MEIER,	)	
ROGER SCHAERER,	)	
EMANUEL AGUSTONI,	)	
MICHELE BERGANTINO,	)	
ANDREAS BACHMANN,	)	
a/k/a/ "Andrew Bachman",	)	
a/k/a/ "Andy Bachman", and	)	
JOSEF DÖRIG	)	
	)	
Defendants.	)	
	)	

SUPERSEDING INDICTMENT

July 2011 Term – At Alexandria

THE GRAND JURY CHARGES THAT:

GENERAL ALLEGATIONS

At all times relevant to this Superseding Indictment:

International Bank

1. An international Swiss bank organized under the laws of Switzerland and headquartered in Zurich, Switzerland, ("International Bank"), directly and through its subsidiaries, operated a global financial services business. As one of the biggest banks in Switzerland and largest wealth managers in the world, International Bank provided banking, wealth management, asset management, and investment banking services, among other services,

Permanent Subcommittee on Investigations
EXHIBIT #40

around the globe, including through branches located in the United States. For decades, International Bank operated a U.S. cross-border business through which its private bankers provided cross-border securities-related and investment advisory services to U.S. customers who maintained undeclared accounts at International Bank in Switzerland, the Bahamas, and other locations outside the United States. This cross-border business was conducted through substantial contacts with the customers in the United States. International Bank's managers and bankers working in the cross-border business knew and should have known that they were aiding and abetting U.S. customers in evading their U.S. income taxes. As of the fall of 2008, International Bank maintained thousands of undeclared accounts containing approximately $4 billion in total assets under management in those accounts.

2. International Bank operated a wholly owned subsidiary that is one of the largest private banks in Switzerland. The wholly owned subsidiary was formed in 2007 from the merger of four private banks and a securities dealer. The wholly owned subsidiary operated a U.S. cross-border business through which its private bankers provided cross-border securities-related and investment advisory services to U.S. customers who maintained undeclared accounts at the wholly owned subsidiary in Switzerland. This cross-border business was conducted through substantial contacts with the customers in the United States. The wholly owned subsidiary's managers and bankers working in the cross-border business knew and should have known that they were aiding and abetting U.S. customers in evading their U.S. income taxes.

3. In order for an entity and its bankers to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security, that entity and its bankers were required under U.S. law to register as a broker-dealer and as an investment adviser with the United States

Securities and Exchange Commission ("SEC"). Neither International Bank, nor the bankers engaged in its cross-border business, were registered as broker-dealers and investment advisers with the SEC.

4. In 1997, International Bank applied to the Federal Reserve Board under section 10(a) of the International Banking Act ("IBA") (12 U.S.C. § 3107(a)) to establish representative offices in Miami, Florida; New York, New York; and, Houston, Texas. The Foreign Bank Supervision Enhancement Act of 1991 ("FBSEA"), which amended the IBA, provided that a foreign bank had to obtain the approval of the Board to establish a representative office in the United States. International Bank proposed to establish the representative offices primarily to act as liaison with private banking customers, solicit private banking business, and provide information and advice on economic conditions and investment opportunities in Switzerland. International Bank represented to the Federal Reserve Board that it had the experience and capacity to support the proposed representative offices and had established controls and procedures for the proposed representative offices to ensure compliance with U.S. law. In 1998, the Federal Reserve Board granted International Bank's application. Prior to 1998, International Bank operated representative offices in New York, Los Angeles, San Francisco, Miami, and Houston under state banking regulations. International Bank made periodic reports regarding the activities of its New York Representative Office to the Federal Reserve Bank of New York, the bank's primary regulator in the United States.

5. In or around January 2001, International Bank entered into a Qualified Intermediary Agreement ("QI Agreement") with the Internal Revenue Service ("IRS"). The QI Agreement required the bank to verify the identity and citizenship/domicile of its customers,

through the execution of IRS Forms W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, and W-9, Request for Taxpayer Identification Number and Certification, and to withhold and pay over to the IRS taxes on certain transactions from accounts beneficially owned by U.S. taxpayers.

6. In or around March 2001, International Bank opened an SEC-registered and U.S. tax compliant cross-border business for U.S. customers who intended to report their ownership of their offshore accounts and related income to the IRS.

7. In or around the fall of 2008, International Bank began the process of exiting its undeclared U.S. cross-border banking business and closed its Representative Office in New York which serviced U.S. customers with undeclared accounts.

Other Swiss Banks

8. A private Swiss bank organized under the laws of Switzerland ("Private Swiss Bank #1") was a family-owned private bank that was founded in 2000 and headquartered in Zurich, Switzerland that provided cross-border banking services to U.S. customers. On its website, Private Swiss Bank #1 touted its "strict policy to never open any branch or other representation outside the reach of the Swiss laws and jurisdiction . . ." because "[o]nly that way can we be certain to maintain our values – and assure that no foreign authority will ever 'bully' us into giving them up." Private Swiss Bank #1 entered into a QI Agreement with the IRS.

9. An Israeli bank with a head office in Tel Aviv, Israel, operated a subsidiary, organized under the laws of Switzerland, with offices in Geneva and Zurich, Switzerland ("Israeli Bank") that provided cross-border banking services to U.S. customers. In or around 2001, Israeli Bank entered into a QI Agreement with the IRS.

10. A private Swiss bank organized under the laws of Switzerland ("Private Swiss Bank #2") was a family-owned private bank with a head office in Zurich, Switzerland, and private banking locations in Lugano and Locarno, Switzerland, that provided cross-border banking services to U.S. customers. In or around 2001, Private Swiss Bank #2 entered into a QI Agreement with the IRS.

11. A private Swiss bank organized under the laws of Switzerland ("Private Swiss Bank #3") owned principally by several partners, each of whom bore unlimited liability, claimed to be Switzerland's oldest bank. Swiss Bank #3 provided cross-border banking services to U.S. customers. In or around 2001, Private Swiss Bank #3 entered into a QI Agreement with the IRS.

12. A bank that was an independent, incorporated public-law institution wholly owned by the Kanton of Zürich, Switzerland ("Kantonal Bank") provided cross-border banking services to U.S. customers. In or around 2001, Kantonal Bank entered into a QI Agreement with the IRS.

13. An asset management firm ("Asset Management Firm #1") located in Zurich, Switzerland, opened private banking operations in 2002 under the direction of HANSRUEDI SCHUMACHER. Asset Management Firm #1 and its employees assisted U.S. customers in opening undeclared accounts at Swiss banks, including Kantonal Bank, and managed the investments in those undeclared account for the U.S. customers.

14. An asset management firm ("Asset Management Firm #2") located in Zurich, Switzerland, was formed by former employees of Asset Management Firm #1 to assist U.S. customers in opening undeclared accounts at Swiss banks and managing the investments in those accounts for the U.S. customers.

Investigation of Cross-Border Banking

15. As of March 23, 2009, the IRS offered the Offshore Account Voluntary Disclosure Program ("Voluntary Disclosure Program") to U.S. taxpayers as a means for those taxpayers to disclose their interests in undeclared accounts and avoid criminal prosecution. The program was open until October 15, 2009. Under the Voluntary Disclosure Program, the participants paid tax on their unreported income, a 20% accuracy penalty on the tax, and a 20% penalty on the high balance of the undeclared accounts, together with interest.

U.S. Income Tax & Reporting Obligations

16. U.S. citizens, resident aliens, and legal permanent residents had an obligation to report to the IRS on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking "Yes" or "No" in the appropriate box and identifying the country where the account was maintained. U.S. citizens, resident aliens, and legal permanent residents had an obligation to report all income earned from foreign bank accounts on the tax return and to pay the taxes due on that income.

17. U.S. citizens, resident aliens, and legal permanent residents who had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than $10,000 at any time during a particular year were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1 (the "FBAR"). The FBAR for the applicable year was due by June 30 of the following year.

Definitions

18. An "undeclared account" was a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that had not been reported to the U.S. government on an income tax return and an FBAR.

19. A "tax haven" was a country or territory whose institutions and laws, including bank secrecy laws, were intended to conceal financial information evidencing tax evasion from other countries.

20. "Offshore charge, credit, and debit cards" were cards issued and caused to be issued by offshore financial institutions to holders of undeclared accounts to permit them to access the assets in the undeclared accounts while ensuring that their applications and records of transactions would be maintained offshore.

21. A "nominee" was a person or entity that was used to conceal the true owner's identity.

THE CONSPIRATORS

22. Defendant MARKUS WALDER, a citizen and resident of Switzerland, was the head of North American Offshore Banking for International Bank responsible for both the declared and undeclared U.S. cross-border banking businesses. He held the title of Managing Director at International Bank. As the head of North American Offshore banking, Defendant MARKUS WALDER supervised the undeclared U.S. cross-border banking business including: teams of private bankers in Zurich and Geneva; the Representative Office in New York, New York; and the SEC-registered and IRS-compliant U.S. cross-border business. Defendant MARKUS WALDER also served as a private banker who traveled to the United States to

provide unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts at International Bank. From in or around 2007 to the present, even though he continued to assist U.S. customers to evade their income tax obligations by using undeclared accounts at International Bank, defendant MARKUS WALDER served as a member of the senior management of International Bank's SEC-registered and U.S. compliant cross-border banking business, holding the title of "Director."

23. Defendant MARCO PARENTI ADAMI, a citizen of Italy and resident of Switzerland, was a member of International Bank's senior management who supervised the Geneva-based undeclared U.S. cross-border banking business. From at least on or about 1994 to the present, he served as a private banker for International Bank, providing unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts at International Bank.

24. Defendant SUSANNE D. RÜEGG MEIER, a citizen and resident of Switzerland, was a member of International Bank's senior management who supervised the Zurich-based undeclared U.S. cross-border banking business. Defendant SUSANNE D. RÜEGG MEIER also served as a private banker for International Bank, providing unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts at International Bank.

25. Defendant ROGER SCHAERER, a dual citizen of Switzerland and the United States and a resident of the United States, was a member of International Bank's senior management who supervised the New York Representative Office from 1999 to 2008. In 2004, International Bank promoted defendant ROGER SCHAERER to the title of Director. As

International Bank's Senior Representative in the United States, defendant ROGER SCHAERER serviced the undeclared accounts of U.S. customers.

26. Defendant EMANUEL AGUSTONI, a citizen and resident of Switzerland, was a private banker and asset manager who provided unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts in Switzerland. From in or around the 1990s to in or around 2005, defendant EMANUEL AGUSTONI was employed as a private banker by International Bank in Zurich, Switzerland. From in or around 2005 to in or around 2008, Private Swiss Bank #2 employed defendant EMANUEL AGUSTONI in Zurich, Switzerland as a private banker with the title of Assistant Vice President. From in or around 2009 to the present, defendant EMANUEL AGUSTONI has worked as an independent asset manger in Zurich, Switzerland opening undeclared accounts for U.S. customers at Private Swiss Bank #1.

27. Defendant MICHELE BERGANTINO, a citizen and resident of Switzerland, was employed by International Bank from in or around April 1983 through in or around May 2009 as a private banker in Zurich, Switzerland, providing unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts in Switzerland. From in or around June 2009 to in or around August 2010, International Bank employed defendant MICHELE BERGANTINO as a private banker in its SEC-registered and U.S. compliant cross-border banking business.

28. Defendant ANDREAS BACHMANN, a citizen and resident of Switzerland, was a private banker and asset manager who provided unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts at banks in

Switzerland. From in or around the 1990s to in or around 2007, he worked as a private banker for a wholly owned subsidiary of International Bank. From in or around 2007 through in or around 2009, defendant ANDREAS BACHMANN worked for Asset Management Firm #1 in Zurich, Switzerland, as an asset manager where he continued to open and manage undeclared accounts for U.S. customers. From in or around July 2009 through the present, defendant ANDREAS BACHMANN with several other partners formed Asset Management Firm #2 in Zurich, Switzerland, where he worked as an asset manager opening and managing undeclared accounts for U.S. customers.

29. Defendant JOSEF DÖRIG was the President, Chief Executive and Chairman of the Board of a wholly owned subsidiary of International Bank that served as a trust and asset management company that managed undeclared accounts for U.S. customers that were opened and maintained in the names of nominee tax haven entities. In or around 1997, he left the wholly owned subsidiary of International Bank and founded a Swiss trust company that was used to open and maintain nominee tax haven entities for U.S. customers who sought to conceal their assets and income from U.S. authorities. International Bank identified and promoted defendant JOSEF DÖRIG to customers as a preferred provider for creating and maintaining nominee tax haven entities.

COUNT ONE
(Conspiracy)

THE GRAND JURY FURTHER CHARGES THAT:

30. The general allegations are incorporated in this Count.

The Conspiracy and Its Object

31. From in or around the 1960s to the present, the exact dates being unknown to the Grand Jury, in the Eastern District of Virginia and elsewhere, defendants

MARKUS WALDER
MARCO PARENTI ADAMI,
SUSANNE RÜEGG MEIER,
ROGER SCHAERER,
EMANUEL AGUSTONI,
MICHELE BERGANTINO,
ANDREAS BACHMANN, and
JOSEF DÖRIG,

(collectively "Defendants") did unlawfully, voluntarily, intentionally, and knowingly conspire, combine, confederate, and agree together and with each other and with others both known and unknown to the Grand Jury to commit the following offense against the United States: to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful government functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment, and collection of revenue: to wit, U.S. income taxes, in violation of Title 18, United States Code, Section 371.

Manner and Means of the Conspiracy

Among the manner and means by which the Defendants and their conspirators would and did carry out the conspiracy were the following:

32. International Bank operated a Representative Office in New York, New York that was utilized to provide unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts in Switzerland;

33. Defendants MARKUS WALDER and ROGER SCHAERER, their conspirators and others made false statements and provided misleading information to the Federal Reserve Bank of New York regarding the International Bank's undeclared U.S. cross-border banking business and the role the Representative Office in New York played in that business;

34. The Defendants, their conspirators and others caused International Bank to make false statements and provided misleading information to the IRS regarding International Bank's compliance with the terms of the QI Agreement.

35. International Bank maintained correspondent bank accounts in the United States through which the Defendants, their conspirators and others conducted financial transactions in furtherance of its cross-border tax evasion scheme;

36. The Defendants and their conspirators caused U.S. customers to execute forms that directed International Bank not to disclose their identities to the IRS;

37. The Defendants and their conspirators caused U.S. customers to open and maintain both declared and undeclared accounts at International Bank so that U.S. authorities would likely not suspect the customer had an undeclared account, which would aid in concealing the customer's offshore assets and income from the IRS;

38. The Defendants and their conspirators assisted U.S. customers to close their undeclared accounts at International Bank and convert marketable securities into precious metals;

39. The Defendants and their conspirators provided cash in the United States to U.S. customers as withdrawals from their undeclared accounts at International Bank in Switzerland;

40. The Defendants and their conspirators solicited cash deposits in the United States from U.S. customers with undeclared accounts at International Bank in Switzerland;

41. The Defendants and their conspirators solicited U.S. customers to open undeclared accounts because Swiss bank secrecy would permit them to conceal their ownership of accounts at International Bank and other Swiss banks;

42. The Defendants and their conspirators set up, and caused to be set up, and utilized, and caused to be utilized, nominee tax haven entities to open undeclared accounts;

43. International Bank's managers and bankers, in violation of International Bank's QI Agreement, knowingly accepted IRS Forms W-8BEN, or the bank's substitute forms, that falsely stated under penalties of perjury that the beneficial owner of the account was not subject to U.S. taxation;

44. The Defendants and their conspirators caused U.S. customers to travel outside the United States, to destinations including Switzerland and the Bahamas, to provide banking services and investment advice related to their undeclared accounts;

45. The Defendants and their conspirators provided unlicensed and unregistered banking services and investment advice to U.S. customers in person while on travel to the United States and by mailings, email, and telephone calls to and from the United States;

46. Certain U.S. customers filed false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, which failed to report their respective interests in their undeclared accounts and the related income;

47. U.S. customers failed to file and otherwise report their undeclared accounts on FBARs;

48. The Defendants and their conspirators advised U.S. customers to structure, and caused U.S. customers to structure, withdrawals from their undeclared accounts in amounts less than $10,000 in an attempt to conceal their undeclared accounts and the transactions from U.S. authorities;

49. The Defendants and their conspirators advised U.S. customers to utilize offshore charge, credit, and debit cards linked to their undeclared accounts and did provide such cards, including cards issued by American Express, Visa, and Maestro;

50. The Defendants and their conspirators advised U.S. customers not to maintain in the United States account records related to their undeclared accounts;

51. The Defendants and their conspirators caused International Bank, Private Swiss Bank #1, Private Swiss Bank # 2, Private Swiss Bank # 3, Kantonal Bank, Asset Management Firm #1, and Asset Management Firm #2 to retain, in Switzerland, account records related to the U.S. customers' undeclared accounts;

52. The Defendants and their conspirators had statements and other account records of undeclared accounts maintained by U.S. customers at International Bank sent by e-mail and facsimile from Switzerland to the Representative Office in New York, New York, so that customers with undeclared accounts could review the documents;

53. The Defendants and their conspirators destroyed, and caused to be destroyed, statements and other account records of undeclared accounts maintained by U.S. customers at

International Bank that were sent by e-mail and facsimile from Switzerland to the Representative Office in New York, New York;

54. The Defendants and their conspirators discouraged U.S. customers from disclosing their undeclared accounts to the IRS through the Voluntary Disclosure Program;

55. The Defendants and their conspirators encouraged and assisted U.S. customers to transfer their undeclared accounts at International Bank to other banks in Switzerland, including Private Swiss Bank #1, Private Swiss Bank # 2, Private Swiss Bank # 3, Kantonal Bank, and Israeli Bank, and to a bank in Hong Kong as a means to continue to conceal the assets and income in undeclared accounts; and

56. The Defendants, their conspirators and others caused U.S. customers who inherited undeclared accounts at International Bank to open new undeclared accounts and transfer into those accounts the funds from the inherited accounts.

Overt Acts

In furtherance of the conspiracy, and to effect the object thereof, the following overt acts were committed in the Eastern District of Virginia, and elsewhere:

57. On or about December 13, 2005, while operating an illegal U.S. cross-border banking business, International Bank made a filing to the Federal Reserve Bank of New York that concealed its participation in the tax evasion scheme in that International Bank stated that if a member of the Representative Office is "asked about overseas account services" or "asked for assistance in the opening of an overseas account" the Representative "must decline the Customer's request" "[i]f the client indicates that he/she intends to avoid paying taxes" as "[i]t is the policy of [International Bank] not to provide any assistance in the evasion of taxes."

58. On or about December 6, 2007, while operating an illegal U.S. cross-border banking business, International Bank attempted to conceal its participation in the tax evasion scheme in that International Bank made a filing to the Federal Reserve Bank of New York regarding its U.S. Anti-Money Laundering Program for its New York Representative Office that reported that the bank's Global Business Conduct Manual states that "employees must not engage in activity that could be viewed as knowingly assisting a client in . . . misleading local or foreign authorities or any tax authority by means of incomplete or missing information."

Customers 1 and 2

59. In or about July 20, 1990, Customer 1, a U.S. citizen and resident of Plandome Manor, New York, opened an undeclared account at International Bank in the name of a nominee tax haven entity.

60. In or about September 17, 2000, Customer 1 closed the existing account at International Bank and transferred the contents to a new account opened at International Bank in the name of a nominee tax haven entity that was formed by defendant JOSEF DÖRIG.

61. In or around 2001, Customer 2, the spouse of Customer 1, met with defendant MARKUS WALDER at a hotel in New York, New York, to discuss the undeclared at International Bank.

62. In or around 2002, Customer 2 met with defendant MARKUS WALDER at a hotel in New York, New York to discuss the undeclared account at International Bank, including discussing portfolio investment decisions.

63. In or around 2008, Customer 2 met with defendant MARKUS WALDER at a hotel in New York, New York to discuss the undeclared account at International Bank, including discussing portfolio investment decisions.

64. In or around November 2008, defendant ROGER SCHAERER telephoned Customer 2 and informed Customer 2 that defendant MARKUS WALDER was no longer traveling to the United States, and that defendant MARKUS WALDER would meet with Customer 2 in Switzerland to close the undeclared account at International Bank.

65. In or around November 2008, at a meeting arranged by defendant MARKUS WALDER at the office of defendant JOSEF DÖRIG in Zurich, Switzerland, Customer 2 met with defendant MARKUS WALDER, defendant JOSEF DÖRIG, and two Italian men who offered to transfer Customer 2's undeclared account from International Bank to another private bank in order to conceal Customer 2's ownership of the assets and income.

Customer 3

66. In or around 1989, Customer 3, a U.S. citizen and resident of New York, New York, opened an undeclared account at International Bank in Zurich, Switzerland with funds inherited from an undeclared account at International Bank that Customer 3 inherited from Customer 3's father.

67. In or around 1989, a relative informed Customer 3 that if Customer 3 repatriated the funds from the undeclared account to the United States, Customer 3 would expose the entire family to possible prosecution for failure to report to the IRS their undeclared accounts and the income derived from them.

68. In or around 2001, at a meeting in a café in New York, New York, defendant MARKUS WALDER gave Customer 3 cash in an amount less than $10,000 as a withdrawal from Customer 3's undeclared account at International Bank.

69. In or around 2004, defendant MARKUS WALDER advised Customer 3 to close the existing undeclared account at International Bank and transfer the contents to a new undeclared account to be opened in the name of a nominee tax haven entity in order to conceal Customer 3's ownership of the new account.

70. In or around 2004, Customer 3 closed the existing undeclared account at International Bank and transferred the assets to a new undeclared account opened in the name of a nominee tax haven entity that was created and managed by an individual suggested by defendant MARKUS WALDER.

71. In or around October of 2008, at a meeting in Zurich, Switzerland, Customer 3 asked defendant MARKUS WALDER if Customer 3 should be concerned about Swiss bank secrecy given the U.S. government's investigation of UBS, and defendant MARKUS WALDER responded by telling Customer 3 that there was nothing to be concerned about.

72. In or around December of 2008, at a meeting in Zurich, Switzerland, defendant MARKUS WALDER informed Customer 3 that International Bank could not maintain the undeclared account because International Bank was fearful of enforcement action by U.S. authorities.

73. In or around December 2008, defendant MARKUS WALDER advised Customer 3 to transfer the undeclared account from International Bank to Private Bank #3.

Customer 4

74. In or around 2005, at a party in Palm Beach, Florida, Customer 4, then a legal permanent resident of the U.S. residing in Palm Beach Gardens, Florida, was introduced to defendant MARKUS WALDER who identified himself as an employee of International Bank in Zurich, Switzerland.

75. In or around 2005, Customer 4 telephoned a banker with International Bank's SEC-registered U.S. tax compliant business in Miami, Florida ("Banker A"), to request contact information for defendant MARKUS WALDER as Customer 4 expressed interested in meeting with defendant MARKUS WALDER in Florida to discuss transferring Customer 4's undeclared account at UBS to International Bank in Switzerland at which time Banker A asked Customer 4 about the assets in the UBS account, which were less than $2 million, and Banker A assured Customer 4 that defendant MARKUS WALDER would make contact in the near future.

76. In or around 2005, several days after the conversation with Banker A, defendant MARKUS WALDER telephoned from Switzerland to Customer 4 in the United States to discuss opening an undeclared account with International Bank.

77. On or about November 23, 2006, at a hotel meeting in Miami, Florida, defendant MARKUS WALDER provided Customer 4 with documents to open an undeclared account at International Bank in Switzerland, which Customer 4 executed in the presence of defendant MARKUS WALDER.

78. On or about July 8, 2008, Customer 4 sent a letter from the United States to defendant MARKUS WALDER in Switzerland in which Customer 4 enclosed a copy of an

article regarding the U.S. government's investigation of UBS's illegal cross-border banking business and asked the following question:

> The enclosed article, which I wanted to share with you, appeared last week in our newspaper and I am certain that there are many issues thereto how UBS and the Swiss Government react to such request and which consequences will result thereof.
>
> Is this a beginning of the end for UBS and/or the entire Swiss bank secrecy in general?

79. On or about June 12, 2009, Customer 4 used funds in the undeclared account at International Bank to purchase 16 one-kilogram bars of gold, at a cost of $483,744, and had the precious metal stored in a safe deposit box at International Bank in Zurich, Switzerland.

80. On or about July 14, 2009, Customer 4 closed the undeclared account at International Bank and received 469,640 Swiss Francs in cash and had the cash stored in a safe deposit box at International Bank in Zurich, Switzerland.

Customer 5

81. In or about August 2006, in Zurich, Switzerland, Customer 5, a naturalized U.S. citizen residing in Charlottesville, Virginia, opened an undeclared account at International Bank in Switzerland.

82. On or about August 16, 2006, Customer 5 departed from Dulles International Airport, in the Eastern District of Virginia, on a flight bound for Zurich, Switzerland, to meet with an International Bank banker in Zurich, Switzerland, to discuss the undeclared account.

83. On or about April 15, 2007, Customer 5 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2006 that failed to report the undeclared account and related income.

84. On or about July 7, 2008, Customer 5 departed from Dulles International Airport, in the Eastern District of Virginia, on a flight bound for Zurich, Switzerland, to meet with an International Bank banker in Zurich, Switzerland, to discuss the undeclared account.

85. On or about June 12, 2009, Customer 5 departed from Dulles International Airport, in the Eastern District of Virginia, on a flight bound for Zurich, Switzerland, to meet with an International Bank banker in Zurich, Switzerland, to discuss the undeclared account.

Customer 6

86. In or around 2003, Customer 6, a U.S. citizen and resident of San Francisco, California, opened an undeclared account at International Bank in Zurich, Switzerland, and deposited into that account funds from Customer 6's deceased father's account at International Bank.

87. In or around 2003, defendant MARKUS WALDER telephoned Customer 6 in the United States and informed Customer 6 that he would be the relationship manager for Customer 6's undeclared account at International Bank.

88. On or about April 12, 2003, defendant MARKUS WALDER caused to be sent via DHL from Switzerland to Customer 6 in San Francisco, California, three bank checks issued by International Bank, each in the amount of $4,206.98, funded with withdrawals from Customer 6's undeclared account at International Bank.

89. In or around 2005, at a meeting at a restaurant in San Francisco, California, defendant MARKUS WALDER showed Customer 6 a copy of a statement for Customer 6's undeclared account at International Bank and discussed account performance with Customer 6.

90. In or around May 2005, defendant MARKUS WALDER caused to be sent via DHL from Switzerland to Customer 6 in San Francisco, California, four bank checks issued by International Bank, in the amounts of $3,037.87, $2,925.25, $3,925.25 and $3,237.87, funded with withdrawals from Customer 6's undeclared account at International Bank.

91. On or about May 11, 2006, defendant MARKUS WALDER caused to be sent via DHL from Switzerland to Customer 6 in San Francisco, California, five bank checks issued by International Bank, in the amounts of $3,324.12, $3,736.18; $13,024.12, $13,024.12, and $13,024.12, funded with withdrawals from Customer 6's undeclared account at International Bank.

92. In or around 2007, at a meeting at a restaurant in San Francisco, California, defendant MARKUS WALDER showed Customer 6 a copy of a statement for Customer 6's undeclared account at International Bank and discussed account performance.

93. In or around 2009, during a conversation with Customer 6 about the U.S. government's investigation of UBS, defendant MARKUS WALDER advised Customer 6 that International Bank may have to exit the undeclared cross-border banking business with U.S. customers and conceded that International Bank had some existing U.S. customers who complied with U.S. tax law.

Customer 7

94. In or around 2002, at a meeting in Nassau, Bahamas, a private banker at International Bank informed Customer 7, a U.S. citizen and resident of West Palm Beach, Florida, that International Bank would transfer Customer 7's undeclared account from the

Bahamas to either Zurich, Switzerland or the Cayman Islands as International Bank could not maintain the undeclared account in the Bahamas any longer.

95. On or about November 11, 2003, at a meeting in Nassau, Bahamas, Customer 7 executed documents to open an undeclared account at International Bank in Zurich, Switzerland, including a document that stated that Customer 7 did not wish to have International Bank disclose Customer 7's ownership of the account to the IRS, and transferred into that account the contents of Customer 7's undeclared account at International Bank in the Bahamas.

96. In or about 2003, at a meeting in Jupiter, Florida, defendant SUSANNE RÜEGG MEIER informed Customer 7 that she would send to Customer 7 in the United States cash withdrawn from the undeclared account at International Bank in the form of bank checks payable to Customer 7.

97. On or about August 19, 2004, defendant SUSANNE RÜEGG MEIER caused to be sent via DHL from Switzerland to Customer 7 in Palm Beach Gardens, Florida, two bank checks issued by International Bank, each in the amount of $9,923.43, funded with withdrawals from Customer 7's undeclared account at International Bank.

98. On or about May 19, 2005, defendant SUSANNE RÜEGG MEIER caused to be sent via DHL from Switzerland to Customer 7 in Palm Beach Gardens, Florida, two bank checks issued by International Bank, each in the amount of $9,923.46, funded with withdrawals from Customer 7's undeclared account at International Bank.

99. On or about October 30, 2008, defendant SUSANNE RÜEGG MEIER caused to be sent via DHL from Switzerland to Customer 7 in Palm Beach Gardens, Florida, two bank

checks issued by International Bank, each in the amount of $9,931.22, funded with withdrawals from Customer 7's undeclared account at International Bank.

Customer 8

100. In or about 1995, at a meeting at an International Bank office in Miami, Florida, Customer 8, a U.S. citizen and resident of Owings Mills, Maryland, signed documents that authorized him to make changes to Customer 8's parents' undeclared account at International Bank.

101. In or around 2005, at the suggestion of defendant SUSANNE RÜEGG MEIER, Customer 8 met with defendant ROGER SCHAERER at the Representative Office of International Bank in New York to add signatories to the undeclared account and to review account statements.

102. In or around 2005, at the Representative Office of International Bank in New York City, on the advice of defendant SUSANNE RÜEGG MEIER, Customer 8 met with defendant ROGER SCHAERER to review account statements for the undeclared account at which time defendant ROGER SCHAERER explained that the account statements were not kept in the United States, but sent via either computer or fax from Switzerland to the Representative Office shortly before the meeting and shredded at the meeting's conclusion.

103. In or around early 2009, during a phone call from Switzerland to the United States, defendant SUSANNE RÜEGG MEIER informed Customer 8 he had to close the undeclared account at International Bank within 60 days and transfer the funds either to the United States or to another bank in Switzerland.

Customer 9

104. In or around 2000, Customer 9, a U.S. citizen and resident of Geneva, New York, received a phone call in the United States from defendant SUSANNE RÜEGG MEIER regarding the power of attorney that Customer 9 held over the undeclared account maintained by the parents of Customer 9 at International Bank.

105. In or around 2002, at a meeting at the Representative Office of International Bank in New York City to discuss and determine investment strategy for the undeclared account, defendant SUSANNE RÜEGG MEIER advised Customer 9 to open an account at International Bank's SEC-registered and U.S. tax compliant business if Customer 9 wished to invest in U.S. securities.

106. In or around 2003, at a meeting at the Representative Office of International Bank in New York City to discuss and determine investment strategy for the undeclared account, defendant SUSANNE RÜEGG MEIER advised Customer 9 to open an account at International Bank's SEC-registered and U.S. tax compliant business if Customer 9 wished to invest in U.S. securities.

107. In or around 2006, defendant SUSANNE RÜEGG MEIER advised Customer 9 to open an undeclared account at International Bank in the name of nominee tax haven entity and suggested that Customer 9 meet with defendant JOSEF DÖRIG.

108. In or around 2006, defendant JOSEF DÖRIG created, or caused to be created, a nominee tax haven entity for Customer 9 and opened, or caused to be opened, an undeclared account at International Bank in Zurich, Switzerland the name of that entity.

109. In or around 2009, defendant SUSANNE RÜEGG MEIER telephoned Customer 9 in the United States and informed Customer 9 that the undeclared account held in the name of the nominee tax haven entity at International Bank had to be closed.

110. In or around 2009, defendant JOSEF DÖRIG closed the undeclared account that he opened, and caused to be opened, on behalf of Customer 9 in the name of the nominee tax haven entity at International Bank on and transferred the contents to a new account in the name of the nominee tax haven entity at Private Swiss Bank # 3.

Customers 10 and 11

111. On or about 2001, Customer 10, a U.S. citizen and resident of Clinton Corners, New York, began assisting Customer 11, a U.S. citizen and resident of Wayne, New Jersey, to manage the undeclared account held in the name of Customer 11 – the parent of Customer 10 – at International Bank.

112. On or about 2007, defendant SUSANNE RÜEGG MEIER met with Customers 10 and 11 at a hotel in New York, New York, to discuss the investment strategy for the undeclared account held in the name of Customer 11 at International Bank.

113. On or about 2007, defendant SUSANNE RÜEGG MEIER met with Customer 10 at International Bank in Zurich, Switzerland, to discuss the investment strategy for the undeclared account held in the name of Customer 11 at International Bank at which time defendant SUSANNE RÜEGG MEIER advised Customer 10 to open a second undeclared account in the name of a nominee tax haven entity in order to conceal Customer 11's ownership of assets and income.

114. On or about 2007, defendants SUSANNE RÜEGG MEIER and JOSEF DÖRIG met with Customer 10 at International Bank in Zurich, Switzerland, to open a second undeclared account in the name of a nominee tax haven entity in order to conceal Customer 11's ownership of assets and income from U.S. authorities.

115. In or around 2007, defendant JOSEF DÖRIG created, or caused to be created, a nominee tax haven entity for Customer 11 and opened, or caused to be opened, an undeclared account at International Bank in Zurich, Switzerland in the name of that entity.

116. On or about 2008, defendant SUSANNE RÜEGG MEIER met with Customers 10 and 11 at a hotel in New York, New York, to discuss investment strategies for the undeclared accounts at International Bank.

Customers 12, 13 and 14

117. On or about September 4, 1997, a married couple – Customers 12, a U.S. citizen and resident of Bellevue, Washington, and 13, a legal permanent resident of the U.S. and resident of Bellevue, Washington – jointly opened an undeclared account at a wholly owned subsidiary of International Bank in Zurich, Switzerland.

118. On or about June 27, 2007, defendant ANDREAS BACHMANN assisted Customers 12 and 13 to close their undeclared account at a wholly owned subsidiary of International Bank and transferred the contents to an undeclared account at Kantonal Bank in Zurich, Switzerland that defendant ANDREAS BACHMANN opened on behalf of Customers 12 and 13.

119. In or around September 2009, in a phone call to Customer 13 in the United States, defendant ANDREAS BACHMANN asked to meet with Customer 13 in Vancouver, Canada, as defendant ANDREAS BACHMANN refused to travel into the United States.

120. In or around September 2009, at a meeting at a hotel in Vancouver, Canada, defendant ANDREAS BACHMANN informed Customer 13 and Customer 14, the adult child of Customers 12 and 13, that Kantonal Bank intended to close the undeclared account as U.S. authorities were placing great pressure on Swiss financial institutions and defendant ANDREAS BACHMANN informed Customers 13 and 14 that he could assist them to open an undeclared account at another Swiss bank or they could transfer the account to a different Swiss bank and maintain it as a declared account.

121. In or around September 2009, at a meeting at a hotel in Vancouver, Canada, defendant ANDREAS BACHMANN provided Customers 13 and 14 with documents to open a undeclared account at one Swiss bank and a declared account at another Swiss bank.

122. In or around September 2009, at a meeting at a hotel in Vancouver, Canada, Customers 13 and 14 executed documents to open an undeclared account at one Swiss bank and a declared account at another Swiss bank and returned them to defendant ANDREAS BACHMANN.

Customer 15

123. In or around the late 1990s, Customer 15, a U.S. citizen and resident of New York, New York, met in Zurich, Switzerland with defendant ANDREAS BACHMANN to open an undeclared account at a wholly owned subsidiary of International Bank at which time

defendant ANDREAS BACHMANN advised Customer 15 to open the account in the name of a nominee entity in order to conceal Customer 15's ownership of the account.

124. On or about December 6, 2000, on behalf of Customer 15, defendant JOSEF DÖRIG caused to be opened an undeclared account at a wholly owned subsidiary of International Bank in the name of a nominee tax haven entity.

125. On or about December 6, 2000, defendant JOSEF DÖRIG provided to a wholly owned subsidiary of International Bank a Form W-8BEN that falsely stated that the nominee tax haven entity was the beneficial owner of the undeclared account owned by Customer 15.

126. In or around 2001, at a meeting in New York City, Customer 15 gave defendant ANDREAS BACHMANN approximately $20,000 in cash to deposit in the undeclared account at a wholly owned subsidiary of International Bank, which defendant ANDREAS BACHMANN had requested as he had another customer who wished to make a withdrawal from an account in Switzerland.

127. On or about May 30, 2003, defendant JOSEF DÖRIG provided to a wholly owned subsidiary of International Bank a Form W-8BEN that falsely stated that a nominee tax haven entity was the beneficial owner of the account owned by Customer 15.

Customer 16

128. In or around 1972, Customer 16, a legal permanent resident of the United States, opened an undeclared account at a wholly owned subsidiary of International Bank.

129. In or around 1972, on behalf of Customer 16, defendant JOSEF DÖRIG caused to be opened an undeclared account in the name of a nominee tax haven entity (i.e., a trust) at a wholly owned subsidiary of International Bank.

130. In or around 1999, defendant ANDREAS BACHMANN met with Customer 16 in California to discuss the undeclared account at a wholly owned subsidiary of International Bank and showed Customer 16 a copy of the statement of the undeclared account.

131. On or about September 7, 2000, on behalf of Customer 16, defendant JOSEF DÖRIG caused to be opened an undeclared account in the name of a nominee tax haven entity (i.e., a corporation) at a wholly owned subsidiary of International Bank after defendant JOSEF DÖRIG advised Customer 16 that a corporation would make it more difficult for U.S. authorities to discover that the wholly owned subsidiary of International Bank was conducting business with a U.S. customer.

132. On or about September 22, 2000, defendant JOSEF DÖRIG provided a wholly owned subsidiary of International Bank a Form W-8BEN that falsely stated that a nominee tax haven entity was the beneficial owner of the account owned by Customer 16.

133. On or about May 30, 2003, defendant JOSEF DÖRIG provided a wholly owned subsidiary of International Bank a Form W-8BEN that falsely stated that a nominee tax haven entity was the beneficial owner of the account owned by Customer 16.

134. On or about January 1, 2006, defendant JOSEF DÖRIG provided a wholly owned subsidiary of International Bank a Form W-8BEN that falsely stated that a nominee tax haven entity was the beneficial owner of the account owned by Customer 16.

135. In or around 2006, defendant ANDREAS BACHMANN met with Customer 16 in California to discuss the undeclared account at a wholly owned subsidiary of International Bank and showed Customer 16 a copy of the statement of the undeclared account.

136. In or around 2006, defendant ANDREAS BACHMANN told Customer 16 that he was leaving a wholly owned subsidiary of International Bank because he believed that the safety of his customers' banking information was in jeopardy and would be employed at Asset Management Firm # 1 as an investment manager.

137. In or around 2006, after advising Customer 16 that Kantonal Bank would not be under the same pressure as a wholly owned subsidiary of International Bank, defendant ANDREAS BACHMAN transferred Customer 16's undeclared account at a wholly owned subsidiary of International Bank to a new undeclared account at Kantonal Bank.

138. In or around August 2009, defendant ANDREAS BACHMAN told Customer 16 he was leaving Asset Management Firm # 1 to work as a partner at a new company, Asset Management Firm # 2, and offered to transfer Customer 16's undeclared account from Kantonal Bank to a Swiss bank that had a relationship with Asset Management Firm # 2.

Customer 17

139. In or around 1983, Customer 17 opened an undeclared account at a wholly owned subsidiary of International Bank in Zurich, Switzerland and deposited into the account $125,000 in cash.

140. In or around 1984, Customer 17 met in Fort Meyers, Florida with a banker from a wholly owned subsidiary of International Bank to discuss the investments in the undeclared account.

141. Prior to September 11, 2001, Customer 17 secretly transported approximately $250,000 in cash from the Untied States to Switzerland by concealing the money beneath Customer 17's clothes in nylon pantyhose that was wrapped around Customer 17's body.

142. In or around 2001, Customer 17 deposited $250,000 in cash into the undeclared account at a wholly owned subsidiary of International Bank in Switzerland.

Customer 18

143. In or about 2000, at a meeting in Anaheim, California, to discuss Customer 18's declared account at International Bank in Zurich, Switzerland, an International Bank banker provided Customer 18 with documents to open a separate, undeclared account at International Bank in Zurich, Switzerland.

144. In or about 2000, Customer 18 sent via private courier from Anaheim, California to Zurich, Switzerland, executed documents to open an undeclared account at International Bank in Zurich, Switzerland.

145. In or around 2002, at a meeting in Anaheim, California, a banker from International Bank met with Customer 18 to discuss the investments in the declared and undeclared accounts at which time the banker provided Customer 18 with a paper copy of a statement for the undeclared account.

146. In or around July 2009, Customer 18 received a telephone call in the United States from a banker with International Bank in Switzerland who stated that Customer 18 had to close his undeclared account.

Customer 19

147. In or around July 1996, Customer 19, a U.S. citizen and resident of Stuart, Florida, inherited an undeclared account at International Bank.

148. On or about January 23, 1997, Customer 19 made a withdrawal of $4,000 from the undeclared account at International Bank at the Representative Office of International Bank in Miami, Florida.

149. In or around 1999, Customer 19 made a withdrawal of approximately $4,000 from the undeclared account at International Bank at the Representative Office of International Bank in Miami, Florida.

Customer 20

150. In or around 1993, Customer 20, a U.S. citizen and resident of Palm Beach, Florida, opened an undeclared account at International Bank and made an initial deposit into that account at an office of International Bank in New York, New York.

151. In or around 1993, defendant MARCO PARENTI ADAMI telephoned Customer 20 in the United States to introduce himself as the banker responsible for Customer 20's undeclared account at International Bank.

152. Beginning in or around the 1990s and continuing through in or around 2008, defendant MARCO PARENTI ADAMI mailed copies of statements for Customer 20's undeclared account at International Bank to Customer 20's home on the island of Saint Barths, an overseas collectivity of France, because defendant MARCO PARENTI ADAMI advised against mailing bank documents to the home of Customer 20 in Palm Beach, Florida.

153. In or around the late 1990s, defendant MARCO PARENTI ADAMI met in Florida with Customer 20 to provide investment advice and discuss Customer 20's undeclared account at International Bank.

154. On or about October 11, 2006, defendant MARCO PARENTI ADAMI met with Customer 20 at a hotel in New York, New York, to discuss the undeclared account at International Bank.

155. On or about October 12, 2006, Customer 20 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

156. In or around 2008, defendant MARCO PARENTI ADAMI met with Customer 20 in the Bahamas to discuss the undeclared account at International Bank because defendant MARCO PARENTI ADAMI was reluctant to travel to the United States.

157. In or around 2008, Customer 20 met with defendant MARCO PARENTI ADAMI in Geneva, Switzerland, to close the undeclared account at International Bank at which time defendant MARCO PARENTI ADAMI recommended transferring the undeclared account to an Israeli bank with a branch in Geneva or to a bank in Hong Kong and not repatriating the funds back to the United States in order to evade U.S. income taxes.

Customer 21

158. In or around 2004, Customer 21, a U.S. citizen and resident of Norwood, New Jersey, at the direction of defendant MARCO PARENTI ADAMI, met with defendant ROGER SCHAERER at International Bank's representative office in New York, New York, to execute bank forms to make Customer 21 a beneficial owner of an undeclared account at International Bank owned by the mother of Customer 21.

159. On or about April 15, 2006, Customer 21 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

160. In or around 2007, Customer 21 met with defendant ROGER SCHAERER at International Bank's representative office in New York, New York, to execute bank forms to add another individual's name to the undeclared account at International Bank.

161. In or around September 2007, in response to Customer 21's request to close the undeclared account at International Bank, defendant MARCO PARENTI ADAMI, via telephone, advised Customer 21 that the undeclared account could be transferred to another offshore bank and that he could locate a Swiss lawyer to assist in the transfer.

Customers 22 and 23

162. In or around 1983, on the advice of an International Bank banker, Customer 22, an Iranian national residing in Beverly Hills, California, opened an undeclared account at International Bank in Switzerland in the name of a fictitious person.

163. On or about October 12, 2006, Customer 22 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

164. In or around 2007, defendant MARCO PARENTI ADAMI sent a fax to Customer 22 in the United States requesting to meet to discuss the undeclared account.

165. In or around the Fall of 2007, defendant MARCO PARENTI ADAMI met at a hotel in Beverly Hills, California, with Customer 22 and, Customer 23, a U.S. citizen residing in Beverly Hills, California, who was the son of Customer 22 and a beneficial owner of the

undeclared account, at which time defendant MARCO PARENTI ADAMI presented them with bank forms to close the undeclared account and to open a new undeclared account at International Bank.

166. In or around December 2008, Customer 23 met with defendant MARCO PARENTI ADAMI and another International Bank banker in Geneva, Switzerland. After the meeting, the International Bank banker introduced Customer 23 to a Swiss attorney who instructed Customer 23 that if Customer 23 wished to maintain the undeclared account as a "secret" undeclared account then Customer 23 would have to create a trust to hold the money.

167. In or around July 2009, during a meeting in Paris, France, the International Bank banker informed Customer 23 that Customer 23 had to close the undeclared account at International Bank but that Customer 23 could transfer the account to a private bank in Switzerland instead of repatriating the funds to the United States.

Customer 24

168. In or around 1994, Customer 24, a U.S. citizen and resident of Beverly Hills, California, opened an undeclared account at International Bank in Geneva, Switzerland, at which time Customer 24 met defendant MARCO PARENTI ADAMI.

169. In or around, 1997, on the advice of defendant MARCO PARENTI ADAMI, Customer 24 opened an undeclared account at International Bank in the name of a nominee tax haven entity.

170. In or around 1997, Customer 24 met with defendant MARCO PARENTI ADAMI at a hotel in Los Angeles, California, at which time defendant MARCO PARENTI ADAMI

provided account updates and copies of statements for the undeclared account that did not identify the account holder.

171. In or around 2005, Customer 24 met with defendant MARCO PARENTI ADAMI at a hotel in Los Angeles, California, at which time defendant MARCO PARENTI ADAMI provided account updates and copies of statements for the undeclared that did not identify the account holder.

172. On or about September 16, 2006, Customer 24 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

173. In or around 2009, on the advice of defendant MARCO PARENTI ADAMI, Customer 24 closed the undeclared account at International Bank and transferred it to a new undeclared account at Israeli Bank in Switzerland.

Customer 25

174. In or around 2003, defendant MARCO PARENTI ADAMI met with Customer 25, a naturalized U.S. citizen residing in La Jolla, California, and discussed Customer 25's undeclared account at International Bank and provided Customer 25 with a copy of a bank statement for the account.

175. On or about April 15, 2006, Customer 25 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

Customers 26 and 27

176. In or around 1953, Customer 26, a U.S. citizen and resident of Elizabeth, New Jersey, opened an undeclared account at International Bank in Basel, Switzerland.

177. On or about March 3, 1988, in response to a request from Customer 26 to receive in the United States cash from the undeclared account, an International Bank banker mailed a letter from Switzerland to Customer 26 in Elizabeth, New Jersey, in which an International Bank banker provided the status of the account, recommended a new investment strategy, stated that the bank would not transfer cash from Switzerland to the United States as it did not wish to comply with U.S. reporting requirements, and advised that the account holder could obtain the funds in Switzerland, or, in the alternative, offered "[m]aybe our people at [International Bank] in New York (100 Wall Street) can help you."

178. In or about 2002, defendant EMANUEL AGUSTONI called from New York, New York to Customer 27, a U.S. citizen and resident of Ossining, New York, at Customer 27's home to discuss the undeclared account at International Bank that Customer 27 inherited upon the death of Customer 26 in 1998.

179. On or about July 6, 2002, defendant EMANUEL AGUSTONI mailed to Customer 27 in the United States a copy of defendant ROGER SCHAERER's business card and instructed Customer 27 that defendant ROGER SCHAERER would be Customer 27's contact in New York.

180. In or about July 2002, on the advice of defendant EMANUEL AGUSTONI, Customer 27 transferred the contents of Customer 27's undeclared account into a new undeclared account, opened in Customer 27's name, at International Bank.

181. On or about November 4, 2002, defendant EMANUEL AGUSTONI mailed from Switzerland to Customer 27 in Ossining, New York, account opening documents for Customer 27's undeclared account with instructions that to mail the executed documents either to him in Switzerland or to defendant ROGER SCHAERER at International Bank's representative office in New York, New York.

182. In or around May 2004, defendant EMANUEL AGUSTONI met with Customer 27 at a hotel in New York, New York, to review statements for Customer 27's undeclared account and discuss investment strategy.

183. On or about April 16, 2005, defendant EMANUEL AGUSTONI called from Switzerland to Customer 27 in Ossining, New York, and unsuccessfully solicited Customer 27 to close the undeclared account at International Bank and transfer it to Private Swiss Bank # 2.

184. In or around December 2005, defendant EMANUEL AGUSTONI mailed from Switzerland to Customer 27 in Ossining, New York, a greeting card in which he proposed to meet with Customer 27 and provided his email address at Private Swiss Bank # 2.

185. On or about April 15, 2006, Customer 27 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

186. In or around Spring 2009, defendant EMANUEL AGUSTONI called from Switzerland to Customer 27 in the United States and solicited Customer 27 to close the undeclared account at International Bank and transfer it to Private Swiss Bank # 2 and inquired whether Customer 27 was aware of the Department of Justice's criminal investigation of UBS.

187. In or around August 2009, Customer 27 met with an International Bank banker in Zurich, Switzerland, to close the undeclared account at which time the banker suggested that rather than repatriate the funds to the U.S. that he transfer the account to another Swiss bank.

Customers 28 and 29

188. In or around 2002, defendants ROGER SCHAERER and EMANUEL AGUSTONI met with Customer 28, a U.S. citizen and resident of New York, New York, and Customer 29, a U.S. citizen and resident of Palm Desert, California, at International Bank's representative office in New York, New York, to open undeclared accounts at International Bank.

189. In or around June 2002, in Zurich, Switzerland, on the advice of defendant EMANUEL AGUSTONI, Customer 28 opened an undeclared account in the name of a nominee tax haven entity at International Bank.

190. In or around 2002, defendant EMANUEL AGUSTONI sent via DHL from Switzerland to Customer 28 in New York, New York, an American Express charge card and a Maestro debit card linked to Customer 28's undeclared account at International Bank with the instruction that Customer 28 limit the use of the cards to times when Customer 28 was in Europe.

191. Beginning in or about 2003, and continuing through 2008, Customer 28 periodically met with defendant ROGER SCHAERER in New York, New York, to discuss the performance of the undeclared accounts at International Bank.

192. In or around 2003, Customer 28 met with defendant EMANUEL AGUSTONI in Zurich, Switzerland, to open an undeclared account at International Bank.

193. In or around 2003, in Zurich, Switzerland, defendant EMANUEL AGUSTONI provided Customer 29 with an American Express charge card and Maestro debit card linked to the undeclared account and instructed that Customer 29 only use the charge card and debit card in Europe.

194. In or around 2003, in Zurich, Switzerland, defendant EMANUEL AGUSTONI informed Customer 28 that International Bank would send money from the undeclared account to the United States in the form of a bank check but advised that Customer 28 should not receive individual checks in excess of $10,000 in order to avoid the suspicion of Customer 28's U.S. bank.

195. In or about February 12, 2003, defendant EMANUEL AGUSTONI caused to be sent via DHL from Switzerland to Customer 28 in New York, New York, cash withdrawn from the undeclared account at International Bank in the form of a bank check payable to Customer 28 in the amount of $5,400 and a bank check payable to Customer 28's spouse in the amount of $4,534.62.

196. In or about March 2004, Customer 28 contacted International Bank officials at the representative office in New York, New York and directed them to make available for withdrawal funds from the undeclared account at an International Bank office in Zurich, Switzerland.

197. On or about March 16, 2004, after making a request to bankers at International Bank's representative office in New York, New York, Customer 28 withdrew $20,000 in cash from the undeclared account at an International Bank office in Zurich, Switzerland.

198. In or around 2005, defendant EMANUEL AGUSTONI met with Customer 29 in Switzerland and solicited Customer 29 to close the undeclared account at International Bank and transfer it to Private Swiss Bank # 2.

199. In or about January 12, 2006, an International Bank banker caused to be sent via DHL from Switzerland to Customer 28 in New York, New York, cash withdrawn from the undeclared account at International Bank in the form of a bank check payable to Customer 28 in the amount of $4,876.64 and a bank check payable to Customer 28's spouse in the amount of $5,176.68.

200. On or about April 15, 2006, Customer 28 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

201. On or about April 15, 2006, Customer 29 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

202. In or around December 2008, Customer 28 contacted International Bank officials at the Representative Office in New York, New York, and directed them to make available for withdrawal funds from the undeclared account at an International Bank office in Nassau, Bahamas.

203. On or about December 17, 2008, after making a request to bankers at International Bank's representative office in New York, New York, Customer 28 withdrew $20,000 in cash from the undeclared account at an International Bank office in Nassau, Bahamas.

204. In or about March 5, 2009, an International Bank banker caused to be sent via DHL from Switzerland to Customer 28 in New York, New York, cash withdrawn from the undeclared account at International Bank in the form of a bank check payable to Customer 28 in the amount of $2,613.63 and a bank check payable to Customer 28's spouse in the amount of $2,463.63.

205. In or around 2009, in Zurich, Switzerland, International Bank bankers informed Customer 28 that Customer 28 had to close the undeclared account and advised Customer 28 to contact defendant EMANUEL AGUSTONI regarding transferring the undeclared account to another Swiss bank.

206. In or around 2009, defendant EMANUEL AGUSTONI met with Customer 29 at a hotel in New York, New York, and solicited Customer 29 to close the undeclared account at International Bank and transfer it to another Swiss bank.

Customers 30, 31, 32 and 33

207. In or around the late 1960s, Customers 30 and 31, a married couple who were U.S. citizens and residents of Pittsburgh, Pennsylvania, opened an undeclared account in their own names at International Bank in Switzerland.

208. On or about June 18, 2003, Customers 30 and 31 spoke by telephone from an International Bank office in Nassau, Bahamas, with defendant EMANUEL AGUSTONI in Switzerland regarding the undeclared account.

209. On or about June 18, 2003, at a International Bank office in Nassau, Bahamas, Customer 32, the child of Customers 30 and 31, executed a bank form giving her signature authority over her parents' undeclared account.

210. In or around late-2003, on the instruction of defendant EMANUEL AGUSTONI, Customer 32 met with defendant ROGER SCHAERER at International Bank's representative office in New York, New York, regarding the undeclared account.

211. In or around Spring 2004, in Zurich, Switzerland, on the advice of defendant EMANUEL AGUSTONI, Customers 30 and 31 closed their undeclared account at International Bank and opened a new undeclared account in the name of a nominee tax haven entity.

212. On or about April 15, 2006, Customers 30 and 31 jointly filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

213. On or about July 3, 2008, defendant EMANUEL AGUSTONI mailed from Switzerland to Customers 30 and 31in Pittsburgh, Pennsylvania, bank forms to open an undeclared account in the name of the nominee tax haven entity at Private Swiss Bank # 2.

214. In or around January 2009, Customers 30 and 31 closed their undeclared account at International Bank and transferred it to Private Swiss Bank # 2.

215. In or around May 2009, at a meeting at the home of Customers 30 and 31 in Pittsburgh, Pennsylvania, defendant EMANUEL AGUSTONI informed Customers 30 and 31 of the Department of Justice's criminal investigation of UBS and advised them to close their undeclared account at Private Swiss Bank # 2 and open a new account in the name of the nominee tax haven entity at Private Swiss Bank # 1.

216. On or around July 2009, Customers 30 and 31 closed the undeclared account at Private Swiss Bank # 2 and transferred it to Private Swiss Bank # 1.

217. In or around Summer 2009, Customer 33, the child of 30 and 31, spoke with defendant EMANUEL AGUSTONI over the telephone at which time defendant EMANUEL AGUSTONI discouraged the participation of Customers 30, 31, 32, and 33 in the Voluntary Disclosure Program.

Customer 34

218. In or around the 1990s, Customer 34, a legal permanent resident of the United States residing in Oakland, New Jersey, met with defendant EMANUEL AGUSTONI in the office of defendant ROGER SCHAERER at International Bank's representative office in New York, New York, at which time defendant EMANUEL AGUSTONI advised Customer 34 to open an undeclared account at International Bank in the name of a nominee tax haven entity.

219. In or around the 1990s, an International Bank banker working at International Bank's representative office in New York, New York, traveled to Customer 34's home in Oakland, New Jersey, and had Customer 34 sign bank forms to open an undeclared account at International Bank in the name of a nominee tax haven entity.

220. On or about May 1, 2006, Customer 34 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

Customer 35

221. In or around 2002, in Zurich, Switzerland, in a meeting to discuss an undeclared account held in the name of a nominee tax haven entity, Customer 35, a naturalized U.S. citizen residing in Miami Beach, Florida, was shown a copy of an account statement by defendant

MICHELE BERGANTINO and advised that defendant ROGER SCHAERER worked for International Bank in the United States and would be able to assist Customer 35 with banking.

222. On or about July 13, 2006, Customer 35 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

223. In or around September 2008, in Zurich, Switzerland, in response to Customer 35's statement that Customer 35 was a U.S. resident and a question about Customer 35's U.S. tax reporting obligations, defendant MICHELE BERGANTINO advised Customer 35 that she had no reporting obligations as she had originally opened the undeclared account with an Iranian passport and, as such, International Bank would have recorded in its files that Customer 35 was not a U.S. taxpayer.

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

A TRUE BILL

Pursuant to the E-Government Act, the original of this page has been filed under seal in the Clerk's Office.

FOREPERSON

NEIL H. MACBRIDE
United States Attorney
Eastern District of Virginia

By: Mark D. Lytle
Assistant U.S. Attorney

JOHN A. DICCICO
Principal Deputy Assistant Attorney General
Tax Division

By: Kevin Downing by MDL
Kevin M. Downing
John E. Sullivan
Senior Litigation Counsel
Mark F. Daly
Michelle M. Petersen
Melissa S. Siskind
Tino M. Lisella
Trial Attorneys

[redacted] = Redacted by the Permanent Subcommittee on Investigations

To: Shafir, Robert <robert.shafir@credit-suisse.com>
From: DeChellis, Anthony </O=CREDIT-SUISSE/OU=GL/CN=RECIPIENTS/CN=ADECHELL>
Cc:
Bcc:
Received Date: 2013-01-29 16:42:31 EST
Subject: RE: (No Subject)

Ok
Will try by phone so we can get it done sooner rather than later.
I'm am also going to try to coordinate with you the next time we are in CH together.
There are some legacy Clariden issues (CB) brewing that we need to brief you on.

I'll attend your meeting tomorrow via video or phone.

Sent with Good (www.good.com)

-----Original Message-----
From: Shafir, Robert
Sent: Tuesday, January 29, 2013 04:23 PM Eastern Standard Time
To: DeChellis, Anthony
Subject: Re: (No Subject)

Whatever works.

From: DeChellis, Anthony
To: Shafir, Robert
Sent: Tue Jan 29 16:04:43 2013
Subject: RE: (No Subject)

Yes
I have a presentation to show you (will send a draft) as soon as we can get on you calendar.
I'm in Zurich this week, next week I'm in Florida Mon. & Tues. to visit the offices and to attend the [redacted] Family's annual benefit dinner for cancer research (also visiting [redacted] and the [redacted] while I'm there), at the end of the week I'll be in Sundance , where I'm hosting 100 guests at the CS Entrepreneur's Summit. So , I won't be home for a while. Should I arrange a call with you while I'm on the road?

Sent with Good (www.good.com)

-----Original Message-----
From: Shafir, Robert
Sent: Tuesday, January 29, 2013 09:11 AM Eastern Standard Time
To: DeChellis, Anthony
Subject:

Tony,

Permanent Subcommittee on Investigations
EXHIBIT #41

[redacted] = Redacted by the Permanent Subcommittee on Investigations

Any progress on the ability to market the [redacted] structure and a plan to push it. BD asking.

» Print

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Swiss seek U.S. tax deal by year-end, but not at any price: paper

Fri, Aug 3 2012

ZURICH (Reuters) - The Swiss government still wants to settle a long-simmering dispute with U.S. justice officials over undeclared funds stowed in Swiss offshore funds by year-end, though not "at any price," Switzerland's chief diplomat said on Friday.

"Our absolute priority is the best possible solution for Switzerland. We want a U.S. settlement by year-end, but not at any price," Michael Ambuehl, the Swiss government's chief negotiator, said in an interview with Neue Zuercher Zeitung.

Ambuehl's comments on the timing contrast with those made by Switzerland's finance minister Eveline Widmer-Schlumpf last month, in which she said she expected a deal with the U.S. before elections in that country.

His comments are also a rejection of demands by some to use emergency law to hand over confidential Swiss bank data in the tax crackdown, which has been hanging over banks such as Credit Suisse (CSGN.VX: Quote, Profile, Research) and Julius Baer (BAER.VX: Quote, Profile, Research) for months.

Switzerland wants the investigations dropped, in exchange for payment of fines and the transfer of names of thousands of U.S. bank clients. It also wants a deal to shield the remainder of its 300 or so banks from U.S. prosecution.

In 2009, Swiss authorities reached a deal for UBS (UBSN.VX: Quote, Profile, Research) to pay a fine of $780 million to avert criminal charges, and ultimately agreed to allow the bank to reveal details of around 4,450 clients.

Switzerland also agreed in July to do more to help other countries hunt tax dodgers following demands from the Organisation for Economic Co-operation and Development.

"We exclude the introduction of retroactive legislation to enable us to hand over bank data (that predates the U.S. deal of 2009)," Ambuehl said.

(Reporting by Martin de Sa'Pinto; Editing by Helen Massy-Beresford)

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Permanent Subcommittee on Investigations
EXHIBIT #42a

The New York Times

May 29, 2013, 8:08 am

Switzerland to Allow Its Banks to Disclose Hidden Client Accounts

By LYNNLEY BROWNING and JULIA WERDIGIER

1:24 p.m. | Updated

The Swiss government said on Wednesday that it would allow its banks to disclose information on American clients with hidden accounts, a watershed move intended to help resolve a long-running dispute with the United States over tax evasion.

The decision, which comes amid widening scrutiny in Europe of tax havens, is a turning point in what has been an escalating conflict between Switzerland and the United States.

Eveline Widmer-Schlumpf, Switzerland's finance minister, said the move would enable Swiss banks to accept an offer by the United States government to hand over broad client details and pay fines in exchange for a promise by United States authorities not to indict any banks.

Related Links

- Switzerland Weighs Deal in Tax Cases (May 28, 2013)

Permanent Subcommittee on Investigations
EXHIBIT #42b

Disclosure of actual client names and account data, which American authorities have been aggressively seeking, would take place under a taxation treaty between the two countries that the American side has not yet ratified. Banks under criminal scrutiny that agree to cooperate with the decision could still face deferred-prosecution or nonprosecution agreements, a lesser punishment than indictment.

Ms. Widmer-Schlumpf declined to say how much banks might have to pay. But she said the Swiss government would not make any payments as part of the agreement. Sources briefed on the matter say the total fines could eventually total $7 billion to $10 billion, and that to ease any financial pressure on the banks, the Swiss government might advance the sums and then seek reimbursement.

"It is important for us to be able to let the past be the past," Ms. Widmer-Schlumpf said at a news briefing in Bern, Switzerland. She declined to give any details about the program, but said banks would have one year to decide whether to accept the American offer.

American clients whose names are handed over by Swiss banks but who have not voluntarily disclosed hidden accounts to the Internal Revenue Service would probably face criminal tax-evasion charges, lawyers said. Dozens of Americans have been indicted or charged in recent years for failing to disclose their accounts.

Until now, the Swiss government has been resisting cooperation because the secrecy of its banking system has long made the country an offshore money haven for wealthy foreigners.

The country is also under growing pressure from the European Union to assist in ferreting out citizens who have sheltered money using offshore private banking services. Switzerland is not a member of the European Union, but nations including France and Germany have tired of watching their citizens squirrel away cash with impunity right across their borders.

The European Union is pushing member nations like Luxembourg and Austria to update their own secrecy rules, meaning the Swiss could soon be without an ally in the bloc and be left vulnerable to pressure from other nations.

Ms. Widmer-Schlumpf said the government would work with Parliament to quickly pass a new law that would allow Swiss banks to accept the terms of the United States offer, but said the onus would be on individual banks to decide whether to participate.

"If banks were not authorized to cooperate with the U.S. authorities, the initiation of further criminal investigations or charges concerning banking institutions could not be ruled out," a Swiss government statement said. It added that "the uncertainty for the financial center would continue to exist."

In 2012, the United States Justice Department indicted Wegelin & Company, Switzerland's oldest bank. The bank pleaded guilty in January, putting it out of business, and prosecutors have indicated in recent months that more indictments could be coming.

Calling the decision "a good, a pragmatic solution for the banks to emerge from their past," Ms. Widmer-Schlumpf said, "We expect this to create the base for banks to again gain some room for maneuver so that calm can return to the sector."

There is no certainty that Parliament would pass the law after two of Switzerland's biggest parties, the Social Democrats and the People's Party, voiced their opposition and a third, the Christian Democratic People's Party, said it disagreed with the urgency the new law was put forward.

Igor Moser, a spokesman for Zürcher Kantonalbank, one of about a dozen Swiss and Swiss-style banks under criminal scrutiny by United States prosecutors, said that if the Swiss Parliament approved the government's decision, the bank "will be able to agree on an individual solution with the U.S. authorities." He added that "a possible penalty will be part of this individual agreement."

Ms. Widmer-Schlumpf hinted that the repercussions for banks that actively helped clients evade taxes after 2009 would be bigger than for those that stopped such activities that year. "All banks knew after 2009 that they can no longer do all sorts of businesses," she said.

It was in 2009 that UBS, the largest Swiss bank, agreed to enter into a deferred-prosecution agreement with the United States. The bank eventually turned over 4,450 client names and paid a $780 million fine after admitting criminal wrongdoing in selling tax-evasion services to wealthy Americans. Justice Department authorities were incensed that after the UBS deal, other Swiss banks took in American clients fleeing UBS to provide shelters for their income, according to court documents in cases of some indicted American clients.

Also in 2009, Switzerland and the United States signed a protocol amending a 1996 tax treaty governing exchanges of information on Americans suspected of avoiding taxes. While the protocol has been approved by the Swiss Parliament, it has been held up in the United States Senate, blocked by Senator Rand Paul, a Republican from Kentucky. The protocol makes it easier for American authorities to seek client and account data from Switzerland.

The Swiss decision on Wednesday to turn over any American client names appears to be contingent on the American side passing the protocol. The decision said any names release would "occur exclusively within the scope of administrative assistance procedures based on a valid double taxation agreement."

In the meantime, Swiss banks would be free to disclose to American authorities broader statistical data about American clients, like information about business relationships. Such disclosure would then pave the way for banks under criminal investigation to negotiate settlements with United States authorities.

"This is an important step for the banks; it will apparently allow them to disclose statistical information, such as the number of accounts with U.S. beneficial owners, the number of accounts with foreign corporations or foundations, and the amount of assets under management," said Scott Michel, a tax lawyer in Washington, D.C. "The I.R.S. and D.O.J. can use this information as the basis for financial penalties under settlement agreements, which might be deferred-prosecution agreements or nonprosecution agreements."

The decision also requires Swiss banks that cooperate with the Justice Department to protect their bankers and employees from, among other things,

being fired for cooperating. American authorities have indicted more than two dozen Swiss bankers, lawyers and financial advisers in recent years.

Other Swiss banks that have been the targets of United States inquiries include Credit Suisse, which disclosed in July 2011 that it had received a letter saying it was under a grand jury investigation; the Zurich-based Julius Baer; two cantonal, or regional, banks; the Swiss operations of HSBC Holdings; and three Israeli hanks, Bank Hapoalim, Mizrahi-Tefahot Bank and Bank Leumi.

Resolution of the conflict "has taken longer than it should have, with a lot of otherwise avoidable damage suffered on the Swiss side," said Robert Katzberg, a white-collar criminal defense lawyer in New York with Swiss and American bank clients. "But it now appears the end is in sight."

David Jolly contributed reporting.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA,	:	INDICTMENT
-v.-	:	
		S1 12 Cr. 02 (JSR)
WEGELIN & CO.,	:	
MICHAEL BERLINKA,		
URS FREI, and	:	
ROGER KELLER,		
	:	
Defendants.		
	:	

- - - - - - - - - - - - - - - - - - - -x

COUNT ONE
(Conspiracy)

The Grand Jury charges:

The Defendants and Co-Conspirators

1. At all times relevant to this Indictment, WEGELIN & CO. ("WEGELIN"), the defendant, founded in 1741, was Switzerland's oldest bank. WEGELIN provided private banking, asset management, and other services to individuals and entities around the world, including U.S. taxpayers living in the Southern District of New York. WEGELIN provided these services principally through "client advisors" based in its various branches in Switzerland ("Client Advisors"). WEGELIN was principally owned by eight managing partners (the "Managing Partners") and was governed by an executive committee that included the Managing Partners (the "Executive Committee").

Permanent Subcommittee on Investigations
EXHIBIT #43a

A TRUE COPY
UNITED STATES MAGISTRATE
FOR THE SOUTHERN DISTRICT OF N.Y.
DEPUTY CLERK

WEGELIN had no branches outside Switzerland, but it directly accessed the U.S. banking system through a correspondent account that it held at UBS AG ("UBS") in Stamford, Connecticut (the "Stamford Correspondent Account"). As of in or about December 2010, WEGELIN had 12 branches in Switzerland and approximately $25 billion in assets under management.

2. From at least in or about 2008 up through and including in or about 2010, MICHAEL BERLINKA, the defendant, was a Client Advisor at the Zurich branch of WEGELIN, the defendant (the "Zurich Branch").

3. From at least in or about 2006 up through and including in or about 2010, URS FREI, the defendant, was a Client Advisor at the Zurich Branch of WEGELIN, the defendant.

4. From at least in or about 2007 up through and including in or about 2010, ROGER KELLER, the defendant, was a Client Advisor at the Zurich Branch of WEGELIN, the defendant.

5. From in or about 2005 up through and including in or about 2010, Client Advisor A, a co-conspirator not named as a defendant herein, was a Client Advisor at the Zurich Branch. At various times, Client Advisor A also served as the "team leader" of MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, and certain other Client Advisors of the Zurich Branch. As a

team leader, Client Advisor A coordinated certain activities of, but did not supervise, these and other Client Advisors.

6. From in or about 2007 up through and including in or about 2012, Managing Partner A, a co-conspirator not named as a defendant herein, was one of the Managing Partners of WEGELIN, the defendant. From in or about 2005 up through and including in or about 2011, Managing Partner A was the head of WEGELIN'S Zurich Branch. During that period, Managing Partner A supervised MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, Client Advisor A, and other Client Advisors in the Zurich Branch with respect to, among other things, the opening and servicing of "undeclared accounts" for U.S. taxpayers. "Undeclared accounts" are bank and securities accounts owned by U.S. taxpayers whose assets, and the income generated by the assets, were not reported by the U.S. taxpayers to the taxation authority of the United States, the Internal Revenue Service ("IRS").

7. From in or about 2008 up through and including in or about 2011, Executive A, a co-conspirator not named as a defendant herein, was a member of the Executive Committee of WEGELIN, the defendant, and worked primarily at the Zurich Branch.

8. At all times relevant to this Indictment, Beda Singenberger ("Singenberger"), a co-conspirator not named as a defendant herein, was an independent asset manager for various U.S. taxpayers who held undeclared accounts at WEGELIN, the defendant, UBS, Swiss Bank A, and other Swiss banks. Singenberger helped his U.S. taxpayer-clients, WEGELIN, UBS, Swiss Bank A and other Swiss banks hide such accounts, and the income generated therein, by, among other things, selling sham corporations and foundations to U.S. taxpayers as vehicles through which the U.S. taxpayers could hold their undeclared accounts, and by managing the assets held in such accounts. From at least in or about 2002 to in or about 2006, Singenberger regularly traveled to the Southern District of New York and other places in the United States to meet with his U.S. taxpayer-clients with undeclared accounts at WEGELIN, UBS, and other Swiss banks.

9. From in or about the mid-1990s up through and including in or about late 2008, Gian Gisler ("Gisler"), a co-conspirator not named as a defendant herein, was a client advisor at UBS in Switzerland. From in or about early 2009 up through and including in or about mid to late 2009, Gisler was an independent asset manager for U.S. taxpayers holding

undeclared accounts at WEGELIN, the defendant, UBS, and other Swiss banks.

Obligations of United States Taxpayers
With Respect to Foreign Financial Accounts

10. At all times relevant to this Indictment, citizens and residents of the United States who had income in any one calendar year in excess of a threshold amount ("U.S. taxpayers") were required to file a U.S. Individual Income Tax Return ("Form 1040"), for that calendar year with the IRS. On Form 1040, U.S. taxpayers were obligated to report their worldwide income, including income earned in foreign bank accounts. In addition, when a U.S. taxpayer completed Schedule B of Form 1040, he or she was required to indicate whether, at any time during the relevant year, the filer had "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." If so, the U.S. taxpayer was required to name the country.

11. In addition, U.S. taxpayers who had a financial interest in, or signature or other authority over, a foreign bank account with an aggregate value of more than $10,000 at any time during a given calendar year were required to file with the IRS a Report of Foreign Bank and Financial Accounts, Form TD F

90-22.1 ("FBAR") on or before June 30 of the following year. In general, the FBAR required that the U.S. taxpayer identify the financial institution where the account was held, the type of account, the account number, and the maximum value of the account during the relevant calendar year.

Overview of the Conspiracy

12. From at least in or about 2002 up through and including in or about 2011, more than 100 U.S. taxpayers conspired with, at various times, WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, Managing Partner A, Client Advisor A, other Client Advisors at WEGELIN, Beda Singenberger, Gian Gisler, and others known and unknown, to defraud the United States by concealing from the IRS undeclared accounts owned by U.S. taxpayers at WEGELIN. As of in or about 2010, the total value of undeclared accounts held by U.S. taxpayers at WEGELIN was at least $1.2 billion.

13. Among other things, WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, and other Client Advisors opened dozens of new undeclared accounts for U.S. taxpayers in or about 2008 and 2009 after UBS and another large international bank based in Switzerland ("Swiss Bank B") closed their respective businesses servicing undeclared accounts for U.S. taxpayers (the "U.S. cross-border banking businesses") in

the wake of widespread news reports in Switzerland and the United States that the IRS was investigating UBS for helping U.S. taxpayers evade taxes and hide assets in Swiss bank accounts. WEGELIN, BERLINKA, FREI, KELLER, Client Advisor A and other Client Advisors did so after WEGELIN's Executive Committee affirmatively decided to capture for WEGELIN the illegal U.S. cross-border banking business lost by UBS and deliberately set out to open new undeclared accounts for U.S. taxpayer-clients leaving UBS. At or about the time this policy decision was announced to team leaders within WEGELIN, Executive A told the team leaders that WEGELIN was not exposed to the risk of prosecution that UBS faced in the United States because WEGELIN was smaller than UBS, and that WEGELIN could charge high fees to its new U.S. taxpayer-clients because the clients were afraid of criminal prosecution in the United States. As a result of this influx of former UBS U.S. taxpayer-clients into WEGELIN, WEGELIN's undeclared U.S. taxpayer assets under management, and the fees earned by managing those assets, increased substantially.

14. As part of their sales pitch to U.S. taxpayer-clients who were fleeing UBS, at various times, BERLINKA, FREI, KELLER, and other Client Advisors told U.S. taxpayer-clients, in substance, that their undeclared accounts at WEGELIN would not

be disclosed to the United States authorities because WEGELIN had a long tradition of bank secrecy and, unlike UBS, did not have offices outside Switzerland, thereby making WEGELIN less vulnerable to United States law enforcement pressure. Managing Partner A and Executive A participated in some of the meetings where such statements were made to U.S. taxpayers.

15. In furtherance of the conspiracy to defraud the United States, WEGELIN, the defendant, helped certain U.S. taxpayer-clients repatriate undeclared funds to the United States by issuing checks drawn on, and executing wire transfers through, WEGELIN'S Stamford Correspondent Account for the benefit of the U.S. taxpayer-clients. In addition, WEGELIN helped at least two other Swiss banks repatriate undeclared funds to their own U.S. taxpayer-clients by issuing checks drawn on WEGELIN's Stamford Correspondent Account for the benefit of the clients of the two other Swiss banks.

Means and Methods of the Conspiracy

16. Among the means and methods by which WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, and their co-conspirators carried out the conspiracy were the following:

a. WEGELIN, BERLINKA, FREI, and KELLER opened and serviced undeclared accounts for U.S. taxpayers -- sometimes in the name of sham corporations and foundations established under

the laws of Panama, Hong Kong, and Liechtenstein -- for the purpose of helping the U.S. taxpayers hide assets and income from the IRS.

b. WEGELIN and FREI knowingly accepted bank documents falsely declaring that such sham entities beneficially owned certain accounts, when WEGELIN and FREI knew that U.S. taxpayers beneficially owned such accounts.

c. WEGELIN, BERLINKA, and FREI opened undeclared accounts for U.S. taxpayers using code names and numbers (so-called "numbered accounts") so that the U.S. taxpayers' names would appear on as few documents as possible in the event that the documents fell into the hands of third parties.

d. WEGELIN, BERLINKA, FREI, and KELLER ensured that account statements and related documents were not mailed to their U.S. taxpayer-clients in the United States.

e. WEGELIN, BERLINKA, and KELLER sent e-mails and Federal Express packages to potential U.S. taxpayer-clients in the United States to solicit new private banking and asset management business.

f. At various times from in or about 2005 up through and including in or about 2007, WEGELIN, BERLINKA, FREI, and KELLER communicated by e-mail and/or telephone with U.S. taxpayer-clients who had undeclared accounts at WEGELIN. Client

Advisors sometimes used their personal e-mail accounts to communicate with U.S. taxpayers to reduce the risk of detection by United States law enforcement authorities.

g. Beginning in or about late 2008 or early 2009, and after WEGELIN began to open new undeclared accounts for U.S. taxpayers fleeing UBS, Managing Partner A instructed BERLINKA, FREI, KELLER and other Client Advisors of the Zurich Branch not to communicate with their U.S. taxpayer-clients by telephone or e-mail, but rather to cause their U.S. taxpayer-clients to travel from the United States to Switzerland to conduct business relating to their undeclared accounts.

h. Various U.S. taxpayer-clients of WEGELIN, BERLINKA, FREI, and KELLER filed Forms 1040 that falsely and fraudulently failed to report the existence of, and the income generated from, their undeclared WEGELIN accounts; evaded substantial income taxes due and owing to the IRS; and failed to file timely FBARs identifying their undeclared accounts.

i. Upon request, WEGELIN issued checks drawn on, and executed wire transfers through, the Stamford Correspondent Account for the benefit of U.S. taxpayers with undeclared accounts at WEGELIN and at least two other Swiss banks. When doing so, WEGELIN sometimes separated the transactions into batches of checks or multiple wire transfers of $10,000 or less

to reduce the risk that the IRS would detect the undeclared accounts.

j. To further conceal the nature of these transactions, WEGELIN comingled the funds transferred in this fashion with millions of dollars of additional funds that WEGELIN moved through the Stamford Correspondent Account.

WEGELIN Solicited New Undeclared Accounts Through a Third-Party Website

17. From in or about 2005 up through and including in or about 2009, WEGELIN, the defendant, solicited new business from U.S. taxpayers wishing to open undeclared accounts in Switzerland by recruiting clients through the website "SwissPrivateBank.com," which was operated by a third party independent of WEGELIN (the "Website Operator"). As of on or about July 2, 2007, this website advertised "Swiss Numbered Bank Account[s]" and "Swiss Anonymous Bank Account[s]." Specifically, the website stated:

> Swiss banking laws are very strict and it is illegal for a banker to reveal the personal details of an account number unless ordered to do so by a judge.
>
> This is long established in Swiss law. Any banker who reveals information about you without your consent risks a custodial sent[e]nce if convicted, with the only exceptions to this rule concerning serious violent crimes.
>
> Swiss banking secrecy is not lifted for tax evasion. The reason for this is because failure to report

> income or assets is not considered a crime under Swiss banking law. As such, neither the Swiss government, nor any other government, can obtain information about your bank account. They must first convince a Swiss judge that you have committed a serious crime punishable by the Swiss Penal Code.

The website invited users to "[r]equest a Swiss banking consultation today" by clicking a link to a "Consultation Request" form that asked for information about a user's country of residence, telephone number, and e-mail address. The Website Operator provided this information to WEGELIN Client Advisors, who then sent e-mails to the United States promoting WEGELIN'S private banking and asset management services. In some cases, Client Advisors sent WEGELIN's promotional materials to U.S. taxpayers in the United States by Federal Express. Through this website, over time, WEGELIN obtained new undeclared accounts holding millions of dollars in total for U.S. taxpayers. Managing Partner A and other managing partners of WEGELIN received quarterly updates on the progress of this advertising program. Managing Partner A approved payments to the Website Operator.

WEGELIN Opens New Undeclared Accounts
For U.S. Taxpayers Fleeing UBS

18. In or about May and June 2008, the IRS's criminal investigation of UBS's U.S. cross-border banking business received widespread media coverage in Switzerland and the United

States. At or about that time, many U.S. taxpayers with undeclared accounts at UBS understood that the investigation might result in the disclosure of their identities and UBS account information to the IRS.

19. On or about July 17, 2008, UBS announced that it was closing its U.S. cross-border banking business. Thereafter, UBS client advisors began to notify their U.S. taxpayer-clients that UBS was closing their undeclared accounts. Some UBS client advisors told such clients that they could continue to maintain undeclared accounts at WEGELIN, the defendant, and certain other Swiss private banks. At or about that time, it became widely known in Swiss private banking circles that WEGELIN was opening new undeclared accounts for U.S. taxpayers.

20. In or about 2008, the Executive Committee of WEGELIN, the defendant, including its Managing Partners, affirmatively decided to capture the illegal U.S. cross-border banking business lost by UBS by opening new undeclared accounts for U.S. taxpayer-clients fleeing UBS. In or about 2008, Managing Partner A announced this decision to Client Advisor A and other team leaders of the Zurich Branch. At or about the time of this announcement, Executive A told the team leaders that WEGELIN was not exposed to the risk of prosecution that UBS faced because WEGELIN was smaller than UBS, and that WEGELIN could charge high

fees to its new U.S. taxpayer-clients because the clients were afraid of criminal prosecution in the United States.

21. At or about that time, Managing Partner A supervised the creation of a list of Client Advisors at the Zurich Branch who were available to meet with potential U.S. taxpayer-clients, many of whom walked into the Zurich Branch of WEGELIN, the defendant, seeking to open new undeclared accounts. Thereafter, in or about 2008 and 2009, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, and other Client Advisors met with at least 70 such potential clients. In these meetings, BERLINKA, FREI, KELLER and other Client Advisors interviewed the potential U.S. taxpayer-clients about their backgrounds, the sources of their funds, and the amount of money they wished to transfer from UBS to WEGELIN, among other things. During these meetings, the U.S. taxpayers typically showed their U.S. passports, advised that they were U.S. citizens or legal permanent residents, confirmed that UBS was closing their accounts, and completed certain account opening documents. These documents typically included a standard Swiss banking form called "Form A," which clearly identified the U.S. taxpayers as the beneficial owners of the accounts. In some cases, as described in more detail below, the Client Advisors sought to reassure their new U.S. taxpayer-clients that WEGELIN would not disclose

their identities or account information to the IRS. In many cases, Managing Partner A or Executive A joined these meetings.

22. In preparation for these meetings, Managing Partner A and Executive A supervised videotaped training sessions with Client Advisors of the Zurich Branch to instruct them on their delivery of certain selling points to be made to U.S. taxpayers fleeing UBS. These selling points included the fact that WEGELIN, the defendant, had no branches outside Switzerland and was small, discreet, and, unlike UBS, not in the media.

23. In this manner, WEGELIN, the defendant, opened new undeclared accounts for at least 70 U.S. taxpayers who had fled UBS in or about 2008 and 2009. Most were opened at WEGELIN'S Zurich Branch. When these new undeclared accounts were opened at the Zurich Branch, they were designated with a special code -- "BNQ" -- indicating internally within WEGELIN, among other things, that the accounts were undeclared. At some point in or about 2008 or 2009, the Zurich Branch required that the opening of all new U.S. taxpayer accounts be approved by Managing Partner A or Executive A.

24. From in or about March 2009 up through and including in or about October 2009, pursuant to a special IRS program for U.S. taxpayers with undeclared accounts (the "Offshore Voluntary Disclosure Program"), approximately 14,000 U.S. taxpayers

voluntarily disclosed to the IRS undeclared accounts held at banks around the world, including WEGELIN, the defendant. As part of this process, dozens of U.S. taxpayers obtained copies of their WEGELIN bank records. Some of these records included the names of MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, and other Client Advisors. In response to the expected disclosure of Client Advisors' names to the IRS through the voluntary disclosure program, in or about 2009, Managing Partner A announced to team leaders of the Zurich Branch that Client Advisors' names would no longer appear on certain WEGELIN records. From at least in or about late 2009 up through and including in or about early 2010, Client Advisors' names were replaced by "Team International," or a similar designation, on certain WEGELIN records, so as to reduce the risk that Client Advisors' names would become known to the IRS.

25. In or about mid-2009, the Executive Committee of WEGELIN, the defendant, decided that the bank would stop opening new undeclared accounts for U.S. taxpayers, but that WEGELIN would continue to service its existing undeclared U.S. taxpayer accounts. Nevertheless, in or about late 2009 or early 2010, WEGELIN and MICHAEL BERLINKA, the defendant, and Executive A opened at least three new undeclared accounts for U.S. taxpayers who had fled from Swiss Bank A when it, like UBS and Swiss Bank

B, closed its U.S. cross-border banking business for both new and existing U.S. taxpayer-clients. Each of the three new U.S. taxpayer-clients had at least two passports: one from the United States and one from a second country. In each case, WEGELIN, BERLINKA and Executive A opened the new undeclared account under the passport of the second country, even though WEGELIN, BERLINKA and Executive A well knew that the U.S. taxpayer had a U.S. passport.

26. After the Managing Partners of WEGELIN, the defendant, decided to capture UBS's illegal business for themselves, the total value of undeclared accounts held by U.S. taxpayers at WEGELIN, the defendant, increased substantially over time. As of in or about 2005, WEGELIN, the defendant, hid at least $240 million in undeclared U.S. taxpayer assets from the IRS. By in or about 2010, this amount had risen to at least $1.2 billion.

New Undeclared Accounts Opened by WEGELIN and MICHAEL BERLINKA

27. In or about 2008 and 2009, WEGELIN and MICHAEL BERLINKA, the defendants, opened new undeclared accounts for numerous U.S. taxpayers fleeing UBS, including the following:

Client A

28. At all times relevant to this Indictment, Client A, a co-conspirator not named as a defendant herein, lived with her husband in Boca Raton, Florida. She became a U.S. citizen in

2003. In or about 1987, Client A became the beneficial owner of an undeclared account at UBS and its predecessor bank. In or about July 2008, Client A's UBS client advisor, Gian Gisler, advised Client A and her husband that she must close her UBS account because she was American. At or about that time, Gisler instructed Client A and her husband not to call UBS from the United States, and told them that he was leaving UBS. Gisler invited Client A to move her account with Gisler to another bank, but she declined. Gisler then recommended WEGELIN, the defendant, and noted that it was a reliable bank that had no offices in the United States.

29. In or about September 2008, Client A and her husband traveled to Zurich to close her UBS account. By that time, Gisler had left UBS, and Client A had a new UBS client advisor. The new UBS client advisor instructed them not to call from the United States, promised that UBS would not give their information to the IRS, and recommended WEGELIN, the defendant, as a bank at which to hold Client A's account.

30. Also during this trip, Client A and her husband walked to WEGELIN, the defendant, and met with MICHAEL BERLINKA, the defendant. BERLINKA interviewed Client A and her husband about their personal background and the source of their funds, among other things. Client A and her husband told BERLINKA that they

were U.S. citizens, showed their U.S. passports, and said that they wanted to transfer funds from UBS. BERLINKA opened a new account beneficially owned by Client A using the code name "N1641" on or about September 19, 2008. At or about that time, WEGELIN accepted a Form A signed by Client A stating that Client A was the beneficial owner of the account.

31. In connection with the opening of the account, MICHAEL BERLINKA, the defendant, told Client A and her husband that they would be safe at WEGELIN, the defendant, and that BERLINKA had been instructed not to disclose their account information to United States authorities. In addition, BERLINKA instructed Client A and her husband not to call or send faxes to WEGELIN from the United States and explained that WEGELIN would not send mail to them in the United States.

32. On multiple occasions in or about 2008 and 2009, Client A or her husband called BERLINKA from the United States to notify him that they would be traveling to Aruba. Once in Aruba, Client A or her husband called and/or faxed BERLINKA to request that he send checks to them in the United States. In response, WEGELIN and BERLINKA sent checks drawn on the Stamford Correspondent Account from Switzerland to Client A in Boca Raton, Florida by private letter carrier. WEGELIN issued the checks in the amount of $8,500 to help conceal the undeclared

account from the IRS. WEGELIN also wired funds for the benefit of Client A through the Stamford Correspondent Account to the United States and Aruba. These checks and wire transfers are set forth in the table accompanying paragraph 137 of this Indictment.

33. In or about September 2009, Client A and her husband learned that their names and UBS account information might be provided to the IRS in connection with the August 2009 agreement between Switzerland and the United States to disclose UBS bank records relating to approximately 4,450 U.S. taxpayers (hereinafter, the "August 2009 Agreement"). Alarmed by this news, Client A's husband called BERLINKA from the United States. During this call, BERLINKA advised Client A's husband not to make a voluntary disclosure to the IRS and assured him that their WEGELIN account information would not be provided to the IRS.

34. As of on or about October 8, 2008, Client A's undeclared account at WEGELIN, the defendant, held approximately $2,332,860.

Clients B and C

35. WEGELIN and MICHAEL BERLINKA, the defendants, opened and managed an undeclared account for a married couple, Clients B and C, co-conspirators not named as defendants herein. At all

times relevant to this Indictment, Clients B and C were U.S. citizens and residents of Florida.

36. In or about 2008, UBS notified Clients B and C that they must close their undeclared UBS account, which they had maintained since in or about the late 1990s. Client B asked Gisler, his former UBS client adviser, if he knew anyone at WEGELIN, the defendant, who could help them. Gisler recommended MICHAEL BERLINKA, the defendant, and arranged for Clients B and C to meet BERLINKA at the Zurich Branch in or about October 2008. At that meeting, Clients B and C showed BERLINKA their U.S. passports, provided their U.S. address, and said that they wanted to transfer approximately $900,000 from UBS to WEGELIN. Managing Partner A joined the meeting and further interviewed Clients B and C. Thereafter, Managing Partner A approved the opening of a new undeclared account for Clients B and C.

37. At or about the time this account was opened, WEGELIN, the defendant, accepted a Form A from Clients B and C stating that they resided in Florida and beneficially owned the account. MICHAEL BERLINKA, the defendant, agreed on behalf of WEGELIN that WEGELIN would not send mail to Clients B and C in the United States and that Clients B and C could conduct business with WEGELIN using a code name, "N1677." Because Client B did not want to use his real name when calling WEGELIN from the

United States, BERLINKA set up the account so that Client B could use another code name -- "Elvis" -- when he did so. Thereafter, on one or two occasions, Client B called BERLINKA from the United States to check his account balance, which BERLINKA provided to Client B.

38. On or about December 31, 2008, the undeclared account at WEGELIN, the defendant, owned by Clients B and C held approximately $873,958.

39. The following table further describes Clients A, B, and C and other U.S. taxpayers whose Client Advisor was MICHAEL BERLINKA, the defendant. None of these U.S. taxpayers timely reported their accounts at WEGELIN, the defendant, or the income earned therein, to the IRS on Form 1040 or the FBAR where they were required to do so.

Beneficial Owner(s)	Code Name(s) or Nominee Name(s) in which WEGELIN Account(s) Held	Approx. Dates of UBS Account(s)	Approx. Date WEGELIN Account(s) Opened	Approx. High Value of WEGELIN Accounts
Client A	N1641	1987-2008	09/2008	$2,544,609
Clients B & C	N1677; Elvis	1998-2008	10/2008	$873,000
Client D	Limpopo Foundation	1970s-2008	12/2008	$30,895,000
Client E	Hackate Foundation	1999-2008	12/12/2008	$1,241,644
Total				**$35,554,253**

New Undeclared Accounts Opened by WEGELIN and URS FREI

40. From in or about 2006 up through and including at least in or about 2010, URS FREI, the defendant, opened and/or serviced dozens of undeclared accounts for U.S. taxpayers at

WEGELIN, the defendant. As of in or about 2006, FREI managed undeclared accounts for approximately 20 U.S. taxpayers holding approximately $40 million in assets. Those figures grew substantially over the next four years. By in or about 2010, FREI managed undeclared accounts for approximately 50 U.S. taxpayers holding approximately $260 million in assets. Within WEGELIN'S Zurich Branch, other Client Advisors frequently sought FREI's advice concerning their undeclared U.S. taxpayer accounts, and some Client Advisors transferred such accounts to him. In or about 2006 and 2007, FREI traveled several times to the United States for U.S. taxpayer-client business. In particular, in or about August and September 2007, FREI traveled to New York, New York, and to San Diego, San Francisco, Marina del Rey, and Santa Monica, California.

41. In or about 2008 and 2009, WEGELIN and URS FREI, the defendants, opened new undeclared accounts for U.S. taxpayers who had fled UBS, including the following:

Clients F and G

42. URS FREI, the defendant, was the Client Advisor at WEGELIN, the defendant, for two undeclared accounts maintained by two brothers ("Clients F and G"), co-conspirators not named as defendants herein, who were, at all times relevant to this Indictment, U.S. citizens and residents of Bayside, New York.

43. In or about August 2008, Clients F and G traveled from New York to Zurich to meet with their client advisor at UBS, where they had owned separate undeclared accounts since in or about the 1960s. The UBS client advisor informed Clients F and G that they must close their UBS accounts, and that other U.S. taxpayers with undeclared accounts were transferring funds to other Swiss banks, including WEGELIN, the defendant.

44. Clients F and G then walked to the Zurich Branch of WEGELIN, the defendant, which was near UBS's Zurich office, and asked to open a new account for each of them. There they met with URS FREI, the defendant. FREI interviewed Clients F and G and inspected their U.S. passports. Clients F and G told FREI that they wanted to transfer assets from UBS to WEGELIN.

45. FREI opened separate undeclared accounts for Clients F and G and assisted with the transfer of their funds from UBS to WEGELIN, the defendant: approximately $3.4 million for Client F and $800,000 for Client G. In addition, FREI established the accounts in code names ("N1 PULTUSK" and "N1 DREW," respectively) so that their names would appear on a minimal number of records relating to their accounts.

46. After opening their accounts, FREI gave his business card to Clients F and G and told them to call him if they needed anything. Thereafter, on multiple occasions in or about 2008

and 2009, Clients F and/or G called FREI from the United States and spoke to FREI or one of his assistants about the status and growth of their accounts at WEGELIN, the defendant.

47. In or about October 2009, the undeclared accounts owned by Clients F and G at WEGELIN, the defendant, held approximately $3.4 million and $800,000 respectively.

Clients H and I

48. URS FREI, the defendant, also served as the client advisor at WEGELIN, the defendant, for an undeclared account maintained jointly by Clients H and I, co-conspirators not named as defendants herein. At all times relevant to this Indictment, Clients H and I were U.S. citizens and residents of New Jersey.

49. In or about November 2008, Clients H and I's UBS client advisor notified them that they must close their undeclared UBS account. Client H asked his UBS client advisor to refer him to another Swiss bank so that Clients H and I could continue to maintain an undeclared account. The UBS client advisor recommended WEGELIN, the defendant, and two other Swiss banks.

50. Clients H and I walked to the Zurich Branch of WEGELIN, the defendant, and met with URS FREI, the defendant. FREI told Clients H and I that he handled American accounts for WEGELIN. FREI interviewed Clients H and I about their personal

background and the amount they wished to deposit. Clients H and I showed their U.S. passports to FREI and told him that they wanted to transfer approximately $1 million from UBS to WEGELIN.

51. On or about November 13, 2008, URS FREI, the defendant, opened a new account for Clients H and I. At that time, WEGELIN, the defendant, promised Clients H and I that they could conduct business with the bank using the code name "N5771." WEGELIN also promised not to send mail to Clients H and I in the United States. In addition, FREI instructed Clients H and I not to call him from the United States. Later, in or about July 2009, FREI lifted this restriction after Clients H and I informed him that they had voluntarily disclosed their WEGELIN account to the IRS.

52. On or about July 14, 2009, the undeclared account owned by Clients H and I at WEGELIN, the defendant, held approximately $1,105,593.

Clients J and K

53. URS FREI, the defendant, also opened an undeclared account at WEGELIN, the defendant, for Clients J and K, a married couple and co-conspirators not named as defendants herein. At all times relevant to this Indictment, Clients J and K were U.S. citizens living in Los Angeles, California.

54. In or about 2008, Clients J and K, who had maintained an undeclared account at UBS and one of its predecessor banks since in or about the 1980s, were advised by their UBS client adviser that they must close their undeclared UBS account. Clients J and K then spoke to an attorney in Los Angeles (the "Los Angeles Attorney"), who advised them to create an offshore entity to hold the account and who referred them to WEGELIN and URS FREI, the defendants. Thereafter, in or about November 2008, at the Los Angeles Attorney's office, Clients J and K completed account opening documents for a new account to be held in the name of White Tower Holdings, LLC, a corporation formed under the laws of Nevis. These documents included: (1) a Form A stating that Clients J and K beneficially owned the White Tower Holdings account; (2) copies of the U.S. passports of Clients J and K; (3) a separate WEGELIN form in which Clients J and K falsely stated that White Tower Holdings was the "beneficial owner of all income from US sources deposited in the above-mentioned portfolio(s), in accordance with US tax law[]"; and (4) even though the account was to be undeclared, Forms W-9 for Clients J and K. A Form W-9 is an IRS form through which U.S. taxpayers can identify themselves as such to a bank, thereby causing the bank to report the U.S. taxpayers' account income to

the IRS each year on Form 1099. The Los Angeles Attorney then sent the signed documents from the United States to WEGELIN.

55. In or about November 2008, Clients J and K traveled to Zurich and Client K met with URS FREI, the defendant, at WEGELIN, the defendant. FREI advised Client K that mail would not be sent to Clients J and K in the United States. FREI also advised that ROGER KELLER, the defendant, would be FREI's secondary contact at the bank in the event that FREI was unavailable. The next day, Clients J and K met with FREI again to discuss the wiring of their funds from UBS to WEGELIN.

56. On or about September 30, 2009, the undeclared account owned by Clients J and K at WEGELIN, the defendant, held approximately $614,408.

Clients L and M

57. URS FREI, the defendant, was also the client advisor for an undeclared account held at WEGELIN, the defendant, by Clients L and M, a married couple and co-conspirators not named as defendants herein. At all times relevant to this Indictment, Clients L and M were U.S. citizens and residents of Florida.

58. In or about December 2008, the UBS client advisor for Clients L and M notified them that they must close their undeclared UBS account, which they had held in the name of an entity called the Magabri Foundation, a sham entity formed unde:

the laws of Liechtenstein. The UBS client advisor further informed Clients L and M that they could open a new account at **WEGELIN, the defendant**. The UBS client advisor spoke to URS FREI, the defendant, on behalf of Clients L and M and learned that WEGELIN and FREI were willing to open a new account for them in the name of their sham entity, the Magabri Foundation.

59. The UBS client advisor then arranged for, and accompanied Clients L and M to, a meeting with URS FREI, the defendant, at the Zurich Branch of WEGELIN, the defendant, in or about January 2009. At or about that time, FREI was informed that Clients L and M were U.S. citizens living in Florida and that UBS was closing their account.

60. On or about January 12, 2009, WEGELIN and URS FREI, the defendants, opened two new undeclared accounts for Clients L and M in the name of the Magabri Foundation. At or about that time, WEGELIN, the defendant, accepted a Form A declaring that Clients L and M were the beneficial owners of the accounts. Copies of their passports were attached to the Form A. In addition, WEGELIN promised not to send mail to Clients L and M in the United States, and FREI instructed Client L not to call him from the United States. FREI lifted the instruction not to call from the United States in or about November 2009 after

Client L notified FREI that he had voluntarily disclosed the Magabri Foundation accounts to the IRS.

61. On or about December 31, 2009, the undeclared accounts owned by Clients L and M at WEGELIN, the defendant, held approximately $2,729,318.

62. Several of the undeclared U.S. taxpayer-clients of WEGELIN and URS FREI, the defendants, are described in the following table. None of these U.S. taxpayers timely reported their WEGELIN accounts, or the income earned therein, to the IRS on Form 1040 or the FBAR where they were required to do so.

Beneficial Owner(s)	Code Name(s) or Nominee Name(s) in which WEGELIN Account(s) Held	Approximate Dates of UBS Account(s)	Approximate Date WEGELIN Account(s) Opened	Approximate High Value of WEGELIN Accounts
Client F	N1 PULTUSK	1960s - 2008	08/2008	$3,200,000
Client G	N1 DREW	1960s - 2008	08/2008	$800,000
Clients H and I	N5571	2006 - 2008	11/13/2008	$1,105,593
Clients J and K	White Tower Hold.	1980s - 2008	11/6/2008	$614,408
Clients L and M	Magabri Foundation	1997 - 2009	1/12/2009	$2,729,318
Clients N and O	Efraim Foundation	1973 - 2008	06/2008	$52,747,000
Arthur Eisenberg	N1126	1983 - 2008	12/10/2008	$2,234,608
Total				$60,980,927

New Undeclared Accounts Opened by WEGELIN and ROGER KELLER

63. From in or about 2007 up through and including at least in or about 2010, WEGELIN and ROGER KELLER, the defendants, opened and serviced undeclared accounts for dozens of U.S. taxpayers. By in or about the end of 2008, KELLER

managed undeclared accounts for at least 30 U.S. taxpayers holding approximately $120 million in total.

64. In or about 2008 and 2009, WEGELIN and ROGER KELLER, the defendants, opened new undeclared accounts for U.S. taxpayers leaving UBS, including the following:

Client P

65. ROGER KELLER, the defendant, served as the client advisor for an undeclared account maintained by Client P, a co-conspirator not named as a defendant herein, at WEGELIN, the defendant. At all times relevant to this Indictment, Client P was a U.S. citizen and resident of Maryland.

66. In or about 2008, UBS advised Client P that he must close his undeclared UBS account, which he had maintained since in or about 1970. Because Client P's deteriorating health did not permit him to travel to Switzerland, Client P's son, a co-conspirator not named as a defendant herein, traveled to Zurich in or about November 2008 to close Client P's UBS account and identify another Swiss private bank that would open a new undeclared account for Client P. The UBS client advisor referred Client P's son to WEGELIN, the defendant, and two other Swiss banks.

67. On or about November 3, 2008, Client P's son walked into the Zurich Branch of WEGELIN, the defendant, without an

appointment and asked to open an account. ROGER KELLER, the defendant, interviewed Client P's son. Client P's son told KELLER that he and Client P were U.S. citizens who lived in the United States and that Client P had maintained an account for many years at UBS.

68. On or about the following day, November 4, 2008, ROGER KELLER, the defendant, with the approval of Managing Partner A, opened a new undeclared account in the name of Client P's son. At or about that time, WEGELIN, the defendant, accepted a Form A falsely stating that Client P's son, who lived in Manhattan, was the sole beneficial owner of the account. WEGELIN promised not to send account statements or other mail relating to the account to the United States.

69. On or about September 30, 2009, Client P's undeclared account at WEGELIN, the defendant, held approximately $732,938.

Client Q

70. ROGER KELLER, the defendant, was also the client advisor for an undeclared account owned by Client Q, a co-conspirator not named as a defendant herein, at WEGELIN, the defendant. At all times relevant to this Indictment, Client Q was a U.S. citizen and resident of California.

71. In or about December 2008, Client Q's UBS client advisor informed him that he must close his undeclared UBS

account, which he had owned since in or about 1987. Thereafter, Client Q's previous UBS client advisor told him that WEGELIN, the defendant, was willing to open new undeclared accounts for U.S. taxpayers.

72. In or about January 2009, because Client Q was unable for health reasons to travel to Zurich to close his UBS account, Client Q's son, a co-conspirator not named as a defendant herein, traveled in his place. Client Q's previous UBS client advisor set up an appointment at WEGELIN, the defendant, and accompanied Client Q's son to meet with ROGER KELLER, the defendant, and a Zurich Branch supervisor on or about January 5, 2009. At this initial meeting, KELLER and the supervisor interviewed Client Q's son about his personal background, the source of the funds, and the amount that he wished to deposit, among other things. Client Q's son told KELLER and the supervisor that he was a U.S. citizen and that he wanted to transfer approximately $7 million from UBS to WEGELIN.

73. Later that day, ROGER KELLER, the defendant, advised Client Q's son by telephone that WEGELIN, the defendant, would open an account for him. Client Q's son then returned to the bank and completed various paperwork. At or about that time, KELLER asked Client Q's son whether he wanted to complete an IRS Form W-9, which, if completed, would cause WEGELIN to file a

Form 1099 with the IRS to report the income in Client Q's account in a given year. Client Q's son told KELLER that he did not wish to complete the Form W-9. In addition, KELLER agreed that WEGELIN would not send mail relating to the account to the United States. In the context of a conversation about the demise of UBS's cross-border banking business, and KELLER told Client Q's son that WEGELIN was the oldest bank in Switzerland. KELLER did so to assure him that WEGELIN would not disclose Client Q's identity or account information to the IRS.

74. In or about September 2009, Client Q and his son traveled to Zurich and met with ROGER KELLER, the defendant, and a lawyer representing WEGELIN, the defendant. In the context of a discussion about the August 2009 Agreement that would result in the disclosure of 4,450 UBS account files to the IRS, KELLER and the WEGELIN lawyer assured Client Q and his son that Client Q's account was safe and that their names would not be released to the United States authorities.

75. On or about March 31, 2010, Client Q's undeclared account at WEGELIN, the defendant, held approximately $7,173,679.

76. Client P, Client Q, and other undeclared U.S. taxpayer-clients of WEGELIN and ROGER KELLER, the defendants, are described in the following table. None of these U.S.

taxpayers timely reported their WEGELIN accounts, or the income earned therein, to the IRS on Form 1040 or the FBAR where they were required to do so.

Beneficial Owner(s)	Code Name(s) or Nominee Name(s) in which WEGELIN Account(s) Held	Approx. Dates of UBS Account(s)	Approx. Date WEGELIN Account(s) Opened	Approximate High Value of WEGELIN Accounts
Client P	Client P's Son	1970-2008	2008	$732,938
Client Q	Client Q's Son	1987-2009	1/5/2009	$7,173,679
Clients R & S	Client R's Advisor	1970s	12/19/2008	$3,667,724
Clients T & U	TMT Family Foundation	1981-2008	11/2008	$1,247,649
Total				$12,821,990

New Undeclared Accounts Opened by Client Advisor A

77. From in or about 2005 up through and including in or about 2010, Client Advisor A opened and serviced U.S. taxpayer-clients with undeclared accounts at WEGELIN, the defendant, including the following:

Client V

78. For example, Client Advisor A opened and maintained an undeclared account for Client V, a co-conspirator not named as a defendant herein, at WEGELIN, the defendant. Client V was, at all times relevant to this Indictment, a U.S. citizen and resident of Florida.

79. Beginning in or about 2005, Client V owned undeclared accounts at UBS and Swiss Bank B. In or about 2008 and 2009, both UBS and Swiss Bank B required Client V to close his undeclared accounts.

80. On or about April 14, 2009, Client V's client advisor at Swiss Bank B informed Client V that WEGELIN, the defendant, was opening new undeclared accounts for U.S. taxpayers who were fleeing Swiss Bank B. Client V then walked to the Zurich Branch of WEGELIN, the defendant, without an appointment and asked to open an account.

81. At or about that time, Client Advisor A interviewed Client V about his personal background and the source of his funds, among other things. Client V told Client Advisor A that UBS and Swiss Bank B were closing his accounts; showed Client Advisor A his U.S. passport; and told Client Advisor A that he wished to deposit approximately $5.7 million at WEGELIN, the defendant. Client Advisor A, with the express approval of Managing Partner A, agreed to open the account through a "structure" -- that is, a sham offshore entity -- rather than in Client V's own name.

82. To establish the "structure," on or about that same day, April 14, 2009, Client Advisor A invited an employee of a Swiss company that provides tax and legal services ("Swiss Trust Advisor A") to meet with Client V. At that meeting, Swiss Trust Advisor A sold to Client V an off-the-shelf sham entity called the Nitro Foundation. Client Advisor A, in turn, opened a new account at WEGELIN, the defendant, for Client V in the name of

the Nitro Foundation. In written materials that Swiss Trust Advisor A provided to WEGELIN, Swiss Trust Advisor A acknowledged that Client V's account would be undeclared. At or about that time, WEGELIN accepted a Form A declaring that Client V, a U.S. citizen and resident of Florida, was the beneficial owner of the Nitro Foundation account. In addition, WEGELIN promised that it would not send mail to Client V in the United States. Thereafter, Client V instructed UBS and the Swiss Bank B to transfer his funds to the Nitro Foundation account at WEGELIN. Based on the advice of Client V's client advisors at UBS and Swiss Bank B, the funds were transferred in Swiss francs so that the transactions would occur entirely in Switzerland, thereby reducing the risk that the IRS would detect the account.

83. At or about that time, Client Advisor A instructed Client V to use text messages to communicate with him, rather than telephone calls, because U.S. law enforcement authorities did not yet have the ability to track the huge volume of text messages that were written around the world. In addition, Client Advisor A assured Client V that his account would remain safe at WEGELIN because the bank was very old, had a rich tradition, and did not do business in the United States.

84. In or about June 2009, Client Advisor A met with Client V in Miami, Florida.

85. On or about October 15, 2009, Client V's undeclared account at WEGELIN, the defendant, held approximately $4,175,000.

Client W

86. Client Advisor A also opened an undeclared account for Client W, a co-conspirator not named as a defendant herein. Client W was, at all times relevant to this Indictment, a U.S. citizen who lived in California.

87. In or about 2008, UBS advised Client W that his undeclared UBS account would be closed. In or about the following month, Client W asked Swiss Trust Advisor A how he could continue to maintain an undeclared account in Switzerland. Swiss Trust Advisor A referred Client W to WEGELIN, the defendant, and accompanied him to meet Client Advisor A at WEGELIN'S Zurich Branch.

88. At this meeting, Client Advisor A interviewed Client W about his personal background, the source of his funds, and the history of his UBS account, among other things. Client W told Client Advisor A that he was a U.S. citizen, showed his passport, and said that UBS was closing his account. Client Advisor A told Client W that WEGELIN, the defendant, would not have UBS's problems with the IRS because WEGELIN did not have branches in the United States.

89. On or about December 19, 2008, Client W returned to the Zurich office of WEGELIN, the defendant, met with Client Advisor A, and opened an account in the name of Herzen Resources S.A., a sham Panama corporation that Client W had bought from Swiss Trust Advisor A. At or about that time, WEGELIN accepted a Form A declaring that Client W beneficially owned the Herzen Resources account. In addition, WEGELIN promised not to send mail to Client W in the United States.

90. In or about the summer of 2009, Client Advisor A told Client W that WEGELIN, the defendant, had stopped opening new accounts for U.S. clients, and that Client W was lucky that he had been able to open the Herzen Resources account.

91. On or about September 30, 2009, Client W's undeclared account at WEGELIN, the defendant, held approximately $8,685,502.

Undeclared WEGELIN Accounts Managed by Independent Asset Managers

92. Separate and apart from the undeclared accounts that WEGELIN, the defendant, opened and managed directly for U.S. taxpayers through its Client Advisors, WEGELIN also acted as a custodian with respect to undeclared accounts that were managed by independent asset managers, including the following:

Kenneth Heller

93. At all times relevant to this Indictment, Kenneth Heller, a co-conspirator not named as a defendant herein, was a U.S. citizen who lived and worked primarily in Manhattan. In or about December 2005 and January 2006, Heller opened an undeclared account at UBS and funded it with approximately $26,420,822 wired from the United States.

94. On or about June 6, 2008, Heller became concerned about the IRS's investigation into UBS's cross-border banking business and faxed a news article about the investigation to his UBS client advisor ("UBS Client Advisor A").

95. On or about June 21, 2008, Heller retained an independent asset manager based in Liechtenstein ("Liechtenstein Asset Manager A") to manage a new undeclared account that Heller opened at WEGELIN, the defendant, at or about that time. Over the next several months, Heller funded this account with approximately $19 million wired from UBS. In order to protect Heller, the account was opened in the name of Nathelm Corporation, according to a September 9, 2008 letter sent to Heller's tax preparer by an attorney working for Heller ("Heller Attorney A"). This letter further stated:

> All Heller money was transferred directly from UBS to Wegelin. . . . The problem is the US Government interference with Swiss Banks, in [an] attempt to

> seize income tax evaders. . . . The US Government gladly pressed its case with Swiss Govt for bank disclosure of US citizens, etc. This is why KH left UBS[.]

96. On or about August 22, 2008, among other occasions, Liechtenstein Asset Manager A faxed to Heller's office in Manhattan account statements and other documents relating to Heller's undeclared account at WEGELIN, the defendant.

97. On or about October 2, 2008, Heller Attorney A faxed instructions from Heller's office in Manhattan to WEGELIN, the defendant, directing WEGELIN to wire approximately $50,000 to a U.S. bank account that HELLER controlled.

98. On various occasions in or about 2008 and 2009, in response to telephone and fax requests from Heller to Liechtenstein Asset Manager A, WEGELIN, the defendant, issued multiple checks drawn on the Stamford Correspondent Account for the benefit of Heller. For example, as set forth in the table accompanying paragraph 137, on or about July 8, 2009, WEGELIN issued approximately 12 checks for Heller's benefit, each in the amount of $2,500. Liechtenstein Asset Manager A sent these checks to Heller in the United States.

99. On or about December 31, 2008, Heller's undeclared account at WEGELIN, the defendant, held approximately $18,466,686.

Clients X and Y

100. Beda Singenberger served as the independent asset manager for numerous U.S. taxpayers holding undeclared accounts at WEGELIN, the defendant, including Clients X and Y, co-conspirators not named as defendants herein. At all times relevant to this Indictment, Clients X and Y, a married couple, were citizens and residents of the United States.

101. On or about April 8, 2002, Singenberger opened an undeclared account at WEGELIN, the defendant, for Clients X and Y in the name of Berry Trust, a sham Liechtenstein foundation. At or about that time, WEGELIN accepted a Form A stating that Clients X and Y beneficially owned the Berry Trust account. At or about that time, WEGELIN accepted another bank form falsely declaring that Berry Trust beneficially owned the Berry Trust account. At the top of this false form, the letters "BNQ" were written to ensure that this account was correctly coded in WEGELIN's computer system as an undeclared account.

102. In or about 2003, Singenberger opened a second account for Client X, at WEGELIN, the defendant, this time in the name of Asset Champion, Ltd., a sham Hong Kong corporation.

103. Thereafter, until in or about 2009, Singenberger managed the assets held by Clients X and Y at WEGELIN, the

defendant. On or about December 31, 2003, the combined value of these undeclared accounts was approximately $6,133,000.

Client Z

104. Singenberger also managed the assets for an undeclared account that Client Z, a co-conspirator not named as a defendant herein, held at WEGELIN, the defendant. At all times relevant to this Indictment, Client Z was a U.S. citizen and resident.

105. On or about October 1, 2004, Singenberger opened an account for Client Z at WEGELIN, the defendant, in the name of Eagle Elite Investments, Ltd., a sham Hong Kong corporation. At or about that time, WEGELIN accepted a Form A stating that Client Z beneficially owned the Eagle Elite Investments account. At or about that time, WEGELIN also accepted another bank form falsely declaring that Eagle Elite Investments beneficially owned the account.

106. In or about 2009, Client Z held approximately $232,435 in his undeclared account at WEGELIN, the defendant.

107. Several U.S. taxpayer-clients whose undeclared accounts at WEGELIN, the defendant, were managed by independent asset managers are described in the following table. These U.S. taxpayers did not timely report their accounts at WEGELIN (or the income earned therein), to the IRS on Form 1040 or the FBAR where they were required to do so.

Beneficial Owner(s)	Code Name(s) or Nominee Name(s) in which WEGELIN Account(s) Held	Approx. Date WEGELIN Account(s) Opened	Approx. High Value of WEGELIN Account(s)
Kenneth Heller	Nathelm Corp.	12/2005	$18,466,686
Clients X & Y	Berry Trust, Asset Champion Ltd	4/10/2002	$6,133,000
Client Z	Eagle Elite Investments Ltd.	10/1/2004	$232,435
Client AA	Levina Trust	4/10/2002	$776,090
Client BB	N 466	2005	$55,496
Client CC & DD	Nema Trust; Grand Dynamic Invest.; Top Harbour Properties	2002; 6/23/2003; 6/6/2005	$4,439,666
Michael Reiss	Floranova Foundation; Upside International	9/11/2003; 11/2008	$2,588,470
Total			

The Repatriation of Undeclared Funds Through the Stamford Correspondent Account

108. From at least in or about 2005 up through and including in or about 2011, WEGELIN, the defendant, used its Stamford Correspondent Account not only to help its own U.S. taxpayer-clients repatriate undeclared funds to the United States without detection by the IRS but also to help U.S. taxpayer-clients of at least two other Swiss banks accomplish the same unlawful ends. For example:

Client EE

109. At all times relevant to this Indictment, Client EE, a co-conspirator not named as a defendant herein, was a resident of New Jersey and a citizen of the United States.

110. In or about 2008, Client EE opened an undeclared account at WEGELIN, the defendant, and funded it through a

transfer from Swiss Bank B, where he had held an undeclared account since in or about the 1980s. Client EE's new undeclared account at WEGELIN was managed by an independent asset manager in Switzerland ("Independent Asset Manager A").

111. In or about 2010, Client EE traveled to Africa for a safari. To pay for the safari, by arrangement with Independent Asset Manager A, Client EE sent a letter with no return address from New Jersey to Independent Asset Manager A in Switzerland. The envelope contained a single piece of paper on which Client EE had written only the amount of money Client EE needed to wire to the safari company, namely, approximately $37,000. At or about that time, Client EE sent a second and separate letter to Independent Asset Manager A containing only the wire transfer details for the safari company's bank account in Botswana. Thereafter, pursuant to these instructions, on or about June 22, 2010, WEGELIN wired approximately $37,000 through the Stamford Correspondent Account to the safari company's bank account in Botswana.

112. In or about December 2009, Client EE's undeclared account at WEGELIN, the defendant, held approximately $847,844.

Client FF

113. At all times relevant to this Indictment, Client FF, a co-conspirator not named as a defendant herein, was a resident of Connecticut and a citizen of the United States.

114. In or about 2006, Client FF inherited funds held in an undeclared account at WEGELIN, the defendant.

115. On various occasions from in or about 2007 up through and including in or about 2011, WEGELIN wired a total of approximately $324,955 in increments less than $10,000 through the Stamford Correspondent Account to Client FF in the United States, as described in the table accompanying paragraph 137.

116. On or about December 31, 2008, Client FF's undeclared account at WEGELIN, the defendant, held approximately $637,395.

Client GG

117. At all times relevant to this Indictment, Client GG, a co-conspirator not named as a defendant herein, was a resident of Westchester County, New York, and a citizen of the United States.

118. In or around 2006, Client GG transferred undeclared funds that he had held at a Swiss bank since in or about the early 1990s to a new undeclared account at WEGELIN, the defendant. The new undeclared account was held in the name of Birkdale Universal, S.A., a sham entity established under the

laws of Panama (the "Birkdale Account"). Client GG's Client Advisor was URS FREI, the defendant. FREI explained to Client GG that the purpose of placing the assets in the name of Birkdale was to further conceal Client GG's ownership of the funds. Later, when Client GG discussed the U.S. government's investigation of UBS with FREI, FREI said that because WEGELIN had no offices outside Switzerland, WEGELIN was less vulnerable to U.S. law enforcement pressure than UBS.

119. In addition, Client GG maintained two "declared accounts" at WEGELIN - that is, accounts that were known to the IRS because Client GG had submitted a Form W-9 to WEGELIN, causing WEGELIN to file a Form 1099 with the IRS each year reporting the income earned in the accounts.

120. In or about August 2007, WEGELIN and URS FREI, the defendants, used the Stamford Correspondent Account to conceal FREI's unlawful hand delivery of approximately $16,000 in U.S. currency to another FREI U.S. taxpayer-client ("FREI's Other Client"). On or about August 8 and August 9, 2007, WEGELIN and FREI used the Stamford Correspondent Account to wire approximately $16,000 in total from one of Client GG's declared WEGELIN accounts to Client GG's U.S. bank account in Westchester County. The $16,000 transfer was divided into two wires of $8,000 on back-to-back days to further conceal the transaction.

Thereafter, at FREI's request, Client GG withdrew approximately $16,000 in U.S. currency from his Westchester County account. On or about August 21, 2007, Client GG carried this $16,000 in cash with him to a lunch meeting in Manhattan with FREI, again at FREI's request. At the lunch, Client GG handed FREI an unmarked envelope containing the $16,000. During the lunch, the head waiter informed FREI that someone else at the restaurant wished to speak with him. FREI then excused himself from Client GG, walked to the other side of the restaurant, and met with FREI's Other Client for approximately 10 minutes. At or about that time, FREI gave the Other Client the cash-filled unmarked envelope that Client GG had given to FREI moments earlier. FREI then returned to Client GG and noted that it was becoming increasingly difficult to move funds out of Switzerland, and that, to do so, he employed this technique of transferring cash directly between his clients. Thereafter, FREI credited approximately $16,000 to Client GG's undeclared account at WEGELIN -- the Birkdale Account.

121. In or about 2010, Client GG's undeclared account at WEGELIN, the defendant, held approximately $898,652.

Client HH

122. At all times relevant to this Indictment, Client HH, a co-conspirator not named as a defendant herein, was a resident of Connecticut and a citizen of the United States.

123. Beginning in or about the 1990s, Client HH maintained an undeclared account at UBS. In or about 2003, Client HH and her Swiss independent asset manager ("Independent Asset Manager B") transferred her UBS funds to an undeclared account at WEGELIN, the defendant.

124. On various occasions from in or about 2003 up through and including in or about 2009, Client HH traveled to Switzerland and withdrew funds from her undeclared account at WEGELIN, the defendant, with the help of Independent Asset Manager B. Independent Asset Manager B advised Client HH not to carry more than $10,000 into the United States at any one time.

125. On various occasions from in or about 2003 up to and including in or about 2009, Independent Asset Manager B met Client HH for dinner in Manhattan. When he did so, he sometimes gave her U.S. currency withdrawn from her undeclared account at WEGELIN, the defendant.

126. On various occasions from in or about 2005 up through and including in or about 2009, WEGELIN, the defendant, issued checks to Client HH drawn on the Stanford Correspondent Account.

As set forth in the table accompanying paragraph 137, WEGELIN issued multiple checks in this manner, each for less than $10,000 to further conceal Client HH's undeclared account, for a total of approximately $79,500.

127. As of December 2007, Client HH's undeclared account at WEGELIN, the defendant, held approximately $177,095.

Client II

128. At all times relevant to this Indictment, Client II, a co-conspirator not named as a defendant herein, was a resident of Arizona and a citizen of the United States.

129. Beginning in or about 2010, Client II maintained an undeclared account at Swiss Bank C.

130. In or about 2010, Client II asked his client advisor at Swiss Bank C ("Swiss Bank C Client Advisor") to send him several batches of checks at regular intervals, three checks at a time, each for less than $5,000, payable to a company that Client II controlled ("Client II's Company"). Client II further requested that the checks "be drawn in the U.S. dollars on your corresponding US bank" and noted that the checks would be cashed over time.

131. Thereafter, from in or about December 2010 up through and including in or about March 2011, WEGELIN, the defendant, issued approximately five checks drawn on the Stamford

Correspondent Account payable to Client II's Company and provided them to the Swiss Bank C Client Advisor, who, in turn, sent them to Client II in Arizona. WEGELIN issued the checks, which are set forth in the table accompanying paragraph 137, in amounts less than $5,000, for a total of $21,088.

132. As of in or about October 2010, Client II's undeclared Swiss Bank C account held approximately $2,183,606.

Client JJ

133. At all times relevant to this Indictment, Client JJ, a co-conspirator not named as a defendant herein, was a resident of Arizona and a citizen of the United States.

134. Beginning in or about the 1990s, Client JJ maintained an undeclared account at Swiss Bank B. In or about late 2009, Swiss Bank B informed him that he had to close his account. He then traveled to Switzerland and opened an undeclared account at Swiss Bank C with the help of the Swiss Bank C Client Advisor.

135. Thereafter, from in or about October 2009 up through and including in or about March 2011, WEGELIN issued five checks drawn on the Stamford Correspondent Account payable to Client JJ, each in the amount of approximately $45,000, as set forth in the table accompanying paragraph 137.

136. As of July 2011, Client JJ's undeclared Swiss Bank C account held approximately $6,700,000.

137. Certain checks and wire transfers that WEGELIN, the defendant, issued and executed through the Stamford Correspondent Account on behalf of U.S. taxpayers with undeclared accounts at WEGELIN, Swiss Bank C, and Swiss Bank D, for a total of approximately $1,417,626, are listed in the following table. None of these U.S. taxpayers timely reported such accounts, or the income earned therein, to the IRS on Form 1040 or the FBAR where they were required to do so.

Check # (or wire)	Check/ Wire date	Approx. amount	Undeclared U.S. taxpayer	Swiss bank where U.S. taxpayer's account was held
2184	3/10/2005	$ 5,621.00	Client KK	Swiss Bank D
2217	4/20/2005	$ 5,000.00	Client HH	WEGELIN
2252	6/23/2005	$ 9,367.00	Client KK	Swiss Bank D
2331	10/11/2005	$ 7,863.00	Client KK	Swiss Bank D
2399	1/9/2006	$ 32,250.00	Client KK	Swiss Bank D
2423	2/7/2006	$ 26,675.00	Client KK	Swiss Bank D
2448	3/15/2006	$ 7,570.00	Client KK	Swiss Bank D
2490	5/16/2006	$ 8,250.00	Client KK	Swiss Bank D
2547	7/26/2006	$ 2,900.00	Client KK	Swiss Bank D
2591	9/7/2006	$ 8,000.00	Client KK	Swiss Bank D
2634	11/7/2006	$ 9,827.00	Client KK	Swiss Bank D
2635	11/8/2006	$ 5,000.00	Client HH	WEGELIN
2636	11/13/2006	$ 5,000.00	Client HH	WEGELIN
2726	2/8/2007	$ 8,730.00	Client KK	Swiss Bank D
Wire	3/30/2007	$ 8,000.00	Client FF	WEGELIN
2791	4/25/2007	$ 8,200.00	Client KK	Swiss Bank D
Wire	4/27/2007	$ 8,000.00	Client FF	WEGELIN
Wire	8/8/2007	$ 8,000.00	Client GG	WEGELIN
Wire	8/9/2007	$ 8,000.00	Client GG	WEGELIN
3152	11/13/2007	$ 5,000.00	Client HH	WEGELIN
3253	3/13/2008	$ 5,000.00	Client KK	Swiss Bank D
Wire	4/1/2008	$ 2,000.00	Client FF	WEGELIN
Wire	4/15/2008	$ 4,000.00	Client FF	WEGELIN
Wire	5/1/2008	$ 2,000.00	Client FF	WEGELIN
Wire	5/15/2008	$ 4,000.00	Client FF	WEGELIN
Wire	5/30/2008	$ 2,000.00	Client FF	WEGELIN
3283	5/30/2008	$ 8,500.00	Client HH	WEGELIN
Wire	6/13/2008	$ 4,000.00	Client FF	WEGELIN
Wire	7/1/2008	$ 2,000.00	Client FF	WEGELIN
Wire	7/15/2008	$ 4,000.00	Client FF	WEGELIN
Wire	8/1/2008	$ 2,000.00	Client FF	WEGELIN

Check # (or wire)	Check/ Wire date	Approx. amount	Undeclared U.S. taxpayer	Swiss bank where U.S. taxpayer's account was held
Wire	8/15/2008	$ 4,000.00	Client FF	WEGELIN
Wire	8/29/2008	$ 2,000.00	Client FF	WEGELIN
Wire	9/15/2008	$ 4,000.00	Client FF	WEGELIN
Wire	10/1/2008	$ 2,000.00	Client FF	WEGELIN
Wire	10/31/2008	$ 2,000.00	Client FF	WEGELIN
Wire	11/14/2008	$ 4,000.00	Client FF	WEGELIN
3416	11/25/2008	$ 8,500.00	Client A	WEGELIN
3417	11/25/2008	$ 8,500.00	Client A	WEGELIN
3418	11/25/2008	$ 8,500.00	Client A	WEGELIN
3421	11/28/2008	$ 8,500.00	Client HH	WEGELIN
Wire	12/1/2008	$ 2,000.00	Client FF	WEGELIN
Wire	12/15/2008	$ 4,000.00	Client FF	WEGELIN
Wire	12/31/2008	$ 2,000.00	Client FF	WEGELIN
3468	1/5/2009	$ 8,500.00	Client A	WEGELIN
3469	1/5/2009	$ 8,500.00	Client A	WEGELIN
3470	1/5/2009	$ 8,500.00	Client A	WEGELIN
Wire	1/6/2009	$ 11,000.00	Client A	WEGELIN
Wire	1/15/2009	$ 4,000.00	Client FF	WEGELIN
3483	1/26/2009	$ 8,500.00	Client HH	WEGELIN
Wire	1/30/2009	$ 2,000.00	Client FF	WEGELIN
Wire	2/13/2009	$ 4,000.00	Client FF	WEGELIN
3510	2/26/2009	$ 8,500.00	Client A	WEGELIN
3512	2/26/2009	$ 8,500.00	Client A	WEGELIN
3511	2/26/2009	$ 8,500.00	Client A	WEGELIN
3509	2/26/2009	$ 8,500.00	Client HH	WEGELIN
Wire	2/27/2009	$ 2,000.00	Client FF	WEGELIN
Wire	3/13/2009	$ 4,000.00	Client FF	WEGELIN
3532	3/25/2009	$ 8,500.00	Client HH	WEGELIN
Wire	4/1/2009	$ 2,000.00	Client FF	WEGELIN
Wire	4/15/2009	$ 4,000.00	Client FF	WEGELIN
Wire	4/21/2009	$ 20,000.00	Client A	WEGELIN
3552	4/21/2009	$ 8,500.00	Client A	WEGELIN
3553	4/21/2009	$ 8,500.00	Client A	WEGELIN
3554	4/21/2009	$ 8,500.00	Client A	WEGELIN
3556	4/24/2009	$ 8,500.00	Client HH	WEGELIN
Wire	5/1/2009	$ 2,000.00	Client FF	WEGELIN
Wire	5/15/2009	$ 4,000.00	Client FF	WEGELIN
Wire	5/22/2009	$ 4,000.00	Client FF	WEGELIN
3568	5/25/2009	$ 8,500.00	Client HH	WEGELIN
Wire	6/1/2009	$ 2,000.00	Client FF	WEGELIN
3571	6/8/2009	$ 10,000.00	K. Heller	WEGELIN
Wire	6/11/2009	$ 6,000.00	Client FF	WEGELIN
Wire	6/15/2009	$ 4,665.00	Client FF	WEGELIN
Wire	7/1/2009	$ 3,500.00	Client FF	WEGELIN
3592	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3583	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3587	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3586	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3589	7/8/2009	$ 2,500.00	K. Heller	WEGELIN

Check # (or wire)	Check/ Wire date	Approx. amount	Undeclared U.S. taxpayer	Swiss bank where U.S. taxpayer's account was held
3590	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3588	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3591	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3593	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3595	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3585	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3584	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
Wire	7/13/2009	$ 24,000.00	Client A	WEGELIN
Wire	7/15/2009	$ 4,665.00	Client FF	WEGELIN
3623	7/16/2009	$ 2,500.00	K. Heller	WEGELIN
Wire	7/20/2009	$ 24,000.00	Client A	WEGELIN
Wire	7/31/2009	$ 3,500.00	Client FF	WEGELIN
Wire	8/14/2009	$ 4,665.00	Client FF	WEGELIN
3660	8/25/2009	$ 5,500.00	Client A	WEGELIN
3659	8/25/2009	$ 8,500.00	Client A	WEGELIN
Wire	9/1/2009	$ 3,500.00	Client FF	WEGELIN
3736	9/11/2009	$ 37,813.97	K. Heller	WEGELIN
Wire	9/15/2009	$ 20,000.00	Client A	WEGELIN
Wire	9/15/2009	$ 4,665.00	Client FF	WEGELIN
3747	9/22/2009	$ 25,000.00	K. Heller	WEGELIN
3746	9/22/2009	$ 50,000.00	K. Heller	WEGELIN
3745	9/22/2009	$ 50,000.00	K. Heller	WEGELIN
3744	9/22/2009	$ 50,000.00	K. Heller	WEGELIN
3750	9/24/2009	$ 16,000.00	K. Heller	WEGELIN
Wire	10/1/2009	$ 3,500.00	Client FF	WEGELIN
3778	10/2/2009	$ 7,250.00	K. Heller	WEGELIN
3779	10/2/2009	$ 500.00	K. Heller	WEGELIN
3794	10/13/2009	$ 2,498.04	K. Heller	WEGELIN
Wire	10/15/2009	$ 4,665.00	Client FF	WEGELIN
3796	10/21/2009	$ 45,000.00	Client JJ	Swiss Bank C
Wire	10/30/2009	$ 3,500.00	Client FF	WEGELIN
Wire	11/13/2009	$ 4,665.00	Client FF	WEGELIN
Wire	12/1/2009	$ 3,500.00	Client FF	WEGELIN
Wire	12/15/2009	$ 4,665.00	Client FF	WEGELIN
Wire	1/4/2010	$ 3,500.00	Client FF	WEGELIN
Wire	1/15/2010	$ 4,665.00	Client FF	WEGELIN
3926	1/22/2010	$ 45,000.00	Client JJ	Swiss Bank C
Wire	2/1/2010	$ 3,500.00	Client FF	WEGELIN
Wire	2/12/2010	$ 4,665.00	Client FF	WEGELIN
Wire	3/1/2010	$ 3,500.00	Client FF	WEGELIN
Wire	3/9/2010	$ 100,000.00	Client A	WEGELIN
Wire	3/15/2010	$ 4,665.00	Client FF	WEGELIN
Wire	4/1/2010	$ 3,500.00	Client FF	WEGELIN
4060	4/6/2010	$ 45,000.00	Client JJ	Swiss Bank C
Wire	4/15/2010	$ 4,665.00	Client FF	WEGELIN
Wire	4/30/2010	$ 3,500.00	Client FF	WEGELIN
Wire	5/14/2010	$ 4,665.00	Client FF	WEGELIN
Wire	6/1/2010	$ 3,500.00	Client FF	WEGELIN
Wire	6/15/2010	$ 4,665.00	Client FF	WEGELIN

Check # (or wire)	Check/ Wire date	Approx. amount	Undeclared U.S. taxpayer	Swiss bank where U.S. taxpayer's account was held
Wire	6/22/2010	$ 37,000.00	Client EE	WEGELIN
Wire	7/15/2010	$ 4,665.00	Client FF	WEGELIN
Wire	8/13/2010	$ 4,665.00	Client FF	WEGELIN
Wire	8/13/2010	$ 7,358.00	Client EE	WEGELIN
Wire	8/18/2010	$ 18,910.00	Client EE	WEGELIN
Wire	9/15/2010	$ 4,665.00	Client FF	WEGELIN
Wire	10/15/2010	$ 4,665.00	Client FF	WEGELIN
Wire	11/15/2010	$ 4,665.00	Client FF	WEGELIN
4361	12/9/2010	$ 4,833.00	Client II	Swiss Bank C
4363	12/10/2010	$ 4,922.00	Client II	Swiss Bank C
Wire	12/15/2010	$ 4,665.00	Client FF	WEGELIN
Wire	1/14/2011	$ 4,665.00	Client FF	WEGELIN
4411	1/25/2011	$ 45,000.00	Client JJ	Swiss Bank C
4416	1/28/2011	$ 3,600.00	Client II	Swiss Bank C
4417	1/28/2011	$ 2,850.00	Client II	Swiss Bank C
Wire	2/15/2011	$ 4,665.00	Client FF	WEGELIN
Wire	3/15/2011	$ 4,665.00	Client FF	WEGELIN
4483	3/17/2011	$ 4,883.00	Client II	Swiss Bank C
4489	3/23/2011	$ 45,000.00	Client JJ	Swiss Bank C
Wire	4/15/2011	$ 4,665.00	Client FF	WEGELIN
Wire	5/13/2011	$ 4,665.00	Client FF	WEGELIN
Wire	6/15/2011	$ 4,665.00	Client FF	WEGELIN
Wire	7/15/2011	$ 4,665.00	Client FF	WEGELIN
Wire	8/15/2011	$ 4,665.00	Client FF	WEGELIN
TOTAL		$ 1,417,626.01		

Statutory Allegations

138. From at least in or about 2002 up through and including in or about 2011, in the Southern District of New York and elsewhere, WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, together with Managing Partner A, Executive A, Client Advisor A, Beda Singenberger, Gian Gisler, Clients A through JJ, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to defraud the United States of America and an agency thereof, to wit, the IRS, and to commit

offenses against the United States, to wit, violations of Title 26, United States Code, Sections 7206(1) and 7201.

139. It was a part and an object of the conspiracy that WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, together with others known and unknown, willfully and knowingly would and did defraud the United States of America and the IRS for the purpose of impeding, impairing, obstructing, and defeating the lawful governmental functions of the IRS in the ascertainment, computation, assessment, and collection of revenue, to wit, federal income taxes.

140. It was further a part and an object of the conspiracy that various U.S. taxpayer-clients of WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, together with others known and unknown, willfully and knowingly would and did make and subscribe returns, statements, and other documents, which contained and were verified by written declarations that they were made under the penalties of perjury, and which these U.S. taxpayer-clients, together with others known and unknown, did not believe to be true and correct as to every material matter, in violation of Title 26, United States Code, Section 7206(1).

141. It was further a part and an object of the conspiracy that WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, together with others known and unknown, willfully

and knowingly would and did attempt to evade and defeat a substantial part of the income tax due and owing to the United States by certain of WEGELIN'S U.S. taxpayer clients, in violation of Title 26, United States Code, Section 7201.

Overt Acts

142. In furtherance of the conspiracy and to effect its illegal objects, WEGELIN, MICHAEL BERLINKA, URS FREI, ROGER KELLER, the defendants, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about September 2008, WEGELIN and BERLINKA opened a new undeclared account in the name of Client A.

b. On or about November 25, 2008; January 5, 2009; February 26, 2009; April 21, 2009; and August 25, 2009, WEGELIN and BERLINKA sent multiple checks drawn on the Stamford Correspondent Account to Client A in the United States.

c. On various occasions from in or about 2003 up to and including in or about 2009, Independent Asset Manager B met Client HH for dinner in Manhattan and gave her U.S. currency withdrawn from her undeclared WEGELIN account.

d. On or about August 8 and August 9, 2007, WEGELIN and FREI wired approximately $16,000 in two transactions to Client GG's U.S. bank account in Westchester County.

e. On or about August 21, 2007, at a restaurant in Manhattan, Client GG provided approximately $16,000 in U.S. currency to FREI, who then provided it to FREI's Other Client.

f. On or about November 4, 2008, WEGELIN and KELLER opened a new undeclared account in the name of Client P's son, a resident of Manhattan, for the purpose of helping Client P hide assets and income from the IRS.

g. On or about October 2, 2008, Kenneth Heller caused his employee to send, by fax and U.S. mail, instructions from Manhattan to WEGELIN directing it to wire approximately $50,000 to an account that HELLER controlled in the United States.

h. On various dates from in or about 2006 up through and including in or about 2009, WEGELIN, BERLINKA, FREI, and KELLER sent Federal Express packages relating to WEGELIN's U.S. taxpayer-client business to addresses in the United States, including a Federal Express package from WEGELIN to FREI at a hotel in Manhattan on or about August 14, 2007.

(Title 18, United States Code, Section 371.)

FOREPERSON

Preet Bharara

PREET BHARARA
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

WEGELIN & CO.,
MICHAEL BERLINKA,
URS FREI, and
ROGER KELLER,

Defendants.

INDICTMENT

S1 12 Cr. 02 (JSR)

18 U.S.C. § 371

PREET BHARARA
United States Attorney.

A TRUE BILL

Foreperson.

D13TWEGP Plea

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 12 CR 02 (JSR)

WEGELIN & COMPANY,

Defendant.

----------x

New York, N.Y.
January 3, 2013
10:40 a.m.

Before:

HON. JED S. RAKOFF,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
DAVID B. MASSEY
DANIEL W. LEVY
JASON H. COWLEY
Assistant United States Attorneys

GOODWIN PROCTOR
Attorneys for Defendant
RICHARD STRASSBERG
JOHN MOUSTAKAS
KONRAD HUMMLER
STEPHEN WELTI

ALSO PRESENT: LAURA MERCANDETTI, IRS Special Agent
PAUL ROONEY, IRS Special Agent

Permanent Subcommittee on Investigations
EXHIBIT #43b

1 (In open court)
2 DEPUTY CLERK: January 3, 2013, 12 CR 02, defendant
3 number four, the will the parties please identify themselves
4 for the record.
5 MR. MASSEY: Good morning, your Honor, David Massey
6 for the government. With me at counsel table are AUSAs Daniel
7 Levy, Jason Cowley, and IRS Supervisor Special Agent Laura
8 Mercandetti, and IRS Special Agent Paul Rooney.
9 MR. STRASSBERG: And your Honor, Richard Strassberg
10 and John Moustakas from Goodman Proctor, and we have Mr. Otto
11 Bruderer from Wegelin Bank here as well.
12 MR. MASSEY: Your Honor, I have notices of appearance,
13 which I could hand up now if it's convenient.
14 THE COURT: OK. So it's my understanding that the
15 defendant Wegelin wishes to enter a guilty plea to Count One of
16 the indictment, is that right?
17 MR. STRASSBERG: That is correct, your Honor.
18 THE COURT: All right. So who is going to be acting
19 for purposes of the allocution as the representative and
20 Wegelin?
21 MR. STRASSBERG: That would be Mr. Bruderer.
22 THE COURT: Good morning.
23 So why don't we place him under oath.
24 (Defendant sworn)
25 THE COURT: So please state your full name for the

record.

THE DEFENDANT: Otto Bruderer.

THE COURT: Why don't you come up to the microphone.

THE DEFENDANT: Otto Bruderer, O-T-T-O B-R-U-D-E-R-E-R.

THE COURT: Mr. Bruderer, do you read, write, speak and understand English?

THE DEFENDANT: Yes, I do.

THE COURT: And are you authorized to appear for and bind Wegelin & Company with respect to these proceedings here today?

THE DEFENDANT: Yes, your Honor.

THE COURT: Now my understanding is that you and Wegelin wish to enter a plea of guilty to Count One, isn't that right?

THE DEFENDANT: Yes, that's right, your Honor.

THE COURT: So do you and Wegelin understand that you have a right, if you wish, to plead not guilty and go to trial on the charge against you?

THE DEFENDANT: Yes, we understand, your Honor.

THE COURT: And do you understand and does Wegelin understand that if there were a trial, Wegelin would be presumed innocent, and the government would have to prove its guilt beyond a reasonable doubt before it could be convicted of any crime?

1 THE DEFENDANT: Yes, your Honor, we understand.
2 THE COURT: And does Wegelin also understand that they
3 would have the right to be represented throughout these
4 proceedings, including at the trial, by counsel, and that if
5 they could not afford counsel, one would be appointed to
6 represent them free of charge?
7 THE DEFENDANT: We understand, your Honor.
8 THE COURT: Does Wegelin also understand that at the
9 trial Wegelin would have the right to see and hear all the
10 witnesses and other evidence against it, and they could
11 cross-examine the government's witnesses, object to the
12 government's evidence, and could call witnesses and produce
13 evidence on their own behalf if they so desired and could have
14 subpoenas issued to compel the attendance of witnesses and
15 documents and other evidence on their behalf? Do they
16 understand all that?
17 THE DEFENDANT: Yes, we do understand all that, your
18 Honor.
19 THE COURT: And do they also understand that even if
20 they were convicted, they would have the right to appeal their
21 conviction?
22 THE DEFENDANT: Yes, we understand.
23 THE COURT: And finally, do you and Wegelin understand
24 that if a guilty plea is entered, Wegelin would be giving up
25 each and every one of the rights we just discussed? Do you

1 understand that?
2 THE DEFENDANT: We understand that, your Honor.
3 THE COURT: Now the indictment in this case previously
4 filed as S1 12 Criminal 02 is a modest statement of 58 pages.
5 Would you like to have that indictment read here in open court
6 or do you waive the public reading?
7 MR. STRASSBERG: Your Honor, we waive the reading.
8 THE COURT: You have gone over -- and this is
9 addressed to both of you, really -- this indictment with all
10 the relevant people at Wegelin?
11 MR. STRASSBERG: Your Honor, yes, we have.
12 THE DEFENDANT: Yes.
13 THE COURT: And let me ask the representative of
14 Wegelin, you and Wegelin understand the charges against you,
15 right?
16 THE DEFENDANT: We are familiar with the allegation.
17 We understand it, your Honor.
18 THE COURT: All right. So now the maximum sentence
19 that Wegelin faces if they plead guilty -- let me ask the
20 government what they deem that to be.
21 MR. MASSEY: Your Honor, we deem that be as follows,
22 assuming Mr. Bruderer allocutes this morning to a loss amount
23 of $20,000,001, the statutory maximum fine would be
24 $40,000,002.
25 THE COURT: I saw that in your letter agreement, but

1 of course it would be -- it's twice the gross gain or twice the
2 gross loss, whatever that's determined to be, if it's more than
3 what, 500,000, I think?
4 MR. MASSEY: Yes. In order to trigger the -- under
5 Southern Union, to trigger the maximum fine to be above
6 500,000, it's double whatever the defendant allocutes to or
7 what the jury find beyond a reasonable doubt.
8 THE COURT: All I'm interested in is the statutory
9 maximum.
10 MR. MASSEY: Well, right now it's 500,000.
11 THE COURT: No, it's --
12 MR. MASSEY: It's twice the gross gain or loss.
13 THE COURT: Thank you.
14 MR. MASSEY: Which cannot be more than 500,000 at this
15 point.
16 THE COURT: And what other statutory penalties does
17 the defendant face?
18 MR. MASSEY: The statutory maximum penalties also
19 include a $100 special assessment, statutory probation maximum
20 of five years, and I believe that's all.
21 THE COURT: So does Wegelin understand that if they
22 plead guilty they could face punishments up to those maximum
23 amounts, that is to say five years probation, a $100 mandatory
24 special assessment, and most importantly, a fine that would be
25 twice the gross gain or twice the gross loss resulting from

1 this offense if that figure was more than $500,000?
2 THE DEFENDANT: Yes, we do, your Honor.
3 THE COURT: Very good. Now the government and the
4 defendant have entered into a proposed letter agreement. Does
5 counsel have a signed copy of that?
6 MR. MASSEY: Yes, your Honor.
7 THE COURT: We will mark this original as Court
8 Exhibit 1 to today's proceeding. And it takes the form of a
9 letter dated December 3rd, 2012 from the government to defense
10 counsel, and it appears, Mr. Bruderer, that you signed it
11 earlier today. Is that right?
12 THE DEFENDANT: That's correct, your Honor.
13 THE COURT: And you were authorized to do so on behalf
14 of Wegelin?
15 THE DEFENDANT: Yes, I am.
16 THE COURT: Now this letter agreement is binding
17 between you and the government, but it is not binding on me.
18 It's not binding on the Court. Do you understand that?
19 THE DEFENDANT: We understand, your Honor.
20 THE COURT: For example, this letter agreement
21 contains various amounts that are said to be the proposed
22 stipulations as to restitution, as to forfeiture, also contains
23 a proposed guideline range. I may agree with that or I may
24 disagree with that. I may think that the penalty should be
25 higher or should be lower, and regardless of where I come out,

if Wegelin pleads guilty, they will be bound by my sentence. Does Wegelin understand that?

THE DEFENDANT: We understand, your Honor.

THE COURT: Now I did have a question or two about this before we continue with the defendant, a question for the government. It says in paragraph 3 on page 1 that Wegelin agrees to pay restitution to the United States in the amount of $20,000,001. Wegelin admits that the restitution amount represents the gross pecuniary loss to the United States as a result of the conduct charged in the superseding indictment and admitted by Wegelin in the allocution.

You're not saying, are you, that that is in fact the exact amount of the gross pecuniary loss to the United States, are you?

MR. MASSEY: Your Honor, we're saying it's a reasonable estimate. It's a negotiated agreement between the victim and the defendant as to what the restitution award should be, and it's a reasonable approximation of the total pecuniary loss to the government.

THE COURT: Well, it looks like it was based on obtaining a particular offense level under the guidelines.

MR. MASSEY: Well, your Honor, it definitely clearly is keyed to the guidelines.

THE COURT: For example, you would not be satisfied if it was $19,999,999.99.

1 MR. MASSEY: It would fall short, it has to be
2 $20,000,000.01.
3 THE COURT: So I understand how you got there, I'm
4 just unclear what the basis is for your asserting that this is
5 an estimate of the actual loss.
6 MR. MASSEY: Well, our basis -- we have numerous
7 grounds to make that a reasonable basis for the loss. The
8 government has access to certain data from the voluntary
9 disclosure program, which is a program in which U.S. taxpayers
10 who had offshore bank accounts have come into the government
11 and paid what they owe. And so we have data about many of
12 those taxpayers. Many of them have accounts at Wegelin.
13 Wegelin has data itself because it has access to the account
14 statements of U.S. taxpayers with accounts there, so it could
15 calculate the amounts of taxes due and owing for the
16 non-compliant U.S. taxpayers.
17 There are other data points out there, such as there's
18 another agreement, there's a deferred prosecution agreement
19 between the United States and UBS which provides certain
20 information that essentially works as a sort of confirming data
21 point for what we and the defense believe is a reasonable
22 estimate of the loss to the government.
23 THE COURT: So in connection with sentencing, I have
24 an obligation to make an independent determination of what the
25 loss was. Yes?

1 MR. MASSEY: Yes, of course, your Honor.
2 THE COURT: I will need to have some of that data.
3 MR. MASSEY: Your Honor, we can provide whatever data
4 the Court wishes to have for purposes of sentencing. For
5 purposes of today, Wegelin is prepared to agree that that's the
6 loss amount.
7 THE COURT: It also says that -- this is on page 2,
8 "Wegelin agrees, pursuant to Title 18, United States Code,
9 Section 981, that it will forfeit $15,821,000 to the United
10 States, representing the gross fees paid to Wegelin from
11 approximately 2002 through 2010 by U.S. taxpayers with
12 undeclared accounts at Wegelin."
13 How is that figure determined?
14 MR. MASSEY: That figure was determined through
15 discussions with Wegelin. Wegelin looked at its own data on
16 the gross proceeds paid by U.S. taxpayers to it for the
17 non-compliant business. It gave us the sum total. It broke it
18 out in various ways, but it provided that data to us. And we
19 don't have access to many of the records that we would need to
20 confirm it, but we believe it's reasonable based on a number of
21 data points that we have.
22 THE COURT: So did you request the data that would
23 confirm it?
24 MR. MASSEY: We requested that Wegelin provide the
25 data.

1 THE COURT: What is Wegelin's position on that?
2 MR. STRASSBERG: I think what Mr. Massey was going to
3 finish to say is they requested that we provide the numbers,
4 which we did provide, your Honor. And that was a calculation
5 of gross receipts, no deductions for costs. It's not a profit
6 number, it's a gross revenue number. And it was deducted by
7 looking at -- it was calculated by looking at all of the
8 revenue and whatever matter was received from the particular
9 accounts at issue during this time period. So that information
10 was provided over to the government frankly some time ago in
11 the context of our ongoing discussions and negotiations with
12 respect to this case.
13 THE COURT: So let me make sure I understand this.
14 This is the amount of money that the taxpayers who were making
15 use of Wegelin's services for avoiding taxes on undeclared
16 accounts paid to Wegelin. Yes?
17 MR. STRASSBERG: We framed it, your Honor, that is
18 this is the gross amount of money that anyone who was a U.S.
19 taxpayers who had an undeclared account paid to Wegelin for any
20 purpose. That could be commissions, it could be advisory fees,
21 it could be things that relate to whatever type of business
22 they actually did with respect to their account.
23 THE COURT: So why would taxpayers want to pay 15,
24 almost 16 million to Wegelin to avoid taxes that were only
25 estimated to be $20,000,001?

1 MR. STRASSBERG: Your Honor, those fees were not
2 unique to the U.S. taxpayers. So for any customer, be it
3 Swiss, U.S., they would pay fees to the banks as they would for
4 any bank to do the various transactions. These fees, as we
5 understand it, were actually very competitive. If you wanted
6 to put your account at UBS or put your account at Credit Suisse
7 or put your account at Citibank, you would be paying similar
8 types of costs for your securities transactions, for example,
9 or for your other type of transactions that you asked the bank
10 to do. It's really unrelated to taxes other than these account
11 holders themselves were undeclared. So as part of this
12 agreement, we agreed to pay all of that money without any
13 attempt to do deductions and have it be part of this agreement.
14 THE COURT: Are you saying it should be forfeiture of
15 monies that you think were properly obtained and had no
16 relationship with any unlawful activity?
17 MR. STRASSBERG: We think, your Honor, that the
18 undeclared accounts themselves is the nature of the conduct
19 that is the subject of the charge and will be the subject of
20 the allocution and the plea, so it's not that it's not
21 connected to unlawful activity.
22 THE COURT: Well, what did you understand to be the
23 purpose of these undeclared accounts?
24 MR. STRASSBERG: Well, your Honor, the undeclared
25 accounts allowed the U.S. taxpayers to evade their duty under

1 U.S. law.
2 THE COURT: So I come back to my question. Why would
3 the taxpayers pay 16 -- almost 16 million to Wegelin if they
4 weren't going to avoid taxes of a much larger amount?
5 MR. STRASSBERG: I think you could think of it this
6 way, your Honor, if they had taken their money and kept it here
7 in a United States bank, done the same type of transactions,
8 they likely would have paid much more than 15 million in
9 commissions and costs to that bank to do those transactions.
10 So those monies would have been paid. It wasn't that those
11 monies would have been avoided by having their accounts in a
12 different institution, if that's helpful to your Honor. So
13 those numbers, while they're here in the plea agreement, we
14 agreed to them as part of our negotiating with the government,
15 they are related to this offense.
16 THE COURT: I hear what you're saying.
17 All right. Now the stipulated guideline range is all
18 set forth in pages 3 and 4 and 5 of the agreement. This would
19 lead to a guideline fine range of 14.7 million to 29.4 million.
20 And I want to make sure that Wegelin understands that none of
21 that is binding on the Court. Do you understand that?
22 THE DEFENDANT: Yes, we understand, your Honor.
23 THE COURT: And more generally, while the Court must
24 have and will consider the guideline range even if the Court
25 agrees with the guideline calculation set forth in this

1 agreement, which the Court may or may not agree with, but even
2 if it agrees with that, the Court doesn't necessarily have to
3 sentence within the guidelines. I could go higher, I could go
4 lower, and regardless of where I come out, Wegelin would still
5 be bound by my sentence. Do you understand that?
6 THE DEFENDANT: We understand, your Honor.
7 THE COURT: Very good. So why don't you tell me, in
8 the accordance with what is a written statement that you wish
9 to read, what it is that makes Wegelin guilty of this offense.
10 THE DEFENDANT: We have prepared a statement I would
11 like to read.
12 From 2002 through 2010, Wegelin provided private
13 banking, wealth management and other related financial services
14 to individuals and entities around --
15 THE COURT: Forgive me for interrupting, why don't you
16 give a copy -- the government should give a copy to the court
17 reporter so he can follow along.
18 MR. STRASSBERG: And your Honor, for ease of your
19 Honor and for the court reporter, we're starting at the third
20 paragraph of the written allocution after the introductory
21 paragraphs, for ease of all parties involved.
22 THE COURT: Yes, we already -- why don't you pick up
23 again from, "At all relevant times."
24 MR. STRASSBERG: Sorry, your Honor, I was talking -- I
25 guess it would be the fourth paragraph, starting with, "From

1 2002."
2 THE DEFENDANT: From 2002 through 2010, Wegelin
3 provided private banking, wealth management, and other related
4 financial services to individuals and entities around the world
5 who held accounts at Wegelin, including citizens and residents
6 of the United States. Wegelin provided these services
7 principally through client advisers based in its various
8 offices in Switzerland. Wegelin also acted as custodian with
9 respect to accounts that were managed by independent asset
10 managers, including accounts for U.S. taxpayers.
11 From about 2002 through about 2010, Wegelin agreed
12 with certain U.S. taxpayers to evade the U.S. tax obligations
13 of these U.S. taxpayer clients who filed false tax returns with
14 the IRS.
15 In furtherance of its agreement to assist U.S.
16 taxpayers to commit tax evasion in the United States, Wegelin
17 opened and maintained accounts at Wegelin in Switzerland for
18 U.S. taxpayers who did not complete W-9 tax disclosure forms.
19 Wegelin also allowed independent asset managers to open non-W-9
20 accounts for U.S. taxpayers at Wegelin.
21 All at relevant times, Wegelin knew that certain U.S.
22 taxpayers were maintaining non-W-9 accounts at Wegelin in order
23 to evade their U.S. tax obligations in violation of U.S. law,
24 and Wegelin knew of the high probability that other U.S.
25 taxpayers who held non-W-9 accounts at Wegelin also did so for

1 the same unlawful purpose. Wegelin was aware that U.S.
2 taxpayers had a legal duty to report to the IRS and pay taxes
3 on the basis of all of their income, including income earned in
4 accounts that these U.S. taxpayers maintained at Wegelin.
5 Despite being aware of this legal duty, Wegelin intentionally
6 opened and maintained non-W-9 accounts for these taxpayers with
7 the knowledge that, by doing so, Wegelin was assisting these
8 taxpayers in violating their legal duties. Wegelin was aware
9 that this conduct was wrong.
10 However, Wegelin believed that, as a practical matter,
11 it would not be prosecuted in the United States for this
12 conduct because it had no branches or offices in the United
13 States, and because of its understanding that it acted in
14 accordance with and not in violation of Swiss law, and that
15 such conduct was common in the Swiss banking industry.
16 In the course of the agreement to knowingly and
17 willfully assist U.S. taxpayers in evading their U.S. tax
18 obligations, Wegelin acted through, among others, certain
19 employees who were acting within the scope of their employment
20 and for benefit of Wegelin. Wegelin's conduct allowed Wegelin
21 to increase the number of undeclared U.S. taxpayer accounts and
22 the amount of undeclared U.S. taxpayer assets held at Wegelin,
23 thereby increasing Wegelin's fees and profits.
24 Wegelin admits that its agreement to assist the U.S.
25 taxpayers in evading their U.S. tax obligations in this matter

1 resulted in a loss to the Internal Revenue Service that was
2 $20,000,001.
3 One or more of the U.S. taxpayers who conspired with
4 Wegelin lived in the Southern District of New York when they
5 did so, and had communications by telephone and fax in
6 furtherance of the conspiracy with Wegelin while they were in
7 Manhattan.
8 THE COURT: So if I understand correctly, what Wegelin
9 is saying is that they knew that the taxpayers who were making
10 use of these services of Wegelin were doing so to evade U.S.
11 taxes. Yes?
12 THE DEFENDANT: Yes, your Honor.
13 THE COURT: And Wegelin, knowing that it was wrong and
14 a violation of U.S. law, nevertheless agreed with the taxpayers
15 to help them commit that crime. Yes?
16 THE DEFENDANT: Yes, your Honor.
17 THE COURT: All right. Very good.
18 Is there anything else regarding the factual portion
19 of the allocution that the government wishes the Court to
20 inquire on?
21 MR. MASSEY: No, your Honor.
22 THE COURT: Is there anything else regarding any
23 aspect of the allocution that either counsel wishes the Court
24 to inquire about before I ask the defendant to formally enter
25 its plea?

1 MR. MASSEY: Your Honor, the government would
2 respectfully request that your Honor simply show him the
3 partnership resolution. Your Honor touched on that at the very
4 beginning, but if we could just confirm that is his signature
5 on the partner resolution and he recognizes the signatures of
6 his partners.
7 THE COURT: Yes, this is Exhibit C to the plea
8 agreement, already marked as part of Court Exhibit 1, and do
9 you have a copy of that in front of you?
10 MR. STRASSBERG: We do, your Honor.
11 THE COURT: And are the signatures known to you to be
12 the signatures of the partners of Wegelin?
13 MR. STRASSBERG: That's my signature and the
14 signatures of the partners, your Honor.
15 THE COURT: Very good.
16 Also, one thing I did neglect to mention, do you
17 understand that as part of your agreement with the government,
18 that if the Court does sentence you within the terms of the
19 agreement, Wegelin has given up its right to appeal or
20 otherwise attack the sentence? Do you understand that?
21 THE DEFENDANT: Yes, we do, your Honor.
22 THE COURT: Anything else from either counsel?
23 MR. MASSEY: Your Honor, this may be part of what your
24 Honor is going to get to, but the government respectfully
25 requests that your Honor ask Mr. Bruderer whether he is

1 satisfied with his counsel's representation, and the plea is
2 knowing and voluntary and the like.
3 THE COURT: Yes, that's where I was going, but is
4 there anything else before we get there?
5 MR. MASSEY: No, your Honor.
6 THE COURT: So Mr. Bruderer, you're represented by
7 Mr. Strassberg in this case. Has he had a full opportunity to
8 discuss this matter not only with you but with the relevant
9 people at Wegelin?
10 MR. STRASSBERG: Yes.
11 THE DEFENDANT: Yes, he did, your Honor.
12 THE COURT: And are you fully satisfied with his
13 representation in this matter?
14 THE DEFENDANT: We are, your Honor.
15 THE COURT: And in making its determination to plead
16 guilty, has Wegelin been given any promises whatsoever beyond
17 those set forth in the plea agreement that we marked as Court
18 Exhibit 1?
19 THE DEFENDANT: No, your Honor.
20 THE COURT: And by the way, has counsel confirmed that
21 is correct, Mr. Strassberg?
22 MR. STRASSBERG: Yes, your Honor.
23 THE COURT: And has anyone else made any kind of
24 promise to Wegelin, anyone outside the government, to induce
25 you to plead guilty in this case?

1 THE DEFENDANT: No, your Honor.
2 THE COURT: Has anyone threatened or coerced Wegelin
3 to plead guilty in this case?
4 THE DEFENDANT: No, your Honor.
5 THE COURT: Does the government represent if this case
6 were to go through trial, it could, through competent evidence,
7 prove every essential element of this charge beyond a
8 reasonable doubt?
9 MR. MASSEY: Yes, we do, your Honor.
10 THE COURT: Does defense counsel know of any valid
11 defense that would prevail at trial or any other reason why his
12 client should not enter this plea?
13 MR. STRASSBERG: Your Honor, we know of no reason why
14 the plea should not be entered.
15 THE COURT: All right. Then in light of everything we
16 have now discussed, Mr. Bruderer, how does Wegelin plead to
17 Count One of indictment S1 12 Criminal 02, guilty or not
18 guilty?
19 THE DEFENDANT: Guilty, your Honor.
20 THE COURT: And is that plea entered voluntarily and
21 knowingly?
22 THE DEFENDANT: Yes, your Honor.
23 THE COURT: All right. Anything else from the
24 government?
25 MR. MASSEY: Could I have one second, your Honor?

1 THE COURT: Yes.
2 The one thing that occurred to me, but I thought it
3 was covered by the plea agreement, is the forfeiture aspect, so
4 I don't know if we need to say anything further in that regard.
5 MR. MASSEY: It is covered by the agreement. It would
6 probably be helpful if your Honor in open court mentioned it,
7 and that it's there in front of your Honor to sign. There's a
8 preliminary stipulated order of forfeiture for the Court to
9 sign in the amount of $15.8 million and change.
10 THE COURT: Yes. So Mr. Bruderer, you and your
11 counsel have gone over the stipulated preliminary order of
12 forfeiture that's attached as Exhibit B to your agreement?
13 THE DEFENDANT: Yes, we did, your Honor.
14 THE COURT: And you understand that pursuant to that,
15 Wegelin has agreed to transfer $15,821,000 in United States
16 currency to the Treasury?
17 THE DEFENDANT: Yes, we agreed, your Honor.
18 THE COURT: So I will sign that order, or do you
19 prefer to wait until the date of sentence?
20 MR. MASSEY: We prefer that your Honor sign that order
21 today. We will have a final order. There has to be a 30-day
22 period of notice following today.
23 THE COURT: It is signed. I will give it to my
24 courtroom deputy to docket.
25 MR. MASSEY: Your Honor, just one more small matter.

1 Mr. Bruderer gave a very thorough allocution which hit all the
2 elements of the offense. The government doesn't believe it's
3 necessary to enumerate the elements of the conspiracy offense,
4 but there is one aspect of this plea that is slightly unusual
5 in that it is a plea of a corporation. So it may make sense
6 for the government or the Court to put on the record the
7 elements.
8 THE COURT: There is some authority to that effect,
9 although since the plea covers all the elements at some length,
10 I didn't think it necessary to have the government repeat them.
11 But I can see you're chomping at the bit, so go ahead.
12 MR. MASSEY: The elements include the following:
13 Wegelin and one or more U.S. taxpayer entered into a conspiracy
14 to violate the United States tax laws. That's the first
15 element. The second is that Wegelin knowingly and voluntarily
16 joined and participated in the conspiracy. The third and the
17 unusual one for this case is that, third, Wegelin did so
18 through managing partners or other employees who were acting
19 within the scope of their employment and acting for the benefit
20 of the partnership, at least in part, and that one or more
21 overt act was committed by Wegelin or a co-conspirator. All of
22 those elements were plainly covered by the allocution of
23 Mr. Bruderer.
24 THE COURT: OK. Anything else?
25 MR. MASSEY: Not from the government, your Honor.

1 Thank you.
2 THE COURT: Anything from defense counsel?
3 MR. STRASSBERG: Not from defense counsel.
4 THE COURT: Because the defendant has acknowledged its
5 guilt as charged, because it has shown through its
6 representative that it understands its rights, because his plea
7 is entered knowingly and voluntarily and supported by an
8 independent basis in fact containing each of the essential
9 elements of offense, I accept his plea and adjudge it guilty of
10 Count One of the indictment S1 12 Criminal 02.
11 So Mr. Bruderer, the next step in this process is that
12 the probation office will prepare a presentence report to
13 assist me in determining sentence. And in that connection,
14 Wegelin may be asked to provide additional documents,
15 additional information, and I assume that's going to be
16 provided. If there's any problem about that, counsel needs to
17 notify the Court immediately. OK?
18 MR. STRASSBERG: We will do so, your Honor.
19 THE COURT: Very good.
20 After that report is in draft form, before it's in
21 final form, Wegelin and its counsel will have a chance to
22 review it, as will the government, and to offer suggestions,
23 corrections and additions to the probation officer, who will
24 then prepare the report in final to come to me.
25 Independent of that, counsel for both sides are hereby

1 given leave to submit to the Court any materials in writing
2 bearing on sentence, and I think in this kind of case that
3 would be very helpful. And as the colloquy earlier indicates,
4 what I am most concerned about is whether the $20,000,001
5 estimate is a fair estimate and what's the basis for saying
6 that. So you're free to address any and all issues, but that's
7 the issue that I particularly want to see addressed. After
8 those submissions are made, we will then have a full hearing
9 here in court, at which time the Court will impose sentence.
10 So let's fix a date for that.
11 MR. STRASSBERG: As your Honor said, we need to set a
12 date that allows for those events to happen. I think from
13 Wegelin's point of view, the faster and more expedited sentence
14 that can be accomplished, we are certainly willing to work
15 within that deadline to make that happen.
16 THE COURT: I'm all for that. The problem -- and I
17 don't know if anyone has checked with the probation office --
18 Congress, in its wisdom, has decided that the judicial process
19 of the United States, being not nearly as important as
20 Congress' vacations and the like, should be starved. We are
21 presently something like 22 probation officers short because we
22 had to last year reduce the judicial budget nationwide by ten
23 percent. Congress has decreed that we will this coming year
24 decrease the judicial budget by another ten percent, leading,
25 for example, as early as yesterday, to long-time employees of

1 the judiciary being severed and left unemployed. One can only
2 marvel at Congress' wisdom, which has been well known to all
3 Americans for some time now.
4 So to get down to the immediate problem, this is the
5 kind of case that we're going to have to put a senior probation
6 officer on. I just don't know whether they have someone
7 available who can give it expedited treatment. What I am
8 willing to do is put it down now -- the normal sentencing used
9 to be 45 days, then because of the loss of probation officers
10 we had to change it to 60 days. If you want, I will put it
11 down today for 45 days from now and talk with the probation
12 office and see if they can accommodate that. We may have to
13 come back and move it. They may be able to do better. Since
14 the parties are very substantially in agreement and obviously
15 had substantial negotiations, I don't expect there will be any
16 significant disputes, but nevertheless we have to give them as
17 much time as the probation office needs.
18 So that's my suggestion. Any other thoughts?
19 MR. STRASSBERG: Your Honor, that suggestion is very
20 agreeable.
21 DEPUTY CLERK: I want to let you know that the last
22 written statement from probation that I have asks for 120 days
23 for defendants who are not detained. That would bring us to
24 May 6.
25 THE COURT: I think we can do better than that. I

will tell you what, why don't we take a two-minute break and I'll call the head of probation and see what we can do, and we'll resume in two minutes.

(Recess taken)

THE COURT: All right. Well, after a full and frank discussion with probation, they said that while they are really tremendously short-handed right now, they will make an exception in this case, but they asked for 60 days rather than 45. I think that's reasonable.

They also ask, and I'm going to make this an order, that all the basic materials that need to be provided to probation be provided to them within the next two weeks. That shouldn't be a problem given all that you have done by way of preparation.

So let's see what date that would be for sentence.

DEPUTY CLERK: Sentence date on March 4th, that's a Monday, at 4:00.

THE COURT: March 4th at 4:00, does that work for everyone?

MR. MASSEY: That's fine with the government, your Honor.

MR. STRASSBERG: Your Honor, that's fine for the defense as well.

THE COURT: Very good. So we'll see you on March 4th. Anything else any counsel needs to raise?

1 MR. STRASSBERG: Your Honor, what time?
2 THE COURT: 4:00 p.m.
3 MR. STRASSBERG: Thank you.
4 THE COURT: Very good. Thanks a lot.
5 MR. MASSEY: Thank you.
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United States Senate
COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

March 18, 2014

VIA U.S. MAIL & EMAIL (Faith.Burton@USDOJ.gov)

The Honorable James M. Cole
Deputy Attorney General
Office of the Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 4111
Washington, DC 20530-0001

Dear Deputy Attorney General Cole:

We are writing to urge a change in the current policy of the Department of Justice (DOJ) which, for more than five years, has not sought extradition from Switzerland of a single Swiss national charged with criminal conduct related to aiding and abetting U.S. tax evasion.

During the hearing held by the U.S. Senate Permanent Subcommittee on Investigations on February 26, 2014, you testified that DOJ has charged 35 bankers and 25 financial advisors with misconduct related to facilitating U.S. tax evasion. Of those, 6 have been convicted or pled guilty, and the majority of the rest apparently live openly in Switzerland, having avoided trial on their alleged crimes for years. Yet you also testified that DOJ has not asked Switzerland to extradite any of those defendants, because DOJ believes "the Swiss will not extradite its citizens."

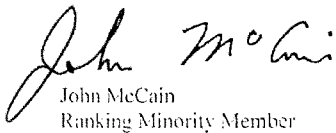
The extradition treaty between the United States and Switzerland, however, does not bar the extradition of Swiss nationals who assisted U.S. nationals in the commission of criminal tax evasion, and it is time to test the Swiss government's professed willingness to cooperate with international tax enforcement efforts and put an end to its nationals participating in criminal tax offenses. While Article 3 of the U.S.-Swiss treaty provides some discretion to the Swiss government to deny U.S. extradition requests related to tax offenses, that discretion is limited. The treaty states that it can "not be used to shield from extradition underlying criminal conduct, such as fraud …or falsification of public documents." At least some of the charges in the indictments filed against Swiss bankers and intermediaries appear to meet that standard. Additionally, Article 8, which provides an exception to extradition requests that name a treaty partner's nationals, is limited to circumstances where "[t]he Requested State [Switzerland] … has jurisdiction to prosecute that person for the acts for which extradition is sought." Switzerland does not consider tax evasion a crime, and therefore cannot prosecute such cases, which means the Article 8 exception should not apply to U.S. extradition requests to Switzerland for cases related to tax evasion.

Permanent Subcommittee on Investigations
EXHIBIT #44

Given that the current treaty does not foreclose the cooperation of the Swiss government in extradition requests for tax cases, we urge DOJ to at least attempt to use the authorities laid out in that treaty. Even if a request is unsuccessful, it will inform both Switzerland and its citizens that the United States is ready to make full use of available legal tools to stop facilitation of U.S. tax evasion and hold alleged wrongdoers accountable.

Thank you for your attention to this matter.

Sincerely,



John McCain
Ranking Minority Member
Permanent Subcommittee on Investigations

Carl Levin
Chairman
Permanent Subcommittee on Investigations

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 6, 2014

The Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable John McCain
Ranking Minority Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator McCain:

This responds to your letter to the Deputy Attorney General dated March 18, 2014, concerning the decision of the Department of Justice (the Department) not to seek the extradition of Swiss nationals from Switzerland.

Please be assured that the Department's position in this regard is well grounded in that the Government of Switzerland, as a matter of law and policy, will not extradite Swiss nationals. The Office of International Affairs (OIA), the component of the Department that handles international extradition matters, is unaware of any case in which Switzerland has extradited one of its nationals or of any indication from officials of the Swiss Government that they would do so. As a result, OIA routinely advises U.S. prosecutors that making requests to Switzerland for the extradition of Swiss nationals would be futile. The most recent U.S. case in which Switzerland asserted its position occurred in 2012, when the United States sought the arrest for purposes of extradition of a person believed to be a citizen of a Latin American country. After the United States sought the fugitive's arrest, Switzerland determined that the person had Swiss citizenship and denied the U.S. request, unequivocally stating that Switzerland does not extradite its nationals and that no arrest for purposes of extradition would be possible.

In March of this year, after receiving a copy of your letter, OIA conferred with the official in charge of extraditions in Switzerland, who confirmed, once again, that Switzerland does not extradite its nationals. This official made it clear that the Swiss constitution provides that a Swiss national may be extradited only with his or her consent; and the Swiss Federal Act on International

Mutual Assistance in Criminal Matters is consistent with this constitutional provision, specifying that, "[n]o Swiss national may, without his written consent, be extradited or surrendered to a foreign State for prosecution or for the execution of a sentence. Consent may be withdrawn up to the time when the surrender is ordered." The Swiss official further stated that, although the law and Swiss constitution refer to the possibility of extradition of a Swiss national if that person so consents, there does not appear to have been any such "voluntary" extradition in at least the last two decades. Under these legal constraints, there could be no arrest of a Swiss national for purposes of extradition. Moreover, any fugitive may voluntarily decide to return to the United States irrespective of any enabling statute or treaty.

Please be assured that the Department takes very seriously tax offenses committed against the United States and will pursue extradition of offenders wherever they may be apprehended and brought to justice. For example, one such case involved Swiss national Raoul Weil, who was extradited from Italy to the United States on December 13, 2013, to stand trial in the Southern District of Florida for conspiring to commit tax fraud. At one point, Mr. Weil was a high-level executive at UBS Bank in Switzerland, overseeing a program that helped U.S. citizens hide approximately $20 billion in overseas assets from the Internal Revenue Service. Although indicted in 2008, he remained a fugitive until his arrest while on vacation in Italy in October 2013. The Department will continue to pursue the extradition of such offenders whenever possible.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Principal Deputy Assistant Attorney General

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Finance
State Secretariat for International Financial Matters
The State Secretary

CH-3003 Bern
SIF

Commissioner Douglas H. Shulman
Internal Revenue Service
1111 Constitution Avenue, NW
Washington DC, 20224

Deputy Attorney General
James Cole
Department of Justice
950 Pennsylvania Avenue, NW
Washington DC, 20530

Bern, August 24, 2011

Swiss-U.S. Discussions on Tax Issues

Dear Commissioner, dear Attorney General:

In our view, the meetings on August 15 and 16, 2011, with the IRS and the DOJ were productive. As you are certainly aware, Switzerland has offered a new tool to grant administrative assistance in more cases than discussed earlier: this tool, to be adopted by the Swiss Parliament to achieve the necessary legal certainty, would allow granting administrative assistance on a no-name basis for tax evasion cases.

All in all, with this new offer, Switzerland would be able to provide you with banking information on the following requests on a no-name basis for:

- Tax fraud or the like (under old DTA; immediately)
- Tax evasion (under new DTA; once adopted by the U.S. Senate and approved in the supplemented version by the Swiss Parliament, it will allow data exchange as of September 24, 2009)

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Permanent Subcommittee on Investigations
EXHIBIT #45

We also indicated the number of clients the different categories of cases may produce and we understand that these figures were met with interest by your delegation. In addition, we have put on the table a draft understanding proposing a possible way forward. You have found this approach to be attractive. Besides an effective and accelerated procedure for the exchange of information, we also suggested including in such an understanding an intention to regularize bank client relationships for the past including flanking measures to maximize the number of disclosures by U.S. persons.

We are prepared to have further talks at the conceptual as well as at the technical levels. We believe it would be productive to agree to have a common understanding on the basic conceptual elements of the envisaged solution in order to be in a position to collect the required data in the most efficient manner.

I left Washington with the impression that your side found our proposal attractive since we had all agreed to continue the talks rapidly and envisaged holding a meeting this week already. However, you have already postponed the meetings twice. I confirm my willingness to come to Washington in order to continue our talks next weekend on August 28, or September 2, 2011.

Kind regards,

M. Ambühl

Dr. Michael Ambühl
State Secretary

cc: Mr. Michael Danilack, Deputy Commissioner, IRS

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Finance
State Secretariat for International Financial Matters
The State Secretary

CH-3003 Bern
SIF

Via E-Mail

Mr. Michael Danilack
Deputy Commissioner (International) LB&I
U.S. Internal Revenue Service
michael.danilack@irs.gov

Bern, August 30, 2011

Swiss-U.S. Tax Issues – Next Round of Talks

Dear Commissioner: Dear Mike,

We refer to your e-mail dated August 26, 2011. As already mentioned in our letter of August 24, 2011, to Mr. D. Shulman (IRS) and Mr. J. Cole (DOJ), a copy of which you have received, we suggest meeting again at your earliest convenience in order to agree (i) on a common commitment to negotiate a solution, and (ii) on a common understanding on its basic conceptual elements.

Following the cancellation of the previously proposed meeting dates, we would still be available for a meeting in Washington D.C. on September 2, 2011, and can alternatively propose September 6, 2011, as a new meeting date.

As you are aware, the Swiss Government supports a negotiated solution. In view of the urgency expressed by your side, our Government has prepared for a special process with Parliament to treat the report of August 8, 2011, concerning the new tool to grant to the United States administrative assistance in more cases than discussed earlier. This special process is planned for the September session of Parliament. The Swiss Government will, however, need to have a mutual commitment and understanding with the U.S. Government about the key elements of a negotiated solution before it can present and successfully defend the August report in Parliament and obtain the required approval. Without such a commitment in principle on the part of the U.S. Government, our Government will not be in a position to

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present the August report in Parliament nor would it be likely for Parliament to grant its approval.

In line with a top-down approach, we propose to initially agree on the conceptual elements of the envisaged solution and the relevant criteria which shall form the basis for the provision of administrative assistance by the Swiss Federal Tax Administration. The discussion and identification of these criteria are absolutely essential to determine the framework within which reliable statistical data can be provided.

Therefore, the next meeting should consist of two parts: in the first part the conceptual issues need to be solved, in the second part stratification issues could be addressed accordingly and aggregated and consolidated statistical data already prepared could be provided. For this purpose we consider to include representatives of specific banks in the Swiss delegation.

We are looking forward to hearing from you.

Best regards,

Dr. Michael Ambühl
State Secretary

Office of the Deputy Attorney General
Washington, D.C. 20530

August 31, 2011

Dr. Michael Ambühl
State Secretariat for International Financial Matters
Bundesgasse 3, 3003 Bern
Switzerland

Dear State Secretary Ambühl:

Thank you for your letter. I appreciate your travels to the United States for our meetings.

As I explained during our meetings, the U.S. government's irreducible and immediate law enforcement interest is in obtaining records for a significant number of U.S. taxpayer accounts, quickly, and with certainty. We are quite willing to work with the Swiss government on a process that achieves this objective and resolves the outstanding issues.

You have predicted that your proposal will very likely satisfy this objective. We hope your prediction is correct, and are prepared to test it under the following terms and conditions:

- We will obtain from the banks under investigation and/or the Swiss government the statistical information we have requested on U.S. taxpayer accounts on the timelines the IRS has provided, so that we can proceed with the other steps outlined below.

- We will promptly seek through the Swiss government records for past and present U.S. taxpayer accounts.

- We also plan to issue a grand jury subpoena and perhaps a John Doe summons for account records.

- The Swiss government will take such steps as necessary – *e.g.*, actions under existing treaties, Parliamentary action regarding those treaties, or other administrative, executive, or legislative measures -- to facilitate and expedite production of account information and any other terms of a final agreement.

- If we obtain through these steps the records we need for a specified number of accounts by specified deadlines, we will not move to enforce the subpoena and any summons.

- If we cannot obtain actual physical possession of the needed records within these deadlines, we will move to enforce the subpoena and any summons, and we will proceed as appropriate with prosecutions that arise from the investigations.

- Assuming the deadlines are met, we are willing to discuss directly with each of the 10 banks currently under investigation an appropriate resolution of that bank's potential criminal liability for past violations of U.S. law.
    - Expeditious production of account records is a precondition of any such resolution, which will also include such elements as payment of lost tax revenues plus interest, penalties, fines, and ongoing legal compliance.
    - Our willingness to delay or forego enforcement of a grand jury subpoena or summons – if we obtain the agreed number account records by the agreed deadline – is not a commitment to forego prosecution of any bank.
    - How we proceed with any particular bank depends on reaching an agreement directly with that institution. If we do not reach agreement with particular banks, we are free to prosecute them. We are also free to prosecute banks that do not participate in this process or to negotiate a resolution with other banks that choose to come forward.
- We need to reach an agreement on the other important measures discussed regarding all other Swiss banks, including disclosing certain taxpayer information and making payments for lost tax revenues, as well as ensuring compliance in the future.

You state in your letter that over the last few weeks, we have postponed several face-to-face sessions. The delay has not been of our choosing. The statistics we have sought on the number and nature of accounts at issue -- similar to those provided in the UBS matter – are, as we have stated, vital to productive negotiations. The data you provided in response to our request of August 1 were not what we asked for and, given the level of generality and the time period covered, were not useful for the intended purposes. At your suggestion, we met with your technical experts on August 16 to address questions about the statistics. The meeting yielded few answers, and Deputy Commissioner Danilack has followed up with two detailed memoranda further explaining what we need and when we need it. Particularly as to the bank referred to in the Walder indictment, he requested that you provide – or, alternatively, authorize that bank to provide – full information by September 2. We are willing to extend that deadline to September 6, but we regard that date as crucial.

In your letter yesterday to Deputy Commissioner Danilack, you suggested that we pursue a "top-down approach" and meet to discuss the "conceptual elements of the envisaged solutions" and the "relevant criteria" for the account records to be produced, before we receive this statistical information on those records. The information, however, is necessary for us to determine whether your proposal is acceptable, to establish timelines for production, and to identify appropriate distinctions among accounts. Without it, I do not see how we can proceed with greater specificity than reflected in the concepts I have outlined above. With the data to inform our discussions, we would hope to move quickly to a resolution.

As for your suggested meeting dates, if we receive the essential statistical information in advance of those dates, we are prepared to proceed very quickly. As we have stated, the sooner we get the information, the sooner we can meet. As I have indicated, however, we must take into account statutes of limitation on potential prosecutions of U.S. taxpayers. Unless we can obtain soon the actual records for a significant number of U.S. taxpayer accounts, I fear we will have little choice but to use the other remedies we have available.

Both our governments wish to avoid that outcome, and I look forward to receiving the information necessary for meaningful talks to avoid it.

Sincerely,

James M. Cole
Deputy Attorney General

cc: Douglas H. Shulman, Commissioner of Internal Revenue

RESPONSE of CREDIT SUISSE
to
SUPPLEMENTAL QUESTIONS FOR THE RECORD
from
SENATOR CARL LEVIN

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Hearing On
Offshore Tax Evasion: The Effort to Collect
Unpaid Taxes on Billions in Hidden Offshore Accounts
February 26, 2014

U.S. Offshore Private Banking

1. **Provide a complete set of reports that the bank, including any outside counsel or consultants, has prepared related to its internal investigation of the bank's involvement in aiding and abetting tax evasion by U.S. taxpayers. If the bank asserts any privilege or confidentiality claim over such reports, provide a privilege log of such materials that the bank believes it cannot provide in entirety, including the reason the bank believes it cannot provide a copy to the Subcommittee.**

   Response: The sole written reports that the bank prepared related to the internal investigation were created by Credit Suisse outside counsel Schellenberg Wittmer at the request of the Swiss Financial Market Supervisory Authority (FINMA). These reports are protected by attorney-client privilege and are confidential attorney work product. As bank regulatory materials, they are exempted from disclosure under 12 U.S.C. §1828(x). The reports are also 'supervisory privileged' under Swiss regulations and thus cannot be disclosed without FINMA's approval.

2. **Explain how, during the Exit Projects, Credit Suisse confirmed that U.S. taxpayer clients were tax compliant, including the bank's definition of tax compliance, the bank's process, and the types of documentation, if any, that the bank may have required.**

   Response: There were many ways U.S. taxpayer clients could confirm their tax compliance status to Credit Suisse as part of the Exit Projects. The kinds of documents and proof required depended, in part, on whether the client was a natural person or a non-US domiciliary entity with a US taxpayer beneficial owner.

   Non-US domiciliary entities with US taxpayer beneficial owners

   The US taxpayer beneficial owners of non-US domiciliary entities such as companies or trusts could provide any of the following documents to evidence US tax compliance:
   - ⇨ W-8IMY from the non-US domiciliary entity plus W-9 from the US beneficial owner;
   - ⇨ W-8BEN combined with
     - o other forms demonstrating the interests had been reported to the IRS (e.g. Form 5471, Form 3520, Form 3520-A, Form 990, etc.), and/or

Permanent Subcommittee on Investigations
EXHIBIT #46a

- TD F 90-22.1 ("FBAR" form), and/or
- Schedule B of Form 1040, Part III, if applicable, possibly in combination with other papers,

AND

- Confirmation that such documents had been duly filed with the IRS or Treasury Department, as appropriate;

⇨ Opinion of reputable US tax adviser, US tax lawyer, or US accountant confirming US tax compliance;

⇨ Confirmation from reputable US tax adviser, US tax lawyer or US accountant that the US taxpayer beneficial owner was participating in the IRS' Voluntary Disclosure Program or a copy of the letter of acceptance from the IRS confirming that the US taxpayer had been accepted into the IRS Voluntary Disclosure Program.

During the Exit Projects, these guidelines were established and documents were reviewed by both internal legal and tax personnel as well as outside counsel to ensure the standards were met and appropriately and consistently applied. In some cases, internally trained personnel who were not in the legal or tax departments confirmed that certain limited combinations of forms had been received. Initially, complex cases were reviewed by outside counsel, and later in the process all cases were reviewed again by outside counsel.

Natural person US taxpayers

US taxpayer natural persons could also demonstrate their compliance with US tax laws in a variety of ways. (It should be noted that many US natural person taxpayer clients were required to leave the bank during the Exit Projects for reasons other than potential tax compliance reasons, such as when the bank determined to exit the business with US domiciled natural person clients except in certain limited circumstances, and so therefore the bank did not review the tax compliance of these clients.)

⇨ W-9 combined with ownership of a US reportable security

⇨ Opinion of reputable US tax adviser, US tax lawyer, or US accountant confirming US tax compliance;

⇨ In some cases, a combination of:

- Copy of Form 1040 or Schedule B of Form 1040, and/or
- Copy of TD- F 90-22.1 ("FBAR Form")

AND

- Confirmation that such documents had been duly filed with the IRS or Treasury Department, as appropriate

⇨ Confirmation from reputable US tax adviser, US tax lawyer or US accountant that the US taxpayer beneficial owner was participating in the IRS' Voluntary Disclosure Program or a copy of the letter of acceptance from the IRS confirming that the US taxpayer had been accepted into the IRS Voluntary Disclosure Program.

⇨ For expats (US citizens resident outside the US), in light of FATCA's delayed implementation, the bank decided to approach those with larger accounts in 2012

already, i.e. prior to FATCA and obtain from them tax compliance certifications (TCC) accompanied by confirmation of the same from the clients' paid tax return preparers. In the 4th quarter of 2013, the Bank then reached out to ALL remaining expats (without any AuM limitations) and asked them to provide a W-9 together with a USWHT waiver. These are the standard documents required for any expat going forward under the FATCA regulations.

Similar to the Exit Projects for non-US domiciliary entities with US taxpayer beneficial owners, documents relating to natural persons were reviewed by both internal legal and tax personnel as well as outside counsel to ensure the standards were met and appropriately and consistently applied. In some cases, internally trained personnel who were not in the legal or tax departments confirmed that certain limited combinations of tax compliance demonstration had been documented.

New Net Assets

3. **Internal Investigation. Please provide to the Subcommittee the results of the internal investigation the bank has carried out through outside counsel regarding classification and allocation decisions of Net New Assets (NNA), including, but not limited to, any written findings, conclusions, or other presentation of the results of the investigation.**

   Response: The bank, through outside counsel, continues to conduct an internal investigation regarding classification and allocation decisions with respect to Net New Assets. The investigation is active and ongoing. At this point in the investigation, no results have been reached, and counsel has not produced written findings, conclusions or other presentations of the results of the investigation.

Additionally, please address the following specific questions:

a. **What indications did the bank identify that suggested business pressure was being applied to the NNA reclassification or reallocation process? Please identify all such documents by bates number if they have already been produced to the Subcommittee, or provide copies to the Subcommittee if they have not already been produced.**

   Response: The bank identified certain emails that could be read as reflecting an attempt to apply business pressure in the NNA decision-making process. The bank has produced to you U.S. emails of this nature, and can be located at the following bates numbers:

   - CS-SEN-00425140
   - CS-SEN-00425099
   - CS-SEN-00443242
   - CS-SEN-00460671
   - CS-SEN-00560923
   - CS-SEN-00463981

= Redacted by the Permanent Subcommittee on Investigations

Our expanded review is focused on whether any potential business pressure unduly influenced the process of NNA classification and allocation.

b. **Identify any current or former bank employees who reported, were exposed to, or applied such pressure.**

Response: See response to 3(a).

c. **What are the process concerns that were raised by such indications of pressure?**

Response: Credit Suisse's process for recognizing NNA is based on FINMA rules. Our review is focused on whether Credit Suisse's NNA determinations were consistent with its process.

d. **What was the total amount of NNA related to each of the incidents reviewed by Credit Suisse?**

Response: The NNA recognized in 2012 in connection with [redacted] was CHF [redacted] billion. The total amount of NNA relating to other examples under review have not yet been quantified.

4.

Question 4a has been redacted by the Permanent Subcommittee on Investigations.

Credit Suisse's response to question 4a has been sealed.

b. When Client 5 informed Credit Suisse that it had been selected to provide custody and treasury services (which included investment advice), were there any conditions that had to be satisfied before a contractual arrangement would be executed with Credit Suisse? If so, identify all of the conditions and the dates when Client 5 indicated to Credit Suisse that each one had been met.

Response: The question as posed is difficult to respond to. The question asks whether there were conditions that had to be satisfied "before a contractual arrangement would be executed with Credit Suisse." But as the Credit Suisse witnesses you interviewed have explained, we are not aware of any contractual arrangement executed by Client 5 in 2012 or thereafter (with the exception of a contractual agreement relating to one particular investment, in a Holt portfolio). Because Client 5 decided he did not want to execute the Services Agreement, and never asked that there be any overall investment mandate executed, the question of whether there were conditions to entering into such contracts, and when they might have been satisfied, is not one capable of being answered. It is not our understanding that any formal contract was required by Client 5. Nor is a formal contract required for NNA recognition under FINMA rules or internal Credit Suisse policy.

As the interviews of Credit Suisse witnesses and documents submitted by Credit Suisse make clear, the only contract Client 5 signed, or expressed any interest in signing, was the customer agreement he executed with Credit Suisse in 2002. As James Martin, the principal RM on the Client 5 account, made clear in his interview with the staff, Credit Suisse did not require any further documentation from Client 5, and he was not aware of Credit Suisse entering into an agreement like the Services Agreement with any other client. Nonetheless, when Client 5's family office requested that a Services Agreement be negotiated, Credit Suisse entered into negotiations with respect to such an agreement and indicated that it was willing to enter into the Services Agreement. The record indicates, however, that Client 5 decided not to sign the Services Agreement after it was negotiated and its terms approved by the client's family office.

Despite the lack of a formal agreement, Client 5 and his advisors have been willing to conduct business with Credit Suisse for the past two years, and have sought and obtained continuous investment advice from Credit Suisse and entered into numerous transactions in light of that advice during that two-year time period. Clearly, there were no remaining conditions that were required to be satisfied in order for the parties to conduct business for the past two years.

While Credit Suisse acknowledges that, in the absence of a contract providing otherwise, Client 5 could have taken some or all of his business elsewhere, Credit Suisse's understanding at the relevant times in 2012 was that Client 5 intended to manage most of his assets through Credit Suisse. In fact he did so, and made almost no significant withdrawals of assets in 2012, leaving the great majority of his assets at Credit Suisse.

We have done our best in this response to set forth what we understand are the relevant facts as reflected in the record. Please be aware, however, that Credit Suisse, through its counsel, is continuing to investigate the facts relating to Client 5 and other transactions in its expanded investigation regarding NNA recognition, and that we have not yet formed definitive conclusions about the NNA recognition for Client 5 or the other matters under review.

As we have explained, NNA recognition is governed by Swiss legal standards promulgated by the Swiss regulator, FINMA. As we have discussed, those standards focus on the question of client intent. As we have indicated in our presentations, in our view, there is strong support in the record that Client 5 formed the intent to invest through Credit Suisse in early February 2012, when CS won the beauty contest and was selected to be global custodian and Client 5's wealth manager of choice. Thereafter, the lawyers at Client 5's family office informed Mr. Martin of Credit Suisse that certain documentation, including a Services Agreement and a Guarantee, needed to be in place. In his interview with the staff, Mr. Martin acknowledged that as of mid-March 2012, he thought it was necessary to get the terms and condition of the parties relationship agreed upon so the parties could move forward with their relationship. He also told the staff that in his view the Guarantee was the "biggest hurdle" to overcome, and that it was a "possible deal breaker." As Mr. Martin explained in his interview, the fact that this documentation had yet to be finalized was the reason he cautioned, in an email dated March 12, 2012, against recognizing NNA without speaking with him first. But the fact that the client's family office wanted certain documentation to be in place before the client would follow through with his earlier expressed intent does not nullify the intent to invest through Credit Suisse that was formed in February. It was understood that certain things needed to happen before investments would begin, including the sale of the Company, which all parties knew would not happen until June (as well as the negotiation of the Services Agreement and the Guarantee). But the fact that those subsequent events had yet to occur does not mean there was no earlier client intent to invest or that CS provided no investment advice before those events occurred. The testimony from Mr. Martin is that he did provide investment advice in the first quarter of 2012, consistent with the client's intent that such advice be provided. And importantly, Mr. Martin repeatedly made clear during his interview that the concerns about NNA recognition that he voiced in his March 12, 2012 email disappeared when the parties reached agreement on the language of the Services Agreement and the Guarantee. As Mr. Martin put it, when we accommodated the terms of the terms of the agreement in March "it was a go." Martin also said that "the last hurdle was the guarantee."

The documentary record indicates that the client's family office "signed off" on the Services Agreement on about March 28, 2012 and that client representatives also agreed to the language of the Guarantee in late March 2012. Thus, to the extent there were thought to be contractual conditions that needed to be satisfied, the record indicates that the client's advisors were satisfied with respect to such matters in March 2012.

Client 5 approved the language in the guarantee on March 22, 2012, and Credit Suisse formally executed the guarantee on April 3, 2012. See CS-SEN-00466088 & CS-

SEN-00440372. Credit Suisse did not report its first quarter NNA numbers until April 25, 2012, long after the guarantee was in place. Carlos Onis's position, which he expressed in contemporaneous emails, was that Credit Suisse could recognize first quarter NNA with respect to Client 5 as long as any needed contractual documentation was finalized before the NNA numbers were reported. In his interview, Onis told the Subcommittee staff that this position was overly conservative, and that, having considered the matter further, he now believes the better view is that it was not necessary to have contractual documentation signed in order for Credit Suisse to determine that there was client intent to invest. But in any event, to the extent any contractual documentation could be viewed as needed in connection with NNA recognition in the first quarter of 2012 in order to confirm the client's earlier expressed intent, it was sufficient if such documentation was in place by April 25, 2012.

As noted above, Credit Suisse, through its counsel, is continuing to investigate the facts relating to Client 5 and other transactions in its expanded investigation regarding NNA recognition, and we have not yet formed definitive conclusions about the NNA recognition for Client 5 or the other matters under review.

MEMORANDUM TO FILE

FROM: Permanent Subcommittee on Investigations Staff
RE: Credit Suisse Classification of Net New Assets
DATE: July 30, 2014

After the hearing, the Subcommittee received information which conflicted with Credit Suisse's representation to the Subcommittee that a wealthy client expressed intent to invest with the bank as early as February 2012, enabling it to record Net New Assets in the first quarter of 2012.

In its response to the Subcommittee's questions for the record, Credit Suisse stated:

> "[I]n our view, there is strong support in the record that [the client] formed the intent to invest through Credit Suisse in early February 2012, when CS [Credit Suisse] won the beauty contest and was selected to be global custodian and [the client's] wealth manager of choice."

However, Credit Suisse also acknowledged that "[i]t was understood that certain things needed to happen before investments would begin, including … the negotiation of the Services Agreement and the Guarantee." Credit Suisse then indicated that the necessary events took place during the first quarter, writing:

> "The documentary record indicates that the client's family office 'signed off' on the services agreement on about March 28, 2012 and that client representatives also agreed to the language of the Guarantee in late March 2012."

Later in its response, Credit Suisse stated that the client:

> "approved the language in the guarantee on March 22, 2012, and Credit Suisse formally executed the guarantee on April 3, 2012."

After the hearing, however, a client representative who was knowledgeable about, and was involved with, the client's decision to select Credit Suisse to provide custody and treasury services, provided the Subcommittee with the following information:

> "[I]t was clearly the intent of [the client] that no contractual arrangement would be executed with Credit Suisse until all conditions were satisfied. Those conditions were the negotiation of a custody and services agreement (satisfactory to [the client]) and a guaranty of Credit Suisse of obligations under the custody and services agreement. … [I]t is also clear, based on my records, that the negotiation of the custody and services agreement was not finalized until the guaranty was executed, which occurred on April 3, 2012."

This information indicates that the client intended to award the custody and treasury services to Credit Suisse only if and when the parties negotiated a custody and services agreement satisfactory to the client and a guarantee of Credit Suisse of obligations under the custody and services agreement was executed by both parties. These events did not occur until April 3, a date which fell outside of the Quarter 1 period (which ended on March 31, 2012).

Permanent Subcommittee on Investigations
EXHIBIT #46c

Based on those facts, Credit Suisse's claim that the client's intent to invest in Credit Suisse was manifested during the first quarter of 2012 appears to be incorrect.[1] The fact that the execution of the guaranty agreement took place before the Q1 Net New Asset figures were published on April 25, 2012, does not change the fact that the execution of the agreement, and therefore fulfillment of the conditions required by the client for awarding the custody and treasury services to Credit Suisse, occurred in the second quarter, not the first quarter, of 2012. As Carlos Onis, former Head of Group Finance for Credit Suisse, told the Subcommittee during an interview, the "manifestation" to invest with Credit Suisse had to take place in the first quarter of 2012 in order to be recorded as part of the first quarter activities.[2]

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[1] In addition, in mid-March 2012, when colleagues approached James Martin, the Relationship Manager who primarily handled the client's account, about re-classifying assets from assets under custody to assets under management, he sent an email to co-workers stating he would "caution against" reclassifying the assets at that time, because he needed the client to be comfortable with the Custody and Services Agreement and guaranty. 3/12/2012 email from James Martin to Gilbert de David, "Major flows last week," CS-SEN-0044133.

[2] Subcommittee interview of Carlos Onis, Credit Suisse (1/10/2014).

RESPONSE of CREDIT SUISSE
to
SUPPLEMENTAL QUESTIONS FOR THE RECORD
from
SENATOR TOM COBURN, M.D.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Hearing On
Offshore Tax Evasion: The Effort to Collect
Unpaid Taxes on Billions in Hidden Offshore Accounts
February 26, 2014

1. **The Permanent Subcommittee on Investigations' investigation found that Credit Suisse had a peak number in 2006 of 22,000 accounts holding 12 billion in Swiss Francs U.S.-linked assets, the vast majority being undeclared. Do you agree with this assessment? If not, please explain any disagreement and provide the company's tally for the number of undeclared accounts during the same time period.**

   Response: While the number of undeclared accounts cannot be determined with certainty, the following information may be instructive. Of the approximately 22,000 U.S. accounts maintained by Credit Suisse in 2008, more than 6,000 accounts were held by U.S. expatriates (primarily U.S. citizens living in Switzerland), more than 8,000 accounts had balances of less than $10,000 (the threshold reporting amount for foreign bank accounts), and more than 11,000 accounts were closed regardless of tax status because the balances did not meet the threshold requirement for transfer to the U.S. regulated Credit Suisse entity.

2. **The Permanent Subcommittee on Investigations' report also makes a number of factual comparisons between Credit Suisse and UBS. Please respond to this comparison. How does the total amount of investment and number of U.S. linked accounts at Credit Suisse compare to the UBS case?**

   Response: UBS's cross-border business with U.S. clients was much more extensive than Credit Suisse's U.S. cross-border business in terms of both the volume of accounts and bankers dedicated to the business, among other things. For example, in 2004, according to UBS documents filed in connection with the summons litigation, UBS maintained more than 50,000 accounts with U.S. residents as to which IRS Forms W-9 had not been filed. Credit Suisse had fewer than half that volume of accounts in total, i.e., this number includes the above mentioned approximately 6,000 accounts with U.S. expatriates. Moreover, UBS had between 45-60 bankers dedicated to the U.S. cross-border business, while Credit Suisse had only 15-20 such bankers.

Permanent Subcommittee on Investigations
EXHIBIT #47

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 26, 2014

The Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find Deputy Attorney General James M. Cole's responses to questions for the record arising from his appearance of before the Permanent Subcommittee on February 26, 2014, at a hearing entitled "Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts." Please be assured that the Deputy Attorney General has personally reviewed and approved these responses. We hope that this information is of assistance to the Committee.

Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

Enclosure

cc: The Honorable John McCain
Ranking Member

Permanent Subcommittee on Investigations
EXHIBIT #48

U.S. Department of Justice
Questions for the Record
Following a Hearing Entitled:
"Offshore Tax Evasion: The Effort to Collect
Unpaid Taxes on Billions in Hidden Offshore Accounts"
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate
February 26, 2014

Questions Posed by Senator Levin

Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks

1. **The Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (hereinafter "the Program") does not require participating banks to provide the name of any U.S. person that held accounts at their bank. Why is the DOJ allowing Swiss banks to seek and obtain Non-Prosecution Agreements and Non-Target Letters without requiring them to provide the names U.S. persons that held accounts at their banks?**

Response:

The Swiss Bank Program (the "Program") is designed to enable the Department of Justice (the "Department") to obtain account information. Over 100 banks applied to participate in the Program. Through the Program, as well as through ongoing investigations and other law enforcement tools, we are confident that we will obtain information that will lead us to account holders. The banks that cooperate under the Program will provide information that will facilitate effective treaty requests under the current treaty. A substantial majority of the banks that came forward under the Program do not have a U.S. presence, and therefore were beyond the reach of U.S. courts to enforce requests for information or provide remedies for violations of U.S. law. Through the Program these banks have come forward to accept responsibility for their actions and to offer their cooperation in our law enforcement efforts.

Every Swiss bank that comes forward to cooperate under the Program represents an opportunity to obtain valuable law enforcement information from a source that is new to the Department's investigations. Each cooperating bank is required to provide full disclosure of their activities, the names of culpable employees and third party advisors, and the number of U.S. accounts. Banks participating in the Program are also required to participate in treaty requests. For those accounts that were closed after the Department's activities became public in mid-2008, the banks must disclose, on an account-by-account basis, the number of U.S. persons related to the account, and the nature of the relationship, monthly balances, and monthly transfers in and out of the account. This information, as well as the information obtained from other banks participating in the Program, cooperators, whistleblowers, and other law enforcement sources, will enable the Department to pursue any banks in Switzerland that have not come forward. Equally important for our offshore enforcement efforts, we will have solid information with which to target banks in other countries that continue to hold themselves out as potential tax havens.

The protocol signed on September 23, 2009 (the "Protocol"), amending 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 "existing Convention") is awaiting the advice and consent of the Senate. If an account remained in a Swiss bank after the September 23, 2009 effective date of the Protocol, then once the Protocol is ratified by the Senate, the Department will benefit from the less restrictive standard of the Protocol. This will enhance our ability to gather detailed information about the account from Swiss entities and enable the Department to pursue the funds and the account holder. Thus while the Program will get us more information to make effective treaty requests, a ratified protocol will enable us to obtain the maximum benefit from the information we are gathering. We are hopeful that the Senate will provide its advice and consent of the Protocol as soon as possible.

A. Did representatives of the Swiss government have any discussions with the Department of Justice (or other representatives of the U.S. Government), or make any recommendations, regarding whether Swiss banks participating in the Program would or should produce the name of any U.S. person that held accounts at their bank?

Response:

As part of our efforts to obtain information relevant to our offshore tax evasion investigations, the Department and the Internal Revenue Service ("IRS") engaged in a series of discussions with representatives of the Swiss government. Representatives of the Swiss government stated that the disclosure of account holder names could only occur through the treaty process set out in the existing Convention. The Department structured the Program to obtain detailed account holder information to maximize the effectiveness of subsequent treaty requests, and to obtain information that can be used to develop additional investigative leads through the use of grand jury subpoenas, John Does summonses and information received from cooperators and whistleblowers.

B. If so, what was the position of the Swiss government representatives in the matter?

Response:

Please see the response to Question 1(A), above.

2. **The Program does not require participating banks to provide any information on accounts closed before August 1, 2008. Why is the DOJ allowing Swiss banks to seek and obtain Non-Prosecution Agreements and Non-Target Letters without requiring them to provide any account information on accounts that were closed before August 1, 2008?**

Response:

Banks that are eligible to participate in the Program are by definition those who were not already under criminal investigation and, in many cases, are institutions for which we had little or no information about their cross border activities involving U.S. account holders. The definition of "Applicable Period" in the Program was chosen to maximize the usefulness to law enforcement of the information received under the Program. In June 2008, the U.S. District Court in Miami authorized the IRS to serve upon UBS AG a "John Doe" summons seeking the records of U.S. taxpayers who held accounts in Switzerland designed to evade their U.S. tax reporting and payment obligations. UBS AG entered into a deferred prosecution agreement in February 2009, and in September 2009, Switzerland signed the Protocol. Each of these events, as well as the forthcoming implementation of the Foreign Account Tax Accountability Act (FATCA), may have motivated account holders to transfer funds out of banks in Switzerland. The August 1, 2008 date was selected to catch account holders shifting assets because of the very real danger that they would be detected and held accountable for their misconduct. It should also be noted that any non-prosecution agreement or deferred prosecution agreement executed pursuant to the Program would not resolve issues arising from a bank's cross-border activity for periods prior to the August 1, 2008 date.

3. **Why was August 1, 2008 selected as the cut-off date?**

Response:

Please see the response to Question 2, above.

A. **Did representatives of the Swiss government have any discussions with the U.S. Government, or make any recommendations, suggestions, requests, or in any way identify to the U.S. Government, about what the cut-off date should be under the Program?**

Response:

The outlines of a unilateral program were discussed with representatives of the Swiss government. The terms of the Program were determined unilaterally by the Department after consideration of law enforcement interests.

B. If so, what dates did the Swiss government representatives suggest?

Response:

Please see the response to Question 3(A), above.

Securing the names of U.S. persons who closed Swiss Accounts before August 1, 2008

4. **The Program does not require participating banks to provide the names of any U.S. person that held accounts at their banks, and does not require them to provide information on accounts that were closed before August 1, 2008. The less restrictive provisions of the 2009 Protocol to 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 "Tax Treaty") only apply to requests for information related to accounts that were in existence on or after September 23, 2009. Accounts closed before that date will be subject to the more restrictive provisions of the older version of the Tax treaty. Given those limitations of the Program and the 2009 Protocol to the Tax Treaty, how does DOJ plan to obtain the names of U.S. Taxpayers who closed their undisclosed accounts before August 1, 2008?**

Response:

As previously noted, we are aware that some U.S. account holders, upon learning that a particular bank was under investigation, moved funds to other banks that they believed would afford them greater secrecy protection, either in Switzerland or in other countries. The banks that cooperate under the Program will provide information that will facilitate effective treaty requests under the existing Convention. If an account remained in a Swiss bank after the September 23, 2009 effective date of the Protocol, then once the Protocol is ratified, the Department will benefit from the less restrictive standard of the Protocol and will be provided detailed information about the account, which will enable the Department to pursue the funds and the account holder.

The Program and treaty requests are not the only tools that the Department is utilizing to obtain Swiss account holder information. We have obtained court orders enforcing John Doe summonses on U.S. banks in Switzerland and other countries. These correspondent accounts may be expected to show activity in the U.S. or U.S. dollar transactions related to foreign bank accounts. These records are located in the U.S., and therefore do not implicate foreign bank secrecy laws. We have also successfully litigated summons and subpoenas to U.S. persons to produce records of their foreign banking activity. Cooperators and whistleblowers have also provided information that we are using to pursue account holders who sought to evade their U.S. tax and reporting obligations. The information gathered using these law enforcement methods is not limited to activity occurring within a particular period of time.

2011 Communications between DOJ and the Swiss Confederation

According to Deputy Attorney General Cole's testimony before the Subcommittee, Exhibits 32a and 32b are, respectively, the draft and final position of the Department of Justice communicated to the Swiss in the course of its discussions (around November – December 2011 time frame) regarding the Swiss government blocking DOJ attempts to obtain corporate records from the Swiss banks it was investigating (the "Targeted Banks").

5. **Why was the Swiss government not allowing the banks to provide their own corporate reeords to the DOJ?**

Response:

The reason why the Swiss government took an action or advanced a position is best explained by the Swiss government rather than the Department.

6. **The opening sentence of the Exhibit 32b is: Assuming that the negotiations between the U.S. Internal Revenue Service ('IRS') and the Swiss Confederation regarding bank secrecy continue productively, the U.S. Department of Justice ('DOJ') intends to take the following steps: ...." Please describe the details and issues related to the negotiations between the U.S., IRS and the Swiss Confederation regarding "bank secrecy." What was the Swiss government seeking and what was the IRS proposing at that time?**

Response:

The details and issues related to negotiations between the IRS and the Swiss government are best explained by the IRS and the Swiss government rather than the Department. As noted in the response to Question 1(A), representatives of the Swiss government stated that the disclosure of account holder names could only occur through the treaty process set out in the existing Convention.

7. **The opening sentence continues: "The proposed agreement between the Swiss government and the IRS provides that any Swiss bank now under investigation by DOJ ('a Targeted Bank') will he eligible for the benefits of the Agreement only if that bank separately negotiates resolution of its potential liability with the DOJ."**

    A. **Please describe the details of the "proposed agreement" referred to in the communication.**

    B. **Please describe the "benefits of the Agreement" referred to in the communication and, in particular, whose benefits would apply to any Targeted Bank that separately negotiated resolution of its potential liability with DOJ.**

Response to Questions 7(A) and 7(B):

The discussions concerning a proposed agreement were conducted by the IRS and the Swiss government, and not the Department of Justice. As noted during testimony before the Subcommittee on February 26, 2014, the discussions and proposals did not result in an agreement between the IRS with either the Swiss government or a Swiss bank.

8. **What is the number of cases known to DOJ in which U.S. taxpayers have challenged, in Switzerland, the production of their names and/or account information to the U.S. government in response to an official request by the U.S. government?**

Response:

Treaty requests are made by the U.S. competent authority who is, in this case, the Deputy Commissioner (International) for the Large Business and International Division of the IRS. Treaty requests between the U.S. competent authority and the competent authorities of other countries, including responses, are generally barred from disclosure by 26 U.S.C. § 6105. Therefore, the IRS is generally not permitted to disclose the information, and the Department could not disclose any information that the IRS provided as part of the referral process.

9. **How many U.S. taxpayers have notified the U.S. government that they have challenged, in Switzerland, the production of their names and/or account information to the U.S. government in response to an official request to the Swiss government by the U.S. government, as required by 18 U.S.C. §3506(a), which states: " Except as provided in subsection (b) of this section , any national or resident of the United States who submits, or causes to be submitted, a pleading or other document to a court or other authority in a foreign country in opposition to an official request for evidence of an offense sball serve such pleading or other document on the Attorney General at the time such pleading or other document is submitted."?**

Response:

Although the Department does not capture data on the number of notices filed pursuant to 18 U.S.C. §3506(a), our general experience is that very few are filed.

Treaty Request Notices

10. **In her testimony before the Subcommittee, Assistant Attorney General Keneally stated: "Senator, when we make treaty requests, the Swiss government publishes the fact of the treaty requests. The Swiss government gives notice of the treaty request. And this is something I wanted to point out earlier. So, where we cannot speak, there is something out there that may indicate where there have been treaty requests."**

Please provide any public notice published by the Swiss government related to treaty requests for account information made by the U.S. government with respect to U.S. linked accounts at Swiss banks that DOJ has identified or has in its possession.

Response:

As noted by Ms. Keneally in her testimony, the Swiss government has published notices regarding treaty requests by the U.S. on its official website, www.admin.ch. We do not know what criteria, if any, is used to determine which notices are published and which notices are searchable in English. Attached are notices obtained from the website for treaty requests for accounts at Wegelin & Co., Julius Baer, and Credit Suisse AG.

We have also attached a copy of the public notice published by the Swiss government relating to the treaty request in UBS. The request can also be accessed at http://www.ejpd.admin.ch/content/ejpd/en/home/dokumentation/mi/2009/2009-08-190.html.

Attachments

Communication de l'Administration fédérale des contributions (AFC) concernant la demande d'assistance administrative de l'Internal Revenue Service (IRS) des Etats-Unis d'Amérique du 27 mars 2013 relative aux relations entretenues par la banque Wegelin & Co. avec certains de ses clients

Conformément à l'art. 14, al. 5, de la Loi fédérale du 28 septembre 2012 sur l'assistance administrative internationale en matière fiscale (LAAF; RS *672.5*), l'AFC indique ce qui suit:

1. En vertu de la Convention du 2 octobre 1996 entre la Confédération suisse et les Etats-Unis d'Amérique en vue d'éviter les doubles impositions en matière d'impôts sur le revenu (CDI-US; RS *0.672.933.61*), l'IRS a adressé à l'AFC, par courrier du 27 mars 2013, une demande d'assistance administrative relative aux relations entretenues par la banque Wegelin & Co. avec certains de ses clients. Simultanément à l'ordonnance de production de documents, l'AFC a invité la banque Wegelin & Co. à informer individuellement les personnes concernées par ladite demande et à leur faire désigner, dans les 20 jours, une personne en Suisse habilitée à recevoir des notifications. Afin de s'assurer que toutes les personnes concernées en aient connaissance, cette invitation est également publiée dans la Feuille fédérale.

2. Avec la présente publication, l'AFC attire l'attention sur l'exécution simplifiée de la procédure consistant en la remise des informations sur la base du consentement irrévocable de la personne concernée, conformément à l'article 16 LAAF, ainsi que sur le fait que l'AFC notifiera sa décision finale à la personne habilitée à recevoir des notifications désignée par elle-même, si la personne concernée n'en a désignée aucune dans le délai de 20 jours.

3. L'AFC informe les personnes concernées qu'elles peuvent obtenir des renseignements supplémentaires sur la procédure auprès de la personne habilitée à recevoir des notifications qu'elle a désignée: Zaehringen Anwälte, Effingerstrasse 45, 3008 Berne, Suisse.

4. La majorité des personnes concernées étant de langue maternelle anglaise, la communication a également lieu en anglais selon les annexes.

2 juillet 2013 Administration fédérale des contributions

Annexe 1

NOTICE TO UNITED STATES BENEFICIAL OWNERS OF ACCOUNTS WITH BANK WEGELIN & CO.

The United States Internal Revenue Service (the IRS) has submitted a request for administrative assistance to the Swiss Federal Tax Administration (the FTA) pursuant to Article 26 of the Convention of 2 October 1996 between the Swiss Confederation and the United States of America with respect to Taxes on Income (the 1996 Convention). The IRS is seeking *information with regard to Bank Wegelin & Co. accounts owned by U.S. persons and held by domiciliary companies (a «DC»)* – as applicable in a given case in the IRS Treaty Request – *within the time period from 1 January 2002 to 31 December 2012.*

The identifying characteristics are as follows:

- The account is held by a domiciliary company (a «DC account») with a U.S. beneficial owner;
- The account includes U.S. securities;
- The account had, at any point in time during the tax period defined in the request, an aggregate balance in excess of US $ 50,000;
- Wegelin & Co. has no record of the timely filing of accurate Forms 1099 naming the account's U.S. beneficial owners and reporting to the IRS all payments made to such U.S. beneficial owners;
- A contradiction between Form A and Form W-8BEN exists (or other equivalent documentary evidence), or a Form W-8 or W-9 is not associated with the account; and
- There is evidence that the U.S. beneficial owner exercised control over the account in violation of corporate governance, for instance by giving investment instructions to the bank regarding the DC account without being an authorized officer, trustee, or director of the DC or without the express written authorization of the DC, or by withdrawing funds from the DC account for personal use

This notice informs you that the Bank Wegelin & Co. account of which you might have or had the beneficial ownership (your Bank Wegelin & Co. account) appears to be within the abovementioned scope of the IRS Treaty Request.

This notice also provides certain information on the Treaty Request Procedure opened by the FTA and the courses of action available to you in connection with that procedure, which are the following:

- Appoint within 20 days from 2 July 2013 an agent authorized to receive service and/or a lawyer in Switzerland to receive all official notifications by the FTA. Should you not act upon this notice, your account will nevertheless stay in the Treaty Request Procedure and the FTA will proceed as described under #1 below.
- You may choose to consent to the FTA sending the account information directly to the IRS, see # 2 below.

1. Appointment of an agent authorized to receive service and/or a lawyer in Switzerland

In connection with the IRS Treaty Request, the FTA has issued a disclosure order directing Bank Wegelin & Co. to submit corresponding account information to the FTA.

If, after a preliminary examination of the bank documents, the FTA comes to the conclusion that information relating to your Bank Wegelin & Co. account is required to be transferred to the IRS pursuant to the 1996 Convention, the FTA will issue a final order to that effect. The final order is subject to appeal to the Swiss Federal Administrative Court. Should no appeal be lodged, the relevant account information will be transferred to the IRS.

If you wish to follow this procedure, the FTA requests that you:

- appoint a person authorized to receive service and/or a lawyer in Switzerland to receive all official notifications, and
- provide the FTA with the details of the person you appointed (agent or lawyer) including his/her address in Switzerland within *20 days* from 2 July 2013. Please send this information to:

  Federal Tax Administration
  Service for Exchange of Information in Tax Matters (SEI)
  Eigerstrasse 65
  CH-3003 Bern
  Switzerland

Should you need assistance in identifying a person to serve as your agent authorized to receive service and/or as a/your lawyer in Switzerland or be in need of advice in Swiss legal matters, you may contact the Swiss Bar Association at:

Swiss Bar Association
Marktgasse 4
CH 3001 Bern
Switzerland

Telephone +41 31 313 06 15
infousa@swisslawyers.com / info@sav-fsa.ch
http://www.swisslawyers.com

The Swiss Bar Association will refer you to Swiss lawyers with the appropriate specialization.

Should you neglect to inform the FTA of the agent authorized to receive service and/or the lawyer in Switzerland within 20 days from 2 July 2013, the FTA will appoint the following law firm as your agent authorized to receive service and subsequently direct all notification and orders to:

Zachringen Anwälte, Attorneys at Law
Effingerstrasse 45
CH-3008 Bern
Switzerland
Telephone *+41 31 382 37 39*
asg-avocats@gmx.ch

You can contact the abovementioned agent authorized to receive service in Switzerland with regard to any questions concerning the Treaty Procedure during the following opening hours (except on weekends and local public holidays):

- until 28 June 2013: Monday to Friday from 08:00 AM to 12:00 AM and from 01:30 PM to 04:30 PM (Swiss time)

  from 1 July 2013 to 31 January 2014: Monday to Friday from 02:30 PM to 04:30 PM (Swiss time)

Information regarding the option to appeal to the court

If the FTA comes to the conclusion that information concerning your Bank Wegelin & Co. account requested on the basis of the 1996 Convention must be transferred to the IRS, the FTA issues a final order. The order contains the instruction on the right to appeal to the Swiss Federal Administrative Court and will be sent to your agent authorized to receive service and/or a/your lawyer in Switzerland.

It is important to note that if you choose to appeal against a final order, you should be aware that Title 18 United States Code Section 3506 applies, where Section (a) states that «any national or resident of the United States who submits, or causes to be submitted, a pleading or other document to a court or other authority in opposition to an official request for evidence of an offense shall serve such pleading or other document on the Attorney General [of the United States] at the time such pleading or other document is submitted.»

2. Information regarding the option to consent to transmission

You may consent to the transfer of information by the FTA to the IRS. In order to do so you can authorize the FTA beforehand to send your Bank Wegelin & Co. account information to the IRS directly in accordance with Article 16 of the Federal Act of 28 September 2012 on International Administrative Assistance in Tax Matters (Tax Administrative Assistance Act, TAAA).

You can find a standard form for this authorization under:

http://www.estv.admin.ch/aktuell/00978/index.html?lang=en

The appropriately completed and duly signed original is to be sent to the FTA at the address specified above. The FTA will transfer the account information in question to the IRS. Such authorization is irrevocable and results in the completion of the Treaty Procedure concerning your Bank Wegelin & Co. account.

Annexe 2

WEGELIN & CO.
Reference No. (Account No):

Name and address of the Domiciliary Company (Accountholder):

Name and address of the Beneficial Owner:

To:
Swiss Federal Tax Administration
Service for Exchange of Information in Tax Matters (SEI)
Eigerstrasse 65
CH-3003 Bern
Switzerland

Re: Consent to Transmission of Information by the FTA

Dear Sir/Madam,

By publication the FTA informed me that the IRS has submitted a request for the exchange of information based on Art. 26 of the Double Taxation Convention between the Swiss Confederation and the United States of America of 2 October 1996 and the FTA has thereby opened the administrative assistance procedure (the Treaty Procedure). The IRS is seeking information with regard to Bank Wegelin & Co. accounts owned by U.S. persons and held by domiciliary companies within the time period from 1 January 2002 to 31 December 2012.

Based on point 2 of the notice, I hereby formally and irrevocably give my consent to the FTA that all information and documents requested in the Treaty Procedure concerning my aforementioned bank account with Wegelin & Co., Switzerland, be transmitted to the IRS.

I note that after receiving this declaration of consent to transmit the required information and documents to the IRS, the FTA will conclude the Treaty Procedure with regard to this account.

Yours faithfully,

.....

(Signature of the Beneficial Owner)

Place, Date: .....

.....

(Signatures of all Authorized Signatories for the Domiciliary Company)

Place, Date: .....

Mitteilung
der Eidgenössischen Steuerverwaltung (ESTV)
über das Amtshilfeverfahren des Internal Revenue Service (IRS)
der Vereinigten Staaten von Amerika vom 17. April 2013
betreffend Bank Julius Baer & Co. Ltd Kundenverhältnisse

Basierend auf Artikel 14 Absatz 5 des Bundesgesetzes vom 28. September 2012 über die internationale Amtshilfe in Steuersachen (StAhiG; SR *672.5*) teilt die ESTV Folgendes mit:

1. Mit Schreiben vom 17. April 2013 ersucht der IRS die ESTV gestützt auf das Abkommen vom 2. Oktober 1996 zwischen der Schweizerischen Eidgenossenschaft und den Vereinigten Staaten von Amerika zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen (DBA-US; SR *0.672.933.61*) um Amtshilfe zu von der Bank Julius Baer & Co. Ltd geführten Kundenverhältnissen. Gleichzeitig mit der Editionsverfügung ersuchte die ESTV die Julius Baer & Co. Ltd die vom Amtshilfeersuchen betroffenen Personen über das Verfahren einzeln zu informieren und aufzufordern, innert 20 Tagen einen Zustellungsbevollmächtigten in der Schweiz zu bezeichnen. Um sicherzustellen, dass alle betroffenen Personen Kenntnis vom Verfahren erhalten, wird die Notifikation ebenfalls im Bundesblatt veröffentlicht.

2. Die ESTV weist mit vorliegender Publikation auf die vereinfachte Ausführung des Verfahrens durch Aushändigung der Informationen mittels unwiderruflicher Zustimmung der betroffenen Personen gemäss Artikel 16 StAhiG hin sowie darauf, dass die ESTV ihre Schlussverfügung einem von ihr bezeichneten Zustellungsbevollmächtigten zustellt, wenn die betroffenen Personen innert der Frist von 20 Tagen keinen solchen bezeichnet haben.

3. Die ESTV orientiert die betroffenen Personen darüber, dass sie bei dem von der ESTV bezeichneten Zustellungsbevollmächtigten, Zaehringen Anwälte, Effingerstrasse 45, 3008 Bern, Schweiz, weitere Informationen über das Verfahren erhalten können.

4. Da die Mehrheit der betroffenen Personen englischer Muttersprache ist, erfolgt die Mitteilung auch in deren Sprache gemäss Beilagen.

2. Juli 2013 Eidgenössische Steuerverwaltung

Beilage 1

NOTICE TO UNITED STATES BENEFICIAL OWNERS OF ACCOUNTS WITH BANK JULIUS BAER & CO. LTD

The United States Internal Revenue Service (the IRS) has submitted a request for administrative assistance to the Swiss Federal Tax Administration (the FTA) pursuant to Article 26 of the Convention of 2 October 1996 between the Swiss Confederation and the United States of America with respect to Taxes on Income (the 1996 Convention). The IRS is seeking *information with regard to Bank Julius Baer accounts owned by U.S. persons and held by domiciliary companies (a «DC»)* – as applicable in a given case in the IRS Treaty Request – *within the time period from 1 January 2002 to 31 December 2012.*

The identifying characteristics are as follows:

- The account is held by a domiciliary company (a «DC account») with a U.S. beneficial owner;
- The account includes U.S. securities;
- The account had, at any point in time during the tax period defined in the request, an aggregate balance in excess of US $ 50,000;
- Julius Baer has no record of the timely filing of accurate Forms 1099 naming the account's U.S. beneficial owners and reporting to the IRS all payments made to such U.S. beneficial owners;
- A contradiction between Form A and Form W-8BEN exists (or other equivalent documentary evidence), or a Form W-8 or W-9 is not associated with the account; and
- There is evidence that the U.S. beneficial owner exercised control over the account in violation of corporate governance, for instance by giving investment instructions to the bank regarding the DC account without being an authorized officer, trustee, or director of the DC or without the express written authorization of the DC, or by withdrawing funds from the DC account for personal use.

This notice informs you that the Bank Julius Baer account of which you might have or had the beneficial ownership (your Bank Julius Baer account) appears to be within the abovementioned scope of the IRS Treaty Request.

This notice also provides certain information on the Treaty Request Procedure opened by the FTA and the courses of action available to you in connection with that procedure, which are the following:

- Appoint within 20 days from 2 July 2013 an agent authorized to receive service and/or a lawyer in Switzerland to receive all official notifications by the FTA. Should you not act upon this notice, your account will nevertheless stay in the Treaty Request Procedure and the FTA will proceed as described under #1 below.
- You may choose to consent to the FTA sending the account information directly to the IRS, see # 2 below.

If you have questions, you may contact Bank Julius Baer by phone +41 (0) 58 886 2828 / by telefax +41 (0) 58 888 0589 or by e-mail: call.center-amb@juliusbaer.com / http://www.juliusbaer.com/SFTA_order.

1. Appointment of an agent authorized to receive service and/or a lawyer in Switzerland

In connection with the IRS Treaty Request, the FTA has issued a disclosure order directing Bank Julius Baer to submit corresponding account information to the FTA.

If, after a preliminary examination of the bank documents, the FTA comes to the conclusion that information relating to your Bank Julius Baer account is required to be transferred to the IRS pursuant to the 1996 Convention, the FTA will issue a final order to that effect. The final order is subject to appeal to the Swiss Federal Administrative Court. Should no appeal be lodged, the relevant account information will be transferred to the IRS.

If you wish to follow this procedure, the FTA requests that you:

appoint a person authorized to receive service and/or a lawyer in Switzerland to receive all official notifications, and

provide the FTA with the details of the person you appointed (agent or lawyer) including his/her address in Switzerland within *20 days* from 2 July 2013. Please send this information to:

- Federal Tax Administration
  Service for Exchange of Information in Tax Matters (SEI)
  Eigerstrasse 65
  CH-3003 Bern
  Switzerland

Should you need assistance in identifying a person to serve as your agent authorized to receive service and/or as a/your lawyer in Switzerland or be in need of advice in Swiss legal matters, you may contact the Swiss Bar Association at:

Swiss Bar Association
Marktgasse 4
CH-3001 Bern
Switzerland

Telephone +41 31 313 06 15
infousa@swisslawyers.com / info@sav-fsa.ch
http://www.swisslawyers.com

The Swiss Bar Association will refer you to Swiss lawyers with the appropriate specialization.

Should you neglect to inform the FTA of the agent authorized to receive service and/or the lawyer in Switzerland within 20 days from 2 July 2013, the FTA will appoint the following law firm as your agent authorized to receive service and subsequently direct all notification and orders to:

Zaehringen Anwälte, Attorneys at Law
Effingerstrasse 45
CH 3008 Bern
Switzerland
Telephone *+41 31 382 37 39*
asp-avocats@gmx.ch

You can contact the abovementioned agent authorized to receive service in Switzerland with regard to any questions concerning the Treaty Procedure during the following opening hours (except on weekends and local public holidays):

- until 28 June 2013: Monday to Friday from 08:00 AM to 12:00 AM and from 01:30 PM to 04:30 PM (Swiss time)
- from 1 July 2013 to 31 January 2014: Monday to Friday from 02:30 PM to 04:30 PM (Swiss time)

Information regarding the option to appeal to the court

If the FTA comes to the conclusion that information concerning your Bank Julius Baer account requested on the basis of the 1996 Convention must be transferred to the IRS, the FTA issues a final order. The order contains the instruction on the right to appeal to the Swiss Federal Administrative Court and will be sent to your agent authorized to receive service and/or a/your lawyer in Switzerland.

It is important to note that if you choose to appeal against a final order, you should be aware that Title 18 United States Code Section 3506 applies, where Section (a) states that «any national or resident of the United States who submits, or causes to be submitted, a pleading or other document to a court or other authority in opposition to an official request for evidence of an offense shall serve such pleading or other document on the Attorney General [of the United States] at the time such pleading or other document is submitted.»

2. Information regarding the option to consent to transmission

You may consent to the transfer of information by the FTA to the IRS. In order to do so, you can authorize the FTA beforehand to send your Bank Julius Baer account information to the IRS directly in accordance with Article 16 of the Federal Act of 28 September 2012 on International Administrative Assistance in Tax Matters (Tax Administrative Assistance Act, TAAA).

You can find a standard form for this authorization under:
http://www.estv.admin.ch/aktuell/00978/index.html?lang=en

The appropriately completed and duly signed original is to be sent to the FTA at the address specified above. The FTA will transfer the account information in question to the IRS. Such authorization is irrevocable and results in the completion of the Treaty Procedure concerning your Bank Julius Baer account.

Beilage 2

JULIUS BAER & CO. LTD
Reference No. (Account No):

Name and address of the Domiciliary Company (Accountholder):

Name and address of the Beneficial Owner:

To,
Swiss Federal Tax Administration
Service for Exchange of Information in Tax Matters (SEI)
Eigerstrasse 65
CH-3003 Bern
Switzerland

Re: Consent to Transmission of Information by the FTA

Dear Sir/Madam,

By publication the FTA informed me that the IRS has submitted a request for the exchange of information based on Art. 26 of the Double Taxation Convention between the Swiss Confederation and the United States of America of 2 October 1996 and the FTA has thereby opened the administrative assistance procedure (the Treaty Procedure). The IRS is seeking information with regard to Bank Julius Baer accounts owned by U.S. persons and held by domiciliary companies within the time period from 1 January 2002 to 31 December 2012.

Based on point 2 of the notice, I hereby formally and irrevocably give my consent to the FTA that all information and documents requested in the Treaty Procedure concerning my aforementioned bank account with Julius Baer, Switzerland, be transmitted to the IRS.

I note that after receiving this declaration of consent to transmit the required information and documents to the IRS, the FTA will conclude the Treaty Procedure with regard to this account.

Yours faithfully,

.....

(Signature of the Beneficial Owner)

Place, Date: .....

.....

(Signatures of all Authorized Signatories for the Domiciliary Company)

Place, Date: .....

Mitteilung
der Eidgenössischen Steuerverwaltung (ESTV)
über das Amtshilfeverfahren des Internal Revenue Service (IRS)
der Vereinigten Staaten von Amerika vom 26. September 2011
betreffend Credit Suisse Group Kundenverhältnisse

Basierend auf Art. 20/ der Verordnung vom 15. Juni 1998 zum schweizerisch-amerikanischen Doppelbesteuerungsabkommen vom 2. Oktober 1996 (SR *672.933.61*, Änderung in Kraft ab 30. November 2011) teilt die ESTV Folgendes mit:

1. Mit Schreiben vom 26. September 2011 ersuchte der IRS die ESTV gestützt auf dem Abkommen zwischen der Schweizerischen Eidgenossenschaft und den Vereinigten Staaten von Amerika zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen vom 2. Oktober 1996 (DBA-US; SR *0.672.933.61*) um Amtshilfe zu von der Credit Suisse Group geführten Kundenverhältnissen. Gleichzeitig mit der Editionsverfügung ersuchte die ESTV die Credit Suisse Group die vom Amtshilfeersuchen betroffenen Personen über das Verfahren einzeln zu informieren und aufzufordern, in der Schweiz einen Zustellungsbevollmächtigten zu bezeichnen. Um sicherzustellen, dass alle betroffenen Personen Kenntnis davon erhalten, wird die Notifikation ebenfalls im Bundesblatt veröffentlicht.

2. Da die Mehrheit der betroffenen Personen englischer Muttersprache ist, erfolgt die Mitteilung in deren Sprache gemäss Beilagen.

29. November 2011 Eidgenössische Steuerverwaltung

Beilage 1

NOTICE TO UNITED STATES BENEFICIAL OWNERS OF ACCOUNTS WITH CREDIT SUISSE AG / NEUE AARGAUER BANK AG / CLARIDEN LEU AG

The United States Internal Revenue Service (the IRS) has submitted a request for administrative assistance to the Swiss Federal Tax Administration (the SFTA) pursuant to Article 26 of the Convention of October 2, 1996 between the Swiss Confederation and United States of America the with respect to Taxes on Income (the 1996 Convention). The IRS is seeking *information with regard to accounts of certain U.S. persons owned through a domiciliary company (a DC) that have been maintained with Credit Suisse AG / Neue Aargauer Bank AG / Clariden Leu AG* (as applicable in a given case in the IRS Treaty Request) *at any time during the years January 1, 2002 through December 31, 2010.*

- The first group of these accounts includes U.S. securities, and a Form W-9 is not associated with the account.
- The second group of these accounts does not include U.S. securities, but there is evidence that the U.S. beneficial owner exercised control over the account of the DC and a Form W-9 is not associated with the account.

This notice provides information to you that the Credit Suisse AG / Neue Aargauer Bank AG / Clariden Leu AG account of which you have the beneficial ownership appears to be within the abovementioned scope of the IRS Treaty Request.

This notice also provides certain information on the Treaty Process opened by the SFTA and the steps available to you in connection with that process, which are the following:

- Appoint within 20 days from 30 November 2011 an agent and/or lawyer in Switzerland to receive all official notifications by the SFTA. In the event that the SFTA comes to the conclusion that exchange of information has to be granted by the SFTA, this may – subject to your judicial rights – ultimately result in the submission of your Credit Suisse AG / Neue Aargauer Bank AG / Clariden Leu AG account documents by the SFTA to the IRS. The SFTA encourages you to promptly consult with a U.S. qualified tax advisor to determine the appropriate course of action. Should you not react to this notice, your account will stay in the Treaty Process and the SFTA will proceed as described under #1. below.

  Consent to the SFTA's sending the account information directly to the IRS, see # 2 below.

Should you have any questions, please consult the Credit Suisse AG website at www.cs.com / the Clariden Leu AG website at www.claridenleu.com, or call the teams of dedicated advisors at Credit Suisse AG on *+41 44 335 60 00*, at Neue Aargauer Bank AG on *+41 44 335 60 42*, at Clariden Leu AG on *+41 44 335 60 43*.

1. Appointment of an agent and/or lawyer in Switzerland

In connection with the IRS Treaty Request, the SFTA has issued an order directing Credit Suisse AG / Neue Aargauer Bank AG / Clariden Leu AG to submit responsive account information to the SFTA.

If, after a comprehensive examination of the bank documents, SFTA comes to the conclusion that information relating to your Credit Suisse AG / Neue Aargauer Bank AG / Clariden Leu AG account is required to be provided to the IRS pursuant to the 1996 Convention, this authority will render an appropriate final decision. Subject to an appeal to the Federal Administrative Court, the SFTA would make available to the IRS the relevant information and records relating to your Credit Suisse AG / Neue Aargauer Bank AG / Clariden Leu AG account.

If you wish to follow this process, the SFTA requests that you

- appoint a person authorized to receive notifications and/or a lawyer in Switzerland concerning these matters and
- inform the SFTA of the person you have appointed and his/her address in Switzerland within *20 days* from 30 November 2011. Please send this information to:
  Swiss Federal Tax Administration
  Service for exchange of information in tax matters (SEI)
  Eigerstrasse 65
  CH-3003 Bern, Switzerland.

Should you have further questions, you can contact Bill, Isenegger, Ackermann AG, Rechtsanwälte, Attorneys at Law, Telephone *+41 44 386 88 00*
E-Mail: bia@bialaw.ch

If needed, you may obtain assistance in identifying a person who could serve as your agent and/or lawyer in Switzerland and, if desired, advise on Swiss legal matters, by going to the website of the Swiss Bar Association at www.swisslawyers.com.

You can also contact the
Swiss Bar Association
Marktgasse 4
CH-3001 Bern, Switzerland
Telephone *+41 31 313 0615* (helpline)
infousa@swisslawyers.com

The Swiss Bar Association will refer you to lawyers with the appropriate specialization.

Should you not appoint an agent and/or lawyer within 20 days from 30 November 2011, the SFTA will retain the following law firm as your agent for the service of process and subsequently direct all correspondence and orders to it:
Bill, Isenegger, Ackermann AG
Rechtsanwälte, Attorneys at Law
Witikonerstrasse 61
P.O. Box
CH-8032 Zurich, Switzerland
Telephone *+41 44 386 88 00*
E-Mail: bia@bialaw.ch

Obligations in respect of any appeal of an SFTA order governing your account

If the SFTA were to authorize the providing of information concerning your Credit Suisse AG / Neue Aargauer Bank AG / Clariden Leu AG account to the IRS pursuant to the 1996 Convention, the SFTA would notify your agent and/or lawyer in Switzerland and would also advise your agent and/or lawyer that you would have a *right under Swiss law to appeal* such a decision by the SFTA *to the Swiss Federal Administrative Court*.

It is important to note that if you choose to appeal such a decision, you should be aware that Title 18 United States Code Section 3506, which in Section (a) provides generally that "any national or resident of the United States who submits, or causes to be submitted, a pleading or other document to a court or other authority in opposition to an official request for evidence of an offense shall serve such pleading or other document on the Attorney General [of the United States] at the time such pleading or other document is submitted." The SFTA urges you to consult with a qualified lawyer concerning whether to appeal any such decision of the SFTA and concerning any obligations you may have under Section 3506 of Title 18 of the United States Code should you choose to appeal such decision.

2. Consent to transmission of information by the SFTA

If you prefer that the SFTA directly send your account information to the IRS, you can authorize the SFTA to do so by sending a consenting letter to the SFTA in accordance with Art. 20*a* of the Ordinance on the 1996 Convention.

You can find a standard letter for this authorization at
http://www.estv.admin.ch/aktuell/00978/index.html?lang=en

The appropriately completed and duly signed authorization can be sent to the SFTA at the address indicated above. The SFTA will transmit the requested account information received from Credit Suisse AG / Neue Aargauer Bank AG / Clariden Leu AG to the IRS. *Consenting to the transmission of information to the SFTA will conclude the Treaty Process for your account.*

Beilage 2

Credit Suisse AG / Neue Aargauer Bank AG / Clariden Leu AG Reference No. (Account No):

Name and Address of the Domiciliary Company (Accountholder):

Name and Address of the Beneficial Owner:

To:
Swiss Federal Tax Administration
Service for exchange of information in tax matters (SEI)
Eigerstr. 65
CH-3003 Bern
Switzerland

Re. Consent to Transmission of Information by the SFTA

Dear Sir/Madam,

By publication Switzerland informed me that the IRS had submitted a request for information exchange to the SFTA based on Art. 26 of the Double Taxation Convention between the Swiss Confederation and the United States of America of 2 October 1996 and thereby has opened the administrative assistance procedure (the Treaty Process). The IRS is seeking information with regard to accounts of certain U.S. persons owned through an offshore company that have been maintained with Credit Suisse AG / Neue Aargauer Bank AG / Clariden Leu AG.

Based on point 2 of the notice, I hereby formally and irrevocably give my consent to the SFTA that all information and documents requested in the Treaty Process concerning my aforementioned bank account with Credit Suisse AG / Neue Aargauer Bank AG / Clariden Leu AG, Switzerland be transmitted to the IRS.

I note that after receiving this declaration to transmit the required information and documents to the IRS, the SFTA will conclude the Treaty Process as far as this account is concerned.

Yours faithfully,

.....

(Signature of the Beneficial Owner)

Place, Date: .....

.....

(Signatures of all Authorized Signatories for the Domiciliary Company)

Place, Date: .....

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Justice and Police

UBS: New Treaty Request Instead Of Unilateral Action

Agreement between Switzerland and the USA enters into force

Press Release, FDJP, 19.08.2009

Bern. In the UBS case, the United States will submit a new treaty request to Switzerland and will withdraw the John Doe summons that demands disclosure of the identity of 52,000 UBS account-holders. In return, Switzerland has undertaken to process the new treaty request, concerning approx. 4,450 accounts, within a year. These are the terms of the agreement between Switzerland and the USA to settle the looming conflict between the two nations' legal systems.

The agreement was signed today in Washington and entered into force immediately. It states that the United States will refrain from unilateral information-gathering measures that infringe Switzerland's sovereignty and rule of law. In particular, the USA will immediately withdraw the enforcement action relating to the John Doe summons against UBS that remains pending before the competent court in Miami. It also undertakes not to seek any further enforcement of the summons. The civil case in the US will remain pending for the time being to prevent any future claims expiring under tax law. It will nonetheless be finally and completely withdrawn in stages no later than 370 days from the date the agreement was signed.

Framework For Action Determined

The US tax authority, the Internal Revenue Service (IRS), will submit a new treaty request to the Swiss Federal Tax Administration (SFTA) on the basis of the tax treaty currently in effect between the two nations. The new request will draw on certain criteria in a framework for action that allows cases of "tax fraud and the like" to be identified in the case of UBS within the confines of applicable Swiss law and judicial practice. Some 4,450 accounts fall within this framework. The precise criteria are laid down in an annex to the agreement. At the request of the United States, the annex will not be published until 90 days after the agreement has entered into force to ensure the IRS voluntary disclosure program runs smoothly.

Serious Tax Offences Also Covered By Treaty Request
According to the tax treaty currently in place, the term "tax fraud or the like" is not restricted to conventional forms of fraud involving falsified documents or schemes of lies. Information may also be obtained with regard to serious tax offenses, specifically the continued evasion of large sums of tax. Under applicable law and the latest practice of the Swiss Federal Administrative Court, in dealings with the USA account information may also be released – through treaty request channels – even if the IRS does not yet know the name of the bank client concerned when it submits its request.

Project To Ensure Faster Handling
The SFTA will set up a project infrastructure to accelerate handling of the new treaty request. The project will involve around 30 specialists from an audit firm and some 40 lawyers and tax specialists recruited from within the federal government. These lawyers and experts bear sole responsibility for key sovereignty-related tasks, specifically the rendering of final decisions.

Under the terms of the agreement, the SFTA must issue final decisions on the first 500 cases within 90 days of the request being received. It has 360 days in total to make a final decision on whether the requested information may be issued in each of the 4,450 cases. UBS must make the account information covered by the treaty request available and prepare it for processing by the SFTA. This is the subject of a separate agreement between UBS and the IRS. The privacy of all of the persons concerned remains protected under the law, and they may contest the SFTA's final decisions before the Federal Administrative Court.

Regular Consultations
In an effort to build trust, the agreement provides for joint quarterly meetings to assess progress and identify and resolve any emerging problems at an early stage. Either party may also request further consultations on the implementation, interpretation or application of the agreement at any time. In addition, immediate consultations on appropriate measures may be requested if it appears that one of the parties is unable to fulfill an obligation on time or at all. If the actual results of the program fall significantly short of its targets after 370 days, both parties may take proportionate rebalancing measures to restore an equitable distribution of rights and obligations under the agreement. The United States government might, for example, delay the final withdrawal of its John Doe summons.

Contact / questions
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CH-3003 Bern
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Contact

Beat Furrer, Swiss Federal Tax Administration, T +41 58 464 91 29, Contact

Last modification: 19.08.2009

Federal Department of Justice and Police (FDJP)
Terms and conditions | Contact