

United States Senate

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Committee on Homeland Security and Governmental Affairs

*Carl Levin, Chairman
Tom Coburn, Acting Ranking Minority Member*

E X H I B I T S

Hearing On

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

March 4, 2009

Carl Levin, Chairman

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EXHIBIT LIST

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OBTAINING THE NAMES OF U.S. CLIENTS
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March 4, 2009

1.
 - a. *Tax Haven Bank Secrecy Tricks*, chart prepared by the U. S. Senate Permanent Subcommittee on Investigations.
 - b. Quotation from UBS Wealth Management & Business Banking internal report: “Review of US Resident Non-W9 Business, Legal and Compliance,” page 9, December 10, 2004, chart prepared by the U. S. Senate Permanent Subcommittee on Investigations.
 - c. Quotation from UBS Wealth Management & Business Banking internal report: “Review of US Resident Non-W9 Business, Legal and Compliance,” page 3, December 10, 2004, chart prepared by the U. S. Senate Permanent Subcommittee on Investigations.
 - d. Quotation from UBS document: “US International Training,” in section subtitled: “Lessons Learned,” page 5, September 26, 2006, chart prepared by the U. S. Senate Permanent Subcommittee on Investigations.
 - e. Quotation from UBS Memorandum: “FPWM policy for dealing with US persons under the QI agreement,” in section subtitled, “Purchase of alternative structures,” page 2, July 4, 2000, chart prepared by the U. S. Senate Permanent Subcommittee on Investigations.
 - f. Quotation from UBS email to third-party corporate formation agents: “Structure/Vehicles for U.S./Canadian Clients,” August 17, 2004, chart prepared by the U.S. Senate Permanent Subcommittee on Investigations.
2. Letter to the Permanent Subcommittee on Investigations from His Excellency Urs Ziswiler, Swiss Ambassador to the United States of America, dated February 20, 2009, declining an invitation to participate in the Subcommittee’s hearing.
3. *DEFERRED PROSECUTION AGREEMENT, United States v. UBS AG*, United States District Court, Southern District of Florida, dated February 18, 2009 (including deferred indictment).
4. *COMPLAINT, Securities and Exchange Commission v. UBS AG*, United States District Court for the District of Columbia, dated February 18, 2009.
5. *DECLARATION OF DANIEL REEVES* excerpted from *EX PARTE PETITION FOR LEAVE TO SERVE “JOHN DOE” SUMMONS*, United States District Court, Southern District of Florida, dated June 30, 2008.

6. *DECLARATION OF BARRY SHOTT* excerpted from *EX PARTE PETITION FOR LEAVE TO SERVE "JOHN DOE" SUMMONS*, United States District Court, Southern District of Florida, dated June 30, 2008.
7. *PETITION TO ENFORCE JOHN DOE SUMMONS*, *United States v. UBS AG*, United States District Court, Southern District of Florida, dated February 19, 2009.
8. *DECLARATION OF DANIEL REEVES*, excerpted from *PETITION TO ENFORCE JOHN DOE SUMMONS*, *United States v. UBS AG*, United States District Court, Southern District of Florida, dated February 19, 2009. [Exhibits to Declaration not attached – available upon request.]
9. *DECLARATION OF BARRY B. SHOTT*, excerpted from *PETITION TO ENFORCE JOHN DOE SUMMONS*, *United States v. UBS AG*, United States District Court, Southern District of Florida, dated February 19, 2009. [Exhibits to Declaration not attached – available upon request.]
10. *BACKGROUND INFORMATION FOR THE COURT'S CONSIDERATION PRIOR TO THE SCHEDULED STATUS CONFERENCE*, filed by UBS, and *RESPONSE TO BACKGROUND FILING BY RESPONDENT*, filed by the United States, *United States v. UBS AG*, United States District Court, Southern District of Florida, dated February 20, 2009.
11. *EBK investigation of the cross-border business of UBS AG with its private clients in the USA, Summary Report*, prepared by the Swiss Financial Market Supervisory Authority (FINMA), February 19, 2009.
12. *UBS AG Review of US Resident Non-W9 Business, Legal and Compliance*, report prepared by UBS Wealth Management & Business Banking, Risk and Compliance, December 10, 2004.
13. UBS document entitled, *US International Training*, September 26, 2006 (*protect the banking secrecy*).
14. UBS *Contact Report*, November 29, 2004 (*orange, green, blue, C, 1 nut, a swan*).
15. UBS AG Memorandum, dated July 4, 2000, regarding *IRS 2001, FPWM policy for dealing with US persons under the QI agreement*.
16. UBS email to third-party corporate formation agents titled *Structures/vehicles for U.S./Canadian Clients*, dated August 17, 2004.

Tax Haven Bank Secrecy Tricks

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

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

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

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

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

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

“In case of an interrogation by any authority:

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

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

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

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

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

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

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

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



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Embassy of Switzerland in the United States of
America

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

Our ref. 522.0 - GHE

Washington D.C., February 20, 2009

RE: Subcommittee Hearing of February 24, 2009

Dear Mr. Chairman:

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

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

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

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

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Permanent Subcommittee on Investigations

EXHIBIT #2

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

Sincerely,

The Ambassador of Switzerland


Urs Ziswiler

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60033-CR-COHN

UNITED STATES OF AMERICA

vs.

UBS AG

Defendant.

DEFERRED PROSECUTION AGREEMENT

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

The Criminal Information

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

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

(c). 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 paragraph 16, or instead choose to extend the period of deferral of prosecution pursuant to paragraph 18. UBS understands and agrees that the exercise of the Government's discretion under this Agreement is not reviewable by any court. Should the Government determine that UBS has committed a material violation of this Agreement, the Government shall provide prompt written notice to UBS addressed to its Group General Counsel, Markus Diethelm, Esq., UBS AG, Bahnhofstrasse 45, CH-8098, Zurich, Switzerland, and to UBS's counsel, John Savarese and Ralph Levene of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York, 10019, or to any successor UBS may designate, of the alleged material violation and provide UBS with a three-week period from the date of receipt of notice in which to make a presentation to the Government, including upon request by UBS the Assistant Attorney General in charge of the Tax Division of the Department of Justice, to demonstrate that no material violation has occurred, or, to the extent applicable, that the material violation should not result in the exercise of those remedies or in an

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

Limits on This Agreement

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

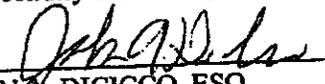
Public Filing and Miscellaneous Provisions

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

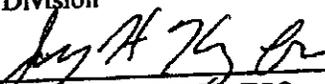
26. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same document.

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

Respectfully submitted,



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



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

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

JEFFREY A. NEIMAN, ESQ.
Assistant United States Attorney

UBS AG
Defendant

By: _____
MARKUS DIETHELM, ESQ.
Group General Counsel

WACHTELL, LIPTON, ROSEN, & KATZ

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

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

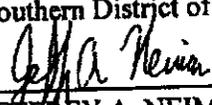
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JOHN A. DICICCO
Acting Assistant Attorney General
United States Department of Justice
Tax Division

By:

Kevin M. Downing
Senior Litigation Counsel
Michael P. Ben' Ary
Trial Attorney

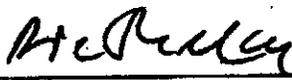
R. ALEXANDER ACOSTA
United States Attorney
Southern District of Florida

By:

Jeffrey A. Neiman, Esq.
Assistant United States Attorney

UBS AG

By:



Markus Diethelm, Esq.
Group General Counsel

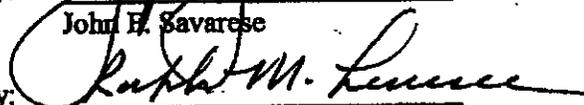
Wachtell, Lipton, Rosen & Katz
Counsel to UBS AG

By:



John H. Savarese

By:



Ralph M. Levene

EXHIBIT A

**EXHIBIT A TO DEFERRED
PROSECUTION AGREEMENT**

RESOLUTION OF THE BOARD OF DIRECTORS OF UBS AG

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

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

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

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

This Board hereby **RESOLVES** that:

1. The Company (i) consent to the filing in the United State District Court for the Southern District of Florida of an Information charging the Company with one count of participating in a conspiracy in violation of 18 U.S.C. § 371 to defraud the United States and its agency the Internal Revenue Service in connection with the conduct of its U.S. cross-border business as set forth more fully in the Information, and (ii) that the Company agree to pay an amount no greater than \$780 million in connection with the execution of the agreement described in paragraph 2 below and to execute the ongoing obligations described therein;
2. The Group General Counsel, or his delegate, hereby is authorized on behalf of the Company to execute the deferred prosecution agreement substantially in such form as reviewed by this Board of Directors at this meeting with such changes as the Group General Counsel, or his delegate, may approve;
3. The Board hereby authorizes, empowers and directs the Group General Counsel of the Company, or his delegate, to take any and all actions as may be necessary or appropriate, and to approve and execute the forms, terms or provisions of any agreement or other documents as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions, including to make any appropriate changes to the Company's divisional or corporate center regulations; and
4. All of the actions of the Group General Counsel of the Company, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as actions on behalf of the Company.

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

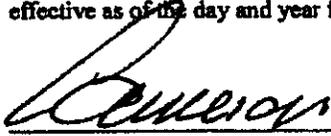

Luzius Cameron
Company Secretary

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

09-60023 CR-MARRA
18 U.S.C. § 371

ZHOPKINS

UNITED STATES OF AMERICA

vs.

UBS AG,

Defendant.

INFORMATION

The United States charges that:

INTRODUCTION

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

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

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

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

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

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

The Conspirators

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

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

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

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

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

COUNT ONE
(18 U.S.C. § 371)

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

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

UBS AG,

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

OBJECT OF THE CONSPIRACY

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

MEANS AND METHODS OF THE CONSPIRACY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OVERT ACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

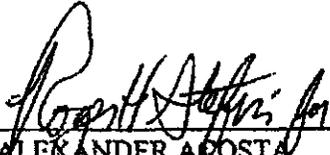
39. In or about early December 2005, Desk Heads and Bankers solicited new business from existing and prospective United States clients at Art Basel Miami Beach in Miami Beach, Florida.

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

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

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

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



R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY



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



JEFFREY A. NEIMAN
ASSISTANT U.S. ATTORNEY

EXHIBIT C

**EXHIBIT C TO DEFERRED
PROSECUTION AGREEMENT**

STATEMENT OF FACTS

1. UBS AG, a corporation organized under the laws of Switzerland ("UBS"), directly and through its subsidiaries, operates a global financial services business. As one of the biggest banks in Switzerland and largest wealth managers in the world, UBS provides banking, wealth management, asset management and investment banking services, among other services, around the globe, including through branches located in the United States (including the Southern District of Florida).
2. Effective January 1, 2001, UBS entered into a Qualified Intermediary Agreement (the "QI Agreement") with the Internal Revenue Service ("IRS"). The Qualified Intermediary ("QI") regime provides a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution that acts as a QI with respect to customer accounts held by non-U.S. persons and by U.S. persons. The QI Agreement is designed to help ensure that non-U.S. persons are subject to the proper U.S. withholding tax rates and that U.S. persons are properly paying U.S. tax, in each case, with respect to U.S. securities held in an account with the QI. QI agreements were subject to a "documentation transition period" announced by the IRS in Notice 2001-4 (Jan. 8, 2001) that gave QIs until the end of 2002 to achieve "substantial compliance" with the provisions of the QI Agreement. The QI Agreement expressly recognizes that a non-U.S. financial institution such as UBS may be prohibited by foreign law, such as Swiss law, from disclosing an account holder's name or other identifying information. In general, a QI subject to such foreign-law restrictions must request that its U.S. clients either (a) grant the QI authority to disclose the client's identity or disclose himself by mandating the QI to provide an IRS Form W-9 completed by the account holder, or (b) grant the QI authority to sell all U.S. securities of the account holder (in the case of accounts opened before January 1, 2001) or to exclude all U.S. securities from the account (in the case of accounts opened on or after January 1, 2001). Following the effective date of the QI Agreement, a sale of U.S. securities, if any, held by a U.S. person who chose not to provide a QI with an IRS Form W-9 was subject to tax information reporting on an anonymous basis and backup withholding.
3. For some time, UBS has operated a U.S. cross-border business through which its private bankers have provided cross-border securities-related and investment advisory services to U.S.-resident private clients who maintained accounts at UBS in Switzerland and other locations outside the United States. UBS was not registered as a broker-dealer or an investment adviser pursuant to the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940, and the private bankers and managers engaged in this U.S. cross-border business were not affiliated with a registered broker-dealer or investment adviser. The Securities Exchange Act and Investment Advisers Act restricted the activities that UBS (and the private bankers and managers engaged in the U.S. cross-border business), absent

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

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

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

The U.S. Cross-Border Business

6. U.S. private clients often visited their private bankers in Switzerland and otherwise communicated with their private bankers from outside the United States. However, during the relevant period, Swiss-based UBS private bankers also traveled to the United States to meet with certain of their U.S. private clients, including U.S. persons who were beneficial owners of offshore companies that maintained accounts at UBS. This U.S. cross-border business was serviced primarily from service desks located in Zurich, Geneva, and Lugano, which employed about 45 to 60 Swiss-based private bankers or client advisors who specialized in servicing U.S. clients. These private bankers traveled to the United States an average of two to three times per year, in trips that generally varied in duration from one to three weeks, and generally tried to meet with about three to five clients per day. An internal UBS document estimated that U.S. cross-border business private bankers had made approximately 3,800 visits with clients in the United States during 2004. In addition, while in Switzerland, these private bankers would communicate via telephone, fax, mail and/or e-mail with certain of their private clients in the United States about their account relationships, including on occasion to take securities transaction orders in respect of offshore company accounts. Private bankers in the U.S. cross-border business typically traveled to the United States with encrypted laptop computers to maintain client confidentiality and received training on how to avoid detection by U.S. authorities while traveling to the United States.
7. In response to concerns expressed in 2002 by some clients of the U.S. cross-border business regarding the effect of UBS's then-recent acquisition of U.S.-based brokerage firm PaineWebber on UBS's ability to keep client information confidential, UBS sought to reassure such clients that Swiss bank secrecy restrictions would continue to protect the confidentiality of their identities. Thus, on or about November 4, 2002, two managers in the U.S. cross-border business sent a form letter to U.S. clients of UBS, noting that UBS had been exposed to, and successfully challenged, attempts by U.S. authorities to assert jurisdiction over assets in accounts maintained abroad since it opened offices in the U.S. in 1939, and that the QI Agreement fully respected client confidentiality and thus UBS would be able to maintain the confidentiality of client information.
8. During the relevant period, UBS's U.S. cross-border business provided securities-related and investment advisory services to accounts of approximately 11,000 to approximately 14,000 U.S.-domiciled U.S. private clients who had chosen not to provide an IRS Form W-9 (or UBS's substitute form) to UBS or who were the underlying beneficial owners of

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

The QI Agreement

9. In 2000, UBS decided to apply to become a QI because operating as a QI would enable UBS to continue handling U.S. securities transactions for non-U.S. persons in accordance with the requirements of the QI Agreement at reduced U.S. withholding tax rates and to handle QI-compliant accounts for U.S. persons. Also in 2000, UBS began communicating with its U.S. clients about the requirements of the QI Agreement. On July 14, 2000, managers in the U.S. cross-border business, with the approval of UBS's QI Coordination Committee, which was made up of various groups, including the U.S. cross-border business and UBS's Group Tax, Legal, Compliance, Operations and Financial Planning departments, changed the wording on a UBS form letter that was sent to U.S. clients entitled "Declaration for US Taxable Persons" from "I would like to avoid disclosure of my identity to the US Internal Revenue Service under the new tax regulations" to "I am aware of the new tax regulations" after U.S. clients expressed concern that the form as originally drafted could be considered an admission of tax evasion by such U.S. clients.
10. In advance of the January 1, 2001 effective date of the QI Agreement, UBS undertook substantial implementation efforts designed to address its obligations under the QI Agreement, including through a global program to communicate the new QI requirements to all affected clients, new policies, procedures and IT systems, and training. As part of those QI compliance efforts, UBS obtained authorizations from U.S. clients holding U.S. securities to sell, or required sales by such U.S. clients, totaling approximately \$530 million of U.S. securities prior to the January 1, 2001 effective date of the QI Agreement. As a result of these efforts, the vast majority of UBS's U.S. person client accounts no longer held U.S. securities by the effective date of the QI Agreement and had executed waivers agreeing not to invest in U.S. securities in the future.

The Offshore Company Scheme

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

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

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

Inadequate Compliance Systems

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

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

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

EXHIBIT D

**EXHIBIT D TO DEFERRED
PROSECUTION AGREEMENT**

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

Dear Client,

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

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

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

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

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

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

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

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

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

[REDACTED].

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

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

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

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

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

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

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

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

Sincerely,

Stephan Zimmermann
Chief Operating Officer Global WM&BB

EXHIBIT E

**(Filed Separately
Under Seal)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE
COMMISSION,
100 F Street, N.E.
Washington, D.C. 20549

Plaintiff,

v.

UBS AG,

Defendant.

Civil Action No.

Case: 1:09-cv-00316
Assigned To : Robertson, James
Assign. Date : 2/18/2009
Description: General Civil

COMPLAINT

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

SUMMARY

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

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

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

JURISDICTION AND VENUE

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

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

DEFENDANT

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

18. During the relevant time, UBS adopted written policies and provided training that purported to address the limits on the activities in which UBS client advisers could engage in servicing United States cross-border clients. UBS, however, did not have a meaningful method of monitoring for compliance with those limits. As a result, client advisers and their managers came to believe that a certain degree of non-compliance with UBS policy was acceptable in connection with operating the United States cross-border business. UBS was aware that client advisers continued to travel to the United States and to use other United States jurisdictional means to provide brokerage and investment advisory services to United States cross-border clients.

19. In a series of communications starting in 2005, while he was still employed at UBS, and culminating in a March 2006 whistleblower letter to UBS following his departure, a former Geneva-based UBS client adviser alleged that the actual practices of UBS client advisers ran contrary to an internal legal document posted on UBS's intranet that outlined what business practices were prohibited and further alleged that the actual practices were actively encouraged by managers in the United States cross-border business. UBS conducted a limited internal investigation of the United States cross-border business that found only "isolated instances" of non-compliance. The communications served again to highlight for UBS the legal challenges posed by the continuing operation of the United States cross-border business.

20. In February 2006, UBS undertook a review of measures that could improve the compliance in UBS's United States cross-border business with United States laws, including the federal securities laws. In the course of the review, UBS examined the impact that those measures would have on its United States cross-border business. Only those measures that were classified as having "No/little business impact" or "Some reduction in business" were adopted by UBS, whereas those measures that were classified as resulting in a "Virtual/real exit" from the United States cross-border business were not adopted at that time.

21. Beginning no later than April 2006, and continuing until August 2007, UBS conducted a review of strategic options for the United States cross-border business in light of the continued focus by UBS on the compliance risks faced by that business. The review identified various options for the United States cross-border business, including winding down, selling, or spinning off the business. Throughout the entire period of this review, UBS continued to use United States jurisdictional means to provide the unregistered brokerage and investment advisory services to United States cross-border clients.

22. In August 2007, UBS determined to seek a gradual elimination of the United States cross-border business, as opposed to ending the business immediately. In the fall of 2007, after initial contacts by the Department of Justice concerning UBS's cross-border business, UBS took steps to begin implementing its August 2007 decision to wind down the United States cross-border business, including by imposing a ban on client adviser travel to the United States and limiting new securities account openings for United States clients to UBS's registered entities. As late as November 2007, UBS

allowed certain client advisers to travel to the United States to meet with United States cross-border clients.

23. On July 17, 2008, in the course of a hearing by the United States Senate Permanent Subcommittee on Investigations, UBS announced that it would cease providing securities services to United States cross-border clients.

24. As a result of its provision of unregistered broker-dealer and investment advisory services to United States cross-border clients, as described above, UBS had ill-gotten gains of at least \$380 million.

CLAIM ONE

Violation of Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)]

25. Paragraphs 1 through 24 of this Complaint are hereby restated and incorporated herein by reference.

26. Defendant UBS acted as a broker-dealer within the meaning of Sections 3(a)(4) and 3(a)(5) of the Exchange Act [15 U.S.C. §§78c(a)(4) and 78c(a)(5)] and, directly or indirectly, made use of the mails or means or instrumentality of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, securities (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) without being registered with the Commission in accordance with Section 15(b) of the Exchange Act [15 U.S.C. §78o(b)].

27. As set forth more fully above, Defendant UBS, while acting as an unregistered broker-dealer, among other things, solicited, established, and maintained brokerage accounts for United States cross-border clients; provided account information; executed securities transactions; and received transaction-based compensation.

28. By reason of the foregoing, Defendant UBS violated Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)].

CLAIM TWO

Violation of Section 203(a) of the Advisers Act [15 U.S.C. §80b-3(a)]

29. Paragraphs 1 through 24 of this Complaint are hereby restated and incorporated herein by reference.

30. Defendant UBS acted as an investment adviser within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)] and, directly or indirectly, made use of the mails or means or instrumentality of interstate commerce in connection with its business as an investment adviser without being registered and without the applicability of Section 203(b) of the Advisers Act [15 U.S.C. §80b-3(b)] or Section 203A of the Advisers Act [15 U.S.C. §80b-3a].

31. As set forth more fully above, UBS, while acting as an unregistered investment adviser for compensation, solicited managed accounts; provided investment advice; and managed greater than \$25 million in assets for United States cross-border clients.

32. By reason of the foregoing, defendant UBS violated Section 203(a) of the Advisers Act [15 U.S.C. §80b-3(a)].

PRAYER FOR RELIEF

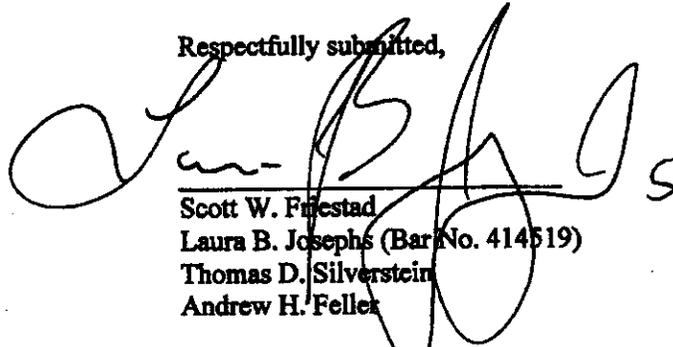
WHEREFORE, the Commission respectfully requests that this Court enter a final judgment

A. Permanently enjoining Defendant UBS from violating Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)] and Section 203(a) of the Advisers Act [15 U.S.C. §80b-3(a)];

B. Ordering Defendant UBS to disgorge the ill-gotten gains that it received from the business of acting as an unregistered broker-dealer and investment adviser as described in this Complaint; and

C. Granting such other relief as the Court deems appropriate.

Respectfully submitted,



Scott W. Fjrestad
Laura B. Josephs (Bar No. 414519)
Thomas D. Silverstein
Andrew H. Fellet

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Dated: February 18, 2009

FILED by **IG** D.C.
ELECTRONIC
JUNE 30, 2008
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIAMI

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

08-21864-MC-LENARD/GARBER

IN THE MATTER OF THE TAX
LIABILITIES OF:

JOHN DOES, United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers.

DECLARATION OF DANIEL REEVES

I, Daniel Reeves, pursuant to 28 U.S.C. Section 1746, declare and state:

1. I am a duly commissioned Internal Revenue Agent and Offshore Compliance Technical Advisor employed in the Small Business/Self Employed Business Division of the Internal Revenue Service and am assigned to the Internal Revenue Service's Offshore Compliance Initiative. The Offshore Compliance Initiative develops projects, methodologies, and techniques for identifying United States taxpayers who are involved in abusive offshore transactions and financial arrangements for tax avoidance purposes. I have been an Internal Revenue Agent for more than thirty years and have specialized in offshore investigations for the

last eight years. As an Internal Revenue Agent, I have received training in tax law and audit techniques, including specialized training in abusive offshore tax issues, and have extensive experience in investigating offshore tax matters.

2. For the past six years I have been the lead investigator for the Internal Revenue Service's Offshore Credit Card Project and other offshore compliance initiatives. I developed many of the investigative techniques and procedures being used to identify United States taxpayers with offshore bank accounts. I am also one of the developers of the Internal Revenue Service's offshore training programs for investigators and have participated as an instructor and expert at numerous presentations and training sessions on identifying offshore accounts.

3. The Internal Revenue Service is now investigating United States taxpayers who maintain accounts with UBS AG in Switzerland but who have not provided to UBS (via Forms W-9) their taxpayer identification numbers and other information necessary for reporting to the Internal Revenue Service (via Forms 1099) taxable income earned from their Swiss accounts. To facilitate this investigation, the Internal Revenue Service, once authorized by the Court, will issue under the authority of Section 7602 of the Internal Revenue Code (26 U.S.C.), a "John Doe" summons to UBS. A copy of this summons is attached as Exhibit A.

4. UBS is a Swiss bank with branches around the world and with a major presence in the United States. UBS provides, among other services, private banking services to wealthy United States taxpayers. The records sought by the summons will reveal the identities of and disclose transactions by persons who may be liable for federal taxes and will enable the Internal Revenue Service to investigate whether those persons have complied with the internal revenue laws.

5. Based on information received by the Internal Revenue Service, it is likely that the persons in the "John Doe" class may have been under-reporting income, evading income taxes, or otherwise violating the internal revenue laws of the United States.

6. The "John Doe" summons to UBS relates to the investigations of an ascertainable group or class of persons. There is a reasonable basis for believing that this group or class of persons has failed or may have failed to comply with provisions of the internal revenue laws. The information and documents sought to be obtained from the examination of the records or testimony (and the identity of the persons with respect to whose tax liabilities the summonses have been issued) are not readily available from sources other than UBS.

I. THE SUMMONS DESCRIBES AN ASCERTAINABLE CLASS OF PERSONS

7. The proposed "John Doe" summons seeks information regarding United States taxpayers who, at any time between December 31, 2002 and December 31, 2007, had financial accounts with UBS in Switzerland, and for whom UBS (1) did not have in its possession IRS Forms W-9, and (2) had not submitted timely and accurate IRS Forms 1099 to United States taxing authorities reporting all reportable payments made to the United States taxpayers.

8. This class of persons is easily ascertainable by UBS. As explained below, UBS divides their United States taxpayer clients into those who provide an IRS Form W-9 and those who do not. The very nature of private banking suggests that UBS will be conversant with virtually all of a client's significant financial affairs, including the formation of controlled foreign entities and the opening of foreign accounts. Private banking requires that the primary client advisor be familiar with all of the financial affairs of the client in order to advise the client on a

comprehensive financial plan. For these reasons, UBS will be able to readily ascertain the identity of the proposed "John Doe" class.

II. REASONABLE BASIS FOR BELIEF THAT THE 'JOHN DOE' CLASS HAS FAILED TO COMPLY WITH INTERNAL REVENUE LAWS

A. A United States Taxpayer Who Fails to Disclose Taxable Payments Has Failed to Comply with the Internal Revenue Laws

9. United States taxpayers are required to file annual income tax returns reporting to the Internal Revenue Service their income from all sources worldwide. Taxpayers who fail to include taxable payments on their income tax returns have failed to comply with the internal revenue laws.

10. As will be described in further detail below, the "John Doe" class is limited to United States taxpayers with UBS accounts in Switzerland who affirmatively chose not to provide to UBS Forms W-9 disclosing their status as United States taxpayers, and for whom UBS did not submit Forms 1099 reporting to the Internal Revenue Service all of their reportable payments. Based on my experience with offshore accounts, taxpayers who choose not to provide the documents necessary for proper reporting do so in order to conceal their income from the Internal Revenue Service. The fact that these United States taxpayers chose not to submit Forms W-9 to UBS, thus choosing to remain "undeclared," provides a reasonable basis to believe that they have failed to comply with the internal revenue laws. Because it does not know the identities of those in the "John Doe" class, the Internal Revenue Service cannot yet audit these United States taxpayers' income tax returns to determine whether they reported such payments.

B. The Tradition of Offshore Tax Haven or Financial Privacy Jurisdictions

11. The Internal Revenue Service has been concerned with the growing problem of United States taxpayers, involved in both lawful and unlawful activities, evading the payment of United States taxes by concealing unreported taxable income in accounts in offshore tax haven or financial privacy jurisdictions. I summarize below several studies that describe the use of offshore tax haven or financial privacy jurisdictions and provide a background of the offshore private banking system.

a. The Gordon Report

12. On January 12, 1981, the Internal Revenue Service issued a report entitled "Tax Havens and Their Use by United States Taxpayers - An Overview," commonly known as the "Gordon Report" for its author, Richard A. Gordon, Special Counsel for International Taxation. The Gordon Report was based on a review of judicial decisions and published literature in the field of international tax planning, research into internal Internal Revenue Service documents concerning taxpayer activities, interviews with Internal Revenue Service personnel, personnel who dealt with tax haven issues for other federal government agencies, and lawyers and certified public accountants who specialized in international taxation. Additionally, the findings in the Gordon Report were based on a statistical analysis of available data concerning international banking, United States direct investment abroad and foreign investment in the United States.

13. The Gordon Report states that the available data support the view that taxpayers ranging from large multi-national companies to individuals and criminals are making extensive use of tax haven and financial privacy jurisdictions. The Gordon Report concluded that there are:

enormous and growing levels of financial activity and accumulation of funds in tax havens [as well as a] large number of transactions involving illegally earned income and legally earned income which is diverted to or passed through havens for purposes of tax evasion.

b. The Crime and Secrecy Report

14. On August 28, 1985, the Permanent Subcommittee on Investigations of the United States Senate Governmental Affairs Committee issued a report entitled "Crime and Secrecy: The Use of Offshore Banks and Companies." The Crime and Secrecy Report summarized the offshore problem as follows:

The subcommittee found that the criminal exploitation of offshore havens is flourishing because of haven secrecy and foreign government intransigence in the face of overwhelming evidence of dirty money in their banking systems. The effect has been to systematically obstruct U.S. law enforcement investigations, erode the public's confidence in our criminal justice system, and thwart the collection of massive amounts of tax revenues.

15. The report includes a quote from Senator William V. Roth, Chairman of the subcommittee regarding the committee's findings on the use of tax haven and financial privacy jurisdictions by American citizens:

But equally shocking is the fact that we have also found that offshore havens are no longer used exclusively by criminals. Instead, they are increasingly being used by otherwise law abiding Americans to avoid paying taxes and to shield assets from creditors.

16. The Crime and Secrecy Report estimated that the "underground economy" at that time (1985) was hiding between \$150 billion and \$600 billion apparently unreported income from both legal and illegal business from the Internal Revenue Service. Furthermore, it stated that the underground economy was unquestionably linked to the use of offshore facilities.

c. The United Nations Report

17. On May 29, 1998, the United Nations' Office for Drug Control and Crime Prevention, Global Programme Against Money Laundering, released a report entitled "Financial Havens, Banking Secrecy and Money Laundering." The United Nations Report (at <http://www.imolin.org/imolin/finhaeng.html>) states that offshore financial centers, tax havens and bank secrecy jurisdictions --

attract funds partly because they promise both anonymity and the possibility of tax avoidance or evasion. A high level of bank secrecy is almost invariably used as a selling point by offshore financial centers. Many Internet advertisements for banks emphasize the strictness of the jurisdiction's secrecy and assure the prospective customers that neither the bank nor the government will ever give bank data to another government. When the advertising is for private banks, it also stresses the protection from tax collectors.

United Nations Report, Part II, "The Global Financial System."

d. Offshore Private Banks

18. Private banks are operational units within banks that specialize in providing financial and related services to wealthy individuals, primarily by acting as a financial advisor, estate planner, credit source, and investment manager.

19. To open an account in a private bank, prospective clients usually must deposit a substantial sum, often \$1 million or more. In return for this deposit, the private bank assigns a "private banker" or "client advisor" to act as a liaison between the client and the bank and to facilitate the client's use of a wide range of the bank's financial services and products. Those products and services often span the globe, enabling the client to benefit from services in carefully selected offshore jurisdictions that tout their strong financial privacy laws.

20. Offshore private banking practices have received considerable attention in recent years. The Senate Permanent Subcommittee on Investigations issued a report concluding that:

Most private banks offer a number of products and services that shield a client's ownership of funds. They include offshore trusts and shell corporations, special name accounts, and codes used to refer to clients or fund transfers.

All of the private banks interviewed by the Subcommittee staff made routine use of shell corporations for their clients. These shell corporations are often referred to as "private investment corporations" or PICs. They are usually incorporated in [tax haven or financial privacy] jurisdictions . . . which restrict disclosure of a PIC's beneficial owner. Private banks then open accounts in the name of the PIC, allowing the PIC's owner to avoid identification as the account holder.

Minority Staff Report for Permanent Subcommittee on Investigations Hearing on Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities, November 9, 1999, pp. 881-882.

21. Similarly, the Federal Reserve Bank of New York concluded, after a study of forty institutions engaged in private banking, that:

Most banking institutions maintain and manage accounts for PICs in their U.S. offices; in fact, frequently PICs are established for the client – the beneficial owner of the PIC – by one of the institution's affiliated trust companies in an offshore secrecy jurisdiction. The majority of these institutions employ the sound practice of applying the same general KYC ["Know Your Customer"] standards to PICs as they do to personal private banking accounts – they identify and profile the beneficial owners. Most institutions had KYC documentation on the beneficial owners of the PICs in their U.S. files.

Federal Reserve Bank of New York, Guidance on Sound Risk Management Practices Governing Private Banking Activities, July 1997.

22. More recently, the Senate Permanent Subcommittee on Investigations issued a report describing this "sophisticated offshore industry," noting that:

A sophisticated offshore industry, composed of a cadre of international professionals including tax attorneys, accountants, bankers, brokers, corporate service providers, and trust administrators, aggressively promotes offshore jurisdictions to U.S. citizens as a means to avoid taxes and creditors in their home jurisdictions. These professionals, many of whom are located or do business in the United States, advise and assist U.S. citizens on opening offshore accounts, establishing sham trusts and shell corporations, hiding assets offshore, and making secret use of their offshore assets here at home. Experts estimate that Americans now have more than \$1 trillion in assets offshore and illegally evade between \$40 and \$70 billion in U.S. taxes each year through the use of offshore tax schemes . . . Utilizing tax haven secrecy laws and practices that limit corporate, bank, and financial disclosures, financial professionals often use offshore tax haven jurisdictions as a "black box" to hide assets and transactions from the Internal Revenue Service ("IRS"), other U.S. regulators, and law enforcement.

Minority & Majority Staff Report for Permanent Subcommittee on Investigations Hearing on Tax Haven Abuses: The Enablers, The Tools and Secrecy, August 1, 2006, p. 1.

23. Thus, although a United States taxpayer may open a private account in Switzerland, it is often the case that the bank will form a foreign shell entity in a third jurisdiction to act as the nominal owner of the assets. Keeping the account in the name of a foreign entity enables the bank to avoid reporting to the Internal Revenue Service payments that were essentially made to the United States taxpayer (the true owner of the account). The banks remove all visible connections between United States taxpayers and the offshore accounts by structuring the arrangement to appear as though foreign entities are the actual and sole beneficial owners.

C. UBS & Bradley Birkenfeld

24. UBS is a bank headquartered in Switzerland with branches throughout the United States, including two in Miami, Florida. According to its 2007 Annual Report, relevant portions of which are attached as Exhibit B, UBS provides "a comprehensive range of products and services, individually tailored for wealthy and affluent clients around the world . . ." According to the Annual Report, UBS Wealth Management International & Switzerland reported a record "net new money intake" of 125 billion Swiss Francs for 2007 alone, "leading to an all-time high in invested assets of [1,294 billion Swiss Francs] . . ."

25. On October 12, 2007, I interviewed Bradley Birkenfeld, a former employee of UBS, regarding his practices as a client advisor for United States taxpayers with UBS accounts in Switzerland. On June 19, 2008, Birkenfeld pleaded guilty to conspiring to assist Igor Olenicoff, a United States taxpayer, evade paying \$7.2 million in taxes by assisting him to conceal \$200 million of assets. Attached as Exhibit C is Birkenfeld's executed Statement of Facts offered at his allocution ("Statement"). Although the Statement does not specifically name UBS, I know from my prior conversation with Birkenfeld that UBS is indeed the "Swiss Bank" referenced in his Statement. Similarly, although Birkenfeld's indictment and Statement refers to an individual with the initials "I.O.," according to an article appearing in the Wall Street Journal and attached as Exhibit D, Olenicoff's attorney has confirmed this is indeed a reference to Olenicoff. The following description is based on information gathered during my interview with Birkenfeld and from his Statement.

26. Birkenfeld worked with UBS Global Wealth Management International & Switzerland. His primary duties being to acquire and develop new clients in the United States,

Birkenfeld was one of approximately 40 to 50 private banking employees of UBS who, with the encouragement of UBS management, traveled to the United States on a quarterly basis to service United States taxpayers. In order to avoid detection by U.S. authorities, according to Birkenfeld, UBS trained its bankers when entering the United States to state falsely on customs forms that they were traveling for pleasure rather than for business. UBS private bankers also traveled with encrypted laptop computers containing clients' portfolios.

27. According to Birkenfeld, UBS assisted wealthy United States taxpayers conceal their assets in offshore UBS accounts nominally held by sham entities formed in overseas jurisdictions, many of which were tax havens. UBS collaborated with United States taxpayers to prepare false and misleading IRS Forms W-8BEN ("Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding") claiming that the sham entities owned the accounts, and they failed to prepare and file IRS Forms W-9 ("Request for Taxpayer Identification Number and Certification") that should have identified the United States taxpayers as the owners of the accounts. Because it was made to appear as though non-United States taxpayers owned the accounts, UBS would not submit Forms 1099 reporting income earned on the offshore accounts. By concealing the United States taxpayers' ownership and control over the assets in the offshore accounts, UBS assisted these United States taxpayers evade the reporting and payment of their income taxes.

28. During our interview, Birkenfeld provided to me a letter from UBS addressed to all of its United States taxpayer clients with offshore accounts dated November 4, 2002. UBS sent the letter following its entry into a Qualified Intermediary Agreement ("Q.I. Agreement") with the Internal Revenue Service in order to assuage concerns of United States taxpayers that

the Q.I. Agreement would result in the disclosure of their identities to U.S. authorities. The Declaration of Barry Shott contains a full explanation of the Q.I. Agreement. In this letter UBS advised that United States taxpayers who did not want to provide Forms W-9 would continue to enjoy anonymity, and their identities would not be shared with U.S. authorities. This letter, which is attached as Exhibit E, states in part:

The QI regime fully respects client confidentiality as customer information are only disclosed to U.S. tax authorities based on the provision of a W-9 form. Should a customer choose not to execute such a form, the client is barred from investments in U.S. securities but under no circumstances will his/her identity be revealed. Consequently, UBS's entire compliance with its QI obligation does not create the risk that his/her identity be shared with U.S. authorities.

29. Because it assisted certain United States taxpayers conceal their ownership of the accounts, UBS divided its United States taxpayer clients into two groups: (1) those who were willing to submit Forms W-9 and have the bank file Forms 1099 reporting their earned income, and (2) those who wished to remained "undeclared."

30. UBS, through Birkenfeld, assisted Igor Olenicoff, a high-profile United States taxpayer, to conceal his ownership of offshore UBS accounts. Igor Olenicoff's story is illustrative because he is similarly situated to the "John Doe" class described in the summons. Many of Birkenfeld's representations regarding his dealings with Olenicoff have been extensively covered by both the national and the international media. Some of these news articles are attached as composite Exhibit F. According to a Wall Street Journal article attached as Exhibit D, Olenicoff was "a major player in Southern California real estate after starting his company, Olen Properties, in 1973." According to the article, Forbes magazine listed Olenicoff as the 286th richest U.S. citizen with an estimated worth of approximately \$1.7 billion.

31. According to Birkenfeld, Olenicoff, with UBS's assistance, formed a Bahamian corporation and fraudulently completed an IRS Form W-8BEN to make it appear as though the corporation was the beneficial owner of an offshore account that he had with UBS. To this and other bogus entities, Olenicoff transferred \$60 million, as well as a 147-foot yacht. Because it was in the name of a foreign entity, UBS did not report to the Internal Revenue Service any payments made to the account, and Olenicoff was able to refrain from reporting the income secure in the knowledge that UBS would maintain the traditional secrecy of Swiss accounts. In December 2007, Olenicoff pleaded guilty to a criminal count of filing a false 2002 tax return for omitting income earned from the offshore assets.

32. In a document attached as Exhibit G, UBS describes similar tactics to assist United States taxpayers evade the reporting and payment of their income taxes in a document found on its own website (last visited June 18, 2008). The document is called "Qualified Intermediary System: US withholding tax on dividends and interest income from US securities," and in it UBS acknowledges that:

While the main issue concerning [offshore entities] is whether they really are companies and also whether they really are the beneficial owner of the assets as defined by US tax law (facts which can be confirmed using the appropriate forms), the basic problem with trusts and foundations is that US tax law tends to regard them as transparent intermediaries with corresponding disclosure obligations.

For those clients who wish to use such trusts and foundations but who also wish to avoid the "corresponding disclosure obligations," the document continues, in relevant part, as follows (emphasis added):

[I]f there is no desire to disclose the identities of either the bank's contracting partner or the beneficial owner to the US tax authorities, the possible alternatives

are for US securities to be excluded from the portfolio, for the beneficial owner to hold them directly, *or for a structure to be put in place between the foundation/trust and the bank* which itself serves as an independent, non-transparent beneficial owner (e.g. a legal entity/corporation/company) and submits documentation to the QI to this effect.

33. Based on what I have learned from Birkenfeld and from UBS's website, it appears that UBS offered, throughout the years addressed by the "John Doe" summons, undeclared offshore accounts to United States taxpayers. In a document found on its own website, UBS suggests putting a "structure in place" between the beneficial owner and the bank in order to avoid disclosure of their beneficial ownership of the account to the Internal Revenue Service. In short, UBS, in plain language, suggests using a nominee entity as a means of avoiding the reporting requirements of the U.S. tax laws.

34. United States taxpayers in the "John Doe" class who choose to remain undisclosed to the Internal Revenue Service are likely failing to comply with the Internal Revenue Code provisions governing a United States taxpayer's obligations to report and pay tax on world-wide income. Given my general knowledge and experience concerning taxpayers who use banking and other services in offshore tax havens and financial privacy jurisdictions, as well as Birkenfeld's Statement, and the story of Olenicoff, I believe it is reasonable to believe that the unidentified United States taxpayers described as the John Doe class, above, may have failed to comply with provisions of the internal revenue law of the United States.

III. THE REQUESTED MATERIALS ARE NOT READILY AVAILABLE FROM OTHER SOURCES

35. As described in the Declaration of Barry Shott, the United States potentially has two means of obtaining Swiss banking records other than through UBS's compliance with the

proposed John Doe summons. First, the United States Competent Authority may make an official request to the Swiss government pursuant to the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income ("the Swiss treaty"). Second, the United States has a Mutual Legal Assistance Treaty (MLAT) with Switzerland which contains a mechanism for the exchange of information in certain circumstances. The MLAT, however, authorizes the exchange of information only in connection with a United States criminal investigation of specific charges. Here, the Internal Revenue Service is not currently conducting a criminal investigation of the John Doe class. By its terms, therefore, the MLAT is not available to obtain information for this civil investigation.

36. As Mr. Shott states in his declaration, the Swiss treaty historically has been applied by the Swiss to require that a request for records identify the particular taxpayer whose records are sought. We cannot identify the specific members of the John Doe class. Although the Swiss government has indicated a willingness to consider a treaty request for the records of the John Doe class of taxpayers, there is no guarantee the request will be successful since Swiss courts could have the final say in whether the records are produced under the Swiss treaty. Furthermore, proceeding under the Swiss treaty, which involves action by the Swiss government and its judicial system, might result in delays that could delay the investigation of the taxpayers in the John Doe class. Section 6501 of the Internal Revenue Code imposes a general three-year period of limitations on the assessment of taxes after a return is filed and a six-year period for returns with a substantial omission of income. A lengthy delay in pursuing a possibly unsuccessful treaty request could jeopardize the timely assessment of taxes against the taxpayers whose records are sought in this summons due to the expiration of the statute of limitations.

37. Finally, the source of any information obtained in response to a request made under the Swiss treaty is the same source from which the Internal Revenue Service will seek information pursuant to the summons - UBS. A request pursuant to the Swiss treaty is a request that the Swiss government use its legal processes to obtain information from UBS. UBS is the only source for the information, whether obtained in response to the Swiss treaty or the John Doe summons. I am not aware of any other institution or person that could provide this information without getting it from UBS in the first instance.

38. In light of the above, the records sought by the John Doe summons are not otherwise reasonably and timely available to the Internal Revenue Service.

IV. CONCLUSION

39. As a general proposition, Internal Revenue Service's experience has shown a direct correlation between unreported income and the lack of visibility of that income to the Internal Revenue Service. That is, income not subject to third party reporting (such as on Forms 1099) is far more likely to go unreported than income that is subject to such reporting. This general proposition is buttressed by examples such as Igor Olenicoff. In short, the Internal Revenue Service's experience provides a reasonable basis to believe United States taxpayers with "undeclared" offshore accounts with UBS are not in compliance with internal revenue laws with respect to such accounts.

I declare under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the foregoing is true and correct.

Executed this 26th day of June 2008.



DANIEL REEVES
Revenue Agent
Internal Revenue Service

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

IN THE MATTER OF THE TAX
LIABILITIES OF:

JOHN DOES, United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers.

DECLARATION OF BARRY B. SHOTT

I, Barry B. Shott, pursuant to 28 U.S.C. Section 1746, declare and state:

1. I am the duly commissioned Deputy Commissioner (International) with the Large & MidSize Business Division of the Internal Revenue Service. I am employed in the office of the Commissioner, Large & MidSize Business Division, and I am the United States Competent Authority. As the Competent Authority, I oversee the international exchange of information pursuant to tax treaties between the United States and foreign countries. Prior to my appointment as the Deputy Commissioner (International) I was a Director of Field Operations, and then Industry Director for the Financial Services Industry in the Large & MidSize Business Division.

While with the Financial Services Industry, I was directly responsible for oversight of the Qualified Intermediary Program.

The Qualified Intermediary Program

2. The United States Government issued regulations, effective in 2001, confirming that the IRS would require that thirty (30) percent be withheld on income earned with respect to United States investments maintained in foreign financial accounts unless the foreign banks gave U.S. withholding agents documentation obtained from the beneficial owners of the accounts.

3. In order to simplify the documentation procedure, the IRS created the Qualified Intermediary Program ("Q.I. Program"). Foreign banks that agreed to follow certain procedures could assume the responsibilities of a U.S. withholding agent (including determining which customers qualified for treaty benefits, such as reduced or eliminated withholdings, based on documents establishing the identity of the account's beneficial owner) without disclosing to U.S. authorities the identities of these non-United States taxpayers. This was a valuable benefit to foreign banks in maintaining their business with respect to the holdings of United States investments by non-United States taxpayers.

4. In order for the Q.I. Program to function as intended, the foreign banks must correctly and truthfully ascertain the identity and citizenship/residence of its clients. Thus, the Q.I. Program requires foreign banks to obtain and maintain IRS Forms W-8BEN, which report the identities of non-United States account holders, or IRS Forms W-9, which report the identities of United States account holders. Model copies of Forms W-8BEN and W-9 are attached as Exhibits A and B, respectively. In addition, the Q.I. Program requires foreign banks to confirm client identities with greater scrutiny than in the past. Specifically, foreign banks

must examine formal identification, citizenship and residency documentation. Clients claiming non-United States residence/citizenship are obligated to document their status, especially where bankers have contact with the client in the United States, such as meetings in person and contacts via telephone, mail, e-mail and fax.

5. Pursuant to the Q.I. Program, foreign banks maintaining accounts for United States clients are required to prepare and transmit to the IRS, Forms 1099 reporting payments on United States investments. Generally, the Form 1099 reporting cover interest, dividends and sales proceeds on United States investments. The Form 1099 is issued by the bank to the United States taxpayer and the information contained therein is provided to the IRS.

6. Where a United States taxpayer refuses to submit the proper documentation, a foreign bank that is party to a Q.I. Agreement must backup withhold at twenty-eight (28) percent on all U.S. source income, just like a U.S. bank. If a foreign bank that is party to a Q.I. Agreement (1) knows that an account holder is a United States taxpayer who should be providing documentation, and (2) the foreign bank is prohibited by law (including by contract) from disclosing the account holder, then the foreign bank must request from the account holder the authority either to disclose his identity or to exclude U.S. securities from his account. If the foreign bank does not receive authority to disclose the owner's identity or to exclude U.S. securities in 60 days, it must sell the U.S. securities in the account.

7. If clients claiming non-United States residence/citizenship do not document their status, the foreign bank is required to apply various presumptions, all of which would result in withholding on U.S. source payments.

8. UBS entered into a Q.I. Agreement with the IRS in 2001.

Access to Swiss Bank Records Through Treaty Requests

9. One of my current responsibilities is exchanges of information under tax conventions, including the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (the "Swiss treaty"). Article 26 of the Swiss treaty, which was signed at Washington on October 2, 1996, provides for the exchange of information as is necessary "for the prevention of tax fraud or the like."

10. In our experience, Article 26 has been applied consistently by the Swiss Competent Authority, since the inception of the treaty, to provide the Internal Revenue Service assistance only in response to specific requests that name a particular taxpayer. It has also been our experience that the Service must have an existing examination or investigation concerning a specific taxpayer and it must make detailed factual allegations regarding conduct constituting tax fraud by the taxpayer in accordance with the Mutual Agreement of January 23, 2003, between the Competent Authorities of the Swiss Federation and the United States, regarding Article 26.

11. Recently, representatives of the Swiss government indicated a willingness to consider a request under the treaty that did not specifically identify the taxpayers whose records were sought. Even if such a request is made pursuant to the Swiss treaty, the account holders whose information is the subject of the request would be notified by the Swiss government and granted the right to object to the production of their records. If the account holder objects to the production of the records, a Swiss court would determine if the records could be produced under the treaty. The Swiss court would approve the production of records only if it found evidence of tax fraud.

12. The United States also has a Mutual Legal Assistance Treaty (MLAT) with Switzerland, which entered into force January 23, 1977. The MLAT also provides a mechanism for the exchange of information, but applies only to criminal investigations. Because the investigation in which the UBS John Doe summons will be issued is civil in nature, the MLAT does not provide a means for securing the information sought in the summons.

I declare under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the foregoing is true and correct.

Executed this 24 day of June 2008.


BARRY E. SHOTT
Deputy Commissioner,
Internal Revenue Service

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil No. **09-20423** **AM-GOLD**

UNITED STATES OF AMERICA,)
)
Petitioner,)
)
v.)
)
UBS AG,)
)
Respondent.)

[MEALILEY]

FILED by 2 D.C.
FEB 19 2009
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

PETITION TO ENFORCE JOHN DOE SUMMONS

The United States of America petitions this Court for an order enforcing the IRS "John Doe" summons served on the respondent, UBS. In support, the United States alleges as follows:

1. The Court has jurisdiction over this case under 26 U.S.C. §§ 7402 and 7604(a) and 28 U.S.C. §§ 1340 and 1345.
2. UBS is an international bank that is also found within this district.
3. Daniel Reeves is a duly commissioned Internal Revenue Agent and Offshore Compliance Technical Advisor employed in the Small Business/Self Employed Division of the Internal Revenue Service. He is assigned to the Internal Revenue Service's Offshore Compliance Initiative.
4. Revenue Agent Reeves is conducting an investigation to determine the identity of US taxpayers who have violated the Internal Revenue Code by failing to report the existence of, and income earned in, undeclared Swiss accounts with UBS.

Permanent Subcommittee on Investigations
EXHIBIT #7

5. On February 18, 2009, this Court approved a "Deferred Prosecution Agreement" (DPA) between UBS and the United States, in which UBS admitted that it had engaged in certain specified criminal activities in violation of U.S. law. United States v. UBS AG, 09-60033-CR-COHN (S.D. Fl.) Those activities relate to the matters discussed in the Declaration of Daniel Reeves, filed in support of this petition. The Court should take judicial notice of the DPA and the Court's files in that case. United States v. Rev., 811 F.2d 1453, 1457 n. 5 (11th Cir. 1987).

6. Attached to the DPA is a Statement of Facts that UBS admits are true. In the Statement of Facts, UBS admitted the following, among other things:

- a. "Beginning in 2000 and continuing until 2007, UBS . . . participated in a scheme to defraud the United States and . . . the IRS, by actively assisting or otherwise facilitating a number of U.S. individual taxpayers in establishing accounts at UBS in a manner designed to conceal the U.S. taxpayers' ownership or beneficial interest in such accounts." ¶ 4.A.
- b. UBS "private bankers and managers would actively assist or otherwise facilitate certain undeclared U.S. taxpayers, who such private bankers and managers knew or should have known were evading United States taxes, by meeting with such clients in the United States and communicating with them via U.S. jurisdictional means in a regular and recurring basis with respect to the their UBS undeclared accounts. This enabled the U.S. clients to conceal from the IRS the active trading of securities held in such accounts and/or the making of payments and/or asset transfers to or from such accounts. Certain UBS executives and managers who knew of the conduct described in this paragraph continued to operate and expand the U.S. cross-border business because of its profitability." ¶ 4.C.
- c. "In or about 2004, the UBS Wealth Management International business changed its compensation approach . . . Thereafter, the managers of the U.S. cross-border business implemented this new compensation structure in a way that provided incentives for U.S. cross-border private bankers to expand the size of the U.S. cross-border business. This encouraged those private bankers to have increased contacts in the United States with U.S.-resident clients via travel to the United States and contact with U.S. clients via telephone, fax, mail and/or e-mail." ¶ 5.

d. "During the relevant period [2001 through 2007], Swiss-based UBS private bankers also traveled to the United States to meet with certain of their U.S. private clients, . . . These [45 to 60 Swiss-based] private bankers traveled to the United States an average of two to three times per year, in trips that generally varied in duration from one to three weeks, and generally tried to meet with three to five clients per day. An internal UBS document estimated that U.S. cross-border business private bankers had made approximately 3,800 visits with clients in the United States during 2004. In addition, while in Switzerland, these private bankers would communicate via telephone, fax, mail and/or e-mail with certain of their private clients in the United States about their account relationships, including on occasion to take securities transaction orders in respect of offshore company accounts. Private bankers in the U.S. cross-border business typically traveled to the United States with encrypted laptop computers to maintain client confidentiality and received training on how to avoid detection by U.S. authorities while traveling to the United States." ¶ 6.

e. "The U.S. cross border business generated approximately \$120 million - \$140 million in annual revenues for UBS. . .". ¶ 8. This conflicts with the estimate of two other sources that UBS's cross-border business generated \$200 million in annual profits. See, Reeves Decl., ¶ 43.

7. On July 1, 2008, this Court issued an order granting the United States leave to serve a "John Doe" summons on UBS AG. Case No. 08-21864-MC-LENARD/GARBER.

8. Internal Revenue Agent Arthur S. Brake is authorized to issue "John Doe" summonses pursuant to 26 U.S.C. § 7602, 26 C.F.R. § 301.7602-1, 26 C.F.R. § 301.7602-1T, and Internal Revenue Service Delegation Order No. 4 (as revised).

9. In furtherance of the investigation described in ¶ 4 above, on July 21, 2008 Revenue Agent Brake issued a "John Doe" summons to UBS. That summons directed UBS to appear before Revenue Agent Reeves or his designee on August 8, 2008 at 10:00 a.m., at the place identified in the summons, to give testimony and produce for examination certain books, papers, or other data as described in the summons.

10. Revenue Agent Brake served an attested copy of the summons on July 21, 2008 by delivering it in person to James Dow, Director & Head of Compliance for UBS.

11. UBS failed to appear on August 8, 2008. To date, UBS has failed to comply in full with the summons.

12. Except for the items specifically identified in Revenue Agent Reeves's Declaration filed with this Petition, the testimony and documents described in the summons are not already in the possession of the IRS.

13. All administrative steps required by the Internal Revenue Code for the issuance of the summons have been followed.

14. The testimony, books, records, papers, and/or other data sought by the summons may be relevant to the IRS's investigation.

15. The identities of the "John Does" are unknown. Accordingly, the IRS does not know whether there is any "Justice Department referral," as that term is defined by 26 U.S.C. § 7602(d)(2), in effect with respect to any unknown "John Doe" for the years under investigation.

16. The Declarations of Daniel Reeves and Barry B. Shott filed with this Petition establish the four elements necessary to prove a *prima facie* case to enforce the summons:

- a. The investigation will be conducted pursuant to a legitimate purpose.
- b. The information sought may be relevant to that purpose.
- c. The information sought is not already in the possession of the IRS.
- d. All administrative steps required by the Internal Revenue Code have been followed.

United States v. Powell, 379 U.S. 48, 57-58 (1964). Accordingly, the burden now shifts to the respondent to show why the summons should not be enforced. United States v. Medlin, 986 F.2d 463, 466 (11th Cir. 1993).

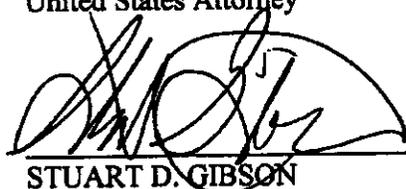
WHEREFORE, the United States respectfully prays that the Court:

A. Enter an order directing the respondent to show cause, if any it has, why it should not comply with summons in all respects; and,

B. Enter an order directing the respondent to comply in full with the summons, by ordering the respondent to appear, testify and produce documents demanded in the summons, before Revenue Agent Daniel Reeves, or such other officer or employee of the IRS that it may designate, within 10 days of entry of the Order, or at such later time and place as may be set by Revenue Agent Reeves or such other officer or employee of the IRS.

R. ALEXANDER ACOSTA
United States Attorney

By:

 2/18/2009
STUART D. GIBSON

Senior Litigation Counsel, Tax Division
U.S. Department of Justice
P.O. Box 403
Washington, D.C. 20044
Telephone: (202) 307-6586
Facsimile: (202) 307-2504
Stuart.D.Gibson@usdoj.gov

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST indicate All Re-filed Cases Below.**

<p>(a) PLAINTIFFS United States of America</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Stuart D. Gibson, U.S. Department of Justice Tax Division, P.O. Box 403 Washington, DC 20044 (202) 307-6586</p>	<p>DEFENDANTS UBS AG</p> <p>County of Residence of First Listed Defendant <u>Dade</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p>
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FILED by D.C.
 FEB 19 2009
 STEVEN M. LARIMORE
 CLERK OF DISTRICT COURT
 PASO DUELA - JAL

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)</p> <table border="0" style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/></td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Foreign Nation</td> <td><input type="checkbox"/></td> </tr> </table>	Citizen of This State	<input type="checkbox"/>	Citizen of Another State	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>																		
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 362 Personal Injury - Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. & Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 463 Habeas Corpus-Alien Detainee</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395(f))</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Arbitration</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Re-filed (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) _____ 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):

a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE Lenard DOCKET NUMBER 08-mc-21864-JAL

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

26 U.S.C. Section 7604, Petition to Enforce "John Doe" Summons

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD:

DATE: 2/18/2009

FOR OFFICE USE ONLY

AMOUNT NFR RECEIPT # _____ IFF _____

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil No. **09-20423** **MCV - GOLD**

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	[McALILEY,
)	
v.)	
)	
UBS AG,)	
)	
Respondent.)	

DECLARATION OF DANIEL REEVES

Daniel Reeves, pursuant to 28 U.S.C. § 1746, declares:

1. I am a duly commissioned Internal Revenue Agent and Offshore Compliance Technical Advisor employed in the Small Business/Self Employed Division of the Internal Revenue Service. I am assigned to the Internal Revenue Service's Offshore Compliance Initiative. The Offshore Compliance Initiative develops projects, methodologies, and techniques for identifying US taxpayers who are involved in abusive offshore transactions and financial arrangements for tax avoidance purposes. I have been an Internal Revenue Agent since 1977, and have specialized in offshore investigations since 2000. As a Revenue Agent, I have received training in tax law and audit techniques, and have received specialized training in abusive offshore tax issues. I also have extensive experience in investigating offshore tax matters.

2. Under the authority of 26 U.S.C. § 7602, 26 C.F.R. § 301.7602-1, and Internal Revenue Service Delegation Order No. 4 (as revised), Revenue Agent Arthur S. Brake is authorized to issue administrative summonses.

<p>Permanent Subcommittee on Investigations</p> <p>EXHIBIT #8</p>

3. UBS AG is a Swiss Bank with offices in more than fifty countries, including the United States, where it has 437 offices. Among other services, UBS provides private banking services to extremely wealthy US taxpayers, including individuals whose net worth exceeds \$1 billion. Unless otherwise indicated, all references in this Declaration to "UBS" or "UBS AG" refer to those offices located, or those employees based, in Switzerland.

4. In my capacity as a Revenue Agent, I am conducting an investigation to determine the identities of US taxpayers who have violated the Internal Revenue Code by failing to report the existence of, and income earned in, undeclared Swiss accounts with UBS.

5. On July 1, 2008, this Court granted a petition filed by the United States for leave to serve a "John Doe" summons on UBS, under the authority of 26 U.S.C. §7609(f).

6. On July 21, 2008, in furtherance of my investigation, Revenue Agent Brake issued a "John Doe" summons to UBS AG. On that same day, Revenue Agent Brake served that summons on UBS by handing a copy to James Dow, Director and Head of Compliance for UBS in Miami, Florida as reflected on the reverse side of the summons. A copy of the summons is attached as Ex. 1.

7. The summons describes the "John Doe" class as:

United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates in Switzerland and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all payments made to such United States taxpayers.

8. The summons directed UBS to appear at 10:00 a.m. on August 8, 2008, to give testimony and produce for examination certain books, papers, records, or other data as described in the summons.

9. UBS failed to appear at the time and place required in the summons. To date, it has failed to comply in full with the summons.

10. Except as otherwise indicated in this Declaration, the books, records, papers and other data sought by the summons are not already in the possession of the IRS.

11. The testimony, books, records, papers, and/or other data sought by the summons will reveal the identities of US taxpayers who did not disclose the existence of their Swiss accounts to the IRS, and who may not have reported to the IRS income related to those accounts.

12. The identities of the "John Does" are unknown. Accordingly, the IRS does not know whether there is any "Justice Department referral," as that term is defined by 26 U.S.C. § 7602(d)(2), in effect with respect to any unknown "John Doe" for the years under investigation.

13. All administrative steps required by the Internal Revenue Code for issuance of the summons have been followed.

I. THE SUMMONS SATISFIES THE POWELL REQUIREMENTS

A. The Internal Revenue Service Issued the Summons for a Legitimate Purpose

14. US taxpayers are required to file annual income tax returns with the IRS, disclosing the existence of, and reporting any income earned from, foreign financial accounts. Taxpayers who fail to make these disclosures on their income tax returns have failed to comply with internal revenue laws. Many US taxpayers have long employed offshore accounts in countries with strict banking secrecy laws (such as Switzerland) as a means to conceal assets and

income from the IRS. This conduct has deprived the United States Treasury of untold billions of dollars in unpaid taxes.

15. Thus far, my investigation has revealed that many US taxpayers concealed their assets in this manner by using secret UBS Swiss bank accounts. UBS describes the secret accounts maintained for its US customers as "undeclared accounts." By using such undeclared accounts, these US taxpayers have violated internal revenue laws requiring full disclosure of all foreign financial accounts and all income. These US taxpayers are the focus of my investigation.

16. UBS, the summoned party, is a Swiss bank that collaborated with many US taxpayers to establish offshore accounts, and actively conceal those accounts from the IRS. UBS has helped these US taxpayers violate US laws by failing to report the existence of foreign bank accounts under their ownership or control, and failing to report and pay US income taxes on income earned in those accounts. The IRS seeks documents from UBS that would identify and help the IRS to investigate these US taxpayers.

B. The Summoned Information May Be Relevant to the Internal Revenue Service's Legitimate Purpose for Issuing the Summons

17. The information sought by the summons may be relevant to the IRS's investigation of the "John Does." The summoned materials include:

- documents identifying each US taxpayer within the "John Doe" class, as well as any documents pertaining to any offshore entities used to hide the true beneficial owner of undeclared accounts. These documents are necessary to identify US taxpayers involved in this scheme, as well as any entities that may have been used to conceal the true owners' identities;
- documents reflecting any activity in the undeclared accounts. This information could aid in the determination of taxable income;

- documents identifying relationship managers for each US taxpayer. Relationship managers may be found within the United States and would be subject to questioning by the IRS. Relationship managers may know more about why and how the US taxpayers formed and concealed their Swiss accounts from the IRS;

- documents relating to the creation of the undeclared accounts and any foreign entities used to conceal such accounts. These documents will further reveal precisely how US taxpayers conducted their affairs to avoid compliance with internal revenue laws, and may reveal whether funds transferred to the accounts had previously been taxed;

- documents pertaining to the referral of each US taxpayer interested in offshore accounts from UBS offices in the United States to UBS offices in Switzerland. These documents will demonstrate the identity of the US taxpayers, the types of products and services provided by UBS, as well as UBS's referral process, and may reveal facts pertaining to the source of the funds in the offshore accounts and the potential liability of the US taxpayers for penalties; and,

- documents related to any domestic bank accounts held by US taxpayers in the "John Doe" class. This information may establish the existence of a related offshore account, may establish the taxability of funds in the offshore accounts, and may additionally uncover potential collection sources for any taxes that may be assessed.

C. The Summoned Information Is Not Already in the Government's Possession

18. UBS has provided to the IRS a list of 323 US accounts used to send or receive wire transfers to or from UBS Swiss accounts held in the same name, as well as related account statements for 57 of the 323 US accounts. UBS provided these names and account numbers after the United States requested that UBS search for wire transfers between accounts within the United States and accounts in Switzerland. UBS produced only US-based records, and did not produce any Swiss-based records for these accounts.

19. The IRS also has possession of the following documents:

- six client-specific binders, each relating to one particular member of the "John Doe" class. Those binders do not identify any of the clients to whom the accounts relate, as UBS redacted all client-identifying information from the documents before producing them to the IRS. UBS provided those binders to the IRS as examples of types of documents in its possession;

- documents provided by Bradley Birkenfeld, a former director in the private banking division of UBS, during an interview that I conducted on October 12, 2007; and

- documents provided by UBS through the Swiss Banking Commission, with client-identifying information redacted.

20. On July 16, 2008, the United States made a formal request to the Swiss Government for records pursuant to the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income ("Treaty Request"). Thus far no records have been produced in response to the Treaty Request. The Declaration of Barry Shott explains the present status of the Treaty Request.

D. The Summons Meets All Administrative Requirements

21. All procedures required by the Internal Revenue Code, as amended, were followed with respect to the summons.

II. UBS HAS ASSISTED ITS US CLIENTS IN THE "JOHN DOE" CLASS TO ESTABLISH AND MAINTAIN "UNDECLARED" ACCOUNTS, AND TO CONCEAL THOSE ACCOUNTS FROM US AUTHORITIES.

A. A Congressional Investigation Concluded UBS has Engaged in Conduct that Assisted US Taxpayers to Violate US Law With Impunity.

22. Following an investigation, in 2008 the Permanent Subcommittee on Investigations of the United States Senate Committee on Homeland Security and Governmental Affairs (PSI) issued a report entitled "Tax Havens and U.S. Tax Compliance" ("Tax Haven Report"). The portion of the Tax Haven Report dealing with UBS, pp. 80-110, is attached as Ex. 2. In the Tax Haven Report, the PSI concluded that, from at least 2000 to 2007, UBS directed its Swiss bankers to target US clients willing to open bank accounts in Switzerland. According to the Tax Haven Report, "In 2002, UBS assured its U.S. clients with undeclared accounts that U.S. authorities

would not learn of them, because the bank is not required to disclose them; UBS procedures, practices and services protect against disclosure; and the account information is further shielded by Swiss bank secrecy laws.” (Ex. 2 at 83) The report also noted:

a. “Until recently, UBS encouraged its Swiss bankers to travel to the United States to recruit new U.S. clients, organized events to help them meet wealthy U.S. individuals, and set annual performance goals for obtaining new U.S. business.” (Id.)

b. “[UBS] also encouraged its Swiss bankers to service U.S. client accounts in ways that would minimize notice to U.S. authorities. The evidence suggests that UBS Swiss bankers marketed securities and banking products and services in the United States without an appropriate license to do so and in apparent violation of U.S. law and the bank’s own policies.” (Id.)

c. Between 2000 and 2007, UBS opened “tens of thousands of accounts in Switzerland that are beneficially owned by U.S. clients, hold billions of dollars in assets, and have not been reported to U.S. tax authorities.” The report notes that although these accounts were owned by US taxpayers, the account owners did not file Forms W-9 identifying themselves as the owners, and the bank did not file Forms 1099 reporting the earnings on those accounts to the IRS. The bank refers to these accounts as “undeclared accounts.” (Ex. 2 at 83-84).

d. UBS officials told the PSI in 2008 that UBS maintains accounts in Switzerland for about 20,000 US clients, and that only about 1,000 of those accounts have been “declared” to the US authorities. According to UBS, the 19,000 US clients with undeclared accounts hold about \$18 billion in undeclared assets. (Ex. 2 at 84).

e. UBS recognized that US taxpayers “may have a legal obligation to report a foreign trust, foreign bank account, or foreign income to the IRS.” (Ex. 2 at 87).

B. UBS Internal Documents Show that UBS Systematically Maintained a Significant and Ongoing Presence in the United States.

23. In a December 2004 internal report, UBS estimated that in the “last year,” 32 different UBS Client Advisors traveled to the United States on business. “On average, each Client Advisor visited the US for 30 days per year, seeing 4 clients per day. This means that approximately 3,800 clients are visited in the US per year by [Wealth Management and Business Banking] Client Advisors based in Switzerland.” (Ex. 3 at U00006000)

24. In that same report, UBS estimated that it had approximately 52,000 undeclared “account relationships” with US taxpayers, containing assets valued at 17 billion CHF (Swiss Francs), the equivalent of about \$14.8 billion at the time. (Ex. 3 at U00005994) About 32,940 of those undeclared accounts contain only cash, while the remaining 20,877 accounts contain at least some securities. Although there are more cash accounts than securities accounts, the securities accounts held approximately 39 times the amount of assets in the cash accounts. (Ex. 4 at U00006029).

C. UBS Assisted its US Customers in Avoiding their Reporting Obligations Under US Law, by Counseling Them to Sell their US Holdings and by Helping Them Establish Sham Offshore Ownership Entities to Avoid UBS’s Obligations Under the QI Program.

25. US taxpayers who control cash-only accounts have a legal obligation to disclose the existence of those accounts to the IRS, and to report any income earned in those accounts on their annual income tax returns. US taxpayers who control securities accounts must also disclose to the IRS their accounts that contain securities. For accounts containing US securities, however,

UBS and the IRS entered into a Qualified Intermediary Agreement (QI Agreement, See Shott Declaration) that required UBS to procure Forms W-9 from its US clients. The Forms W-9 provided UBS with the information necessary for it to file Forms 1099 with the IRS reporting income paid on the offshore accounts. Thus, the QI Agreement should have enabled the IRS to learn directly from UBS the identities of US taxpayers holding US securities accounts at UBS. As explained in greater detail in the following section, this did not happen.

26. UBS and its US clients knew that it violated US law for US taxpayers to maintain undeclared accounts with UBS in Switzerland – whether the accounts held cash or securities. In fact, UBS had its undeclared account holders complete a boilerplate declaration swearing that they were aware that their relationship with UBS could have legal ramifications. In the declaration’s original form, attached hereto as Ex. 5, a client was required to state that he is “liable to tax in the USA as a US person.” (Ex. 5 at U00014257).

27. As originally presented to clients, the boilerplate declaration required the client to state, *“I would like to avoid disclosure of my identity to the US Internal Revenue Service . . .”* (Emphasis added) (*Id.*). According to a UBS internal e-mail, many US taxpayers refused to sign the declaration since it “fully incriminates a US person of criminal wrongdoing should this document fall into the wrong hands.” As a result of those complaints from its US clients, UBS revised the form to state simply that the client “consent[s] to the new tax regulations.” (Ex. 6)

28. As explained in greater detail in the Declaration of Barry Shott, in 2001 UBS entered into a Qualified Intermediary (QI) Agreement with the IRS. As described in greater detail below, UBS systematically violated and circumvented its obligations under the QI Agreement, all in order to help its US clients conceal from the IRS their Swiss accounts at UBS.

29. According to former UBS private banker, Bradley Birkenfeld, UBS recognized that its entry into the QI Agreement could damage its US business, as its responsibilities under the QI Agreement could defeat the purpose of many US taxpayers in opening their offshore accounts in the first place. (Ex. 7 at 3).

30. The Tax Haven Report concluded that soon after entering into the QI Agreement UBS, "took steps to assist its U.S. clients to structure their Swiss accounts in ways that avoided U.S. reporting rules under the QI Program." (Ex. 2 at 87)

31. One way that UBS proposed its US customers could avoid disclosing their Swiss accounts to the IRS was for the customer to liquidate all US securities from those accounts, and block the accounts from acquiring US securities in the future. (Ex. 5, p. U00014257) This would enable US customers to continue to trade non-US securities in their Swiss accounts, with the assurance that UBS would not disclose their accounts to the IRS.

32. Another option proposed by UBS was to make it appear as though non-US taxpayers were the actual beneficial owners of these accounts, thereby enabling UBS to forgo reporting any income from those accounts to the IRS. UBS and its clients achieved this result by helping their US clients to arrange for the undeclared accounts to be listed as owned by foreign corporations or other entities that were, in fact, shams. In truth, the accounts were owned and controlled by US taxpayers. These clients, with UBS's knowledge and active assistance, failed to prepare IRS Forms W-9 declaring themselves as US taxpayers and providing the information necessary for UBS to report their income to the IRS. Then, with UBS's knowledge and assistance, these US taxpayers prepared false and misleading IRS Forms W-8BEN ("Certificate of

Foreign Status of Beneficial Owner for United States Tax Withholding”), reporting that their sham entities actually owned the accounts.

33. UBS understood that this “structured solution” could violate US tax laws, as well as its obligations under the QI Agreement. In a memorandum discussing the effect of the QI Agreement on UBS’s servicing of US taxpayers, a UBS official explained that:

... we cannot recommend products (such as the use of offshore companies ...) to our clients as an ‘alternative’ to filing a Form W-9. This could be viewed as actively helping our clients evade US tax, which is a U.S. criminal offence. Further, such recommendations could infringe upon our Qualified Intermediary status, if, on audit in 2003, it is determined that we have systematically helped US person (sic) to avoid the QI rules. What we can do is suggest that clients seek external professional advice and offer them a choice of approved service providers, if they request it.

(Ex. 8 at U00014262). Thus, UBS acknowledged that it could be helping its US clients to commit tax crimes, if its officials recommended that its US clients use offshore entities in order to prevent disclosure of their identity.

34. In effect, UBS made precisely that recommendation, when it gave its US customers a list of “approved service providers.” UBS expected those providers to recommend how its US customers could avoid detection by US tax authorities, by having their UBS accounts held in the name of dummy offshore entities. To determine which service providers to recommend, on August 17, 2004, six UBS officials met to review presentations from competing service providers who were invited, “to make a short presentation on the structures/vehicles that you recommend to U.S. and Canadian clients who do not appear to declare income/capital gains to their respective tax authorities.” (Ex. 9)

35. UBS went farther to advance this plan. In a document found on its website, “Qualified Intermediary System: US withholding tax on dividends and interest income from US

securities" (last visited June 18, 2008), UBS counsels clients who wish to hold their accounts through simple trusts:

While the main issue concerning [offshore entities] is whether they really are companies and also whether they really are the beneficial owner of the assets as defined by US tax law (facts which can be confirmed using the appropriate forms), *the basic problem with trusts and foundations is that US tax law tends to regard them as transparent intermediaries with corresponding disclosure obligations.* (Emphasis added).

(Ex. 10 at 3). For those clients who wish to continue holding their accounts through such trusts and foundations but who also wish to avoid the "corresponding disclosure obligations," the document suggests, in relevant part, as follows (emphasis added):

[I]f there is no desire to disclose the identities of either the bank's contracting partner or the beneficial owner to the US tax authorities, the possible alternatives are for US securities to be excluded from the portfolio, for the beneficial owner to hold them directly, *or for a structure to be put in place between the foundation/trust and the bank* which itself serves as an independent, non-transparent beneficial owner (e.g. a legal entity/corporation/company) and *submits documentation to the QI to this effect.*

(Ex. 10 at 3).

36. As noted above, UBS acknowledged that it would be illegal to recommend that its US customers use offshore entities to avoid their US reporting obligations. Nonetheless in 2004, on its own initiative, UBS planned to create approximately 900 offshore corporations for its largest US customers – those holding UBS accounts with asset balances exceeding 500,000 CHF. It intended to create 650 such dummy corporations for customers it could not contact by October 31, 2004, and another 250 dummy corporations for customers it could contact, and who UBS expected would employ these dummy corporations to hide their Swiss accounts from the IRS.

(Ex. 11, U00005303)

37. Although UBS unabashedly recommended that its clients use nominee entities to circumvent the QI Agreement – and, accordingly, violate US tax laws – the bank remained concerned that US authorities would discover this scheme. At one point, UBS received word of a possible undercover IRS investigation into UBS’s compliance with the QI Agreement. Though a UBS official expressed “doubts” as to the veracity of the report, he nevertheless admonished that the bank should “be on the safe side” and instructed client advisors “to be prudent in first time clients re QI, possible structures etc. mentioning of solutions only to clients which we already know since some time.” (Ex. 12 at U00007530)

38. The documents compiled at Exhibit 13 demonstrate the precise way that UBS and its clients used to structure these accounts, in the following sequence:

a. A US taxpayer directly holds a “predecessor account” with UBS which, in this example, had been opened in 1985. (U00000816-817)

b. In 2000, shortly before the QI Agreement was to take effect, the US taxpayer formed an overseas nominee corporation, which formally resolved to open a new Swiss account with UBS. (U00000854 and 857)

c. Following its formation, the offshore entity opened a new, separate account with UBS. (U00000858-859)

d. As part of the account opening process, UBS had the US taxpayer complete an internal UBS form entitled “Verification of the beneficial owner’s identity,” for the newly-opened account. (Even though the new account was ostensibly opened by the overseas entity, this particular form confirmed for UBS’s internal purposes that, in fact, the beneficial owner was the US taxpayer.) (U00000863)

e. The US taxpayer then executed a Form W-8BEN representing that the overseas entity was the beneficial owner for IRS purposes. In this important respect, the Form W-8BEN directly contradicted the UBS form "Verification of the beneficial owner's identity." Thus, UBS maintained its own form identifying the actual beneficial owner of the account – the US taxpayer – while simultaneously accepting a fraudulent Form W-8BEN. (U00000865)

f. UBS relied on the knowingly fraudulent Form W-8BEN to avoid reporting the true ownership of the account to the IRS.

39. UBS used this procedure to help Igor Olenicoff hide from the IRS his beneficial ownership of undeclared accounts, thereby helping him to evade approximately \$7.2 million in US income taxes, as described more fully in ¶ 59 below.

D. UBS Took Affirmative Steps to Prevent the United States Government from Discovering its Violations of US Securities and Tax Laws.

40. Except for two subsidiaries that UBS established in London (UBS Investment Advisors Ltd., Ex. 14) and in Switzerland (UBS Swiss Financial Advisors, AG, Ex. 3 at U00005996) to provide investment advisory services to US customers who had submitted Forms W9, UBS's offices and affiliates located outside of the United States are not licensed by the Securities and Exchange Commission ("SEC") to provide broker/dealer services to US taxpayers. (Ex. 15 at U00013486).

41. According to an internal UBS document, because it is not an SEC-licensed broker, UBS may not establish or maintain "relationships for securities services" with US taxpayers if doing so requires communicating with the client by using US jurisdictional means, which UBS defined as "telephone, mail, e-mail, advertising, the internet or personal visits into the United States." (Ex. 15 at U00013487). As further explained in a UBS memo:

Many of the core PB ["Private Banking"] services provided by UBS to U.S. persons out of Switzerland are problematic due to the very restrictive approach the U.S. regulatory regime takes with regard to permissible cross-border activities. (Ex. 16 at U00007121).

42. In the Tax Haven Report, the PSI concluded, "UBS Swiss bankers marketed securities and banking products and services in the United States without an appropriate license to do so and in apparent violation of U.S. law and the bank's own policies." (Ex. 2 at 83).

43. In its internal documents, UBS acknowledged that accepting cross-border trades with its US clients would violate US securities law. And yet, despite knowing such trading violated US law, UBS was committed in "exceptional circumstances" to accepting such cross-border trades (Ex. 17 at U00013755). Those cross-border services earned \$200 million per year in profit for UBS. (Ex. 7 at 3, Ex. 28 at ¶ 4).

44. Not only did UBS Client Advisors conduct business in person within the United States. UBS also conducted its cross-border business through telephone, facsimile and e-mail.

45. In one case, a UBS Client Advisor went so far as to conceal UBS's cross-border securities trading through the use of an elaborate code. In one report, the Advisor recounts a "new code to facilitate discreet email contacts" created by his client, with the following translation key:

EUR = orange
USD = green
GBP = blue

100K = C
250K = 1 nut
1 M = a swan

The meeting report then proceeds to use code as follows: "The [REDACTED] are all comfortable: about 2.5 orange nuts @13710 (3%) and about 2.05 green nuts @13270 (12%). All clear?"

Using the key, the client requested a purchase of 625,000 euros @13710(3%) and about 512,500 US dollars at @13270(12%). (Ex. 18)

46. UBS acknowledged that maintaining both an actual and a virtual presence in the United States was critical to building and sustaining its US business. One UBS study concluded that either discontinuing the use of telephone and e-mail to provide "investment advice," or banning US travel, would be tantamount to UBS's "virtual/real exit" from the US market. (Ex. 19 at U00005989).

47. UBS maintains a "Risk Committee" as part of its organizational structure. The Risk Committee identifies, assesses, and makes recommendations regarding the risks associated with the bank's various activities. In 2004, the Risk Committee concluded, "the key risk arises from UBS AG in Switzerland being a non-SEC registered entity communicating with such clients in (or into) the US concerning securities." (Ex. 3 U00005995).

48. In a 2004 training session, UBS acknowledged that its cross-border brokerage services could trigger the United States' "broad subpoena powers [or] long-arm jurisdiction rules." (Ex. 20 at U00006011). In another document, UBS noted that its actions could also mean the "[l]oss of QI status and of US banking license," and that it could also result in the imposition of fines or penalties. (Ex. 4 at U00006019).

49. As early as 1999, UBS recognized that its activities in the United States violated US law. In a 1999 memorandum to UBS "Legal PB" (Private Banking) in Basel, UBS "Legal PB" in New York advised,

As outlined in this memo, the provision or soliciting the provision of certain services by Swiss offices of the Bank (in particular brokerage services and investment advise) entail considerable risks for the Bank, because the Bank lacks the necessary license to provide these services. The registration requirements

come into play because such activity of the Bank has its effect on U.S. territory and is therefore subject to U.S. jurisdiction.

The memorandum concluded that the use of certain preventative measures could, "at least dramatically reduce the risk of the SEC becoming aware of the activities of the Bank in the U.S. market." (Ex. 21 at U00018275) In response to these identified risks, UBS took the following steps to mitigate the risk that US authorities would detect its illegal activities within the United States:

a. UBS first divided its US taxpayer clients into two groups: (1) those who were willing to submit Forms W-9 and have the bank file Forms 1099 reporting their earned income, and (2) those who wished to remain "undeclared."

b. UBS then created the "Cross-Border U.S. Centralization" initiative ("Centralization"). Through its Centralization, UBS consolidated the theretofore disparate administration of all undeclared accounts from the various UBS branches worldwide and transferred them to the Zurich, Geneva, and Lugano offices in Switzerland. As one UBS document described the strategy: "To comply with the US business model and to mitigate compliance, liability, and reputation risk, relations with US persons (i.e. 'W-9 and US domiciled non W-9 clients') with custody account or investment fund account were centralized." (Emphasis in original). (Ex. 4 at U00006025).

50. A UBS report explained it this way: "In general, US Resident Non-W9 clients are now centralised [in Switzerland] . . . The aim of the centralisation exercise was to concentrate handling of these particularly sensitive client relationships in the area with the highest expertise." (Ex. 3 at U00005998)

51. By centralizing the administration of the undeclared US accounts, UBS could better oversee the precautionary initiatives put in place to minimize the risk of detection by US authorities (Ex. 4 at U00006019).

52. As another step in its Centralization, UBS created Swiss Financial Advisors ("SFA"), an SEC-registered broker/dealer, to provide securities services within the United States for those US taxpayers who chose to disclose the existence of their accounts. SFA allowed UBS to provide services to its declared US clients through a separate, legally registered affiliate. UBS saw this as a risk-mitigating measure because, at least with regard to its declared US accounts, this brought UBS into compliance with the QI Agreement and with applicable US securities laws. (Ex. 4 at U00006019).

53. SFA achieved another important goal, purportedly removing its securities business from the United States. Before UBS created SFA, UBS was concerned that providing services to its US clients holding declared Swiss accounts could result in an "[i]ncreased chance that UBS AG is treated like any other U.S. provider, which means that there is higher litigation risk." (Ex. 22 at U00010833). Thus, UBS concluded that "a separate legal entity [to service the W-9 accounts] is the only way to achieve SEC compliance without having UBS AG under U.S. jurisdiction." (*Id.* at U00010845). Acknowledging that UBS is "not a U.S. licensed company," the report explained that "[i]n the many decades UBS AG has been serving U.S. clients this issue has not surfaced as UBS did not file with the IRS and has therefore not had any direct relationship to any U.S. official body." (*Id.* at U00010833). With declared clients, however, such contact with the IRS would be necessary, and UBS wanted to insulate its undeclared clients from the consequences of its forthcoming interaction with the IRS. In other words, the centralization plan

allowed UBS to provide services to all its US clients, without having its services for the declared account holders shed light on its services for the undeclared account holders. This enabled UBS to continue, with reduced risk, to conceal from the IRS the identities of its undeclared account holders.

54. At the conclusion of its Centralization, UBS had consolidated all of its undeclared accounts under the auspices of the Swiss offices, while placing the administration of its transparent, tax-compliant accounts with the new, SEC-registered affiliate, SFA.

55. After it had consolidated the administration of all of its undeclared accounts, UBS then took further precautionary measures designed to mitigate even further the risk that US authorities would learn of its illegal activities and its undeclared US account holders. These measures included:

a. UBS trained its Client Advisors who traveled to the United States, teaching them to take care when traveling to the United States on business:

- Client advisors were advised to have an explanation prepared for the purpose of their trip when entering the United States. (Ex. 23 at U00011454). Birkenfeld reports that UBS had actually encouraged its client advisors to lie on customs forms by representing that they were "traveling into the United States for pleasure and not business." (Ex. 7 at 2). In the Tax Haven Report, the PSI found that on about half of their business trips to the United States, UBS Client Advisors falsely reported on Forms I-94 that they were traveling to the United States for pleasure when, in fact, they were traveling to the United States to provide services to US holders of undeclared UBS accounts. (Ex. 2, pp. 103-104)

- Client advisors were advised to keep an irregular hotel rotation. (Ex. 23 at U00011454).

- Travel laptops were to have a generic UBS power point presentation to show to US authorities in the event of a border search. (Ex. 24 at U00011460).

- Client advisors were warned that the United States Government uses various systems to monitor telephone, facsimile, electronic mail, and other communications systems. (Ex. 24 at U00011460).

- Client advisors were not permitted to bring printers into the United States to prevent them from printing statements, which could prove that a sale was deemed to have occurred on US soil, or that the client advisor "gave investment instructions on US soil." (Id.).

- Client advisors were advised to maintain a "clear desk policy" while in hotel rooms. (Ex. 25 at 5).

- In the event that a client advisor was detained and interrogated, or in the event of any other emergency, the client advisor is to contact UBS hotline that was operated 24 hours a day, 7 days a week. (Id. at 4).

b. With the clients' consent, UBS would not mail regular banking statements or trade confirmations to US taxpayers within the United States. Instead, UBS would retain those documents for the US taxpayers to pick up in person in Switzerland. (Ex. 19 at U00005979).

c. UBS also attempted to maintain its client-identifying documents in Switzerland. (Ex. 23 at U00011451). In fact, part of the Centralization initiative required that all account-opening documents not be maintained in the United States. (Ex. 3 at U00006000).

d. According to Birkenfeld, UBS had advised its US clients to "destroy all off-shore banking records existing in the United States." (Ex. 7 at 3). Birkenfeld also told the PSI that UBS client advisors often completed account documents in the United States and that "instead of saying, 'I signed it in New York,' they brought the forms back to Geneva and they put in 'Geneva.'" (Ex. 2 at 101).

56. UBS knew that it was critical to keep its activities in the United States hidden from US law enforcement. In one e-mail exchange discussing risks associated with UBS's use of

US jurisdictional means, UBS executive Martin Liechti admonished, "I think we need to take the utmost care of this issue, *that's why I think we need to be extremely carefull* (sic) *with any written statement on the subject.*" (emphasis added) (Ex. 26 at U00009457). Similarly, in an e-mail exchange between UBS officials discussing the wording of minutes of a meeting between UBS Legal and UBS Compliance, one official suggested that language stating that UBS's visits to the United States are "not allowed under compliance" should be changed to say that such "behavior may however be problematic under SEC rules." (Ex. 27 at U00007587). UBS's legal counsel proceeded to note that the drafted minutes evidence, "how sensitive things get when you are writing them down." (*Id.* at U00007587).

57. After completing its Centralization initiative, and putting the other risk-mitigation steps in place, UBS continued to offer its products to wealthy, sophisticated US taxpayers who demanded confidentiality. A grand jury in Miami has charged that, in 2005, UBS actually set out to *increase* the volume of its cross-border services. (Ex. 28 at ¶ 38) As noted above, UBS reported that it had earned \$200 million per year administering undeclared, offshore accounts for US taxpayers.

E. UBS Bankers and Customers Have Been Charged and Convicted of Crimes in Connection with Maintaining Undeclared Accounts.

58. The legal consequences of maintaining these undeclared accounts have recently resulted in criminal charges for a number of people associated with UBS's activities:

a. In 2008, a grand jury in the Southern District of Florida indicted Raoul Weil, former head of UBS's wealth management business, and since 2007 Chief Executive Officer of a division of UBS that oversaw UBS's cross-border business within the United States. The indictment charges that Weil and others conspired to defraud the United States and the

Internal Revenue Service in the ascertainment, computation, assessment and collection of federal income taxes. In particular, the indictment charges that Weil assisted some 20,000 US customers of UBS to knowingly conceal from the IRS \$20 billion in assets that they held in secret accounts at UBS. (Ex. 28) The Court has declared him a fugitive from justice.

b. In 2007, former high-profile UBS client Igor Olenicoff, a California real estate developer, was charged in the Central District of California with filing false income tax returns by failing to disclose on his federal income tax returns the undeclared accounts he maintained at UBS in Switzerland. (Ex. 29). In 2007 Olenicoff pleaded guilty to one count of filing a false tax return for 2002. Olenicoff's Plea Agreement included a statement of facts which he admitted were true. Among other things, Olenicoff admitted that he had filed false income tax returns for each of the years 1998 through 2004, by failing to disclose his undeclared accounts at UBS. (Ex. 30)

c. In 2008 former UBS private banker Bradley Birkenfeld was indicted in the Southern District of Florida on one count of conspiracy to defraud the United States in violation of 18 USC § 371. The indictment charged Birkenfeld and co-conspirator Mario Staggl, a resident of Liechtenstein, with assisting UBS clients to open and maintain undisclosed accounts, and hide those accounts from the IRS, thereby enabling the US clients to evade millions of dollars in US income taxes. (Ex. 31) In June 2008, Birkenfeld pleaded guilty to conspiring to defraud the United States by helping at least one UBS client evade \$7.2 million in taxes on income earned from about \$200 million in assets that the client maintained in an undeclared UBS account. To support his plea of guilty, Birkenfeld agreed to a Statement of Facts, describing in detail how he and others at UBS conspired to assist thousands of US taxpayers to open, maintain, and conceal

undeclared Swiss accounts. (Ex. 7) In that Statement of Facts, among other things, Birkenfeld described in detail the steps that he, Staggl, and others at UBS took to help US taxpayers conceal the existence of undeclared accounts from the IRS. Among other things, they advised US clients to:

- ◆ place cash and valuables in Swiss safety deposit boxes;
- ◆ purchase jewels, artwork and luxury items from the UBS account while overseas;
- ◆ misrepresent the receipt of funds in the United States from their UBS account in Switzerland as loans from UBS;
- ◆ destroy all US-based records of their off-shore accounts;
- ◆ purchase goods and services with UBS-issued credit cards, which UBS officials claimed could not be discovered by US authorities.

In one instance, at the request of a US client of UBS, Birkenfeld purchased diamonds with funds from the client's undeclared UBS account, and smuggled the diamonds into the United States in a toothpaste tube. (Ex. 7, pp. 3-4)

59. Traditionally, taxpayers maintain undisclosed offshore accounts in order to conceal assets and income from the IRS. My investigation to date – and the Tax Haven Report discussed above – make clear that UBS has assisted tens of thousands of US taxpayers in the “John Doe” class to avoid the obligation to report all foreign financial accounts to the IRS, thereby helping the US taxpayers conceal from the IRS any income earned in those accounts.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 6th day of February 2009.

A handwritten signature in black ink, appearing to read "Daniel Reeves", written over a horizontal line.

DANIEL REEVES
Revenue Agent
Internal Revenue Service

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil No. **09-20423** *MG* - GOLD

UNITED STATES OF AMERICA,)
)
Petitioner,)
)
v.)
)
UBS AG,)
)
Respondent.)

MGALLEN

DECLARATION OF BARRY B. SHOTT

Barry B. Shott, pursuant to 28 U.S.C. § 1746, declares:

1. I am the duly commissioned Deputy Commissioner (International) with the Large & MidSize Business (LMSB) Division of the Internal Revenue Service. I am employed in the office of the Commissioner, LMSB, and I am the United States Competent Authority. As the Competent Authority, I oversee the international exchange of information between the United States and foreign countries pursuant to tax treaties. Before I was appointed to my present position, I was a Director of Field Operations, and then the Financial Services Industry Director, in the LMSB Division. While with the Financial Services Industry, I was directly responsible for oversight of the Qualified Intermediary Program.

The Qualified Intermediary Program

2. Effective in 2001, the Secretary of the Treasury issued regulations requiring foreign banks to withhold taxes and pay over to the IRS 30% of income earned with respect to US investments maintained in foreign financial accounts. Foreign banks could avoid this

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requirement if they identified the beneficial owner of each such account to a US withholding agent.

3. In order to simplify the documentation procedure, the IRS created the Qualified Intermediary Program (QI Program). Under the QI Program, foreign banks that agree to follow certain procedures can – by entering into a QI Agreement – assume the responsibilities of a US withholding agent. Those responsibilities may include determining which customers qualify for treaty benefits (such as reduced or eliminated withholdings, based on documents establishing the identity of the account's beneficial owner), without disclosing to US authorities the identities of non-US taxpayers. The QI program provided a valuable benefit to foreign banks in maintaining their business with respect to the holdings of US investments by non-US taxpayers.

4. The QI Program governs the responsibilities of foreign banks only as to accounts that contain securities. The QI Program does not apply to cash-only accounts.

5. The purpose of the QI program is to make it easier for the IRS to obtain foreign banks' compliance with US tax laws, in respect of securities accounts maintained for both US and non-US taxpayers. The QI program was not, however, intended to assist US taxpayers in finding clever ways to avoid their obligations to comply with US tax laws.

6. The QI Program does **not** relieve US taxpayers of their obligation to report all income to the IRS, wherever that income is earned. And the QI Program does **not** relieve US taxpayers of their obligation to disclose to the IRS the existence of all foreign financial accounts over which they exercise signatory or other authority.

7. In order for the QI Program to function as intended, foreign banks must correctly and truthfully ascertain the identity and citizenship/residence of their clients. Thus, the QI

Program requires foreign banks to obtain and maintain IRS Forms W-8BEN, which report the identities of non-US account holders, and IRS Forms W-9, which report the identities of US account holders. Model copies of Forms W-8BEN and W-9 are attached as Exhibits A and B, respectively.

8. Under the QI program, foreign banks must examine formal identification, citizenship, and residency documentation. Clients claiming non-US residence/citizenship must document their status. Because of the potential for abuse, it is especially important that foreign bankers verify the non-US residence/citizenship of customers whom they contact within the United States – such as by meetings in person and contacts via telephone, mail, e-mail and facsimile. Foreign banks may not assist US taxpayers to conceal from the IRS their identities, or the true beneficial ownership of foreign securities accounts.

9. Foreign banks that participate in the QI Program and maintain accounts for US clients must prepare and transmit to the IRS Forms 1099 reporting payments on US investments. Although US taxpayers must report and pay US income tax on all income, regardless of where in the world it is earned, the Forms 1099 issued by foreign banks in the QI Program report only interest, dividends and sales proceeds on US investments. Under the QI Program, the bank must issue the Form 1099 to the US taxpayer, and report to the IRS the information contained on the Form 1099.

10. When a US taxpayer refuses to submit the proper documentation, a foreign bank that is party to a QI Agreement must make backup withholding at 28% of all US-source income. This is the same backup withholding obligation that is imposed on US banks.

11. If a foreign bank that is party to a QI Agreement, (1) knows that an account holder is a US taxpayer who must provide documentation, and (2) is prohibited by law – whether by statute or by contract – from disclosing the identity of the account holder, the foreign bank must request from the account holder the authority either to disclose that person’s identity to the IRS, or to exclude US securities from that account. If, within 60 days, the foreign bank does not receive authority to disclose the owner’s identity or exclude US securities, it must sell the US securities in the account.

12. Even where the foreign account does not contain US securities, the bank must make backup withholdings on all “deemed sales” for those US taxpayers who refuse to submit the proper documentation. “Deemed sales” are sales effected through the use of US jurisdictional means and are, therefore, “deemed” to have occurred within the United States.

13. UBS entered into a QI Agreement with the IRS in 2001. That QI Agreement remained in effect throughout the period covered by the IRS investigation in which the John Doe summons was issued to UBS in 2008.

Access to Swiss Bank Records Is Not Available Through Alternative Means

14. One of my current responsibilities is to engage in exchanges of information under tax conventions (treaties), including the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (the “Swiss Treaty”). Article 26 of the Swiss Treaty (signed in Washington, DC on October 2, 1996) provides for the exchange of information as is necessary, “for the prevention of tax fraud or the like.”

15. In the experience of the IRS, the Swiss Treaty does not provide an alternative way to obtain the information sought in the John Doe summons at issue in this case. Based upon my conversations with the Swiss competent authority, this is because the Swiss government will not exchange information about a taxpayer unless the taxpayer committed an affirmative act of deception (such as falsifying a document), above and beyond a mere failure to report the existence of an account, or income earned in that account. The IRS may ultimately determine that at least some of the "John Does" have engaged in acts that would enable the IRS to obtain information under the Swiss Treaty. But for now, the IRS is investigating US taxpayers who failed to report the existence of Swiss bank accounts – or income earned on those accounts. Absent additional facts, those failures do not enable the IRS to obtain from the Swiss government the information demanded in the John Doe summons issued to UBS.

16. Until recently, with regard to this current matter, Article 26 of the Swiss Treaty had been strictly applied by the Swiss Competent Authority to provide the IRS assistance only in response to specific requests that name a particular taxpayer. As a consequence, it had also been the IRS's experience that the Swiss Competent Authority would only provide the IRS with information for an examination or investigation that concerns a specifically identified taxpayer. The current IRS investigation is focused on learning the identities of US taxpayers not known to the IRS.

17. Recently, representatives of the Swiss government have indicated to me that, under limited circumstances, they might be willing to consider a request under the Swiss Treaty that did not specifically identify taxpayers whose records are sought. As a consequence, on July 16, 2008, the United States made a formal request under the Swiss Treaty ("Treaty Request").

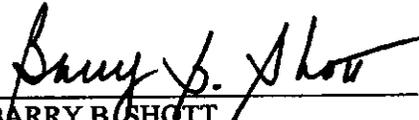
Thus far, however, the Swiss government has not produced any documents in response to the Treaty Request.

18. According to the declaration of Daniel Reeves (which I have read), the United States has learned that UBS maintained as many as 52,000 undeclared accounts for US taxpayers, all of which are subject to the summons. Based on the best information presently available to me, it appears that the Treaty Request may only result in the production of records for, at most, about 300 of those 52,000 accounts. According to my conversations with officials of the Swiss Government, this is because (as noted in ¶ 15 above) the Swiss Government interprets the Treaty to require a taxpayer to have committed affirmative acts of fraud or deception, in order to trigger Switzerland's obligation to provide information about that taxpayer to the IRS.

19. I last spoke with officials of the Swiss Government about the Treaty Request on January 21, 2009. During that conversation, I learned that the Swiss Government had made final determinations to provide the requested records for only twelve accounts. The Swiss Government will not, however, provide records to the IRS about those twelve accounts until after the account holders have been given an opportunity to litigate in a Swiss court the Swiss Government's decision to turn their records over to the IRS. During our January 21, 2009, conversation, I learned that the twelve account holders are either exercising their appeal rights, or contemplating exercising their appeal rights. I have also learned from my subordinates that the Swiss Government has determined there is insufficient evidence of "fraud and the like" with respect to two other accounts, and accordingly will not provide information about those two accounts. In sum, the Swiss Government has not provided any records sought under the Treaty Request, and it is not clear when, if ever, it will.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 6th day of February 2009 in Washington, DC.



BARRY B. SHOTT
Deputy Commissioner, *LMSB*
Internal Revenue Service

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:09-MC-20423-GOLD/MCALILEY

UNITED STATES OF AMERICA,

Petitioner,

vs.

UBS AG,

Respondent.

**BACKGROUND INFORMATION FOR THE COURT'S
CONSIDERATION PRIOR TO THE SCHEDULED STATUS CONFERENCE**

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CASE NO. 1:09-MC-20423

Yesterday, the Internal Revenue Service ("IRS") began a process pursuant to which it seeks to have this Court order Swiss-based employees of Respondent UBS AG ("UBS") to violate Swiss criminal law in Switzerland. Such violations would expose these employees to substantial prison terms, as well as fines, penalties and other sanctions. The IRS similarly believes that this Court should require UBS, a Swiss bank and one of the largest banks in the world, to violate Swiss law in a manner that will expose it to penalties, civil liability and the possible revocation of its banking license. The IRS makes this request notwithstanding that it has a contract with UBS that expressly permits UBS to comply with Swiss law by keeping confidential the very information that the IRS now demands.

Notwithstanding the extraordinary importance, consequences and international implications of these issues, the IRS submitted to this Court a proposed order to show cause that provides for a limited, expedited briefing schedule and a truncated procedure for this matter. Indeed, after waiting seven months to file its petition, the IRS proposes that the Court order that UBS be given only eleven days after service of the Court's order to respond to the IRS's petition. There is simply no reason to have, nor equity in having, such an expedited process here. UBS respectfully requests that, rather than entering the proposed order to show cause submitted by the IRS, the Court use the status conference now scheduled for February 23, 2009 to give the parties the opportunity to address a possible briefing schedule, discovery, the nature of the hearing that might take place in this matter, and the role of the governments of both Switzerland and the United States in these proceedings.

* * * * *

On July 1, 2008, this Court authorized the IRS to issue the "John Doe" summons to UBS. See In the Matter of the Tax Liabilities of John Does, 08-21864-MC-LENARD (S.D.

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Fla.), Docket Entry No. 5. The summons seeks account information for a class of unidentified U.S. taxpayers who have accounts with UBS in Switzerland. See Declaration of Daniel Reeves (“Reeves Dec.”) ¶¶ 5-6 & Ex. 1. The IRS issued the summons knowing full well that UBS and its employees could not provide information responsive to the summons that was located in Switzerland without violating Swiss law. Indeed, in full and fair recognition of the incompatibility between the John Doe summons and Swiss law, the IRS initially agreed to limit the scope of UBS’s obligations in response to the summons to the production of documents or information located in the United States.

Since being served with the summons in July of 2008, UBS has cooperated fully, working diligently and in good faith to provide the IRS with information responsive to the summons that UBS could provide without violating Swiss law. Indeed, over the past seven months, UBS has provided the IRS with information located in the United States relating to more than three hundred accounts targeted by the John Doe summons. See Reeves Dec. ¶ 18.

The U.S. government has now also been provided with responsive account information that was located in Switzerland. On February 18, 2009, this Court approved a deferred prosecution agreement between UBS and the U.S. Department of Justice. See United States v. UBS AG, 09-60033-CR-COHN (S.D. Fla.), Docket Entry No. 19. As part of the deferred prosecution agreement, the U.S. government was provided with documentation located in Switzerland for certain additional accounts that are targeted by the John Doe summons. This production was made pursuant to an order issued by the Swiss Financial Market Supervisory Authority (“FINMA”) based on evidence available in UBS’s files that supported a reasonable suspicion that the holders of these accounts engaged in conduct that constituted “tax fraud or the like,” as that term is used in the Convention between the United States of America and the Swiss

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Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (the "Double Taxation Treaty"), and that therefore the account information could be provided to the U.S. government consistent with the Double Taxation Treaty and Swiss law.

In a very public move giving little or no credit to UBS's productions and its commitments in the deferred prosecution agreement — including UBS's agreement to exit the relevant U.S. cross-border business — the IRS now asks this Court to place UBS and its employees into an untenable position, stuck between the enforcement power of this Court and the criminal law of their sovereign home country. The petition filed by the IRS will thus force the Court to consider a series of important issues:

First, the IRS's petition raises significant issues of international comity and conflicts of law. The IRS has a legitimate interest in making sure that U.S. taxpayers pay taxes on their income. UBS does not dispute that. However, in the absence of the express authorization of the Swiss authorities granted pursuant to fully negotiated standards set forth by the two governments in U.S.-Swiss treaties, Swiss law strictly prohibits UBS and its employees from disclosing to the IRS the account information located in Switzerland that the IRS seeks through its summons. The IRS's petition does not acknowledge these restrictions and instead simply ignores the existence of Swiss law and sovereignty.

Second, while the IRS attempts to downplay them, the treaties between the United States and Switzerland provide administrative procedures pursuant to which the IRS has the ability to seek information relating to tax fraud or the like that is located in Switzerland. See Double Taxation Treaty art. 26(1); Double Taxation Treaty Protocol § 10; Treaty Between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters arts. 1(1), (4). It is true that the IRS may not be able to obtain information as quickly or as

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broadly through these treaty mechanisms as the IRS might be able to in the United States, but these treaty mechanisms reflect a carefully negotiated, mutually accepted agreement balancing the interests of the U.S. and Swiss governments. With yesterday's filing, the IRS asks this Court to rewrite the relevant treaties between two sovereign nations, the United States and Switzerland. To the extent that the IRS is not satisfied with treaties that the U.S. government has negotiated, that concern should be remedied through diplomacy, not an enforcement action such as the one the IRS has commenced here.

Third, the IRS entered into an agreement known as a "Qualified Intermediary Agreement" with UBS (and many other banks). That agreement sets forth, among other things, the manner in which UBS, in its capacity as a "Qualified Intermediary," is to conduct information reporting and tax withholding for U.S. clients with accounts in Switzerland. Most relevant for the present proceeding, the Qualified Intermediary Agreement contains specific procedures addressing the treatment of accounts held by U.S. taxpayers. Subject to special rules limiting investments by U.S. taxpayers in U.S. securities, these procedures expressly recognize that UBS — like any other Qualified Intermediary that is prohibited by law from disclosing account holder information — may maintain accounts for U.S. taxpayers who choose not to submit an IRS Form W-9 to UBS and that UBS is not required to disclose the identities of such account holders to the IRS. And that is what took place. In this action, the IRS seeks to repudiate its own contract and demands the production of the very account information that the IRS agreed would remain confidential.

* * * * *

The IRS issued the summons in July 2008. Now, seven months later, the IRS seeks to commence an enforcement proceeding on an expedited schedule and with a truncated

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process. In light of the complex issues and international implications raised by the IRS's petition, rather than entering the proposed order to show cause submitted by the IRS, we respectfully request that this Court use the scheduled status conference to address how this matter should proceed.

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Dated: February 20, 2009

Respectfully submitted,

s/ Eugene E. Stearns

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CASE NO. 1:09-MC-20423

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2009, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF or other approved means.

s/ Gordon M. Mead, Jr.
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CASE NO. 1:09-MC-20423

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United States of America v. UBS AG, No. 09-20423-GOLD

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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 09-20423-mc-GOLD

UNITED STATES OF AMERICA,)
)
Petitioner,)
)
v.)
)
UBS AG,)
)
Respondent.)

RESPONSE TO BACKGROUND FILING BY RESPONDENT

Petitioner the United States files this short response to the "Background Information" document filed by respondent UBS on February 20, 2009. It plans to fully brief in due course any issues raised by any response to an Order to Show Cause.

1. Summons Enforcement Proceedings are Summary in Nature.

The respondent complains about the brief time limits in the Order to Show Cause tendered in support of the petition to enforce. This is consistent with well-established law governing summons enforcement cases, discussed briefly below.

The United States may seek to compel compliance with a summons "[w]henever any person summoned under section . . . 7602 neglects or refuses to obey such summons . . ." 26 U.S.C. § 7604(b). In such a case, the United States has the initial burden of making a prima facie showing that the following requirements have been met:

- (1) the investigation has a legitimate purpose;

- (2) the summoned materials may be relevant to that investigation;
- (3) the information sought is not already within the IRS' possession; and,
- (4) the IRS has followed the administrative steps required by the Internal Revenue Code.

United States v. Powell, 379 U.S. 48, 57-58 (1964). The United States typically makes this showing through the affidavit or sworn declaration of the IRS officer who issued the summons. Once the United States makes this showing, the burden shifts to the respondent to prove that enforcement of the summons would be an abuse of the court's process. Powell, 379 U.S. at 58; United States v. Medlin, 986 F.2d 463, 466 (11th Cir. 1993).

Because summons enforcement actions are intended to be summary proceedings, the burden on the United States to make out its prima facie case is light, but the burden on the respondent to demonstrate abuse of process is a heavy one. United States v. Davis, 636 F.2d 1028, 1034 (5th Cir.), cert. denied, 454 U.S. 862 (1981) (describing the Government's showing under Powell as "minimal"). The respondent must do more than just produce evidence that would call into question the United States' prima facie case. To meet this burden, the respondent "must allege specific facts and evidence to support his allegations." Liberty Financial Services v. United States, 778 F.2d 1390, 1392 (9th Cir. 1985). If the respondent cannot refute the United States' prima facie showing, or cannot provide factual support for an affirmative defense, the district court should properly dispose of the proceedings on the papers before it and without an evidentiary hearing. United States v. Balanced Financial Management, Inc., 769 F.2d 1440, 1444 (10th Cir. 1985).

Here the United States has established its prima facie case through the sworn Declarations of Daniel Reeves and Barry B. Shott. While the United States is amenable to altering the briefing schedule proposed in its Order to Show Cause, there is no reason to delay what should be a "summary proceeding" simply because the respondent wishes to raise a number of defenses to enforcement.

2. Nothing in the Tax Treaty Limits the IRS's Authority to Enforce a Duly Authorized Summons Issued to a Third-Party Witness Within the United States, or Requires the IRS to Exhaust its Treaty Rights With a Foreign Government Before Seeking to Enforce that Summons.

The respondent argues that the United States has a remedy under the tax treaty with Switzerland, and accuses it of using the summons to "rewrite the treaty." There is no authority for the notion that the United States must first seek information from a foreign government under a treaty, before it can enforce a summons that was duly authorized, issued and served on a witness located here in the United States. Certainly, the IRS should not have to sit idly by while tens of thousands of its citizens violate U.S. law with impunity. The existence of a treaty cannot obscure this indisputable fact, nor does it limit the rights granted to the United States under the laws of **this** country.

3. UBS Was Not Surprised by this Filing.

The respondent suggests it was surprised by the filing of this case, and claims that, in the pleadings filed in this case, it has "been given little or no credit" for its productions and commitment under the Deferred Prosecution Agreement (DPA). This claim is irrelevant. The DPA stated that the United States would file a petition to enforce the John Doe summons, and UBS expressly reserved the right to raise all

defenses to the enforcement of the summons, and to litigate those defenses through all appeals. It knew this day was coming, and it knew this day would come sooner, rather than later. UBS also knew that only a fraction of the accounts would be identified to the IRS, out of a universe of 52,000. It is, therefore, irrelevant whether UBS produced whatever accounts the DPA required it to produce. Certainly, that compliance should have no bearing on whether it should comply with the summons.

Moreover, it is odd for UBS to suggest that it should receive any credit at all in this case for complying with the DPA. UBS has already received credit by not facing immediate criminal prosecution for having committed very serious crimes on U.S. soil. Certainly agreeing to cease helping U.S. taxpayers break the law should count for nothing in a case that involves its failure to comply with a legitimate summons that this Court expressly authorized the IRS to serve.

4. The Comity Issue Raised Here is Not New.

The respondent suggests that the Court should treat this case differently from other IRS summons enforcement cases because it involves a question of international comity. But the respondent fails to acknowledge that the international comity analysis, in the context of an attempt by the United States to compel the U.S. office of a foreign bank to produce records, was decided long ago in this jurisdiction. In United States v. Bank of Nova Scotia, 691 F.2d 1384 (11th Cir. 1982), the Eleventh Circuit Court of Appeals described the scope of the analysis and the considerations that should be taken into account, in deciding whether to enforce a grand jury subpoena against a U.S.-

located bank, for records that it claimed would violate the bank secrecy laws of another country (The Bahamas in that case).

5. The QI Agreement Does Not Bar this Action, Especially in Light of UBS's Conduct.

The respondent argues that, because it entered into an agreement to help its U.S. clients meet their reporting obligations under U.S. law (the QI agreement), that agreement bars the IRS from enforcing this summons. While the United States will await the formal briefing process to show why this argument should not prevail, the Court should note that **only two days ago** UBS admitted to conspiring with its U.S. clients to violate that agreement, and thereby assist U.S. taxpayers to evade their U.S. tax obligations. That UBS and IRS entered into an agreement that UBS systematically violated over the past 7 years should not bar this action.

In conclusion, we welcome the opportunity to discuss how this case should proceed, including adopting a less hectic briefing schedule. It is important to understand, however, that the United States does not believe justice is served by delay. In fact, delay serves the cause of those U.S. taxpayers who continue to hide behind the actions of the respondent – and its spurious claims that it can do business within the United States with impunity, and still rely on Swiss bank secrecy law – to avoid their obligations to comply with the laws of this country.

Dated: February 20, 2009

Respectfully submitted,

/s/ Stuart D. Gibson

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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2009, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified below, via transmission of Notices of Electronic Filing generated by CM/ECF or other approved means.

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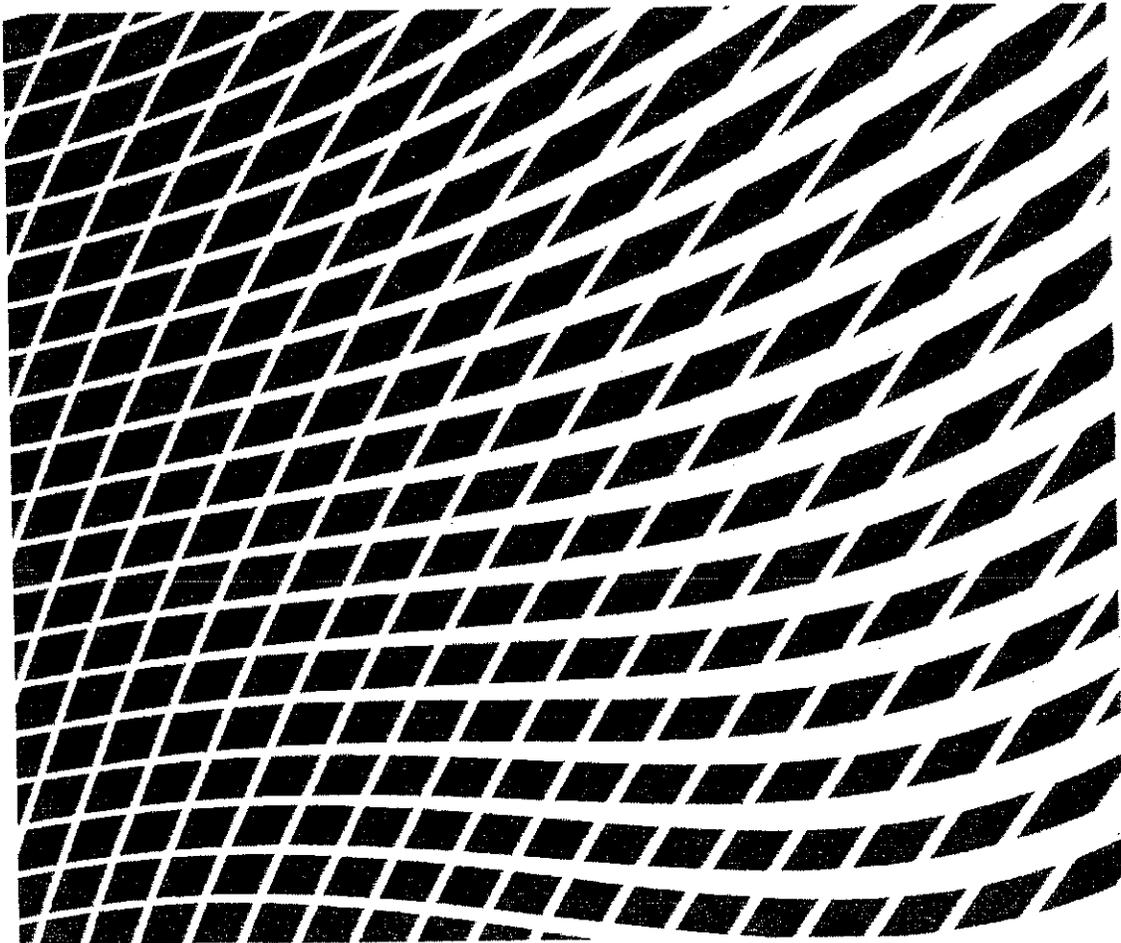


Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

18 February 2009

EBK investigation of the cross-border business of UBS AG with its private clients in the USA

Summary Report



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Permanent Subcommittee on Investigations

EXHIBIT #11

Summary

The present report of the Swiss Financial Market Supervisory Authority (FINMA) states the reasons for and results of proceedings conducted by the Swiss Federal Banking Commission ("EBK") between May and December 2008 which were closed by an injunction. The FINMA wrote this summary report because the EBK, being one of three supervisory authorities, has been merged into the FINMA as of 1 January 2009.

After preliminary inquiries the EBK opened supervisory proceedings against UBS AG in May 2008 which it closed with an injunction against UBS AG on 21 December 2008 after having gathered extensive evidence. The main topic of these proceedings was the question whether UBS AG has adequately captured, limited and supervised the legal and reputational risks which are associated with the implementation of the Qualified Intermediary Agreement ("QIA") and with the American supervisory restrictions of the cross-border business with U.S. persons ("SEC restrictions").

The EBK established in its injunction that UBS AG violated the requirement for fit- and properness as well as the organizational obligations set out in the Swiss Banking Act. Individual employees of UBS AG have, in a limited number of cases and contrary to the provisions of the QIA, considered client documents, which were drafted for U.S. tax purposes, sufficient whereas they knew or should have known that these documents do not correctly reflect the client's tax status. In addition, they ignored the SEC restrictions over a longer period of time, which provide for a mandatory license for cross-border financial services to U.S. investors. As a result, UBS AG exposed itself to massive legal and reputational risks, which materialized in the proceedings opened by several U.S. authorities.

Within the scope of its investigation, the EBK did not assert a negligent implementation of the QIA by UBS AG. The EBK did also not come to the conclusion that the top management of UBS AG knew about the afore mentioned fraudulent conduct by U.S. clients to the disadvantage of the U.S. fiscal authorities or of the violation of SEC restrictions committed by individual employees contrary to instructions. Nevertheless, the EBK barred UBS AG in its injunction from further operating the cross-border Private Banking business with persons having their residence or domicile in the USA. It obliged UBS AG, to adequately capture, limit and supervise the legal and reputational risks inherent to cross-border services and it ordered an audit of the implementation of this instruction. It imposed the bank to pay the procedural costs in the amount of more than half a million Swiss francs. This injunction was brought to UBS AG's knowledge in December 2008 and has become effective in the meantime.

The EBK proceedings took place approximately at the same time as proceedings conducted by the U.S. Securities and Exchange Commission („SEC“), the U.S. Department of Justice („DoJ“) and the American tax authority, the Internal Revenue Service („IRS“). The EBK provided administrative assistance to the SEC and the DoJ.

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1 Investigations of American authorities against UBS AG

In September 2007, the DoJ contacted representatives of UBS AG and informed them that it was in possession of a letter regarding the internal investigation by UBS AG in connection with the "Whistleblowing" by Bradley Birkenfeld, a former client advisor in Private Banking North America with UBS AG in Geneva. At first, DoJ requested to keep related documents at its disposal. Eventually, DoJ opened an investigation and began to request more and more information on the cross-border Private Banking activities in the USA and on the adherence to the QIA. The bank reacted to these DoJ requests and allegations by immediately initiating an extensive internal investigation. In the course of its investigation the DoJ detained the person responsible for the North America business of UBS AG for a period of several of months as "material witness" and questioned several client advisors as well as managers in the USA. In November 2008, the DoJ caused the Grand Jury of the United States District Court of the Southern District of Florida to charge Raoul Weil, the currently suspended CEO of the business section Global Wealth Management & Business Banking („GWM&BB"), with „Conspiracy in violation of 18 U.S.C. §371". This act was made public without prior disclosure vis-à-vis the bank or Raoul Weil.

Around the same time and in close coordination with the DoJ, the IRS also opened an investigation. It analyses, to what extent U.S. clients of UBS AG have violated their tax duties. The IRS requested information from UBS AG relating thereto as well as to the bank's compliance with its obligations as a Qualified Intermediary ("QI"). The SEC commenced its investigation at the same time as the DoJ. It investigated the compliance with the SEC restrictions in connection with the performance of cross-border financial services into the USA.

2 EBK Investigation

After preliminary inquiries, the EBK opened an administrative proceeding against UBS AG on 23 May 2008 and examined four questions, which concern the (present) business unit GWM&BB (formerly referred to as: business unit Private Banking UBS Switzerland, subsequently Wealth Management & Business Banking):

- (1) Has UBS AG or have its employees respectively participated actively in tax fraud of its clients?
- (2) Has UBS AG, in the context of its obligations as QI or otherwise made false statements or provided false reports to American authorities, namely to the IRS?
- (3) Did violations of the QIA by UBS AG occur and if so, how severe were these?
- (4) How did UBS AG and how did its employees deal with the legal risks, which resulted from the cross-border business into the USA in connection with the QIA?

The EBK finalized its comprehensive investigation with an injunction on 21 December 2008.

3 The Qualified Intermediary Agreement

3.1 How did the Qualified Intermediary Agreement come about?

The USA levies, *inter alia*, a withholding tax in the amount of 30% ("NRA Withholding Tax") on interests and dividends that are deriving from U.S. securities and are payable to a person who is not a U.S. resident („Non-Resident Alien" or „NRA"). The U.S. Withholding Agent is responsible for the levying and the delivery of the NRA Withholding Tax. Investors, who are domiciled in a country bound by a double tax treaty (*Doppelbesteuerungsabkommen*, "DBA") with the USA, may assert full or partial deduction of this tax. In most cases, the deduction of the withholding tax amounts to a reduction to 15% on dividends and to 0% on interest. Apart from specific exceptions, the proceeds generated through a sale of U.S. securities are not subject to a withholding tax.

Generally, no withholding tax is levied on payments which are credited to a U.S. person. Instead, the taxation of such proceeds is carried out through a reporting procedure to the IRS. The U.S. paying agent, particularly the banks, must possess an IRS-form W-9, by means of which the recipient of benefits confirms, subpoenaed, that he is a U.S. person and that the indicated identification number for tax payers („tax payer identification number", or „TIN") is correct. Based on the details of this declaration, the paying agent, respectively the withholding agent, provides a standardized notification (the so-called "1099 Reporting") to the IRS. If the Withholding Agent cannot provide this report due to incorrectly or incompletely reported details, he raises a "Backup Withholding Tax" with reference to the respective payments, namely the U.S. Withholding tax of currently 28% (originally 31%).

At the end of 1997, the IRS enacted a new provision regarding the handling of the NRA Withholding Tax and the respective reporting. This provision was meant to affect payments of dividends and interest from U.S. sources, which were paid from 1 January 2001 onwards. The main reason for this amendment was the aspiration to prevent the widespread misapplication of DBAs in the context of deductions on dividends. Pursuant to the method previously in place, the deduction of withholding tax based on a DBA was based on the so-called "Address-Method". According to that method, the entitlement to reduce the U.S. Withholding tax was assessed solely by the address of the recipient of payments set out in the documentation. Such recipient could also refer to a bank's address, with which the client held his account/depot relation. Therefore, an address in a DBA-country was until then enough to claim a tax deduction.

The provisions passed in 1997 which were supposed to become effective on 1 January 2001 included very high requirements concerning the identification and documentation of the recipient of proceeds from U.S. sources. The initially contemplated provision set out that even if a person had not been subject to tax in the USA (NRAs), such person would only have been able to claim deductions from the NRA Withholding Tax based on a DBA if he had revealed his identity to the U.S. Withholding Agent. These extensive disclosure and reporting provisions led to substantial concern in the affected (financial services) circles, most notably with reference to the U.S. depot banks. At the end of the 90s, a

delegation of the American IRS started talks with foreign financial centers to discuss possible solutions.

The IRS finally established the so-called „Qualified Intermediary“-System („QI-System“) as an alternative to these extensive disclosure and reporting duties. It is based on the basic idea that the U.S. Withholding Agent's requirement to know the identity of those recipients of benefits whose payments he effected, is transferred to a (foreign) qualified financial institute, the so-called "Qualified Intermediary" ("QI"). Pursuant to this system, the QI incurs the determination of the identity of the recipient of benefits ("Beneficial Owner"¹) and, as the case may be, the deduction of withholding taxes on dividends and interest. In return, the U.S. Withholding Agent will be released from this task. Only financial institutes could (and can) sign a QIA with the IRS, which commit to comply with the client identification provisions („Know Your Customer Rules“) deemed sufficient by the IRS. The QI-System further envisages that external auditors control repetitively whether the QI performs the client allocation correctly and whether the necessary client documentation is available in each case.

Text box 1: Objectives pursued with the QIA

The IRS pursued various objectives with the worldwide execution of QIAs: (1) Primarily, NRAs were supposed to be recorded in such manner that the reduction of U.S. withholding tax based on a DBA could only benefit those beneficiaries who were in fact privileged through a DBA. (2) At the same time, U.S. taxable persons were not supposed to invest in the USA any longer without declaring the respective investments. (3) All income derived from U.S. sources, particularly U.S. securities, was supposed to be recorded in a correct fiscal manner. (4) Finally, the determination of the identity of the Beneficial Owner was supposed to be externalized newly within the meaning of a fundamental system change and was supposed to be made the subject of the preferred contact person, the QI.

Banks not domiciled in the USA and Clearing Organizations which sign a QIA with the IRS may claim the deductions of withholding tax for their clients who are not subject to tax in the USA (NRAs), without having to disclose the identity of the recipients of such benefits. This is of particular importance for non-U.S. banks, which would like to offer direct investment opportunities into U.S. securities for their domestic and foreign clients who are not U.S. persons.

The QIA contains special provisions on the treatment of clients who are U.S. persons. In principle, these provisions envisage that the QI makes investments by U.S. persons in U.S. securities impossible, unless such U.S. persons consent to the disclosure of their identity to the U.S. Withholding Agent and therewith the IRS. In situations, in which the disclosure of information about an account holder is prohibited pursuant to the applicable law – such as the Swiss Banking Secrecy – a QI may be obliged in addition to observe information and backup withholding duties on an anonymous basis.

¹ This is a technical term derived from the QIA or the U.S. tax law respectively, which is not to be confused with the term "Beneficial Owner" pursuant to Swiss money laundering provisions.

3.2 What is being regulated by the QIA?

The QIA is a model agreement that is used by the IRS worldwide. The agreement contains a choice of law clause in favour of U.S. federal law. The interested financial intermediaries sign a standard text without the possibility to change or adapt the agreement individually. As a contractual partner of the IRS, the QI takes over far reaching documentation, reporting and withholding duties. The requirements regarding these duties and regarding the diligence necessary derive from the agreement and, because of the references therein partially from U.S. tax law.

To fulfil its obligations under the QIA, the QI is – amongst others - required to categorize its clients with a deposit account according to certain criteria.

Key is the classification of clients into U.S. and non-U.S. persons, respectively Non-Resident Aliens. At the time of the implementation of the QI system, this led to QIs worldwide approaching their clients and asking for a declaration regarding their U.S. tax status:

- *U.S. persons* within the meaning of U.S. tax law (this includes amongst others also Green Cards Holders) had the choice to (i) sign a W-9 form and in doing so disclosing their identity to the IRS (so-called W-9 clients); (ii) refrain from disclosure and sell all U.S. securities before 1 January 2001 when the QIA came into force (so-called non-W-9 clients); or (iii) refrain from disclosure, continue to hold U.S. securities and accept to pay an (anonymous) withholding tax of 31% on all so-called "reportable payments" (also called non-W9 clients). It was (and is) expected under the QIA that the number of clients falling under the last category is kept to a minimum.
- *Non-U.S. persons* holding U.S. securities were asked to confirm their status as non-U.S. persons on a form W-8BEN or through other adequate documentation (Non-Resident Aliens or NRA-clients). The QI had to deduct a withholding tax of 30% on income from U.S. sources from NRA clients with an insufficient QI documentation.

When creating a QI-compatible documentation, the QIs faced the procedural difficulties that the U.S. person they actually were in contact with was not the client in a technical sense, but instead the client was an offshore structure (mostly domiciliary companies such as for example foundations or trusts etc.): According to U.S. tax law structures are either "per se" considered to be the beneficial owners of the assets held (e.g. a Swiss Aktiengesellschaft is considered a "per se Corporation") or they can opt so under the "check-the-box-rule".

In case of a so-called non-tax-transparent "Non-Flow-Through Entity", the beneficial owner of that entity does not have to be disclosed to the IRS under the QIA (for example the shareholder of a Non-Flow-Through structure). In this case, the structure respectively the acting corporate bodies of the structure declare that the structure itself is the beneficial owner of the assets. If the structure is incorporated under U.S. law (and thus is a U.S. person), its corporate bodies sign a W-9 form. If the structure is founded under foreign law (and thus is a non-U.S. person), they sign a W-8BEN form. Such a

structure, however, has the option according to the "check-the-box-rule" to be treated as tax-transparent – contrary to the actual qualification.

In case of tax transparent structures (so-called "Flow Through Entities"), the structure respectively the corporate bodies of the structure have to sign a form W-8IMY. Thereby, the structure declares it is holding the assets (simply) as *financial intermediary*. In addition, the beneficial owners of the structure are obliged to sign either a form W-9 (U.S. persons) or a W-BEN (non-U.S. person, respectively NRAs) in accordance with their U.S. tax status. Because of a special regulation, it was not necessary to disclose the beneficial owners of Flow-Trough foundations and trusts that were non-U.S. persons and protected by client banking secrecy. Such a structure, however, has the option according to the "check-the-box-rule" to be treated as non-tax-transparent – contrary to the actual qualification.

The difficulty in assessing the beneficial owner of assets held by offshore structures consists especially in finding out when an independent, fiscally non-transparent Non-Flow-Through structure is considered a "sham" or "mere conduit" under U.S. tax law and, as a result of that, one has - for U.S. tax purposes - to look through the structure to the beneficial owner standing behind it. No reliable guidelines exist to answer the question, when a structure is a "sham" or "mere conduit". In general, it was assumed that the mere knowledge derived from the Swiss Form A that the beneficial owner behind a domiciliary company is a U.S. person does not in and by itself lead to the qualification as "sham" or "mere conduit" structure.

The situation is clear inasmuch as the QI bank is not allowed to rely on the declaration that the structure itself is the beneficial owner of the assets given by the corporate bodies of a structure on a form W8-BEN, if it has knowledge of deceptive or fraudulent manoeuvres (for example sham structures) or other specific circumstances. In the past, the IRS has, however, neither explicitly asked nor implicitly expected an examination of the domiciliary companies' substance. Respective controls were so far never subject of the external QI audits required by the IRS.

Text box 2: Client identification by Swiss QIs according to the QIA

Special formalities for client identification by Swiss QIs in accordance with the QIA are laid down in an annex to the QIA, the so-called "Attachment for Switzerland". Accordingly, all documentation created in accordance with the requirements of the Attachment for Switzerland is considered as "Documentary Evidence" within the meaning of the QIA and has been put on a par as a method of identification with the use of official IRS forms. The KYC-Rules acknowledged by the IRS are based on the one hand on the Swiss KYC-rules, but are on the other hand amended with certain additional questions regarding U.S. tax obligations.

For the assessment whether a client is a U.S. person or a non-U.S. person as well as for the determination as to whether a client is the beneficial owner of certain assets, a QI bank, according to the QIA, is allowed to generally assume that an IRS form (W-9, W-8BEN, W-8IMY) properly filled out by the client reflects the truth, respectively that the client data collected in accordance with the KYC-rules accepted by the IRS is correct.

During the negotiations for the QIA, the IRS had (orally) confirmed that a Form A used for the assessment of the beneficial owner in accordance with Swiss anti-money laundering law was not relevant for QI purposes. For as-

sessing the beneficial owner in accordance with U.S. tax law, the QI bank can thus generally rely on a signed IRS form or an adequate substitute in its possession. Potential discrepancies to a Form A in possession of the QI are generally irrelevant.

However, according to the QIA the QI is not allowed to rely on the documentation, if it has actual knowledge that the information or the declarations are unreliable or incorrect. Different opinions exist on when "actual knowledge" is given. Reliable guidance from the authorities applying the regulations does not exist. If a QI, because of reasons specifically described in the QIA, has reason to know that despite a contradicting declaration a client could be a U.S. person it is not allowed to rely on the QI client documentation without further inquiries.

4 Cross-border Private Client business into the USA: U.S. framework requirements

4.1 SEC Restrictions

Various U.S. laws (*inter alia* the „Securities Act of 1934“, the „Securities and Exchange Act of 1934“ and the „Investment Advisers Act of 1940“) as well as further rules and regulations deriving from the aforementioned Acts limit the provision of cross-border financial services into the USA. The SEC is responsible for the enforcement of these provisions which explains the terminology "SEC restrictions" in this report. Pursuant to these provisions a foreign unit is subject to the respective U.S. restrictions, if it provides specific services to U.S. persons in the USA thereby using "U.S. Jurisdictional Means". Each communication from a foreign country into U.S. territory is considered „Use of U.S. Jurisdictional Means" (e.g. per e-mail, telephone, fax, regular mail) as well as travel activities on the Interstate Highways. Particularly the activity as broker or dealer (client trader or independent dealer) and the investment advice to U.S. persons in the USA constitute in general a duty to get authorized by the SEC. The U.S. legislator has furthermore enacted provisions, with which financial products need to comply, if they are offered to U.S. persons.

The SEC restrictions are diametrically opposed to the approach of the Swiss financial markets regulation. For example, a foreign financial intermediary may perform the services as broker, dealer or investment advisor described above cross-border into Switzerland without an authorization by FINMA being required. Only the distribution of foreign collective investments and structured products and also insurance services are regulated in Switzerland.

4.2 The "deemed sales rules" under U.S. tax law

Conceptually, similarities exist between the SEC restrictions and the so-called "Deemed Sales Rules" of the U.S. Treasury Regulations: according to these rules, a sale of securities which otherwise would have been deemed as having taken place in an office *outside* of the U.S. will be deemed as having taken place *inside* the U.S., if there is a certain connection to the USA. Such sales are therefore subject to reporting- and / or backup withholding duties. This kind of connection to USA exists, if the client has opened an U.S. account with an U.S. office of the broker or if the client has given instructions from

within the USA per mail, telephone, electronically or otherwise concerning this sale or other sales (exception: this instruction from within the USA was given only "in isolated and infrequent circumstances"). Similarly, the Deemed Sales Rules apply, if the gross proceeds from the sale has been transferred to a client account within the USA or to an address of the client within the USA, if the client's selling order confirmation has been mailed to an U.S. address, if a branch of the respective broker in the USA has coordinated the sale with the client or receives instructions from the client regarding the sale.

The QIA contains explicit reporting and backup withholding duties relating to gross proceeds coming from the sale of U.S. securities. The QIA does not contain an explicit provision according to which the Deemed Sales Rules are applicable to non-U.S. securities.

At the time the QIA entered into force, the financial intermediaries were obviously well aware that there could be a duty on the QI-bank to notify the IRS when U.S. persons traded non-U.S. securities, if the Deemed Sales Rules was applicable to a transaction. Even today, the applicability of the Deemed Sales Rules is controversial and has at least been intermittently purported by U.S. authorities. According to the available information, the QI financial intermediaries have not yet reached a reliable, conclusive answer of this U.S. legal issue. This resulted in considerable legal uncertainty: In favour of the applicability of Deemed Sales Rules (on non-U.S. securities) it can be argued that Sec. 2.44(B) (2) and (3) QIA explicitly states that brokerage proceeds from the sale of U.S. securities are treated as "reportable payments". Sec 2.44 (B) QIA does not explicitly deal with brokerage proceeds from the sale of non-U.S. securities. In the FAQ relating to the QIA published on the IRS' website, the IRS is of the opinion that Sec. 2.44 (B) (4), which deals with certain payments of income from foreign sources, should be interpreted in a way that proceeds of securities transactions are included therein. However, an argument against the applicability of the Deemed Sales Rules is that the QIA does not contain any reporting- or backup withholding duties of proceeds coming from the sale of non-U.S. securities (therefore proceeds from the sale of non-U.S. securities would not be "reportable payments"). The latter view is being held today by UBS AG.

Text box 3: SEC-Restrictions und Deemed Sales Rules: Parallelisms

There is no obvious connection between SEC restrictions and tax consequences based on the Deemed Sales Rules. However, there are parallels. The Deemed Sales Rules are, *inter alia*, relevant when a client gives sales orders for securities from within the USA more often than in an isolated and infrequent manner. The SEC restrictions apply to contacts – a single contact is enough – with the client in the USA, as soon as "U.S. Jurisdictional Means" are used and this results in the sale of a security. Both the Deemed Sales Rules and the SEC restrictions refer to clients domiciled in the USA. The definition of "domicile" is specified in the QIA in connection with the U.S. Internal Revenue Code, respectively the SEC restrictions. The fiscal Deemed Sales Rules as well as the SEC restrictions are not limited to US securities, but also apply to the sale of non-U.S. securities.

In taking corresponding measures it is possible to avoid the applicability of the (diverging) legal consequences: the Deemed Sales Rules and the SEC restrictions are not applicable, if there are no longer contacts between client and the bank regarding securities.

5 2001 - UBS AG becomes a „Qualified Intermediary“

In the beginning of 2000, UBS AG operated a comprehensive Private Banking business with U.S. clients it took over from its predecessors *Schweizerischer Bankverein* and *Schweizerische Bankgesellschaft*. These clients either held an account / custody account directly with UBS AG or indirectly as beneficial owner of a domiciliary company. This business was conducted out of the North America Unit (NAM-business) within the bank. At the same time, UBS AG operated in a limited manner the „on-shore“ Private Banking in New York. With the acquisition of the U.S. broker and asset manager PaineWebber Group, Inc. („PaineWebber“) with approximately 30'000 employees at the end of 2000, UBS AG became an important onshore Private Banking provider in the USA and at the same time one of the largest asset managers worldwide.

After signing the QIA which became effective as of 1 January 2001, UBS AG as QI was obliged to obtain and retain reliable documentation from all of its clients holding U.S. securities which gave information on the tax status of the clients according to U.S. tax laws. Based on this, the bank committed to the IRS, depending on the tax status of a U.S. taxable person, to either report directly or through an U.S. depository (1099 Reporting) or where necessary to collect and deliver the backup withholding tax.

This fundamental system change with the levying of the U.S. withholding tax caused massive adjustments of client documentation, internal processes and IT-systems at UBS AG and at other QIs worldwide. To be in a position to provide information on the taxation status of clients a QI had to obtain from all clients either a corresponding declaration on an official IRS-form or documentary evidence approved by the IRS and archive it in the client files in an auditable form. The clients are - by way of the pertinent IRS-forms - adverted to the fact that their declarations are made under penalty of perjury in case they are untrue, incorrect or incomplete.

As with other banks worldwide the efforts for the implementation rose significantly in the course of 2000, because 1 January 2001 was set as the date for the QI-system coming into force. The implementation was made difficult by the fact that several questions were never clarified by the IRS or it only did so very late. UBS AG had to receive and make available QI-conforming client documentation not only for U.S. clients (status: 2000) but also had to ensure that the documentation of thousands and thousands of client relationships with non-U.S. persons who held U.S. securities in their accounts, provided information that the client and the Beneficial Owner is a non-U.S. persons according to U.S. tax law.

From an operational point of view requesting QI-compatible client documentation (especially W-9 and W-8BEN Forms signed by the client) as well as (forced-) sales of U.S. securities were reasons for concern for UBS AG. A particular challenge was the great number of domiciliary companies, which held U.S. securities in their accounts. In the year 2000, UBS AG maintained client relationships with approximately 32'000 offshore structures, 15'000 of which kept U.S. securities in their depots. Only a

small part of these structures had a further reference to the USA apart from the fact that they had invested in U.S. securities.

With regards to the numerous natural persons and structures which held U.S. securities as clients of UBS AG in the year 2000, client documentation had to be obtained until the end of that year - respectively after the IRS granted a global grace period in the course of 2001. Additionally, U.S. securities held by non-W-9 clients had to be sold, as far as the QI was entitled to do so contractually. Forced sales were executed regularly, also after 2000, if a client became a U.S. person under U.S. tax law - for example by taking up a domicile in the USA - without signing a Form W-9.

6 Results of the investigation and sanctions of the EBK

6.1 Incorrect implementation of the Qualified Intermediary Agreement by UBS AG

In the course of its investigation the EBK ascertained that in the clear majority of client relations the U.S. tax status of NAM-clients was stated correctly. The investigation, however, brought to light three overlapping constellations in a very small number of cases compared to the total number of clients of the NAM-business where UBS AG seems to have violated its duties under the QIA.

- **Category (1) - Restructuring („Switches“):** These cases involve an entity (frequently an offshore domiciliary company) which was interposed between the bank and the natural person who until then was the contractual partner of the bank. The then executives of the NAM-business knew in light of the QIA implementation that UBS AG, as a signatory of the QIA, was not allowed to offer proactive support to clients respectively U.S. beneficial owners, who did not want to disclose their data to the IRS via a form W-9, in their search for possibilities to avoid taxes. Based on the bank's guidelines and in coordination with external U.S. tax advisors and in accordance with the interpretation aids of the Swiss Bankers Association, the client advisors were only allowed to arrange a client's contact with an external advisor (after having been asked by the client). In most of the cases, the client advisors complied with this. But there were - in the overall context a relatively small number of - exceptions, particularly in the case of very wealthy clients. At times, individual client advisors not only referred their clients to selected providers of Non-Flow-Through structures, but also actively advised them beforehand, accompanied them to visit such providers or even arranged to meet the client with the provider in the USA. The directly responsible management of the NAM-Business knew about this, although specialists had made it clear that an active role of the bank in setting up those structures may be interpreted as circumventing the QIA. From a U.S. tax law point of view this category is problematic and may be considered suitable of circumventing the QIA; this is due to the proximity of the period in which the restructuring took place and the QIA was implemented and due to the (real life) relations between the client advisors, the structure and the U.S. persons behind the structure.
- **Category (2) „Upgrades“:** These cases involved already existing structures which - however - needed to be restructured with respect to QIA requirements (for example, a change of corporate

form or interposing of an offshore domicile entity) to qualify as a non-tax-transparent Non-Flow-Through structure. In the year 2002, at the occasion of repatriating client relationships from the Bahamas to Switzerland, Upgrades of such structures were discussed within UBS AG and were allowed in isolated cases without any expressive objections raised by Group Tax.

- **Category (3) - "Sham-", "Mere Conduit-", "Nominee-" and "Agent" Situations:** In general, U.S. tax law assumes that a Non-Flow-Through structure is the beneficial owner of the assets held within the meaning of U.S. tax law. To qualify in such manner, it was and is required that the corporate legal prerequisites are upheld while managing the company with respect to the decision making process and other prerequisites under corporate law. For example, assets of such a structure may only be distributed or investments may only be made, if a formal resolution of the competent corporate bodies exists. Among individual structured clients (the bank's client is the structure) that held their assets in accounts with UBS AG, these requirements were not complied with thoroughly in such manner that the client advisor considered the beneficial owner as the "actual client" and served him like a "direct client". This led to, *inter alia*, monies being taken out of the company without any respective distribution resolutions of the entity which was the account holder. In these and similar cases (e.g. where structures were used to mask active trading or payment activities), the bank could no longer simply rely on the information by the structure which states it was a Non-Flow-Through structure. Insofar as the bank did not request a new form W-8IMY from the structure and the beneficial owners reported to the IRS using W-9 or W-8-BEN, it violated its duties under the QIA.

A few individual client advisors of the NAM-Business and their direct supervisors were responsible for this severe misconduct. In addition, their behaviour was partially expected and partially at least tolerated and not, as would have been their duty, vigorously prevented by those responsible for the NAM-business and their direct supervisor. Thereby, UBS AG violated the requirement for fit- and propeness as well as the organizational obligations set out in the Swiss Banking Act, because it assumed uncontrollable legal and reputational risks for a long period of time. It was particularly severe that the management of the NAM-business failed to inform the top management of UBS AG timely and comprehensively.

With regard to the clarification of the U.S. tax status, the bank had bestowed a big responsibility upon its client advisors. This not only led to an inherent danger of overstraining, but also brought along a potential for malpractice. Although the bank had trained the client advisors concerning the categorization of client relations, it failed to ensure subsequently, by means of periodical and sample controls which are independent from the management, that client advisors only accepted declarations regarding the U.S. tax status of their clients where this was justified.

Text box 4: The QIA and the use of structures in Private Banking

The use of structures such as trusts, foundations and other domiciliary companies within the framework of a private client relationship corresponds to a legitimate need and is legally permissible pursuant to both U.S. and Swiss law. If the bank's client is not a natural person, nor an unincorporated as-

sociation, nor a charitable foundation, nor an operative partnership or company, but a non-operating domiciliary company, then the bank needs to ensure that it has identified the beneficial owner/s pursuant to the applicable anti-money laundering provisions and that it has inquired about the origin of monies. In principle, a bank does not have to take the tax status of the domiciliary company and of its beneficial owner into consideration. A bank needs to at least be able to exclude, by applying the necessary diligence, that the monies brought forward do not stem from a crime (Sec. 305^{ter} para. 1 Swiss Criminal Code, StGB; SR 311.0), that embargo provisions are not violated or that the acceptance of monies is not connected to otherwise uncontrollable legal and reputational risks. Finally, according to Art. 8 of the Agreement on the Swiss Bank's Code of Conduct with regard to the Exercise of Due Diligence (*Vereinbarung über die Sorgfaltspflichten der Bank* (VSB)), banks may not abet to be part of any deception manoeuvres of their clients toward local or foreign authorities, particularly toward tax authorities, by incomplete or otherwise misleading statements.

If bank employees are providing advice themselves or perform certain activities for the client, respectively for the beneficial owner, they are exposed to the danger of getting into the proximity of contributing to a tax violation pursuant to foreign or Swiss law. In light of the requirement for fit- and properness as well as the organizational obligations set out in the Swiss Banking Act, certain constellations are problematic in which an institute, such as UBS AG in this case, takes over contractual duties with respect to the IRS towards domestic or foreign authorities by signing the QIA and subsequently neglecting it.

6.2 Partial non-compliance with SEC restrictions

In spring 2002, the bank decided to introduce a new "conservative" business-model (the so-called "Revised Business Model") in the non-W-9 business, whereupon contact with U.S. clients by use of U.S. Jurisdictional Means should no longer be permitted. Instead, already existing clients should be induced to enter into portfolio management agreements with UBS AG. With this measure, UBS AG sought to achieve compliance with the SEC restrictions as well as to avoid the risk of Deemed Sales with respect to U.S. tax regulations. UBS AG issued a special country paper in 2004, which was revised in 2007, relating to the SEC restrictions and their impact on the activities of client advisors of the NAM-business. The EBK investigation revealed however that several client advisors of the NAM-business had kept in touch with selected non-W-9 U.S. clients over the years and repeatedly and had thus violated the SEC restrictions. These violations were however not limited to the business with non-W-9 clients. Before UBS Swiss Financial Advisers AG ("UBS SFA AG"), which is registered with the SEC, took over the W-9 clients living in the USA with assets above CHF 500'000- in the beginning of 2005, even W-9 clients were sometimes attended to in violation of SEC restrictions.

The EBK admonished the bank for not having enforced its own business policy and the Revised Business Model with necessary persistency. Thereby, the bank as a global company with a strong presence in the USA exposed itself to substantial legal and reputational risks. The EBK considers this neglect as serious. This especially so, because the bank is present as a financial services provider in the USA and since the unclear legal situation with respect to the application of the Deemed Sales Rules and its application in cases of non-observance of the SEC restrictions could not be excluded. The EBK

acknowledged that UBS AG tried to adjust its internal regulations and its business model pursuant to applicable U.S. restrictions continuously. At the same time, the EBK determined that independent compliance controls of the directives for the cross-border provision of financial services into the USA were only established in 2006. The EBK considers this as insufficient in light of the risks inherent to this business.

6.3 Increasingly difficult offshore Private Banking of UBS AG for U.S. clients

The responsible managers of the NAM-business had been aware early that classic Private Banking, which is - *inter alia* - based on intensive contact between client advisors and clients, could only be conducted with maximum difficulties in the corset of the duties of a QI in connection with the restrictive SEC restrictions. The acquisition of PaineWebber redounded furthermore to the fact that UBS AG ran increased reputational risks with its parallel offshore business. Hence, the management of UBS AG tightened the general framework for cross-border Private Banking into the USA increasingly. This happened for instance in the year 2002 when it established the Revised Business Model for the non-W-9 business, generally centralized U.S. clients, founded a separate unit for W-9-clients (the UBS SFA AG) and decreed clear directives pursuant to a country paper USA as well as annotations for the QIA.

In its day-to-day business, UBS AG ran politics of strict compliance. However, it neglected to safeguard, via independent controls from direct management that the restrictions were adhered to unexceptionally on the client front. The way the NAM-business had been set up, left the impression with some client advisors of the NAM desks that even though one had to act carefully, a violation of SEC restrictions would be tolerated by their supervisors, as long as this would be unavoidable with respect to the sophisticated demands of wealthy clients. In addition, client advisors of NAM were confronted by two, in their incentives opposing changes of the general framework of the U.S. offshore Private Banking since the year 2004: On the one hand, the country paper USA (2004) had been uploaded to the intranet of UBS AG. This paper gave precise information about what was allowed in the cross-border business and what was not. Client advisors were also trained with respect to the country paper. On the other hand, the performance monitoring- and assessment system of the entire bank was changed and was set up within the Business Unit "Americas" in a special kind of way. In doing this, the criterion of net new money became the most important factor for the participation in the bonus pool; this had huge implications on the NAM-business which was in the same time confronted with sensitive restrictions and eventually resulted in an ultimate perversion of the targets set by the bank with its performance monitoring- and assessment system. Individual client advisors were inclined to the interpretation that – if the bank set such ambitious targets – it could not be very serious about the enforcement of the country paper USA.

Following the foundation of UBS SFA AG, to which W-9 clients had been transferred to in 2005, the responsible persons became increasingly aware of the fact that offshore Private Banking with U.S. clients was very risky; in particular, because further and further tightening of the U.S. regulatory framework had to be expected. Several (sequentially originated) project teams searched for solutions which turned out to be time-consuming. First, considerations of selling the business came to the fore,

including the sale to a third party as well as a management buy-out by the management in charge of the NAM-business. In August 2007, the top management of UBS AG instead decided to shut down the existing business by way of melting it down step-by-step until zero. The implementation of this decision started in November 2007.

6.4 Responsibility on management level

The EBK did not find any indications that the bank's top management had any knowledge of violations of duties under the QIA. In particular, the EBK did not find any indications in the course of its extensive investigation that would lead to the conclusion that top management were accessories or accomplices regarding the violations of the QIA or that management had even proactively furthered such violations. Quite to the contrary, UBS AG undertook great efforts between 2001 and 2002 to ensure that it meets its obligations under the QIA in its entirety. With respect to the QI-documentation of client relationships, which had been a fundamental obligation under the QIA, the former CEO of WM&BB stated unmistakably that "non-compliance is not an option". In view of the then imminent QI-audit and the banking statutory audit Raoul Weil, at that time Head of Private Banking International, pointed out at a meeting of the upper managers of his business unit that there would be "zero tolerance" for non-compliance.

The fact that individual client advisers of the bank had assisted individual clients with their endeavour to avoid taxes while continuing to invest in U.S securities at the same time, was known to a few client advisers, the (few) managers of the NAM-business and its direct supervisor as well as certain experts of GWM&BB. Especially because of this fact and because the bank assumed it had implemented the QIA correctly – even the external auditors had confirmed this when carrying out the audit routine required by the IRS -, it had not established effective controls independent of the line reporting. This caused the now detected partial non-compliance with the obligations deriving from the QIA and the legal and reputational risks accumulated by the bank to have remained undetected by the bank for a longer time.

It was pointed out within the bank that with regards to the compliance with the SEC restrictions heightened reputational risks existed after the acquisition of PaineWeber as onshore and offshore business were operated at the same time. UBS AG, respectively its top management, basically reacted with two (proper) measures to that challenge: Firstly, by adopting the Revised Business Model for the non-W-9 business in the year 2002, and secondly, by establishing an SEC-registered provider for the W-9 business. UBS SFA AG finally took up its business operations in January 2005. Looking back, the EBK is of the opinion that whereas the Revised Business Model was not implemented with the necessary force, the setting up of UBS SFA AG took too long. These weaknesses in leadership cannot be blamed on persons who are to ensure fit- and properness ("Gewährsträger") currently in charge at the bank in a way that would justify imposing supervisory measures against these persons. Rather, these failures have to be attributed to the bank as a whole, as a complex company.

The EBK also considers the fact very problematic that the management of "Americas International" had established a new incentive system from 2004 onwards, in which the criterion of net new money became a paramount factor for the distribution of the bonus pool. This apparently resulted in several client advisors of the NAM-business feeling under additional pressure to reach these goals while accepting the violation of the requirements of the Country Paper USA. Thus, to some extent there has been communication using U.S. Jurisdictional Means with U.S. clients contrary to internal directives and also contrary to the SEC restrictions.

Overall, UBS AG lacked the unconditional will to comprehensively adjust itself to U.S. regulatory requirements at all times. The mandatory duty of taking foreign provisions into consideration does not directly result from Swiss supervisory law. It should also be noted that the applicable regulations of U.S. law are blurred at times and are alien to Swiss (supervisory) law. Nevertheless, with respect to the significant exposure of UBS AG in the USA, the adherence to U.S. law is an absolute must from a risk management perspective. Although this point of view was also clearly shared by the top management, it was not implemented dutifully and consistently by its cadres with respect to the NAM-business.

The fact that UBS AG is exposed to existence-threatening, legal and reputational risks emanating from Private Banking can - in the EBK's view - also be attributed to a cultural problem.

6.5 Sanctions

The EBK admonished the bank for severe violation of the warranty and organisational requirements and barred it from carrying on its business with U.S. clients out of Switzerland beyond UBS SFA AG. Furthermore, it instructed the bank to adequately capture, limit and supervise the legal and reputational risks with respect to the provision of cross-border financial services out of Switzerland. In contrast, the EBK did not impose any sanctions on former or current executives or employees of UBS AG. UBS AG has not appealed the injunction of 21 December 2008.

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Review of US Resident Non-W9 Business

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Date
Classification

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10 December 2004
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**GOVERNMENT
EXHIBIT**
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Permanent Subcommittee on Investigations
EXHIBIT #12

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1. Introduction

1.1 Introduction and Background

This report has been prepared by the Legal and Risk & Compliance functions of UBS Wealth Management and Business Banking ("WM&BB") and looks at the extent of business that WM&BB carries out with and for Non W9 US Persons. It was prepared with the help and input of Business Sector North America ("NAM"), headed by Michel Guignard and its content has been agreed with NAM.

1.2 Scope of the Review and Approach Applied

This report focuses on business in WM&BB's booking centre Switzerland (primarily within the Wealth Management International Business Area) with Non-W9 persons resident in the United States (note that WM&BB also services a significant number of Non-W9 customers who are currently not residing in the US. This segment should not trigger the concerns outlined in more detail in this report but it is understood that this population creates potential change management issues). WM&BB's booking centres abroad only service a limited number of US resident Non-W9 customers. (see overview on page 6) and are subject to the same rules as Swiss booked clients. This report does not therefore consider in detail WM&BB's locations abroad nor does it consider any other businesses servicing US persons within the UBS Group such as Investment Bank, Global Asset Management or those businesses physically located in the US such as WM (USA)'s business, WM&BB's business conducted through UBS AG, New York Branch etc.

This report also focuses primarily on the risk issues arising from Securities and Exchange Commission ("SEC") oversight and / or regulations affecting business with US Resident Non-W9s. In particular, it focuses on SEC rules governing marketing and communicating into the US and dealing with US customers. Only peripherally does this paper discuss the issues arising under the US Internal Revenue Services' ("IRS") Qualified Intermediary ("QI") regime and the UBS Group's arrangements for compliance therewith. These issues were and are dealt with by specialist working groups in WM&BB. Additionally, we do not address any [REDACTED] - though it bears mentioning that we have obtained legal advice from outside US counsel [REDACTED]

The approach we apply is to report on status by categorising client segments along risk-relevant factors i.e. cash only clients vs those holding securities in a custody account, arrangements for mail instructions, value of assets as these impact the communication issues etc..

We have also commented briefly on related service models as far as they deal with US residents, namely: exposures in our Financial Planning and Financial Intermediary ("FIM") businesses as well as e-banking relationships. We have also reviewed the banking process end to end over the full life span of the relationship i.e. prospecting, marketing, account opening and servicing.

1.3 Key Findings / Conclusions

The number of account relationships in WM&BB in Switzerland with US residents where the account holder has not provided a W-9 is approximately 52,000 (representing CHF 17 billion in assets). The business with US Resident Non-W9s generally raises the same types of risk as WM&BB's wider cross-border businesses raise. However, it is generally accepted that due to UBS AG's US listing, wider UBS Group exposure in the US and the particular regulatory environment existing there, the risks are higher. Consequently additional mitigating

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actions have been taken to further reduce the regulatory risk associated with the business with US Resident Non-W9s.

WMBB has taken the view that the key risk arises from UBS AG in Switzerland being a non-SEC registered entity communicating with such clients in (or into) the US concerning securities. This risk has been mitigated by a number measures and factors as described in this report. These include:-

- 32,940 account relationships with US Resident non W-9 clients are cash accounts only. They are therefore not a factor in assessing risks regarding SEC compliance.
- The remaining account relationships (20,877) with US Resident non W9 clients have arrangements in place to the effect that UBS do not enter into postal or e-mail communication into the US regarding the portfolios (17,846 of these relationships have retained mail services and the rest provide addresses for correspondence outside the US). This obviously substantially limits the communications risks.
- The business has a mandate to strive hard to increase the number of relationships that require no (or little) communication into the US.

Guidelines are in place (and training has been and continues to be provided) for Client Advisors indicating the limits of what they can do with respect to communicating into the US and with Cross-Border Banking Activities into the US generally. These guidelines (and further relevant information) can be found under <http://tw.ubs.com/page/0/36/0.1080.636-80482-1-0.00.shtml>. Advertising and events in the US by or on behalf of non-us entities are prohibited. Cold calling / prospecting in the us and use of us jurisdictional means is similarly clearly prohibited. Guidance on conduct of existing relationships is then provided. The attention paid in training, support of BU Americas International management and virtually daily contact between Legal / Compliance and the NAM team strongly indicates that the business is well aware of the sensitiveness of its services to US clients.

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2. Historical Information

2.1 Analysis - 1999 to date

2.1.1 Background

The issue of the bank's cross-border business into the United States has been the subject of intense Legal / Compliance scrutiny for quite some time. In 1999, Legal prepared a memo outlining the US regulatory framework relevant for UBS's Wealth Management business conducted into the US from non-US offices. With UBS AG becoming a Qualified Intermediary under the IRS QI regime and the acquisition of the former PaineWebber business, such discussions were intensified and ultimately led to an in-depth analysis being undertaken at the beginning of 2001. The results of this analysis were presented to senior management in September 2001 and essentially entailed as principal recommendations:

- the establishment of an SEC-registered investment adviser subsidiary to deal with W9-customers who typically expect an active service model; and
- to curtail the bank's activities when servicing US Resident Non-W9 customers by refraining from use of US "jurisdictional means".

The first decision resulted in the creation of UBS Swiss Financial Advisers AG and the second decision in a change of the business model. It merits highlighting that the issue of the so-called "deemed sales" rules which - taking a risk based approach were ultimately regarded as being integral to UBS's compliance with its QI Agreement with the IRS - further galvanised the process to make adjustments to the then existing business models for dealing with US Resident Non-W9 clients.

2.1.2 Actions Taken

In January 2002, UBS implemented strict principles for servicing US customers under the heading "Deemed Sales Guideline" (for full details see materials at <http://bw.ubs.com/pages/0/36/0.1080/636-80482-1-000.shtml>). In essence, these boil down to a development of a "ring-fenced" service model for US Resident Non-W9 clients having securities accounts, i.e. retained mail instructions to be in place and no securities-related communications into the US. In addition, the business was asked to transfer as many advisory / non-discretionary clients as possible into discretionary mandates, primarily in order to address the deemed sales issue but also improve SEC / Securities Act compliance as a result of the mandatory "ring-fencing". In September 2004, Business Sector North America ("BS NAM") also established a "Competence Centre Deemed Sales" to further ensure implementation of agreed principles.

During Q2 2002, an IT-based tool was implemented in Switzerland to make sure that no securities related instructions could be given when the customer was on U.S. territory. In Q3 2002, a project was initiated to "centralise" all W9 US clients and all US Resident Non-W9 clients to designated desks with a view to creating an enhanced control environment (ensuring that those Client Advisors most familiar with the particular requirements related to dealings with such clients were involved in these relationships etc.). This project remains current and progress is tracked on an ongoing basis.

Legal / Compliance has been in constant contact with senior management BS NAM and has held various training sessions with Client Advisors on cross border banking activities into the US. Most recently, updates were provided in Q3 2004. Below is the standard presentation.

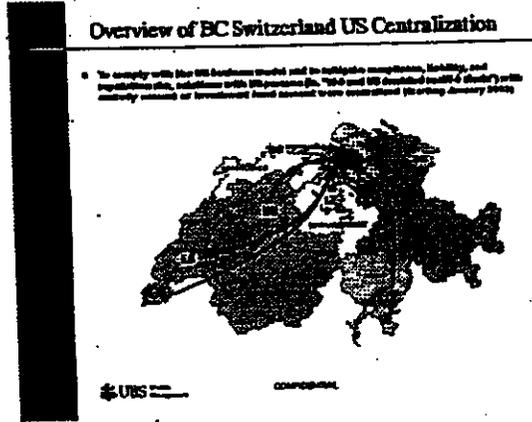
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Certain categories of clients were excluded from the process as shown below. Largely these are specific client segments already handled in a distinct manner within WM&BB. BAP are employee accounts, FIM are Financial Intermediary relationships (see section 3.2 of this report), FK / GK are corporate clients (i.e. not individuals), NALO are dormant relationships and SCAP are clients designated as having a "sensitive country" connection under relevant WM&BB policy.

Non-W9 categories excluded from Centralization

Account Office	Excluded	With activity	With related staff
USA	313	145	75
USA	2836	1479	725
USA	812	210	47
USA	7236	600	816
USA	13	13	7

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The number of US Resident Non W-9 account relationships now handled by the Business Sector North Americas Desks in Switzerland is shown on the following slide (note that references in these slides to "clients" are actually to account relationships and in some cases, the same "client" may have more than one account relationship - however WM&BB systems do not allow to see the number of linked account relationships):

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Situation WM&BB as per end of October 2004
 (In All US - only US resident Non-W9)

Account Type	Without activity		With activity	
	With Potential Ball	Without Potential Ball	With Potential Ball	Without Potential Ball
Private Bank	1,234	567	890	321
Private Equity	456	789	101	234
Private Hedge	321	654	987	123
Private VC	210	543	876	432
Private PE	109	432	765	198
Private Other	987	321	654	987

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This breaks down as follows in terms of client segment:

BS NAM Key Figures 04

Client Segment	Number of Accounts	Number of Clients
Private Bank	2,434	1,742
Key Client	1,742	121
Private Equity	1,742	121
Private Hedge	1,742	121
Private VC	1,742	121
Private PE	1,742	121
Private Other	1,742	121

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As part of the centralization process, system restrictions are also in place to prevent any new accounts for US resident non-W9 clients being opened anywhere other than on the Business Sector North Americas Desks. Therefore going forward the centralization principles should be preserved.

3.1.2 Client Advisors Travelling to the US

In the last year, we are advised that 32 different Client Advisors from BS NAM have travelled to the US on business. On average, each Client Advisor visited the US for 30 days per year, seeing 4 clients per day. This means that approximately 3,800 clients are visited in the US per year by WM&BB Client Advisors based in Switzerland. Client visits are prioritised by asset size, and Affluent clients are not visited.

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No printed matter is taken into the US and as will be apparent from the above all clients have cash accounts or make use of other banking products that justify the Client Advisor visiting them. Guidelines have been established in relation to the conduct of cross border business generally into the US and a copy of the present text is set out in Annex 1 to this report. Training materials (case studies etc.) have also been developed and delivered to relevant Client Advisors to emphasise what is and what is not permissible activity.

Below is the full presentation produced by BS NAM on their business.



3.2 US Resident Non-W9 Clients Dealing with WM&BB via Financial Intermediaries ("FIMs")

The following table shows numbers of account relationships with US Resident Non-W9 clients dealing with WM&BB through a Swiss-based Financial intermediary. The numbers will be included in the information shown in 3.1 above but it is not open to us to isolate the relationships which appear in both groups.

		US Resident Non W9	Non US-Resident (US persons) non W9
Relationships With Custody Account	Account Numbers	826	2,686
	Assets (CHF)	1,534,486,100	5,792,927,159
Relationships Without Custody Account	Account numbers	64	30
	Assets (CHF)	1,741,476	1,008,448

In these cases, under standard UBS FIM business models, day to day (and in most cases all) client contact is via the FIM and not directly between UBS and the underlying client. Further details on the specific FIM relationships can be provided if required. As an aside, note that WM&BB also engages in business with 9 US-based FIMs that do, however exclusively bank customers who are not subject to U.S. tax (i.e. US Non-Resident Aliens). This segment does not create SEC or QI / deemed sales issues as we only work with US FIMs that have the appropriate SEC registrations.

3.3 UBS Trusts, Foundations and Other UBS Administered Structures Involving US Residents

The following table gives information on UBS administered Trusts, Foundations or other structures involving US residents. Again, the numbers may, to some extent be included in the information shown in 3.1 above but it is not open to us to isolate the relationships which appear in both groups. No such "double counting" will occur where the nature of the connection to the US resident is "indirect" - e.g. there is a beneficiary of a trust structure that is resident in the US.

UBS Trusts, Foundations and Other UBS Administered Structures where the Selloer is a US Resident	16
UBS Trusts, Foundations and Other UBS Administered Structures where one or more of the Beneficiaries are resident in US (Number)	315
UBS Trusts, Foundations and Other UBS Administered Structures where the Selloer is a US National (Number) INCLUDING TAX DOMICILE	15

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UBS Trusts, Foundations and Other UBS Administered Structures whose one or more of the Beneficiaries is a US national (Number) INCLUDING TAX DOMICILE	283
Total Sum of Total Assets in Structures (in CHF)	4132'826'806

WMLBB Financial Planning policy is that generally we do not take on relationships with US resident settlors and a tax opinion is required in the context of any structure involving a US resident settlor or beneficiary. Accordingly, it can be seen that the number of structures in place is very small (total universe of FP structures is over 10,000 trusts and foundations under administration).

3.4 E-Banking Relationships with US Residents

The following table gives information on UBS E-banking relationships with US residents. Again, the numbers may, to some extent be included in the information shown in 3.1 above, but again it is not open to us to isolate the relationships which appear in both groups.

Client Account Numbers in Abacus with Domicile USA and E-Banking access	2'605
With Custody Account	975
Without Custody Account (i.e. cash only)	1'630
Total clients Assets (CHF)	486'323'526
Total Invested Assets (CHF)	425'312'811
Invested Assets in Depot Accounts (i.e. securities) (CHF)	333'059'377
Invested Assets in Cash Accounts (CHF)	92'253'434

E-banking for US resident customers is constantly monitored by Legal to ensure appropriate restrictions are put in place.

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4. High-Level Risk Assessment For Various Client Segments

4.1 Risk Assessment

As can be seen from the information above, WM&BB's business relationships with US Resident Non-W9s are material both in number of clients and value of assets. However, various measures have been put in place to mitigate the risks attendant to the business.

4.1.1 The Risk

UBS AG, Switzerland, is not licensed to conduct regulated activities within the US. The primary risk facing WM&BB therefore in dealing with US Residents generally (whether or not W9s), is that we are alleged by the SEC to have carried on securities related activities within the US for US persons against SEC regulation. Specifically this is the risk that WM&BB has communicated within or into the US to US Persons regarding securities.

4.1.2 The Business

There is no prospecting or marketing for WM&BB's services (other than for our US operations and in the future for our Swiss-based SEC-registered investment adviser entity) performed on U.S. territory. Additionally, as a matter of policy, WM&BB does not accept account openings through correspondence for US resident clients.

US Resident Non-W9 Clients who hold only cash do not expose UBS AG, Switzerland to the risk of communicating into the US regarding securities and can therefore be discounted for the purposes of assessing risk in this respect. Of the remaining US Resident Non-W9 account relationships, over 20,000 hold at least some securities (although this figure maybe in fact be lower due to fiduciary deposits (i.e. cash deposits) being reported on investment accounts). In our view these are the higher risk clients.

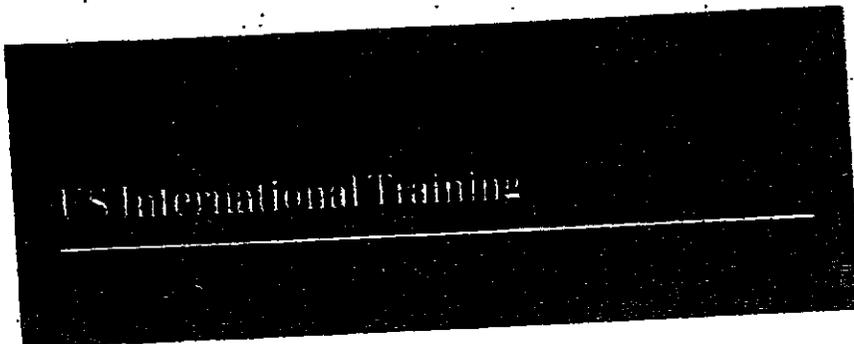
4.1.3 Cross-Border Risk

Conducting business on a "cross border" basis (i.e. with non-resident clients in any jurisdiction) carries a certain amount of risk due to the inherent difficulties in reconciling often conflicting laws and regulations. Whilst WM&BB seeks to comply with the laws and regulations of the countries into which it carries out business (e.g. through restrictions on the types of products offered to clients and the way in which those products are offered), it is not possible to reduce the risks arising from such business to zero.

4.1.4 Additional Specific Steps To Mitigate Risk

There is no doubt that the US has its own specific risks due to the extent of the UBS Group exposure and the virulent regulatory atmosphere. Therefore, further steps have been taken over and above those generally taken for the cross border businesses of the WM&BB. As described in this report, these include the centralisation of all US Resident Non-W9 business into the BS NAM Desks in Zurich, Geneva and Lugano; ensuring that all such clients are retained mail clients (i.e. no systemised communication by the Bank into the US); providing further guidelines to Client Advisors regarding communications with such clients, and lower levels of Client Advisor visits to such clients when compared to other business areas.

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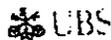
26 September 2006

Agenda

Introduction
Country Paper USA
Impact of Country Paper
on Business Model US Intl
Security Aspects
Round table

Hansjörg Bless, US International
Franz Zimmermann, Legal
Hansjörg Bless, US International

Paul Herger, Security Risk Control
all



Introduction

- + Scope of Training Sessions
- + US Regulatory environment
- + US Service Model
- + New Country Paper USA
- + Way forward



US Service Model

Client Segment	Investments/ Reporting Needs	Domestic	Servicing Unit
US Person	All securities (incl. US secs.) (W9)	[Redacted]	UBS SFA ³¹
		[Redacted]	US Int'l. (W9) NAM ³¹
	Securities (except US secs.) (non-W9)	[Redacted]	US Int'l. NAM
		[Redacted]	WMI, WMCH, PCC



³¹ UBS SFA, US Int'l. NAM, WMI, WMCH, PCC are all UBS entities.

Country Paper USA

Purpose of Country Paper ('CP')
Launch of amended CP targeted in Oct 2006

- Travels to meet existing and prospective clients to be kept to a minimum
- Adequate training of Traveling Officers
- Specific approval for business travels required by supervisor
- Travel Plans and certification required from Traveling Officers
- No security-related communications to persons resident in the U.S. This includes in-person communication and communication by mail, telephone, e-mail, facsimile or telex.
- Distributing account opening documents is accepted within defined parameters
- No transport of assets (e.g. cash, checks, etc.) into or out of the U.S.
- Use of Travel notebook essential to safeguard client confidentiality

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Country Paper USA

Provision of statements and account information related to banking services is allowed
In a meeting in the U.S. communication may not be related to securities products or services
Exception: a security client (non-discr.) inquiring about optimal servicing structures may be informed about a discretionary mandate with UBS

Contacting prospects regarding banking services on an unsolicited basis and discussions on non-security related topics are permitted
Standard UBS account opening documentation may be distributed to banking services prospects. However, the prospective client must return the forms by mail.

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Impact of Country Paper on Business Model US Intl

- Increase ring-fenced discretionary solutions further
- Strict adherence to Country Paper
- General traveling guidelines:
 - HNWI: client retention & referrals / switch to discretionary mandates
 - CORA: referrals / switch to discretionary mandates
- Development of specific education sessions (e.g. for traveling purposes, for walk-in's, for telephone servicing, for referrals)
- Performance measurement with respect to KPI's to be reviewed

* UBS

Travel Security

- Thorough preparation of trip
 - First travel accompanied by senior CA
 - Employment of Using Best Practices
 - Reasoning of Business Trip: be prepared for arising questions when crossing the border .
 - Travel habits:
 - Airlines, flight routes need not be altered from a security point of view
 - Strong recommendation to change hotels in rotation
- In case of emergency (7 x 24h) : Tel. +41-44 234 24 24
Security Risk Governance will subsequently co-ordinate the next steps with Legal, Line Management, Family and others

* UBS

Travel Security

Observe Clients' Right to privacy at all times:

- Always maintain 'Clear Desk Policy' in hotel rooms
- Use secure infrastructure (Travel notebook, PDA)
- Be aware that cell phones are prone to eavesdropping
- Cross borders without client related documents

Usage of courier and postal services by clients:

- Regular mail may be used
- Use courier service if tracking is needed
- Address must not necessarily show 'UBS'
- Passport/Id copies should be sent separately



Lessons learned

Tel. +41-44 234 24 24

No further calls

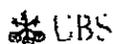
In case of an interrogation by any authority:

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

No panic / rush! we are not criminals!

"Yes, I am meeting with clients" (banking products)

Comply with e-mail policy



Traveling - way forward

- "Certification"
 - sign country paper
 - travel security training
- First trip together with a senior
- Written travel plan to be discussed / agreed with line manager prior to business trip
- Empty Travel notebook, no printer, blank forms only
- **NO** handover of asset statements
- Written debriefing / report with line manager
- Regular security training



Useful Links

US Service Model

[http://www.ubs.com](#)

US Competence Center

[http://www.ubs.com/uscompetencecenter](#)

Country Paper USA

[http://www.ubs.com/countrypaperusa](#)

Security Home page

[http://www.ubs.com/securityhome](#)

Travel Tips & Personal Security Tips

[http://www.ubs.com/traveltips](#)

Travel Risk Advisor

[http://www.ubs.com/travelriskadvisor](#)



Round table

Comments

Questions

Discussion

* UBS

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Baerengasse 16
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Tel. +41-44-234 47 53

* UBS



CONTACT REPORT

Number		Currency	Value
		USD	1'500'000
	Strategy	Stage	Performance
	Advisory	2004 ytd	5.6%
Date	Where	City	Who
29.11.2004		New York	Client

Introduces a new code to facilitate discreet email contacts:

EUR = orange
 USD = green
 GBP = blue

100K = C
 250K = 1 nut
 1 M = a swan

DOCU=D

Place EUR cash in DOCU approx 3%
 Place USD in DOCU more or less ATM

Buy forward accrual USD 1 mio ag. EUR (buying EUR!), lower level about 2.5 cents below spot. Call to confirm final price with him.

Email:

Took care of the [redacted] this morning, green @ 12 (about 13275), orange @ 3 (around 13720). I say about because I neglected to write down the exact numbers (too early in the morning), I can get them to you later.

I also booked the other trip, because as I was talking to the agent, it looked like it was moving away from us and I believe that you would be good with that. I got you [redacted]

We expect to move in a range at the moment.

I had not forgotten you, on the contrary. I sent you a mail the next day which you do not seem to have received, but which, interestingly enough, is not to be found in my sent items either.

The upper and lower levels are [redacted] First leg is December 7th. I was able to do it when the level was [redacted] but had to move fast because it was on the upswing. Later on in the day we would have been over [redacted] So I decided to move without first consulting you, since you had agreed in essence. That saved us some money.

The [redacted] are all comfortable: about 2.5 orange nuts @13710 (3%) and about 2.05 green nuts @13270 (12%).

All clear?
 Dieter

PS Just give me a short confirmation when you get this mail, to make sure things are working.
 Follow-up: Next visit: Apr05

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Memorandum

4 July 2008

DRAFT

to Business Committee, Private Banking

cc Walter von Wyl, John Casack, Hausrudi Schmecker

from Rami Sonneveld and Jonathan Bourne, Financial Planning & Wealth Management

subject IRS 2008
 FPMW policy for dealing with US persons under the III agreement

Gentlemen,

The Bank's Qualified Intermediary Agreement with the IRS forces US persons who invest in US securities to disclose themselves to the IRS by completing an IRS Form W-8.

This applies in particular to:-

1. US persons with accounts held directly;
2. The settlors of grantor trusts, as defined by US rules;
3. The beneficiaries of simple trusts, as defined by US rules;
4. The economic founders of foundations, treated as grantor trusts;
5. The beneficiaries of foundations, treated as simple trusts;
6. In the case of items 2-5 above, we will have to disclose non-US persons who are settlors or beneficiaries to the IRS, if the structures hold US securities.

Questionnaires will be sent to legal entities including trusts, foundations and underlying companies by the end of July 2008 to determine their status. The III Project team (of which FPMW is not a part) is working on this questionnaire at the moment.

Certain other structures are not caught by these rules, and there is no need for the settlor/beneficiary/individual owner to disclose themselves to the IRS, even though they are US persons. These structures are:-

- Offshore companies, with limited liability, which have not elected to be "flow-through" entities;
- Grantor, simple and complex trusts with underlying companies, holding the assets;
- Complex trusts;
- Foundations treated as complex trusts;
- Certain insurance products in which a non-US insurance company holds the assets underlying a deferred variable annuity policy or a life insurance policy.

We recommend the following FPMW policies for US persons in categories 1-6 above.

I. Change of investments

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IRS AG
 Private Banking
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 Tel. +41-224-44

Financial Planning & Wealth Management

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Where the client agrees, direct investments in US securities should be sold and replaced with investments on the approved list shown on the Private Web. These include URS investment funds and certain derivative products.

II. Change of structure

Where the client/settlor/beneficiaries wish to retain direct investments in US securities, this can be achieved by placing an underlying company beneath the trust/foundation.

This is a relatively minor structural change, which could be made without upsetting the IRS, if done prior to 2008.

The conversion of a simple or grantor trust/foundation into a complex trust, by changing the trust/foundation deeds is not recommended by Baker & McKenzie, as the advantages of the original structure can be destroyed.

III. No more "flow-through" entities as a matter of policy

Baker & McKenzie have recommended that we give active consideration to setting a new policy, by which the bank would not accept "flow-through" entities as account holders. By "flow-through" entities we mean simple and grantor trusts/foundations and other entities, eg partnerships, where IRS rules look through the structure to the ultimate beneficial owners. Such a policy would be justified on the grounds of administrative convenience and avoiding costly mistakes, where a structure is mis-analyzed under all the complex rules, rather than tax avoidance. Baker & McKenzie would have the capacity, for example, to place BVs under each of our foundations.

IV. Purchase of alternative structures

In the case where the US person holds his US investments directly, we have been advised by Baker & McKenzie that we cannot recommend products (such as the use of offshore companies, annuity or insurance products) to our clients as an "alternative" to filing a Form W-8. This could be viewed as actively helping our clients to evade US tax, which is a U.S. criminal offence. Further, such recommendations could infringe upon our Qualified Intermediary status. If, on audit in 2008, it is determined that we have systematically helped US person to avoid the QI rules.

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

Conclusion

We would recommend that direct US investments are replaced by indirect investments as far as possible.

Where the client in relation to a trust or foundation with no underlying company is against this, then an underlying company should be placed under the trust/foundation with the purpose of holding the US investments.

Consideration should be given to requiring all flow-through entities to have an underlying company as a matter of policy.

Where clients want an external solution, we should only offer them a choice of approved service providers offering insurance products and offshore companies.

Yours truly,

URS AG

Jonathan Bourne

Rand Somerville

Ent. Foreign Trusts & Liechtenstein Foundations: Impact of new QI rules

Subject: Structures/vehicles for U.S./Canadian Clients
Location: Palm Beach
Start: Tue 8/17/2004 8:00 AM
End: Tue 8/17/2004 12:30 PM
Recurrence: (none)
Meeting Status: Accepted
Required Attendees: Meetzler, Claudia; Perron, Daniel; Bourne, Jonathan; La-Barre, Rene; Guignard, Michel; Marti, Georg

Dear colleagues,

You will meet at Bärenegasse 16, 2nd floor, room Palm Beach:
 8.00-9.00, Quadris
 9.00-10.00, Sinco Treuhand AG
 10.15.-11.15, Rickenbach & Partner
 11.15-12.15, Panazur

Please see below the e-mail which was sent to the different service providers:

Dear

We would like to conduct a review of the structures/vehicles that you offer to/have set up for our U.S. and Canadian clients. We invite you to make a short presentation on the structures/vehicles that you recommend to U.S. and Canadian clients who do not appear to declare income/capital gains to their respective tax authorities. Our meeting should be concluded in one hour. We kindly ask you to cover both types "simple" and "well managed" structures/vehicles. In your presentation please focus on the following issues for each structure/vehicle:

- a) Filing requirements (e.g. accounts, tax returns)
- b) Disclosure of BO info (e.g. locally under KYC rules or through tax information exchange)
- c) Tax implications (e.g. inheritance tax or income tax in the relevant location)
- d) Procedures for management (e.g. to ensure the company is well-managed)
- e) OI status (e.g. whether the structure is flow-through or non-flow through)
- f) Other issues that the provider believes are relevant to a complete risk assessment

We look forward to meeting with you soon.

Best regards,
 Michel Guignard
 Daniel Perron
 Georg Marti
 Rene La Barre
 Jonathan Bourne

GOVERNMENT EXHIBIT

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Permanent Subcommittee on Investigations
EXHIBIT #16