United States Senate
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Committee on Homeland Security and Governmental Affairs

Carl Levin, Chairman
John McCain, Ranking Minority Member

E X H I B I T S

Part 2 of 2 (Exhibits 31a-43)

Hearing On

Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts

February 26, 2014

199 Russell Senate Office Building, Washington, D.C. 20510

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EXHIBIT LIST

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February 26, 2014

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

U.S. Audit Disclosure:

2. Credit Suisse email, dated March 2010, re: *Account Instructions (It will certainly be a pleasure to welcome you as a client, should you opt to knock on our door again in future times.*). [CS-SEN-00025083-084]

3. Credit Suisse email, dated October 2008, re: *Numbered Accounts (He needs not to disclose anything to anyone. He has the choice of disclosing it to the US authorities or not. It is his choice! Whatever he does is of no concern to us.).* [CS-SEN-00345395-396]

Documents Related to Travel:

4. a. Credit Suisse *Business Trips 2006* (*Swiss Ball*). [CS-SEN-00080267-269]
   b. Credit Suisse *Business Trips SALN and SALN1 2007 (Key Client Visits).* [CS-SEN-00080270]
   c. Credit Suisse *Business Trips SALN and SALN1 2008 (Key Client Visits).* [CS-SEN-00080271-273]

5. a. Credit Suisse *Travel Report Summary*, February 2006 Destination: New York (*Clients covered - 20 - CHF 80,000,000 ... Invitation to the Swiss Ball in New York, regular RO New York visit, Key Clients visited, successful meetings overall, Retention, new Referrals).* [CS-SEN-00081860]
   b. Credit Suisse *Travel Report Summary*, May 2006, Destination: New York, Philadelphia, Chicago (*Clients covered - 42 - CHF 80'000'000 ... Will have follow-up business, in pipeline NNA CHF 3'000'000).* [CS-SEN-00081868-869]

c. Credit Suisse *Travel Report Summary*, May 2006, Destination: Miami, New York, Houston *(Clients covered - 40 - CHF 160'000'000).* [CS-SEN-00081872-873]
d. Credit Suisse *Travel Report Summary*, July 2006, Destination: Miami, New York, Toronto, Montreal *(Clients covered - 34 - CHF 54'000'000 ... Client sends me a list of shares that we need to give our recommendations!*). [CS-SEN-00081874-875]
e. Credit Suisse *Travel Report Summary*, February 2006, Destination: Houston, Los Angeles, Reno *(Clients covered - 28 - CHF 65,000,000 ... Knows some very wealthy people for future referrals.).* [CS-SEN-00081879-880]
f. Credit Suisse *Travel Report Summary*, February 2007, Destination: New York *(Invitation to the Swiss Ball in New York, regular RO* [Rep Office] *New York visit ... new Referrals).* [CS-SEN-00081883]
g. Credit Suisse *Travel Report Summary*, March 2008, Destination: San Francisco, Los Angeles, New York, Toronto, Montreal *(Clients covered - 49 - CHF 230,000,000 ...* [Credit Suisse redacted] *for dinner in Beverly Hills ...).* [CS-SEN-00081901-905]

Document Related to Credit Suisse New York Representative Office:

6. Credit Suisse *Important phone numbers (Doerig Josef, Doerig Partner, external Trust expert; Singenberger Beda, Sinco AG, external Trust expert)* [CS-SEN-00011615-616]

7. Credit Suisse *Weekly Report - Rep. Office New York (Client Activities - Assisting client of Nicole (wire instructions to send additional funds) ... Contact with prospective client from Chicago (US$ 3 - 5 Mio).* [CS-SEN-00096325-328]

8. Credit Suisse email, dated July 2008, *(We do not have any educational or promotional material we could provide to a US person regarding accounts in Switzerland. We are not allowed to actively solicit or promote offshore accounts from or 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*.) [CS-SEN-00095655-656]

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

Documents Related to SALN:

10. a. *SALN: Organizational Chart as of 01.04.2008,* with Swiss codes [CS-SEN-00080287]
    b. *SALN: Organizational Chart as of 01.04.2008* [CS-SEN-00011631-632]

11. a. Credit Suisse PB Americas – North America Offshore, Latin America and Bahamas *CSG Internal Audit,* August 2006 draft *(Employees of SWLN making visits or holding meetings in the United States should not provide investment advice or solicit business, given existing regulations ... the level of travel activities (in 2005 approximately 500 clients were met in the United States and Canada) may entail regulatory risk.* [CS-SEN-00408714-730]
    b. Credit Suisse PB Americas – North America Offshore, Latin America and Bahamas *CSG Internal Audit,* dated August 31, 2006 (final) (*The overall control environment was generally founded to be operating adequately.)* [CS-SEN-00418830-839]

12. Credit Suisse PB Americas – North America International *CSG Internal Audit*, dated December 9, 2009 *(Significant Reputational Risk Issues: None ... The overall control environment was generally found to be operating adequately and we noted no deficiencies with regard to Policy P-00025.*

Documents Related to Project W9:

13. Credit Suisse, *Project W9 Kick-Off Meeting*, dated September 29, 2006 (Chart at CS-SEN-00426144 - *Swiss Booked W9 Clients: Affected Units, 998 CIFs.).* [CS-SEN-00426138-158]

14. Credit Suisse, *Project W9 6th Core Team Meeting*, dated January 26, 2007. [CS-SEN-00173686-704]

Documents Related to Credit Suisse Accounts Numbers/Exit Projects:

15. Credit Suisse email, dated March 2007, re: *Risk Country: Yearly Review 2006 (US – Market purity is still insufficient with regard to the business risk involved.*). [CS-SEN-00409535-555]

16. Credit Suisse *US Project - STC #1,* dated August 19, 2008 (Chart at CS-SEN-00426306 - *US Intl. business activities spread-out across whole organization).* [CS-SEN-00426290-307]

17. Credit Suisse, Project Tom - STC #5, dated December 19, 2008 (Chart at 00455231 - *Quick Win Non W-9 (transfer SIOA 5 to SALN)*. [CS-SEN-00455224-234]

18. Credit Suisse, Update on Development of AuM and Accounts of U.S. Clients to the Senate Permanent Subcommittee on Investigations, dated April 20, 2012. [CS-SEN-00189151-157]

19. Letter from Credit Suisse legal counsel to the Permanent Subcommittee on Investigations, dated August 13, 2013 re: Credit Suisse's exit projects. [PSI-CreditSuisse-37-000001-051]

20. Letter from Credit Suisse legal counsel to the Permanent Subcommittee on Investigations, dated December 20, 2013 re: *questions regarding Credit Suisse's internal investigation covering its U.S. cross-border business (In early 2012, the Bank formed a special task force to follow up on potential breaches of its internal policies ... [and] imposed disciplinary action against a total of 10 Swiss based employees (6 in 2012 and 4 in 2013) ... None of the employees were terminated).* [PSI-CreditSuisse-54-000001-048]

Document Related to Net New Assets (NNA):

21. Credit Suisse email, dated February 2012, re: *Important - NNA, PBMC (...we will again discuss our NNA results which have been very disappointing up until now. As our capability to attract clients and new assets is of utmost importance - also externally - we need to take all possible measures in order to change this into a positive story within the next weeks*.). [CS-SEN-00463984-984]

22. Credit Suisse email, dated March 2012, re: *Major flows last week (...none of these assets are currently categorized as AUM and I would caution against it before speaking with me as I am very knowledgeable about the plans for the assets.).* [CS-SEN-00441333-335]

23. Credit Suisse email, dated March 2012, re: *Project* [Redacted] (*There is no agreement at this time…There have been suggestions that we count as much as 5B CHF…this is not a number I want to risk having to reverse, so let's be sure we are VERY confident in what we count.).* [CS-SEN-00443178-181]

24. Credit Suisse email, dated April 2012, re: *PB NNA (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.).* [CS-SEN-00424575-577]

25. Credit Suisse email, dated October 2012, re: *NNA Q3 2012 (...please find below ... NNA for Q3 2012, as reported internally for PB Americas (CHF 2.4bn) vs. the externally released figure (CHF 0.2bn)).* [CS-SEN-00443246]

26. Credit Suisse email, dated December 2012, re: NNA 4Q12 Forecast *(Based on reported November NNA and the result of the first December week, our ambition to deliver WMC* [Wealth Management Clients] *NNA of around CHF 6-7bn in 4Q12 is at risk. With 3 weeks to go until the year comes to a close and QTD* [Quarter to Date] *actuals of CHF 2.5 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.).* [CS-SEN-0000560923-924]

27. Credit Suisse email, dated December 2012, re: *Confidential: Global Client Segments metrics, (Zurich is looking for more potential NNA positions to support the global 2012 year-end disclosure. As a consequence they are looking to transfer more of [Client 5] balance into AUM*.). [CS-SEN-00425106-107]

28. Credit Suisse email, dated January 2013, re: *Americas* [Redacted] *(Currently - for Q4 reporting - WMC* [Wealth Management Clients] *runs for NNA substantially below expectations. ... [I]n order to support the PB division, a further* [Redacted/Client 5] *portion of 0.9bn CHF - fully reported internally and externally in the Americas region - would be a great favour for our division. Hans-Ueli* [Hans-Ulrich Meister] *would be extremely happy if you could support this.).* [CS-SEN-00425140-142]

29. Credit Suisse email, dated January 2013, re: *WG:NNA (I am convinced that with this enhanced story we will get approval soon from Carlos. ... Given the rather weak granularity, we need to create a more powerful story in the sense of making more around the existing weak figures in the sense of* [redacted] *consists of xx accounts, all held in the xx branch, covered by 2 senior RMs xx and yy which do high interaction level.....blabla. Might not be relevant but sounds rather good.).* [CS-SEN-00442608-613]

30. Credit Suisse email, dated June 2013, re: *Feedback from new RMs (We need some fresh blood and some nna.)*. [CS-SEN-00424732]

Documents Related to the Department of Justice and the Swiss:

31. a. *Tax Convention with Swiss Confederation Message from the President of the United States Transmitting Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, Signed at Washington, October 2, 1996, together with Protocol to the Convention.*
    b. *Protocol Amending Tax Convention with Swiss Confederation*, January 2011.
    c. Translation of Swiss Parliamentary Resolution, dated March 16, 2012, *Federal Resolution Concerning a Supplement to the Double Taxation Treaty between Switzerland and the Untied States of America.*

32. a./b. Communications from the Department of Justice to Swiss representatives, unsigned and undated, outlining steps to be taken by the Department of Justice and The Swiss Confederation regarding Agreement between the Internal Revenue Service and The Swiss Confederation.

33. Department of Justice letter, dated December 9, 2011, *...in order to determine whether it will be fruitful for the United States Department of Justice to discuss with your institution the possibility of an agreement with us that could avoid indictment, the Department of Justice must have complete and accurate information and must have the information quickly.*

34. Translation of newspaper article, *Tax Dispute with the US is Escalating,* SonntagsZeitung, September 4, 2011.

35. a. Press Release of the Swiss Federal Supreme Court, dated July 5, 3013, *Exchange of information in Tax Matters with the United States – The Federal Supreme Court rejects a first appeal*.
    b. Press Release of the Swiss Federal Administrative Court, dated January 8, 2014, *Julius Baer: IRS request for administrative assistance not sufficient for the disclosure of client data.*

36. a. Translation of the Swiss Federal Parliament *Lex USA, Measures to facilitate the resolution of the tax dispute between the Swiss banks and the United States*, dated May 29, 2013.
    b. Summarized Translation of the Swiss Federal Parliament Dispatch explaining *Lex USA*, dated May 29, 2013.

37. a. *Joint Statement between the U.S. Department of Justice and the Swiss Federal Department of Finance*, dated August 29, 2013.
    b. U.S. Department of Justice *Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks*, dated August 29, 2013.

38. *Deferred Prosecution Agreement, U.S. v. UBS AG*, undated.

39. a. Settlement of the John Doe Summons, agreement between the U.S. and the Swiss Confederation, August 19, 2009.
    b. Settlement of the John Doe Summons, agreement between the U.S., the U.S. Internal Revenue Service and UBS AG, dated August 19, 2009.

40. U.S. v. Walder et al., Case No. 1:11-CR-95 (E.D. Virginia) Superceding Indictment (7/21/2011).

Additional Documents:

41. Credit Suisse email, dated January 2013, (*There was some legacy Clariden issues (CB) brewing that we need to brief you on.)*. [CS-SEN-00426110-111]

42. a. *Swiss seek U.S. tax deal by year-end, but not at any price*, Reuters, August 3, 2012.
    b. *Switzerland to Allow Its Banks to Disclose Hidden Client Accounts*, The New York Times, May 29, 2013.

43. a. *Indictment,* US v. Wegelin & Co., et al., February 1, 2012.
    b. *Plea*, U.S. v. Wegelin & Co., January 3, 2013.

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TAX CONVENTION WITH SWISS CONFEDERATION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON, OCTOBER 2, 1996, TOGETHER WITH A PROTOCOL TO THE CONVENTION

GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 1998

TABLE OF ARTICLES

LETTER OF SUBMITTAL

DEPARTMENT OF *STATE,*
Washington, May 29, 1997.

The PRESIDENT,
The White House.

The PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Washington on October 2, 1996, ("the Convention") together with a Protocol. Also enclosed for the information of the Senate is an exchange of notes with an attached Memorandum of Understanding, which provides clarification with respect to the application of the Convention in specified cases.

This Convention will replace the existing Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income signed at Washington on May 24, 1951. The new Convention maintains many provisions of the existing convention, but it also provides certain additional benefits and updates the text to reflect current tax treaty policies.

This Convention is similar to the tax treaties between the United States and other OECD nations. It provides for maximum rates of tax to be applied to various types of income, protection from double taxation of income, exchange of information, and rules to limit the benefits of the Convention to persons that are not engaged in treaty shopping.

Like other U.S. tax conventions, this Convention provides rules specifying when income that arises in one of the countries and is attributable to residents of the other country may be taxed by the country in which the income arises (the "source" country). In most respects, the rates under the new Convention are the same as those in many recent U.S. tax treaties with OECD countries.

The maximum rates of tax that may be imposed on dividend and royalty income are generally the same as in the current U.S. - Switzerland treaty. Pursuant to Article 10, dividends from direct investments are subject to tax by the source country at a rate of five percent. The threshold criterion for direct investment has been reduced from 95 percent ownership of the equity of a firm to ten percent consistent with other modern U.S. treaties, in order to facilitate direct investment. Other dividends are generally taxable at 15 percent. Under Article 12, royalties derived and beneficially owned by a resident of a Contracting State are generally taxable only in that State.

The current convention, at Article 11, provides for a five percent rate of tax by the source country on most interest payments. Interest is exempt from taxation by the country in which the interest arises under the new Convention. The restrictions on the taxation of royalty and interest income do not apply, however, if the beneficial owner of the income is a resident of one Contracting State who carries on business in the other Contracting State in which the income arises and the income is attributable to a permanent establishment in that State. In that situation, the income is to be considered either business profit or income from independent personal services.

The maximum rates of withholding tax described in the preceding paragraphs are subject to the standard anti- abuse rules for certain classes of investment income found in other U.S. tax treaties and agreements.

The taxation of capital gains, described in Article 13 of the Convention, generally follows the rule of recent U.S. tax treaties as well as the OECD model. Gains on real property are taxable in the country in which the property is located, and gains from the sale of personal property are taxed only in the State of residence of the seller, unless attributable to a permanent establishment or fixed base in the other State. The Convention, at Sections 6 and 7 of Article 13, also contains rules, found in a few other U.S. tax treaties, that allow for adjustments to the timing of the taxation of certain classes of capital gains. These rules serve to minimize possible double taxation that could otherwise result.

Article 7 of the new Convention generally follows the standard rules for taxation by one country of the business profits of a resident of the other. The non-residence country's right to tax such profits is generally limited to cases in which the profits are attributable to a permanent establishment located in that country.

As do all recent U.S. treaties, this Convention preserves the right of the United States to impose its branch profits tax in addition to the basic corporate tax on a branch's business (Article 7). This tax, which was introduced in 1986, is not imposed under the present treaty. The new Convention, at Article 28, also accommodates a provision of the 1986 Tax Reform Act that attributes to a permanent establishment income that is earned during the life of the permanent establishment but is deferred and not received until after the permanent establishment no longer exists.

Consistent with U.S. treaty policy, Article 8 of the new Convention permits only the country of residence to tax profits from international carriage by ships or airplanes. This reciprocal exemption also extends to income from the rental of ships and aircraft if the rental income is incidental to income from the operation of ships or aircraft in international traffic. Other income from the rental of ships or aircraft and income from the use or rental of containers, however, is treated as business profits.

The taxation of income from the performance of personal services under Articles 14 through 17 of the new Convention is essentially the same as that under other recent U.S. treaties with OECD countries. Unlike many U.S. treaties, however, the new Convention, at Article 28, provides for the deductibility of cross-border contributions by temporary residents of one State to pension plans registered in the other State under limited circumstances.

Article 22 of the new Convention contains significant anti-treaty-shopping rules making its benefits unavailable to persons engaged in treaty shopping. The current convention contains no such anti-treaty-shopping rules.

The proposed Convention also contains rules necessary for administering the Convention, including rules for the resolution of disputes under the Convention (Article 25) and for exchange of information (Article 26). The proposed Convention significantly expands the scope of the exchange of information between the United States and Switzerland. For example, as elaborated in the Protocol and Memorandum of Understanding, U.S. tax authorities will be given access to Swiss bank information in cases of tax fraud. The Protocol contains a broad definition of tax fraud that should ensure that more information will be made available to U.S. authorities. Furthermore, the new Convention provides for information to be provided in a form acceptable for use in court proceedings (Article 26, Section 1).

The Convention would permit the General Accounting Office and the tax-writing committees of Congress to obtain access to certain tax information exchanged under the Convention for use in their oversight of the administration of U.S. tax laws and treaties.

This Convention is subject to ratification. In accordance with Article 29, it will enter into force upon the exchange of instruments of ratification and will have effect for payments made or credited on or after the first day of the second month following entry into force with respect to taxes withheld by the source country; with respect to other taxes, the Convention will take effect for taxable periods beginning on or after the first day of January following the date on which the Convention enters into force. When the present convention affords a more favorable result for a taxpayer than the proposed Convention, the taxpayer may elect to continue to apply the provisions of the present convention, in its entirety, for one additional year.

This Convention will remain in force indefinitely unless terminated by one of the Contracting States, pursuant to Article 30. Either State may terminate the Convention by giving at least six months of prior notice through diplomatic channels.

A Protocol and an exchange of notes with an attached Memorandum of Understanding accompany the Convention and provide clarification with respect to the application of the Convention in specified cases. The Protocol, which is an integral part of the Convention, elaborates on the meaning of certain terms used in the Convention. The exchange of notes, with its attached Memorandum of Understanding, provides clarification and is submitted for the information of the Senate. It includes examples of the application of various provisions of the Convention, particularly those concerning the limitation of benefits.

A technical memorandum explaining in detail the provisions of the Convention will be prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Convention It has the full approval of both Departments.

Respectfully submitted,

(s) LYNN E. DAVIS.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 25, 1997.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Washington, October 2, 1996, together with a Protocol to the Convention. An enclosed exchange of notes with an attached Memorandum of Understanding, transmitted for the information of the Senate, provides clarification with respect to the application of the Convention in specified cases. Also transmitted is the report of the Department of State concerning the Convention.

This Convention, which is similar to tax treaties between the United States and other Organization for Economic Cooperation and Development (OECD) nations, provides maximum rates of tax to be applied to various types of income and protection from double taxation of income. The Convention also provides for exchange of information and sets forth rules to limit the benefits of the Convention so that they are available only to residents that are not engaged in treaty shopping.

I recommend that the Senate give early and favorable consideration to this Convention and give its advice and consent to ratification.

(s) WILLIAM J. CLINTON.

NOTES OF EXCHANGE

DEPARTMENT OF STATE
WASHINGTON
October 2, 1996

Excellency:

I have the honor to refer to the Convention signed today between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income and to the Protocol also signed today which forms an integral part of the Convention and to propose on behalf of the Government of the United States the following:

In the course of the negotiations leading to the conclusion of the Convention and the Protocol signed today, the negotiators developed and agreed upon the Memorandum of Understanding that is attached to this note. The Memorandum of Understanding is a statement of intent setting forth a common understanding and interpretation of certain provisions of the Convention reached by the delegations of the Swiss Confederation and the United States acting on behalf of their respective governments. These understandings and interpretations are intended to give guidance both to the taxpayers and the tax authorities of our two countries in interpreting these provisions.

If the understandings and interpretations in the Memorandum of Understanding are acceptable, this note and your note reflecting such acceptance will memorialize the understandings and interpretations that the parties have reached.

Accept, Excellency, renewed assurances of my highest consideration.

For the Secretary of State:
(s) Alan Larson

Attachment:
As stated.

The Ambassador of Switzerland

Washington, October 2, 1996

Dear Mr. Secretary,

I have the honor to confirm the receipt of your Note of today's date which reads as follows:

"Excellency:

I have the honor to refer to the Convention signed today between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income and to the Protocol also signed today which forms an integral part of the Convention and to propose on behalf of the Government of the United States the following:

In the course of the negotiations leading to the conclusion of the Convention and the Protocol signed today, the negotiators developed and agreed upon the Memorandum of Understanding that is attached to this note. The Memorandum of Understanding is a statement of intent setting forth a common understanding and interpretation of certain provisions of the Convention reached by the delegations of the Swiss Confederation and the United States acting on behalf of their respective governments. These understandings and interpretations are intended to give guidance both to the taxpayers and the tax authorities of our two countries in interpreting these provisions.

If the understandings and interpretations in the Memorandum of Understanding are acceptable, this note and your note reflecting such acceptance will memorialize the understandings and interpretations that the parties have reached.

Accept, Excellency, renewed assurances of my highest consideration.

For the Secretary of State:"

Attachment:

The Honorable
Warren Christopher
Secretary of State
United States Department of State
Washington, D.C.

I have the honor to inform you that the understandings and interpretations in the Memorandum of Understanding are acceptable.

Accept, Mr. Secretary, renewed assurances of my highest consideration.

(s) Carlo Jagmetti

MEMORANDUM OF UNDERSTANDING

1. In reference to subparagraph 1 b) of Article 4 (Resident)

It is understood that the term "government" includes any body, however designated, including agencies, bureaus, funds, or organizations, that constitute a governing authority of the Contracting State, Cantons, States, Municipalities, or political subdivisions. The net earnings of

the governing authority must be credited to its own account or to other accounts of the Contracting State, Canton, State, Municipality, or political subdivision with no portion inuring to the benefit of any private person.

The term "government" also includes a corporation (other than a corporation engaged in commercial activities), that is wholly owned, directly or indirectly, by a Contracting State, Canton, State, Municipality or a political subdivision, provided (A) it is organized under the laws of the Contracting State, Canton, State, Municipality, or political subdivision, (B) its earnings are credited to its own account or to other accounts of the Contracting State, Canton, State, Municipality or political subdivision with no portion of its income inuring to the benefit of any private person and (C) its assets vest in the Contracting State, Canton, State, Municipality, or political subdivision upon dissolution.

The term "government" also includes a pension trust of a Contracting State, Canton, State, Municipality, or a political subdivision that is established and operated exclusively to provide pension benefits to employees or former employees of the Contracting State, Canton, State, Municipality, or a political subdivision provided that the pension trust does not engage in commercial activities.

2. In reference to Article 7 (Business Profits)

It is understood that, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits attributable to such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined on the basis only of that part of the contract that is effectively carried out by the permanent establishment. The profits related to that part of the contract that is carried out by the head office of the enterprise shall not be taxable in the State in which the permanent establishment is situated.

3. In reference to paragraph 2 of Article 15 (Dependent Personal Services) and to Article 17 (Artistes and Sportsmen)

It is understood that nothing shall preclude a Contracting State from withholding tax from such payments according to its domestic laws. However, if according to the provisions of these Articles, such remuneration or income may only be taxed in the other Contracting State, the first-mentioned Contracting State shall make a refund of the tax so withheld upon a duly filed claim. Such claim must be filed with the tax authorities that have collected the withholding tax within five years after the close of the calendar year in which the tax was withheld.

4. In reference to subparagraph 1 c) of Article 22 (Limitation on Benefits)

This paragraph provides a test for eligibility for benefits for residents of one of the Contracting States that do not qualify for benefits under the other tests of paragraph 1 (because, for example, a company is not publicly traded, and cannot pass the "predominant interest" test). This is the "active trade or business" test. In general, it is expected that if a person qualifies for benefits under one of the other tests of the paragraph, no inquiry will be made into the person's

qualification for benefits under subparagraph c). Upon satisfaction of any of the other tests of paragraph 1, all income derived by the beneficial owner from the other Contracting State is entitled to treaty benefits. Under subparagraph c), however, the test is applied separately for each item of income. Under this provision, therefore, a person may receive benefits with respect to one item of income and not with respect to another.

Under the active trade or business test, a resident of a Contracting State deriving an item of income from the other Contracting State is entitled to benefits with respect to that income if that person (or a person related to that person) is engaged in an active trade or business, as defined in paragraph 7 of the Protocol, in the first-mentioned State and the income in question is derived from the other State in connection with, or is incidental to, that trade or business.

The active conduct of a trade or business need not involve manufacturing or sales activities but may instead involve services. However, income that is derived in connection with, or is incidental to, the business of making, managing or simply holding investments for the resident's own account generally will not qualify for benefits under this provision, whether or not those activities would otherwise constitute an active trade or business. Therefore, a company the business of which consists solely of managing investments (including group financing) will not be considered to be engaged in an active trade or business. However, if such company also engages in activities such as active licensing or leasing that would otherwise qualify under subparagraph 1 c), it will be entitled to the benefits to the extent provided therein. The limitation relating to investments does not apply to banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer in the ordinary course of business. Of course, this rule does not affect the status of investment advisors or others who are actively conducting the business of managing investments that are beneficially owned by others.

Income is considered derived "in connection" with an active trade or business in a Contracting State if the income-generating activity in the other Contracting State is a line of business which forms a part of, or is complementary to, the trade or business conducted in the first-mentioned State. The line of business in the first-mentioned State may be "upstream" to that going on in the other State (e.g., providing inputs to a manufacturing process that occurs in that other State), "downstream" (e.g., selling the output of the manufacturer resident in the other State) or "parallel" (e.g., selling in one Contracting State the same sorts of products that are being sold by the trade or business carried on in the other Contracting State).

Income derived from a Contracting State would be considered "incidental" to the trade or business carried on in the other Contracting State if the income is not produced by a line of business which forms a part of, or is complementary to, the trade or business conducted in that other Contracting State by the recipient of the income, but the production of such income facilitates the conduct of the trade or business in that other Contracting State. An example of such "incidental" income is interest income earned from the short-term investment of working capital of a resident of a Contracting State in securities issued by persons in the other Contracting State.

An item of income will be considered to be earned in connection with or to be incidental to an active trade or business in a Contracting State if the resident claiming the benefits is itself engaged in business, or it is deemed to be so engaged through the activities of related persons that are residents of one of the Contracting States. Thus, for example, a resident in a Contracting State could claim benefits with respect to an item of income earned by an operating subsidiary in the other Contracting State but derived by the resident indirectly through a wholly-owned holding company resident in the other Contracting State and interposed between it and the operating subsidiary.

Income that is derived from a related party in connection with an active trade or business in a Contracting State must pass an additional test to qualify for benefits granted by the other Contracting State. The trade or business in the first-mentioned State must be substantial in relation to the activity carried on by the related party in the other Contracting State that gave rise to the income in respect of which treaty benefits are being claimed. The substantiality requirement is intended to prevent a narrow case of treaty-shopping abuses in which a company attempts to qualify for benefits by engaging in de minimis connected business activities that have little economic cost or effect with respect to the company's business as a whole.

The application of the substantiality test only to income from related parties focuses only on potential abuse cases, and does not hamper certain other kinds of non-abusive activities, even though the income recipient resident in a Contracting State may be very small in relation to the entity generating the income in the other Contracting State. For example, if a small U.S. research firm develops a process that it licenses to a very large, unrelated, Swiss pharmaceutical manufacturer, the size of the U.S. research firm would not have to be tested against the size of the Swiss manufacturer. Similarly, a small U.S. bank that makes a loan to a very large unrelated Swiss business would not have to pass a substantiality test to receive treaty benefits under subparagraph c).

The following examples are intended to help clarify how the rules of subparagraph c) are intended to operate:

Example 1

Facts: P, a holding corporation resident in Switzerland, is owned by three persons that are residents of third countries. P has a participation of 50 percent in the Swiss resident P-l, which performs all of the principal economic functions related to the manufacture and sale of widgets and nidgets in Switzerland. P, which does not conduct any business activities, also owns all of the stock and debt issued by R-1, a United States corporation. R-l performs all of the principal economic functions in the manufacture and sale of widgets in the United States. R-1 purchases nidgets from P-1. R-1 performs all of the economic functions for the sale and distribution of nidgets in the United States and neighboring countries. P-1's activities are substantial in comparison to the activities of R-1.

Analysis: Treaty benefits may be obtained by P on the payment of dividends or interest from R-1. The income received by P from R-1 is derived in connection with P's active and substantial business (through P-1) in Switzerland. For this purpose, 50 percent of P-1's activities may be attributed to P since P owns a 50 percent participation in P-1. The same result would occur if R, a wholly owned United States subsidiary of P, owned all of the stock and debt of R-1.

Example II

Facts: T, a corporation resident in the United States, is owned by U (10 percent), a U.S. resident, and V, W, and X (90 percent), residents of other countries. T owns the rights to various international franchises that it has acquired, and through its staff in the United States performs all of the principal economic functions and technical support in the licensing of the franchises to regional corporations. T owns all of the stock and debt of T-1, a subsidiary resident in Switzerland, that owns the right to use related franchises within Switzerland and neighboring countries. T-1 licenses the franchises to Swiss and regional corporations. T also owns all of the stock and debt of T-2, a subsidiary resident in Switzerland that it acquired several years ago, that owns only the patent right for the manufacture of a major pharmaceutical product licensed to a corporation resident in Switzerland. T's activities are substantial in comparison to the activities of T-1.

Analysis: Treaty benefits may be obtained by T on the payment of dividends or interest from T-1. The income received by T from T-1 is derived in connection with T's active and substantial business of licensing franchises. However, treaty benefits may not be obtained by T on payments from T-2. Although T has a substantial business for the licensing of franchises, the income received by T from T-2's licensing of a pharmaceutical product is not derived in connection with and is not incidental to T's franchise licensing business.

Example III

Facts: G is a corporation resident in Switzerland, the stock and debt of which is wholly owned by F, a major corporation resident in a third country. F, directly and through various subsidiaries located worldwide, manufactures electronic products. G, through its staff and facilities in Switzerland, performs all of the principal economic functions for the worldwide distribution and marketing of products manufactured by F. G owns all of the stock and debt of H, a subsidiary resident in the United States. H purchases the electronic products manufactured by F and its subsidiaries from G, F or other F subsidiaries and distributes those products in the United States and neighboring countries. H also arranges in the United States advertisements and warranty coverage for products manufactured by F and its subsidiaries. G also owns all of the stock and debt of I and J, subsidiaries resident in the United States that are engaged in the manufacturing of electronic products

(I) and the ownership and development of residential housing (J). G's activities are substantial in comparison to the activities of H.

Analysis: Treaty benefits may be obtained by G on the payment of dividends or interest from H and I. The income received by G from H is derived in connection with G's active and substantial distribution business because H's business forms a part of G's business. The income received by G from I is derived in connection with G's active and substantial distribution business because the manufacturing business of I is complementary to G's distribution business. However, treaty benefits may not be obtained by G on the payments of dividends or interest from J because any income received by G from J is not derived in connection with or incidental to G's distribution business.

Example IV

Facts: V, a resident of a country that does not have a treaty with Switzerland, wants to acquire a Swiss financial institution. However, since its country of residence has no tax treaty with Switzerland, any dividends generated by the investment would be subject to a Swiss withholding tax of 35 percent. V establishes a U.S. corporation with one office in a small town to provide investment advice to local residents. That U.S. corporation acquires the Swiss financial institution with capital provided by V.

Analysis: The Swiss source income is generated from business activities in Switzerland related to the investment advisory business conducted by the U.S. parent. However, the substantiality test would not be met in this example, so the dividends would remain subject to withholding in Switzerland at a rate of 35 percent rather than the 5 percent rate provided by Article 10 of the Convention.

Example V

Facts: United States, United Kingdom and French corporations create a joint venture to make a market in over-the-counter derivative instruments, which is in the form of a Delaware limited liability company that is treated as a partnership for U.S. tax purposes. The joint venture establishes a Swiss financial institution in order to market derivative financial instruments to Swiss customers. The Swiss institution pays dividends to the joint venture.

Analysis: Under Article 4, only the U.S. partner is a resident of the United States for purposes of the treaty. The question arises under this treaty, therefore, only with respect to the U.S. partner's share of the dividends. If the U.S. partner meets the predominant interest or the public trading tests of subparagraph 1 e) or f) it is entitled to benefits without reference to subparagraph 1 c) . If not, the U.S. partner's share of the dividends would be eligible for benefits under subparagraph 1 c). The determination of treaty benefits available to the United Kingdom and

French partners will be made under the Swiss treaties with the United Kingdom and France.

Example VI

Facts: A Swiss corporation, a German corporation and a Belgian corporation create a joint venture in the form of a Swiss resident corporation in which they take equal shareholdings. The joint venture corporation engages in an active manufacturing business in Switzerland. Income derived from that business that is retained as working capital is invested in short-term U.S. debt instruments so that it is available when needed for use in the business.

Analysis: The interest would be eligible for treaty benefits. Interest income earned from short-term investment of working capital is incidental to the business in Switzerland of the Swiss joint venture corporation.

5. In reference to subparagraph 1 e) of Article 22 (Limitation on Benefits

It is understood that a company is described in clause i) of subparagraph 1 e) of Article 22 within the meaning of clause ii) of subparagraph 1 e) of Article 22 only if that company is a resident of one of the Contracting States that is entitled to the benefits of the Convention by reason of clause i) of subparagraph 1 e) of Article 22.

6. In reference to subparagraph 1 f) of Article 22 (Limitation on Benefits)

The following examples demonstrate the manner in which Article 22, subparagraph 1 f) may be applied:

Example I

Facts: All of the stock of a U.S. resident company is owned by a U.S. individual. The stock is worth 100x and the company pays a dividend each year of approximately 10x. The company has outstanding debt of 1000x, all of which is held by three members of a single family, none of which is resident in the United States. The debt pays interest each year of 100x.

Analysis: The U.S. company would not satisfy the requirements of subparagraph 1 f) of Article 22 of the Convention because the debt represents a predominant interest in the company, the ultimate beneficial owners of which are persons who are not residents of the United States Therefore, the U.S. company will be entitled to the benefits of the Convention only if it qualifies under some other provision of Article 22.

Example II

Facts: An individual who is not a resident of the United States owns 49% of the stock of a U.S. company that holds passive investments in other companies; the other 51% of the stock in the company is owned by several unrelated U.S. individuals. The non-resident individual also has a contract to provide investment advice to the company under which the individual is to receive l0x each year, regardless of the profits of the company. The company's gross profits are approximately 60x each year.

Analysis: Whether the non-resident individual has a predominant interest in the U.S. company will depend on whether l0x is an arm's length remuneration for the services. If l0x is arm's length remuneration, then the payments are not taken into account for purposes of determining whether the individual has a predominant interest in the company. As a result, because U.S. individuals own a majority of the stock in the company, the company would qualify for benefits under Article 22, subparagraph 1 f). If the remuneration is not arm's length, then the non-resident individual would have a predominant interest in the company when the service payments are combined with his equity interest and the company would not be entitled to benefits under Article 22, subparagraph 1 f).

Example III

Facts: Assume the same facts as in Example II, except that the individual does not have an investment contract with the U.S. company and performs only nominal, if any, service. Nevertheless, each year the company sends the individual a check equal to 50% of the company's gross profits as a "bonus" for "services rendered".

Analysis: The U.S. company would not satisfy the requirements of subparagraph 1 f) of Article 22 of the Convention because the facts indicate that, even though the individual owns less than 50% of the stock of the company and does not have a contract to provide services, he in fact is the ultimate beneficial owner of a predominant interest in the company. Therefore, the U.S. company will be entitled to the benefits of the Convention only if it qualifies under some other provision of Article 22.

Example IV

Facts: A single Swiss resident individual owns 100% of the stock of a Swiss company. The stock of the Swiss company is worth l00x. The Swiss company's only asset is a license for the worldwide rights to a product developed by a corporation organized in a jurisdiction that does not have a tax treaty with the United States. The Swiss company licenses those rights to companies throughout the world, including to a U.S. corporation. The Swiss company receives 100x each year in royalties. It pays 95x in royalties, which is an arm's length rate, to the licensor.

Analysis: The Swiss company would not satisfy the requirements of subparagraph 1 f) of Article 22 of the Convention because the license represents a predominant interest in the company, the ultimate beneficial owners of which are persons who are not residents of Switzerland. Therefore, the Swiss company will be entitled to the benefits of the Convention only if it qualifies under some other provision of Article 22.

Example V

Facts: A Swiss individual and a corporation organized in a jurisdiction that does not have a tax treaty with the United States create a joint venture in the form of a partnership organized in Switzerland. The partnership provides management consulting services to unrelated companies. The Swiss individual owns 60 percent of the joint venture and the corporation owns 40 percent of the joint venture. The joint venture's debt is held by Swiss banks and its only significant contract is with the Swiss individual who is to provide the consulting services. The Swiss partnership receives fees from the United States for providing management consulting services as well as interest and dividends that are unrelated to the consulting business.

Analysis: Under Article 4, the Swiss partnership is a resident of Switzerland for purposes of the treaty because the worldwide income of the partnership is subject to tax in Switzerland (albeit in the hands of the partners). Accordingly, the predominant interest test is applied at the level of the partnership. Because the Swiss individual is the ultimate beneficial owner of a predominant interest in the partnership as a result of its 60% ownership interest, the income earned by the partnership is entitled to treaty benefits pursuant to paragraph 1 f).

7. In reference to paragraph 6 of Article 22 (Limitation on Benefits)

a) It is understood that a company resident in one of the Contracting States will be granted the benefits of the Convention under paragraph 6 of Article 22 with respect to the income it derives from the other Contracting State if:

i) the ultimate beneficial owners of 95 percent or more of the aggregate vote and value of all of its shares are seven or fewer persons that are residents of a member State of the European Union or of the European Economic Area or a party to the North American Free Trade Agreement that meet the requirements of subparagraph 3 b) of Article 22; and

ii) the amount of the expenses (including payments for interest or royalties, but not payments at arm's length for the purchase or use of or the right to use tangible property in the ordinary course of business or remuneration at arm's length for services) deductible from gross income that are paid or payable by the company for its preceding fiscal period (or, in the case of its first fiscal period, that period) to persons that are neither U.S. citizens nor residents of a member state of the European Union or of the European Economic Area or a party to the North American Free Trade Agreement that meet the requirements of

subparagraph 3 b) of Article 22 is less than 50 percent of the gross income of the company for that period.

b) However, a company otherwise entitled to benefits under subparagraph a) shall not be entitled to the benefits of the Convention if that company, or a company that controls such company, has outstanding a class of shares:

i) the terms of which, or which is subject to other arrangements that entitle its holders to a portion of the income of the company derived from the other Contracting State that is larger than the portion such holders would receive absent such terms or arrangements; and

ii) 50 percent or more of the vote or value of which is owned by persons who are neither U.S. citizens nor residents of a member state of the European Union or of the European Economic Area or a Party to the North American Free Trade Agreement that meet the requirements of subparagraph 3 b) of Article 22.

Thus, for example, if 100% of the common stock of a U.S. company (representing 100 percent of the voting power in, and 95 percent of the value of, the company) was owned by a Canadian company, it generally would be entitled to benefits under subparagraph a) with respect to its Swiss source income, assuming that it met the base erosion test of clause a) ii). However, if the remaining five percent of the value of the company consisted of a class of stock that paid dividends determined by reference to the income derived from the U.S. company's Swiss subsidiary (sometimes known as "tracking" or "alphabet" stock) and 50 percent or more of the value (or vote, if relevant) of the class of stock were held by resident of a third country that does not have a double tax treaty with Switzerland, the U.S. company would not be entitled to benefits under this paragraph as a result of the application of subparagraph b).

8. In reference to Article 26 (Exchange of Information)

a) The definition of tax fraud applicable for purposes of Article 26 of this Convention shall apply in cases where a Contracting State may need to resort to other legal means applicable to mutual assistance between the Contracting States in matters involving tax fraud, such as the Swiss Federal Law on International Mutual Assistance in Criminal Matters of 20 March, 1981, in order to obtain certain types of assistance, such as the deposition of witnesses.

b) The term "records or documents" used in Article 26 is an all-inclusive term covering all forms of recorded information whether held by public or private individuals or entities.

c) Persons or authorities to whom information is disclosed in accordance with paragraph 1 of Article 26 may disclose the information in public court proceedings or in judicial decisions.

d) It is understood that in cases of tax fraud Swiss banking secrecy does not hinder the gathering of documentary evidence from banks or its being forwarded under the Convention to the competent authority of the United States of America.

AND
THE SWISS CONFEDERATION FOR THE AVOIDANCE OF
DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The United States of America and the Swiss Confederation, desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income, have agreed as follows:

ARTICLE 1
Personal Scope

1. Except as otherwise provided in this Convention, this Convention shall apply to persons who are residents of one or both of the Contracting States.

2 Notwithstanding any provision of this Convention except paragraph 3 of this Article, the United States may tax a person who is treated as a resident under its taxation laws (except where such person is determined to be a resident of Switzerland under the provisions of paragraphs 3 or 4 of Article 4 (Resident)) and its citizens (including its former citizens) as if this Convention had not come into effect.

3. The provisions of paragraph 2 shall not affect:

a) the benefits conferred by the United States under paragraph 2 of Article 9 (Associated Enterprises), paragraphs 6 and 7 of Article 13 (Gains), Articles 23 (Relief from Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement procedure); and

b) the benefits conferred by the United States under paragraphs 1 and 2 of Article 19 (Government Service and Social Security), and under Articles 20 (Students and Trainees) and 27 (Members of Diplomatic Missions and Consular Posts) and paragraph 4 of Article 28 (Miscellaneous), upon individuals who are neither citizens of, nor have immigrant status in, the United States.

ARTICLE 2
Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State.

2. The existing taxes to which the Convention shall apply are:

a) in Switzerland: the federal, cantonal and communal taxes on income (total income, earned income, income from property, business profits, etc.);

b) in the United States: the Federal income taxes imposed by the Internal Revenue Code and the excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations. The Convention shall, however, apply to the excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the

risks covered by such premiums are not reinsured with a person not entitled to the benefits of this or any other Convention which provides exemption from these taxes.

3. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3
General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "person" includes an individual, a partnership, a company, an estate, a trust and any other body of persons;

b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes under the laws of the Contracting State in which it is organized;

c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

d) the term "nationals" means:

i) all individuals possessing the nationality (i.e., citizenship, in the case of the United States) of a Contracting State; and

ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

e) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in the other Contracting State;

f) the term "competent authority" means:

i) in Switzerland: the Director of the Federal Tax Administration or his authorized representative; and

ii) in the United States: the Secretary of the Treasury or his delegate;

g) the term "Switzerland" means the Swiss Confederation;

h) the term "United States" means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning according to the provisions of Article 25 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4
Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means:

a) any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, nationality, place of management, place of incorporation, or any other criterion of a similar nature, except that a United States citizen or alien lawfully admitted for permanent residence (a "green card" holder) who is not a resident of Switzerland by virtue of this paragraph or paragraph 5 shall be considered to be a resident of the United States only if such person has a substantial presence, permanent home or habitual abode in the United States; if, however, such person is also a resident of Switzerland under this paragraph, such person also will be treated as a United States resident under this paragraph and such person's status shall be determined under paragraph 3;

b) the Government of that State or a political subdivision or local authority thereof or any agency or instrumentality of any such Government, subdivision or authority;

c) i) a pension trust and any other organization established in that State and maintained exclusively to administer or provide pensions, retirement or employee benefits, that is established or sponsored by a person resident in that State under this Article; and

ii) a not-for-profit organization established and maintained in that State for religious, charitable, educational, scientific, cultural or other public purposes; that by reason of its nature as such is generally exempt from income taxation in that State; or

d) a partnership, estate, or trust, but only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State in the same manner as the income of a resident of that State, either in its hands or in the hands of its partners or beneficiaries.

2. Notwithstanding paragraph 1, the term "resident of a Contracting State" does not include any person who is liable to tax in that State in respect only of income from sources in that State.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

b) if the State in which he has his center of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

4 Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, such person shall be treated as a resident only if and to the extent that the competent authorities of the Contracting States so agree pursuant to Article 25 (Mutual Agreement Procedure), including paragraph 6 thereof.

5. An individual who would be a resident of Switzerland by reason of the provisions of paragraphs 1 and 3, but who elects not to be subject to the generally imposed income taxes in Switzerland with respect to all income from sources in the United States, shall not be considered a resident of Switzerland for the purposes of this Convention.

ARTICLE 5
Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

a) a place of management;
b) a branch;
c) an office;
d) a factory;
e) a workshop; and
f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration or development of natural resources, constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, advertising, the supply of information, scientific research, or other activities which have a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs a) to e) of this paragraph, provided that the overall

activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraph 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6
Income from Real Property

1. Income derived by a resident of a Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

5. A resident of a Contracting State who is subject to tax in the other Contracting State on income from real property situated in the other Contracting State may, subject to the procedures of the domestic law of the other Contracting State, elect to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment or a fixed base in such other State. Any such election shall be binding for taxable years as provided by the domestic law of the Contracting State in which the property is situated.

ARTICLE 7
Business Profits

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions and which shall include only those profits derived from the assets or activities of the permanent establishment.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the business profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in the other paragraphs of this Article.

5. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the business profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where business profits include items of income which are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

8. For the purposes of this Convention, the term "business profits" includes income derived from the rental of tangible movable property and the rental or licensing of cinematographic films or works on film, tape, or other means of reproduction for use in radio or television broadcasting.

ARTICLE 8
Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived from the rental of ships or aircraft if such rental profits are incidental to other profits described in paragraph 1.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9
Associated Enterprises

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. a) Where a Contracting State proposes to include in the profits of an enterprise of that State, and to tax accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, the competent authorities of the Contracting States may consult pursuant to Article 25 (Mutual Agreement Procedure).

b) If pursuant to Article 25 the Contracting States agree on adjustments to the profits of each such enterprise that reflect the conditions which would have been made

between independent enterprises, then each State shall make the agreed adjustment to the amounts charged on the profits of each such enterprise.

ARTICLE 10
Dividends

1. Dividends derived and beneficially owned by a resident of a Contracting State may be taxed in that State.

2 However, such dividends may also be taxed in the Contracting State in which the dividends arise according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed

a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 percent of the voting stock of the company paying the dividends;

b) 15 percent of the gross amount of the dividends in all other cases.

Subparagraph b) and not subparagraph a) shall apply in the case of dividends paid by a person which is a resident of the United States and which is a Regulated Investment Company. Subparagraph a) shall not apply to dividends paid by a person which is a resident of the United States and which is a Real Estate Investment Trust, and subparagraph b) shall only apply if the dividend is beneficially owned by an individual holding an interest of less than 10 percent in the Real Estate Investment Trust.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding paragraph 2, dividends may not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a resident of the other Contracting State described in subparagraph 4 b) of Article 28 (Miscellaneous) that does not control the company paying the dividend.

4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares under the law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services) shall apply.

6. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as

a) such dividends are paid to a resident of that other State, or

b) the dividends are attributable to a permanent establishment or a fixed base situated in that State.

7. A company that is a resident of Switzerland and that has a permanent establishment in the United States, or that is subject to tax on a net basis in the United States on items of income described in Article 6 (Income from Real Property) or Article 13 (Gains), may be subject in the United States to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may be imposed only on

a) the portion of the business profits of the company attributable to the permanent establishment under this Convention, and

b) the portion of the income referred to in the preceding sentence that is described in Article 6 (Income from Real Property) or paragraphs 1 or 3 of Article 13 (Gains), that represents the "dividend equivalent amount" of those profits and income; the term "dividend equivalent amount" shall, for the purposes of this paragraph, have the meaning that it has under the law of the United States as it may be amended from time to time without changing the general principle thereof.

8. The tax referred to in paragraph 7 shall not be imposed at a rate exceeding the rate specified in subparagraph 2 a).

ARTICLE 11
Interest

1. Interest derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

2. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, and including an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit. However, the term "interest" does not include income dealt with in Article 10 (Dividends). Penalty charges for late payment shall not be regarded as interest for the purpose of this Convention.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services) shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

5. Except as otherwise provided in paragraphs 1 or 3, interest paid by a company that is a resident of a Contracting State may be subject to tax by the other Contracting State only insofar as such interest is paid by a permanent establishment of such company located in that other State, or out of income described in Article 6 (Income from Real Property) or paragraph 1 of Article 13 (Gains) that is subject to tax on a net basis in that other State.

6. The provisions of paragraph 1 shall not apply to

a) interest arising in the United States if the amount of such interest is determined by reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person, but only to the extent that the interest does not qualify as portfolio interest under United States law, and

b) an excess inclusion with respect to a residual interest in an entity that is treated as a real estate mortgage investment conduit under the law of the United States,

which may be taxed in the United States according to its laws.

ARTICLE 12
Royalties

1. Royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

2. The term "royalties" as used in this Convention means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work (but not including motion pictures, or films, tapes or other means of reproduction for use in radio or television broadcasting), any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial, or scientific experience. The term "royalties" also includes gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent

establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services) shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the person deriving the royalties in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13
Gains

1. Gains derived by a resident of a Contracting State that are attributable to the alienation of real property situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Article, the term "real property situated in the other Contracting State" shall include

a) real property referred to in Article 6 (Income from Real Property); and

b) shares or other comparable rights in a company that is a resident of that other State, the assets of which consist wholly or principally of real property situated in that other State, or an interest in a partnership, trust, or estate, to the extent attributable to real property situated in that other State.

In the United States, the term includes a "United States real property interest" as defined in the Internal Revenue Code as it may be amended from time to time without changing the general principles thereof.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or such fixed base, may be taxed in that other State in accordance with its law.

4. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic shall be taxable only in that State. Gains described in Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12.

5. Gains from the alienation of any property other than that referred to in paragraphs 1 through 4 shall be taxable only in the Contracting State of which the alienator is a resident.

6. Where a resident of a Contracting State alienates property in the course of an organization, reorganization, merger or similar transaction and profit, gain or income with respect to such

alienation is not recognized for the purpose of taxation in that State, if requested to do so by the person who acquires the property, the competent authority of the other Contracting State may agree, subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain or income with respect to such property for the purpose of taxation in that other State until such time and in such manner as may be stipulated in the agreement.

7. If a resident of a Contracting State who is subject to income taxation in both Contracting States on a disposition of property is treated for the purposes of taxation by a Contracting State as having alienated property and is taxed in that State by reason thereof, and the domestic law of the other Contracting State at such time does not require or allow the resident to recognize gain or loss or otherwise permits the deferral of the gain or loss, then the resident may elect in his annual return of income for the year of such alienation to be liable to tax in the other Contracting State in that year as if he had, immediately before that time, sold and repurchased such property for an amount equal to its fair market value at that time. Such an election shall apply to all property described in this paragraph that is alienated by the resident in the taxable year for which the election is made or at any time thereafter.

ARTICLE 14
Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of the performance of personal services of an independent character shall be taxable only in that State, unless the individual has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, that portion of the income attributable to the fixed base that is derived in respect of services performed in that other State also may be taxed by that other State.

2. In determining the income described in paragraph 1 that is taxable in the other Contracting State the principles of Article 7 (Business Profits} shall apply.

ARTICLE 15
Dependent Personal Services

1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions and Annuities) and 19 (Government Service and Social Security), salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable year concerned;

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

c) the remuneration is not borne by a permanent establishment or a fixed base that the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration described in paragraph 1 that is derived by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic shall be taxable only in that State.

ARTICLE 16
Director's Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company that is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 17
Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed ten thousand United States dollars ($10,000) or its equivalent in Swiss francs for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or a sportsman who is a resident of a Contracting State in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Independent Personal Services), unless it is established that neither the entertainer or sportsman nor persons related thereto (whether or not residents of that State) participate directly or indirectly in the receipts or profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

ARTICLE 18

Pensions and Annuities

1. Subject to the provisions of Article 19 (Government Service and Social Security), pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Subject to the provisions of Article 19 (Government Service and Social Security), annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated tines during a specified number of years or for life under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

ARTICLE 19
Government Service and Social Security

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

i) is a national of that State; or

ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15 (Dependent Personal Services), 16 (Directors' Fees) and 18 (Pensions and Annuities) shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

4. Notwithstanding paragraph 2, social security payments and other public pensions paid by a Contracting State to an individual who is a resident of the other Contracting State may be taxed in that other State. However, such payments may also be taxed in the first Contracting State according to the laws of that State, but the tax so charged shall not exceed 15 percent of the gross amount of the payment.

ARTICLE 20

Students and Trainees

Payments which a student, apprentice, or business trainee, who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who is present in the first-mentioned State for the purpose of his full-time education or training, receives for the purpose of his maintenance, education or training shall not be taxed in that State provided that such payments arise from sources outside that State.

ARTICLE 21
Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income other than income from real property as defined in paragraph 2 of Article 6 (Income from Real Property), if the person deriving the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services) as the case may be, shall apply.

3. The provisions of this Article shall not apply to income subject to tax by either Contracting State on wagering, gambling or lottery winnings.

ARTICLE 22

Limitation on Benefits

1. Subject to the succeeding provisions of this Article, a person that is a resident of a Contracting State and that derives income from the other Contracting State may only claim the benefits provided for in this Convention where such person:

a) is an individual;

b) is a Contracting State, a political subdivision or local authority thereof, or an agency or instrumentality of such State, political subdivision or authority;

c) is engaged in the active conduct of a trade or business in the first-mentioned Contracting State (other than the business of making, managing or simply holding investments for the persons own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer) and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business;

d) is a recognized headquarters company for a multinational corporate group;

e) is a company

i) whose principal class of shares is primarily and regularly traded on a recognized stock exchange; or

ii) if one or more companies described in clause i) are the ultimate beneficial owners of a predominant interest in such company;

f) is a company, trust or estate, unless one or more persons who are not entitled to the benefits of this Convention under subparagraphs a), b), d), e) or g) are, in the aggregate, the ultimate beneficial owners of a predominant interest in the form of a participation, or otherwise, in such company, trust or estate; or

g) is a family foundation resident in Switzerland, unless the founder, or the majority of the beneficiaries, are persons who are not entitled to the benefits of this Convention under subparagraph a), or 50 percent or more of the income of the family foundation could benefit persons who are not entitled to the benefits of this Convention under subparagraph a).

2. Notwithstanding the preceding paragraph, an entity described in paragraph 1 c) of Article 4 (Resident) may claim the benefits of this Convention, provided that more than half of the beneficiaries, members or participants, if any, in such organization are persons that are entitled, under this Article, to the benefits of this Convention.

3. a) A company that is a resident of a Contracting State shall also be entitled to the benefits of Articles 10 (Dividends), 11 (Interest) and 12 (Royalties} if:

i) the ultimate beneficial owners of more than 30 percent of the aggregate vote and value of all of its shares are persons that are resident in that Contracting State, and that would qualify for benefits under subparagraphs a), b), d), e), f) or g) of paragraph 1;

ii) the ultimate beneficial owners of more than 70 percent of all such shares are persons described in subparagraph i) and persons that are residents of member states of the European Union or of the European Economic Area or parties to the North American Free Trade Agreement that are described in subparagraph b); and

iii) the amount of the expenses deductible from gross income that are paid or payable by the company for its preceding fiscal period (or; in the case of its first fiscal period, that period) to persons that would not qualify for benefits under subparagraphs a), b), d), e), f) or g) of paragraph 1, is less than 50 percent of the gross income of the company for that period.

b) For purposes of subparagraph a) ii) shares whose ultimate beneficial owner is a person that is a resident of a member state of the European Union or of the European Economic Area or a party to the North American Free Trade Agreement will be taken into account only if such person:

i) is a resident of a country with which the other Contracting State has a comprehensive income tax convention and that person is entitled to all of the benefits provided by the other Contracting State under that convention;

ii) would qualify for benefits under paragraph 1 if that person were a resident of the first-mentioned Contracting State and if references in such

paragraph to the first-mentioned Contracting State were references to that person's state of residence; and

iii) would be entitled to a rate of tax in the other Contracting State under the convention between that person's country of residence and the other Contracting State in respect of the particular class of income for which benefits are being claimed under this Convention, that is at least as low as the rate applicable under this Convention.

4. Notwithstanding the provisions of paragraphs 1 through 3, where an enterprise of a Contracting State derives income from the other Contracting State, and that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction, the tax benefits that would otherwise apply under the other provisions of the Convention will not apply to any item of income if the combined tax that is actually paid with respect to such income in the first-mentioned State and in the third jurisdiction is less than 60 percent of the tax that would have been payable in the first-mentioned State if the income were earned in that State by the enterprise and were not attributable to the permanent establishment in the third jurisdiction. Any dividends, interest or royalties to which the provisions of this paragraph apply shall be subject to tax at a rate that shall not exceed 15 percent of the gross amount thereof. Any other income to which the provisions of this paragraph apply will be subject to tax under the provisions of the domestic law of the other Contracting State, notwithstanding any other provision of the Convention. The provisions of this paragraph shall not apply if:

a) in the case of royalties, the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment itself; or

b) in the case of any other income, the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (other than the business of making, managing or simply holding investments for the person's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer).

5. The competent authorities of the Contracting States shall consult together with a view to developing a commonly agreed application of the provisions of this Article. The competent authorities shall, in accordance with the provisions of Article 26 (Exchange of Information), exchange such information as is necessary for carrying out the provisions of this Article.

6. A person that is not entitled to the benefits of this Convention pursuant to the provisions of the preceding paragraphs may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income arises so determines after consultation with the competent authority of the other Contracting State.

7. a) For the purposes of paragraph 1, the term "recognized stock exchange" means:

i) any Swiss stock exchange on which registered dealings in shares take place;

ii) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934;

iii) the stock exchanges of Amsterdam, Frankfurt, London, Milan, Paris, Tokyo and Vienna; and

iv) any other stock exchange agreed upon by the competent authorities of the Contracting States.

b) For purposes of subparagraph d) of paragraph 1, a person shall be considered a recognized headquarters company if:

i) it provides in its state of residence a substantial portion of the overall supervision and administration of a group of companies, (which may be part of a larger group of companies), which may include, but cannot be principally, group financing;

ii) the group of companies consists of corporations resident in, and engaged in an active business in, at least five countries, and the business activities carried on in each of the five countries (or five groupings of countries) generate at least 10 percent of the gross income of the group;

iii) the business activities carried on in any one country other than the Contracting State of residence of the headquarters company generate less than 50 percent of the gross income of the group;

iv) no more than 25 percent of its gross income is derived from the other Contracting State;

v) it has, and exercises, independent discretionary authority to carry out the functions referred to in subparagraph i)

vi) it is subject to generally applicable rules of taxation in its country of residence; and

vii) the income derived in the other Contracting State either is derived in connection with, or is incidental to, the active business referred to in subparagraph ii).

If the income requirements for being considered a recognized headquarters company (subparagraphs ii), iii), or iv)) are not fulfilled, they will be deemed to be fulfilled if the required ratios are met when averaging the gross income of the preceding four years.

ARTICLE 23
Relief from Double Taxation

1. In the case of Switzerland, double taxation shall be avoided as follows:

a) Where a resident of Switzerland derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, Switzerland shall; subject to the provisions of subparagraphs b), c) and d) and paragraph 3, exempt such income from tax; provided, however, that such exemption shall apply to gains referred to in paragraph 1 of Article 13 (Gains) only if actual taxation of such gains in the United

States is demonstrated. Switzerland may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted.

b) Where a resident of Switzerland derives dividends which, in accordance with the provisions of Article 10 (Dividends), may be taxed in the United States, Switzerland shall allow, upon request, and subject to the provisions of subparagraph c), a relief to such resident. The relief may consist of

i) a deduction from the Swiss tax on the income of that resident of an amount equal to the tax levied in the United States in accordance with the provisions of Article 10 (Dividends); such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in the United States; or

ii) a lump sum reduction of the Swiss tax; or

iii) a partial exemption of such dividends from Swiss tax, in any case consisting at least of the deduction of the tax levied in the United States from the gross amount of the dividends.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

c) Where a resident of Switzerland derives income

i) described in paragraph 2 of Article 10 (Dividends) or paragraph 6 of Article 11 (Interest) which is not entitled to any reduction in U.S. withholding tax pursuant to those provisions; or

ii) which may be taxed in the United States in accordance with the provisions of Article 22 (Limitation on Benefits)

Switzerland shall allow the deduction of the tax levied in the United States from the gross amount of such income.

d) Where a resident of Switzerland derives payments that may be taxed by the United States pursuant to paragraph 4 of Article 19 (Government Service and Social Security), Switzerland shall provide a relief to such resident consisting of a deduction equal to the tax levied in the United States, plus an exemption equal to one-third (1/3) of the net amount of such payment from Swiss tax.

2. In the case of the United States, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income the appropriate amount of tax paid to Switzerland; and, in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of Switzerland from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of tax paid to Switzerland by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid to Switzerland. For purposes of applying the United States credit in relation to tax paid to Switzerland the taxes

referred to in subparagraph 2 a) and paragraph 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

3. Where a resident of Switzerland is also a citizen of the United States and is subject to United States income tax in respect of profits, income or gains which arise in the United States, the following rules apply:

a) Switzerland will apply paragraph 1 as if the amount of tax paid to the United States in respect of such profits, income or gains were the amount that would have been paid if the resident were not a citizen of the United States; and

b) for the purpose of computing the United States tax on such profits, income or gains, the United States shall allow as a credit against United States tax the income tax paid or accrued to Switzerland after the application of subparagraph a), provided that the credit so allowed shall not reduce the amount of the United States tax below the amount that is taken into account in applying subparagraph a); and

c) for the purpose of subparagraph b), profits, income or gains described in this paragraph shall be deemed to arise in Switzerland to the extent necessary to avoid double taxation of such income; however, the rules of this subparagraph shall not apply in determining credits against United States tax for foreign taxes other than the taxes referred to in subparagraph 2 a) and paragraph 3 of Article 2 (Taxes Covered).

ARTICLE 24
Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. For purposes of United States taxation of income, United States nationals not resident in the United States are not in the same circumstances as Swiss nationals not resident in the United States. This provision shall, notwithstanding the provisions of Article 1 (Personal Scope), also apply to persons who are not residents of one or both of the Contracting States.

2. a) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities

b) The provisions of this paragraph shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 4 of Article 11 (Interest), or paragraph 4 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the

other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding paragraph 2 of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

6. Nothing in this Article shall prevent the United States from imposing the tax described in paragraph 7 of Article 10 (Dividends).

ARTICLE 25
Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may consult together to endeavor to agree:

a) to the same attribution of income, deductions, credits or allowances to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

b) to the same allocation of income, deductions, credits or allowances between a resident of a Contracting State and any associated person provided for in Article 9 (Associated Enterprises);

c) to the same characterization of particular items of income;

d) to the same characterization of persons;

e) to the same application of source rules with respect to particular items of income;

f) to a common meaning of a term;

g) to the application of the provisions of domestic law regarding penalties, fines, and interest in a manner consistent with the purposes of the Convention.

The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. The competent authorities of the Contracting States may prescribe procedures to carry out the purposes of this Convention.

6. If any difficulty or doubt arising as to the interpretation or application of this Convention cannot he resolved by the competent authorities in a mutual agreement procedure pursuant to the previous paragraphs of this Article, the case may, if both competent authorities and all affected taxpayers agree, be submitted for arbitration, provided the taxpayers agree in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both Contracting States with respect to that case. The procedures shall be established in an exchange of notes between the Contracting States. The provisions of this paragraph shall have effect after the Contracting States have so agreed through the exchange of diplomatic notes.

ARTICLE 26
Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of tax fraud or the like in relation to the taxes which are the subject of the present Convention. In cases of tax fraud,

(a) the exchange of information is not restricted by Article 1 (Personal Scope) and

(b) if specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of authenticated copies of unedited original records or documents.

Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the

information only for such purposes. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

2. Each of the Contracting States may collect such taxes imposed by the other Contracting State as though such taxes were the taxes of the former State as will ensure that the exemption or reduced rate of tax granted under Articles 10 (Dividends), 11 (Interest), 12 (Royalties) and 18 (Pensions and Annuities) of the present Convention by such other State shall not be enjoyed by persons not entitled to such benefits.

3. In no case shall the provisions of this Article be construed so as to impose upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

4. The competent authorities may release to an arbitration board established pursuant to paragraph 6 of Article 25 (Mutual Agreement Procedure) such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations on disclosure described in this Article.

ARTICLE 27
Members of Diplomatic Missions and Consular Posts

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

2. Insofar as, due to fiscal privileges granted to diplomatic agents or consular officers under the general rules of international law or under the provisions of special international agreements, income is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.

3. Notwithstanding the provisions of Article 4 (Resident), an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if:

a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State, and

b) he is liable in the sending State to the same obligations in relation to tax on his total income as are residents of that State.

4. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of

a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

ARTICLE 28
Miscellaneous

1. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded

a) by the laws of either Contracting State; or

b) by any other agreement between the Contracting States.

2. Notwithstanding the provisions of subparagraph 1 b):

a) Notwithstanding any other agreement to which the Contracting States may be parties, a dispute concerning whether a measure is within the scope of this Convention shall be considered only by the competent authorities of the Contracting States, as defined in subparagraph 1 f) of Article 3 (General Definitions) of this Convention, and the procedures under this Convention exclusively shall apply to the dispute.

b) Unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the nondiscrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favored-nation obligation under any other agreement shall apply with respect to that measure.

c) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any other form of measure.

3. For the implementation of paragraphs 1 and 2 of Article 7 (Business Profits), paragraph 5 of Article 10 (Dividends), paragraph 3 of Article 11 (Interest), paragraph 3 of Article 12 (Royalties), paragraph 3 of Article 13 (Gains), paragraph 2 of Article 14 (Independent Personal Services), and paragraph 2 of Article 21 (Other Income), any income, gain or expense attributable to a permanent establishment during its existence is taxable or deductible (under otherwise applicable principles) in the Contracting State where such permanent establishment is situated even if the payments are deferred until such permanent establishment has ceased to exist.

4. In determining the taxable income for purposes of taxation in a Contracting State of an individual who renders personal services and who is a resident, but not a national, of that State, contributions paid by, or on behalf of, such individual to a pension or other retirement arrangement that is established and maintained and recognized for tax purposes in the other Contracting State shall be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension or other retirement arrangement that is established and maintained and recognized for tax purposes in that first-mentioned State, provided that:

a) the individual was not a resident of that State, and was contributing to that pension or other retirement arrangement immediately before he began to exercise employment in that State; and

b) the competent authority of that State agrees that the pension or other retirement arrangement in the other Contracting State generally corresponds to a pension or other retirement arrangement recognized for tax purposes by that first-mentioned State.

The benefits of this paragraph shall extend for a period not exceeding five taxable years beginning with the individual's first taxable year during which the individual rendered personal services in the first-mentioned Contracting State. For purposes of this paragraph, a pension or other retirement arrangement is recognized for tax purposes in a Contracting State if the contributions to, or earnings of, the arrangement would qualify for tax relief in that State.

5. The appropriate authority of either Contracting State may request consultations with the appropriate authority of the other Contracting State to determine whether amendment to the Convention is appropriate to respond to changes in the law or policy of either Contracting State. If these consultations determine that the effect of the Convention or its application have been unilaterally changed by reason of domestic legislation enacted by a Contracting State such that the balance of benefits provided by the Convention has been significantly altered, the authorities shall consult with each other with a view to amending the Convention to restore an appropriate balance of benefits.

ARTICLE 29
Entry into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of the second month next following the date on which this Convention enters into force;

b) in respect of other taxes, to taxable periods beginning on or after the first day of January next following the date on which this Convention enters into force.

3. Notwithstanding paragraph 2, where any greater relief from tax would have been afforded to a person entitled to the benefits of the Convention between the Swiss Confederation and the United States of America for the avoidance of double taxation with respect to taxes on income, signed at Washington on May 24, 1951 ("prior Convention"), under that Convention than under this Convention, the prior Convention shall, at the election of such person, continue to have effect in its entirety for a twelve-month period from the date on which the provisions of this Convention otherwise would have effect under paragraph 2.

4. The prior Convention shall cease to have effect when the provisions of this Convention take effect in accordance with paragraphs 2 and 3.

ARTICLE 30
Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate this Convention at any time provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period;

b) in respect of other taxes, to taxable periods beginning on or after the first day of January next following the expiration of the 6 months' period.

DONE at Washington, in duplicate, in the English and German languages, the two texts having equal authenticity, this 2nd day of October, 1996.

FOR THE UNITED STATES
OF AMERICA:
(s) Lawrence H. Summers

FOR THE SWIS
CONFEDERATION:
(s) Kasper Villiger

PROTOCOL

At the signing today of the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, the undersigned have agreed upon the following provisions, which shall form an integral part of the Convention:

1. With reference to paragraph 2 of Article 2 Taxes Covered
The reference to "Federal income taxes imposed by the Internal Revenue Code" in subparagraph b) does not include social security taxes. Income taxes on social security benefits, however, are covered.

2. With reference to paragraph 1 of Article 4 Resident)
Residents of Switzerland who make a spousal election under I.R.C. section 6013 will continue to be treated as residents of Switzerland and will also be subject to U.S. taxation as residents.

3. With reference to Article 7 (Business profits)
The United States tax on insurance premiums paid to foreign insurers shall not be imposed on insurance or reinsurance premiums which are the receipts of a business of insurance carried on by an enterprise of Switzerland, whether or not that business is carried on through a permanent establishment in the United States, except to the extent that the risks covered by such premiums are reinsured with a person not entitled to the benefits of this or any other Convention which provides a similar exemption from U.S. tax.

4. With reference to paragraph 4 of Article 10 (Dividends) and paragraph 2 of Article 11 (Interest)

It is understood that participation in the profits of the obligor is a factor in determining whether an instrument nominally characterized as a debt-claim should be treated for purposes of the Convention as equity.

5. With reference to paragraph 7 of Article 10 (Dividends)

The general principle of the "dividend equivalent amount", as used in United States law, is to approximate that portion of the income mentioned in paragraph 7 of Article 10 that is comparable to the amount that would be distributed as a dividend if such income were earned by a subsidiary incorporated in the United States. For any year, a foreign corporation's dividend equivalent amount is equal to the after-tax earnings attributable to the foreign corporation's (i) income attributable to a permanent establishment in the United States, (ii) income from real property in the United States that is taxed on a net basis under Article 6, and (iii) gain from a real property interest taxable by the United States under paragraph 1 of Article 13, reduced by any increase in the foreign corporation's net investment in U.S. assets or increased by any reduction in the foreign corporation's net investment in U.S. assets.

6. With reference to paragraph 4 of Article 19 (Government Service and Social Security)

It is understood that the term "other public pensions" as used in this paragraph is intended to refer to United States tier 1 Railroad Retirement benefits.

7. With reference to subparagraph 1 c) of Article 22 (Limitation on Benefits)

a) The parties agree that whether the activities of a foreign corporation constitute an active trade or business must be determined under all the facts and circumstances. In general, a trade or business comprises activities that constitute (or could constitute) an independent economic enterprise carried on for profit. To constitute a trade or business, the activities conducted by the resident ordinarily must include every operation which forms a part of, or a step in, a process by which an enterprise may earn income or profit. A resident of a Contracting State actively conducts a trade or business if it regularly performs active and substantial management and operational functions through its own officers or staff of employees. In this regard, one or more of such activities may be carried out by independent contractors under the direct control of the resident. However, in determining whether the corporation actively conducts a trade or business, the activities of independent contractors shall be disregarded.

b) A payment between related parties is to be treated as derived in connection with a trade or business only if the trade or business carried on in the first-mentioned Contracting State is substantial in relation to the activity carried on in the Contracting State that gives rise to the income in respect of which treaty benefits are being claimed. For these purposes, the recipient of income is related to the payor of the item of income if it owns, directly or indirectly, 10 percent or more of the shares (or other comparable rights) in the payor.

Whether a trade or business is substantial will be determined on the basis of all the facts and circumstances. Such determination will take into account the comparative sizes of the trades or businesses in each Contracting State (measured by reference to asset values, income and payroll expenses), the nature of the activities performed in each Contracting State, and, in cases where a trade or business is conducted in both Contracting States, the relative contributions made to that trade or business in each Contracting State. In making each determination or comparison, due regard will be given to the relative sizes of the U.S. and Swiss economies.

8. With reference to paragraph 1 f) of Article 22 (Limitation on Benefits)

The parties agree that, in determining whether one or more persons who are not entitled to the benefits of the Convention under subparagraphs a), b), d), e) or g) of paragraph 1 of Article 22 are, in the aggregate, the ultimate beneficial owners of a predominant interest in such company, trust or estate, a Contracting State shall take into account, in addition to equity interests that such persons may hold in the company, trust or estate, other contractual interests that the person or persons may have in the company, trust or estate and the extent to which such person or persons receive, or have the right to receive, directly or indirectly, payments from that company, estate or trust (including payments for interest or royalties, but not payments at arm's length for the purchase or use of or the right to use tangible property in the ordinary course of business or remuneration at arm's length for services) that reduce the amount of the taxable income of the company, trust or estate, in order to deny benefits to a person that would otherwise qualify for benefits under subparagraph 1 f).

9. With reference to Article 24 (Non-Discrimination)

Nothing in this Article shall prevent the United States from applying I.R.C. section 367(e) (1) or (e) (2) or section 1446.

10. With reference to Article 26 (Exchange of Information)

The parties agree that the term "tax fraud" means fraudulent conduct that causes or is intended to cause an illegal and substantial reduction in the amount of the tax paid to a Contracting State.

Fraudulent conduct is assumed in situations when a taxpayer uses, or has the intention to use, a forged or falsified document such as a double set of books, a false invoice, an incorrect balance sheet or profit and loss statement, or a fictitious order or, in general, a false piece of documentary evidence, and in situations where the taxpayer uses, or has the intention to use a scheme of lies ("Lügengebäude") to deceive the tax authority. It is understood that the acts described in the preceding sentence are by way of illustration, not by way of limitation. The term "tax fraud" may in addition include acts that, at the time of the request, constitute fraudulent conduct with respect to which the requested Contracting State may obtain information under its laws or practices.

It is understood that, in determining whether tax fraud exists in a case involving the active conduct of a profession or business (including a profession or business conducted through a sole proprietorship, partnership or similar enterprise), the requested State shall assume that the record-keeping requirements applicable under the laws of the requesting State are the record-keeping requirements of the requested State.

DONE at Washington, in duplicate, in the English and German languages, the two texts having equal authenticity, this 2nd day of October, 1996.

FOR THE UNITED STATES
OF AMERICA:
(s) Lawrence H. Summers

FOR THE SWISS
CONFEDERATION:
(s) Kasper Villiger

112TH CONGRESS *1st Session*	SENATE	TREATY DOC. 112–1

PROTOCOL AMENDING TAX CONVENTION WITH SWISS CONFEDERATION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL AMENDING THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON ON OCTOBER 2, 1996

JANUARY 26, 2011.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
99–112 WASHINGTON : 2011

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 26, 2011.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to their ratification, the Protocol Amending the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Washington on October 2, 1996, signed on September 23, 2009, at Washington, as corrected by an exchange of notes effected November 16, 2010 (the "proposed Protocol") and a related agreement effected by an exchange of notes on September 23, 2009 (the "related Agreement"). I also transmit for the information of the Senate the report of the Department of State, which includes an Overview of the proposed Protocol and related Agreement.

The proposed Protocol and related Agreement provide for more robust exchange of information between tax authorities in the two countries to facilitate the administration of each country's tax laws. They generally follow the current U.S. Model Income Tex Convention and the Organization for Economic Cooperation and Development standards for exchange of tax information. The proposed Protocol and related Agreement also provide for mandatory arbitration of certain cases that the competent authorities of each country have been unable to resolve after a reasonable period of time.

I recommend that the Senate give early and favorable consideration to the proposed Protocol and related Agreement and give its advice and consent to their ratification.

BARACK OBAMA.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, December 8, 2010.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to their transmission to the Senate for advice and consent to ratification, the Protocol Amending the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, Signed at Washington on October 2, 1996, signed on September 23, 2009, at Washington, as corrected by an exchange of notes effected November 16, 2010 ("proposed Protocol"), together with a related agreement effected by an exchange of notes on the same day ("related Agreement"). The proposed Protocol and related Agreement were negotiated to bring the existing income tax Convention with Switzerland into closer conformity with current U.S. tax treaty policy, and in recognition of the importance of the United States' economic relations with Switzerland. I recommend that the proposed Protocol and related Agreement be transmitted to the Senate for its advice and consent to ratification.

The proposed Protocol and related Agreement provide for more robust exchange of information between tax authorities in the two countries to facilitate the administration of each country's tax laws. They generally follow the current U.S. Model Income Tax Convention and the current Organization for Economic Cooperation and Development standards for exchange of information. The proposed Protocol and related Agreement also provide for mandatory arbitration of certain cases that the competent authorities of each country have been unable to resolve after a reasonable period of time. An overview of key provisions of the proposed Protocol and related Agreement is enclosed with this report.

The proposed Protocol is self-executing. The Department of the Treasury and the Department of State cooperated in the negotiation of the proposed Protocol and related Agreement, and the Department of the Treasury joins the Department of State in recommending that the proposed Protocol and related Agreement be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted.

HILLARY RODHAM CLINTON.

Enclosures: as stated.

OVERVIEW

The proposed Protocol amending the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income ("proposed Protocol") and the related agreement effected by exchange of notes ("related Agreement") were negotiated to bring the existing convention ("existing Convention"), signed in 1996, into closer conformity with current U.S. tax treaty policy regarding exchange of information and to include mandatory arbitration procedures for certain cases that the competent authorities of the countries have been unable to resolve after a reasonable period of time. There are, as with all bilateral tax conventions, some variations from the language of the current U.S. Model Income Tax Convention. In the proposed Protocol and related Agreement, these minor differences reflect particular aspects of Swiss law and treaty policy. However, the proposed Protocol and related Agreement and generally follow the current U.S. Model Income Tax Convention and the Organization for Economic Cooperation and Development standard for exchange of tax information.

EXCHANGE OF INFORMATION

The proposed Protocol and related Agreement would replace the existing Convention's tax information exchange provisions with updated rules that are consistent with current U.S. tax treaty practice. The proposed Protocol and related Agreement allow the tax authorities of each country to exchange information relevant to carrying out the provisions of the Convention or the domestic tax laws of either country, including information that would otherwise be protected by the bank secrecy laws of either country.

DISPUTE RESOLUTION THROUGH MANDATORY BINDING ARBITRATION

The proposed Protocol and related Agreement update the provisions of the existing Convention with respect to the mutual agreement procedure by incorporating mandatory arbitration of certain cases that the competent authorities of the United States and the Swiss Confederation have been unable to resolve after a reasonable period of time. The arbitration provisions in the proposed Protocol and related Agreement are similar to other mandatory arbitration provisions that have recently been included in other U.S. bilateral tax treaties and that are currently in force.

INDIVIDUAL RETIREMENT ACCOUNTS

The proposed Protocol updates the provisions of the existing Convention to provide that individual retirement accounts are eligible for the benefits afforded a pension under the Convention.

VIII

ENTRY INTO FORCE

The proposed Protocol would enter into force when the United States and the Swiss Confederation exchange instruments of ratification. The proposed Protocol would have effect, with respect to taxes withheld at source, for amounts paid or credited on or after the first day of January of the year following entry into force of the Protocol. With respect to tax information exchange, the proposed Protocol would have effect with respect to requests for bank information to information that relates to any date beginning on or after the date of signature of the proposed Protocol and, with respect to all other cases, would have effect with respect to requests for information that relate to taxable periods beginning on or after the first day of January of the year following the date of signature. The mandatory arbitration provision would have effect with respect both to cases that are under consideration by the competent authorities as of the date on which the Protocol enters into force and to cases that come under consideration after that date. The related Agreement would enter into force on the date of entry into force of the proposed Protocol and would be annexed to the Convention as Annex A thereto and would be an integral part of the Convention.

PROTOCOL

AMENDING THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON ON OCTOBER 2, 1996

THE UNITED STATES OF AMERICA

AND

THE SWISS CONFEDERATION

Desiring to conclude a Protocol to amend the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with respect to Taxes on Income, signed at Washington on October 2, 1996 (hereinafter referred to as the "Convention"),

Have agreed as follows:

Article 1

Paragraph 3 of Article 10 of the Convention shall be deleted and replaced by the following:

"3. Notwithstanding paragraph 2, dividends may not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a pension or other retirement arrangement which is a resident of the other Contracting State, or an individual retirement savings plan set up in, and owned by a resident of, the other Contracting State, and the competent authorities of the Contracting States agree that the pension or retirement arrangement, or the individual retirement savings plan, in a Contracting State generally corresponds to a pension or other retirement arrangement, or to an individual retirement savings plan, recognized for tax purposes in the other Contracting State. This paragraph shall not apply if such pension or retirement arrangement, or such individual retirement savings plan, controls the company paying the dividend."

Article 2

Paragraph 6 of Article 25 of the Convention shall be deleted and replaced by the following paragraphs:

"6. Where, pursuant to a mutual agreement procedure under this Article, the competent authorities have endeavored but are unable to reach a complete agreement, the case shall be resolved through arbitration conducted in the manner prescribed by, and subject to, the requirements of paragraph 7 and any rules or procedures agreed upon by the Contracting States if:

a) tax returns have been filed with at least one of the Contracting States with respect to the taxable years at issue in the case;

b) the case is not a particular case that both competent authorities agree, before the date on which arbitration proceedings would otherwise have begun, is not suitable for determination by arbitration; and

c) all concerned persons agree according to provisions of subparagraph d) of paragraph 7.

An unresolved case shall not, however, be submitted to arbitration if a decision on such case has already been rendered by a court or administrative tribunal of either Contracting State.

7. For the purposes of paragraph 6 and this paragraph, the following rules and definitions shall apply:

a) the term "concerned person" means the presenter of a case to a competent authority for consideration under this Article and all other persons, if any, whose tax liability to either Contracting State may be directly affected by a mutual agreement, arising from that consideration;

b) the "commencement date" for a case is the earliest date on which the information necessary to undertake substantive consideration for a mutual agreement has been received by both competent authorities;

c) arbitration proceedings in a case shall begin on the later of:

i) two years after the commencement date of that case, unless both competent authorities have previously agreed to a different date, and

ii) the earliest date upon which the agreement required by subparagraph d) has been received by both competent authorities;

d) the concerned person(s), and their authorized representatives or agents, must agree prior to the beginning of arbitration proceedings not to disclose to any other person any information received during the course of the arbitration proceeding from either Contracting State or the arbitration panel, other than the determination of such panel;

e) unless any concerned person does not accept the determination of an arbitration panel the determination shall constitute a resolution by mutual agreement under this Article and shall be binding on both Contracting States with respect to that case only; and

f) for purposes of an arbitration proceeding under paragraph 6 and this paragraph, the members of the arbitration panel and their staffs shall be involved "persons or authorities" to whom information may be disclosed under Article 26 of the Convention."

Article 3

Article 26 (Exchange of Information) of the Convention shall be deleted and replaced by the following provisions:

"ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as may be relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration, assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of such functions. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the requested State authorizes such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic use.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information, the tax authorities of the requested Contracting State, if necessary to comply with its obligations under this paragraph, shall have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws."

Article 4

Paragraph 10 of the Protocol to the Convention shall be deleted and replaced by the following new paragraph 10.

"10. With reference to Article 26 (Exchange of Information)

a) It is understood that the competent authority of a Contracting State shall provide the following information to the competent authority of the requested State when making a request for information under Article 26 of the Convention:

i) information sufficient to identify the person under examination or investigation (typically, name and, to the extent known, address, account number or similar identifying information);

ii) the period of time for which the information is requested;

iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;

iv) the tax purpose for which the information is sought; and

v) the name and, to the extent known, the address of any person believed to be in possession of the requested information.

b) The purpose of referring to information that may be relevant is intended to provide for exchange of information in tax matters to the widest possible extent without allowing the Contracting States to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While paragraph 10(a) contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, subparagraphs (i) through (v) of paragraph 10(a) nevertheless are to be interpreted in order not to frustrate effective exchange of information.

c) If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under Article 26 of the Convention in the form of authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings).

d) Although Article 26 of the Convention does not restrict the possible methods for exchanging information, it shall not commit a Contracting State to exchange information on an automatic or spontaneous basis. The Contracting States expect to provide information to one another necessary for carrying out the provisions of the Convention.

e) It is understood that in the case of an exchange of information under Article 26 of the Convention, the administrative procedural rules regarding a taxpayer's rights (such as the right to be notified or the right to appeal) provided for in the requested State remain applicable before the information is exchanged with the requesting State. It is further understood that these rules are intended to provide the taxpayer a fair procedure and not to prevent or unduly delay the exchange of information process."

Article 5

1. This Protocol shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged as soon as possible.

2. This Protocol shall enter into force upon the exchange of instruments of ratification. Its provisions shall have effect:

a) in respect of tax withheld at source, for amounts paid or credited on or after the first January of the year following the entry into force of this Protocol;

b) in respect of Articles 3 and 4 of this Protocol, to requests made on or after the date of entry into force of this Protocol:

i) regarding information described in paragraph 5 of Article 26 of the Convention, to information that relates to any date beginning on or after the date of signature of this Protocol, and

ii) in all other cases, to information that relates to taxable periods beginning on or after the first January of the year following the date of signature of this Protocol.

c) in respect of paragraphs 6 and 7 of Article 25 of the Convention, with respect to

i) cases that are under consideration by the competent authorities as of the date on which this Protocol enters into force, and

ii) cases that come under such consideration after that time,

and the commencement date for a case described in clause i) of this subparagraph shall be the date on which this Protocol enters into force.

DONE at Washington, in duplicate, this 23rd day of September, 2009, in the English and German languages, the two texts having equal authenticity.

FOR THE UNITED STATES OF AMERICA: FOR THE SWISS CONFEDERATION:

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Schweizerische Botschaft in den Vereinigten Staaten von Amerika

The Embassy of Switzerland presents its compliments to the United States Department of State and, referring to the Protocol (the "Protocol") signed today between the Swiss Confederation and the United States of America amending the Convention for the Avoidance of Double Taxation with Respect to Taxes on Income signed in Washington on October 2, 1996, and the protocol signed in Washington on October 2, 1996, (the "Convention"), and on behalf of the Government of Switzerland has the honor to propose the following:

1. In respect of any case where the competent authorities have endeavored but are unable to reach an agreement under Article 25 of the Convention regarding the application of the Convention, binding arbitration shall be used to determine such application, unless the competent authorities agree that the particular case is not suitable for determination by arbitration. If an arbitration proceeding under paragraph 6 of Article 25 commences (the Proceeding), the following rules and procedures shall apply.

a) The Proceeding shall be conducted in the manner prescribed by, and subject to the requirements of, paragraphs 6 and 7 of Article 25 and these rules and procedures, as completed by any other rules and procedures agreed upon by the competent authorities pursuant to subparagraph q) below.

b) The determination reached by an arbitration panel in the Proceeding shall be limited to a determination regarding the amount of income, expense or tax reportable to the Contracting States.

c) Notwithstanding the initiation of the Proceeding, the competent authorities may reach a mutual agreement to resolve a case and terminate the Proceeding. Correspondingly, a concerned person may withdraw a request for the competent authorities to engage in the Mutual Agreement Procedure (and thereby terminate the Proceeding) at any time.

d) The requirements of subparagraph d) of paragraph 7 of Article 25 shall be met when the competent authorities have each received from each concerned person a statement agreeing that the concerned person and each person acting on the concerned person's behalf shall not disclose to any other person any information received during the course

of the Proceeding from either Contracting State or the arbitration panel, other than the determination of the Proceeding. A concerned person that has the legal authority to bind any other concerned person(s) on this matter may do so in a comprehensive statement.

e) Each Contracting State shall have 90 days from the date on which the Proceeding begins to send a written communication to the other Contracting State appointing one member of the arbitration panel. The members appointed shall not be employees of the tax administration of the Contracting State which appoints them. Within 60 days of the date on which the second such communication is sent, the two members appointed by the Contracting States shall appoint a third member, who shall serve as Chair of the panel. If the members appointed by the Contracting States fail to agree upon the third member, these members shall be regarded as dismissed and each Contracting State shall appoint a new member of the panel within 30 days of the dismissal of the original members. The competent authorities shall develop a non-exclusive list of individuals with familiarity in international tax matters who may potentially serve as the Chair of the panel. In any case, the Chair shall not be a citizen or resident of either Contracting State.

f) The arbitration panel may adopt any procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Article 25 or of this note.

g) Each of the Contracting States shall be permitted to submit, within 60 days of the appointment of the Chair of the arbitration panel, a Proposed Resolution describing the proposed disposition of the specific monetary amounts of income, expense or taxation at issue in the case, and a supporting Position Paper, for consideration by the arbitration panel. Copies of the Proposed Resolution and supporting Position Paper shall be provided by the panel to the other Contracting State on the date on which the later of the submissions is submitted to the panel. In the event that only one Contracting State submits a Proposed Resolution within the allotted time, then that Proposed Resolution shall be deemed to be the determination of the panel in that case and the Proceeding shall be terminated. Each of the Contracting States may, if it so desires, submit a Reply Submission to the panel within 120 days of the appointment of its Chair, to address any points raised by the Proposed Resolution or Position Paper submitted by the other Contracting State. Additional information may be submitted to the arbitration panel only at its request, and copies of the panel's request and the Contracting State's response shall be provided to the other Contracting State on the

date on which the request or the response is submitted. Except for logistical matters such as those identified in subparagraphs l), n) and o) below, all communications from the Contracting States to the arbitration panel, and vice versa, shall take place only through written communications between the designated competent authorities and the Chair of the panel.

h) The presenter of the case to the competent authority of a Contracting State shall be permitted to submit, within 90 days of the appointment of the Chair of the arbitration panel, a Position Paper for consideration by the arbitration panel. Copies of the Position Paper shall be provided by the panel to the Contracting States on the date on which the later of the submissions of the Contracting States is submitted to the panel.

i) The arbitration panel shall deliver a determination in writing to the Contracting States within six months of the appointment of its Chair. The panel shall adopt as its determination one of the Proposed Resolutions submitted by the Contracting States.

j) The determination of the arbitration panel shall pertain to the application of the Convention in a particular case, and shall be binding on the Contracting States. The determination of the panel shall not state a rationale. It shall have no precedential value.

k) As provided in subparagraph e) of paragraph 7 of Article 25, the determination of an arbitration panel shall constitute a resolution by mutual agreement under Article 25. Each concerned person must, within 30 days of receiving the determination of the panel from the competent authority to which the case was first presented, advise that competent authority whether that concerned person accepts the determination of the panel. In the event the case is in litigation, each concerned person who is a party to the litigation must also advise, within the same time frame, the relevant court of its acceptance of the determination of the panel as the resolution by mutual agreement and withdraw from the consideration of the court the issues resolved through the Proceeding. If any concerned person fails to so advise the relevant competent authority and relevant court within this time frame, the determination of the panel shall be considered not to have been accepted in that case. Where the determination of the panel is not accepted, the case may not subsequently be the subject of a Proceeding.

l) Any meeting(s) of the arbitration panel shall be in facilities provided by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case.

m) The treatment of any associated interest or penalties is outside the scope of the Proceeding and shall be determined by applicable domestic law of the Contracting State(s) concerned.

n) No information relating to the Proceeding (including the panel's determination) may be disclosed by the members of the arbitration panel or their staffs or by either competent authority, except as permitted by the Convention and the domestic laws of the Contracting States. In addition, all material prepared in the course of, or relating to, the Proceeding shall be considered to be information exchanged between the Contracting States. All members of the arbitration panel and their staffs must agree in statements sent to each of the Contracting States in confirmation of their appointment to the arbitration panel to abide by and be subject to the confidentiality and nondisclosure provisions of Article 26 (Exchange of Information) of the Convention and the applicable domestic laws of the Contracting States. In the event those provisions conflict, the most restrictive condition shall apply.

o) The fees and expenses shall be borne equally by the Contracting States. In general, the fees of members of the arbitration panel shall be set at the fixed amount of $2,000 (two thousand United States dollars) per day or the equivalent amount in Swiss francs, subject to modification by the competent authorities. In general, the expenses of members of the arbitration panel shall be set in accordance with the International Centre for Settlement of Investment Disputes (ICSID) Schedule of Fees for arbitrators (as in effect on the date on which the arbitration proceedings begin), subject to modification by the competent authorities. Any fees for language translation shall also be borne equally by the Contracting States. Meeting facilities, related resources, financial management, other logistical support, and general administrative coordination of the Proceeding shall be provided, at its own cost, by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case. Any other costs shall be borne by the Contracting State that incurs them.

p) For purposes of paragraphs 6 and 7 of Article 25 and this paragraph, each competent authority shall confirm in writing to the other competent authority and to the concerned person(s) the date of its receipt of the information necessary to undertake substantive consideration for a mutual agreement. Such information shall be submitted to the competent authorities under relevant internal rules and procedures of each of the Contracting States. However, this information shall not be considered received until both competent authorities have received copies of all materials submitted to either

Contracting State by the concerned person(s) in connection with the mutual agreement procedure.

q) The competent authorities of the Contracting States may complete the above rules and procedures as necessary to more effectively implement the intent of paragraph 6 of Article 25 to eliminate double taxation.

2. It is understood that paragraph 5 of Article 26 of the Convention does not preclude a Contracting State from invoking paragraph 3 of Article 26 to refuse to supply information held by a bank, financial institution, a person acting in an agency or fiduciary capacity or information relating to ownership interests. However, such refusal must be based on reasons unrelated to the person's status as a bank, financial institution, agent, fiduciary, nominee, or the fact that the information relates to ownership interests. For instance, a legal representative acting for a client may be acting in an agency capacity but for any information protected as a confidential communication between attorneys, solicitors or other admitted legal representatives and their clients, paragraph 3 of Article 26 continues to provide a possible basis for declining to supply the information.

If the above proposal is acceptable to the Government of the United States of America, the Embassy of Switzerland proposes that this Note and the Department of State's reply reflecting such acceptance shall constitute an agreement between the two Governments that shall enter into force on the date of entry into force of the Protocol and shall be annexed to the Convention as Annex A thereto and shall therefore be an integral part of the Convention.

The Embassy of Switzerland avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration.

Washington, D.C. September 23, 2009

EMBASSY OF SWITZERLAND
WASHINGTON D.C.

United States Department of State
Washington, D.C.

The Department of State acknowledges receipt of the note dated September 23, 2009, from the Embassy of Switzerland which states:

"The Embassy of Switzerland presents its compliments to the United States Department of State and, referring to the Protocol (the "Protocol") signed today between the Swiss Confederation and the United States of America amending the Convention for the Avoidance of Double Taxation with Respect to Taxes on Income signed in Washington on October 2, 1996, and the protocol signed in Washington on October 2, 1996, (the "Convention"), and on behalf of the Government of Switzerland has the honor to propose the following:

1. In respect of any case where the competent authorities have endeavored but are unable to reach an agreement under Article 25 of the Convention regarding the application of the Convention, binding arbitration shall be used to determine such application, unless the competent authorities agree that the particular case is not suitable for determination by arbitration. If an arbitration proceeding under paragraph 6 of Article 25 commences (the Proceeding), the following rules and procedures shall apply.

a) The Proceeding shall be conducted in the manner prescribed by, and subject to the requirements of, paragraphs 6 and 7 of Article 25 and these rules and procedures, as completed by any other rules and procedures agreed upon by the competent authorities pursuant to subparagraph q) below.

b) The determination reached by an arbitration panel in the Proceeding shall be limited to a determination regarding the amount of income, expense or tax reportable to the Contracting States.

c) Notwithstanding the initiation of the Proceeding, the competent authorities may reach a mutual agreement to resolve a case and terminate the Proceeding. Correspondingly, a concerned person may withdraw a request for the

competent authorities to engage in the Mutual Agreement Procedure (and thereby terminate the Proceeding) at any time.

d) The requirements of subparagraph d) of paragraph 7 of Article 25 shall be met when the competent authorities have each received from each concerned person a statement agreeing that the concerned person and each person acting on the concerned person's behalf shall not disclose to any other person any information received during the course of the Proceeding from either Contracting State or the arbitration panel, other than the determination of the Proceeding. A concerned person that has the legal authority to bind any other concerned person(s) on this matter may do so in a comprehensive statement.

e) Each Contracting State shall have 90 days from the date on which the Proceeding begins to send a written communication to the other Contracting State appointing one member of the arbitration panel. The members appointed shall not be employees of the tax administration of the Contracting State which appoints them. Within 60 days of the date on which the second such communication is sent, the two members appointed by the Contracting States shall appoint a third member, who shall serve as Chair of the panel. If the members appointed by the Contracting States fail to agree upon the third member, these members shall be regarded as dismissed and each Contracting State shall appoint a new member of the panel within 30 days of the dismissal of the original members. The competent authorities shall develop a non-exclusive list of individuals with familiarity in international tax matters who may potentially serve as the Chair of the panel. In any case, the Chair shall not be a citizen or resident of either Contracting State.

f) The arbitration panel may adopt any procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Article 25 or of this note.

g) Each of the Contracting States shall be permitted to submit, within 60 days of the appointment of the Chair of the arbitration panel, a Proposed Resolution describing the proposed disposition of the specific monetary amounts of income, expense or taxation at issue in the case, and a supporting Position Paper, for consideration by the arbitration panel. Copies of the Proposed Resolution and supporting Position Paper shall be provided by the panel to the other Contracting State on the date on which the later of the submissions is

submitted to the panel. In the event that only one Contracting State submits a Proposed Resolution within the allotted time, then that Proposed Resolution shall be deemed to be the determination of the panel in that case and the Proceeding shall be terminated. Each of the Contracting States may, if it so desires, submit a Reply Submission to the panel within 120 days of the appointment of its Chair, to address any points raised by the Proposed Resolution or Position Paper submitted by the other Contracting State. Additional information may be submitted to the arbitration panel only at its request, and copies of the panel's request and the Contracting State's response shall be provided to the other Contracting State on the date on which the request or the response is submitted. Except for logistical matters such as those identified in subparagraphs l), n) and o) below, all communications from the Contracting States to the arbitration panel, and vice versa, shall take place only through written communications between the designated competent authorities and the Chair of the panel.

h) The presenter of the case to the competent authority of a Contracting State shall be permitted to submit, within 90 days of the appointment of the Chair of the arbitration panel, a Position Paper for consideration by the arbitration panel. Copies of the Position Paper shall be provided by the panel to the Contracting States on the date on which the later of the submissions of the Contracting States is submitted to the panel.

i) The arbitration panel shall deliver a determination in writing to the Contracting States within six months of the appointment of its Chair. The panel shall adopt as its determination one of the Proposed Resolutions submitted by the Contracting States.

j) The determination of the arbitration panel shall pertain to the application of the Convention in a particular case, and shall be binding on the Contracting States. The determination of the panel shall not state a rationale. It shall have no precedential value.

k) As provided in subparagraph e) of paragraph 7 of Article 25, the determination of an arbitration panel shall constitute a resolution by mutual agreement under Article 25. Each concerned person must, within 30 days of receiving the determination of the panel from the competent authority to which the case was first presented, advise that competent authority whether

that concerned person accepts the determination of the panel. In the event the case is in litigation, each concerned person who is a party to the litigation must also advise, within the same time frame, the relevant court of its acceptance of the determination of the panel as the resolution by mutual agreement and withdraw from the consideration of the court the issues resolved through the Proceeding. If any concerned person fails to so advise the relevant competent authority and relevant court within this time frame, the determination of the panel shall be considered not to have been accepted in that case. Where the determination of the panel is not accepted, the case may not subsequently be the subject of a Proceeding.

l) Any meeting(s) of the arbitration panel shall be in facilities provided by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case.

m) The treatment of any associated interest or penalties is outside the scope of the Proceeding and shall be determined by applicable domestic law of the Contracting State(s) concerned.

n) No information relating to the Proceeding (including the panel's determination) may be disclosed by the members of the arbitration panel or their staffs or by either competent authority, except as permitted by the Convention and the domestic laws of the Contracting States. In addition, all material prepared in the course of, or relating to, the Proceeding shall be considered to be information exchanged between the Contracting States. All members of the arbitration panel and their staffs must agree in statements sent to each of the Contracting States in confirmation of their appointment to the arbitration panel to abide by and be subject to the confidentiality and nondisclosure provisions of Article 26 (Exchange of Information) of the Convention and the applicable domestic laws of the Contracting States. In the event those provisions conflict, the most restrictive condition shall apply.

o) The fees and expenses shall be borne equally by the Contracting States. In general, the fees of members of the arbitration panel shall be set at the fixed amount of $2,000 (two thousand United States dollars) per day or the equivalent amount in Swiss francs, subject to modification by the competent authorities. In general, the expenses of members of the arbitration panel shall be set in accordance with the International Centre for Settlement of

Investment Disputes (ICSID) Schedule of Fees for arbitrators (as in effect on the date on which the arbitration proceedings begin), subject to modification by the competent authorities. Any fees for language translation shall also be borne equally by the Contracting States. Meeting facilities, related resources, financial management, other logistical support, and general administrative coordination of the Proceeding shall be provided, at its own cost, by the Contracting State whose competent authority initiated the mutual agreement proceedings in the case. Any other costs shall be borne by the Contracting State that incurs them.

p) For purposes of paragraphs 6 and 7 of Article 25 and this paragraph, each competent authority shall confirm in writing to the other competent authority and to the concerned person(s) the date of its receipt of the information necessary to undertake substantive consideration for a mutual agreement. Such information shall be submitted to the competent authorities under relevant internal rules and procedures of each of the Contracting States. However, this information shall not be considered received until both competent authorities have received copies of all materials submitted to either Contracting State by the concerned person(s) in connection with the mutual agreement procedure.

q) The competent authorities of the Contracting States may complete the above rules and procedures as necessary to more effectively implement the intent of paragraph 6 of Article 25 to eliminate double taxation.

2. It is understood that paragraph 5 of Article 26 of the Convention does not preclude a Contracting State from invoking paragraph 3 of Article 26 to refuse to supply information held by a bank, financial institution, a person acting in an agency or fiduciary capacity or information relating to ownership interests. However, such refusal must be based on reasons unrelated to the person's status as a bank, financial institution, agent, fiduciary, nominee, or the fact that the information relates to ownership interests. For instance, a legal representative acting for a client may be acting in an agency capacity but for any information protected as a confidential communication between attorneys, solicitors or other admitted legal representatives and their clients, paragraph 3 of Article 26 continues to provide a possible basis for declining to supply the information.

If the above proposal is acceptable to the Government of the United States of America, the Embassy of Switzerland proposes that this Note and the Department of State's reply reflecting such acceptance shall constitute an agreement between the two Governments that shall enter into force on the date of entry into force of the Protocol and shall be annexed to the Convention as Annex A thereto and shall therefore be an integral part of the Convention.

The Embassy of Switzerland avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration."

The Department of State confirms that the proposal set forth in the Embassy of Switzerland's note is acceptable to the Government of the United States of America and agrees that this note and the Government of Switzerland's note shall constitute an agreement between the two Governments that shall enter into force on the date of entry into force of the Protocol and shall be annexed to the Convention as Annex A thereto and shall therefore be an integral part of the Convention.

Department of State,

Washington, September 23, 2009.

XXV

The Department of State presents its compliments to the Embassy of Switzerland and refers the Embassy of Switzerland to the Protocol signed in Washington on September 23, 2009, entitled Protocol Amending the Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, Signed on October 2, 1996 (hereinafter "Protocol").

Some errors were discovered in the English language version of the Protocol which the Department of State proposes to rectify as follows:

1. Subparagraph a) of paragraph 2 of Article 5:

   In the English version the words "the first January" shall be replaced by the words "the first of January".

2. Subsection ii) of subparagraph b) of paragraph 2 of Article 5:

   In the English version the words "the first January" shall be replaced by the words "the first of January".

In order to correct the Protocol, the Department of State proposes, on behalf of the Government of the United States of America, that:

I. The English language version be corrected as set out above; and

II. The corrected texts replace the defective texts as from the date on which the Protocol was signed.

If the Government of Switzerland concurs with the proposals contained in paragraphs I. and II. above, the Department of State further proposes that this note and the note in reply thereto expressing the approval of the Government of Switzerland shall constitute the correction of the English language version of the Protocol, and shall become part of the original thereof.

Department of State,

Washington, November 16, 2010.

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Embassy of Switzerland in the United States of America

Note No. 75/2010

The Embassy of Switzerland presents it compliments to the United States Department of State and acknowledges receipt of the note dated November 16, 2010 which reads as follows:

"The Department of State presents its compliments to the Embassy of Switzerland and refers the Embassy of Switzerland to the Protocol signed in Washington on September 23, 2009, entitled Protocol Amending the Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, Signed on October 2, 1996 (hereinafter "the Protocol").

Some errors were discovered in the English language version of the Protocol which the Department of State proposes to rectify as follows:

1. Subparagraph a) of paragraph 2 of Article 5:

   In the English version the words "the first January" shall be replaced by the words "the first of January".

2. Subsection ii) of subparagraph b) of paragraph 2 of Article 5:

   In the English version the words "the first January" shall be replaced by the words "the first of January".

In order to correct the Protocol, the Department of State proposes, on behalf of the Government of the United States of America, that:

I. The English language version be corrected as set out above; and

II. The corrected texts replace the defective texts as from the date on which the Protocol was signed.

If the Government of Switzerland concurs with the proposals contained in paragraphs I. and II. above, the Department of State further proposes that this note and the note in reply thereto expressing the approval of the Government of Switzerland shall constitute the correction of the English language version of the Protocol, and shall become part of the original thereof."

The Embassy of Switzerland confirms that the Government of Switzerland agrees with the corrections proposed by the Government of the United States of America. Accordingly, the note of the United States Department of States of November 16, 2010, and this note in reply shall constitute the correction of the English language version of the Protocol and shall become part of the original thereof.

The Embassy of Switzerland avails itself of this opportunity to renew to the United States Department of State the assurances of its highest consideration.

Washington, D.C., November 16, 2010

United States Department of State
Washington, D.C.

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Switzerland:
Translation of a Parliamentary Resolution

Edith Palmer
Chief, Foreign, Comparative, and International Law Division II

* * * * *

Expiration of Referendum Period: July 5, 2012

Federal Resolution
Concerning a Supplement to the Double Taxation Treaty between Switzerland and the United States of America.*

March 16, 2012

The Federal Assembly of the Swiss Confederation,
in accordance with article 54 paragraph a and article 166 paragraph 2 of the Federal Constitution,[1] after considering the Message of the Federal Council of April 6, 2011,[2] and the Supplementary Report of August 8, 2011,[3] Concerning the Double Taxation Treaty with the United States of America,
resolves:

Art. 1

(1) Number 10 letter b of the Protocol to the Agreement of October 2, 1996[4] between the Swiss Confederation and the United States of America for the Avoidance of Double Taxation with respect to Taxes on Income, inserted through article 4 of the Protocol of September 23, 2001[5] on the Amendment of this Agreement, signifies that Switzerland complies with a request for administrative assistance when it is demonstrated that a "fishing expedition" is not involved and the United States:

* Bundesbeschluss über Eine Ergänzung des Doppelbesteuerungsbkommens zwischen der Schweiz und den Vereinigten Staaten von Amerika, Mar. 16, 2012, BUNDESBLATT 3511 (2012), http://www.admin.ch/opc/de/federal-gazette/2012/3511.pdf.

[1] SR [Systematische Sammlung des Bundesrechts] 101.

[2] BBl [Bundesblatt] 2011, 3749.

[3] BBl 2011, 6663.

[4] SR 0.672.933.61.

[5] BBl 2010, 247.

a. Identify the person subject to taxation, whereby this identification may be accomplished also in other ways besides statement of name and address; and
b. Provide the name and address of the probable holder of the information, to the extent known to the United States.

(2) The identification according to paragraph 1 letter a may also be accomplished through the description of a pattern of conduct on the basis of which it can be assumed that persons subject to taxation who behaved according to this pattern have not lived up to their statutory obligations. Persons subject to taxation may only be identified in this manner, however, if the holder of the information or his coworkers has contributed significantly to such conduct.
(3) The Swiss Tax Administration is hereby delegated to work toward a mutual recognition of the interpretation presented in paragraphs 1 and 2.
(4) In the application of the requirements of paragraph 1 letter b, Switzerland, as the requested state, observes the principles of proportionality and practicability.

Art. 2.

This Resolution is subject to the optional referendum for international treaties applicable to treaties that, in accordance with article 141 paragraph 1 letter d number 4 of the Federal Constitution, contain important legislative provisions or whose implementation requires the enactment of federal legislation.

Council of States, March 16, 2012
The President: Hans Altherr
The Secretary: Philippe Schwab

National Council, March 16, 2012
The President: Hansjörg Walter
Der Sekretär: Pierre-Hervé Freléchoz

Date of Publication: March 27, 2012[6]

[6] BBl 2012, 3511

In connection with the Agreement between the Internal Revenue Service of the United States of America ("IRS") and The Swiss Confederation on the request for information from IRS regarding certain Swiss Financial Institutions ("the Agreement"), and contingent upon the those parties' entering into and implementing the Agreement, the U.S. Department of Justice ("DOJ") and The Swiss Confederation intend to undertake the following steps:

1. Under the Agreement, any Swiss bank currently under investigation by DOJ ("a Targeted Bank") will not be eligible for the benefits of the Agreement unless and until that bank negotiates a separate resolution of its potential liability with DOJ. To progress in those negotiations, DOJ needs complete information on such critical issues as how the banks operated and supervised the U.S. cross-border businesses, including internal reporting and other communications with management, how the banks set up their off-shore businesses, what they communicated to attract and service account-holders, and which bank employees or outside advisors were involved, among other things. DOJ therefore has adopted and will inform the Targeted Banks of the following prerequisites for such negotiations:

    a. In order to participate with DOJ in negotiations toward a resolution of potential criminal liability, a Targeted Bank must promptly and fully cooperate with DOJ by producing all requested documents and providing complete information on those subjects by December 31, 2011.

    b. In this production, the records provided to DOJ by the banks need not include names of account holders. The banks also may redact the names of bank employees and outside advisors from the materials produced to DOJ, but the banks will provide unredacted copies of the documents to FINMA.

2. FINMA will promptly, and no later than December 31, 2011, provide U.S. regulatory agencies records received from Targeted Banks without redactions of the names of bank employees and outside advisers, at the request of those agencies. The Swiss government will authorize the U.S. regulatory agencies to provide the unredacted documents to DOJ. Further, FINMA will authorize the Targeted Banks to cooperate with DOJ by producing all records requested by DOJ, as set forth above.

3. Production of account records which identify account holders will be necessary to any agreement resolving the potential liability of a Targeted Bank. To demonstrate the intent and ability of the Swiss government to produce complete, unredacted account records pursuant to the treaty process, the Swiss taxing authority (SFTA) will issue final decrees by January 2, 2012, as to 200-250 accounts covered by the treaty request submitted on September 26, 2011, and will produce to the U.S. at least 100-150 accounts by February 14, 2012.

4. Based upon the Swiss Confederation's stated intention to implement these steps, and contingent upon the Confederation's actually implementing these steps and the Targeted

Banks' cooperating, DOJ will refrain until December 31, 2011, from seeking an indictment or enforcing a grand jury subpoena against a Targeted Bank that commences or continues good faith negotiations with DOJ relating to past violations of U.S. tax laws and related provisions. DOJ's forbearance extends only to the banks, not to other entities or to individuals. Further, DOJ may proceed before the end of 2011 against any Targeted Bank that fails to take the steps set forth in Paragraph 1 or otherwise to cooperate with DOJ.

5. Upon obtaining the information described above, and DOJ being satisfied that the further account information, containing the identity of the account holders, to be produced under the Agreement will satisfy U.S. law enforcement interests, DOJ will move toward finalizing the resolution of the potential liability of the Targeted Banks. Under those circumstances, DOJ will continue to refrain through March 2012 from seeking an indictment or enforcing a subpoena against a Targeted Bank that continues to negotiate in good faith with DOJ toward a resolution of its potential criminal liability. Any resolutions as to particular banks will be contingent upon continued cooperation, including production of account records.

Assuming that the negotiations between the U.S. Internal Revenue Service ("IRS") and The Swiss Confederation regarding bank secrecy continue productively, the U.S. Department of Justice ("DOJ") intends to take the following steps:

1. The proposed agreement between the Swiss government and the IRS provides that any Swiss bank now under investigation by DOJ ("a Targeted Bank") will be eligible for the benefits of the Agreement only if that bank separately negotiates resolution of its potential liability with DOJ. To progress in those negotiations, DOJ needs complete and accurate information on such critical issues as how the banks operated and supervised the U.S. cross-border businesses (including internal reporting and other communications with management), who was involved, how they set up the off-shore businesses, and how they attracted and serviced accountholders.

   - Therefore, as indicated previously to Ambassador Sager, any Targeted Bank wishing to participate in such negotiations must promptly and fully cooperate with DOJ by coming forward, no later than December 31, 2011, with a detailed explanation of its off-shore business, supported by key documents DOJ has requested, and by making arrangements with DOJ for production of the balance of the requested materials. The Swiss government has authorized this cooperation.

   - The records need not identify accountholders, bank employees or outside advisors, but the banks will provide FINMA copies, without redacting names of employees and advisors. FINMA has stated that it intends to transmit those unredacted records to U.S. regulatory agencies that assert a supervisory interest in them. FINMA has further stated that it intends to authorize the agencies to share the unredacted records with DOJ, upon the consent of the Swiss Federal Office of Justice.

2. If the Swiss government commits to implementing these steps, and contingent upon receiving the information described above, DOJ intends to refrain until December 31, 2011, from indicting or enforcing a grand jury subpoena against a Targeted Bank seeking to engage in good faith negotiations with DOJ regarding past violations of U.S. tax laws and related provisions. By that time, DOJ expects to have substantial information from any such bank and to know whether FINMA will provide the unredacted documents described above. DOJ's forbearance extends only to cooperating banks, not to other entities or to individuals, nor to any Targeted Bank that fails to take the steps set forth in Paragraph 1 or otherwise to cooperate.

3. Production of records that identify accountholders is essential to any agreement with a Targeted Bank resolving its potential liability. To assess the feasibility of such agreements, DOJ needs – and the Swiss government reasonably expects to produce by February 14, 2012 – complete, unredacted account records for 100-150 accounts covered by the September 26, 2011 treaty request. Assuming that as of mid-February, these account records, along with the information described in paragraph 1above, confirm the reasonable expectation that

unredacted records for both structured and individual accounts will be produced according to the terms of the Agreement and will satisfy U.S. law enforcement interests, DOJ intends to continue moving toward resolution of the potential liability of cooperative Targeted Banks. DOJ further intends under those circumstances to refrain from seeking an indictment or enforcing a subpoena against a Targeted Bank while that bank engages in good faith negotiations. Any resolutions or forbearance as to particular banks will require those banks' continued cooperation, by providing, among other things, unredacted account records and truthful information on the nature and scope of the off-shore business.

U.S. Department of Justice

Tax Division

601 D Street, N.W.
Washington, D.C. 20579

(202) 514-5196
Telefax: (202) 616-1786

December 9, 2011

By Electronic Mail and First Class Mail

Re:

Dear

Reference is made to the letter dated November 17, 2011, from Dr. Urs Zulauf, General Counsel, FINMA, and Jan Blochinger of the FINMA General Counsel's Office, to you in which they stated that "the institutions concerned are explicitly recommended to cooperate with the US authorities" regarding the latter's investigation of cross-border business with U.S. clients.

As the United States has made clear in discussions with Dr. Michael Ambühl, State Secretary for International Financial Matters, and Dr. Michael Leupold, director of the Swiss Federal Office of Justice, in order to determine whether it will be fruitful for the United States Department of Justice to discuss with your institution the possibility of an agreement with us that could avoid indictment, the Department of Justice must have complete and accurate information and must have that information quickly. We have previously discussed the categories of documents that need to be produced as evidence of the bank's cooperation. I have attached, as Appendix A, a list of records and documents which must be produced if your institution wishes to attempt to reach an agreement with us by which it could avoid indictment. Please note that you must also provide an English translation of each of the listed records and documents.

We must hear from you immediately if you wish to engage in these negotiations. Participation in these negotiations requires that, by December 31, 2011, you provide us with documents (together with English translations) responsive to the Appendix A requests. We understand that the document production with English translations may present an occasional logistical issue. In such event, it is essential that you contact us immediately to make satisfactory arrangements for the production of those particular documents. In addition, by December 31, 2011, it is expected that you will have made firm arrangements to meet with us to give us a detailed oral presentation explaining your institution's U.S. cross-border businesses (including

who was involved, how the business was set up, and how the institution attracted and serviced account holders).

The material listed on Appendix A should be delivered to:

You cooperation in this matter is appreciated.

Sincerely yours,

JOHN A. DICICCO
Principal Deputy Assistant Attorney General
Tax Division

Enclosure: Appendix A

APPENDIX A

From its affiliates, branches and wholly owned subsidiaries, including, but not limited to, , for the period January 1, 2000, to the present:

All business records relating to the U.S. cross-border banking business, including but not limited to the following:

a. All records related to contacts or communications between employees of its affiliates, branches and wholly owned subsidiaries, including, but not limited to, and U.S. clients in the United States including, among other things, e-mails, correspondence, faxes, meeting notes, memoranda, telephone logs;

b. All records related to contacts or communications between employees regarding communications with U.S. clients in the United States, including, among other things, e-mails, correspondence, faxes, meeting notes, memoranda, telephone logs;

c. All records regarding contacts or communications between employees and third parties (including intermediaries, asset managers, fiduciaries, attorneys, etc.) concerning communications with U.S. clients in the United States including, among other things, e-mails, correspondence, faxes, meeting notes, memoranda, telephone logs;

d. All records related to travel by employees to the United States including, among other things, emails, travel itineraries, travel requests, travel authorizations, memoranda of activities in the United States, statements of the purpose of the travel, expense reports;

e. All documents related to transferring accounts held by United States persons from to any of its affiliates or to any other entity;

f. All documents related to allegations of violations of law or policies and procedures involving the bank, its affiliates, wholly owned subsidiaries and/or the employees thereof, in connection with the operation of the U.S. cross-border banking business;

g. All meeting minutes, presentations, memoranda, reports and correspondence relating to the U.S. cross-border banking business by or to and from management, executives, and board of directors; and

h. All personnel files for the executives, management and employees involved in the U.S. cross-border banking business.

Switzerland:
Translation of Newspaper Article

Edith Palmer
Chief, Foreign, Comparative, and International Law Division II

* * * * *

Tax Dispute with the US is Escalating[*]

Bern/Washington. The United States demands immediate and detailed information about the extent of tax evasion by US citizens through Swiss banks. If Switzerland opposes, the United States threatens criminal charges against Credit Suisse (CS) and nine other banks. This escalation concerning the disclosure of customer names becomes apparent from an exchange of letters that are on file with the *SonntagsZeitung*. Among other things, the US demands detailed numbers on tax evasion involving CS, [to be obtained] by Tuesday.

The US ultimatum comes after a letter from State Secretary Michael Ambühl of last Tuesday. Ambühl proposes to an office-holder of the US tax agency to negotiate "a top-down approach" in a meeting in Washington. Ambühl sketches a two-pronged process "in the first part, conceptual topics must be resolved, in the second (...) aggregated and consolidated statistical data could follow."

USA: "Significant" number of accounts, and "quickly."

Ambühl refers furthermore to an Additional Protocol of the Federal Council to the US Tax Convention that should allow for group requests without specifying individual names. According to Ambühl, with the "new instrument" the US would obtain administrative assistance in "more cases than before." It would require, however, "mutual will and an agreement on the key points." Otherwise, the Swiss Parliament would not go along.

The US responded by return mail and harshly. In three pages, Deputy Attorney General James Cole demanded an immediate and extensive disclosure of the type and extent of the tax evasion. "Without these data I do not see how we can actually progress," Cole states in the letter of August 31. The course of action is reminiscent of the UBS case, when US pressure also emanated from the criminal authority (DOJ) and Switzerland ended up disclosing the names of 5,000 US customers.

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[*] Translator's Note: This is a translation of Lukas Hässig & Martin Spieler, *Steuerstreit mit den USA eskaliert [Tax Dispute with the US is Escalating]*, SONNTAGSZEITUNG, Sept. 4, 2011, as available on Lexis by subscription. The article is followed by a short interview with Federal Councilor Eveline Widmer-Schlumpf, which is also translated. The *SonntagsZeitung* is a Zürich-based, German-language newspaper.

The information contained in the article is based on correspondence between State Secretary Michael Ambühl, a high-ranking Swiss government official, and US Deputy Attorney General James Cole that allegedly was leaked to the *SonntagsZeitung*. The quotation marks appear to indicate direct quotations from the letters of Mr. Cole and Mr. Ambühl.

According to Deputy Attorney General Cole the US demands the data of a "significant" number of US accounts, and "speedily and with certainty." In return the US would be willing to "test" the Swiss plan with group requests, yet only under the following conditions: First, the US wants comprehensive "statistical information." According to Swiss negotiator circles, the US demands detailed information from ten banks concerning their US customers and assets. In addition to CS, Julius Bär, Wegelin, and the Zürich and Basel Cantonal Banks are affected. In this context, the number of all US private customers and foundations with investments of at least 50,000 dollars are to be disclosed for the period 2002 through July 2010. Tens of thousands of customers could be affected, more than Switzerland could disclose through group requests. The latter would only apply as of the fall of 2009.

Second, Switzerland has so far refused to hand over to the US the requested amount structure [sic]. Yet only after they have received it would the Americans be willing, according to Cole, to veer toward the path of administrative assistance that the Swiss government has proposed.

Third, to be on the safe side, the US wants to simultaneously issue a "grand jury subpoena" and possibly also a "John Doe Summons" against the affected banks. Intended are court-ordered coercive measures for the disclosure of customer data. According to DOJ Deputy Cole, Switzerland would have to do everything possible to facilitate and accelerate the "delivery of account information and any other form" of a global deal. Otherwise, Cole threatens, "I am afraid that we will hardly have a choice other than to apply the measures that are at our disposal." Fifth [sic], individual deals would be negotiated with the ten banks. There is no promise, however, of not suing them.

Finally the Americans demand an agreement for other banks that would ensure that "certain customer information" is disclosed, evaded taxes are paid, and correct behavior is guaranteed.

A speaker for Finance State Secretary Michael Ambühl did not want to comment. "We do not discuss negotiations publicly," said Mario Tuor. CS referred to the federal government.

The Swiss Banks Fears Billions of Fines in US Tax Dispute

Behind the scenes the Swiss banks are discussing who would have to pay how much in the potential billion dollar fines.

"There is an enormous fear of US justice," a banker said in the context of the escalation of the tax dispute. Another source speaks of a climate of alarm and he complains: "This is now going to hurt." The financial institutions expect that the conflict between the US and Switzerland will have much more serious consequences than those of the UBS tax *affaire*. "For us it will be significantly more expensive than it was for UBS, which had to pay a fine of 780 million dollars," confirmed a well-informed source. "We figure that the Swiss banks must pay fines of up to 2 billion [Swiss] Francs and must deliver a multiple of the customer data of the UBS case." Even though the federal government is still negotiating with the US, the banks have reconciled themselves [to the fact] that "there is no possibility that we will not have to pay and deliver data." Otherwise the involved banks will be in jeopardy. Because large fines could bring

individual institutions to the brink of disaster, bankers are demanding a solidarity fund for participation by all banks. "Now the financial market must stick together," demands one bank president.

* * * * *

Widmer-Schlumpf: Existing Laws are Sufficient [Interview in Q&A Format]

You have submitted to the Foreign Policy Committee an Additional Report (*Zusatzbericht*) on the double-taxation treaty (DTT) with the US. What is your intended purpose?

> We start out from the assumption that the problems with the US can be resolved on the basis of current law. We would like to make it clear to the Parliament that this, as already in the old DTT, could include group requests.

Is the adjustment sufficient for the US?

> Nothing is certain as yet. Yet we would not make such proposals to the Parliament, had we not conducted discussions with the US.

What is the content of the Additional Report?

> The Report clarifies that according to the Federal Administrative Court, group requests were already possible under the old DTT under certain, clearly circumscribed conditions, and that this should also prevail for the new DTT.

Bundesgericht
Tribunal fédéral
Tribunale federale
Tribunal federal

CH-1000 Lausanne 14
File number. 11.5.2/8_2013

Lausanne, 5 July 2013

Press Release of the Swiss Federal Supreme Court

Judgement of 5 July 2013 (2C_269/2013)

Exchange of information in Tax Matters with the United States – The Federal Supreme Court rejects a first appeal

Group requests are permitted under the 1996 Double Taxation Agreement with the United States, provided that the facts are described with sufficient detail so as to provide grounds for suspicion of fraud and the like and to enable the identification of the taxpayers involved.

In November 2012, in response to a request for administrative assistance issued by the American tax authorities, the Swiss Federal Tax Administration decided to transfer the bank records of a United States resident, who was the beneficial owner of a company holding an account with Credit Suisse. In a decision rendered on the 13th March 2013, the Federal Administrative Court rejected an appeal against this decision (A-6011/2012).

Today, the Federal Supreme Court rejected the appeal against the decision of the Federal Administrative Court. It held that requests for administrative assistance in relation with fraud and the like are in principle admissible under the 1996 Double Taxation Agreement with the United States, regardless of whether the suspicion falls on one or more persons and whether the said persons are explicitly named in the request. As the Double Taxation Agreement contains no express provision concerning the minimum content of a request for administrative assistance, the content had to be assessed by interpretation. The Federal Supreme Court thus considered that the mere absence of indications relating to the identity of the persons involved did not constitute an inadmissible fishing expedition, provided that the request for administrative

assistance fullfills the strict requirements concerning the degree of detail in the description of the facts.

Regarding the actual facts presented by the American tax authorities, the Federal Supreme Court held that the method chosen by the clients of the bank involved, by which the financial assets held by a domiciliary company which was not subject to United States taxes, sought not only to avoid income tax owed by the beneficial owner of the company, but was also a way to escape American fiscal procedures put in place in order to ensure the payment of this tax. The process was described with sufficient detail to render the presence of tax fraud plausible.

Contact: Lorenzo Egloff, Deputy of the Secretary General
Tel. 021 318 97 16; Fax 021 323 37 00
E-mail: presse@bger.ch

NB: The judgment will be published on our website as soon as the legal considerations have been redacted: www.bger.ch / "Rechtsprechung gratis" / "Weitere Urteile ab 2000" (Insert the reference of the judgment into the search field 2C_269/2013). When exactly the legal considerations will be available is not yet known.

Bundesverwaltungsgericht
Tribunal administratif fédéral
Tribunale amministrativo federale
Tribunal administrativ federal

Media relations
A-5390/2013, A-5540/2013

Press Release – Communiqué de presse – Medienmitteilung – Comunicato stampa

St. Gallen, January 8, 2014

Julius Baer: IRS request for administrative assistance not sufficient for the disclosure of client data

Decision A-5390/2013 of January 6, 2014:
The Swiss Federal Tax Administration has unlawfully granted the request for administrative assistance submitted on April 17, 2013, by the IRS concerning the disclosure of bank account data of clients of Julius Baer. The facts, as set out in the IRS request for administrative assistance, do not meet the level of detail which is required for the demarcation between group requests, for which administrative assistance can be granted, and forbidden 'fishing expeditions'. Therefore, in its decision of January 6, 2014, the Federal Administrative Court affirmed the appeal of a Julius Baer client. As a consequence his bank account data must not be disclosed to the IRS.

On April 17, 2013, based on the Double Tax Agreement between Switzerland and the USA of 2 October 1996 (DTA Switzerland-USA 96), the IRS submitted a request for administrative assistance, in which it accused Julius Baer of having had employees that actively assisted their clients, subject to US tax law, in concealing their income and assets from the US tax authority. In the request, the IRS abstractly describes the alleged conduct of the Julius Baer clients. Furthermore, the request gives a concrete example: a married couple used debit cards linked to an account of a company which is domiciled in a country outside the US (domiciliary company).

According to the decision of the Federal Administrative Court, the above mentioned conduct and the example given in the request do not provide sufficient evidence that they are covered by the term 'tax fraud or the like' in article 26 of the DTA Switzerland-USA. In the example given, the IRS does neither state that the married couple has not respected the company's separate legal existence ('they have not played the game of the legal entity') nor that the withdrawal of cash served private purposes. Furthermore, the enclosed indictment against employees of Julius Baer ('Casadei Indictment') does not set forth any conduct that could be considered as 'tax fraud or the like'. Hence, the IRS request of April 17, 2013, does not give enough indication of 'tax fraud or the like'. Therefore, the appeal of the Julius Baer client has to be granted.

The Court reaffirms its case law that, under the DTA Switzerland-USA 96, administrative assistance shall not be granted for presumed tax evasion, even if high amounts are at stake. It also confirms that the mere failure to declare a bank account may be qualified - at the utmost - as a tax evasion, which is not subject to administrative assistance.

In a further proceeding **(A-5540/2013)**, the Federal Administrative Court did not enter into the substance of an appeal by a Julius Baer client because the deadline for submission of the appeal against the final decision of the Swiss Federal Tax Administration (SFTA) had not been complied with. The Court states that the SFTA had rightfully sent its final decision to the authorised recipients which were mentioned in the official federal publication ('Bundesblatt'). The point in time at which the final decision was received by the authorised recipients is decisive for the issue of the final decision and marks the beginning of the period for the appeal. Since the Court did not enter into substance of the appeal, the bank account data of the appellant may be transferred to the US.

According to article 84a of the Federal Act of 17 June 2005 on the Swiss Federal Supreme Court (BGG), decisions of the Federal Administrative Court in the field of international administrative assistance in tax matters can be referred to the Federal Supreme Court within 10 days, if the legal question at stake is of fundamental importance or if certain circumstances outlined in article 84 paragraph 2 BGG which imply that the case is of special importance are present. The Federal Supreme Court will decide if that is the case or not. Within these restrictions, both described decisions of the Federal Administrative Court can be referred to the Federal Supreme Court.

The Swiss Federal Administrative Court
The Federal Administrative Court renders judgment in cases of appeal against decrees issued by Swiss federal authorities. In certain matters the court is also authorized to examine decisions rendered by cantonal authorities and issue judgments on complaints filed against cantonal decisions. Where the Federal Administrative Court is lower instance court, its judgments can be appealed before the Federal Supreme Court. Based in St. Gallen, the Federal Administrative Court accommodates five divisions and a General Secretariat. Approximately 75 judges and 320 members of staff constitute the largest Swiss federal court.

Contact:
Rocco R. Maglio, Spokesperson, Kreuzackerstrasse 12, P.O. Box, CH-9023 St. Gallen, phone 058 705 29 86 / 079 619 04 83, medien@bvger.admin.ch.

Switzerland: Translation of the "Lex USA"

Edith Palmer
Chief, FCIL II

* * * * *

(Measures to facilitate the resolution of the tax dispute between the Swiss banks and the United States.)[1, 2]

Date. . .

The Federal Assembly of the Swiss Confederation,
based on article 98 paragraph 1 of the Federal Constitution
having considered the Federal Council Dispatch of May 29, 2013
decrees:

I.

Art. 1 Cooperation Authorization for Banks

[1] The banks according to the Banking Act of November 8, 1934 are [herewith] authorized to fulfill all obligations arising from their cooperation with the United States to resolve the tax dispute.

[2] Included in this authorization is information relating to business relationships that have a connection to a U.S. Person within the meaning of article 2 paragraph 1 number 26 of the Agreement of February 14, 2013 between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA, including the names and functions of persons who organized, serviced or supervised such business relationships within the bank as well as [the names and functions] of third persons who worked for such business relationships in a similar way.

[3] Not included in this authorization are data of customers and account information. The banks are authorized, however, to make available to the United States the necessary information for a

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[1] Mesures visant à faciliter le règlement du différend fiscal entre les banques suisses et les Etats-Unis d'Amérique. Loi urgente (Measures to facilitiate the resolution of the tax dispute between the Swiss banks and the United States. Urgent Act), May 29, 2013, CURIA VISTA (Database of the Swiss Federal Parliament), *at* http://www.parlament.ch/f/suche/pages/geschaefte.aspx?gesch_id=20130046. This draft was rejected on June 18 by the National Council, the representative chamber of the federal legislature. *Id.*

[2] In translating this law from the German text, footnotes referring to statutes cited in the text were omitted.

request according to article 26 of the Agreement of October 2, 1996 for the Avoidance of Double Taxation with respect to Taxes on Income and the Protocol of September 23, 2009 amending the Agreement.

Art. 2 Protection of Bank Employees and Third Parties

[1] Each bank that fulfills obligations according to Article 1 takes the best possible care to protect its employees. For this purpose, the banks and the associations representing the employees enter into agreements.

[2] [Such] an agreement must:

a. set forth information duties that notify the affected employees in advance of the scope and type of documents to be transferred as well as of the period from which they arise;

b. allow the employees to obtain information about all the documents relating to them;

c. give a more detailed explanation of the [employer's] duties of loyalty arising from the law of labor contracts, and in particular, call for the absorption of attorney fees to protect the interests of the employees;

d. provide hardship rules for employees who, through the fulfillment of the obligations according to article 1, end up in a personally, financially, or economically difficult situation;

e. provide protection against discrimination according to which the banks waive, in their own name, [the right] to ask job applicants questions relating to their being affected through the transfer of data to the American authorities;

f. provide protection against dismissal if an employee furnishes prima facie evidence of discrimination in connection with a business relationship with a U.S. Person.

[3] If a bank intends to fulfill obligations according to article 1 that affect employees, the bank is obligated to join an agreement in advance.

[4] If a bank intends to fulfill obligations according to article 1 that affect third parties, the bank is obligated to observe the duties of information according to paragraph 2 letter a also against these third parties.

Art. 3 Penal Provisions

[1] Whoever intentionally violates the duty of joinder according to article 2 paragraph 3 or the duty of information according to article 2 paragraph 4 shall be punished with up to three years' imprisonment or a fine.

2 The Federal Finance Ministry [Eidgenössisches Finanzdepartment] is the prosecuting and adjudging authority.

II.

1 This Act is being declared as urgent in accordance with article 165 paragraph 1 of the Federal Constitution.

2 This Act enters into effect on July 1, 2013 and remains in effect until June 30, 2014.

Switzerland: Summarized Translation of the Dispatch (Message) to the "Lex USA"

Edith Palmer
Chief, FCIL II

Message on a Federal Act concerning Measures to Facilitate a Resolution of the Tax Dispute between the Swiss Banks and the United States[1]

May 29, 2013[2]

[The Federal Council (Bundesrat, Federal Cabinet) addresses the two chambers of Parliament for the purpose of submitting this Message and the Draft Act for the Lex USA]

Overview

For the past two years, discussions have been held with the American justice and tax authorities on how the tax dispute could be resolved. Involved in the tax dispute are Swiss banks who are accused of having violated American law by assisting U.S. customers in evading American taxes. Affected are therefore not only banks against which the U.S. has already opened a criminal proceeding, but also all banks that potentially could have violated American law.

Based on an order issued by the Federal Council on October 26, 2011, negotiations have been carried out since then that have aimed at resolving the tax dispute between the Swiss banks and the United States in conformity with current Swiss law and in particular with the double taxation treaty that is currently in effect.

The negotiations were first carried out under the leadership of the U.S. tax authority. In the fall of 2012, leadership over this dossier shifted to the Department of Justice (DoJ). The proposed solution envisions that banks that intend to clear up their relationship with the U.S. authorities do this directly within a framework provided by DoJ. Within this framework it should also be possible to obtain a declaration that American law has not been violated.

The proposed solution would allow the banks that desire to obtain closure to accomplish this through a regime applying to past conduct that would eliminate the risk of becoming embroiled in an American court proceeding while "continuing to hold the banks responsible for

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[1] When the Swiss Federal Cabinet introduced the "Lex USA" in Parliament, it also submitted an explanation of the Act in the following message: Message relatif à la loi fédérale sur des mesures visant à faciliter le règlement du différend fiscal entre les banques suisses et les Etats-Unis d'Amérique [Message on the Federal Act concerning Measures to facilitate the resolution of the tax dispute between the Swiss banks and the United States]. The French version of the Message and of Lex USA is available at http://www.efd.admin.ch/dokumentation/gesetzgebung/00570/02724/index.html?lang=fr.

[2] This translation is "summarized," that is, the test is paraphrased, conveying the full meaning, but not necessarily the exact wording of the vernacular text. Footnotes in the text that refer to cited legislation are omitted.

themselves." Such a solution would only be possible under the prerequisite that the banks cooperate extensively with the American authorities by furnishing in particular statistical data on the behavior of their customers and on financial streams (closure of accounts and transfer of funds). The furnishing of customer data is excluded. Instead, information must be furnished about persons who organized, serviced, and monitored customer transactions within the bank. Also to be transferred are data concerning third persons with a connection to a business relationship with U.S. Persons.

The banks intending to cooperate with the DoJ must ensure the greatest possible protections for their employees, including advance information, continuing rights of information, employer's loyalty measures, and protection against discrimination and dismissal.

The proposed Act lives up to responsibilities vis-à-vis Switzerland as a financial center, as well as to responsibilities toward banks, bank customers, and bank employees. If no statutory basis for such cooperation were to be enacted, banks could not sufficiently cooperate and further prosecutions could be expected, also against larger banks. In addition, a speedy opening of a large number of prosecutions against banks not already affected could be expected. This would lead to continued uncertainty for Switzerland as a financial center.

Message

1. Starting Point

1.1. Proceedings against Swiss Banks

Swiss banks are involved in a tax dispute with the United States of America and they are being accused of having assisted U.S. customers in tax evasion in violation of U.S. law. Included are not only banks against which the U.S. has already opened a criminal proceeding, but all banks that potentially could have violated American law.

If a quick solution is not found, the dispute may flare up again and the American authorities may target additional banks. The *DoJ* (Department of Justice) has not only authorized investigations against fourteen banks, but it has also indicated to the Swiss authorities that it has obtained information about several other banks through a program that allowed U.S. citizens to report themselves. The *DoJ* could try to punish one bank severely to set an example. In other words, if a solution is not found soon, Switzerland is in danger of further escalation.

1.2. Negotiations with U.S. Authorities

Based on an order of the Swiss Cabinet (Bundesrat) of Oct. 12, 2011, negotiations have been conducted since then that aim at resolving the conflict with the U.S. in a manner compatible with current Swiss law, in particular the Double Taxation Treaty, as currently in effect. These discussions were originally carried out with the U.S. Tax Authority and they aimed at a solution that would have cleared the past conduct of each bank through an individual *Closing Agreement.*

Such an Agreement would have required an Adjustment of the Qualified Intermediary Agreement and a payment.

Initially, the U.S. Tax Authority led the negotiations on behalf of the U.S. In the fall of 2011, leadership was transferred to the *DoJ*. The solution now envisioned calls for an individual solution for each bank that wants to clear up its relationship with the U.S. authorities. Within this framework it should also be possible for a bank to obtain a declaratory statement of its compliance with American law.

1.3. Cooperation with the U.S. Authorities

The *DoJ* requests that the banks provide "leaver lists," that is, generic data on the closure of accounts and the transfer of funds to other banks in Switzerland or abroad. From the Swiss perspective, furnishing such lists is a criminal offense according to article 271 of the Penal Code, unless permission has been granted. In addition, data protection issues are raised in that Swiss banks may only find out from disclosure by other banks that they are holding untaxed moneys of U.S. citizens.

The furnishing of personal data must be carried out under observance of data protection law. The furnishing of data of (former and current) employees and third parties requires advance notification about the scope and type of the information to be transferred (Data Protection Act, art. 4). The delivery of personal data is legal if the data subject consents or if it is justified by a preponderant public interest or statutory provision. If a court were to deny disclosure, which possibility cannot be excluded particularly for third parties, the bank at issue would not be able to comply with its obligations toward the *DoJ*. As a result such a bank might not be able to enter into a no prosecution agreement or deferred prosecution agreement with the *DoJ* and would not be able to clear its past within the opportunities offered by the *DoJ*. Consequently, the definitive solution that the banks request and that would comply with Swiss law could not be provided..

In addition, if violations of U.S. law are involved, the U.S. authorities request the disclosure of U.S. customer data. According to Swiss law, a disclosure of customer data may be carried out only by governmental authorities on the basis of a mutual assistance request pursuant to a valid double taxation treaty, and not through direct transfers by a bank, and the U.S. recognizes this. The banks must, however, be allowed to furnish the necessary information in response to a group request as is regulated analogously in the FATCA Agreement between the U.S. and Switzerland.

On April 4, 2012, the Federal Council allowed the Swiss banks involved in a proceeding with the U.S. authorities to intensify their cooperation and to furnish the requested data directly, including (to the extent required) data about employees and third parties. At the same time, the Federal Council gave these banks an authorization according to art. 271 of the Penal Code, in order to protect them. The transfer of customer data was specifically prohibited and reservations were made that Swiss law had to be observed. After all, protecting a bank against a criminal prosecution that may endanger the bank's existence is also in the best interest of the employees. Despite this authorization one bank was unable to clear up its past with the U.S. authorities, in particular because a deferred prosecution agreement could not be reached without the delivery of the requested leaver lists and the full delivery of the requested data.

1.4 Principles of the Act

The submitted Draft Act aims at creating a generally applicable abstract legal basis that would allow all banks to clear up their situations with the competent American authority, irrespective of whether the bank is already under investigation or would like to cooperate in order to find out where they stand with the *DoJ*.

This Message therefore proposes legislation that allows the banks sufficient cooperation with U.S. authorities, in particular, by

- allowing the Swiss banks to deliver the necessary information to the U.S. authorities to protect their own interests including the information necessary to reach a deferred prosecution agreement, that is, the leaver lists as well as information about persons who organized, serviced, or monitored the border crossing business with U.S. customers within the banks as well as information about third persons who have a connection to such a business relationship; [and]
- creating rules granting the best possible protection for the bank employees affected by the data transfers.

1.5 Evaluation of the Approach to a Resolution

The proposed approach toward a resolution that, without releasing the Swiss banks from responsibility, would allow them to find closure for the tax dispute with the United States if this is their desire, by finding a solution for past conduct and thereby eliminating the risk of being involved in an American criminal proceeding. Such an approach toward a resolution would only be possible if the banks cooperate extensively with the American authorities, in particular by providing statistical data about the conduct of their customers and financial streams (*leaver* lists).

The transfer of customer data is ruled out. With respect to customer data, only mutual administrative assistance is applicable, as based on the currently effective double taxation agreement.

However, information about persons who, within the bank, organized, serviced, and monitored customer transactions must be transferred. Nevertheless, the banks wanting to cooperate with the *DoJ* within this proposed framework must take care that they provide the greatest possible protection to their employees. Also to be transmitted are data of third persons that have a connection to a business relationship with a U.S. Person.

The chosen approach toward a resolution allows legal harmony to be reestablished without having to create retroactive law or resort to extraordinary measures according to article 184 paragraph 5 or article 185 paragraph 3 of the Federal Constitution.

2 Explanations of the individual Articles

Art. 1 Cooperation Authorization for Banks

Paragraph 1

This paragraph contains the basic authorization for banks to cooperate with the U.S. authorities in connection with clearing up their past. To protect the interests of the banks within the framework of Swiss law, it contains an authorization according to article 271 number 1 of the Penal Code in a general and abstract form.

Paragraph 2

This paragraph describes the information that may be transferred. A connection between the information and a business relationship with a U.S. Person is presupposed and this relationship is defined according to the FATCA Agreement. Covered by the authorization are transfers of aggregated data on the closing of accounts and the transfer of the funds to another bank in Switzerland or abroad (*leaver* lists). With respect to the transfer of personal data, the circle of affected persons and the scope of the data are defined. Included are also the names and functions of persons who are or were directly occupied within a bank with the organization, servicing, and monitoring of border-crossing transactions of U.S. customers as well as third parties who are connected in a similar way to such business relationships. Third parties are to be understood to encompass trustees, property administrators, and attorneys who had an active role in the shaping of the business relationship.

Paragraph 3

Not covered by the authorization are customer data including account information. These can be transferred only within the framework of administrative tax assistance based on the currently effective double taxation agreement and under observation of procedural rights. In their cooperation with U.S. authorities the banks are authorized, however, to furnish to the U.S. the information required for a group request. This authorization corresponds to an analogous rule in the FATCA Agreement.

Art. 2 Protection of Bank Employees and Third Parties

Paragraph 1

Banks cooperating with American authorities to protect their interests must ensure the observance of the rights of their employees. This paragraph obligates the banks to safeguard the greatest possible protection of their employees. For this purposes, the banks or the representatives of their interests must enter into an agreement with the affected employee associations which must contain mandatory elements.

Paragraph 2

Aside from the duty of information by which the affected employees must be notified in advance of the type and scope of the data to be transferred, the mandatory elements of an agreement are the right of obtaining information, the duty of loyalty of the employer including the duty to absorb attorney fees to protect the interest of the affected employees as well as the protection against discrimination and dismissal related to business relationships with U.S. Persons.

Paragraphs 3 and 4

[These paragraphs restate the wordings of article 2, paragraphs 3 and 4 of the Lex USA.]

Art. 3 Penal Provisions

The penal provisions criminalize intentional violations of the duties against employees and third parties described in article 2 paragraph 3 (joinder to an agreement and duties of information). The prosecuting and adjudging authority is the Federal Finance Ministry. The proceeding is governed the Federal Act on Administrative Penal Law of March 22, 1974.

3. Effects

3.1 Effects on the Federation

The aggregated reports by the individual banks could lead to additional requests for administrative assistance because the U.S. authorities could request detailed information about such accounts through group requests. The processing of such requests by the Federal Tax Administration will lead to increased personnel expenditures. No specifics can be given at the moment because it is not known how many aggregated reports will be given. Because of the costs accruing to the individual banks in connection with the clearing up of their past, tax revenue will be slightly decreased for a short period.

3.2 Effects on Cantons and Municipalities

The proposed bill will allow cantonal banks desirous of straightening out their relationship with American authorities to furnish the requested information and reduce their risk of being subjected to litigation in the U.S. The costs involved in clearing up the past of banks will for a short time lead to a decrease in cantonal revenue and in reduced profit sharing in cantonal banks.

3.3. Effects on the Economy

The proposed bill allows the Swiss banks to cooperate with the U.S. authorities to clear up their past. Such an extensive cooperation allows a final solution for proceedings that in part have been pending for years. Therefore, legal certainty and stability will be created for an important part of business of Switzerland as a financial center.

4. Relationship to Legislative Planning

The proposed Draft Act was not foreseen in legislative planning. The reasons therefore are found in the previous explanations.

5. Legal Aspects

5.1. Constitutionality

The submitted Draft Act is based on article 98 of the Federal Constitution.

5.2. Urgency

The change in legislation has a sunset date of June 30, 2014. According to current estimates, the Swiss banks should be able to fulfill their obligations toward U.S. authorities and thereby protect their interests by that date.

The urgency of the Act is based on article 165 paragraph 1 of the Federal Constitution. The urgency is a result of the purposes of the proposed bill. If the banks are not given an opportunity to protect their interests, the danger exists that the tax dispute will break out anew and that the American authorities will target additional banks. Not only has the *DoJ* already authorized investigations against fourteen banks; it has also indicated that it has collected information about several other banks. If the banks are not immediately given a general permission to cooperate with the American authorities in order to protect their interests, Switzerland risks the escalation of further measures against which a defense would hardly be possible and that would have serious consequences for the reputation and stability of Switzerland as a financial center and for the Swiss economy, at the political and economic level. For the problems arising from this issue, the ordinary rules of international cooperation would not be able to provide a sufficiently speedy resolution.

Therefore, this Act should become effective on July 1, 2013, after approval by the parliamentary chambers. In accordance with article 141, paragraph 1, letter b of the Federal Constitution, this federal law that has been declared as urgent is not subject to optional referendum because its term of validity does not exceed one year.

Joint Statement

between the U.S. Department of Justice

and

the Swiss Federal Department of Finance

1. The United States Department of Justice has been and continues to be engaged in law enforcement action against individuals and entities that use foreign bank accounts to evade U.S. taxes and reporting requirements, and individuals and entities that facilitate the evasion of U.S. taxes and reporting requirements. In announcing today the Program for Swiss banks the Department of Justice intends to provide a path for Swiss Banks that are not currently the target of a criminal investigation authorized by the U.S. Department of Justice, Tax Division, to obtain resolution concerning their status in connection with the Department's overall investigations, and to assist the Department of Justice in its law enforcement efforts. The Program does not apply to individuals and is not available to any Swiss bank as to which the Tax Division has authorized a formal criminal investigation concerning its operations.

2. Switzerland welcomes the efforts of the Department of Justice to provide the Program and intends to draw the attention of the Swiss Banks to the terms of the Program and encourages them to consider participating therein. Switzerland notes that the Swiss Parliament by Declaration of 19 June 2013 stated its expectation that the Swiss Federal Council will take all measures within existing legal framework to put Swiss banks in a position to cooperate with the Department of Justice. Switzerland represents that applicable Swiss law will permit effective participation by the Swiss Banks on the terms set out in the Program.

3. The signatories take note that the Swiss Financial Market Supervisory Authority intends to encourage, within its supervisory powers, all Swiss Banks to send a letter to U.S. Persons or Entities with U.S. Related Accounts at those Swiss Banks informing them of the Program and drawing their attention to the Internal Revenue Service Offshore Voluntary Disclosure Initiative.

4. Switzerland intends to process treaty requests according to the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Washington on October 2, 1996, and the Protocol Amending the Convention, signed at Washington on September 23, 2009, if and when it is in force and applicable, as may be amended, and intends to do so on an expedited basis, including by providing additional personnel and the other necessary resources to process the requests.

5. Noting the importance attached by both sides to providing a high level of personal data and privacy protection for all individuals as provided in their laws, the signatories understand that, if personal data are provided, they should only be used for purposes of law enforcement (which may include regulatory action) in the United States or as otherwise permitted by U.S. law. Personal data should only be retained for so long as necessary for these purposes.

6. The signatories intend to resolve any difficulties or doubts arising from this Joint Statement by way of consultations.

Signed at Washington, D.C., this 29th day of August, 2013, in duplicate in English.

JAMES M. COLE
Deputy Attorney General
United States Department of Justice

MANUEL SAGER
Ambassador Extraordinary
and Plenipotentiary of
Switzerland to the United States

PROGRAM FOR NON-PROSECUTION AGREEMENTS OR NON-TARGET LETTERS FOR SWISS BANKS

I. Scope and Definitions

A. Scope of the Program

This Program is available to any Swiss Bank

1. requesting a Non-Prosecution Agreement on the terms set out in Paragraph II, below (Category 2 Bank);

2. requesting a Non-Target Letter on the terms set out in Paragraph III, below (Category 3 Bank); or

3. requesting a Non-Target Letter on the terms set out in Paragraph IV, below (Category 4 Bank).

This Program does not apply to individuals and shall not be available to any Swiss Bank as to which the Tax Division has authorized a formal criminal investigation concerning its operations (Category 1 Bank) as of the date of the announcement of this Program. All Category 1 Banks either have already been notified that the Tax Division has authorized a formal criminal investigation concerning its operations, or will be so notified through its counsel by certified mail issued in conjunction with the announcement of this Program.

B. Definitions

1. "Department" means the United States Department of Justice.

2. "Tax Division" means the Tax Division of the United States Department of Justice.

3. "FATCA Agreement" means the Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA signed on February 14, 2013.[1]

4. "Swiss Bank" has the same meaning as the term "Swiss Financial Institution" in the FATCA Agreement, except that it shall exclude any "Investment Entity" or "Specified Insurance Company" that does not independently meet the definition of "Custodial Institution" or "Depository Institution."

5. "FFI Agreement" has the same meaning as in the FATCA Agreement.

6. "Applicable Period" shall mean the period between August 1, 2008, and either (a) the later of December 31, 2014, or the effective date of an FFI Agreement,

[1] References to the FATCA Agreement are for definitional purposes only and apply for the purpose of this Program without regard to any subsequent amendments to the FATCA Agreement and regardless of whether or when the FATCA Agreement is ratified or becomes effective.

or (b) the date of the Non-Prosecution Agreement or Non-Target Letter, if that date is earlier than December 31, 2014, inclusive.

7. "U.S. person" has the same meaning as in the FATCA Agreement.

8. "Entity" has the same meaning as in the FATCA Agreement.

9. "U.S. Related Accounts" means accounts which exceeded $50,000 in value at any time during the Applicable Period, as measured by the account balance on the last day of each month during the Applicable Period, and as to which indicia exist that a U.S. Person or Entity has or had a financial or beneficial interest in, ownership of, or signature authority (whether direct or indirect) or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) over the account, as determined by applying the due diligence procedures applicable to "Lower Value Accounts" in the FATCA Agreement, Annex I, Part II, for accounts with $250,000 or less in value at all times during the Applicable Period, and by applying the due diligence procedures applicable to "High-Value Accounts" in the FATCA Agreement, Annex I, Part II, for accounts with more than $250,000 in value at any time during the Applicable Period, notwithstanding the amounts and dates set out in the FATCA Agreement, Annex I, Part II.

10. "Independent Examiner" means a qualified independent attorney or accountant; the Tax Division reserves the right to object to a particular attorney or accountant, but will not unreasonably withhold approval.

11. "Non-Target Letter" means a letter from the Tax Division stating that, as of the date of the letter and based upon information then known to the Tax Division, the Swiss Bank to which the letter is addressed is not the target of a criminal investigation authorized by the Tax Division for violations of any tax-related offenses under Titles 18 or 26, United States Code, or for any unreported monetary transactions under §§ 5314 or 5322, Title 31, United States Code, in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period.

II. Swiss Banks Requesting A Non-Prosecution Agreement (Category 2 Banks)

A. Any Swiss Bank

1. as to which the Tax Division has not authorized a formal criminal investigation concerning its operations as of August 29, 2013 (i.e., that is not a Category 1 Bank);

2. that is not a Category 4 Bank; and

3. that has reason to believe it may have committed tax-related offenses under Titles 18 or 26, United States Code, or monetary transactions offenses under §§ 5314 or 5322, Title 31, United States Code, in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period,

may request a Non-Prosecution Agreement ("NPA") on the terms set out in Paragraphs II.B through K, below.

B. Each Swiss Bank requesting an NPA must provide a letter to the Tax Division, expressing its intent, no later than December 31, 2013. The letter must:

1. include a plan for complying with the requirements set out herein, within a reasonable time, but not to exceed 120 days from the date of the letter of intent;

2. provide the identity and qualifications of the Independent Examiner;

3. state that the Swiss Bank will maintain all records required for compliance with the terms of an NPA as set out in this Program, including all records that may be sought by treaty requests; and

4. state that the Swiss Bank agrees that with respect to any applicable statute of limitations that has not expired as of the date of the announcement of this Program, the Bank waives any potential defense based on the statute of limitations for the period from the date of the announcement of this Program to the issuance of an NPA or a DPA.

If such Bank is not able to comply with the requirements set out in this Program within 120 days from the date of the letter of intent, the Tax Division will grant a one-time extension of 60 days upon a showing of good cause.

C. If the Tax Division concludes that a Swiss Bank has met all obligations set forth in the NPA, the Department will not prosecute the Swiss Bank for any tax-related offenses under Titles 18 or 26, United States Code, or for any unreported monetary transactions under §§ 5314 or 5322, Title 31, United States Code, in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period.

D. Each Swiss Bank requesting an NPA must fully cooperate in the disclosure of the following evidence and information.

1. Prior to the execution of an NPA, the Swiss Bank must provide information including:

   a. how the cross-border business for U.S. Related Accounts was structured, operated, and supervised (including internal reporting and other communications with and among management);

   b. the name and function of the individuals who structured, operated, or supervised the cross-border business for U.S. Related Accounts during the Applicable Period;

   c. how the Swiss Bank attracted and serviced account holders;

   d. an in-person presentation and documentation, properly translated, supporting the disclosure of the above information, as well as cooperation and assistance with further explanation of information and materials so presented, upon request, or production of additional explanatory materials as needed; and

   e. the total number of U.S. Related Accounts and the maximum dollar value, in the aggregate, of the U.S. Related Accounts that:

i. existed on August 1, 2008;

ii. were opened between August 1, 2008, and February 28, 2009; and

iii. were opened after February 28, 2009.

2. Upon execution of an NPA, for all U.S. Related Accounts that were closed during the Applicable Period, the Swiss Bank must provide information including:

   a. the total number of accounts; and

   b. as to each account:

      i. the maximum value, in dollars, of each account, during the Applicable Period;

      ii. the number of U.S. persons or entities affiliated or potentially affiliated with each account, and further noting the nature of the relationship to the account of each such U.S. person or entity or potential U.S. person or entity (e.g., a financial interest, beneficial interest, ownership, or signature authority, whether directly or indirectly, or other authority);

      iii. whether it was held in the name of an individual or an entity;

      iv. whether it held U.S. securities at any time during the Applicable Period;

      v. the name and function of any relationship manager, client advisor, asset manager, financial advisor, trustee, fiduciary, nominee, attorney, accountant, or other individual or entity functioning in a similar capacity known by the Bank to be affiliated with said account at any time during the Applicable Period; and

      vi. information concerning the transfer of funds into and out of the account during the Applicable Period on a monthly basis, including (a) whether funds were deposited or withdrawn in cash; (b) whether funds were transferred through an intermediary (including but not limited to an asset manager, financial advisor, trustee, fiduciary, nominee, attorney, accountant, or other third party functioning in a similar capacity) and the name and function of any such intermediary; (c) identification of any financial institution and domicile of any financial institution that transferred funds into or received funds from the account; and (d) any country to or from which funds were transferred.

3. Prior to the execution of an NPA, the Swiss Bank will, at its expense, have the information described in Paragraph II.D.2, above, verified by an Independent Examiner. The verification will include a statement that the Independent Examiner has confirmed that the due diligence standards set out in Paragraph I.B.9, above, were applied in collecting the information described in Paragraph II.D.2, above.

4. As a condition of any NPA, the Swiss Bank will provide all necessary information for the United States to draft treaty requests to seek account information; such cooperation will include but not be limited to the development of appropriate search criteria.

5. As a condition of any NPA, the Swiss Bank will collect and maintain all records that are potentially responsive to such treaty requests to facilitate prompt responses.

E. Retention of records

The terms of an NPA will include that the Swiss Bank agrees to retain all records relating to its U.S. cross-border business, including records relating to all U.S. Related Accounts closed during the Applicable Period, for a period of 10 years from the termination date of the NPA.

F. Assistance in Related Matters

The terms of an NPA will include that the Swiss Bank, upon request, will provide:

1. testimony of a competent witness or information as needed to enable the United States to use the information and evidence obtained pursuant to a provision of this Program or separate treaty request in any criminal or other proceeding; and

2. assistance in identification and translation of significant documents at the expense of the Swiss Bank.

G. Closure of Accounts of Recalcitrant Account Holders

The terms of an NPA will provide that the Swiss Bank agrees to close any and all accounts of recalcitrant account holders, as defined in Section 1471(d)(6) of the U.S. Internal Revenue Code. The terms of the NPA will require that the Swiss Bank implement procedures to prevent its employees from assisting recalcitrant account holders to engage in acts of further concealment in connection with closing any account or transferring any funds. The terms of the NPA will also provide that the Swiss Bank agrees not to open any U.S. Related Accounts (as defined in Paragraph I.B.9, above, but without regard to the dollar limit or the reference to the Applicable Period) except on conditions that ensure that the account will be declared to the United States and will be subject to disclosure by the Swiss Bank.

H. Payment

Upon execution of an NPA, the Swiss Bank will agree to pay as a penalty:

1. for U.S. Related Accounts that existed on August 1, 2008, an amount equal to 20% of the maximum aggregate dollar value of all such accounts during the Applicable Period;

2. for U.S. Related Accounts that were opened between August 1, 2008, and February 28, 2009, an amount equal to 30% of the maximum aggregate dollar value of all such accounts; and

3. for U.S. Related Accounts that were opened after February 28, 2009, an amount equal to 50% of the maximum aggregate value of all such accounts.

The determination of the maximum dollar value of the aggregated U.S. Related Accounts may be reduced by the dollar value of each account as to which the Swiss Bank demonstrates, to the satisfaction of the Tax Division, was not an undeclared account, was disclosed by the Swiss Bank to the U.S. Internal Revenue Service, or was disclosed to the U.S. Internal Revenue Service through an announced Offshore Voluntary Disclosure Program or Initiative following notification by the Swiss Bank of such a program or initiative and prior to the execution of the NPA.

I. This Program sets out the framework for the proposed NPAs. Each NPA may take into account factors specific to the particular Swiss Bank.

J. If the Department determines, in its sole discretion, that any information or evidence provided by the Swiss Bank is materially false, incomplete, or misleading, it may decline to enter into an NPA; or if after entering into an NPA, the Department, in its sole discretion, determines that the Swiss Bank has provided materially false, incomplete, or misleading information or evidence, or has otherwise materially violated the terms of the NPA, the United States may pursue any and all legal remedies available to it, including investigating and instituting criminal charges against the Swiss Bank, without regard to any other provision of the NPA or this Program. For purposes of this provision, by executing the NPA, the Swiss Bank will agree that any prosecutions under statutes included in Paragraph II.C, above, that are not time-barred by the applicable statute of limitations on the date of the announcement of the Program may be commenced against the Swiss Bank, and the Swiss Bank will agree to waive any defenses premised upon the expiration of the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay, and will agree that such waiver is knowing, voluntary, and in express reliance upon the advice of the Swiss Bank's counsel.

K. If the Tax Division determines, upon review of the information provided by a Swiss Bank under Paragraph II.D, above, or other information available to the Tax Division, that the Swiss Bank's conduct demonstrates extraordinary culpability, the Tax Division reserves the right to require that the Swiss Bank enter a Deferred Prosecution Agreement ("DPA") instead of an NPA.

III. Swiss Banks Requesting A Non-Target Letter As A Category 3 Bank

A. Any Swiss Bank

1. as to which the Tax Division has not authorized a formal criminal investigation concerning its operations as of the date of this Program (i.e., that is not a Category 1 Bank);

2. that is not a Category 4 Bank; and

3. that has not committed any tax-related offenses under Titles 18 or 26, United States Code, or monetary transactions offenses under §§ 5314 or 5322, Title 31, United States Code, in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period (i.e., that is not a Category 2 Bank),

may request a Non-Target Letter on the terms set out in Paragraphs III.B through H, below.

B. Each Swiss Bank requesting a Non-Target Letter as a Category 3 Bank must provide a letter to the Tax Division, expressing its intent no earlier than July 1, 2014 and no later than October 31, 2014. The letter must:

1. include a plan for complying with the requirements set out herein, within a reasonable time, but not to exceed 120 days from the date of the letter of intent;

2. provide the identity and qualifications of the Independent Examiner;

3. state that the Swiss Bank will maintain all records required for compliance with the terms set out below; and

4. state that the Swiss Bank agrees that with respect to any applicable statute of limitations that has not expired as of the date of the announcement of this Program, the Bank waives any potential defense based on the statute of limitations for the period from the date of the announcement of this Program to the issuance of a Non-Target Letter.

C. If a Swiss Bank, after having undertaken an investigation in a timely and good faith manner, belatedly determines, based on the discovery of information that in good faith could not have been discovered previously, that it should instead have requested an NPA as a Category 2 Bank, the Tax Division may consider whether to enter into discussions with the Swiss Bank as if the Swiss Bank had timely requested an NPA under the terms of Paragraph II, above. A request for relief under this provision must be made before October 31, 2014. Relief will be granted at the sole discretion of the Tax Division, and only under extraordinary circumstances. Under no circumstances will such relief be considered if the Tax Division has authorized a formal criminal investigation concerning the operations of the Swiss Bank, or has received information concerning wrongful conduct by the Swiss Bank.

D. A Swiss Bank requesting a Non-Target Letter under Paragraph III.B, above, must, at its expense, engage an Independent Examiner to conduct an independent internal investigation.

E. At the conclusion of the independent internal investigation, the Swiss Bank and the Independent Examiner must:

1. verify the percent of the Swiss Bank's account holdings and assets under management that are U.S. Related Accounts;

2. verify that the Swiss Bank has an effective compliance program, accompanied by a description of the compliance program; and

3. provide the Tax Division with a report of the Independent Examiner's internal investigation, prepared in English, that includes: (i) a list of the witnesses, including titles, interviewed by the Independent Examiner and a summary of the information provided by each witness; (ii) identification of the files reviewed by the Independent Examiner; (iii) the factual findings of the Independent Examiner; and (iv) the conclusions reached by the Independent Examiner.

F. A Swiss Bank requesting a Non-Target Letter under Paragraph III.B, above, must agree:

1. to maintain all notes, drafts, correspondence, reports, and other documents or records created or prepared in any manner by the Independent Examiner, or reviewed by or provided to the Independent Examiner, for a period of ten years from the date of the Non-Target Letter;

2. to close any and all accounts of recalcitrant account holders, as defined in Section 1471(d)(6) of the U.S. Internal Revenue Code, and to implement procedures to prevent its employees from assisting recalcitrant account holders to engage in acts of further concealment in connection with closing any account or transferring any funds;

3. not to open any U.S. Related Accounts (as defined in Paragraph I.B.9, above, but without regard to the dollar limit or the reference to the Applicable Period) except on conditions that will ensure that the account will be declared to the United States and will be subject to disclosure by the Swiss Bank; and

4. that, if the Department, in its sole discretion, determines that the Swiss Bank has provided materially false, incomplete, or misleading information or evidence to the United States, or has otherwise materially violated the terms of any agreement with the United States, the United States may pursue any and all legal remedies available to it, including investigating and instituting criminal charges against the Swiss Bank, without regard to any other provision of the Non-Target Letter or this Program. For purposes of this provision, the Swiss Bank will agree that any prosecutions that are not time-barred by the applicable statute of limitations on the date of the announcement of the Program may be commenced against the Swiss Bank, and the Swiss Bank will agree to waive any defenses premised upon the expiration of the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay, and will agree that such waiver is knowing, voluntary, and in express reliance upon the advice of the Swiss Bank's counsel.

G. Following the submission of the report of an Independent Examiner's internal investigation on the terms set out in Paragraph III.E.3, above:

1. The Tax Division may either (a) inform the Swiss Bank that the Swiss Bank is eligible for a Non-Target Letter as a Category 3 Bank or (b) seek additional information from the Swiss Bank prior to making its determination. The Tax Division may decline to provide a Non-Target Letter if the requested information is not provided.

2. The Tax Division will endeavor to provide the determination or the request for information set out in Paragraph III.G.1, above, within a period of 270 days from receipt of the report of the Independent Examiner's internal investigation. Should the Tax Division seek additional information, the Tax Division will endeavor to provide a determination within 90 days of the receipt of all such additional information. If the Tax Division is unable to act within these time periods, the Tax Division will provide notice to the Swiss Bank of its expectation as to the additional time that will be needed to complete its review.

H. The Tax Division may decline to provide a Non-Target Letter to any Swiss Bank if it determines that the Swiss Bank has failed to meet the standard set out in Paragraph III.A.3, above, or that any information or evidence provided by the Swiss Bank is materially false, incomplete, or misleading, or it has information that contradicts the verification or report of the Independent Examiner under Paragraph III.E, above, or that otherwise demonstrates criminal culpability by the Swiss Bank.

IV. Swiss Banks Requesting A Non-Target Letter As A Category 4 Bank

A. Any Swiss Bank

1. as to which the Tax Division has not authorized a formal criminal investigation concerning its operations as of the date of this Program (i.e., that is not a Category 1 Bank); and

2. that is a "Deemed Compliant Financial Institution" as a "Financial Institution with Local Client Base" under the FATCA Agreement, Annex II Paragraph II.A.1, as if the FATCA Agreement were in force during the Applicable Period (except that the Swiss Bank must meet the terms of Annex II, Paragraph II.A.1.e on December 31, 2009, and the date of the announcement of this Program),

may request a Non-Target Letter on the terms set out in Paragraphs IV.B through E, below.

B. A Swiss Bank requesting a Non-Target Letter as a Category 4 Bank must provide a letter to the Tax Division, expressing its intent no earlier than July 1, 2014 and no later than October 31, 2014. The letter must:

1. include a plan for complying with the requirements set out herein, within a reasonable time, but not to exceed 120 days from the date of the letter of intent;

2. provide the identity and qualifications of the Independent Examiner;

3. state that the Swiss Bank will maintain all records required for compliance with the terms set out below; and

4. state that the Swiss Bank agrees that with respect to any applicable statute of limitations that has not expired as of the date of the announcement of this Program, the Bank waives any potential defense based on the statute of limitations for the period from the date of the announcement of this Program to the issuance of a Non-Target Letter.

C. To obtain a Non-Target Letter as a Category 4 Bank, a Swiss Bank must:

1. provide verification executed by the Swiss Bank and an Independent Examiner that it has satisfied the requirements of Paragraph IV.A, above;

2. agree to maintain records sufficient to establish the basis for verification of its status as a Category 4 Bank for a period of ten years from the date of the Non-Target Letter; and

3. agree that, if the Department, in its sole discretion, determines that the Swiss Bank has provided materially false, incomplete, or misleading information or evidence to the United States, or has otherwise materially violated the terms of any agreement with the United States, the United States may pursue any and all legal remedies available to it, including investigating and instituting criminal charges against the Swiss Bank, without regard to any other provision of the Non-Target Letter or this Program. For purposes of this provision, the Swiss Bank will agree that any prosecutions that are not time-barred by the applicable statute of limitations on the date of the announcement of the Program may be commenced against the Swiss Bank, and the Swiss Bank will agree to waive any defenses premised upon the expiration of the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay, and will agree that such waiver is knowing, voluntary, and in express reliance upon the advice of the Swiss Bank's counsel.

D. Upon acceptance of verification of a Swiss Bank's status as a Category 4 Bank by the Tax Division, and the agreement by the Swiss Bank to the terms set out in Paragraph IV.C, above, the Tax Division will provide the Swiss Bank with a Non-Target Letter.

E. The Tax Division may decline to provide a Non-Target Letter if it determines that any information or evidence provided by the Swiss Bank is materially false, incomplete, or misleading, or if it has evidence that contradicts the verification of the Independent Examiner under Paragraph IV.C, above, or otherwise demonstrates criminal culpability by the Swiss Bank.

V. Other Provisions

A. The Tax Division will not authorize formal criminal investigation of any additional Swiss Banks in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period before January 1, 2014.

B. The personal data provided by the Swiss Banks under this Program will be used and disclosed only for purposes of law enforcement (which may include regulatory action) in the United States or as otherwise permitted by U.S. law.

C. This Program is conditioned on the intention of Switzerland, as stated in the Joint Statement between the U.S. Department of Justice and the Swiss Federal Department of Finance dated August 29, 2013, to encourage Swiss Banks to consider participation in the Program. Should Switzerland fail to provide or act to withdraw such encouragement, or should legal barriers prevent effective participation by the Swiss Banks on the terms set out in this Program, this Program may be terminated by the Department.

Announced on August 29, 2013.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60033-CR-COHN

UNITED STATES OF AMERICA

vs.

UBS AG

Defendant.
_____/

DEFERRED PROSECUTION AGREEMENT

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

The Criminal Information

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

Acceptance of Responsibility for Violation of Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Disclosure of Client Data

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

Cooperation

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

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

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

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

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

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

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

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

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

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

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

Deferral of Prosecution

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

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

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

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

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

express reliance on the advice of UBS's counsel.

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

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

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

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

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

External Auditor

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

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

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

The Government's Discretion

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

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

Limits on This Agreement

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

Public Filing and Miscellaneous Provisions

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

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

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

Respectfully submitted,

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

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

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

JEFFREY A. NEIMAN, ESQ.
Assistant United States Attorney

UBS AG
Defendant

By: _____
MARKUS DIETHELM, ESQ.
Group General Counsel

WACHTELL, LIPTON, ROSEN, & KATZ

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

By: _____
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Counsel to UBS AG

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UBS AG

By: _____
Markus Diethelm, Esq.
Group General Counsel

Wachtell, Lipton, Rosen & Katz
Counsel to UBS AG

By: _____
John F. Savarese

By: _____
Ralph M. Levene

EXHIBIT A

EXHIBIT A TO DEFERRED
PROSECUTION AGREEMENT

RESOLUTION OF THE BOARD OF DIRECTORS OF UBS AG

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

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

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

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

This Board hereby **RESOLVES** that:

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

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

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

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

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

Luzius Cameron
Company Secretary

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

09-60023 CR-MARRA L HOPKINS

CASE NO. _____
18 U.S.C. § 371

UNITED STATES OF AMERICA

vs.

UBS AG,

Defendant.
_____/

FILED by D.C.
FEB 17 2009
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. OF FLA.

INFORMATION

The United States charges that:

INTRODUCTION

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

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

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

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

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

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

The Conspirators

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

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

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

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

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

COUNT ONE
(18 U.S.C. § 371)

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

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

UBS AG,

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

OBJECT OF THE CONSPIRACY

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

MEANS AND METHODS OF THE CONSPIRACY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OVERT ACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

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

JEFFREY A. NEIMAN
ASSISTANT U.S. ATTORNEY

EXHIBIT C

EXHIBIT C TO DEFERRED PROSECUTION AGREEMENT

STATEMENT OF FACTS

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

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

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

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

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

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

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

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

The U.S. Cross-Border Business

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

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

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

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

The QI Agreement

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

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

The Offshore Company Scheme

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

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

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

Inadequate Compliance Systems

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

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

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

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

EXHIBIT D

EXHIBIT D TO DEFERRED PROSECUTION AGREEMENT

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

Dear Client,

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

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

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

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

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

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

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

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

UBS recommends that you consult with your U.S. tax advisor or tax preparer to determine any applicable U.S. tax consequences in connection with the closure of your existing UBS account, including whether you have any additional U.S. tax return filing or other disclosure obligations with respect to prior tax years or the closure of your account. In the event that you and your tax advisor identify any issues arising from prior tax years, UBS would like to inform you that the Internal Revenue Service (IRS) has a voluntary disclosure practice to encourage U.S. taxpayers to bring themselves voluntarily into full compliance with the U.S. tax laws, and, in exchange, the IRS may provide for substantial relief from otherwise applicable penalties and fines. (http://www.irs.gov/newsroom/article/0,,id=104361,00.html).

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

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

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

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

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

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

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

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

Sincerely,

Stephan Zimmermann
Chief Operating Officer Global WM&BB

EXHIBIT E

(Filed Separately Under Seal)

AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA

AND

THE SWISS CONFEDERATION

on the request for information from the Internal Revenue Service of the United States of America regarding UBS AG, a corporation established under the laws of the Swiss Confederation

THE UNITED STATES OF AMERICA

and

THE SWISS CONFEDERATION

hereinafter referred to as "the Contracting Parties",

WHEREAS,

the Contracting Parties seek to reaffirm and strengthen the long-standing and close friendship between their peoples and to continue and enrich the cooperative relationship which exists between the two countries;

the Contracting Parties share a mutual respect for each other's sovereignty and democratic traditions, and for the rule of law;

the Contracting Parties equally share a desire to amicably resolve disputes in a manner consistent with the laws of both nations;

Article 26 of the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income of October 2, 1996 (the "Tax Treaty"), the Protocol accompanying and forming an integral part of the Tax Treaty (the "Protocol"), and the Mutual Agreement of January 23, 2003 regarding the administration of Article 26 of the Treaty (the "Mutual Agreement"), provide a mutually agreed-upon mechanism pursuant to which competent authorities of the Contracting Parties are able to exchange information, as is necessary for the prevention of "tax fraud or the like";

on July 21, 2008, the Internal Revenue Service ("IRS"), pursuant to its authority under 26 U.S.C. §7602(a), issued a "John Doe Summons" (the "JDS") to UBS AG seeking information concerning client accounts;

on or about the date of the signing of this Agreement, the IRS and UBS AG entered into a separate agreement; and

the Contracting Parties wish to establish understandings that will avoid future disputes regarding requests for information;

NOW, THEREFORE, pursuant to Articles 25 and 26 of the Tax Treaty, the Contracting Parties have agreed as follows:

Article 1 Treaty Request

1. The Swiss Confederation shall process, pursuant to the existing Tax Treaty, a request by the United States for information regarding US clients of UBS AG, incorporating the criteria set forth in the Annex to this Agreement (the "Treaty Request"). Based on the criteria set forth in the Annex, the Contracting Parties estimate and expect that the number of open or closed accounts falling under the Treaty Request is approximately 4'450.[1]
2. The Swiss Confederation shall establish a special task force enabling the Swiss Federal Tax Administration ("SFTA") to render its final decisions (as described in Section 4.a., Art. 20j, of the Ordinance of the Swiss Federal Council of June 15, 1998) pursuant to the Treaty Request on an expedited basis according to the following time frames:
   - the first 500 decisions within 90 days from receipt of the Treaty Request; and
   - the remaining decisions on a continuing basis concluding no later than 360 days from receipt of the Treaty Request.
3. The SFTA shall notify UBS AG that it has received the Treaty Request immediately upon receipt of the Treaty Request by the SFTA and shall support the Treaty Request process according to this Article and the criteria set forth in the Annex with the highest priority, and is committed to discuss any issues that might arise in this regard according to the mechanism established in Article 5 of this Agreement.
4. With a view to accelerating the processing of the Treaty Request by the SFTA, the IRS will promptly request all UBS clients who enter into the voluntary disclosure program on or after the signing of this Agreement to give a waiver to UBS AG to provide account documentation to the IRS.
5. The Swiss Confederation is prepared to process additional requests for information by the IRS under Article 26 of the existing Tax Treaty regarding the UBS AG case if a future decision of the Swiss Federal Administrative Court broadens the criteria set forth in the Annex to this Agreement.

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[1] For these accounts UBS will provide a notice to account holders under the Treaty Request. They will (i) be subject to a final decision of the SFTA under the treaty process, or (ii) be transmitted to the IRS as a result of the accountholder having provided UBS or the SFTA with a waiver to submit such account information directly, or (iii) fall out of the treaty process after the account holders have provided consent to the SFTA to request copies of the taxpayer's FBAR returns from the IRS for the relevant years as described in the Annex under paragraph 2.A.b. and 2.B.b.

Article 2 Revised Tax Treaty

The Contracting Parties are committed to the signing of the new protocol amending Article 26 (and certain other provisions) of the Tax Treaty, initialed on June 18, 2009, as soon as possible, but no later than September 30, 2009, and shall use their best efforts, consistent with their respective constitutional processes, to have the new protocol ratified promptly.

Article 3 Withdrawal of the John Doe Summons

1. Immediately after the signing of this Agreement, the United States and UBS AG shall file a stipulation of dismissal with the United States District Court for the Southern District of Florida with respect to the enforcement action concerning the JDS.
2. Subject to the terms of Article 5 of this Agreement, the United States shall not seek further enforcement of the JDS while this Agreement remains in force.
3. Subject to UBS AG's compliance with Article 4 of this Agreement, the United States shall withdraw the JDS with prejudice no later than December 31, 2009 with respect to accounts not covered by the Treaty Request.
4. The United States shall withdraw the JDS with prejudice with respect to the accounts covered by the Treaty Request on or after January 1, 2010 when it has received all relevant account information, submitted on or after February 18, 2009, concerning 10'000 open or closed undisclosed UBS AG accounts from any source.[2] The United States shall provide the SFTA with regular updates about the number of such disclosures.
5. Subject to UBS AG's compliance with Article 4 of this Agreement and subject to the terms of Article 5 of this Agreement, the United States shall withdraw the JDS with prejudice with respect to the accounts covered by the Treaty Request no later than 370 days from the signing of this Agreement.

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[2] For purposes of this paragraph, the term "any source" means account information disclosed (i) under the Treaty Request, (ii) under the IRS's voluntary disclosure practice, (iii) as a result of waivers for UBS or the SFTA to submit account information to the IRS, or (iv) under the Deferred Prosecution Agreement between UBS AG and the United States of America, dated February 18, 2009. Furthermore, the IRS shall to the extent feasible, include account information disclosed through FBAR filings made after the signing of this Agreement and for which the IRS has determined that such filings are attributable to the fact that the Contracting Parties entered into this Agreement.

Article 4 Compliance by UBS

1. In the separate agreement with the IRS, UBS AG has committed itself to comply with the SFTA order requesting the information covered by the Treaty Request according to the following time frames:
   - within 60 days after UBS AG receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall have submitted to the SFTA the first 500 cases;
   - within 180 days after UBS AG receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall have submitted to the SFTA the remaining cases referred to in the Annex under paragraphs 2.A.b and 2.B.b, respectively; and
   - within 270 days after UBS AG receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall have submitted to the SFTA all remaining cases.
2. In the separate agreement with the IRS, UBS AG has committed itself to continue its support for the IRS voluntary compliance practice.
3. The Swiss Federal Office of Justice (SFOJ), which shall seek the assistance of the Swiss Financial Market Supervisory Authority (FINMA), shall oversee UBS AG's strict compliance with the commitments.

Article 5 Assessment, Consultations and other Measures

1. The SFTA, the SFOJ, and the IRS shall meet together with UBS on a quarterly basis to assess the progress of the process established in this Agreement, including evaluation of maximum effectiveness of the voluntary compliance of UBS US clients and additional measures that the Contracting Parties can reasonably undertake to promote the legitimate enforcement interest of the IRS.
2. Either Contracting Party may at any time request further consultations on the implementation, interpretation, application, or amendment of this Agreement. Such consultation (through discussion or correspondence) shall take place within a period of 30 days of the date of receipt of such a request, unless otherwise mutually decided.
3. If a Contracting Party fails to fulfill its obligations contained in this Agreement, the other Contracting Party may request immediate consultations in view of taking the appropriate measures to ensure the fulfillment of the Agreement.
4. If 370 days after the signing of this Agreement the actual and anticipated results differ significantly from what can reasonably be expected at that time according to the purpose of this Agreement and if the matter cannot be resolved mutually either (1) by the consultation measures according to paragraphs 2 and 3 of this Article or (2) by an amendment according to Article 9 of this Agreement, then either Contracting Party may take proportionate rebalancing measures to remedy the

effected imbalance between the rights and obligations under this Agreement. However, such measures may not go beyond preserving the legal situation of either Contracting Party, which existed immediately before they were taken.

5. Possible measures taken under this Article shall not impose any financial or new non-financial obligations on UBS AG.

Article 6 Confidentiality

The initial public statements shall be made simultaneously on August 19, 2009 at 9:30 a.m. Eastern Daylight Time. To avoid impairment of tax administration in both the United States and Switzerland, the Contracting Parties agree not to publicly discuss or publish the Annex of this Agreement earlier than 90 days from the date of signing of this Agreement.[3] However, nothing in this Agreement shall prevent the SFTA from explaining to a particular accountholder the specific facts upon which a final determination is based. Such individuals will be under the criminally enforceable obligation under Swiss law not to disclose such facts to any third party prior to the date of publication of the Annex.

Article 7 Third Party Rights

This Agreement does not confer any rights or benefits on any third party other than as provided in this Agreement with respect to UBS AG.

Article 8 Entry into Force

This Agreement shall enter into force upon signature.

Article 9 Amendment

This Agreement may be amended by written agreement between the Contracting Parties. Amendments shall enter into force according to Article 8 of the present Agreement.

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[3] The Annex will be disclosed to UBS AG under the same confidentiality requirements.

Article 10 Duration and Termination

This Agreement shall remain in force until both Contracting Parties have confirmed in writing the fulfillment of their obligations contained under this Agreement.

IN WITNESS THEREOF, the undersigned, duly authorized thereto by their respective governments, have signed this Agreement.

Done at Washington, DC this 19th day of August 2009, in duplicate, in English.

For the
United States of America:

by: _____
Barry B. Shott
United States Competent Authority
Deputy Commissioner (International)
Internal Revenue Service
Large & Mid-Size Business

For the
Swiss Confederation:

by: _____
Guillaume Scheurer
The Chargé d'Affaires a.i. of Switzerland

Annex

Criteria for Granting Assistance Pursuant to the Treaty Request

1. It is understood that a request for exchange of information generally requires the clear identification of the person(s) concerned. However, in light of (i) the identified specific wrongful conduct by certain individual US taxpayers who maintained non-W-9 accounts at UBS AG Switzerland (UBS) in their name or in the name of an offshore non-operating company of which they were a beneficial owner, (ii) the specificity of the concerned group of individuals as described in paragraph 4 of the Statement of Facts to the Deferred Prosecution Agreement between the United States of America and UBS of February 18, 2009 (the "DPA"), and (iii) consistent with the conditions set by the judgment of the Swiss Federal Administrative Court on March 5, 2009, the names of the UBS United States clients do not need to be mentioned in this request for information exchange.

   Thus, consistent with paragraph 4 of the Statement of Facts to the DPA, the general requirement to identify the persons subject to the request for information exchange is considered to be satisfied for the following individuals:

   A. US domiciled clients of UBS who directly held and beneficially owned "undisclosed (non-W-9) custody accounts" and "banking deposit accounts" in excess of CHF 1 million (at any point in time during the period of years 2001 through 2008) with UBS and for which a reasonable suspicion of "tax fraud or the like" can be demonstrated, or

   B. US persons (irrespective of their domicile) who beneficially owned "offshore company accounts" that have been established or maintained during the period of years 2001 through 2008 and for which a reasonable suspicion of "tax fraud or the like" can be demonstrated.

2. The agreed-upon criteria for determining "tax fraud or the like" for this request pursuant to the existing Tax Treaty are set forth as follows:

   A. For "undisclosed (non-W-9) custody accounts" and "banking deposit accounts" (as described in paragraph 1.A of this Annex) where there is a reasonable suspicion that the US domiciled taxpayers engaged in the following:

      a. Activities presumed to be fraudulent conduct (as described in paragraph 10, subparagraph 2, first sentence of the Protocol) including such activities that led to a concealment of assets and

underreporting of income based on a "scheme of lies"[1] or submission of incorrect and false documents. Where such conduct has been established, persons with accounts of less than CHF 1 million in assets (except those accounts holding assets below CHF 250,000) during the relevant period would also be included in the group of US persons subject to this request; or

b. Acts of continued and serious tax offense for which the Swiss Confederation may obtain information under its laws and practices (as described in paragraph 10, subparagraph 2, third sentence of the Protocol), which based on the legal interpretation of the Contracting Parties includes cases where (i) the US-domiciled taxpayer has failed to provide a Form W-9[2] for a period of at least 3 years (including at least 1 year covered by the request) and (ii) the UBS account generated revenues of more than CHF 100,000 on average per annum for any 3-year period that includes at least 1 year covered by the request. For the purpose of this analysis, revenues are defined as gross income (interest and dividends) and capital gains (which for the purpose of assessing the merits of this administrative information request are calculated as 50% of the gross sales proceeds generated by the accounts during the relevant period).

B. For "offshore company accounts" (as described in paragraph 1.B of this Annex) where there is a reasonable suspicion that the US beneficial owners engaged in the following:

a. Activities presumed to be fraudulent conduct (as described in paragraph 10, subparagraph 2, first sentence of the Protocol) including such activities that led to a concealment of assets and underreporting of income based on a "scheme of lies"[3] or

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1 Such "scheme of lies" may exist where, based on the Bank's records, beneficial owners (i) used false documents; (ii) engaged in a fact pattern that has been set out in the "hypothetical case studies" in the appendix to the Mutual Agreement concerning Art. 26 of the Tax Treaty (for example, by using related entities or persons as conduits or nominees to repatriate or otherwise transfer funds in the offshore accounts); or (iii) used calling cards to disguise the source of trading. These examples are not exhaustive, and depending on the applicable facts and circumstances, certain further activities may be considered by the SFTA as a "scheme of lies".

2 For "banking deposit accounts" based on the Contracting Parties' legal interpretation a reasonable suspicion for such tax offence would be met if the US persons failed to prove upon notification by the Swiss Federal Tax Administration that they have met their statutory tax reporting requirements in respect of their interests in such accounts (i.e., by providing consent to the SFTA to request copies of the taxpayer's FBAR returns from the IRS for the relevant years).

3 Such "scheme of lies" may exist where the Bank's records show that beneficial owners continued to direct and control, in full or in part, the management and disposition of the assets held in the offshore company account or otherwise disregarded the formalities or substance of the purported corporate ownership (i.e., the offshore corporation functioned as nominee, sham entity or alter ego of the US

submission of incorrect or false documents, other than US beneficial owners of offshore company accounts holding assets below CHF 250,000 during the relevant period; or

b. Acts of continued and serious tax offense for which the Swiss Confederation may obtain information under its laws and practices (as described in paragraph 10, subparagraph 2, third sentence of the Protocol), which based on the legal interpretation of the Contracting Parties includes cases where the US person failed to prove upon notification by the Swiss Federal Tax Administration that the person has met his or her statutory tax reporting requirements in respect of their interests in such offshore company accounts (i.e., by providing consent to the SFTA to request copies of the taxpayer's FBAR returns from the IRS for the relevant years). Absent such confirmation, the Swiss Federal Tax Administration would grant information exchange where (i) the offshore company account has been in existence over a prolonged period of time (i.e., at least 3 years including one year covered by the request), and (ii) generated revenues of more than CHF 100'000 on average per annum for any 3-year period that includes at least 1 year covered by the request. For the purpose of this analysis, revenues are defined as gross income (interest and dividends) and capital gains (which for the purpose of assessing the merits of this administrative information request are calculated as 50% of the gross sales proceeds generated by the accounts during the relevant period).

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beneficial owner) by: (i) making investment decisions contrary to the representations made in the account documentation or in respect to the tax forms submitted to the IRS and the Bank; (ii) using calling cards / special mobile phones to disguise the source of trading; (iii) using debit or credit cards to enable them to deceptively repatriate or otherwise transfer funds for the payment of personal expenses or for making routine payments of credit card invoices for personal expenses using assets in the offshore company account; (iv) conducting wire transfer activity or other payments from the offshore company's account to accounts in the United States or elsewhere that were held or controlled by the US beneficial owner or a related party with a view to disguising the true source of the person originating such wire transfer payments; (v) using related entities or persons as conduits or nominees to repatriate or otherwise transfer funds in the offshore company's account; or (vi) obtaining "loans" to the US beneficial owner or a related party directly from, secured by, or paid by assets in the offshore company's account. These examples are not exhaustive, and depending on the applicable facts and circumstances, certain further activities may be considered by the SFTA as a "scheme of lies".

SETTLEMENT AGREEMENT

WHEREAS,

The United States of America (the "United States"), the U.S. Internal Revenue Service ("IRS") and UBS AG ("UBS") (singularly a "Party" and collectively the "Parties") desire to resolve their dispute over the John Doe summons that was served upon UBS by the IRS on or about July 21, 2008 (the "UBS Summons") and that is the subject of the matter pending in the United States District Court for the Southern District of Florida, Miami Division, entitled United States of America v. UBS AG, Case No. 09-20423-CIV-GOLD/MCALILEY (the "Action");

the United States and the Swiss Confederation have entered into a separate agreement dated August 19, 2009, in which the United States and the Swiss Confederation have agreed on an information exchange mechanism that is intended to achieve the U.S. tax compliance goals of the UBS Summons while also respecting Swiss sovereignty (the "US-Switzerland Agreement"); and

as contemplated in the US-Switzerland Agreement, the IRS will deliver to the Swiss Federal Tax Administration (the "SFTA") a request for administrative assistance, pursuant to Article 26 of the 1996 Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (the "1996 Convention"), seeking information with regard to accounts of certain U.S. persons maintained at UBS in Switzerland (the "Treaty Request").

NOW, THEREFORE, the Parties have agreed to the settlement of the Action on the terms set forth below:

1. Immediately upon the execution of this Settlement Agreement, and in no event more than 5 business days after its execution, UBS and the United States will file a Stipulation of Dismissal, pursuant to Fed.R.Civ.P. 41(a)(1)(A)(ii), with the United States District Court for the Southern District of Florida. (A copy of the proposed joint stipulation dismissing the Action is attached hereto as Exhibit A.) The Parties understand that the dismissal of the Action pursuant to this paragraph 1 shall, in and of itself, have no effect on the UBS Summons or its enforceability.

2. In order to facilitate and support the information exchange mechanism being established under the US-Switzerland Agreement, UBS agrees that it shall produce, on a rolling basis, account information to the SFTA on the following schedule: (i) within 60 days after UBS receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall submit to the SFTA the first 500 cases described in paragraphs 2.A.b and 2.B.b of the Annex to the US-Switzerland Agreement; (ii) within 180 days after UBS receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall submit to the SFTA the remaining cases described in paragraphs 2.A.b and 2.B.b of the Annex to the US-Switzerland Agreement; and (iii) within 270 days after UBS receives notice from the SFTA

that the Treaty Request has been received by the SFTA, UBS shall submit to the SFTA all the remaining cases subject to the Treaty Request. As a result, UBS shall complete the production to the SFTA of all cases responsive to the Treaty Request no later than 270 days after UBS receives notice from the SFTA that the Treaty Request has been received by the SFTA. The account information referred to in this paragraph is the information that UBS is ordered to produce to the SFTA pursuant to the Treaty Request. Based on an analysis conducted by UBS, the Parties estimate that information concerning approximately 4,450 accounts shall be provided by UBS to the SFTA in response to the Treaty Request.

3. In order to further expedite the process, UBS agrees to send notices based on currently available contact information to U.S. persons whose accounts with UBS are subject to the Treaty Request informing such U.S. persons that they should promptly designate an agent in Switzerland for the receipt of communications concerning the Treaty Request with respect to their accounts as soon as such accounts are identified by UBS but, with respect to accounts described in paragraphs 2.A.b and 2.B.b of the Annex to the US-Switzerland Agreement, beginning immediately upon UBS receiving notice from the SFTA that the Treaty Request has been received by the SFTA and continuing on a rolling basis, UBS shall send notices to holders of 500 such accounts within 15 days of receiving notice from the SFTA; shall send notices to holders of 1,000 additional such accounts within 30 days of receiving notice from the SFTA; shall send notices to holders of 1,000 additional such accounts within 45 days of receiving notice from the SFTA; and shall complete notifying all such accounts identified at that time within 90 days of receiving notice from the SFTA. The Parties recognize that certain unavoidable system limitations and technical issues with respect to a de minimis number of accounts relating, for example, to the identification of addresses for old and/or closed accounts, may cause delays with respect to notification. The Parties agree that any delay in sending notices to a de minimis number of account holders requiring notification within the timeframes set forth in this paragraph 3 shall not be considered a violation of this paragraph 3. The Parties will consult regularly with respect to any such issues that arise. If such U.S. persons do not designate an agent in Switzerland, communications with respect to their accounts shall be sent to such persons' last known mailing address. UBS agrees that the notice will advise such U.S. persons that if they choose to appeal to the Swiss Federal Administrative Court any SFTA administrative decision authorizing the providing of account information to the IRS, they may have an obligation under 18 U.S.C. §3506 to serve the notice of any such appeal and/or other documents relating to the appeal on the Attorney General of the United States at the time such notice of appeal or other document is submitted. UBS agrees that the notice shall encourage such U.S. persons to consult with qualified counsel concerning any obligations they may have under 18 U.S.C. §3506 should they choose to appeal. UBS agrees that the notice shall encourage such U.S. persons to execute a written instruction directing that the relevant account information (i.e., account opening and closing documentation and account statements) in respect of any accounts they maintained with UBS in Switzerland be transmitted to the IRS; in accordance with all valid instructions received from such U.S. persons, UBS shall transmit, at the earliest opportunity and on a rolling basis, all such information to the IRS. Finally, UBS agrees that the notice provided by UBS shall encourage such U.S. persons to consult with a qualified U.S. tax advisor regarding their account with UBS and, if appropriate, to take advantage of the IRS's

Voluntary Disclosure Practice. (Such notice shall be substantially in the form attached hereto as Exhibit B.)

4. UBS agrees that, in connection with its ongoing exit from its U.S. cross-border business, UBS shall send a written communication to all exiting U.S. clients encouraging such clients to execute a written instruction directing that account information substantially similar to the account information ordered to be produced to the SFTA with respect to any accounts they maintained with UBS in Switzerland be transmitted to the IRS, and UBS shall continue to maintain instructions and proposed forms relating to such waivers on UBS's website. In accordance with all valid instructions received from exiting U.S. clients, UBS shall transmit, at the earliest opportunity and on a rolling basis, all such account information to the IRS. In addition, the IRS has stated, in the US-Switzerland Agreement, that it intends to ask UBS clients who wish to participate in the IRS's voluntary disclosure practice to submit written instructions to UBS directing that UBS provide relevant account information directly to the IRS. UBS commits to process such instructions promptly and, in accordance with all valid instructions received from such accountholders, UBS shall promptly transmit such account information to the IRS.

5. The Parties understand that the Swiss Federal Office of Justice (the "SFOJ"), which shall seek the assistance of the Swiss Financial Market Supervisory Authority (the "FINMA"), shall oversee UBS's compliance with its commitments under this Settlement Agreement, including but not limited to the commitments set forth in paragraphs 2 and 3 of this Settlement Agreement.

6. The IRS and UBS hereby agree to amend UBS's Qualified Intermediary ("QI") Agreement, and to amend the QI audit guidance (applicable to UBS with respect to tax years for which the QI Agreement has been amended) to implement the provisions set forth in IRS Announcement 2008-98 effective for QI audit year 2010; provided, however, that in the event the IRS or the U.S. Department of Treasury issues temporary or final regulations or other guidance with respect to the QI program that modify or supersede, in whole or in part, the provisions set forth in IRS Announcement 2008-98, UBS agrees to be bound by such guidance, and the QI Agreement and the applicable QI audit guidance shall be further amended as necessary to give effect to such subsequent regulations or other guidance. The IRS and UBS further agree that the amendment to UBS's QI Agreement shall provide that the first QI audit year shall be 2010, and that such QI audit shall be conducted during the year 2011. UBS agrees to provide the IRS U.S. Competent Authority with copies of the periodic reports on the progress of the Exit Program it makes to the U.S. Department of Justice pursuant to paragraph 5 of the Deferred Prosecution Agreement between the United States and UBS dated February 18, 2009 ("DPA") at the same time it provides them to the U.S. Department of Justice. The IRS and UBS further agree that upon execution of the amended QI Agreement and adoption of the amended QI audit guidance, the IRS shall withdraw with prejudice the Notice of Default dated May 15, 2008 served on UBS by the IRS, and that such withdrawal constitutes the final resolution of any and all deficiencies, breaches, defaults and liabilities relating to or arising out of UBS's QI Agreement. Nothing in this Settlement Agreement shall serve to limit the IRS's ability to amend the QI program or audit guidance in

the future with respect to all QIs and to apply such program-wide amendments or guidance to UBS's QI Agreement.

7. With respect to UBS accounts that are covered by the UBS Summons but that will not be described in and subject to the Treaty Request, the IRS agrees to withdraw with prejudice no later than December 31, 2009 the UBS Summons with respect to those accounts; provided, however, if UBS fails to timely meet in any material respect any of its obligations under paragraphs 2 and 3 of this Settlement Agreement that are required to be performed on or before December 31, 2009, the IRS is not obligated to withdraw the UBS Summons with respect to those accounts.

8. With respect to UBS accounts that are covered by the UBS Summons and that will be described in and subject to the Treaty Request, the IRS agrees to withdraw the UBS Summons with respect to those accounts, subject to Article 5.4 of the US-Switzerland Agreement, with prejudice upon the earlier of:

   (a) the date on or after January 1, 2010 when the IRS has received, subsequent to February 18, 2009, information concerning 10,000 UBS accounts pursuant to the Treaty Request, the IRS's voluntary disclosure practice, from UBS clients who have waived their right to secrecy and instructed UBS or the SFTA to provide their account information to the IRS, or under the DPA, or

   (b) no later than 370 days from the date of this Settlement Agreement; provided, however, (i) if UBS fails to comply in any material respect with any of its obligations under paragraphs 2 and 3 of this Settlement Agreement, the IRS is not obligated to withdraw the UBS Summons under this paragraph 8(b) with respect to those accounts that will be described in and subject to the Treaty Request and which have not been disclosed to the IRS as of that time as a result of the Treaty Request, the IRS's voluntary disclosure practice, or from UBS clients who have waived their right to secrecy and instructed UBS or the SFTA to provide their account information to the IRS, or (ii) if Article 5.4 of the US-Switzerland Agreement is triggered, and after all other alternatives under such Article have been exhausted, the IRS is not obligated to withdraw the UBS Summons under this paragraph 8(b) with respect to those accounts that will be described in and subject to the Treaty Request and which have not been disclosed to the IRS as of that time as a result of the Treaty Request or UBS clients waiving their right to secrecy and instructing UBS or the SFTA to provide their account information to the IRS.

   For purposes of subparagraph (a) of this paragraph 8, the IRS shall assess the feasibility of including account information disclosed through FBAR filings made after the signing of this Agreement and for which the IRS has determined that such filings are attributable to the fact that the Parties entered into this Agreement.

   In no event shall this Settlement Agreement or the alternatives provided for under Article 5.4 of the US-Switzerland Agreement require any financial payment or create any financial liability by UBS to the IRS.

9. Provided that the UBS Summons is withdrawn with prejudice in accordance with paragraphs 7 and 8 of this Settlement Agreement, the IRS agrees that it will not issue or seek to issue against UBS any John Doe summons or other similar process or request in respect of any accounts at UBS within the subject matter and time periods covered by the UBS Summons and this Settlement Agreement (including the Treaty Request).

10. The IRS and UBS agree to meet with SFTA and SFOJ on a quarterly basis to assess the progress of the process established in this Settlement Agreement, including evaluation of maximum effectiveness of the voluntary compliance of UBS U.S. clients and additional measures that the Parties can reasonably undertake to promote the enforcement interests of the IRS.

11. The initial public statements shall be made simultaneously on August 19, 2009 at 9:30 a.m. Eastern Daylight Time. The Parties agree that the following are confidential and shall not be disclosed to any person or persons not engaged in the implementation or interpretation of this Settlement Agreement: (i) any and all discussions leading up to the execution of this Settlement Agreement and which may take place subsequent to its execution (and any and all documents and communications reflecting the same other than this Settlement Agreement); and (ii) the criteria used to identify the accountholders that are subject to the Treaty Request, prior to the public release of such information under the terms of the US-Switzerland Agreement. Provided, however, that the Parties agree that the IRS and the U.S. Department of Justice may disclose the total number of direct accounts and the total number of offshore company accounts expected to be provided by UBS to the SFTA pursuant to the Treaty Request, the maximum value in such accounts at any point in time, and the total value of such accounts as of September 30, 2008 and December 31, 2008 (or the last available value prior to such dates). The Parties further agree that any Party may disclose other information related to this Settlement Agreement with the consent of the other Parties, which consent shall not be unreasonably withheld. For purposes of this paragraph 11, the IRS, UBS, SFTA, SFOJ, FINMA, the Swiss Federal Council, and the U.S. Department of Justice are engaged in the implementation or interpretation of this Settlement Agreement.

12. UBS agrees not to make any public statement that contradicts any statement made by the Swiss Confederation, the U.S. Department of Justice, or the IRS with respect to this Settlement Agreement, unless any such statement materially mischaracterizes the terms of this Settlement Agreement, but in no event shall UBS make such public statement before UBS brings the public statement to the attention of the governmental entity described in this paragraph 12 (and specifically to the attention of the IRS U.S. Competent Authority if the governmental entity is the IRS) and provides that governmental entity with a reasonable opportunity to explain or cure the public statement.

13. UBS AG shall provide a written consent in appropriate form meeting the requirements of IRC §6103 and Treas. Reg. §301.6103(c)(1) to permit the IRS and the U.S. Department of Justice to publicly discuss this Settlement Agreement, subject to the terms of paragraph 11.

14. The Parties further agree that:

(a) This Settlement Agreement contains all the agreements, conditions, promises and covenants among and between the signatories regarding the matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations or understandings, either written or oral, with respect to the subject matter of the present Settlement Agreement, except that this Settlement Agreement does not affect the terms of the DPA (or the Agreement between the IRS and UBS referred to therein) or the Consent Order between UBS and the U.S. Securities and Exchange Commission in SEC v. UBS AG, No. 1:09-cv-00316 (D.D.C.), Docket Entry No. 6;

(b) This Settlement Agreement may be amended or modified only by a written instrument signed by, or on behalf of, all of the undersigned signatories or their successors in interest;

(c) All counsel executing this Settlement Agreement warrant and represent that they have the full authority to do so;

(d) This Settlement Agreement shall be binding upon and inure to the benefit of the signatories hereto and their respective successors and assigns; and

(e) This Settlement Agreement may be executed in one or more original, photocopied, electronically scanned or facsimile counterparts. All executed counterparts and each of them shall be deemed to constitute an original and to be one and the same.

Dated at Washington, DC this day of , 2009.

For
UBS AG

By: _____
Marcus Diethelm, Esq.
Group General Counsel

For the
United States of America

By: _____
John A. DiCicco
Acting Assistant Attorney General
Tax Division
United States Department of Justice

For
UBS AG

By: _____
John F. Savarese
Wachtell, Lipton, Rosen & Katz

For the
Internal Revenue Service

By: _____
Barry B. Shott
United States Competent Authority
Deputy Commissioner (International)
Internal Revenue Service
Large & Mid-Size Business

For
UBS AG

By: _____
Ralph M. Levene
Wachtell, Lipton, Rosen & Katz

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

Case No. 09-20423-CIV-GOLD/MCALILEY

UNITED STATES OF AMERICA, Petitioner,	)
v.	)
UBS AG, Respondent.	)

STIPULATION OF DISMISSAL

Pursuant to Fed.R.Civ.P. 41(a)(1)(A)(ii), the parties stipulate that the action is dismissed, with each party to bear its own costs and attorneys' fees.

Dated:

The United States of America

By: _____

UBS AG

By: _____

SO ORDERED

Dated:

_____
ALAN S. GOLD USDJ

EXHIBIT B

PROPOSED DRAFT NOTICE TO UBS ACCOUNTHOLDERS

[Address Block]

Dear _____:

We have been informed that the U.S. Internal Revenue Service ("IRS") has submitted a request for administrative assistance to the Swiss Federal Tax Administration (the "SFTA"), pursuant to Article 26 of the 1996 Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (the "1996 Convention"), seeking information with regard to accounts of certain U.S. persons owned either directly or through an offshore company that are or have been maintained with UBS AG ("UBS") in Switzerland.

This letter provides notice to you that your account with UBS appears to be within the scope of the above-referenced IRS request. If the SFTA were to make a determination that information relating to your UBS account is required to be provided to the IRS pursuant to the 1996 Convention, the SFTA would make available to the IRS information and records relating to your account with UBS.

UBS has been directed to convey to you the following information:

1. Appointment of an agent in Switzerland. The SFTA requests that you appoint a person authorized to receive notifications in Switzerland concerning these matters and to inform the SFTA of the person you have appointed and his/her address in Switzerland. Within **20 days** of the receipt of this notification, please send this information to: Swiss Federal Tax Administration, Abteilung für Internationales, Eigerstrasse 65, CH-3003 Bern, Switzerland. *If needed, you may obtain assistance in identifying a person who could serve as your agent in* Switzerland by calling the [Swiss Bar Association] at [---].

2. Obligations in respect of any appeal. If the SFTA were to authorize the providing of information concerning your UBS account to the IRS pursuant to the 1996 Convention, the SFTA would notify your agent in Switzerland and the SFTA also would advise your agent that you would have a right under Swiss law to appeal such a decision by the SFTA to the Swiss Federal Administrative Court. *It is important to note that if you choose to appeal such* a decision, you may have an obligation, pursuant to Title 18 United States Code Section 3506, to serve the notice of appeal or other documents relating to the appeal on the Attorney General of the United States at the time such notice of appeal or other pleading is submitted. UBS urges you to consult with a qualified lawyer concerning whether to appeal any such decision of the SFTA and concerning any obligations you may have under Section 3506 of Title 18 of the United States Code should you choose to appeal such SFTA decision.

   Please be advised that we are not authorized to provide any information on whether or not information with respect to a specific account will be provided to the IRS before the overall process has been concluded.

3. Consent to disclosure. Alternatively, you may give us your consent and instruct us to provide to the IRS on your behalf information relating to your account ("account information") that is responsive to the IRS request. If you would like to give this consent and instruct us accordingly, please sign the enclosed Form of Instruction Letter and return it to us in the enclosed prepaid envelope. We do not express any views as to whether provision of such account information would be treated by the IRS as a voluntary disclosure and recommend that you consult with a qualified U.S. tax lawyer should you have questions.

   If you would like to give this consent, please include the account number on your consent and please note the following:

   - If you hold or held the account together with one or more other person(s), all persons should sign the consent.
   - If you hold or held more than one account, please provide a separate form for each account.
   - If you have changed your name, for example, by marriage, please provide documentation of such name change.
   - If you hold or held this account through an offshore company, please have those who are authorized to act on behalf of the company (directors or other signatories or holders of power of attorney) sign the Instruction Letter.
   - If the account holder is deceased, please submit valid inheritance documents and the contact details of the executor.

   If you have filed FBAR forms with the United States Government with respect to your account, you may also provide the SFTA with permission to request from the IRS copies of your FBAR forms. To do so, please send permission for such a request to: [Swiss Federal Tax Administration, Abteilung für Internationales, Eigerstrasse 65, CH-3003 Bern, Switzerland.]

4. IRS Voluntary Disclosure Practice. The IRS has a longstanding voluntary disclosure practice to encourage U.S. taxpayers to bring themselves voluntarily into full compliance with the U.S. tax laws. Making voluntary disclosure enables taxpayers to become compliant, avoid substantial civil penalties and generally eliminates the risk of criminal prosecution. As part of this voluntary disclosure practice, on March 23, 2009, the IRS announced a penalty framework applicable to voluntary disclosure requests regarding unreported offshore accounts and entities. This initiative offers greater certainty regarding the applicable penalty structure and is designed to encourage U.S. taxpayers with offshore assets to take advantage of the IRS's voluntary disclosure practice.

   The IRS has announced that this new initiative will be in place for six months, ending on September 23, 2009. As a general matter, in order to take advantage of the IRS's voluntary disclosure practice (including the penalty framework described above), a U.S. taxpayer must make a voluntary disclosure to the IRS before the IRS identifies the taxpayer's potential non-compliance with U.S. tax laws through a civil examination, criminal investigation or other means.

Under the terms of the voluntary disclosure initiative, as explained by the IRS in subsequent guidance, there is still an opportunity for you to make a voluntary disclosure, but that opportunity will be lost upon the provision of your account data to the IRS in response to the treaty request. Accordingly, if you are considering making a voluntary disclosure, it is important for you to do so now. The IRS has stated that a voluntary disclosure will be considered timely as soon as a taxpayer identifies himself and expresses an intent to disclose, even if the taxpayer has not yet completed amended or delinquent returns. For details and further information on this offshore voluntary disclosure practice or the more general voluntary disclosure practice, please visit the IRS website, including at: http://www.irs.gov/newsroom/article/0,,id=210027,00.html.

Upon request, UBS will provide you with account information that you may need in order to make a voluntary disclosure.

UBS encourages you to consult with a qualified U.S. tax advisor regarding your account and, if appropriate, to consider taking advantage of the IRS's voluntary disclosure practice.

Sincerely yours,

UBS AG

[Signature Block]

CONSENT TO PUBLICLY DISCLOSE SETTLEMENT AGREEMENT AND RELATED INFORMATION

The undersigned authorized representative of UBS AG hereby consents to the disclosure by the Internal Revenue Service and/or the Tax Division, U.S. Department of Justice, through official publication such as in the Internal Revenue Bulletin (by the IRS) or a through a press release or in a public setting such as a press conference, of: (1) the name of UBS AG; (2) subject to its terms, the Settlement Agreement between UBS AG, the Tax Division, U.S. Department of Justice and the Internal Revenue Service dated August 19, 2009; and (3) as described in paragraph 11 of the Settlement Agreement, the total number of direct accounts and the total number of offshore company accounts expected to be provided by UBS AG to the Swiss Federal Tax Administration pursuant to a Treaty Request that will be made by the IRS to the SFTA pursuant to Article 26 of the 1996 Convention Between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, as well as the maximum value in such accounts at any point in time and the total value of such accounts as of September 30, 2008 and December 31, 2008 (or the last available value prior to such dates). The undersigned understands that this information might be published, broadcast, discussed, or otherwise disseminated in the public record.

This authorization shall become effective upon the later of (i) the execution hereof, or (ii) the execution of the Settlement Agreement. The returns and return information of UBS AG are confidential and are protected by law under the Internal Revenue Code.

I certify that I have the authority to execute this consent to disclose on behalf of the taxpayer named below.

Date: 8-19-09

Signature: [signature]

Print name: Markus U. Diethelm

Title: Group General Counsel
Member of the Executive Committee

Name of Taxpayer: UBS AG

Taxpayer Identification Number: QI-EIN 98-0235527

Taxpayer's Address: BAHNHOFSTRASSE 45, 8001 ZURICH, SWITZERLAND

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	CRIMINAL NO. 1:11-CR-95
v.	)	
	)	Count 1: 18 U.S.C. § 371
MARKUS WALDER,	)	(Conspiracy)
MARCO PARENTI ADAMI,	)	
SUSANNE D. RÜEGG MEIER,	)	
ROGER SCHAERER,	)	
EMANUEL AGUSTONI,	)	
MICHELE BERGANTINO,	)	
ANDREAS BACHMANN,	)	
a/k/a/ "Andrew Bachman",	)	
a/k/a/ "Andy Bachman", and	)	
JOSEF DÖRIG	)	
	)	
Defendants.	)	
	)	

SUPERSEDING INDICTMENT

July 2011 Term – At Alexandria

THE GRAND JURY CHARGES THAT:

GENERAL ALLEGATIONS

At all times relevant to this Superseding Indictment:

International Bank

1. An international Swiss bank organized under the laws of Switzerland and headquartered in Zurich, Switzerland, ("International Bank"), directly and through its subsidiaries, operated a global financial services business. As one of the biggest banks in Switzerland and largest wealth managers in the world, International Bank provided banking, wealth management, asset management, and investment banking services, among other services,

around the globe, including through branches located in the United States. For decades, International Bank operated a U.S. cross-border business through which its private bankers provided cross-border securities-related and investment advisory services to U.S. customers who maintained undeclared accounts at International Bank in Switzerland, the Bahamas, and other locations outside the United States. This cross-border business was conducted through substantial contacts with the customers in the United States. International Bank's managers and bankers working in the cross-border business knew and should have known that they were aiding and abetting U.S. customers in evading their U.S. income taxes. As of the fall of 2008, International Bank maintained thousands of undeclared accounts containing approximately $4 billion in total assets under management in those accounts.

2. International Bank operated a wholly owned subsidiary that is one of the largest private banks in Switzerland. The wholly owned subsidiary was formed in 2007 from the merger of four private banks and a securities dealer. The wholly owned subsidiary operated a U.S. cross-border business through which its private bankers provided cross-border securities-related and investment advisory services to U.S. customers who maintained undeclared accounts at the wholly owned subsidiary in Switzerland. This cross-border business was conducted through substantial contacts with the customers in the United States. The wholly owned subsidiary's managers and bankers working in the cross-border business knew and should have known that they were aiding and abetting U.S. customers in evading their U.S. income taxes.

3. In order for an entity and its bankers to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security, that entity and its bankers were required under U.S. law to register as a broker-dealer and as an investment adviser with the United States

Securities and Exchange Commission ("SEC"). Neither International Bank, nor the bankers engaged in its cross-border business, were registered as broker-dealers and investment advisers with the SEC.

4. In 1997, International Bank applied to the Federal Reserve Board under section 10(a) of the International Banking Act ("IBA") (12 U.S.C. § 3107(a)) to establish representative offices in Miami, Florida; New York, New York; and, Houston, Texas. The Foreign Bank Supervision Enhancement Act of 1991 ("FBSEA"), which amended the IBA, provided that a foreign bank had to obtain the approval of the Board to establish a representative office in the United States. International Bank proposed to establish the representative offices primarily to act as liaison with private banking customers, solicit private banking business, and provide information and advice on economic conditions and investment opportunities in Switzerland. International Bank represented to the Federal Reserve Board that it had the experience and capacity to support the proposed representative offices and had established controls and procedures for the proposed representative offices to ensure compliance with U.S. law. In 1998, the Federal Reserve Board granted International Bank's application. Prior to 1998, International Bank operated representative offices in New York, Los Angeles, San Francisco, Miami, and Houston under state banking regulations. International Bank made periodic reports regarding the activities of its New York Representative Office to the Federal Reserve Bank of New York, the bank's primary regulator in the United States.

5. In or around January 2001, International Bank entered into a Qualified Intermediary Agreement ("QI Agreement") with the Internal Revenue Service ("IRS"). The QI Agreement required the bank to verify the identity and citizenship/domicile of its customers,

through the execution of IRS Forms W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, and W-9, Request for Taxpayer Identification Number and Certification, and to withhold and pay over to the IRS taxes on certain transactions from accounts beneficially owned by U.S. taxpayers.

6. In or around March 2001, International Bank opened an SEC-registered and U.S. tax compliant cross-border business for U.S. customers who intended to report their ownership of their offshore accounts and related income to the IRS.

7. In or around the fall of 2008, International Bank began the process of exiting its undeclared U.S. cross-border banking business and closed its Representative Office in New York which serviced U.S. customers with undeclared accounts.

Other Swiss Banks

8. A private Swiss bank organized under the laws of Switzerland ("Private Swiss Bank #1") was a family-owned private bank that was founded in 2000 and headquartered in Zurich, Switzerland that provided cross-border banking services to U.S. customers. On its website, Private Swiss Bank #1 touted its "strict policy to never open any branch or other representation outside the reach of the Swiss laws and jurisdiction . . ." because "[o]nly that way can we be certain to maintain our values – and assure that no foreign authority will ever 'bully' us into giving them up." Private Swiss Bank #1 entered into a QI Agreement with the IRS.

9. An Israeli bank with a head office in Tel Aviv, Israel, operated a subsidiary, organized under the laws of Switzerland, with offices in Geneva and Zurich, Switzerland ("Israeli Bank") that provided cross-border banking services to U.S. customers. In or around 2001, Israeli Bank entered into a QI Agreement with the IRS.

10. A private Swiss bank organized under the laws of Switzerland ("Private Swiss Bank #2") was a family-owned private bank with a head office in Zurich, Switzerland, and private banking locations in Lugano and Locarno, Switzerland, that provided cross-border banking services to U.S. customers. In or around 2001, Private Swiss Bank #2 entered into a QI Agreement with the IRS.

11. A private Swiss bank organized under the laws of Switzerland ("Private Swiss Bank #3") owned principally by several partners, each of whom bore unlimited liability, claimed to be Switzerland's oldest bank. Swiss Bank #3 provided cross-border banking services to U.S. customers. In or around 2001, Private Swiss Bank #3 entered into a QI Agreement with the IRS.

12. A bank that was an independent, incorporated public-law institution wholly owned by the Kanton of Zürich, Switzerland ("Kantonal Bank") provided cross-border banking services to U.S. customers. In or around 2001, Kantonal Bank entered into a QI Agreement with the IRS.

13. An asset management firm ("Asset Management Firm #1") located in Zurich, Switzerland, opened private banking operations in 2002 under the direction of HANSRUEDI SCHUMACHER. Asset Management Firm #1 and its employees assisted U.S. customers in opening undeclared accounts at Swiss banks, including Kantonal Bank, and managed the investments in those undeclared account for the U.S. customers.

14. An asset management firm ("Asset Management Firm #2") located in Zurich, Switzerland, was formed by former employees of Asset Management Firm #1 to assist U.S. customers in opening undeclared accounts at Swiss banks and managing the investments in those accounts for the U.S. customers.

Investigation of Cross-Border Banking

15. As of March 23, 2009, the IRS offered the Offshore Account Voluntary Disclosure Program ("Voluntary Disclosure Program") to U.S. taxpayers as a means for those taxpayers to disclose their interests in undeclared accounts and avoid criminal prosecution. The program was open until October 15, 2009. Under the Voluntary Disclosure Program, the participants paid tax on their unreported income, a 20% accuracy penalty on the tax, and a 20% penalty on the high balance of the undeclared accounts, together with interest.

U.S. Income Tax & Reporting Obligations

16. U.S. citizens, resident aliens, and legal permanent residents had an obligation to report to the IRS on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking "Yes" or "No" in the appropriate box and identifying the country where the account was maintained. U.S. citizens, resident aliens, and legal permanent residents had an obligation to report all income earned from foreign bank accounts on the tax return and to pay the taxes due on that income.

17. U.S. citizens, resident aliens, and legal permanent residents who had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than $10,000 at any time during a particular year were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1 (the "FBAR"). The FBAR for the applicable year was due by June 30 of the following year.

Definitions

18. An "undeclared account" was a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that had not been reported to the U.S. government on an income tax return and an FBAR.

19. A "tax haven" was a country or territory whose institutions and laws, including bank secrecy laws, were intended to conceal financial information evidencing tax evasion from other countries.

20. "Offshore charge, credit, and debit cards" were cards issued and caused to be issued by offshore financial institutions to holders of undeclared accounts to permit them to access the assets in the undeclared accounts while ensuring that their applications and records of transactions would be maintained offshore.

21. A "nominee" was a person or entity that was used to conceal the true owner's identity.

THE CONSPIRATORS

22. Defendant MARKUS WALDER, a citizen and resident of Switzerland, was the head of North American Offshore Banking for International Bank responsible for both the declared and undeclared U.S. cross-border banking businesses. He held the title of Managing Director at International Bank. As the head of North American Offshore banking, Defendant MARKUS WALDER supervised the undeclared U.S. cross-border banking business including: teams of private bankers in Zurich and Geneva; the Representative Office in New York, New York; and the SEC-registered and IRS-compliant U.S. cross-border business. Defendant MARKUS WALDER also served as a private banker who traveled to the United States to

provide unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts at International Bank. From in or around 2007 to the present, even though he continued to assist U.S. customers to evade their income tax obligations by using undeclared accounts at International Bank, defendant MARKUS WALDER served as a member of the senior management of International Bank's SEC-registered and U.S. compliant cross-border banking business, holding the title of "Director."

23. Defendant MARCO PARENTI ADAMI, a citizen of Italy and resident of Switzerland, was a member of International Bank's senior management who supervised the Geneva-based undeclared U.S. cross-border banking business. From at least on or about 1994 to the present, he served as a private banker for International Bank, providing unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts at International Bank.

24. Defendant SUSANNE D. RÜEGG MEIER, a citizen and resident of Switzerland, was a member of International Bank's senior management who supervised the Zurich-based undeclared U.S. cross-border banking business. Defendant SUSANNE D. RÜEGG MEIER also served as a private banker for International Bank, providing unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts at International Bank.

25. Defendant ROGER SCHAERER, a dual citizen of Switzerland and the United States and a resident of the United States, was a member of International Bank's senior management who supervised the New York Representative Office from 1999 to 2008. In 2004, International Bank promoted defendant ROGER SCHAERER to the title of Director. As

International Bank's Senior Representative in the United States, defendant ROGER SCHAERER serviced the undeclared accounts of U.S. customers.

26. Defendant EMANUEL AGUSTONI, a citizen and resident of Switzerland, was a private banker and asset manager who provided unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts in Switzerland. From in or around the 1990s to in or around 2005, defendant EMANUEL AGUSTONI was employed as a private banker by International Bank in Zurich, Switzerland. From in or around 2005 to in or around 2008, Private Swiss Bank #2 employed defendant EMANUEL AGUSTONI in Zurich, Switzerland as a private banker with the title of Assistant Vice President. From in or around 2009 to the present, defendant EMANUEL AGUSTONI has worked as an independent asset manger in Zurich, Switzerland opening undeclared accounts for U.S. customers at Private Swiss Bank #1.

27. Defendant MICHELE BERGANTINO, a citizen and resident of Switzerland, was employed by International Bank from in or around April 1983 through in or around May 2009 as a private banker in Zurich, Switzerland, providing unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts in Switzerland. From in or around June 2009 to in or around August 2010, International Bank employed defendant MICHELE BERGANTINO as a private banker in its SEC-registered and U.S. compliant cross-border banking business.

28. Defendant ANDREAS BACHMANN, a citizen and resident of Switzerland, was a private banker and asset manager who provided unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts at banks in

Switzerland. From in or around the 1990s to in or around 2007, he worked as a private banker for a wholly owned subsidiary of International Bank. From in or around 2007 through in or around 2009, defendant ANDREAS BACHMANN worked for Asset Management Firm #1 in Zurich, Switzerland, as an asset manager where he continued to open and manage undeclared accounts for U.S. customers. From in or around July 2009 through the present, defendant ANDREAS BACHMANN with several other partners formed Asset Management Firm #2 in Zurich, Switzerland, where he worked as an asset manager opening and managing undeclared accounts for U.S. customers.

29. Defendant JOSEF DÖRIG was the President, Chief Executive and Chairman of the Board of a wholly owned subsidiary of International Bank that served as a trust and asset management company that managed undeclared accounts for U.S. customers that were opened and maintained in the names of nominee tax haven entities. In or around 1997, he left the wholly owned subsidiary of International Bank and founded a Swiss trust company that was used to open and maintain nominee tax haven entities for U.S. customers who sought to conceal their assets and income from U.S. authorities. International Bank identified and promoted defendant JOSEF DÖRIG to customers as a preferred provider for creating and maintaining nominee tax haven entities.

COUNT ONE
(Conspiracy)

THE GRAND JURY FURTHER CHARGES THAT:

30. The general allegations are incorporated in this Count.

The Conspiracy and Its Object

31. From in or around the 1960s to the present, the exact dates being unknown to the Grand Jury, in the Eastern District of Virginia and elsewhere, defendants

MARKUS WALDER
MARCO PARENTI ADAMI,
SUSANNE RÜEGG MEIER,
ROGER SCHAERER,
EMANUEL AGUSTONI,
MICHELE BERGANTINO,
ANDREAS BACHMANN, and
JOSEF DÖRIG,

(collectively "Defendants") did unlawfully, voluntarily, intentionally, and knowingly conspire, combine, confederate, and agree together and with each other and with others both known and unknown to the Grand Jury to commit the following offense against the United States: to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful government functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment, and collection of revenue: to wit, U.S. income taxes, in violation of Title 18, United States Code, Section 371.

Manner and Means of the Conspiracy

Among the manner and means by which the Defendants and their conspirators would and did carry out the conspiracy were the following:

32. International Bank operated a Representative Office in New York, New York that was utilized to provide unlicensed and unregistered banking services and investment advice to U.S. customers who maintained undeclared accounts in Switzerland;

33. Defendants MARKUS WALDER and ROGER SCHAERER, their conspirators and others made false statements and provided misleading information to the Federal Reserve Bank of New York regarding the International Bank's undeclared U.S. cross-border banking business and the role the Representative Office in New York played in that business;

34. The Defendants, their conspirators and others caused International Bank to make false statements and provided misleading information to the IRS regarding International Bank's compliance with the terms of the QI Agreement.

35. International Bank maintained correspondent bank accounts in the United States through which the Defendants, their conspirators and others conducted financial transactions in furtherance of its cross-border tax evasion scheme;

36. The Defendants and their conspirators caused U.S. customers to execute forms that directed International Bank not to disclose their identities to the IRS;

37. The Defendants and their conspirators caused U.S. customers to open and maintain both declared and undeclared accounts at International Bank so that U.S. authorities would likely not suspect the customer had an undeclared account, which would aid in concealing the customer's offshore assets and income from the IRS;

38. The Defendants and their conspirators assisted U.S. customers to close their undeclared accounts at International Bank and convert marketable securities into precious metals;

39. The Defendants and their conspirators provided cash in the United States to U.S. customers as withdrawals from their undeclared accounts at International Bank in Switzerland;

40. The Defendants and their conspirators solicited cash deposits in the United States from U.S. customers with undeclared accounts at International Bank in Switzerland;

41. The Defendants and their conspirators solicited U.S. customers to open undeclared accounts because Swiss bank secrecy would permit them to conceal their ownership of accounts at International Bank and other Swiss banks;

42. The Defendants and their conspirators set up, and caused to be set up, and utilized, and caused to be utilized, nominee tax haven entities to open undeclared accounts;

43. International Bank's managers and bankers, in violation of International Bank's QI Agreement, knowingly accepted IRS Forms W-8BEN, or the bank's substitute forms, that falsely stated under penalties of perjury that the beneficial owner of the account was not subject to U.S. taxation;

44. The Defendants and their conspirators caused U.S. customers to travel outside the United States, to destinations including Switzerland and the Bahamas, to provide banking services and investment advice related to their undeclared accounts;

45. The Defendants and their conspirators provided unlicensed and unregistered banking services and investment advice to U.S. customers in person while on travel to the United States and by mailings, email, and telephone calls to and from the United States;

46. Certain U.S. customers filed false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, which failed to report their respective interests in their undeclared accounts and the related income;

47. U.S. customers failed to file and otherwise report their undeclared accounts on FBARs;

48. The Defendants and their conspirators advised U.S. customers to structure, and caused U.S. customers to structure, withdrawals from their undeclared accounts in amounts less than $10,000 in an attempt to conceal their undeclared accounts and the transactions from U.S. authorities;

49. The Defendants and their conspirators advised U.S. customers to utilize offshore charge, credit, and debit cards linked to their undeclared accounts and did provide such cards, including cards issued by American Express, Visa, and Maestro;

50. The Defendants and their conspirators advised U.S. customers not to maintain in the United States account records related to their undeclared accounts;

51. The Defendants and their conspirators caused International Bank, Private Swiss Bank #1, Private Swiss Bank # 2, Private Swiss Bank # 3, Kantonal Bank, Asset Management Firm #1, and Asset Management Firm #2 to retain, in Switzerland, account records related to the U.S. customers' undeclared accounts;

52. The Defendants and their conspirators had statements and other account records of undeclared accounts maintained by U.S. customers at International Bank sent by e-mail and facsimile from Switzerland to the Representative Office in New York, New York, so that customers with undeclared accounts could review the documents;

53. The Defendants and their conspirators destroyed, and caused to be destroyed, statements and other account records of undeclared accounts maintained by U.S. customers at

International Bank that were sent by e-mail and facsimile from Switzerland to the Representative Office in New York, New York;

54. The Defendants and their conspirators discouraged U.S. customers from disclosing their undeclared accounts to the IRS through the Voluntary Disclosure Program;

55. The Defendants and their conspirators encouraged and assisted U.S. customers to transfer their undeclared accounts at International Bank to other banks in Switzerland, including Private Swiss Bank #1, Private Swiss Bank # 2, Private Swiss Bank # 3, Kantonal Bank, and Israeli Bank, and to a bank in Hong Kong as a means to continue to conceal the assets and income in undeclared accounts; and

56. The Defendants, their conspirators and others caused U.S. customers who inherited undeclared accounts at International Bank to open new undeclared accounts and transfer into those accounts the funds from the inherited accounts.

Overt Acts

In furtherance of the conspiracy, and to effect the object thereof, the following overt acts were committed in the Eastern District of Virginia, and elsewhere:

57. On or about December 13, 2005, while operating an illegal U.S. cross-border banking business, International Bank made a filing to the Federal Reserve Bank of New York that concealed its participation in the tax evasion scheme in that International Bank stated that if a member of the Representative Office is "asked about overseas account services" or "asked for assistance in the opening of an overseas account" the Representative "must decline the Customer's request" "[i]f the client indicates that he/she intends to avoid paying taxes" as "[i]t is the policy of [International Bank] not to provide any assistance in the evasion of taxes."

58. On or about December 6, 2007, while operating an illegal U.S. cross-border banking business, International Bank attempted to conceal its participation in the tax evasion scheme in that International Bank made a filing to the Federal Reserve Bank of New York regarding its U.S. Anti-Money Laundering Program for its New York Representative Office that reported that the bank's Global Business Conduct Manual states that "employees must not engage in activity that could be viewed as knowingly assisting a client in . . . misleading local or foreign authorities or any tax authority by means of incomplete or missing information."

Customers 1 and 2

59. In or about July 20, 1990, Customer 1, a U.S. citizen and resident of Plandome Manor, New York, opened an undeclared account at International Bank in the name of a nominee tax haven entity.

60. In or about September 17, 2000, Customer 1 closed the existing account at International Bank and transferred the contents to a new account opened at International Bank in the name of a nominee tax haven entity that was formed by defendant JOSEF DÖRIG.

61. In or around 2001, Customer 2, the spouse of Customer 1, met with defendant MARKUS WALDER at a hotel in New York, New York, to discuss the undeclared at International Bank.

62. In or around 2002, Customer 2 met with defendant MARKUS WALDER at a hotel in New York, New York to discuss the undeclared account at International Bank, including discussing portfolio investment decisions.

63. In or around 2008, Customer 2 met with defendant MARKUS WALDER at a hotel in New York, New York to discuss the undeclared account at International Bank, including discussing portfolio investment decisions.

64. In or around November 2008, defendant ROGER SCHAERER telephoned Customer 2 and informed Customer 2 that defendant MARKUS WALDER was no longer traveling to the United States, and that defendant MARKUS WALDER would meet with Customer 2 in Switzerland to close the undeclared account at International Bank.

65. In or around November 2008, at a meeting arranged by defendant MARKUS WALDER at the office of defendant JOSEF DÖRIG in Zurich, Switzerland, Customer 2 met with defendant MARKUS WALDER, defendant JOSEF DÖRIG, and two Italian men who offered to transfer Customer 2's undeclared account from International Bank to another private bank in order to conceal Customer 2's ownership of the assets and income.

Customer 3

66. In or around 1989, Customer 3, a U.S. citizen and resident of New York, New York, opened an undeclared account at International Bank in Zurich, Switzerland with funds inherited from an undeclared account at International Bank that Customer 3 inherited from Customer 3's father.

67. In or around 1989, a relative informed Customer 3 that if Customer 3 repatriated the funds from the undeclared account to the United States, Customer 3 would expose the entire family to possible prosecution for failure to report to the IRS their undeclared accounts and the income derived from them.

68. In or around 2001, at a meeting in a café in New York, New York, defendant MARKUS WALDER gave Customer 3 cash in an amount less than $10,000 as a withdrawal from Customer 3's undeclared account at International Bank.

69. In or around 2004, defendant MARKUS WALDER advised Customer 3 to close the existing undeclared account at International Bank and transfer the contents to a new undeclared account to be opened in the name of a nominee tax haven entity in order to conceal Customer 3's ownership of the new account.

70. In or around 2004, Customer 3 closed the existing undeclared account at International Bank and transferred the assets to a new undeclared account opened in the name of a nominee tax haven entity that was created and managed by an individual suggested by defendant MARKUS WALDER.

71. In or around October of 2008, at a meeting in Zurich, Switzerland, Customer 3 asked defendant MARKUS WALDER if Customer 3 should be concerned about Swiss bank secrecy given the U.S. government's investigation of UBS, and defendant MARKUS WALDER responded by telling Customer 3 that there was nothing to be concerned about.

72. In or around December of 2008, at a meeting in Zurich, Switzerland, defendant MARKUS WALDER informed Customer 3 that International Bank could not maintain the undeclared account because International Bank was fearful of enforcement action by U.S. authorities.

73. In or around December 2008, defendant MARKUS WALDER advised Customer 3 to transfer the undeclared account from International Bank to Private Bank #3.

Customer 4

74. In or around 2005, at a party in Palm Beach, Florida, Customer 4, then a legal permanent resident of the U.S. residing in Palm Beach Gardens, Florida, was introduced to defendant MARKUS WALDER who identified himself as an employee of International Bank in Zurich, Switzerland.

75. In or around 2005, Customer 4 telephoned a banker with International Bank's SEC-registered U.S. tax compliant business in Miami, Florida ("Banker A"), to request contact information for defendant MARKUS WALDER as Customer 4 expressed interested in meeting with defendant MARKUS WALDER in Florida to discuss transferring Customer 4's undeclared account at UBS to International Bank in Switzerland at which time Banker A asked Customer 4 about the assets in the UBS account, which were less than $2 million, and Banker A assured Customer 4 that defendant MARKUS WALDER would make contact in the near future.

76. In or around 2005, several days after the conversation with Banker A, defendant MARKUS WALDER telephoned from Switzerland to Customer 4 in the United States to discuss opening an undeclared account with International Bank.

77. On or about November 23, 2006, at a hotel meeting in Miami, Florida, defendant MARKUS WALDER provided Customer 4 with documents to open an undeclared account at International Bank in Switzerland, which Customer 4 executed in the presence of defendant MARKUS WALDER.

78. On or about July 8, 2008, Customer 4 sent a letter from the United States to defendant MARKUS WALDER in Switzerland in which Customer 4 enclosed a copy of an

article regarding the U.S. government's investigation of UBS's illegal cross-border banking business and asked the following question:

> The enclosed article, which I wanted to share with you, appeared last week in our newspaper and I am certain that there are many issues thereto how UBS and the Swiss Government react to such request and which consequences will result thereof.
>
> Is this a beginning of the end for UBS and/or the entire Swiss bank secrecy in general?

79. On or about June 12, 2009, Customer 4 used funds in the undeclared account at International Bank to purchase 16 one-kilogram bars of gold, at a cost of $483,744, and had the precious metal stored in a safe deposit box at International Bank in Zurich, Switzerland.

80. On or about July 14, 2009, Customer 4 closed the undeclared account at International Bank and received 469,640 Swiss Francs in cash and had the cash stored in a safe deposit box at International Bank in Zurich, Switzerland.

Customer 5

81. In or about August 2006, in Zurich, Switzerland, Customer 5, a naturalized U.S. citizen residing in Charlottesville, Virginia, opened an undeclared account at International Bank in Switzerland.

82. On or about August 16, 2006, Customer 5 departed from Dulles International Airport, in the Eastern District of Virginia, on a flight bound for Zurich, Switzerland, to meet with an International Bank banker in Zurich, Switzerland, to discuss the undeclared account.

83. On or about April 15, 2007, Customer 5 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2006 that failed to report the undeclared account and related income.

84. On or about July 7, 2008, Customer 5 departed from Dulles International Airport, in the Eastern District of Virginia, on a flight bound for Zurich, Switzerland, to meet with an International Bank banker in Zurich, Switzerland, to discuss the undeclared account.

85. On or about June 12, 2009, Customer 5 departed from Dulles International Airport, in the Eastern District of Virginia, on a flight bound for Zurich, Switzerland, to meet with an International Bank banker in Zurich, Switzerland, to discuss the undeclared account.

Customer 6

86. In or around 2003, Customer 6, a U.S. citizen and resident of San Francisco, California, opened an undeclared account at International Bank in Zurich, Switzerland, and deposited into that account funds from Customer 6's deceased father's account at International Bank.

87. In or around 2003, defendant MARKUS WALDER telephoned Customer 6 in the United States and informed Customer 6 that he would be the relationship manager for Customer 6's undeclared account at International Bank.

88. On or about April 12, 2003, defendant MARKUS WALDER caused to be sent via DHL from Switzerland to Customer 6 in San Francisco, California, three bank checks issued by International Bank, each in the amount of $4,206.98, funded with withdrawals from Customer 6's undeclared account at International Bank.

89. In or around 2005, at a meeting at a restaurant in San Francisco, California, defendant MARKUS WALDER showed Customer 6 a copy of a statement for Customer 6's undeclared account at International Bank and discussed account performance with Customer 6.

90. In or around May 2005, defendant MARKUS WALDER caused to be sent via DHL from Switzerland to Customer 6 in San Francisco, California, four bank checks issued by International Bank, in the amounts of $3,037.87, $2,925.25, $3,925.25 and $3,237.87, funded with withdrawals from Customer 6's undeclared account at International Bank.

91. On or about May 11, 2006, defendant MARKUS WALDER caused to be sent via DHL from Switzerland to Customer 6 in San Francisco, California, five bank checks issued by International Bank, in the amounts of $3,324.12, $3,736.18; $13,024.12, $13,024.12, and $13,024.12, funded with withdrawals from Customer 6's undeclared account at International Bank.

92. In or around 2007, at a meeting at a restaurant in San Francisco, California, defendant MARKUS WALDER showed Customer 6 a copy of a statement for Customer 6's undeclared account at International Bank and discussed account performance.

93. In or around 2009, during a conversation with Customer 6 about the U.S. government's investigation of UBS, defendant MARKUS WALDER advised Customer 6 that International Bank may have to exit the undeclared cross-border banking business with U.S. customers and conceded that International Bank had some existing U.S. customers who complied with U.S. tax law.

Customer 7

94. In or around 2002, at a meeting in Nassau, Bahamas, a private banker at International Bank informed Customer 7, a U.S. citizen and resident of West Palm Beach, Florida, that International Bank would transfer Customer 7's undeclared account from the

Bahamas to either Zurich, Switzerland or the Cayman Islands as International Bank could not maintain the undeclared account in the Bahamas any longer.

95. On or about November 11, 2003, at a meeting in Nassau, Bahamas, Customer 7 executed documents to open an undeclared account at International Bank in Zurich, Switzerland, including a document that stated that Customer 7 did not wish to have International Bank disclose Customer 7's ownership of the account to the IRS, and transferred into that account the contents of Customer 7's undeclared account at International Bank in the Bahamas.

96. In or about 2003, at a meeting in Jupiter, Florida, defendant SUSANNE RÜEGG MEIER informed Customer 7 that she would send to Customer 7 in the United States cash withdrawn from the undeclared account at International Bank in the form of bank checks payable to Customer 7.

97. On or about August 19, 2004, defendant SUSANNE RÜEGG MEIER caused to be sent via DHL from Switzerland to Customer 7 in Palm Beach Gardens, Florida, two bank checks issued by International Bank, each in the amount of $9,923.43, funded with withdrawals from Customer 7's undeclared account at International Bank.

98. On or about May 19, 2005, defendant SUSANNE RÜEGG MEIER caused to be sent via DHL from Switzerland to Customer 7 in Palm Beach Gardens, Florida, two bank checks issued by International Bank, each in the amount of $9,923.46, funded with withdrawals from Customer 7's undeclared account at International Bank.

99. On or about October 30, 2008, defendant SUSANNE RÜEGG MEIER caused to be sent via DHL from Switzerland to Customer 7 in Palm Beach Gardens, Florida, two bank

checks issued by International Bank, each in the amount of $9,931.22, funded with withdrawals from Customer 7's undeclared account at International Bank.

Customer 8

100. In or about 1995, at a meeting at an International Bank office in Miami, Florida, Customer 8, a U.S. citizen and resident of Owings Mills, Maryland, signed documents that authorized him to make changes to Customer 8's parents' undeclared account at International Bank.

101. In or around 2005, at the suggestion of defendant SUSANNE RÜEGG MEIER, Customer 8 met with defendant ROGER SCHAERER at the Representative Office of International Bank in New York to add signatories to the undeclared account and to review account statements.

102. In or around 2005, at the Representative Office of International Bank in New York City, on the advice of defendant SUSANNE RÜEGG MEIER, Customer 8 met with defendant ROGER SCHAERER to review account statements for the undeclared account at which time defendant ROGER SCHAERER explained that the account statements were not kept in the United States, but sent via either computer or fax from Switzerland to the Representative Office shortly before the meeting and shredded at the meeting's conclusion.

103. In or around early 2009, during a phone call from Switzerland to the United States, defendant SUSANNE RÜEGG MEIER informed Customer 8 he had to close the undeclared account at International Bank within 60 days and transfer the funds either to the United States or to another bank in Switzerland.

Customer 9

104. In or around 2000, Customer 9, a U.S. citizen and resident of Geneva, New York, received a phone call in the United States from defendant SUSANNE RÜEGG MEIER regarding the power of attorney that Customer 9 held over the undeclared account maintained by the parents of Customer 9 at International Bank.

105. In or around 2002, at a meeting at the Representative Office of International Bank in New York City to discuss and determine investment strategy for the undeclared account, defendant SUSANNE RÜEGG MEIER advised Customer 9 to open an account at International Bank's SEC-registered and U.S. tax compliant business if Customer 9 wished to invest in U.S. securities.

106. In or around 2003, at a meeting at the Representative Office of International Bank in New York City to discuss and determine investment strategy for the undeclared account, defendant SUSANNE RÜEGG MEIER advised Customer 9 to open an account at International Bank's SEC-registered and U.S. tax compliant business if Customer 9 wished to invest in U.S. securities.

107. In or around 2006, defendant SUSANNE RÜEGG MEIER advised Customer 9 to open an undeclared account at International Bank in the name of nominee tax haven entity and suggested that Customer 9 meet with defendant JOSEF DÖRIG.

108. In or around 2006, defendant JOSEF DÖRIG created, or caused to be created, a nominee tax haven entity for Customer 9 and opened, or caused to be opened, an undeclared account at International Bank in Zurich, Switzerland the name of that entity.

109. In or around 2009, defendant SUSANNE RÜEGG MEIER telephoned Customer 9 in the United States and informed Customer 9 that the undeclared account held in the name of the nominee tax haven entity at International Bank had to be closed.

110. In or around 2009, defendant JOSEF DÖRIG closed the undeclared account that he opened, and caused to be opened, on behalf of Customer 9 in the name of the nominee tax haven entity at International Bank on and transferred the contents to a new account in the name of the nominee tax haven entity at Private Swiss Bank # 3.

Customers 10 and 11

111. On or about 2001, Customer 10, a U.S. citizen and resident of Clinton Corners, New York, began assisting Customer 11, a U.S. citizen and resident of Wayne, New Jersey, to manage the undeclared account held in the name of Customer 11 – the parent of Customer 10 – at International Bank.

112. On or about 2007, defendant SUSANNE RÜEGG MEIER met with Customers 10 and 11 at a hotel in New York, New York, to discuss the investment strategy for the undeclared account held in the name of Customer 11 at International Bank.

113. On or about 2007, defendant SUSANNE RÜEGG MEIER met with Customer 10 at International Bank in Zurich, Switzerland, to discuss the investment strategy for the undeclared account held in the name of Customer 11 at International Bank at which time defendant SUSANNE RÜEGG MEIER advised Customer 10 to open a second undeclared account in the name of a nominee tax haven entity in order to conceal Customer 11's ownership of assets and income.

114. On or about 2007, defendants SUSANNE RÜEGG MEIER and JOSEF DÖRIG met with Customer 10 at International Bank in Zurich, Switzerland, to open a second undeclared account in the name of a nominee tax haven entity in order to conceal Customer 11's ownership of assets and income from U.S. authorities.

115. In or around 2007, defendant JOSEF DÖRIG created, or caused to be created, a nominee tax haven entity for Customer 11 and opened, or caused to be opened, an undeclared account at International Bank in Zurich, Switzerland in the name of that entity.

116. On or about 2008, defendant SUSANNE RÜEGG MEIER met with Customers 10 and 11 at a hotel in New York, New York, to discuss investment strategies for the undeclared accounts at International Bank.

Customers 12, 13 and 14

117. On or about September 4, 1997, a married couple – Customers 12, a U.S. citizen and resident of Bellevue, Washington, and 13, a legal permanent resident of the U.S. and resident of Bellevue, Washington – jointly opened an undeclared account at a wholly owned subsidiary of International Bank in Zurich, Switzerland.

118. On or about June 27, 2007, defendant ANDREAS BACHMANN assisted Customers 12 and 13 to close their undeclared account at a wholly owned subsidiary of International Bank and transferred the contents to an undeclared account at Kantonal Bank in Zurich, Switzerland that defendant ANDREAS BACHMANN opened on behalf of Customers 12 and 13.

119. In or around September 2009, in a phone call to Customer 13 in the United States, defendant ANDREAS BACHMANN asked to meet with Customer 13 in Vancouver, Canada, as defendant ANDREAS BACHMANN refused to travel into the United States.

120. In or around September 2009, at a meeting at a hotel in Vancouver, Canada, defendant ANDREAS BACHMANN informed Customer 13 and Customer 14, the adult child of Customers 12 and 13, that Kantonal Bank intended to close the undeclared account as U.S. authorities were placing great pressure on Swiss financial institutions and defendant ANDREAS BACHMANN informed Customers 13 and 14 that he could assist them to open an undeclared account at another Swiss bank or they could transfer the account to a different Swiss bank and maintain it as a declared account.

121. In or around September 2009, at a meeting at a hotel in Vancouver, Canada, defendant ANDREAS BACHMANN provided Customers 13 and 14 with documents to open a undeclared account at one Swiss bank and a declared account at another Swiss bank.

122. In or around September 2009, at a meeting at a hotel in Vancouver, Canada, Customers 13 and 14 executed documents to open an undeclared account at one Swiss bank and a declared account at another Swiss bank and returned them to defendant ANDREAS BACHMANN.

Customer 15

123. In or around the late 1990s, Customer 15, a U.S. citizen and resident of New York, New York, met in Zurich, Switzerland with defendant ANDREAS BACHMANN to open an undeclared account at a wholly owned subsidiary of International Bank at which time

defendant ANDREAS BACHMANN advised Customer 15 to open the account in the name of a nominee entity in order to conceal Customer 15's ownership of the account.

124. On or about December 6, 2000, on behalf of Customer 15, defendant JOSEF DÖRIG caused to be opened an undeclared account at a wholly owned subsidiary of International Bank in the name of a nominee tax haven entity.

125. On or about December 6, 2000, defendant JOSEF DÖRIG provided to a wholly owned subsidiary of International Bank a Form W-8BEN that falsely stated that the nominee tax haven entity was the beneficial owner of the undeclared account owned by Customer 15.

126. In or around 2001, at a meeting in New York City, Customer 15 gave defendant ANDREAS BACHMANN approximately $20,000 in cash to deposit in the undeclared account at a wholly owned subsidiary of International Bank, which defendant ANDREAS BACHMANN had requested as he had another customer who wished to make a withdrawal from an account in Switzerland.

127. On or about May 30, 2003, defendant JOSEF DÖRIG provided to a wholly owned subsidiary of International Bank a Form W-8BEN that falsely stated that a nominee tax haven entity was the beneficial owner of the account owned by Customer 15.

Customer 16

128. In or around 1972, Customer 16, a legal permanent resident of the United States, opened an undeclared account at a wholly owned subsidiary of International Bank.

129. In or around 1972, on behalf of Customer 16, defendant JOSEF DÖRIG caused to be opened an undeclared account in the name of a nominee tax haven entity (i.e., a trust) at a wholly owned subsidiary of International Bank.

130. In or around 1999, defendant ANDREAS BACHMANN met with Customer 16 in California to discuss the undeclared account at a wholly owned subsidiary of International Bank and showed Customer 16 a copy of the statement of the undeclared account.

131. On or about September 7, 2000, on behalf of Customer 16, defendant JOSEF DÖRIG caused to be opened an undeclared account in the name of a nominee tax haven entity (i.e., a corporation) at a wholly owned subsidiary of International Bank after defendant JOSEF DÖRIG advised Customer 16 that a corporation would make it more difficult for U.S. authorities to discover that the wholly owned subsidiary of International Bank was conducting business with a U.S. customer.

132. On or about September 22, 2000, defendant JOSEF DÖRIG provided a wholly owned subsidiary of International Bank a Form W-8BEN that falsely stated that a nominee tax haven entity was the beneficial owner of the account owned by Customer 16.

133. On or about May 30, 2003, defendant JOSEF DÖRIG provided a wholly owned subsidiary of International Bank a Form W-8BEN that falsely stated that a nominee tax haven entity was the beneficial owner of the account owned by Customer 16.

134. On or about January 1, 2006, defendant JOSEF DÖRIG provided a wholly owned subsidiary of International Bank a Form W-8BEN that falsely stated that a nominee tax haven entity was the beneficial owner of the account owned by Customer 16.

135. In or around 2006, defendant ANDREAS BACHMANN met with Customer 16 in California to discuss the undeclared account at a wholly owned subsidiary of International Bank and showed Customer 16 a copy of the statement of the undeclared account.

136. In or around 2006, defendant ANDREAS BACHMANN told Customer 16 that he was leaving a wholly owned subsidiary of International Bank because he believed that the safety of his customers' banking information was in jeopardy and would be employed at Asset Management Firm # 1 as an investment manager.

137. In or around 2006, after advising Customer 16 that Kantonal Bank would not be under the same pressure as a wholly owned subsidiary of International Bank, defendant ANDREAS BACHMAN transferred Customer 16's undeclared account at a wholly owned subsidiary of International Bank to a new undeclared account at Kantonal Bank.

138. In or around August 2009, defendant ANDREAS BACHMAN told Customer 16 he was leaving Asset Management Firm # 1 to work as a partner at a new company, Asset Management Firm # 2, and offered to transfer Customer 16's undeclared account from Kantonal Bank to a Swiss bank that had a relationship with Asset Management Firm # 2.

Customer 17

139. In or around 1983, Customer 17 opened an undeclared account at a wholly owned subsidiary of International Bank in Zurich, Switzerland and deposited into the account $125,000 in cash.

140. In or around 1984, Customer 17 met in Fort Meyers, Florida with a banker from a wholly owned subsidiary of International Bank to discuss the investments in the undeclared account.

141. Prior to September 11, 2001, Customer 17 secretly transported approximately $250,000 in cash from the Untied States to Switzerland by concealing the money beneath Customer 17's clothes in nylon pantyhose that was wrapped around Customer 17's body.

142. In or around 2001, Customer 17 deposited $250,000 in cash into the undeclared account at a wholly owned subsidiary of International Bank in Switzerland.

Customer 18

143. In or about 2000, at a meeting in Anaheim, California, to discuss Customer 18's declared account at International Bank in Zurich, Switzerland, an International Bank banker provided Customer 18 with documents to open a separate, undeclared account at International Bank in Zurich, Switzerland.

144. In or about 2000, Customer 18 sent via private courier from Anaheim, California to Zurich, Switzerland, executed documents to open an undeclared account at International Bank in Zurich, Switzerland.

145. In or around 2002, at a meeting in Anaheim, California, a banker from International Bank met with Customer 18 to discuss the investments in the declared and undeclared accounts at which time the banker provided Customer 18 with a paper copy of a statement for the undeclared account.

146. In or around July 2009, Customer 18 received a telephone call in the United States from a banker with International Bank in Switzerland who stated that Customer 18 had to close his undeclared account.

Customer 19

147. In or around July 1996, Customer 19, a U.S. citizen and resident of Stuart, Florida, inherited an undeclared account at International Bank.

148. On or about January 23, 1997, Customer 19 made a withdrawal of $4,000 from the undeclared account at International Bank at the Representative Office of International Bank in Miami, Florida.

149. In or around 1999, Customer 19 made a withdrawal of approximately $4,000 from the undeclared account at International Bank at the Representative Office of International Bank in Miami, Florida.

Customer 20

150. In or around 1993, Customer 20, a U.S. citizen and resident of Palm Beach, Florida, opened an undeclared account at International Bank and made an initial deposit into that account at an office of International Bank in New York, New York.

151. In or around 1993, defendant MARCO PARENTI ADAMI telephoned Customer 20 in the United States to introduce himself as the banker responsible for Customer 20's undeclared account at International Bank.

152. Beginning in or around the 1990s and continuing through in or around 2008, defendant MARCO PARENTI ADAMI mailed copies of statements for Customer 20's undeclared account at International Bank to Customer 20's home on the island of Saint Barths, an overseas collectivity of France, because defendant MARCO PARENTI ADAMI advised against mailing bank documents to the home of Customer 20 in Palm Beach, Florida.

153. In or around the late 1990s, defendant MARCO PARENTI ADAMI met in Florida with Customer 20 to provide investment advice and discuss Customer 20's undeclared account at International Bank.

154. On or about October 11, 2006, defendant MARCO PARENTI ADAMI met with Customer 20 at a hotel in New York, New York, to discuss the undeclared account at International Bank.

155. On or about October 12, 2006, Customer 20 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

156. In or around 2008, defendant MARCO PARENTI ADAMI met with Customer 20 in the Bahamas to discuss the undeclared account at International Bank because defendant MARCO PARENTI ADAMI was reluctant to travel to the United States.

157. In or around 2008, Customer 20 met with defendant MARCO PARENTI ADAMI in Geneva, Switzerland, to close the undeclared account at International Bank at which time defendant MARCO PARENTI ADAMI recommended transferring the undeclared account to an Israeli bank with a branch in Geneva or to a bank in Hong Kong and not repatriating the funds back to the United States in order to evade U.S. income taxes.

Customer 21

158. In or around 2004, Customer 21, a U.S. citizen and resident of Norwood, New Jersey, at the direction of defendant MARCO PARENTI ADAMI, met with defendant ROGER SCHAERER at International Bank's representative office in New York, New York, to execute bank forms to make Customer 21 a beneficial owner of an undeclared account at International Bank owned by the mother of Customer 21.

159. On or about April 15, 2006, Customer 21 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

160. In or around 2007, Customer 21 met with defendant ROGER SCHAERER at International Bank's representative office in New York, New York, to execute bank forms to add another individual's name to the undeclared account at International Bank.

161. In or around September 2007, in response to Customer 21's request to close the undeclared account at International Bank, defendant MARCO PARENTI ADAMI, via telephone, advised Customer 21 that the undeclared account could be transferred to another offshore bank and that he could locate a Swiss lawyer to assist in the transfer.

Customers 22 and 23

162. In or around 1983, on the advice of an International Bank banker, Customer 22, an Iranian national residing in Beverly Hills, California, opened an undeclared account at International Bank in Switzerland in the name of a fictitious person.

163. On or about October 12, 2006, Customer 22 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

164. In or around 2007, defendant MARCO PARENTI ADAMI sent a fax to Customer 22 in the United States requesting to meet to discuss the undeclared account.

165. In or around the Fall of 2007, defendant MARCO PARENTI ADAMI met at a hotel in Beverly Hills, California, with Customer 22 and, Customer 23, a U.S. citizen residing in Beverly Hills, California, who was the son of Customer 22 and a beneficial owner of the

undeclared account, at which time defendant MARCO PARENTI ADAMI presented them with bank forms to close the undeclared account and to open a new undeclared account at International Bank.

166. In or around December 2008, Customer 23 met with defendant MARCO PARENTI ADAMI and another International Bank banker in Geneva, Switzerland. After the meeting, the International Bank banker introduced Customer 23 to a Swiss attorney who instructed Customer 23 that if Customer 23 wished to maintain the undeclared account as a "secret" undeclared account then Customer 23 would have to create a trust to hold the money.

167. In or around July 2009, during a meeting in Paris, France, the International Bank banker informed Customer 23 that Customer 23 had to close the undeclared account at International Bank but that Customer 23 could transfer the account to a private bank in Switzerland instead of repatriating the funds to the United States.

Customer 24

168. In or around 1994, Customer 24, a U.S. citizen and resident of Beverly Hills, California, opened an undeclared account at International Bank in Geneva, Switzerland, at which time Customer 24 met defendant MARCO PARENTI ADAMI.

169. In or around, 1997, on the advice of defendant MARCO PARENTI ADAMI, Customer 24 opened an undeclared account at International Bank in the name of a nominee tax haven entity.

170. In or around 1997, Customer 24 met with defendant MARCO PARENTI ADAMI at a hotel in Los Angeles, California, at which time defendant MARCO PARENTI ADAMI

provided account updates and copies of statements for the undeclared account that did not identify the account holder.

171. In or around 2005, Customer 24 met with defendant MARCO PARENTI ADAMI at a hotel in Los Angeles, California, at which time defendant MARCO PARENTI ADAMI provided account updates and copies of statements for the undeclared that did not identify the account holder.

172. On or about September 16, 2006, Customer 24 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

173. In or around 2009, on the advice of defendant MARCO PARENTI ADAMI, Customer 24 closed the undeclared account at International Bank and transferred it to a new undeclared account at Israeli Bank in Switzerland.

Customer 25

174. In or around 2003, defendant MARCO PARENTI ADAMI met with Customer 25, a naturalized U.S. citizen residing in La Jolla, California, and discussed Customer 25's undeclared account at International Bank and provided Customer 25 with a copy of a bank statement for the account.

175. On or about April 15, 2006, Customer 25 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

Customers 26 and 27

176. In or around 1953, Customer 26, a U.S. citizen and resident of Elizabeth, New Jersey, opened an undeclared account at International Bank in Basel, Switzerland.

177. On or about March 3, 1988, in response to a request from Customer 26 to receive in the United States cash from the undeclared account, an International Bank banker mailed a letter from Switzerland to Customer 26 in Elizabeth, New Jersey, in which an International Bank banker provided the status of the account, recommended a new investment strategy, stated that the bank would not transfer cash from Switzerland to the United States as it did not wish to comply with U.S. reporting requirements, and advised that the account holder could obtain the funds in Switzerland, or, in the alternative, offered "[m]aybe our people at [International Bank] in New York (100 Wall Street) can help you."

178. In or about 2002, defendant EMANUEL AGUSTONI called from New York, New York to Customer 27, a U.S. citizen and resident of Ossining, New York, at Customer 27's home to discuss the undeclared account at International Bank that Customer 27 inherited upon the death of Customer 26 in 1998.

179. On or about July 6, 2002, defendant EMANUEL AGUSTONI mailed to Customer 27 in the United States a copy of defendant ROGER SCHAERER's business card and instructed Customer 27 that defendant ROGER SCHAERER would be Customer 27's contact in New York.

180. In or about July 2002, on the advice of defendant EMANUEL AGUSTONI, Customer 27 transferred the contents of Customer 27's undeclared account into a new undeclared account, opened in Customer 27's name, at International Bank.

181. On or about November 4, 2002, defendant EMANUEL AGUSTONI mailed from Switzerland to Customer 27 in Ossining, New York, account opening documents for Customer 27's undeclared account with instructions that to mail the executed documents either to him in Switzerland or to defendant ROGER SCHAERER at International Bank's representative office in New York, New York.

182. In or around May 2004, defendant EMANUEL AGUSTONI met with Customer 27 at a hotel in New York, New York, to review statements for Customer 27's undeclared account and discuss investment strategy.

183. On or about April 16, 2005, defendant EMANUEL AGUSTONI called from Switzerland to Customer 27 in Ossining, New York, and unsuccessfully solicited Customer 27 to close the undeclared account at International Bank and transfer it to Private Swiss Bank # 2.

184. In or around December 2005, defendant EMANUEL AGUSTONI mailed from Switzerland to Customer 27 in Ossining, New York, a greeting card in which he proposed to meet with Customer 27 and provided his email address at Private Swiss Bank # 2.

185. On or about April 15, 2006, Customer 27 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

186. In or around Spring 2009, defendant EMANUEL AGUSTONI called from Switzerland to Customer 27 in the United States and solicited Customer 27 to close the undeclared account at International Bank and transfer it to Private Swiss Bank # 2 and inquired whether Customer 27 was aware of the Department of Justice's criminal investigation of UBS.

187. In or around August 2009, Customer 27 met with an International Bank banker in Zurich, Switzerland, to close the undeclared account at which time the banker suggested that rather than repatriate the funds to the U.S. that he transfer the account to another Swiss bank.

Customers 28 and 29

188. In or around 2002, defendants ROGER SCHAERER and EMANUEL AGUSTONI met with Customer 28, a U.S. citizen and resident of New York, New York, and Customer 29, a U.S. citizen and resident of Palm Desert, California, at International Bank's representative office in New York, New York, to open undeclared accounts at International Bank.

189. In or around June 2002, in Zurich, Switzerland, on the advice of defendant EMANUEL AGUSTONI, Customer 28 opened an undeclared account in the name of a nominee tax haven entity at International Bank.

190. In or around 2002, defendant EMANUEL AGUSTONI sent via DHL from Switzerland to Customer 28 in New York, New York, an American Express charge card and a Maestro debit card linked to Customer 28's undeclared account at International Bank with the instruction that Customer 28 limit the use of the cards to times when Customer 28 was in Europe.

191. Beginning in or about 2003, and continuing through 2008, Customer 28 periodically met with defendant ROGER SCHAERER in New York, New York, to discuss the performance of the undeclared accounts at International Bank.

192. In or around 2003, Customer 28 met with defendant EMANUEL AGUSTONI in Zurich, Switzerland, to open an undeclared account at International Bank.

193. In or around 2003, in Zurich, Switzerland, defendant EMANUEL AGUSTONI provided Customer 29 with an American Express charge card and Maestro debit card linked to the undeclared account and instructed that Customer 29 only use the charge card and debit card in Europe.

194. In or around 2003, in Zurich, Switzerland, defendant EMANUEL AGUSTONI informed Customer 28 that International Bank would send money from the undeclared account to the United States in the form of a bank check but advised that Customer 28 should not receive individual checks in excess of $10,000 in order to avoid the suspicion of Customer 28's U.S. bank.

195. In or about February 12, 2003, defendant EMANUEL AGUSTONI caused to be sent via DHL from Switzerland to Customer 28 in New York, New York, cash withdrawn from the undeclared account at International Bank in the form of a bank check payable to Customer 28 in the amount of $5,400 and a bank check payable to Customer 28's spouse in the amount of $4,534.62.

196. In or about March 2004, Customer 28 contacted International Bank officials at the representative office in New York, New York and directed them to make available for withdrawal funds from the undeclared account at an International Bank office in Zurich, Switzerland.

197. On or about March 16, 2004, after making a request to bankers at International Bank's representative office in New York, New York, Customer 28 withdrew $20,000 in cash from the undeclared account at an International Bank office in Zurich, Switzerland.

198. In or around 2005, defendant EMANUEL AGUSTONI met with Customer 29 in Switzerland and solicited Customer 29 to close the undeclared account at International Bank and transfer it to Private Swiss Bank # 2.

199. In or about January 12, 2006, an International Bank banker caused to be sent via DHL from Switzerland to Customer 28 in New York, New York, cash withdrawn from the undeclared account at International Bank in the form of a bank check payable to Customer 28 in the amount of $4,876.64 and a bank check payable to Customer 28's spouse in the amount of $5,176.68.

200. On or about April 15, 2006, Customer 28 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

201. On or about April 15, 2006, Customer 29 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

202. In or around December 2008, Customer 28 contacted International Bank officials at the Representative Office in New York, New York, and directed them to make available for withdrawal funds from the undeclared account at an International Bank office in Nassau, Bahamas.

203. On or about December 17, 2008, after making a request to bankers at International Bank's representative office in New York, New York, Customer 28 withdrew $20,000 in cash from the undeclared account at an International Bank office in Nassau, Bahamas.

204. In or about March 5, 2009, an International Bank banker caused to be sent via DHL from Switzerland to Customer 28 in New York, New York, cash withdrawn from the undeclared account at International Bank in the form of a bank check payable to Customer 28 in the amount of $2,613.63 and a bank check payable to Customer 28's spouse in the amount of $2,463.63.

205. In or around 2009, in Zurich, Switzerland, International Bank bankers informed Customer 28 that Customer 28 had to close the undeclared account and advised Customer 28 to contact defendant EMANUEL AGUSTONI regarding transferring the undeclared account to another Swiss bank.

206. In or around 2009, defendant EMANUEL AGUSTONI met with Customer 29 at a hotel in New York, New York, and solicited Customer 29 to close the undeclared account at International Bank and transfer it to another Swiss bank.

Customers 30, 31, 32 and 33

207. In or around the late 1960s, Customers 30 and 31, a married couple who were U.S. citizens and residents of Pittsburgh, Pennsylvania, opened an undeclared account in their own names at International Bank in Switzerland.

208. On or about June 18, 2003, Customers 30 and 31 spoke by telephone from an International Bank office in Nassau, Bahamas, with defendant EMANUEL AGUSTONI in Switzerland regarding the undeclared account.

209. On or about June 18, 2003, at a International Bank office in Nassau, Bahamas, Customer 32, the child of Customers 30 and 31, executed a bank form giving her signature authority over her parents' undeclared account.

210. In or around late-2003, on the instruction of defendant EMANUEL AGUSTONI, Customer 32 met with defendant ROGER SCHAERER at International Bank's representative office in New York, New York, regarding the undeclared account.

211. In or around Spring 2004, in Zurich, Switzerland, on the advice of defendant EMANUEL AGUSTONI, Customers 30 and 31 closed their undeclared account at International Bank and opened a new undeclared account in the name of a nominee tax haven entity.

212. On or about April 15, 2006, Customers 30 and 31 jointly filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

213. On or about July 3, 2008, defendant EMANUEL AGUSTONI mailed from Switzerland to Customers 30 and 31in Pittsburgh, Pennsylvania, bank forms to open an undeclared account in the name of the nominee tax haven entity at Private Swiss Bank # 2.

214. In or around January 2009, Customers 30 and 31 closed their undeclared account at International Bank and transferred it to Private Swiss Bank # 2.

215. In or around May 2009, at a meeting at the home of Customers 30 and 31 in Pittsburgh, Pennsylvania, defendant EMANUEL AGUSTONI informed Customers 30 and 31 of the Department of Justice's criminal investigation of UBS and advised them to close their undeclared account at Private Swiss Bank # 2 and open a new account in the name of the nominee tax haven entity at Private Swiss Bank # 1.

216. On or around July 2009, Customers 30 and 31 closed the undeclared account at Private Swiss Bank # 2 and transferred it to Private Swiss Bank # 1.

217. In or around Summer 2009, Customer 33, the child of 30 and 31, spoke with defendant EMANUEL AGUSTONI over the telephone at which time defendant EMANUEL AGUSTONI discouraged the participation of Customers 30, 31, 32, and 33 in the Voluntary Disclosure Program.

Customer 34

218. In or around the 1990s, Customer 34, a legal permanent resident of the United States residing in Oakland, New Jersey, met with defendant EMANUEL AGUSTONI in the office of defendant ROGER SCHAERER at International Bank's representative office in New York, New York, at which time defendant EMANUEL AGUSTONI advised Customer 34 to open an undeclared account at International Bank in the name of a nominee tax haven entity.

219. In or around the 1990s, an International Bank banker working at International Bank's representative office in New York, New York, traveled to Customer 34's home in Oakland, New Jersey, and had Customer 34 sign bank forms to open an undeclared account at International Bank in the name of a nominee tax haven entity.

220. On or about May 1, 2006, Customer 34 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

Customer 35

221. In or around 2002, in Zurich, Switzerland, in a meeting to discuss an undeclared account held in the name of a nominee tax haven entity, Customer 35, a naturalized U.S. citizen residing in Miami Beach, Florida, was shown a copy of an account statement by defendant

MICHELE BERGANTINO and advised that defendant ROGER SCHAERER worked for International Bank in the United States and would be able to assist Customer 35 with banking.

222. On or about July 13, 2006, Customer 35 filed with the IRS a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for tax year 2005 that failed to report the undeclared account and related income.

223. In or around September 2008, in Zurich, Switzerland, in response to Customer 35's statement that Customer 35 was a U.S. resident and a question about Customer 35's U.S. tax reporting obligations, defendant MICHELE BERGANTINO advised Customer 35 that she had no reporting obligations as she had originally opened the undeclared account with an Iranian passport and, as such, International Bank would have recorded in its files that Customer 35 was not a U.S. taxpayer.

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

A TRUE BILL

FOREPERSON

NEIL H. MACBRIDE
United States Attorney
Eastern District of Virginia

By: _____
Mark D. Lytle
Assistant U.S. Attorney

JOHN A. DICCICO
Principal Deputy Assistant Attorney General
Tax Division

By: Kevin Downing by MDL
Kevin M. Downing
John E. Sullivan
Senior Litigation Counsel
Mark F. Daly
Michelle M. Petersen
Melissa S. Siskind
Tino M. Lisella
Trial Attorneys

[redacted] = Redacted by the Permanent Subcommittee on Investigations

To: Shafir, Robert <robert.shafir@credit-suisse.com>
From: DeChellis, Anthony </O=CREDIT-SUISSE/OU=GL/CN=RECIPIENTS/CN=ADECHELL>
Cc:
Bcc:
Received Date: 2013-01-29 16:42:31 EST
Subject: RE: (No Subject)

Ok
Will try by phone so we can get it done sooner rather than later.
I'm am also going to try to coordinate with you the next time we are in CH together.
There are some legacy Clariden issues (CB) brewing that we need to brief you on.

I'll attend your meeting tomorrow via video or phone.

Sent with Good (www.good.com)

-----Original Message-----
From: Shafir, Robert
Sent: Tuesday, January 29, 2013 04:23 PM Eastern Standard Time
To: DeChellis, Anthony
Subject: Re: (No Subject)

Whatever works.

From: DeChellis, Anthony
To: Shafir, Robert
Sent: Tue Jan 29 16:04:43 2013
Subject: RE: (No Subject)

Yes
I have a presentation to show you (will send a draft) as soon as we can get on you calendar.
I'm in Zurich this week, next week I'm in Florida Mon. & Tues. to visit the offices and to attend the [redacted] Family's annual benefit dinner for cancer research (also visiting [redacted] and the [redacted] while I'm there), at the end of the week I'll be in Sundance , where I'm hosting 100 guests at the CS Entrepreneur's Summit. So , I won't be home for a while. Should I arrange a call with you while I'm on the road?

Sent with Good (www.good.com)

-----Original Message-----
From: Shafir, Robert
Sent: Tuesday, January 29, 2013 09:11 AM Eastern Standard Time
To: DeChellis, Anthony
Subject:

Tony,

Permanent Subcommittee on Investigations
EXHIBIT #41

[redacted] = Redacted by the Permanent Subcommittee on Investigations

Any progress on the ability to market the [redacted] structure and a plan to push it. BD asking.

» Print

Swiss seek U.S. tax deal by year-end, but not at any price: paper

Fri, Aug 3 2012

ZURICH (Reuters) - The Swiss government still wants to settle a long-simmering dispute with U.S. justice officials over undeclared funds stowed in Swiss offshore funds by year-end, though not "at any price," Switzerland's chief diplomat said on Friday.

"Our absolute priority is the best possible solution for Switzerland. We want a U.S. settlement by year-end, but not at any price," Michael Ambuehl, the Swiss government's chief negotiator, said in an interview with Neue Zuercher Zeitung.

Ambuehl's comments on the timing contrast with those made by Switzerland's finance minister Eveline Widmer-Schlumpf last month, in which she said she expected a deal with the U.S. before elections in that country.

His comments are also a rejection of demands by some to use emergency law to hand over confidential Swiss bank data in the tax crackdown, which has been hanging over banks such as Credit Suisse (CSGN.VX: Quote, Profile, Research) and Julius Baer (BAER.VX: Quote, Profile, Research) for months.

Switzerland wants the investigations dropped, in exchange for payment of fines and the transfer of names of thousands of U.S. bank clients. It also wants a deal to shield the remainder of its 300 or so banks from U.S. prosecution.

In 2009, Swiss authorities reached a deal for UBS (UBSN.VX: Quote, Profile, Research) to pay a fine of $780 million to avert criminal charges, and ultimately agreed to allow the bank to reveal details of around 4,450 clients.

Switzerland also agreed in July to do more to help other countries hunt tax dodgers following demands from the Organisation for Economic Co-operation and Development.

"We exclude the introduction of retroactive legislation to enable us to hand over bank data (that predates the U.S. deal of 2009)," Ambuehl said.

(Reporting by Martin de Sa'Pinto; Editing by Helen Massy-Beresford)

The New York Times

May 29, 2013, 8:08 am

Switzerland to Allow Its Banks to Disclose Hidden Client Accounts

By LYNNLEY BROWNING and JULIA WERDIGIER

1:24 p.m. | Updated

The Swiss government said on Wednesday that it would allow its banks to disclose information on American clients with hidden accounts, a watershed move intended to help resolve a long-running dispute with the United States over tax evasion.

The decision, which comes amid widening scrutiny in Europe of tax havens, is a turning point in what has been an escalating conflict between Switzerland and the United States.

Eveline Widmer-Schlumpf, Switzerland's finance minister, said the move would enable Swiss banks to accept an offer by the United States government to hand over broad client details and pay fines in exchange for a promise by United States authorities not to indict any banks.

Related Links

- Switzerland Weighs Deal in Tax Cases (May 28, 2013)

Disclosure of actual client names and account data, which American authorities have been aggressively seeking, would take place under a taxation treaty between the two countries that the American side has not yet ratified. Banks under criminal scrutiny that agree to cooperate with the decision could still face deferred-prosecution or nonprosecution agreements, a lesser punishment than indictment.

Ms. Widmer-Schlumpf declined to say how much banks might have to pay. But she said the Swiss government would not make any payments as part of the agreement. Sources briefed on the matter say the total fines could eventually total $7 billion to $10 billion, and that to ease any financial pressure on the banks, the Swiss government might advance the sums and then seek reimbursement.

"It is important for us to be able to let the past be the past," Ms. Widmer-Schlumpf said at a news briefing in Bern, Switzerland. She declined to give any details about the program, but said banks would have one year to decide whether to accept the American offer.

American clients whose names are handed over by Swiss banks but who have not voluntarily disclosed hidden accounts to the Internal Revenue Service would probably face criminal tax-evasion charges, lawyers said. Dozens of Americans have been indicted or charged in recent years for failing to disclose their accounts.

Until now, the Swiss government has been resisting cooperation because the secrecy of its banking system has long made the country an offshore money haven for wealthy foreigners.

The country is also under growing pressure from the European Union to assist in ferreting out citizens who have sheltered money using offshore private banking services. Switzerland is not a member of the European Union, but nations including France and Germany have tired of watching their citizens squirrel away cash with impunity right across their borders.

The European Union is pushing member nations like Luxembourg and Austria to update their own secrecy rules, meaning the Swiss could soon be without an ally in the bloc and be left vulnerable to pressure from other nations.

Ms. Widmer-Schlumpf said the government would work with Parliament to quickly pass a new law that would allow Swiss banks to accept the terms of the United States offer, but said the onus would be on individual banks to decide whether to participate.

"If banks were not authorized to cooperate with the U.S. authorities, the initiation of further criminal investigations or charges concerning banking institutions could not be ruled out," a Swiss government statement said. It added that "the uncertainty for the financial center would continue to exist."

In 2012, the United States Justice Department indicted Wegelin & Company, Switzerland's oldest bank. The bank pleaded guilty in January, putting it out of business, and prosecutors have indicated in recent months that more indictments could be coming.

Calling the decision "a good, a pragmatic solution for the banks to emerge from their past," Ms. Widmer-Schlumpf said, "We expect this to create the base for banks to again gain some room for maneuver so that calm can return to the sector."

There is no certainty that Parliament would pass the law after two of Switzerland's biggest parties, the Social Democrats and the People's Party, voiced their opposition and a third, the Christian Democratic People's Party, said it disagreed with the urgency the new law was put forward.

Igor Moser, a spokesman for Zürcher Kantonalbank, one of about a dozen Swiss and Swiss-style banks under criminal scrutiny by United States prosecutors, said that if the Swiss Parliament approved the government's decision, the bank "will be able to agree on an individual solution with the U.S. authorities." He added that "a possible penalty will be part of this individual agreement."

Ms. Widmer-Schlumpf hinted that the repercussions for banks that actively helped clients evade taxes after 2009 would be bigger than for those that stopped such activities that year. "All banks knew after 2009 that they can no longer do all sorts of businesses," she said.

It was in 2009 that UBS, the largest Swiss bank, agreed to enter into a deferred-prosecution agreement with the United States. The bank eventually turned over 4,450 client names and paid a $780 million fine after admitting criminal wrongdoing in selling tax-evasion services to wealthy Americans. Justice Department authorities were incensed that after the UBS deal, other Swiss banks took in American clients fleeing UBS to provide shelters for their income, according to court documents in cases of some indicted American clients.

Also in 2009, Switzerland and the United States signed a protocol amending a 1996 tax treaty governing exchanges of information on Americans suspected of avoiding taxes. While the protocol has been approved by the Swiss Parliament, it has been held up in the United States Senate, blocked by Senator Rand Paul, a Republican from Kentucky. The protocol makes it easier for American authorities to seek client and account data from Switzerland.

The Swiss decision on Wednesday to turn over any American client names appears to be contingent on the American side passing the protocol. The decision said any names release would "occur exclusively within the scope of administrative assistance procedures based on a valid double taxation agreement."

In the meantime, Swiss banks would be free to disclose to American authorities broader statistical data about American clients, like information about business relationships. Such disclosure would then pave the way for banks under criminal investigation to negotiate settlements with United States authorities.

"This is an important step for the banks; it will apparently allow them to disclose statistical information, such as the number of accounts with U.S. beneficial owners, the number of accounts with foreign corporations or foundations, and the amount of assets under management," said Scott Michel, a tax lawyer in Washington, D.C. "The I.R.S. and D.O.J. can use this information as the basis for financial penalties under settlement agreements, which might be deferred-prosecution agreements or nonprosecution agreements."

The decision also requires Swiss banks that cooperate with the Justice Department to protect their bankers and employees from, among other things,

being fired for cooperating. American authorities have indicted more than two dozen Swiss bankers, lawyers and financial advisers in recent years.

Other Swiss banks that have been the targets of United States inquiries include Credit Suisse, which disclosed in July 2011 that it had received a letter saying it was under a grand jury investigation; the Zurich-based Julius Baer; two cantonal, or regional, banks; the Swiss operations of HSBC Holdings; and three Israeli banks, Bank Hapoalim, Mizrahi-Tefahot Bank and Bank Leumi.

Resolution of the conflict "has taken longer than it should have, with a lot of otherwise avoidable damage suffered on the Swiss side," said Robert Katzberg, a white-collar criminal defense lawyer in New York with Swiss and American bank clients. "But it now appears the end is in sight."

David Jolly contributed reporting.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA,	:	INDICTMENT
-v.-	:	
		S1 12 Cr. 02 (JSR)
WEGELIN & CO.,	:	
MICHAEL BERLINKA,		
URS FREI, and	:	
ROGER KELLER,		
	:	
Defendants.		
	:	

- - - - - - - - - - - - - - - - - - - -x

COUNT ONE
(Conspiracy)

The Grand Jury charges:

The Defendants and Co-Conspirators

1. At all times relevant to this Indictment, WEGELIN & CO. ("WEGELIN"), the defendant, founded in 1741, was Switzerland's oldest bank. WEGELIN provided private banking, asset management, and other services to individuals and entities around the world, including U.S. taxpayers living in the Southern District of New York. WEGELIN provided these services principally through "client advisors" based in its various branches in Switzerland ("Client Advisors"). WEGELIN was principally owned by eight managing partners (the "Managing Partners") and was governed by an executive committee that included the Managing Partners (the "Executive Committee").

WEGELIN had no branches outside Switzerland, but it directly accessed the U.S. banking system through a correspondent account that it held at UBS AG ("UBS") in Stamford, Connecticut (the "Stamford Correspondent Account"). As of in or about December 2010, WEGELIN had 12 branches in Switzerland and approximately $25 billion in assets under management.

2. From at least in or about 2008 up through and including in or about 2010, MICHAEL BERLINKA, the defendant, was a Client Advisor at the Zurich branch of WEGELIN, the defendant (the "Zurich Branch").

3. From at least in or about 2006 up through and including in or about 2010, URS FREI, the defendant, was a Client Advisor at the Zurich Branch of WEGELIN, the defendant.

4. From at least in or about 2007 up through and including in or about 2010, ROGER KELLER, the defendant, was a Client Advisor at the Zurich Branch of WEGELIN, the defendant.

5. From in or about 2005 up through and including in or about 2010, Client Advisor A, a co-conspirator not named as a defendant herein, was a Client Advisor at the Zurich Branch. At various times, Client Advisor A also served as the "team leader" of MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, and certain other Client Advisors of the Zurich Branch. As a

team leader, Client Advisor A coordinated certain activities of, but did not supervise, these and other Client Advisors.

6. From in or about 2007 up through and including in or about 2012, Managing Partner A, a co-conspirator not named as a defendant herein, was one of the Managing Partners of WEGELIN, the defendant. From in or about 2005 up through and including in or about 2011, Managing Partner A was the head of WEGELIN'S Zurich Branch. During that period, Managing Partner A supervised MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, Client Advisor A, and other Client Advisors in the Zurich Branch with respect to, among other things, the opening and servicing of "undeclared accounts" for U.S. taxpayers. "Undeclared accounts" are bank and securities accounts owned by U.S. taxpayers whose assets, and the income generated by the assets, were not reported by the U.S. taxpayers to the taxation authority of the United States, the Internal Revenue Service ("IRS").

7. From in or about 2008 up through and including in or about 2011, Executive A, a co-conspirator not named as a defendant herein, was a member of the Executive Committee of WEGELIN, the defendant, and worked primarily at the Zurich Branch.

8. At all times relevant to this Indictment, Beda Singenberger ("Singenberger"), a co-conspirator not named as a defendant herein, was an independent asset manager for various U.S. taxpayers who held undeclared accounts at WEGELIN, the defendant, UBS, Swiss Bank A, and other Swiss banks. Singenberger helped his U.S. taxpayer-clients, WEGELIN, UBS, Swiss Bank A and other Swiss banks hide such accounts, and the income generated therein, by, among other things, selling sham corporations and foundations to U.S. taxpayers as vehicles through which the U.S. taxpayers could hold their undeclared accounts, and by managing the assets held in such accounts. From at least in or about 2002 to in or about 2006, Singenberger regularly traveled to the Southern District of New York and other places in the United States to meet with his U.S. taxpayer-clients with undeclared accounts at WEGELIN, UBS, and other Swiss banks.

9. From in or about the mid-1990s up through and including in or about late 2008, Gian Gisler ("Gisler"), a co-conspirator not named as a defendant herein, was a client advisor at UBS in Switzerland. From in or about early 2009 up through and including in or about mid to late 2009, Gisler was an independent asset manager for U.S. taxpayers holding

undeclared accounts at WEGELIN, the defendant, UBS, and other Swiss banks.

Obligations of United States Taxpayers With Respect to Foreign Financial Accounts

10. At all times relevant to this Indictment, citizens and residents of the United States who had income in any one calendar year in excess of a threshold amount ("U.S. taxpayers") were required to file a U.S. Individual Income Tax Return ("Form 1040"), for that calendar year with the IRS. On Form 1040, U.S. taxpayers were obligated to report their worldwide income, including income earned in foreign bank accounts. In addition, when a U.S. taxpayer completed Schedule B of Form 1040, he or she was required to indicate whether, at any time during the relevant year, the filer had "an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account." If so, the U.S. taxpayer was required to name the country.

11. In addition, U.S. taxpayers who had a financial interest in, or signature or other authority over, a foreign bank account with an aggregate value of more than $10,000 at any time during a given calendar year were required to file with the IRS a Report of Foreign Bank and Financial Accounts, Form TD F

90-22.1 ("FBAR") on or before June 30 of the following year. In general, the FBAR required that the U.S. taxpayer identify the financial institution where the account was held, the type of account, the account number, and the maximum value of the account during the relevant calendar year.

Overview of the Conspiracy

12. From at least in or about 2002 up through and including in or about 2011, more than 100 U.S. taxpayers conspired with, at various times, WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, Managing Partner A, Client Advisor A, other Client Advisors at WEGELIN, Beda Singenberger, Gian Gisler, and others known and unknown, to defraud the United States by concealing from the IRS undeclared accounts owned by U.S. taxpayers at WEGELIN. As of in or about 2010, the total value of undeclared accounts held by U.S. taxpayers at WEGELIN was at least $1.2 billion.

13. Among other things, WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, and other Client Advisors opened dozens of new undeclared accounts for U.S. taxpayers in or about 2008 and 2009 after UBS and another large international bank based in Switzerland ("Swiss Bank B") closed their respective businesses servicing undeclared accounts for U.S. taxpayers (the "U.S. cross-border banking businesses") in

the wake of widespread news reports in Switzerland and the United States that the IRS was investigating UBS for helping U.S. taxpayers evade taxes and hide assets in Swiss bank accounts. WEGELIN, BERLINKA, FREI, KELLER, Client Advisor A and other Client Advisors did so after WEGELIN's Executive Committee affirmatively decided to capture for WEGELIN the illegal U.S. cross-border banking business lost by UBS and deliberately set out to open new undeclared accounts for U.S. taxpayer-clients leaving UBS. At or about the time this policy decision was announced to team leaders within WEGELIN, Executive A told the team leaders that WEGELIN was not exposed to the risk of prosecution that UBS faced in the United States because WEGELIN was smaller than UBS, and that WEGELIN could charge high fees to its new U.S. taxpayer-clients because the clients were afraid of criminal prosecution in the United States. As a result of this influx of former UBS U.S. taxpayer-clients into WEGELIN, WEGELIN's undeclared U.S. taxpayer assets under management, and the fees earned by managing those assets, increased substantially.

14. As part of their sales pitch to U.S. taxpayer-clients who were fleeing UBS, at various times, BERLINKA, FREI, KELLER, and other Client Advisors told U.S. taxpayer-clients, in substance, that their undeclared accounts at WEGELIN would not

be disclosed to the United States authorities because WEGELIN had a long tradition of bank secrecy and, unlike UBS, did not have offices outside Switzerland, thereby making WEGELIN less vulnerable to United States law enforcement pressure. Managing Partner A and Executive A participated in some of the meetings where such statements were made to U.S. taxpayers.

15. In furtherance of the conspiracy to defraud the United States, WEGELIN, the defendant, helped certain U.S. taxpayer-clients repatriate undeclared funds to the United States by issuing checks drawn on, and executing wire transfers through, WEGELIN'S Stamford Correspondent Account for the benefit of the U.S. taxpayer-clients. In addition, WEGELIN helped at least two other Swiss banks repatriate undeclared funds to their own U.S. taxpayer-clients by issuing checks drawn on WEGELIN's Stamford Correspondent Account for the benefit of the clients of the two other Swiss banks.

Means and Methods of the Conspiracy

16. Among the means and methods by which WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, and their co-conspirators carried out the conspiracy were the following:

a. WEGELIN, BERLINKA, FREI, and KELLER opened and serviced undeclared accounts for U.S. taxpayers -- sometimes in the name of sham corporations and foundations established under

the laws of Panama, Hong Kong, and Liechtenstein -- for the purpose of helping the U.S. taxpayers hide assets and income from the IRS.

b. WEGELIN and FREI knowingly accepted bank documents falsely declaring that such sham entities beneficially owned certain accounts, when WEGELIN and FREI knew that U.S. taxpayers beneficially owned such accounts.

c. WEGELIN, BERLINKA, and FREI opened undeclared accounts for U.S. taxpayers using code names and numbers (so-called "numbered accounts") so that the U.S. taxpayers' names would appear on as few documents as possible in the event that the documents fell into the hands of third parties.

d. WEGELIN, BERLINKA, FREI, and KELLER ensured that account statements and related documents were not mailed to their U.S. taxpayer-clients in the United States.

e. WEGELIN, BERLINKA, and KELLER sent e-mails and Federal Express packages to potential U.S. taxpayer-clients in the United States to solicit new private banking and asset management business.

f. At various times from in or about 2005 up through and including in or about 2007, WEGELIN, BERLINKA, FREI, and KELLER communicated by e-mail and/or telephone with U.S. taxpayer-clients who had undeclared accounts at WEGELIN. Client

Advisors sometimes used their personal e-mail accounts to communicate with U.S. taxpayers to reduce the risk of detection by United States law enforcement authorities.

g. Beginning in or about late 2008 or early 2009, and after WEGELIN began to open new undeclared accounts for U.S. taxpayers fleeing UBS, Managing Partner A instructed BERLINKA, FREI, KELLER and other Client Advisors of the Zurich Branch not to communicate with their U.S. taxpayer-clients by telephone or e-mail, but rather to cause their U.S. taxpayer-clients to travel from the United States to Switzerland to conduct business relating to their undeclared accounts.

h. Various U.S. taxpayer-clients of WEGELIN, BERLINKA, FREI, and KELLER filed Forms 1040 that falsely and fraudulently failed to report the existence of, and the income generated from, their undeclared WEGELIN accounts; evaded substantial income taxes due and owing to the IRS; and failed to file timely FBARs identifying their undeclared accounts.

i. Upon request, WEGELIN issued checks drawn on, and executed wire transfers through, the Stamford Correspondent Account for the benefit of U.S. taxpayers with undeclared accounts at WEGELIN and at least two other Swiss banks. When doing so, WEGELIN sometimes separated the transactions into batches of checks or multiple wire transfers of $10,000 or less

to reduce the risk that the IRS would detect the undeclared accounts.

j. To further conceal the nature of these transactions, WEGELIN comingled the funds transferred in this fashion with millions of dollars of additional funds that WEGELIN moved through the Stamford Correspondent Account.

WEGELIN Solicited New Undeclared Accounts Through a Third-Party Website

17. From in or about 2005 up through and including in or about 2009, WEGELIN, the defendant, solicited new business from U.S. taxpayers wishing to open undeclared accounts in Switzerland by recruiting clients through the website "SwissPrivateBank.com," which was operated by a third party independent of WEGELIN (the "Website Operator"). As of on or about July 2, 2007, this website advertised "Swiss Numbered Bank Account[s]" and "Swiss Anonymous Bank Account[s]." Specifically, the website stated:

> Swiss banking laws are very strict and it is illegal for a banker to reveal the personal details of an account number unless ordered to do so by a judge.
>
> This is long established in Swiss law. Any banker who reveals information about you without your consent risks a custodial sent[e]nce if convicted, with the only exceptions to this rule concerning serious violent crimes.
>
> Swiss banking secrecy is not lifted for tax evasion. The reason for this is because failure to report

> income or assets is not considered a crime under Swiss banking law. As such, neither the Swiss government, nor any other government, can obtain information about your bank account. They must first convince a Swiss judge that you have committed a serious crime punishable by the Swiss Penal Code.

The website invited users to "[r]equest a Swiss banking consultation today" by clicking a link to a "Consultation Request" form that asked for information about a user's country of residence, telephone number, and e-mail address. The Website Operator provided this information to WEGELIN Client Advisors, who then sent e-mails to the United States promoting WEGELIN'S private banking and asset management services. In some cases, Client Advisors sent WEGELIN's promotional materials to U.S. taxpayers in the United States by Federal Express. Through this website, over time, WEGELIN obtained new undeclared accounts holding millions of dollars in total for U.S. taxpayers. Managing Partner A and other managing partners of WEGELIN received quarterly updates on the progress of this advertising program. Managing Partner A approved payments to the Website Operator.

WEGELIN Opens New Undeclared Accounts
For U.S. Taxpayers Fleeing UBS

18. In or about May and June 2008, the IRS's criminal investigation of UBS's U.S. cross-border banking business received widespread media coverage in Switzerland and the United

States. At or about that time, many U.S. taxpayers with undeclared accounts at UBS understood that the investigation might result in the disclosure of their identities and UBS account information to the IRS.

19. On or about July 17, 2008, UBS announced that it was closing its U.S. cross-border banking business. Thereafter, UBS client advisors began to notify their U.S. taxpayer-clients that UBS was closing their undeclared accounts. Some UBS client advisors told such clients that they could continue to maintain undeclared accounts at WEGELIN, the defendant, and certain other Swiss private banks. At or about that time, it became widely known in Swiss private banking circles that WEGELIN was opening new undeclared accounts for U.S. taxpayers.

20. In or about 2008, the Executive Committee of WEGELIN, the defendant, including its Managing Partners, affirmatively decided to capture the illegal U.S. cross-border banking business lost by UBS by opening new undeclared accounts for U.S. taxpayer-clients fleeing UBS. In or about 2008, Managing Partner A announced this decision to Client Advisor A and other team leaders of the Zurich Branch. At or about the time of this announcement, Executive A told the team leaders that WEGELIN was not exposed to the risk of prosecution that UBS faced because WEGELIN was smaller than UBS, and that WEGELIN could charge high

fees to its new U.S. taxpayer-clients because the clients were afraid of criminal prosecution in the United States.

21. At or about that time, Managing Partner A supervised the creation of a list of Client Advisors at the Zurich Branch who were available to meet with potential U.S. taxpayer-clients, many of whom walked into the Zurich Branch of WEGELIN, the defendant, seeking to open new undeclared accounts. Thereafter, in or about 2008 and 2009, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, and other Client Advisors met with at least 70 such potential clients. In these meetings, BERLINKA, FREI, KELLER and other Client Advisors interviewed the potential U.S. taxpayer-clients about their backgrounds, the sources of their funds, and the amount of money they wished to transfer from UBS to WEGELIN, among other things. During these meetings, the U.S. taxpayers typically showed their U.S. passports, advised that they were U.S. citizens or legal permanent residents, confirmed that UBS was closing their accounts, and completed certain account opening documents. These documents typically included a standard Swiss banking form called "Form A," which clearly identified the U.S. taxpayers as the beneficial owners of the accounts. In some cases, as described in more detail below, the Client Advisors sought to reassure their new U.S. taxpayer-clients that WEGELIN would not disclose

their identities or account information to the IRS. In many cases, Managing Partner A or Executive A joined these meetings.

22. In preparation for these meetings, Managing Partner A and Executive A supervised videotaped training sessions with Client Advisors of the Zurich Branch to instruct them on their delivery of certain selling points to be made to U.S. taxpayers fleeing UBS. These selling points included the fact that WEGELIN, the defendant, had no branches outside Switzerland and was small, discreet, and, unlike UBS, not in the media.

23. In this manner, WEGELIN, the defendant, opened new undeclared accounts for at least 70 U.S. taxpayers who had fled UBS in or about 2008 and 2009. Most were opened at WEGELIN'S Zurich Branch. When these new undeclared accounts were opened at the Zurich Branch, they were designated with a special code -- "BNQ" -- indicating internally within WEGELIN, among other things, that the accounts were undeclared. At some point in or about 2008 or 2009, the Zurich Branch required that the opening of all new U.S. taxpayer accounts be approved by Managing Partner A or Executive A.

24. From in or about March 2009 up through and including in or about October 2009, pursuant to a special IRS program for U.S. taxpayers with undeclared accounts (the "Offshore Voluntary Disclosure Program"), approximately 14,000 U.S. taxpayers

voluntarily disclosed to the IRS undeclared accounts held at banks around the world, including WEGELIN, the defendant. As part of this process, dozens of U.S. taxpayers obtained copies of their WEGELIN bank records. Some of these records included the names of MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, and other Client Advisors. In response to the expected disclosure of Client Advisors' names to the IRS through the voluntary disclosure program, in or about 2009, Managing Partner A announced to team leaders of the Zurich Branch that Client Advisors' names would no longer appear on certain WEGELIN records. From at least in or about late 2009 up through and including in or about early 2010, Client Advisors' names were replaced by "Team International," or a similar designation, on certain WEGELIN records, so as to reduce the risk that Client Advisors' names would become known to the IRS.

25. In or about mid-2009, the Executive Committee of WEGELIN, the defendant, decided that the bank would stop opening new undeclared accounts for U.S. taxpayers, but that WEGELIN would continue to service its existing undeclared U.S. taxpayer accounts. Nevertheless, in or about late 2009 or early 2010, WEGELIN and MICHAEL BERLINKA, the defendant, and Executive A opened at least three new undeclared accounts for U.S. taxpayers who had fled from Swiss Bank A when it, like UBS and Swiss Bank

B, closed its U.S. cross-border banking business for both new and existing U.S. taxpayer-clients. Each of the three new U.S. taxpayer-clients had at least two passports: one from the United States and one from a second country. In each case, WEGELIN, BERLINKA and Executive A opened the new undeclared account under the passport of the second country, even though WEGELIN, BERLINKA and Executive A well knew that the U.S. taxpayer had a U.S. passport.

26. After the Managing Partners of WEGELIN, the defendant, decided to capture UBS's illegal business for themselves, the total value of undeclared accounts held by U.S. taxpayers at WEGELIN, the defendant, increased substantially over time. As of in or about 2005, WEGELIN, the defendant, hid at least $240 million in undeclared U.S. taxpayer assets from the IRS. By in or about 2010, this amount had risen to at least $1.2 billion.

New Undeclared Accounts Opened by WEGELIN and MICHAEL BERLINKA

27. In or about 2008 and 2009, WEGELIN and MICHAEL BERLINKA, the defendants, opened new undeclared accounts for numerous U.S. taxpayers fleeing UBS, including the following:

Client A

28. At all times relevant to this Indictment, Client A, a co-conspirator not named as a defendant herein, lived with her husband in Boca Raton, Florida. She became a U.S. citizen in

2003. In or about 1987, Client A became the beneficial owner of an undeclared account at UBS and its predecessor bank. In or about July 2008, Client A's UBS client advisor, Gian Gisler, advised Client A and her husband that she must close her UBS account because she was American. At or about that time, Gisler instructed Client A and her husband not to call UBS from the United States, and told them that he was leaving UBS. Gisler invited Client A to move her account with Gisler to another bank, but she declined. Gisler then recommended WEGELIN, the defendant, and noted that it was a reliable bank that had no offices in the United States.

29. In or about September 2008, Client A and her husband traveled to Zurich to close her UBS account. By that time, Gisler had left UBS, and Client A had a new UBS client advisor. The new UBS client advisor instructed them not to call from the United States, promised that UBS would not give their information to the IRS, and recommended WEGELIN, the defendant, as a bank at which to hold Client A's account.

30. Also during this trip, Client A and her husband walked to WEGELIN, the defendant, and met with MICHAEL BERLINKA, the defendant. BERLINKA interviewed Client A and her husband about their personal background and the source of their funds, among other things. Client A and her husband told BERLINKA that they

were U.S. citizens, showed their U.S. passports, and said that they wanted to transfer funds from UBS. BERLINKA opened a new account beneficially owned by Client A using the code name "N1641" on or about September 19, 2008. At or about that time, WEGELIN accepted a Form A signed by Client A stating that Client A was the beneficial owner of the account.

31. In connection with the opening of the account, MICHAEL BERLINKA, the defendant, told Client A and her husband that they would be safe at WEGELIN, the defendant, and that BERLINKA had been instructed not to disclose their account information to United States authorities. In addition, BERLINKA instructed Client A and her husband not to call or send faxes to WEGELIN from the United States and explained that WEGELIN would not send mail to them in the United States.

32. On multiple occasions in or about 2008 and 2009, Client A or her husband called BERLINKA from the United States to notify him that they would be traveling to Aruba. Once in Aruba, Client A or her husband called and/or faxed BERLINKA to request that he send checks to them in the United States. In response, WEGELIN and BERLINKA sent checks drawn on the Stamford Correspondent Account from Switzerland to Client A in Boca Raton, Florida by private letter carrier. WEGELIN issued the checks in the amount of $8,500 to help conceal the undeclared

account from the IRS. WEGELIN also wired funds for the benefit of Client A through the Stamford Correspondent Account to the United States and Aruba. These checks and wire transfers are set forth in the table accompanying paragraph 137 of this Indictment.

33. In or about September 2009, Client A and her husband learned that their names and UBS account information might be provided to the IRS in connection with the August 2009 agreement between Switzerland and the United States to disclose UBS bank records relating to approximately 4,450 U.S. taxpayers (hereinafter, the "August 2009 Agreement"). Alarmed by this news, Client A's husband called BERLINKA from the United States. During this call, BERLINKA advised Client A's husband not to make a voluntary disclosure to the IRS and assured him that their WEGELIN account information would not be provided to the IRS.

34. As of on or about October 8, 2008, Client A's undeclared account at WEGELIN, the defendant, held approximately $2,332,860.

Clients B and C

35. WEGELIN and MICHAEL BERLINKA, the defendants, opened and managed an undeclared account for a married couple, Clients B and C, co-conspirators not named as defendants herein. At all

times relevant to this Indictment, Clients B and C were U.S. citizens and residents of Florida.

36. In or about 2008, UBS notified Clients B and C that they must close their undeclared UBS account, which they had maintained since in or about the late 1990s. Client B asked Gisler, his former UBS client adviser, if he knew anyone at WEGELIN, the defendant, who could help them. Gisler recommended MICHAEL BERLINKA, the defendant, and arranged for Clients B and C to meet BERLINKA at the Zurich Branch in or about October 2008. At that meeting, Clients B and C showed BERLINKA their U.S. passports, provided their U.S. address, and said that they wanted to transfer approximately $900,000 from UBS to WEGELIN. Managing Partner A joined the meeting and further interviewed Clients B and C. Thereafter, Managing Partner A approved the opening of a new undeclared account for Clients B and C.

37. At or about the time this account was opened, WEGELIN, the defendant, accepted a Form A from Clients B and C stating that they resided in Florida and beneficially owned the account. MICHAEL BERLINKA, the defendant, agreed on behalf of WEGELIN that WEGELIN would not send mail to Clients B and C in the United States and that Clients B and C could conduct business with WEGELIN using a code name, "N1677." Because Client B did not want to use his real name when calling WEGELIN from the

United States, BERLINKA set up the account so that Client B could use another code name -- "Elvis" -- when he did so. Thereafter, on one or two occasions, Client B called BERLINKA from the United States to check his account balance, which BERLINKA provided to Client B.

38. On or about December 31, 2008, the undeclared account at WEGELIN, the defendant, owned by Clients B and C held approximately $873,958.

39. The following table further describes Clients A, B, and C and other U.S. taxpayers whose Client Advisor was MICHAEL BERLINKA, the defendant. None of these U.S. taxpayers timely reported their accounts at WEGELIN, the defendant, or the income earned therein, to the IRS on Form 1040 or the FBAR where they were required to do so.

Beneficial Owner(s)	Code Name(s) or Nominee Name(s) in which WEGELIN Account(s) Held	Approx. Dates of UBS Account(s)	Approx. Date WEGELIN Account(s) Opened	Approx. High Value of WEGELIN Accounts
Client A	N1641	1987-2008	09/2008	$2,544,609
Clients B & C	N1677; Elvis	1998-2008	10/2008	$873,000
Client D	Limpopo Foundation	1970s-2008	12/2008	$30,895,000
Client E	Hackate Foundation	1999-2008	12/12/2008	$1,241,644
Total				**$35,554,253**

New Undeclared Accounts Opened by WEGELIN and URS FREI

40. From in or about 2006 up through and including at least in or about 2010, URS FREI, the defendant, opened and/or serviced dozens of undeclared accounts for U.S. taxpayers at

WEGELIN, the defendant. As of in or about 2006, FREI managed undeclared accounts for approximately 20 U.S. taxpayers holding approximately $40 million in assets. Those figures grew substantially over the next four years. By in or about 2010, FREI managed undeclared accounts for approximately 50 U.S. taxpayers holding approximately $260 million in assets. Within WEGELIN'S Zurich Branch, other Client Advisors frequently sought FREI's advice concerning their undeclared U.S. taxpayer accounts, and some Client Advisors transferred such accounts to him. In or about 2006 and 2007, FREI traveled several times to the United States for U.S. taxpayer-client business. In particular, in or about August and September 2007, FREI traveled to New York, New York, and to San Diego, San Francisco, Marina del Rey, and Santa Monica, California.

41. In or about 2008 and 2009, WEGELIN and URS FREI, the defendants, opened new undeclared accounts for U.S. taxpayers who had fled UBS, including the following:

Clients F and G

42. URS FREI, the defendant, was the Client Advisor at WEGELIN, the defendant, for two undeclared accounts maintained by two brothers ("Clients F and G"), co-conspirators not named as defendants herein, who were, at all times relevant to this Indictment, U.S. citizens and residents of Bayside, New York.

43. In or about August 2008, Clients F and G traveled from New York to Zurich to meet with their client advisor at UBS, where they had owned separate undeclared accounts since in or about the 1960s. The UBS client advisor informed Clients F and G that they must close their UBS accounts, and that other U.S. taxpayers with undeclared accounts were transferring funds to other Swiss banks, including WEGELIN, the defendant.

44. Clients F and G then walked to the Zurich Branch of WEGELIN, the defendant, which was near UBS's Zurich office, and asked to open a new account for each of them. There they met with URS FREI, the defendant. FREI interviewed Clients F and G and inspected their U.S. passports. Clients F and G told FREI that they wanted to transfer assets from UBS to WEGELIN.

45. FREI opened separate undeclared accounts for Clients F and G and assisted with the transfer of their funds from UBS to WEGELIN, the defendant: approximately $3.4 million for Client F and $800,000 for Client G. In addition, FREI established the accounts in code names ("N1 PULTUSK" and "N1 DREW," respectively) so that their names would appear on a minimal number of records relating to their accounts.

46. After opening their accounts, FREI gave his business card to Clients F and G and told them to call him if they needed anything. Thereafter, on multiple occasions in or about 2008

and 2009, Clients F and/or G called FREI from the United States and spoke to FREI or one of his assistants about the status and growth of their accounts at WEGELIN, the defendant.

47. In or about October 2009, the undeclared accounts owned by Clients F and G at WEGELIN, the defendant, held approximately $3.4 million and $800,000 respectively.

Clients H and I

48. URS FREI, the defendant, also served as the client advisor at WEGELIN, the defendant, for an undeclared account maintained jointly by Clients H and I, co-conspirators not named as defendants herein. At all times relevant to this Indictment, Clients H and I were U.S. citizens and residents of New Jersey.

49. In or about November 2008, Clients H and I's UBS client advisor notified them that they must close their undeclared UBS account. Client H asked his UBS client advisor to refer him to another Swiss bank so that Clients H and I could continue to maintain an undeclared account. The UBS client advisor recommended WEGELIN, the defendant, and two other Swiss banks.

50. Clients H and I walked to the Zurich Branch of WEGELIN, the defendant, and met with URS FREI, the defendant. FREI told Clients H and I that he handled American accounts for WEGELIN. FREI interviewed Clients H and I about their personal

background and the amount they wished to deposit. Clients H and I showed their U.S. passports to FREI and told him that they wanted to transfer approximately $1 million from UBS to WEGELIN.

51. On or about November 13, 2008, URS FREI, the defendant, opened a new account for Clients H and I. At that time, WEGELIN, the defendant, promised Clients H and I that they could conduct business with the bank using the code name "N5771." WEGELIN also promised not to send mail to Clients H and I in the United States. In addition, FREI instructed Clients H and I not to call him from the United States. Later, in or about July 2009, FREI lifted this restriction after Clients H and I informed him that they had voluntarily disclosed their WEGELIN account to the IRS.

52. On or about July 14, 2009, the undeclared account owned by Clients H and I at WEGELIN, the defendant, held approximately $1,105,593.

Clients J and K

53. URS FREI, the defendant, also opened an undeclared account at WEGELIN, the defendant, for Clients J and K, a married couple and co-conspirators not named as defendants herein. At all times relevant to this Indictment, Clients J and K were U.S. citizens living in Los Angeles, California.

54. In or about 2008, Clients J and K, who had maintained an undeclared account at UBS and one of its predecessor banks since in or about the 1980s, were advised by their UBS client adviser that they must close their undeclared UBS account. Clients J and K then spoke to an attorney in Los Angeles (the "Los Angeles Attorney"), who advised them to create an offshore entity to hold the account and who referred them to WEGELIN and URS FREI, the defendants. Thereafter, in or about November 2008, at the Los Angeles Attorney's office, Clients J and K completed account opening documents for a new account to be held in the name of White Tower Holdings, LLC, a corporation formed under the laws of Nevis. These documents included: (1) a Form A stating that Clients J and K beneficially owned the White Tower Holdings account; (2) copies of the U.S. passports of Clients J and K; (3) a separate WEGELIN form in which Clients J and K falsely stated that White Tower Holdings was the "beneficial owner of all income from US sources deposited in the above-mentioned portfolio(s), in accordance with US tax law[]"; and (4) even though the account was to be undeclared, Forms W-9 for Clients J and K. A Form W-9 is an IRS form through which U.S. taxpayers can identify themselves as such to a bank, thereby causing the bank to report the U.S. taxpayers' account income to

the IRS each year on Form 1099. The Los Angeles Attorney then sent the signed documents from the United States to WEGELIN.

55. In or about November 2008, Clients J and K traveled to Zurich and Client K met with URS FREI, the defendant, at WEGELIN, the defendant. FREI advised Client K that mail would not be sent to Clients J and K in the United States. FREI also advised that ROGER KELLER, the defendant, would be FREI's secondary contact at the bank in the event that FREI was unavailable. The next day, Clients J and K met with FREI again to discuss the wiring of their funds from UBS to WEGELIN.

56. On or about September 30, 2009, the undeclared account owned by Clients J and K at WEGELIN, the defendant, held approximately $614,408.

Clients L and M

57. URS FREI, the defendant, was also the client advisor for an undeclared account held at WEGELIN, the defendant, by Clients L and M, a married couple and co-conspirators not named as defendants herein. At all times relevant to this Indictment, Clients L and M were U.S. citizens and residents of Florida.

58. In or about December 2008, the UBS client advisor for Clients L and M notified them that they must close their undeclared UBS account, which they had held in the name of an entity called the Magabri Foundation, a sham entity formed under

the laws of Liechtenstein. The UBS client advisor further informed Clients L and M that they could open a new account at **WEGELIN, the defendant**. The UBS client advisor spoke to URS FREI, the defendant, on behalf of Clients L and M and learned that WEGELIN and FREI were willing to open a new account for them in the name of their sham entity, the Magabri Foundation.

59. The UBS client advisor then arranged for, and accompanied Clients L and M to, a meeting with URS FREI, the defendant, at the Zurich Branch of WEGELIN, the defendant, in or about January 2009. At or about that time, FREI was informed that Clients L and M were U.S. citizens living in Florida and that UBS was closing their account.

60. On or about January 12, 2009, WEGELIN and URS FREI, the defendants, opened two new undeclared accounts for Clients L and M in the name of the Magabri Foundation. At or about that time, WEGELIN, the defendant, accepted a Form A declaring that Clients L and M were the beneficial owners of the accounts. Copies of their passports were attached to the Form A. In addition, WEGELIN promised not to send mail to Clients L and M in the United States, and FREI instructed Client L not to call him from the United States. FREI lifted the instruction not to call from the United States in or about November 2009 after

Client L notified FREI that he had voluntarily disclosed the Magabri Foundation accounts to the IRS.

61. On or about December 31, 2009, the undeclared accounts owned by Clients L and M at WEGELIN, the defendant, held approximately $2,729,318.

62. Several of the undeclared U.S. taxpayer-clients of WEGELIN and URS FREI, the defendants, are described in the following table. None of these U.S. taxpayers timely reported their WEGELIN accounts, or the income earned therein, to the IRS on Form 1040 or the FBAR where they were required to do so.

Beneficial Owner(s)	Code Name(s) or Nominee Name(s) in which WEGELIN Account(s) Held	Approximate Dates of UBS Account(s)	Approximate Date WEGELIN Account(s) Opened	Approximate High Value of WEGELIN Accounts
Client F	N1 PULTUSK	1960s - 2008	08/2008	$3,200,000
Client G	N1 DREW	1960s - 2008	08/2008	$800,000
Clients H and I	N5571	2006 - 2008	11/13/2008	$1,105,593
Clients J and K	White Tower Hold.	1980s - 2008	11/6/2008	$614,408
Clients L and M	Magabri Foundation	1997 - 2009	1/12/2009	$2,729,318
Clients N and O	Efraim Foundation	1973 - 2008	06/2008	$52,747,000
Arthur Eisenberg	N1126	1983 - 2008	12/10/2008	$2,234,608
Total				**$60,980,927**

New Undeclared Accounts Opened by WEGELIN and ROGER KELLER

63. From in or about 2007 up through and including at least in or about 2010, WEGELIN and ROGER KELLER, the defendants, opened and serviced undeclared accounts for dozens of U.S. taxpayers. By in or about the end of 2008, KELLER

managed undeclared accounts for at least 30 U.S. taxpayers holding approximately $120 million in total.

64. In or about 2008 and 2009, WEGELIN and ROGER KELLER, the defendants, opened new undeclared accounts for U.S. taxpayers leaving UBS, including the following:

Client P

65. ROGER KELLER, the defendant, served as the client advisor for an undeclared account maintained by Client P, a co-conspirator not named as a defendant herein, at WEGELIN, the defendant. At all times relevant to this Indictment, Client P was a U.S. citizen and resident of Maryland.

66. In or about 2008, UBS advised Client P that he must close his undeclared UBS account, which he had maintained since in or about 1970. Because Client P's deteriorating health did not permit him to travel to Switzerland, Client P's son, a co-conspirator not named as a defendant herein, traveled to Zurich in or about November 2008 to close Client P's UBS account and identify another Swiss private bank that would open a new undeclared account for Client P. The UBS client advisor referred Client P's son to WEGELIN, the defendant, and two other Swiss banks.

67. On or about November 3, 2008, Client P's son walked into the Zurich Branch of WEGELIN, the defendant, without an

appointment and asked to open an account. ROGER KELLER, the defendant, interviewed Client P's son. Client P's son told KELLER that he and Client P were U.S. citizens who lived in the United States and that Client P had maintained an account for many years at UBS.

68. On or about the following day, November 4, 2008, ROGER KELLER, the defendant, with the approval of Managing Partner A, opened a new undeclared account in the name of Client P's son. At or about that time, WEGELIN, the defendant, accepted a Form A falsely stating that Client P's son, who lived in Manhattan, was the sole beneficial owner of the account. WEGELIN promised not to send account statements or other mail relating to the account to the United States.

69. On or about September 30, 2009, Client P's undeclared account at WEGELIN, the defendant, held approximately $732,938.

Client Q

70. ROGER KELLER, the defendant, was also the client advisor for an undeclared account owned by Client Q, a co-conspirator not named as a defendant herein, at WEGELIN, the defendant. At all times relevant to this Indictment, Client Q was a U.S. citizen and resident of California.

71. In or about December 2008, Client Q's UBS client advisor informed him that he must close his undeclared UBS

account, which he had owned since in or about 1987. Thereafter, Client Q's previous UBS client advisor told him that WEGELIN, the defendant, was willing to open new undeclared accounts for U.S. taxpayers.

72. In or about January 2009, because Client Q was unable for health reasons to travel to Zurich to close his UBS account, Client Q's son, a co-conspirator not named as a defendant herein, traveled in his place. Client Q's previous UBS client advisor set up an appointment at WEGELIN, the defendant, and accompanied Client Q's son to meet with ROGER KELLER, the defendant, and a Zurich Branch supervisor on or about January 5, 2009. At this initial meeting, KELLER and the supervisor interviewed Client Q's son about his personal background, the source of the funds, and the amount that he wished to deposit, among other things. Client Q's son told KELLER and the supervisor that he was a U.S. citizen and that he wanted to transfer approximately $7 million from UBS to WEGELIN.

73. Later that day, ROGER KELLER, the defendant, advised Client Q's son by telephone that WEGELIN, the defendant, would open an account for him. Client Q's son then returned to the bank and completed various paperwork. At or about that time, KELLER asked Client Q's son whether he wanted to complete an IRS Form W-9, which, if completed, would cause WEGELIN to file a

Form 1099 with the IRS to report the income in Client Q's account in a given year. Client Q's son told KELLER that he did not wish to complete the Form W-9. In addition, KELLER agreed that WEGELIN would not send mail relating to the account to the United States. In the context of a conversation about the demise of UBS's cross-border banking business, and KELLER told Client Q's son that WEGELIN was the oldest bank in Switzerland. KELLER did so to assure him that WEGELIN would not disclose Client Q's identity or account information to the IRS.

74. In or about September 2009, Client Q and his son traveled to Zurich and met with ROGER KELLER, the defendant, and a lawyer representing WEGELIN, the defendant. In the context of a discussion about the August 2009 Agreement that would result in the disclosure of 4,450 UBS account files to the IRS, KELLER and the WEGELIN lawyer assured Client Q and his son that Client Q's account was safe and that their names would not be released to the United States authorities.

75. On or about March 31, 2010, Client Q's undeclared account at WEGELIN, the defendant, held approximately $7,173,679.

76. Client P, Client Q, and other undeclared U.S. taxpayer-clients of WEGELIN and ROGER KELLER, the defendants, are described in the following table. None of these U.S.

taxpayers timely reported their WEGELIN accounts, or the income earned therein, to the IRS on Form 1040 or the FBAR where they were required to do so.

Beneficial Owner(s)	Code Name(s) or Nominee Name(s) in which WEGELIN Account(s) Held	Approx. Dates of UBS Account(s)	Approx. Date WEGELIN Account(s) Opened	Approximate High Value of WEGELIN Accounts
Client P	Client P's Son	1970-2008	2008	$732,938
Client Q	Client Q's Son	1987-2009	1/5/2009	$7,173,679
Clients R & S	Client R's Advisor	1970s	12/19/2008	$3,667,724
Clients T & U	TMT Family Foundation	1981-2008	11/2008	$1,247,649
Total				$12,821,990

New Undeclared Accounts Opened by Client Advisor A

77. From in or about 2005 up through and including in or about 2010, Client Advisor A opened and serviced U.S. taxpayer-clients with undeclared accounts at WEGELIN, the defendant, including the following:

Client V

78. For example, Client Advisor A opened and maintained an undeclared account for Client V, a co-conspirator not named as a defendant herein, at WEGELIN, the defendant. Client V was, at all times relevant to this Indictment, a U.S. citizen and resident of Florida.

79. Beginning in or about 2005, Client V owned undeclared accounts at UBS and Swiss Bank B. In or about 2008 and 2009, both UBS and Swiss Bank B required Client V to close his undeclared accounts.

80. On or about April 14, 2009, Client V's client advisor at Swiss Bank B informed Client V that WEGELIN, the defendant, was opening new undeclared accounts for U.S. taxpayers who were fleeing Swiss Bank B. Client V then walked to the Zurich Branch of WEGELIN, the defendant, without an appointment and asked to open an account.

81. At or about that time, Client Advisor A interviewed Client V about his personal background and the source of his funds, among other things. Client V told Client Advisor A that UBS and Swiss Bank B were closing his accounts; showed Client Advisor A his U.S. passport; and told Client Advisor A that he wished to deposit approximately $5.7 million at WEGELIN, the defendant. Client Advisor A, with the express approval of Managing Partner A, agreed to open the account through a "structure" -- that is, a sham offshore entity -- rather than in Client V's own name.

82. To establish the "structure," on or about that same day, April 14, 2009, Client Advisor A invited an employee of a Swiss company that provides tax and legal services ("Swiss Trust Advisor A") to meet with Client V. At that meeting, Swiss Trust Advisor A sold to Client V an off-the-shelf sham entity called the Nitro Foundation. Client Advisor A, in turn, opened a new account at WEGELIN, the defendant, for Client V in the name of

the Nitro Foundation. In written materials that Swiss Trust Advisor A provided to WEGELIN, Swiss Trust Advisor A acknowledged that Client V's account would be undeclared. At or about that time, WEGELIN accepted a Form A declaring that Client V, a U.S. citizen and resident of Florida, was the beneficial owner of the Nitro Foundation account. In addition, WEGELIN promised that it would not send mail to Client V in the United States. Thereafter, Client V instructed UBS and the Swiss Bank B to transfer his funds to the Nitro Foundation account at WEGELIN. Based on the advice of Client V's client advisors at UBS and Swiss Bank B, the funds were transferred in Swiss francs so that the transactions would occur entirely in Switzerland, thereby reducing the risk that the IRS would detect the account.

83. At or about that time, Client Advisor A instructed Client V to use text messages to communicate with him, rather than telephone calls, because U.S. law enforcement authorities did not yet have the ability to track the huge volume of text messages that were written around the world. In addition, Client Advisor A assured Client V that his account would remain safe at WEGELIN because the bank was very old, had a rich tradition, and did not do business in the United States.

84. In or about June 2009, Client Advisor A met with Client V in Miami, Florida.

85. On or about October 15, 2009, Client V's undeclared account at WEGELIN, the defendant, held approximately $4,175,000.

Client W

86. Client Advisor A also opened an undeclared account for Client W, a co-conspirator not named as a defendant herein. Client W was, at all times relevant to this Indictment, a U.S. citizen who lived in California.

87. In or about 2008, UBS advised Client W that his undeclared UBS account would be closed. In or about the following month, Client W asked Swiss Trust Advisor A how he could continue to maintain an undeclared account in Switzerland. Swiss Trust Advisor A referred Client W to WEGELIN, the defendant, and accompanied him to meet Client Advisor A at WEGELIN'S Zurich Branch.

88. At this meeting, Client Advisor A interviewed Client W about his personal background, the source of his funds, and the history of his UBS account, among other things. Client W told Client Advisor A that he was a U.S. citizen, showed his passport, and said that UBS was closing his account. Client Advisor A told Client W that WEGELIN, the defendant, would not have UBS's problems with the IRS because WEGELIN did not have branches in the United States.

89. On or about December 19, 2008, Client W returned to the Zurich office of WEGELIN, the defendant, met with Client Advisor A, and opened an account in the name of Herzen Resources S.A., a sham Panama corporation that Client W had bought from Swiss Trust Advisor A. At or about that time, WEGELIN accepted a Form A declaring that Client W beneficially owned the Herzen Resources account. In addition, WEGELIN promised not to send mail to Client W in the United States.

90. In or about the summer of 2009, Client Advisor A told Client W that WEGELIN, the defendant, had stopped opening new accounts for U.S. clients, and that Client W was lucky that he had been able to open the Herzen Resources account.

91. On or about September 30, 2009, Client W's undeclared account at WEGELIN, the defendant, held approximately $8,685,502.

Undeclared WEGELIN Accounts Managed by Independent Asset Managers

92. Separate and apart from the undeclared accounts that WEGELIN, the defendant, opened and managed directly for U.S. taxpayers through its Client Advisors, WEGELIN also acted as a custodian with respect to undeclared accounts that were managed by independent asset managers, including the following:

Kenneth Heller

93. At all times relevant to this Indictment, Kenneth Heller, a co-conspirator not named as a defendant herein, was a U.S. citizen who lived and worked primarily in Manhattan. In or about December 2005 and January 2006, Heller opened an undeclared account at UBS and funded it with approximately $26,420,822 wired from the United States.

94. On or about June 6, 2008, Heller became concerned about the IRS's investigation into UBS's cross-border banking business and faxed a news article about the investigation to his UBS client advisor ("UBS Client Advisor A").

95. On or about June 21, 2008, Heller retained an independent asset manager based in Liechtenstein ("Liechtenstein Asset Manager A") to manage a new undeclared account that Heller opened at WEGELIN, the defendant, at or about that time. Over the next several months, Heller funded this account with approximately $19 million wired from UBS. In order to protect Heller, the account was opened in the name of Nathelm Corporation, according to a September 9, 2008 letter sent to Heller's tax preparer by an attorney working for Heller ("Heller Attorney A"). This letter further stated:

> All Heller money was transferred directly from UBS to Wegelin. . . . The problem is the US Government interference with Swiss Banks, in [an] attempt to

> seize income tax evaders. . . . The US Government gladly pressed its case with Swiss Govt for bank disclosure of US citizens, etc. This is why KH left UBS[.]

96. On or about August 22, 2008, among other occasions, Liechtenstein Asset Manager A faxed to Heller's office in Manhattan account statements and other documents relating to Heller's undeclared account at WEGELIN, the defendant.

97. On or about October 2, 2008, Heller Attorney A faxed instructions from Heller's office in Manhattan to WEGELIN, the defendant, directing WEGELIN to wire approximately $50,000 to a U.S. bank account that HELLER controlled.

98. On various occasions in or about 2008 and 2009, in response to telephone and fax requests from Heller to Liechtenstein Asset Manager A, WEGELIN, the defendant, issued multiple checks drawn on the Stamford Correspondent Account for the benefit of Heller. For example, as set forth in the table accompanying paragraph 137, on or about July 8, 2009, WEGELIN issued approximately 12 checks for Heller's benefit, each in the amount of $2,500. Liechtenstein Asset Manager A sent these checks to Heller in the United States.

99. On or about December 31, 2008, Heller's undeclared account at WEGELIN, the defendant, held approximately $18,466,686.

Clients X and Y

100. Beda Singenberger served as the independent asset manager for numerous U.S. taxpayers holding undeclared accounts at WEGELIN, the defendant, including Clients X and Y, co-conspirators not named as defendants herein. At all times relevant to this Indictment, Clients X and Y, a married couple, were citizens and residents of the United States.

101. On or about April 8, 2002, Singenberger opened an undeclared account at WEGELIN, the defendant, for Clients X and Y in the name of Berry Trust, a sham Liechtenstein foundation. At or about that time, WEGELIN accepted a Form A stating that Clients X and Y beneficially owned the Berry Trust account. At or about that time, WEGELIN accepted another bank form falsely declaring that Berry Trust beneficially owned the Berry Trust account. At the top of this false form, the letters "BNQ" were written to ensure that this account was correctly coded in WEGELIN's computer system as an undeclared account.

102. In or about 2003, Singenberger opened a second account for Client X, at WEGELIN, the defendant, this time in the name of Asset Champion, Ltd., a sham Hong Kong corporation.

103. Thereafter, until in or about 2009, Singenberger managed the assets held by Clients X and Y at WEGELIN, the

defendant. On or about December 31, 2003, the combined value of these undeclared accounts was approximately $6,133,000.

Client Z

104. Singenberger also managed the assets for an undeclared account that Client Z, a co-conspirator not named as a defendant herein, held at WEGELIN, the defendant. At all times relevant to this Indictment, Client Z was a U.S. citizen and resident.

105. On or about October 1, 2004, Singenberger opened an account for Client Z at WEGELIN, the defendant, in the name of Eagle Elite Investments, Ltd., a sham Hong Kong corporation. At or about that time, WEGELIN accepted a Form A stating that Client Z beneficially owned the Eagle Elite Investments account. At or about that time, WEGELIN also accepted another bank form falsely declaring that Eagle Elite Investments beneficially owned the account.

106. In or about 2009, Client Z held approximately $232,435 in his undeclared account at WEGELIN, the defendant.

107. Several U.S. taxpayer-clients whose undeclared accounts at WEGELIN, the defendant, were managed by independent asset managers are described in the following table. These U.S. taxpayers did not timely report their accounts at WEGELIN (or the income earned therein), to the IRS on Form 1040 or the FBAR where they were required to do so.

Beneficial Owner(s)	Code Name(s) or Nominee Name(s) in which WEGELIN Account(s) Held	Approx. Date WEGELIN Account(s) Opened	Approx. High Value of WEGELIN Account(s)
Kenneth Heller	Nathelm Corp.	12/2005	$18,466,686
Clients X & Y	Berry Trust, Asset Champion Ltd	4/10/2002	$6,133,000
Client Z	Eagle Elite Investments Ltd.	10/1/2004	$232,435
Client AA	Levina Trust	4/10/2002	$776,090
Client BB	N 466	2005	$55,496
Client CC & DD	Nema Trust; Grand Dynamic Invest.; Top Harbour Properties	2002; 6/23/2003; 6/6/2005	$4,439,666
Michael Reiss	Floranova Foundation; Upside International	9/11/2003; 11/2008	$2,588,470
Total			

The Repatriation of Undeclared Funds Through the Stamford Correspondent Account

108. From at least in or about 2005 up through and including in or about 2011, WEGELIN, the defendant, used its Stamford Correspondent Account not only to help its own U.S. taxpayer-clients repatriate undeclared funds to the United States without detection by the IRS but also to help U.S. taxpayer-clients of at least two other Swiss banks accomplish the same unlawful ends. For example:

Client EE

109. At all times relevant to this Indictment, Client EE, a co-conspirator not named as a defendant herein, was a resident of New Jersey and a citizen of the United States.

110. In or about 2008, Client EE opened an undeclared account at WEGELIN, the defendant, and funded it through a

transfer from Swiss Bank B, where he had held an undeclared account since in or about the 1980s. Client EE's new undeclared account at WEGELIN was managed by an independent asset manager in Switzerland ("Independent Asset Manager A").

111. In or about 2010, Client EE traveled to Africa for a safari. To pay for the safari, by arrangement with Independent Asset Manager A, Client EE sent a letter with no return address from New Jersey to Independent Asset Manager A in Switzerland. The envelope contained a single piece of paper on which Client EE had written only the amount of money Client EE needed to wire to the safari company, namely, approximately $37,000. At or about that time, Client EE sent a second and separate letter to Independent Asset Manager A containing only the wire transfer details for the safari company's bank account in Botswana. Thereafter, pursuant to these instructions, on or about June 22, 2010, WEGELIN wired approximately $37,000 through the Stamford Correspondent Account to the safari company's bank account in Botswana.

112. In or about December 2009, Client EE's undeclared account at WEGELIN, the defendant, held approximately $847,844.

Client FF

113. At all times relevant to this Indictment, Client FF, a co-conspirator not named as a defendant herein, was a resident of Connecticut and a citizen of the United States.

114. In or about 2006, Client FF inherited funds held in an undeclared account at WEGELIN, the defendant.

115. On various occasions from in or about 2007 up through and including in or about 2011, WEGELIN wired a total of approximately $324,955 in increments less than $10,000 through the Stamford Correspondent Account to Client FF in the United States, as described in the table accompanying paragraph 137.

116. On or about December 31, 2008, Client FF's undeclared account at WEGELIN, the defendant, held approximately $637,395.

Client GG

117. At all times relevant to this Indictment, Client GG, a co-conspirator not named as a defendant herein, was a resident of Westchester County, New York, and a citizen of the United States.

118. In or around 2006, Client GG transferred undeclared funds that he had held at a Swiss bank since in or about the early 1990s to a new undeclared account at WEGELIN, the defendant. The new undeclared account was held in the name of Birkdale Universal, S.A., a sham entity established under the

laws of Panama (the "Birkdale Account"). Client GG's Client Advisor was URS FREI, the defendant. FREI explained to Client GG that the purpose of placing the assets in the name of Birkdale was to further conceal Client GG's ownership of the funds. Later, when Client GG discussed the U.S. government's investigation of UBS with FREI, FREI said that because WEGELIN had no offices outside Switzerland, WEGELIN was less vulnerable to U.S. law enforcement pressure than UBS.

119. In addition, Client GG maintained two "declared accounts" at WEGELIN - that is, accounts that were known to the IRS because Client GG had submitted a Form W-9 to WEGELIN, causing WEGELIN to file a Form 1099 with the IRS each year reporting the income earned in the accounts.

120. In or about August 2007, WEGELIN and URS FREI, the defendants, used the Stamford Correspondent Account to conceal FREI's unlawful hand delivery of approximately $16,000 in U.S. currency to another FREI U.S. taxpayer-client ("FREI's Other Client"). On or about August 8 and August 9, 2007, WEGELIN and FREI used the Stamford Correspondent Account to wire approximately $16,000 in total from one of Client GG's declared WEGELIN accounts to Client GG's U.S. bank account in Westchester County. The $16,000 transfer was divided into two wires of $8,000 on back-to-back days to further conceal the transaction.

Thereafter, at FREI's request, Client GG withdrew approximately $16,000 in U.S. currency from his Westchester County account. On or about August 21, 2007, Client GG carried this $16,000 in cash with him to a lunch meeting in Manhattan with FREI, again at FREI's request. At the lunch, Client GG handed FREI an unmarked envelope containing the $16,000. During the lunch, the head waiter informed FREI that someone else at the restaurant wished to speak with him. FREI then excused himself from Client GG, walked to the other side of the restaurant, and met with FREI's Other Client for approximately 10 minutes. At or about that time, FREI gave the Other Client the cash-filled unmarked envelope that Client GG had given to FREI moments earlier. FREI then returned to Client GG and noted that it was becoming increasingly difficult to move funds out of Switzerland, and that, to do so, he employed this technique of transferring cash directly between his clients. Thereafter, FREI credited approximately $16,000 to Client GG's undeclared account at WEGELIN -- the Birkdale Account.

121. In or about 2010, Client GG's undeclared account at WEGELIN, the defendant, held approximately $898,652.

Client HH

122. At all times relevant to this Indictment, Client HH, a co-conspirator not named as a defendant herein, was a resident of Connecticut and a citizen of the United States.

123. Beginning in or about the 1990s, Client HH maintained an undeclared account at UBS. In or about 2003, Client HH and her Swiss independent asset manager ("Independent Asset Manager B") transferred her UBS funds to an undeclared account at WEGELIN, the defendant.

124. On various occasions from in or about 2003 up through and including in or about 2009, Client HH traveled to Switzerland and withdrew funds from her undeclared account at WEGELIN, the defendant, with the help of Independent Asset Manager B. Independent Asset Manager B advised Client HH not to carry more than $10,000 into the United States at any one time.

125. On various occasions from in or about 2003 up to and including in or about 2009, Independent Asset Manager B met Client HH for dinner in Manhattan. When he did so, he sometimes gave her U.S. currency withdrawn from her undeclared account at WEGELIN, the defendant.

126. On various occasions from in or about 2005 up through and including in or about 2009, WEGELIN, the defendant, issued checks to Client HH drawn on the Stanford Correspondent Account.

As set forth in the table accompanying paragraph 137, WEGELIN issued multiple checks in this manner, each for less than $10,000 to further conceal Client HH's undeclared account, for a total of approximately $79,500.

127. As of December 2007, Client HH's undeclared account at WEGELIN, the defendant, held approximately $177,095.

Client II

128. At all times relevant to this Indictment, Client II, a co-conspirator not named as a defendant herein, was a resident of Arizona and a citizen of the United States.

129. Beginning in or about 2010, Client II maintained an undeclared account at Swiss Bank C.

130. In or about 2010, Client II asked his client advisor at Swiss Bank C ("Swiss Bank C Client Advisor") to send him several batches of checks at regular intervals, three checks at a time, each for less than $5,000, payable to a company that Client II controlled ("Client II's Company"). Client II further requested that the checks "be drawn in the U.S. dollars on your corresponding US bank" and noted that the checks would be cashed over time.

131. Thereafter, from in or about December 2010 up through and including in or about March 2011, WEGELIN, the defendant, issued approximately five checks drawn on the Stamford

Correspondent Account payable to Client II's Company and provided them to the Swiss Bank C Client Advisor, who, in turn, sent them to Client II in Arizona. WEGELIN issued the checks, which are set forth in the table accompanying paragraph 137, in amounts less than $5,000, for a total of $21,088.

132. As of in or about October 2010, Client II's undeclared Swiss Bank C account held approximately $2,183,606.

Client JJ

133. At all times relevant to this Indictment, Client JJ, a co-conspirator not named as a defendant herein, was a resident of Arizona and a citizen of the United States.

134. Beginning in or about the 1990s, Client JJ maintained an undeclared account at Swiss Bank B. In or about late 2009, Swiss Bank B informed him that he had to close his account. He then traveled to Switzerland and opened an undeclared account at Swiss Bank C with the help of the Swiss Bank C Client Advisor.

135. Thereafter, from in or about October 2009 up through and including in or about March 2011, WEGELIN issued five checks drawn on the Stamford Correspondent Account payable to Client JJ, each in the amount of approximately $45,000, as set forth in the table accompanying paragraph 137.

136. As of July 2011, Client JJ's undeclared Swiss Bank C account held approximately $6,700,000.

137. Certain checks and wire transfers that WEGELIN, the defendant, issued and executed through the Stamford Correspondent Account on behalf of U.S. taxpayers with undeclared accounts at WEGELIN, Swiss Bank C, and Swiss Bank D, for a total of approximately $1,417,626, are listed in the following table. None of these U.S. taxpayers timely reported such accounts, or the income earned therein, to the IRS on Form 1040 or the FBAR where they were required to do so.

Check # (or wire)	Check/ Wire date	Approx. amount	Undeclared U.S. taxpayer	Swiss bank where U.S. taxpayer's account was held
2184	3/10/2005	$ 5,621.00	Client KK	Swiss Bank D
2217	4/20/2005	$ 5,000.00	Client HH	WEGELIN
2252	6/23/2005	$ 9,367.00	Client KK	Swiss Bank D
2331	10/11/2005	$ 7,863.00	Client KK	Swiss Bank D
2399	1/9/2006	$ 32,250.00	Client KK	Swiss Bank D
2423	2/7/2006	$ 26,675.00	Client KK	Swiss Bank D
2448	3/15/2006	$ 7,570.00	Client KK	Swiss Bank D
2490	5/16/2006	$ 8,250.00	Client KK	Swiss Bank D
2547	7/26/2006	$ 2,900.00	Client KK	Swiss Bank D
2591	9/7/2006	$ 8,000.00	Client KK	Swiss Bank D
2634	11/7/2006	$ 9,827.00	Client KK	Swiss Bank D
2635	11/8/2006	$ 5,000.00	Client HH	WEGELIN
2636	11/13/2006	$ 5,000.00	Client HH	WEGELIN
2726	2/8/2007	$ 8,730.00	Client KK	Swiss Bank D
Wire	3/30/2007	$ 8,000.00	Client FF	WEGELIN
2791	4/25/2007	$ 8,200.00	Client KK	Swiss Bank D
Wire	4/27/2007	$ 8,000.00	Client FF	WEGELIN
Wire	8/8/2007	$ 8,000.00	Client GG	WEGELIN
Wire	8/9/2007	$ 8,000.00	Client GG	WEGELIN
3152	11/13/2007	$ 5,000.00	Client HH	WEGELIN
3253	3/13/2008	$ 5,000.00	Client KK	Swiss Bank D
Wire	4/1/2008	$ 2,000.00	Client FF	WEGELIN
Wire	4/15/2008	$ 4,000.00	Client FF	WEGELIN
Wire	5/1/2008	$ 2,000.00	Client FF	WEGELIN
Wire	5/15/2008	$ 4,000.00	Client FF	WEGELIN
Wire	5/30/2008	$ 2,000.00	Client FF	WEGELIN
3283	5/30/2008	$ 8,500.00	Client HH	WEGELIN
Wire	6/13/2008	$ 4,000.00	Client FF	WEGELIN
Wire	7/1/2008	$ 2,000.00	Client FF	WEGELIN
Wire	7/15/2008	$ 4,000.00	Client FF	WEGELIN
Wire	8/1/2008	$ 2,000.00	Client FF	WEGELIN

Check # (or wire)	Check/ Wire date	Approx. amount	Undeclared U.S. taxpayer	Swiss bank where U.S. taxpayer's account was held
Wire	8/15/2008	$ 4,000.00	Client FF	WEGELIN
Wire	8/29/2008	$ 2,000.00	Client FF	WEGELIN
Wire	9/15/2008	$ 4,000.00	Client FF	WEGELIN
Wire	10/1/2008	$ 2,000.00	Client FF	WEGELIN
Wire	10/31/2008	$ 2,000.00	Client FF	WEGELIN
Wire	11/14/2008	$ 4,000.00	Client FF	WEGELIN
3416	11/25/2008	$ 8,500.00	Client A	WEGELIN
3417	11/25/2008	$ 8,500.00	Client A	WEGELIN
3418	11/25/2008	$ 8,500.00	Client A	WEGELIN
3421	11/28/2008	$ 8,500.00	Client HH	WEGELIN
Wire	12/1/2008	$ 2,000.00	Client FF	WEGELIN
Wire	12/15/2008	$ 4,000.00	Client FF	WEGELIN
Wire	12/31/2008	$ 2,000.00	Client FF	WEGELIN
3468	1/5/2009	$ 8,500.00	Client A	WEGELIN
3469	1/5/2009	$ 8,500.00	Client A	WEGELIN
3470	1/5/2009	$ 8,500.00	Client A	WEGELIN
Wire	1/6/2009	$ 11,000.00	Client A	WEGELIN
Wire	1/15/2009	$ 4,000.00	Client FF	WEGELIN
3483	1/26/2009	$ 8,500.00	Client HH	WEGELIN
Wire	1/30/2009	$ 2,000.00	Client FF	WEGELIN
Wire	2/13/2009	$ 4,000.00	Client FF	WEGELIN
3510	2/26/2009	$ 8,500.00	Client A	WEGELIN
3512	2/26/2009	$ 8,500.00	Client A	WEGELIN
3511	2/26/2009	$ 8,500.00	Client A	WEGELIN
3509	2/26/2009	$ 8,500.00	Client HH	WEGELIN
Wire	2/27/2009	$ 2,000.00	Client FF	WEGELIN
Wire	3/13/2009	$ 4,000.00	Client FF	WEGELIN
3532	3/25/2009	$ 8,500.00	Client HH	WEGELIN
Wire	4/1/2009	$ 2,000.00	Client FF	WEGELIN
Wire	4/15/2009	$ 4,000.00	Client FF	WEGELIN
Wire	4/21/2009	$ 20,000.00	Client A	WEGELIN
3552	4/21/2009	$ 8,500.00	Client A	WEGELIN
3553	4/21/2009	$ 8,500.00	Client A	WEGELIN
3554	4/21/2009	$ 8,500.00	Client A	WEGELIN
3556	4/24/2009	$ 8,500.00	Client HH	WEGELIN
Wire	5/1/2009	$ 2,000.00	Client FF	WEGELIN
Wire	5/15/2009	$ 4,000.00	Client FF	WEGELIN
Wire	5/22/2009	$ 4,000.00	Client FF	WEGELIN
3568	5/25/2009	$ 8,500.00	Client HH	WEGELIN
Wire	6/1/2009	$ 2,000.00	Client FF	WEGELIN
3571	6/8/2009	$ 10,000.00	K. Heller	WEGELIN
Wire	6/11/2009	$ 6,000.00	Client FF	WEGELIN
Wire	6/15/2009	$ 4,665.00	Client FF	WEGELIN
Wire	7/1/2009	$ 3,500.00	Client FF	WEGELIN
3592	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3583	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3587	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3586	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3589	7/8/2009	$ 2,500.00	K. Heller	WEGELIN

Check # (or wire)	Check/ Wire date	Approx. amount	Undeclared U.S. taxpayer	Swiss bank where U.S. taxpayer's account was held
3590	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3588	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3591	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3593	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3595	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3585	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
3584	7/8/2009	$ 2,500.00	K. Heller	WEGELIN
Wire	7/13/2009	$ 24,000.00	Client A	WEGELIN
Wire	7/15/2009	$ 4,665.00	Client FF	WEGELIN
3623	7/16/2009	$ 2,500.00	K. Heller	WEGELIN
Wire	7/20/2009	$ 24,000.00	Client A	WEGELIN
Wire	7/31/2009	$ 3,500.00	Client FF	WEGELIN
Wire	8/14/2009	$ 4,665.00	Client FF	WEGELIN
3660	8/25/2009	$ 5,500.00	Client A	WEGELIN
3659	8/25/2009	$ 8,500.00	Client A	WEGELIN
Wire	9/1/2009	$ 3,500.00	Client FF	WEGELIN
3736	9/11/2009	$ 37,813.97	K. Heller	WEGELIN
Wire	9/15/2009	$ 20,000.00	Client A	WEGELIN
Wire	9/15/2009	$ 4,665.00	Client FF	WEGELIN
3747	9/22/2009	$ 25,000.00	K. Heller	WEGELIN
3746	9/22/2009	$ 50,000.00	K. Heller	WEGELIN
3745	9/22/2009	$ 50,000.00	K. Heller	WEGELIN
3744	9/22/2009	$ 50,000.00	K. Heller	WEGELIN
3750	9/24/2009	$ 16,000.00	K. Heller	WEGELIN
Wire	10/1/2009	$ 3,500.00	Client FF	WEGELIN
3778	10/2/2009	$ 7,250.00	K. Heller	WEGELIN
3779	10/2/2009	$ 500.00	K. Heller	WEGELIN
3794	10/13/2009	$ 2,498.04	K. Heller	WEGELIN
Wire	10/15/2009	$ 4,665.00	Client FF	WEGELIN
3796	10/21/2009	$ 45,000.00	Client JJ	Swiss Bank C
Wire	10/30/2009	$ 3,500.00	Client FF	WEGELIN
Wire	11/13/2009	$ 4,665.00	Client FF	WEGELIN
Wire	12/1/2009	$ 3,500.00	Client FF	WEGELIN
Wire	12/15/2009	$ 4,665.00	Client FF	WEGELIN
Wire	1/4/2010	$ 3,500.00	Client FF	WEGELIN
Wire	1/15/2010	$ 4,665.00	Client FF	WEGELIN
3926	1/22/2010	$ 45,000.00	Client JJ	Swiss Bank C
Wire	2/1/2010	$ 3,500.00	Client FF	WEGELIN
Wire	2/12/2010	$ 4,665.00	Client FF	WEGELIN
Wire	3/1/2010	$ 3,500.00	Client FF	WEGELIN
Wire	3/9/2010	$ 100,000.00	Client A	WEGELIN
Wire	3/15/2010	$ 4,665.00	Client FF	WEGELIN
Wire	4/1/2010	$ 3,500.00	Client FF	WEGELIN
4060	4/6/2010	$ 45,000.00	Client JJ	Swiss Bank C
Wire	4/15/2010	$ 4,665.00	Client FF	WEGELIN
Wire	4/30/2010	$ 3,500.00	Client FF	WEGELIN
Wire	5/14/2010	$ 4,665.00	Client FF	WEGELIN
Wire	6/1/2010	$ 3,500.00	Client FF	WEGELIN
Wire	6/15/2010	$ 4,665.00	Client FF	WEGELIN

Check # (or wire)	Check/ Wire date	Approx. amount	Undeclared U.S. taxpayer	Swiss bank where U.S. taxpayer's account was held
Wire	6/22/2010	$ 37,000.00	Client EE	WEGELIN
Wire	7/15/2010	$ 4,665.00	Client FF	WEGELIN
Wire	8/13/2010	$ 4,665.00	Client FF	WEGELIN
Wire	8/13/2010	$ 7,358.00	Client EE	WEGELIN
Wire	8/18/2010	$ 18,910.00	Client EE	WEGELIN
Wire	9/15/2010	$ 4,665.00	Client FF	WEGELIN
Wire	10/15/2010	$ 4,665.00	Client FF	WEGELIN
Wire	11/15/2010	$ 4,665.00	Client FF	WEGELIN
4361	12/9/2010	$ 4,833.00	Client II	Swiss Bank C
4363	12/10/2010	$ 4,922.00	Client II	Swiss Bank C
Wire	12/15/2010	$ 4,665.00	Client FF	WEGELIN
Wire	1/14/2011	$ 4,665.00	Client FF	WEGELIN
4411	1/25/2011	$ 45,000.00	Client JJ	Swiss Bank C
4416	1/28/2011	$ 3,600.00	Client II	Swiss Bank C
4417	1/28/2011	$ 2,850.00	Client II	Swiss Bank C
Wire	2/15/2011	$ 4,665.00	Client FF	WEGELIN
Wire	3/15/2011	$ 4,665.00	Client FF	WEGELIN
4483	3/17/2011	$ 4,883.00	Client II	Swiss Bank C
4489	3/23/2011	$ 45,000.00	Client JJ	Swiss Bank C
Wire	4/15/2011	$ 4,665.00	Client FF	WEGELIN
Wire	5/13/2011	$ 4,665.00	Client FF	WEGELIN
Wire	6/15/2011	$ 4,665.00	Client FF	WEGELIN
Wire	7/15/2011	$ 4,665.00	Client FF	WEGELIN
Wire	8/15/2011	$ 4,665.00	Client FF	WEGELIN
TOTAL		$ 1,417,626.01		

Statutory Allegations

138. From at least in or about 2002 up through and including in or about 2011, in the Southern District of New York and elsewhere, WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, together with Managing Partner A, Executive A, Client Advisor A, Beda Singenberger, Gian Gisler, Clients A through JJ, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to defraud the United States of America and an agency thereof, to wit, the IRS, and to commit

offenses against the United States, to wit, violations of Title 26, United States Code, Sections 7206(1) and 7201.

139. It was a part and an object of the conspiracy that WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, together with others known and unknown, willfully and knowingly would and did defraud the United States of America and the IRS for the purpose of impeding, impairing, obstructing, and defeating the lawful governmental functions of the IRS in the ascertainment, computation, assessment, and collection of revenue, to wit, federal income taxes.

140. It was further a part and an object of the conspiracy that various U.S. taxpayer-clients of WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, together with others known and unknown, willfully and knowingly would and did make and subscribe returns, statements, and other documents, which contained and were verified by written declarations that they were made under the penalties of perjury, and which these U.S. taxpayer-clients, together with others known and unknown, did not believe to be true and correct as to every material matter, in violation of Title 26, United States Code, Section 7206(1).

141. It was further a part and an object of the conspiracy that WEGELIN, MICHAEL BERLINKA, URS FREI, and ROGER KELLER, the defendants, together with others known and unknown, willfully

and knowingly would and did attempt to evade and defeat a substantial part of the income tax due and owing to the United States by certain of WEGELIN'S U.S. taxpayer clients, in violation of Title 26, United States Code, Section 7201.

Overt Acts

142. In furtherance of the conspiracy and to effect its illegal objects, WEGELIN, MICHAEL BERLINKA, URS FREI, ROGER KELLER, the defendants, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about September 2008, WEGELIN and BERLINKA opened a new undeclared account in the name of Client A.

b. On or about November 25, 2008; January 5, 2009; February 26, 2009; April 21, 2009; and August 25, 2009, WEGELIN and BERLINKA sent multiple checks drawn on the Stamford Correspondent Account to Client A in the United States.

c. On various occasions from in or about 2003 up to and including in or about 2009, Independent Asset Manager B met Client HH for dinner in Manhattan and gave her U.S. currency withdrawn from her undeclared WEGELIN account.

d. On or about August 8 and August 9, 2007, WEGELIN and FREI wired approximately $16,000 in two transactions to Client GG's U.S. bank account in Westchester County.

e. On or about August 21, 2007, at a restaurant in Manhattan, Client GG provided approximately $16,000 in U.S. currency to FREI, who then provided it to FREI's Other Client.

f. On or about November 4, 2008, WEGELIN and KELLER opened a new undeclared account in the name of Client P's son, a resident of Manhattan, for the purpose of helping Client P hide assets and income from the IRS.

g. On or about October 2, 2008, Kenneth Heller caused his employee to send, by fax and U.S. mail, instructions from Manhattan to WEGELIN directing it to wire approximately $50,000 to an account that HELLER controlled in the United States.

h. On various dates from in or about 2006 up through and including in or about 2009, WEGELIN, BERLINKA, FREI, and KELLER sent Federal Express packages relating to WEGELIN's U.S. taxpayer-client business to addresses in the United States, including a Federal Express package from WEGELIN to FREI at a hotel in Manhattan on or about August 14, 2007.

(Title 18, United States Code, Section 371.)

FOREPERSON

Preet Bharara

PREET BHARARA
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

WEGELIN & CO.,
MICHAEL BERLINKA,
URS FREI, and
ROGER KELLER,

Defendants.

INDICTMENT

S1 12 Cr. 02 (JSR)

18 U.S.C. § 371

PREET BHARARA
United States Attorney.

A TRUE BILL

Foreperson.

D13TWEGP Plea

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. 12 CR 02 (JSR)

WEGELIN & COMPANY,

Defendant.

----------x

New York, N.Y.
January 3, 2013
10:40 a.m.

Before:

HON. JED S. RAKOFF,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
DAVID B. MASSEY
DANIEL W. LEVY
JASON H. COWLEY
Assistant United States Attorneys

GOODWIN PROCTOR
Attorneys for Defendant
RICHARD STRASSBERG
JOHN MOUSTAKAS
KONRAD HUMMLER
STEPHEN WELTI

ALSO PRESENT: LAURA MERCANDETTI, IRS Special Agent
PAUL ROONEY, IRS Special Agent

(In open court)

DEPUTY CLERK: January 3, 2013, 12 CR 02, defendant number four, the will the parties please identify themselves for the record.

MR. MASSEY: Good morning, your Honor, David Massey for the government. With me at counsel table are AUSAs Daniel Levy, Jason Cowley, and IRS Supervisor Special Agent Laura Mercandetti, and IRS Special Agent Paul Rooney.

MR. STRASSBERG: And your Honor, Richard Strassberg and John Moustakas from Goodman Proctor, and we have Mr. Otto Bruderer from Wegelin Bank here as well.

MR. MASSEY: Your Honor, I have notices of appearance, which I could hand up now if it's convenient.

THE COURT: OK. So it's my understanding that the defendant Wegelin wishes to enter a guilty plea to Count One of the indictment, is that right?

MR. STRASSBERG: That is correct, your Honor.

THE COURT: All right. So who is going to be acting for purposes of the allocution as the representative and Wegelin?

MR. STRASSBERG: That would be Mr. Bruderer.

THE COURT: Good morning.

So why don't we place him under oath.

(Defendant sworn)

THE COURT: So please state your full name for the

record.

THE DEFENDANT: Otto Bruderer.

THE COURT: Why don't you come up to the microphone.

THE DEFENDANT: Otto Bruderer, O-T-T-O B-R-U-D-E-R-E-R.

THE COURT: Mr. Bruderer, do you read, write, speak and understand English?

THE DEFENDANT: Yes, I do.

THE COURT: And are you authorized to appear for and bind Wegelin & Company with respect to these proceedings here today?

THE DEFENDANT: Yes, your Honor.

THE COURT: Now my understanding is that you and Wegelin wish to enter a plea of guilty to Count One, isn't that right?

THE DEFENDANT: Yes, that's right, your Honor.

THE COURT: So do you and Wegelin understand that you have a right, if you wish, to plead not guilty and go to trial on the charge against you?

THE DEFENDANT: Yes, we understand, your Honor.

THE COURT: And do you understand and does Wegelin understand that if there were a trial, Wegelin would be presumed innocent, and the government would have to prove its guilt beyond a reasonable doubt before it could be convicted of any crime?

THE DEFENDANT: Yes, your Honor, we understand.

THE COURT: And does Wegelin also understand that they would have the right to be represented throughout these proceedings, including at the trial, by counsel, and that if they could not afford counsel, one would be appointed to represent them free of charge?

THE DEFENDANT: We understand, your Honor.

THE COURT: Does Wegelin also understand that at the trial Wegelin would have the right to see and hear all the witnesses and other evidence against it, and they could cross-examine the government's witnesses, object to the government's evidence, and could call witnesses and produce evidence on their own behalf if they so desired and could have subpoenas issued to compel the attendance of witnesses and documents and other evidence on their behalf? Do they understand all that?

THE DEFENDANT: Yes, we do understand all that, your Honor.

THE COURT: And do they also understand that even if they were convicted, they would have the right to appeal their conviction?

THE DEFENDANT: Yes, we understand.

THE COURT: And finally, do you and Wegelin understand that if a guilty plea is entered, Wegelin would be giving up each and every one of the rights we just discussed? Do you

understand that?

THE DEFENDANT: We understand that, your Honor.

THE COURT: Now the indictment in this case previously filed as S1 12 Criminal 02 is a modest statement of 58 pages. Would you like to have that indictment read here in open court or do you waive the public reading?

MR. STRASSBERG: Your Honor, we waive the reading.

THE COURT: You have gone over -- and this is addressed to both of you, really -- this indictment with all the relevant people at Wegelin?

MR. STRASSBERG: Your Honor, yes, we have.

THE DEFENDANT: Yes.

THE COURT: And let me ask the representative of Wegelin, you and Wegelin understand the charges against you, right?

THE DEFENDANT: We are familiar with the allegation. We understand it, your Honor.

THE COURT: All right. So now the maximum sentence that Wegelin faces if they plead guilty -- let me ask the government what they deem that to be.

MR. MASSEY: Your Honor, we deem that be as follows, assuming Mr. Bruderer allocutes this morning to a loss amount of $20,000,001, the statutory maximum fine would be $40,000,002.

THE COURT: I saw that in your letter agreement, but

of course it would be -- it's twice the gross gain or twice the gross loss, whatever that's determined to be, if it's more than what, 500,000, I think?

MR. MASSEY: Yes. In order to trigger the -- under Southern Union, to trigger the maximum fine to be above 500,000, it's double whatever the defendant allocutes to or what the jury find beyond a reasonable doubt.

THE COURT: All I'm interested in is the statutory maximum.

MR. MASSEY: Well, right now it's 500,000.

THE COURT: No, it's --

MR. MASSEY: It's twice the gross gain or loss.

THE COURT: Thank you.

MR. MASSEY: Which cannot be more than 500,000 at this point.

THE COURT: And what other statutory penalties does the defendant face?

MR. MASSEY: The statutory maximum penalties also include a $100 special assessment, statutory probation maximum of five years, and I believe that's all.

THE COURT: So does Wegelin understand that if they plead guilty they could face punishments up to those maximum amounts, that is to say five years probation, a $100 mandatory special assessment, and most importantly, a fine that would be twice the gross gain or twice the gross loss resulting from

this offense if that figure was more than $500,000?

THE DEFENDANT: Yes, we do, your Honor.

THE COURT: Very good. Now the government and the defendant have entered into a proposed letter agreement. Does counsel have a signed copy of that?

MR. MASSEY: Yes, your Honor.

THE COURT: We will mark this original as Court Exhibit 1 to today's proceeding. And it takes the form of a letter dated December 3rd, 2012 from the government to defense counsel, and it appears, Mr. Bruderer, that you signed it earlier today. Is that right?

THE DEFENDANT: That's correct, your Honor.

THE COURT: And you were authorized to do so on behalf of Wegelin?

THE DEFENDANT: Yes, I am.

THE COURT: Now this letter agreement is binding between you and the government, but it is not binding on me. It's not binding on the Court. Do you understand that?

THE DEFENDANT: We understand, your Honor.

THE COURT: For example, this letter agreement contains various amounts that are said to be the proposed stipulations as to restitution, as to forfeiture, also contains a proposed guideline range. I may agree with that or I may disagree with that. I may think that the penalty should be higher or should be lower, and regardless of where I come out,

if Wegelin pleads guilty, they will be bound by my sentence. Does Wegelin understand that?

THE DEFENDANT: We understand, your Honor.

THE COURT: Now I did have a question or two about this before we continue with the defendant, a question for the government. It says in paragraph 3 on page 1 that Wegelin agrees to pay restitution to the United States in the amount of $20,000,001. Wegelin admits that the restitution amount represents the gross pecuniary loss to the United States as a result of the conduct charged in the superseding indictment and admitted by Wegelin in the allocution.

You're not saying, are you, that that is in fact the exact amount of the gross pecuniary loss to the United States, are you?

MR. MASSEY: Your Honor, we're saying it's a reasonable estimate. It's a negotiated agreement between the victim and the defendant as to what the restitution award should be, and it's a reasonable approximation of the total pecuniary loss to the government.

THE COURT: Well, it looks like it was based on obtaining a particular offense level under the guidelines.

MR. MASSEY: Well, your Honor, it definitely clearly is keyed to the guidelines.

THE COURT: For example, you would not be satisfied if it was $19,999,999.99.

MR. MASSEY: It would fall short, it has to be $20,000,000.01.

THE COURT: So I understand how you got there, I'm just unclear what the basis is for your asserting that this is an estimate of the actual loss.

MR. MASSEY: Well, our basis -- we have numerous grounds to make that a reasonable basis for the loss. The government has access to certain data from the voluntary disclosure program, which is a program in which U.S. taxpayers who had offshore bank accounts have come into the government and paid what they owe. And so we have data about many of those taxpayers. Many of them have accounts at Wegelin. Wegelin has data itself because it has access to the account statements of U.S. taxpayers with accounts there, so it could calculate the amounts of taxes due and owing for the non-compliant U.S. taxpayers.

There are other data points out there, such as there's another agreement, there's a deferred prosecution agreement between the United States and UBS which provides certain information that essentially works as a sort of confirming data point for what we and the defense believe is a reasonable estimate of the loss to the government.

THE COURT: So in connection with sentencing, I have an obligation to make an independent determination of what the loss was. Yes?

MR. MASSEY: Yes, of course, your Honor.

THE COURT: I will need to have some of that data.

MR. MASSEY: Your Honor, we can provide whatever data the Court wishes to have for purposes of sentencing. For purposes of today, Wegelin is prepared to agree that that's the loss amount.

THE COURT: It also says that -- this is on page 2, "Wegelin agrees, pursuant to Title 18, United States Code, Section 981, that it will forfeit $15,821,000 to the United States, representing the gross fees paid to Wegelin from approximately 2002 through 2010 by U.S. taxpayers with undeclared accounts at Wegelin."

How is that figure determined?

MR. MASSEY: That figure was determined through discussions with Wegelin. Wegelin looked at its own data on the gross proceeds paid by U.S. taxpayers to it for the non-compliant business. It gave us the sum total. It broke it out in various ways, but it provided that data to us. And we don't have access to many of the records that we would need to confirm it, but we believe it's reasonable based on a number of data points that we have.

THE COURT: So did you request the data that would confirm it?

MR. MASSEY: We requested that Wegelin provide the data.

THE COURT: What is Wegelin's position on that?

MR. STRASSBERG: I think what Mr. Massey was going to finish to say is they requested that we provide the numbers, which we did provide, your Honor. And that was a calculation of gross receipts, no deductions for costs. It's not a profit number, it's a gross revenue number. And it was deducted by looking at -- it was calculated by looking at all of the revenue and whatever matter was received from the particular accounts at issue during this time period. So that information was provided over to the government frankly some time ago in the context of our ongoing discussions and negotiations with respect to this case.

THE COURT: So let me make sure I understand this. This is the amount of money that the taxpayers who were making use of Wegelin's services for avoiding taxes on undeclared accounts paid to Wegelin. Yes?

MR. STRASSBERG: We framed it, your Honor, that is this is the gross amount of money that anyone who was a U.S. taxpayers who had an undeclared account paid to Wegelin for any purpose. That could be commissions, it could be advisory fees, it could be things that relate to whatever type of business they actually did with respect to their account.

THE COURT: So why would taxpayers want to pay 15, almost 16 million to Wegelin to avoid taxes that were only estimated to be $20,000,001?

MR. STRASSBERG: Your Honor, those fees were not unique to the U.S. taxpayers. So for any customer, be it Swiss, U.S., they would pay fees to the banks as they would for any bank to do the various transactions. These fees, as we understand it, were actually very competitive. If you wanted to put your account at UBS or put your account at Credit Suisse or put your account at Citibank, you would be paying similar types of costs for your securities transactions, for example, or for your other type of transactions that you asked the bank to do. It's really unrelated to taxes other than these account holders themselves were undeclared. So as part of this agreement, we agreed to pay all of that money without any attempt to do deductions and have it be part of this agreement.

THE COURT: Are you saying it should be forfeiture of monies that you think were properly obtained and had no relationship with any unlawful activity?

MR. STRASSBERG: We think, your Honor, that the undeclared accounts themselves is the nature of the conduct that is the subject of the charge and will be the subject of the allocution and the plea, so it's not that it's not connected to unlawful activity.

THE COURT: Well, what did you understand to be the purpose of these undeclared accounts?

MR. STRASSBERG: Well, your Honor, the undeclared accounts allowed the U.S. taxpayers to evade their duty under

U.S. law.

THE COURT: So I come back to my question. Why would the taxpayers pay 16 -- almost 16 million to Wegelin if they weren't going to avoid taxes of a much larger amount?

MR. STRASSBERG: I think you could think of it this way, your Honor, if they had taken their money and kept it here in a United States bank, done the same type of transactions, they likely would have paid much more than 15 million in commissions and costs to that bank to do those transactions. So those monies would have been paid. It wasn't that those monies would have been avoided by having their accounts in a different institution, if that's helpful to your Honor. So those numbers, while they're here in the plea agreement, we agreed to them as part of our negotiating with the government, they are related to this offense.

THE COURT: I hear what you're saying.

All right. Now the stipulated guideline range is all set forth in pages 3 and 4 and 5 of the agreement. This would lead to a guideline fine range of 14.7 million to 29.4 million. And I want to make sure that Wegelin understands that none of that is binding on the Court. Do you understand that?

THE DEFENDANT: Yes, we understand, your Honor.

THE COURT: And more generally, while the Court must have and will consider the guideline range even if the Court agrees with the guideline calculation set forth in this

agreement, which the Court may or may not agree with, but even if it agrees with that, the Court doesn't necessarily have to sentence within the guidelines. I could go higher, I could go lower, and regardless of where I come out, Wegelin would still be bound by my sentence. Do you understand that?

THE DEFENDANT: We understand, your Honor.

THE COURT: Very good. So why don't you tell me, in the accordance with what is a written statement that you wish to read, what it is that makes Wegelin guilty of this offense.

THE DEFENDANT: We have prepared a statement I would like to read.

From 2002 through 2010, Wegelin provided private banking, wealth management and other related financial services to individuals and entities around --

THE COURT: Forgive me for interrupting, why don't you give a copy -- the government should give a copy to the court reporter so he can follow along.

MR. STRASSBERG: And your Honor, for ease of your Honor and for the court reporter, we're starting at the third paragraph of the written allocution after the introductory paragraphs, for ease of all parties involved.

THE COURT: Yes, we already -- why don't you pick up again from, "At all relevant times."

MR. STRASSBERG: Sorry, your Honor, I was talking -- I guess it would be the fourth paragraph, starting with, "From

2002."

THE DEFENDANT: From 2002 through 2010, Wegelin provided private banking, wealth management, and other related financial services to individuals and entities around the world who held accounts at Wegelin, including citizens and residents of the United States. Wegelin provided these services principally through client advisers based in its various offices in Switzerland. Wegelin also acted as custodian with respect to accounts that were managed by independent asset managers, including accounts for U.S. taxpayers.

From about 2002 through about 2010, Wegelin agreed with certain U.S. taxpayers to evade the U.S. tax obligations of these U.S. taxpayer clients who filed false tax returns with the IRS.

In furtherance of its agreement to assist U.S. taxpayers to commit tax evasion in the United States, Wegelin opened and maintained accounts at Wegelin in Switzerland for U.S. taxpayers who did not complete W-9 tax disclosure forms. Wegelin also allowed independent asset managers to open non-W-9 accounts for U.S. taxpayers at Wegelin.

All at relevant times, Wegelin knew that certain U.S. taxpayers were maintaining non-W-9 accounts at Wegelin in order to evade their U.S. tax obligations in violation of U.S. law, and Wegelin knew of the high probability that other U.S. taxpayers who held non-W-9 accounts at Wegelin also did so for

the same unlawful purpose. Wegelin was aware that U.S. taxpayers had a legal duty to report to the IRS and pay taxes on the basis of all of their income, including income earned in accounts that these U.S. taxpayers maintained at Wegelin. Despite being aware of this legal duty, Wegelin intentionally opened and maintained non-W-9 accounts for these taxpayers with the knowledge that, by doing so, Wegelin was assisting these taxpayers in violating their legal duties. Wegelin was aware that this conduct was wrong.

However, Wegelin believed that, as a practical matter, it would not be prosecuted in the United States for this conduct because it had no branches or offices in the United States, and because of its understanding that it acted in accordance with and not in violation of Swiss law, and that such conduct was common in the Swiss banking industry.

In the course of the agreement to knowingly and willfully assist U.S. taxpayers in evading their U.S. tax obligations, Wegelin acted through, among others, certain employees who were acting within the scope of their employment and for benefit of Wegelin. Wegelin's conduct allowed Wegelin to increase the number of undeclared U.S. taxpayer accounts and the amount of undeclared U.S. taxpayer assets held at Wegelin, thereby increasing Wegelin's fees and profits.

Wegelin admits that its agreement to assist the U.S. taxpayers in evading their U.S. tax obligations in this matter

resulted in a loss to the Internal Revenue Service that was $20,000,001.

One or more of the U.S. taxpayers who conspired with Wegelin lived in the Southern District of New York when they did so, and had communications by telephone and fax in furtherance of the conspiracy with Wegelin while they were in Manhattan.

THE COURT: So if I understand correctly, what Wegelin is saying is that they knew that the taxpayers who were making use of these services of Wegelin were doing so to evade U.S. taxes. Yes?

THE DEFENDANT: Yes, your Honor.

THE COURT: And Wegelin, knowing that it was wrong and a violation of U.S. law, nevertheless agreed with the taxpayers to help them commit that crime. Yes?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. Very good.

Is there anything else regarding the factual portion of the allocution that the government wishes the Court to inquire on?

MR. MASSEY: No, your Honor.

THE COURT: Is there anything else regarding any aspect of the allocution that either counsel wishes the Court to inquire about before I ask the defendant to formally enter its plea?

MR. MASSEY: Your Honor, the government would respectfully request that your Honor simply show him the partnership resolution. Your Honor touched on that at the very beginning, but if we could just confirm that is his signature on the partner resolution and he recognizes the signatures of his partners.

THE COURT: Yes, this is Exhibit C to the plea agreement, already marked as part of Court Exhibit 1, and do you have a copy of that in front of you?

MR. STRASSBERG: We do, your Honor.

THE COURT: And are the signatures known to you to be the signatures of the partners of Wegelin?

MR. STRASSBERG: That's my signature and the signatures of the partners, your Honor.

THE COURT: Very good.

Also, one thing I did neglect to mention, do you understand that as part of your agreement with the government, that if the Court does sentence you within the terms of the agreement, Wegelin has given up its right to appeal or otherwise attack the sentence? Do you understand that?

THE DEFENDANT: Yes, we do, your Honor.

THE COURT: Anything else from either counsel?

MR. MASSEY: Your Honor, this may be part of what your Honor is going to get to, but the government respectfully requests that your Honor ask Mr. Bruderer whether he is

satisfied with his counsel's representation, and the plea is knowing and voluntary and the like.

THE COURT: Yes, that's where I was going, but is there anything else before we get there?

MR. MASSEY: No, your Honor.

THE COURT: So Mr. Bruderer, you're represented by Mr. Strassberg in this case. Has he had a full opportunity to discuss this matter not only with you but with the relevant people at Wegelin?

MR. STRASSBERG: Yes.

THE DEFENDANT: Yes, he did, your Honor.

THE COURT: And are you fully satisfied with his representation in this matter?

THE DEFENDANT: We are, your Honor.

THE COURT: And in making its determination to plead guilty, has Wegelin been given any promises whatsoever beyond those set forth in the plea agreement that we marked as Court Exhibit 1?

THE DEFENDANT: No, your Honor.

THE COURT: And by the way, has counsel confirmed that is correct, Mr. Strassberg?

MR. STRASSBERG: Yes, your Honor.

THE COURT: And has anyone else made any kind of promise to Wegelin, anyone outside the government, to induce you to plead guilty in this case?

THE DEFENDANT: No, your Honor.

THE COURT: Has anyone threatened or coerced Wegelin to plead guilty in this case?

THE DEFENDANT: No, your Honor.

THE COURT: Does the government represent if this case were to go through trial, it could, through competent evidence, prove every essential element of this charge beyond a reasonable doubt?

MR. MASSEY: Yes, we do, your Honor.

THE COURT: Does defense counsel know of any valid defense that would prevail at trial or any other reason why his client should not enter this plea?

MR. STRASSBERG: Your Honor, we know of no reason why the plea should not be entered.

THE COURT: All right. Then in light of everything we have now discussed, Mr. Bruderer, how does Wegelin plead to Count One of indictment S1 12 Criminal 02, guilty or not guilty?

THE DEFENDANT: Guilty, your Honor.

THE COURT: And is that plea entered voluntarily and knowingly?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. Anything else from the government?

MR. MASSEY: Could I have one second, your Honor?

THE COURT: Yes.

The one thing that occurred to me, but I thought it was covered by the plea agreement, is the forfeiture aspect, so I don't know if we need to say anything further in that regard.

MR. MASSEY: It is covered by the agreement. It would probably be helpful if your Honor in open court mentioned it, and that it's there in front of your Honor to sign. There's a preliminary stipulated order of forfeiture for the Court to sign in the amount of $15.8 million and change.

THE COURT: Yes. So Mr. Bruderer, you and your counsel have gone over the stipulated preliminary order of forfeiture that's attached as Exhibit B to your agreement?

THE DEFENDANT: Yes, we did, your Honor.

THE COURT: And you understand that pursuant to that, Wegelin has agreed to transfer $15,821,000 in United States currency to the Treasury?

THE DEFENDANT: Yes, we agreed, your Honor.

THE COURT: So I will sign that order, or do you prefer to wait until the date of sentence?

MR. MASSEY: We prefer that your Honor sign that order today. We will have a final order. There has to be a 30-day period of notice following today.

THE COURT: It is signed. I will give it to my courtroom deputy to docket.

MR. MASSEY: Your Honor, just one more small matter.

Mr. Bruderer gave a very thorough allocution which hit all the elements of the offense. The government doesn't believe it's necessary to enumerate the elements of the conspiracy offense, but there is one aspect of this plea that is slightly unusual in that it is a plea of a corporation. So it may make sense for the government or the Court to put on the record the elements.

THE COURT: There is some authority to that effect, although since the plea covers all the elements at some length, I didn't think it necessary to have the government repeat them. But I can see you're chomping at the bit, so go ahead.

MR. MASSEY: The elements include the following: Wegelin and one or more U.S. taxpayer entered into a conspiracy to violate the United States tax laws. That's the first element. The second is that Wegelin knowingly and voluntarily joined and participated in the conspiracy. The third and the unusual one for this case is that, third, Wegelin did so through managing partners or other employees who were acting within the scope of their employment and acting for the benefit of the partnership, at least in part, and that one or more overt act was committed by Wegelin or a co-conspirator. All of those elements were plainly covered by the allocution of Mr. Bruderer.

THE COURT: OK. Anything else?

MR. MASSEY: Not from the government, your Honor.

Thank you.
THE COURT: Anything from defense counsel?
MR. STRASSBERG: Not from defense counsel.
THE COURT: Because the defendant has acknowledged its guilt as charged, because it has shown through its representative that it understands its rights, because his plea is entered knowingly and voluntarily and supported by an independent basis in fact containing each of the essential elements of offense, I accept his plea and adjudge it guilty of Count One of the indictment S1 12 Criminal 02.
So Mr. Bruderer, the next step in this process is that the probation office will prepare a presentence report to assist me in determining sentence. And in that connection, Wegelin may be asked to provide additional documents, additional information, and I assume that's going to be provided. If there's any problem about that, counsel needs to notify the Court immediately. OK?
MR. STRASSBERG: We will do so, your Honor.
THE COURT: Very good.
After that report is in draft form, before it's in final form, Wegelin and its counsel will have a chance to review it, as will the government, and to offer suggestions, corrections and additions to the probation officer, who will then prepare the report in final to come to me.
Independent of that, counsel for both sides are hereby

given leave to submit to the Court any materials in writing bearing on sentence, and I think in this kind of case that would be very helpful. And as the colloquy earlier indicates, what I am most concerned about is whether the $20,000,001 estimate is a fair estimate and what's the basis for saying that. So you're free to address any and all issues, but that's the issue that I particularly want to see addressed. After those submissions are made, we will then have a full hearing here in court, at which time the Court will impose sentence.

So let's fix a date for that.

MR. STRASSBERG: As your Honor said, we need to set a date that allows for those events to happen. I think from Wegelin's point of view, the faster and more expedited sentence that can be accomplished, we are certainly willing to work within that deadline to make that happen.

THE COURT: I'm all for that. The problem -- and I don't know if anyone has checked with the probation office -- Congress, in its wisdom, has decided that the judicial process of the United States, being not nearly as important as Congress' vacations and the like, should be starved. We are presently something like 22 probation officers short because we had to last year reduce the judicial budget nationwide by ten percent. Congress has decreed that we will this coming year decrease the judicial budget by another ten percent, leading, for example, as early as yesterday, to long-time employees of

the judiciary being severed and left unemployed. One can only marvel at Congress' wisdom, which has been well known to all Americans for some time now.

So to get down to the immediate problem, this is the kind of case that we're going to have to put a senior probation officer on. I just don't know whether they have someone available who can give it expedited treatment. What I am willing to do is put it down now -- the normal sentencing used to be 45 days, then because of the loss of probation officers we had to change it to 60 days. If you want, I will put it down today for 45 days from now and talk with the probation office and see if they can accommodate that. We may have to come back and move it. They may be able to do better. Since the parties are very substantially in agreement and obviously had substantial negotiations, I don't expect there will be any significant disputes, but nevertheless we have to give them as much time as the probation office needs.

So that's my suggestion. Any other thoughts?

MR. STRASSBERG: Your Honor, that suggestion is very agreeable.

DEPUTY CLERK: I want to let you know that the last written statement from probation that I have asks for 120 days for defendants who are not detained. That would bring us to May 6.

THE COURT: I think we can do better than that. I

will tell you what, why don't we take a two-minute break and I'll call the head of probation and see what we can do, and we'll resume in two minutes.

(Recess taken)

THE COURT: All right. Well, after a full and frank discussion with probation, they said that while they are really tremendously short-handed right now, they will make an exception in this case, but they asked for 60 days rather than 45. I think that's reasonable.

They also ask, and I'm going to make this an order, that all the basic materials that need to be provided to probation be provided to them within the next two weeks. That shouldn't be a problem given all that you have done by way of preparation.

So let's see what date that would be for sentence.

DEPUTY CLERK: Sentence date on March 4th, that's a Monday, at 4:00.

THE COURT: March 4th at 4:00, does that work for everyone?

MR. MASSEY: That's fine with the government, your Honor.

MR. STRASSBERG: Your Honor, that's fine for the defense as well.

THE COURT: Very good. So we'll see you on March 4th.

Anything else any counsel needs to raise?

MR. STRASSBERG: Your Honor, what time?
THE COURT: 4:00 p.m.
MR. STRASSBERG: Thank you.
THE COURT: Very good. Thanks a lot.
MR. MASSEY: Thank you.

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