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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

MAJORITY AND MINORITY STAFF REPORT

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Law Clerk
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Law Clerk
DYLAN TEGGART
Intern
DORIS WEIL
Law Clerk

Permanent Subcommittee on Investigations
199 Russell Senate Office Building – Washington, D.C. 20510
Majority: 202/224-9505 – Minority: 202/224-3721
Web Address: http://www.hsgac.senate.gov/subcommittees/investigations

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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 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

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[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).

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 (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 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 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,

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 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,

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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.

[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.

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]

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.

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[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.

[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)).

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 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 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

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[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.

[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).

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.

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 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

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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.

[29] See Treasury Regulations 1.1441-1, et seq., adopted in T.D. 8881, 2000-1 C.B. 1158 (5/5/2000).

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-U.S. person filing a W-8 or W8BEN 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

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[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). W8 Forms are filed for non-U.S. persons. W8BEN 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 W8BEN 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 W8BEN 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 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).

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-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

[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).

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:

> "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

[35] Id.
[36] 2007 GAO Report on QI Program, at 21.
[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).

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, 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. accountholder names, from its financial institutions and exchange the information, on an automated reciprocal basis, with the United States.[47] Under the second

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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.
[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

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.

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

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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.

[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),

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 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

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).

[57] Subcommittee briefing by the U.S. Department of Justice (12/17/2013).

> 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 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

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[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.

[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).

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 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

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[61] Id.
[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.

initiative as part of their disclosure obligations.[68] GAO found that the participants had together 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.

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

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[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).

[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.

[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.

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]

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

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[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.

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 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

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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.

[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/.

> 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:

> "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

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[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.

[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.

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 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 OECD in 2000 and 2001, and the OECD agreed to omit them from the list of uncooperative tax havens being prepared.

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[78] See, e.g., "Fighting Offshore Tax Evasion," OECD Centre for Tax Policy and Administration, http://www.oecd.org/fr/ctp/fightingoffshoretaxevasion.htm.

[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.

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 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]

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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.
[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/oecdreportsprogressinfightingoffshoretaxevasionbutsaysmoreeffortsareneeded.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).

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-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

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[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/oecdglobalforumconsolidatestaxevasionrevolutioninadvanceofpittsburgh.htm.

[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/conventiononmutualadministrativeassistanceintaxmatters.htm.

[98] Id.

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 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

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[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.
[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.

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 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

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[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.
[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.

820% of Switzerland's gross domestic product (GDP), demonstrating the banking sector's importance to the Swiss economy.[113] The Swiss 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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[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.

[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, 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

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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.

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 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

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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).

[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.

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 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]

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[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.

[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).

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 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,

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[136] See "Switzerland to adopt OECD standard on administrative assistance in fiscal matters," press release issued by Switzerland (3/13/2009).
[137] Id.
[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).

> 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 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:
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> 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

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[141] Id.

[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.

required, for example, that a treaty partner requesting 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]

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

[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), http://www.taxtreatiesanalysis.com/2013/06/entreasury-continues-push-ratification-stalled-treaties-official/.

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 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

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[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.

[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).

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 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]

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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).

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.

[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 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

[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.

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]

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

[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 .
[166] "Executive Board," Credit Suisse, https://www.credit-suisse.com/governance/en/executive_board_cs.jsp.

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 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

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[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.

[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.

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]

(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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[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/.
[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, 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

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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).
[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).

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 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.

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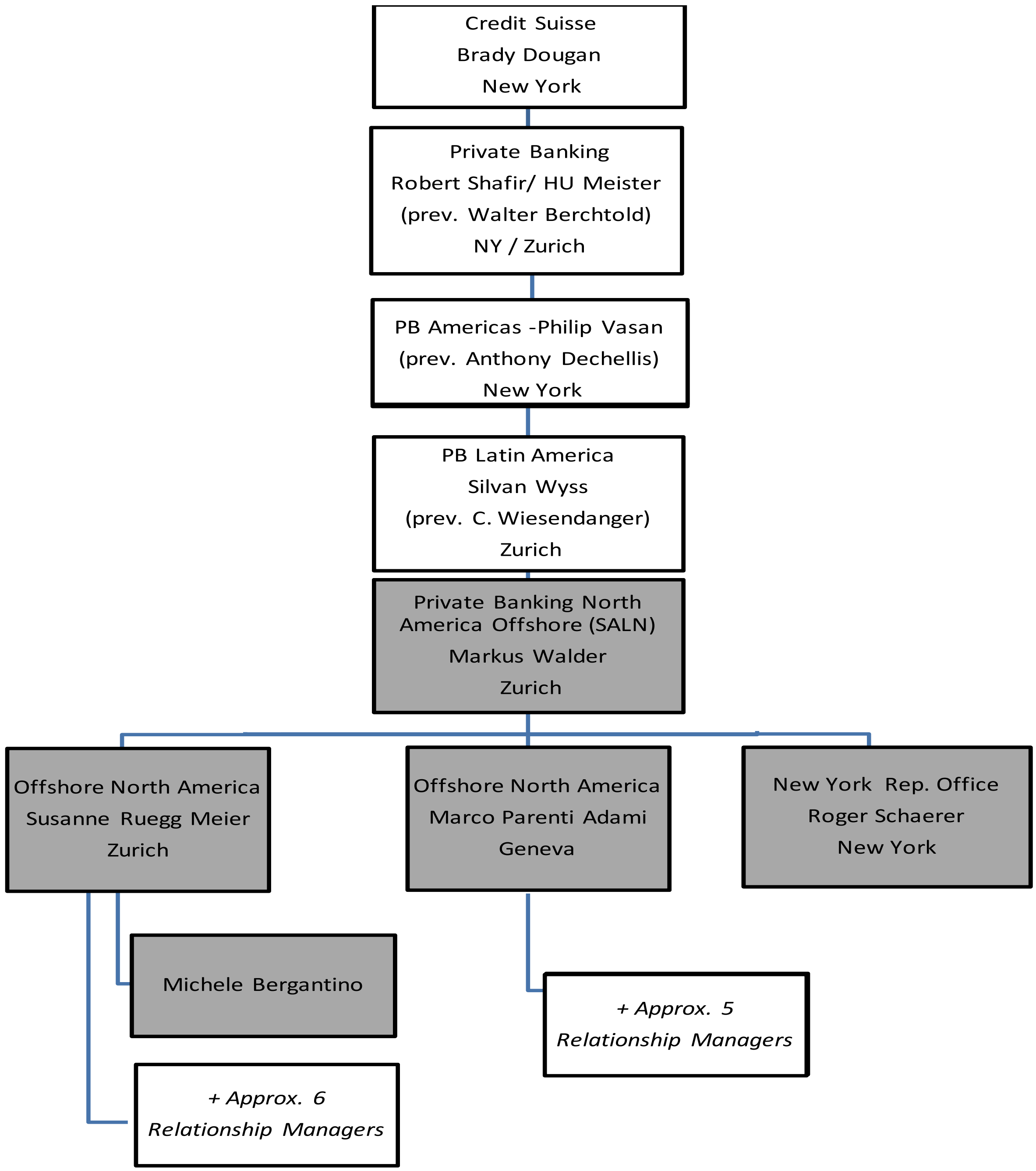
[195] Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (9/24/2013).
[196] Id.
[197] See Credit Suisse website, www.creditsuisse.com (showing 301 billion CHF in AuM for the first quarter of 2012 for the Private Bank, Region Switzerland).
[198] SALN is a code with each letter signifying a more narrow group. "S" stands for Private Bank, "A" stands for Americas, "L" stands for Latin America, and "N" stands for North America.
[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]

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.

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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.
[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).

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]

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,

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[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.").
[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.

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 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.

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[216] Subcommittee interview of Romeo Cerutti, Credit Suisse (1/15/2014).
[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.

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 (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.

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[223] In re Credit Suisse Group AG, SEC File No. 3-15763, Order Instituting Administrative and Cease-and-Desist Proceedings (2/21/2014).
[224] 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-29-000001, at 008.

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.

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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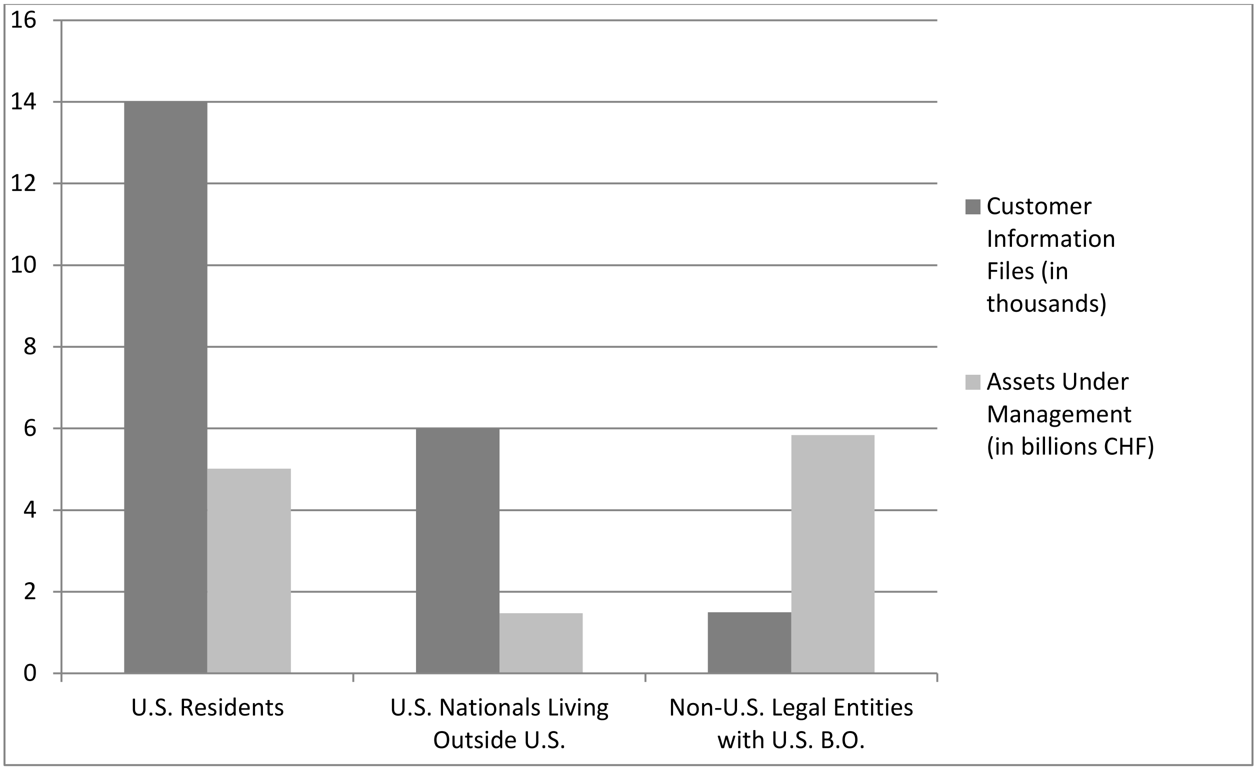
[225] Credit Suisse data compiled from Credit Suisse presentation, Credit Suisse Update on Development of AuM and Accounts of U.S. Clients to the Senate Permanent Subcommittee on Investigations (4/20/2012) CS-SEN-00189151, 153-154; Clariden Leu statistics from Credit Suisse presentation, “Credit Suisse 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.

[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

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

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.

[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.

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 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.

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

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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).

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]

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

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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-Ulrich 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 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.

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 to 2010, and then became the Chief of Staff to the Private Bank Americas CEO from 2010 to 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 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,

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[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.
[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).

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 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 located at the bank's branch at the Zurich airport.[255] That

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[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).
[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

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.

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.

[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)] 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*
SBIP	*w/o CSPA*	*367*	*34*	*401*	*0.6*	*2*	6/*6*
SBIP	P&BB CH	6'009	771	6'780	1.8	32	993/*44*
SBIP	PB EMEA	10'283	269	10'552	2.2	36	465/*19*
SBIP	*w/o SIOA 5*	*9'345*	*91*	*9'436*	*1.1*	*17*	189/*62*
SBIP	PB Asia	84	6	90	0.1	1	38/*0*
SBIP	PB IS&P[5)]	539	35	574	0.7	7	57/*3*
SBIP	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. customer (individuals or companies) respectively servicing ≥ 5 US Intl. customers (in italics); 5) Including EAM business; 6) Including PB Technical BA, IB 0977; 7) Included BCs: Spain, China (HK), Dubai, Singapore, Australia, Indonesia, Austria, Germany, Luxemburg, 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

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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;

bankers serviced only one U.S.-linked Swiss account, the 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 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.

"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.
[261] Id.
[262] Subcommittee interview with Agnes Reicke, Credit Suisse (10/29/2013).

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 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

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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.

[267] Id. Numbers do not add up because the bank opened some U.S.-linked accounts during that time period.

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 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

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[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).
[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.

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 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:

[274] Subcommittee interview of Brady Dougan, Credit Suisse (12/20/2013).
[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-CreditSuisse-54-000003, at 033.

> "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 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

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[277] 10/24/2008 email from Joseph Haering to Raphael Waknine, "Numbered Accounts," CS-SEN-00345395.
[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.").

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 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. 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.

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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."

[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.

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 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]

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[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).
[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.

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 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

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[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.
[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.").

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 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

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[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.

[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 Francisco, 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.

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 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.

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[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 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 (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]

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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.

[313] Id.

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 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

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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.
320 Id.

[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 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]

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[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).
[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.

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 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

[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.).
[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.

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 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

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[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.
[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.

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 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-

[348] Id. at ¶18.
[349] Id. at ¶19.
[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.

8BEN forms that concealed 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 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

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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).
[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.

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 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

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[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).
[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).

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 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]

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[367] Subcommittee briefing by Credit Suisse (1/16/2014).
[368] Id.
[369] Id.
[370] Id.
[371] Id.
[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.

(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 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

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[376] 12/22/2005 New York Representative Office, Federal Reserve Bank of New York Target Review, FRBNY to DOJTAXCS 00066 [Sealed Exhibit].

[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.

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 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

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[381] See 6/21/2007 Credit Suisse, Rep. Office Coverage Review Report, CS-SEN-00011902, at 903.

[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.

[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].

York wrote to Credit Suisse that the objectionable conduct by the team of bankers had appeared to have stopped.[389]

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 Representative Office to Switzerland in 2007, suggest that the minimum account size had to be $500,000 before the New York Rep 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 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

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[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].
[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].
[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.

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 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

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[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.
[404] 1/24/2007 email from David Holmes to Roger Schaerer, "Prospect," CS-SEN-00100092.

> 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 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

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[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.
[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.

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 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

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[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 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

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 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

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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.

[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.

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 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 also traveled to other Swiss offices of Credit Suisse, besides the Zurich airport, to service their accounts.

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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 much 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 counsel to the Subcommittee, Questions about Findings and Conclusions from Credit Suisse's Internal Investigation, PSI-CreditSuisse-54-000001, at 018-19.

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 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.

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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.

442 Subcommittee interview of Client 2 (May 18, 2012).

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 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.

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[443] Id. (relying on account statements that identified the Basel office).
[444] Subcommittee interview of [Client 3] (5/23/2012).
[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].

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 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]

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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-

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 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

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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).

[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.

than one country, within its definition of a U.S. 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, 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]

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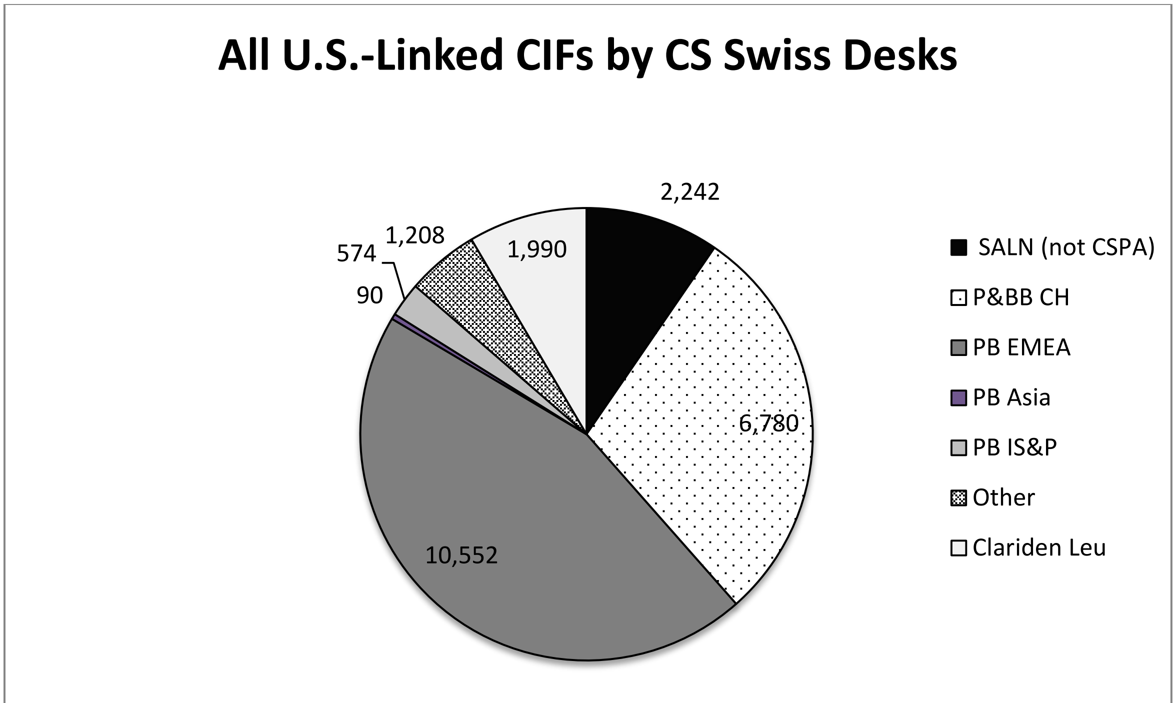
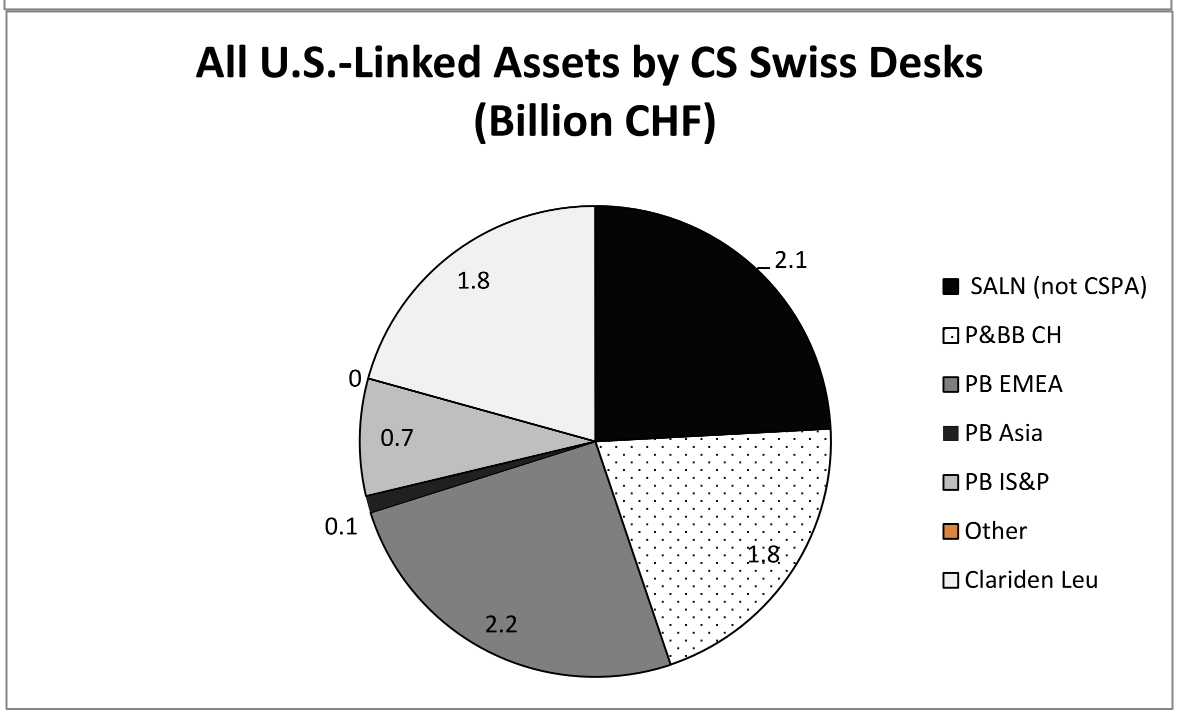
[455] Id. at 344.
[456] Subcommittee briefing by Credit Suisse (11/7/2013).
[457] 11/26/2002 Credit Suisse Financial Services, "Bank relationships with US persons, US Taxpayers and EAMS that are located in the US or have clients who are US Persons and/or US Taxpayers ("US Person Directive,")," CS-SEN-00465963, 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).
[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.





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 "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] 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

[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.
[470] Id. at 953.
[471] Id.
[472] See id. at 954; see also Subcommittee interview of Agnes Reicke, Credit Suisse (10/29/2013).

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 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

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[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.
[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).

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. 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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[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).
[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	14'536	2'283	15.7%	10'382	1'465	406	8'903'361'280	2'855'896'121	32.1%	1'747'857'815	2'989'143'077	1'310'464'267 *)
Hong Kong	1'437	907	63.1%	311	118	101	4'705'183'849	4'021'248'828	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: 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 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

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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.
[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).

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.

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

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[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.
[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.

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 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-

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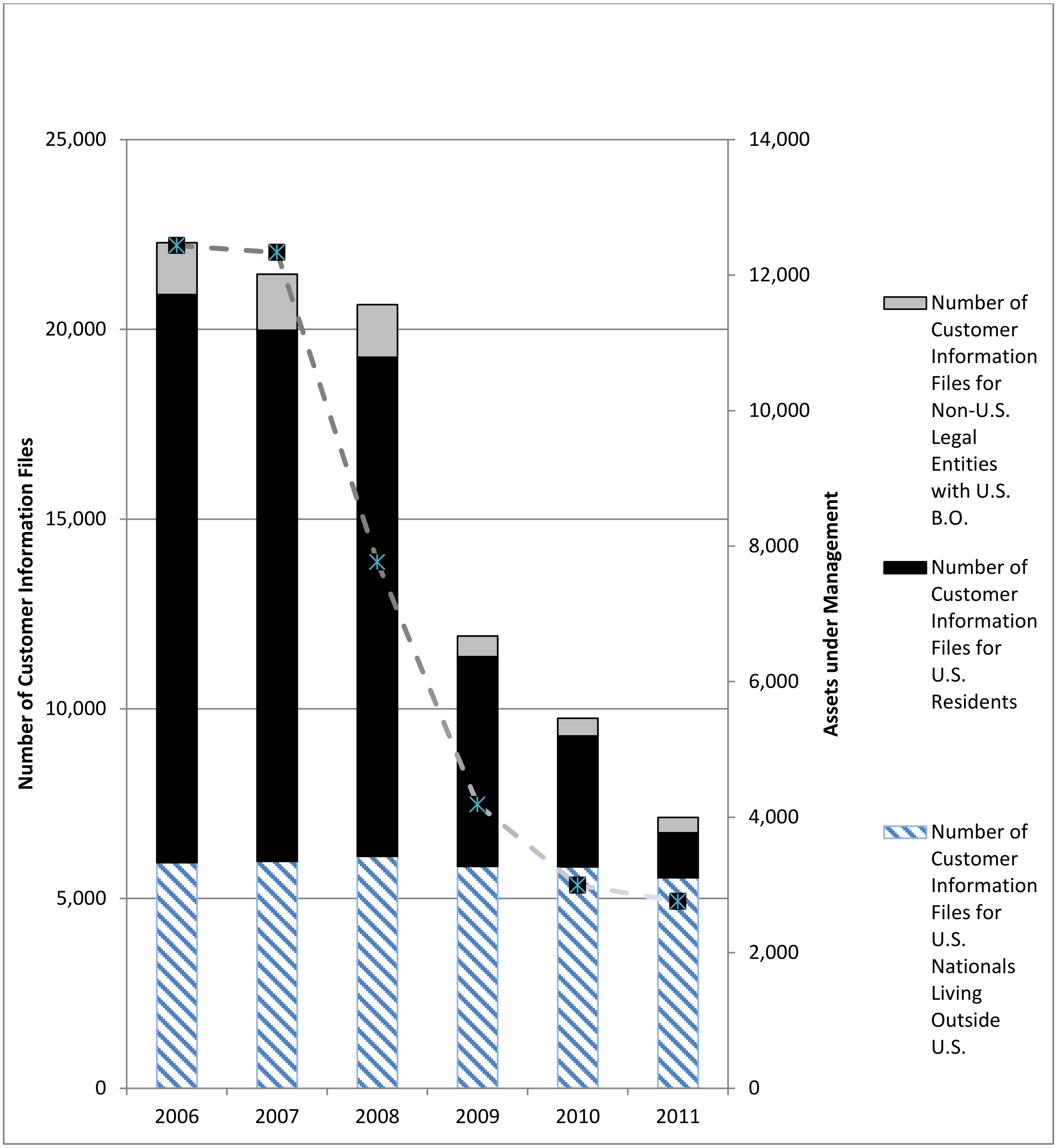
[498] Id.

[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.").

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 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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[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.
[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 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

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 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-

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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.
513 4/16/2007 Email from Anthony DeChellis to Richard Isarin, "CSPA W9 project, new estimated AuM-transfer and TOl's," CS-SEN-00075697, at 698.
514 Id. at 697.

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 the W-9 project, even though Clariden Leu had been made a direct subsidiary of the bank in 2007, the year after Project W9 began.

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

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[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.
[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.

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 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

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[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.
[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).

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]

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,

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[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).
[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.

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] 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.

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[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.
[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.").

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 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 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

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[552] Credit Suisse briefing to the Subcommittee (1/16/2014) (Andrew Hruska).
[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).
[557] 7/12/2013 letter from Credit Suisse legal counsel to the Subcommittee, PSI-CreditSuisse-29-000001.

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 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

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[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 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.

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 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.

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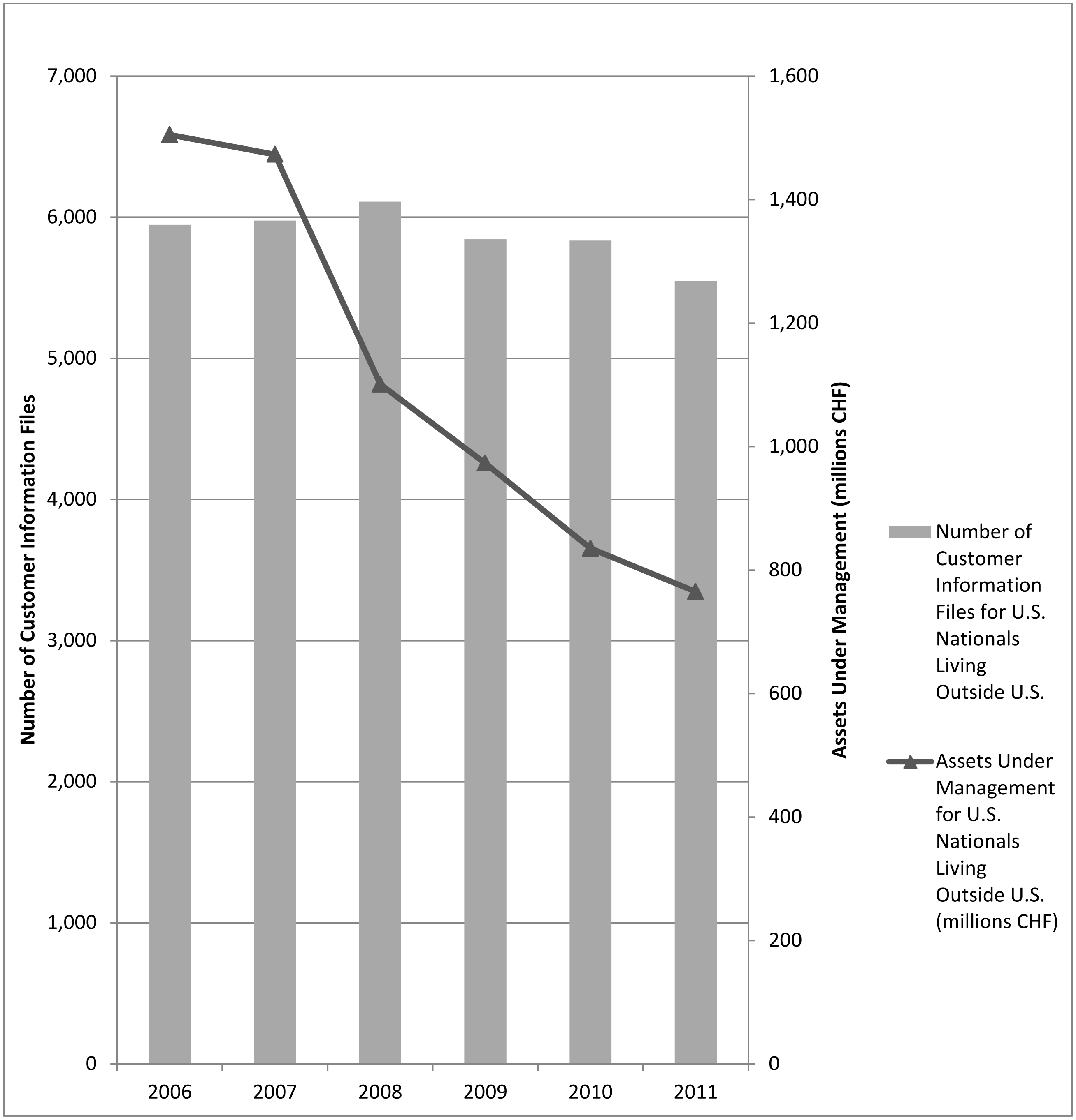
566 Subcommittee briefing by Credit Suisse (11/7/2013) (Tina Freund).
567 Id.; see also 3/2011 Credit Suisse presentation by Andrea Kuttner, "FATCA International Transparency Phase Overview," CS-SEN-00408837, at 854.
568 Subcommittee interview of Agnes Reicke, Credit Suisse (11/7/2013).
569 Subcommittee 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.

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.

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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).

cross border business with an eye towards compliance; it was structured instead by business considerations, for example, by locating the Zurich 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 that 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 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

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[576] Credit Suisse Policy P-04890, CS-SEN-00421553, at 555.
[577] Id.
[578] Id.
[579] Id.
[580] Subcommittee interview of Philip Vasan, Credit Suisse (10/28/2013).

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, 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

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[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.'").
[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).

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] 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

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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&blobheadername1=Content-Disposition&blobheadername2=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.
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.

> 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 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

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[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.
[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.

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 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

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[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.
[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.

> 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]

> "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]

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

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[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.

[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/S7l9Wl.

[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.

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 "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]

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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).
[622] Id.
[623] Subcommittee interview of Hans-Ulrich Meister, Credit Suisse (9/24/2013).

(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.

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,

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[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).

[629] "Annual General Meeting of Credit Suisse Group AG, Zurich, April 27, 2012," CS-SEN-00455272, at 275.

[630] Id.

[631] Id. at 280.

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]

(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

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[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).

[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).

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 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

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[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).
[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.").

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 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

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[646] Credit Suisse "AuM/NNA qualification assessment template," CS-SEN-00424609.
[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.

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 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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[655] Id.
[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 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

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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).).

> 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 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]

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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/

[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.

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 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

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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).

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.

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 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

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683 3/29/2012 email from Anthony DeChellis to Adrian Studer, "Project [Client 5]," CS-SEN-00443178 [emphasis in original].
684 Id.
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.

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 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

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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.
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).

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 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.

[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 investment advice originated. The result left the Americas region with 1.6

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[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).

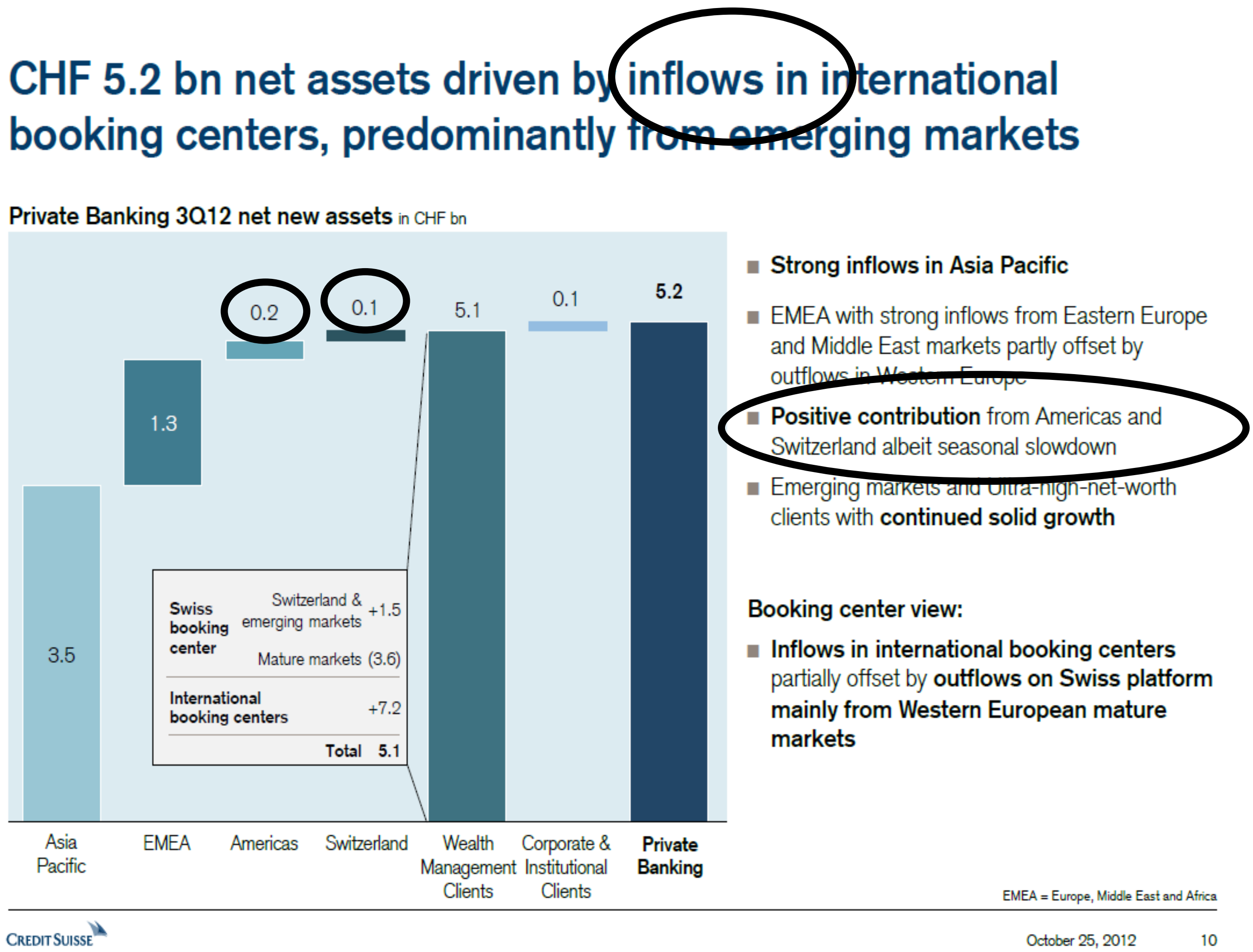
[705] Q2 NNA consists of 1.7 billion CHF from Client 5's daughter, and 500 million CHF from Client 5. January 2013 memorandum, "PB Americas/Reclassification of USD 1 bn in 4Q12," CS-SEN-00421550, first page. Subcommittee interview of Thomas Sipp, Credit Suisse (11/25/2013) (stating he directed Carlos 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.

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.



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.

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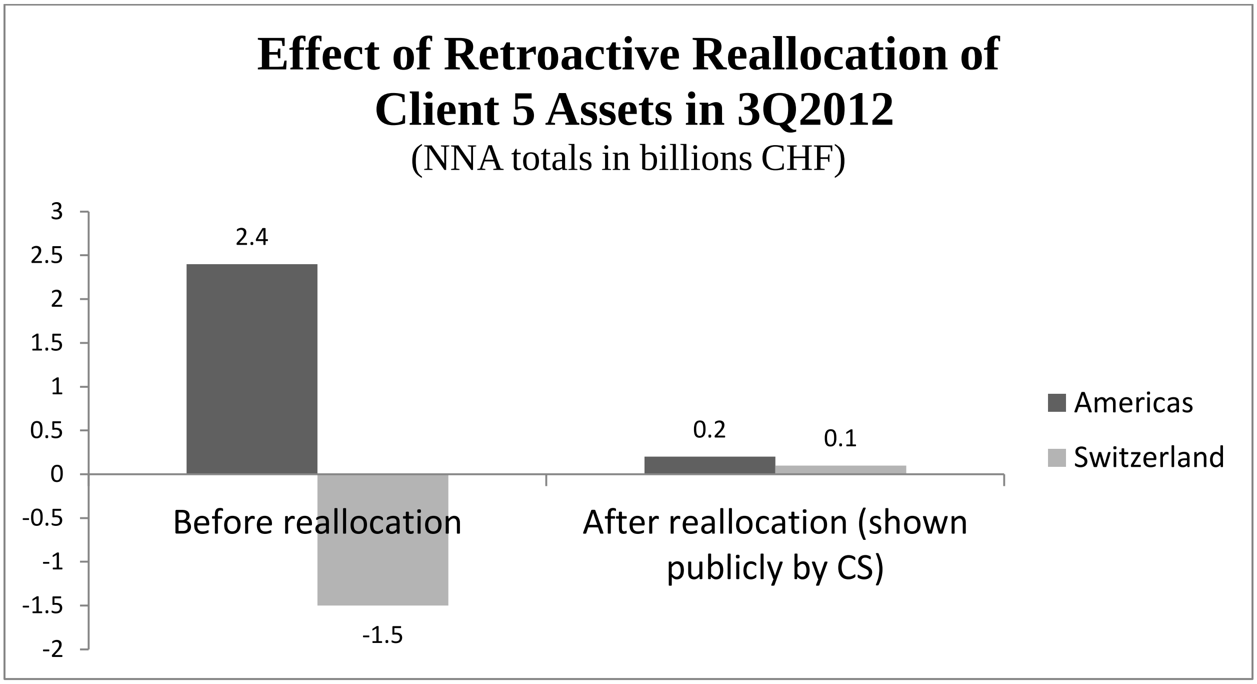
[709] 10/5/2012 email from Adrian Studer to Roland Spah and Minesh Parekh, "Q3 [Client 5] Adjustment," CS-SEN-00443242, at 244.
[710] Id.

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 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

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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).

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. 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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[714] See Subcommittee interview of Brady Dougan, Credit Suisse (12/20/2013).
[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 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]

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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.

[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).

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 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

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[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.
[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.

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.

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.

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[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).

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 <u>In Re Grand Jury</u>

[739] U.S. Attorneys' Manual, Title 9, Criminal Resource Manual, Subpoenas, hhttp://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/cr00279.htm.

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]

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]

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[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 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.

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.' …
>
> 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

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[746] Id.
[747] Id.
[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.

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-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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[753] Fed.R.Civ.P. 45(g).
[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,

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 obtaining the conviction of a corporation."[762] The Manual further notes that NPAs and DPAs can be particularly appropriate

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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.

[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.

[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.

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 efforts to identify and prosecute U.S. tax evaders and the banks that aided and abetted them.[766]

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[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).
[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.

(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]

(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]

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[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.
[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.

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 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

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[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);

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.

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 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.

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[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.

[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) .

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 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 United States has not

[787] Id. at Article 3.3(b).
[788] Id.
[789] Id. at Article 8(a).

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

[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.

> 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 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

[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.
[793] Id. at 15.

> 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?
>
> 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 four Credit Suisse bankers;[797] the July 2011 superseding

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[794] Id. at 21.
[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.

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. 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

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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.

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 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]

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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).
[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/.

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 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.

[811] Subcommittee briefing by Credit Suisse (1/16/2014)(Agnes Reicke).

[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.").

(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]

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.

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[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.
[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 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.

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

[817] Subcommittee briefing by Credit Suisse (2/7/2014).

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. 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.

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

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[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.

[819] Undated, unaddressed, unattributed communication from DOJ to Swiss Government officials.

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 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

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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.

[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.").

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 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]

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[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.

[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.

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 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:

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[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 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.

- 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 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

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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.

release of the 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 accounts used by Swiss banks.[848] The John Doe summons did not seek any records outside of the United States.

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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.

[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

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 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.

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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/Wegelin SummonsPR/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.

[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.

(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 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

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[855] For more information on these agreements, see Chapter II.

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 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

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[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.

[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.

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 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]

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

[861] Id.
[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.

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 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

[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).
[875] Id.

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, 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

[876] Id.

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 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

[877] For more information, see Chapter II.
[878] 26 C.F.R. § 1.6038D-2T (2011).
[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).

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 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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[883] 78 Fed. Reg. 5908 (Jan. 28, 2013).
[884] 78 Fed. Reg. 5947, 5965 (Jan. 28, 2013).
[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, 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

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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.

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 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

[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]

> 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 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.

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[896] Id.