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,

v.

UBS AG,

Respondent.

/ McALILEY

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.

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

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

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

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

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

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

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

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

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

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

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

> EUR = orange
> USD = green
> GBP = blue
>
> 100K = C
> 250K = 1 nut
> 1 M = a swan

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Executed this 6th day of February 2009.

DANIEL REEVES
Revenue Agent
Internal Revenue Service

Reeves Declaration
Exhibit 1

Summons

In the matter of Tax Liability of John Does*

Internal Revenue Service (Division): Small Business/Self Employed Division

Industry/Area (name or number): South Atlantic Area

Periods: Years ending 12/31/2002, 12/31/2003, 12/31/2004, 12/31/2005, 12/31/2006, and 12/31/2007

The Commissioner of Internal Revenue

To: UBS AG

At: 701 Brickell Avenue, Suite 3250, Miami FL 33131

You are hereby summoned and required to appear before Daniel Reeves or Designee an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

See attachment

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

Do not write in this space

GOVERNMENT EXHIBIT
1

Business address and telephone number of IRS officer before whom you are to appear:

Telephone: (609) 625-7878

Place and time for appearance at IRS, 51 S.W. First Ave., Miami, Florida 33130-1608; Telephone: (305) 982-5269

on the 8th day of August 2008 (year) at 10:00 o'clock a m.

Issued under authority of the Internal Revenue Code this 21 **day of** July 2008 (year)

IRS

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 12-2001)
Catalog Number 21405J

Signature of issuing officer — Revenue Agent (Title)

Signature of approving officer *(if applicable)* — Territory Manager (Title)

Original — to be kept by IRS

Service of Summons, Notice and Recordkeeper Certificates

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	Time
7-21-08	11:00 AM

James Dow, Director & Head of Compliance

How Summons Was Served

1. ☒ I certify that I handed a copy of the summons, which contained the attestation required by § 7603, to the person to whom it was directed.
2. ☐ I certify that I left a copy of the summons, which contained the attestation required by § 7603, at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any): _____
3. ☐ I certify that I sent a copy of the summons, which contained the attestation required by § 7603, by certified or registered mail to the last known address of the person to whom it was directed, that person being a third-party recordkeeper within the meaning of § 7603(b). I sent the summons to the following address: _____
   701 Brickell Avenue, Suite 3250, Miami FL 33131

Signature	Title
[signature]	Revenue Agent

4. This certificate is made to show compliance with IRC Section 7609. This certificate does not apply to summonses served on any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Part D of Form 2039) to the person named below on the date and in the manner indicated.

Date of giving Notice: _____ Time: _____

Name of Noticee: _____

Address of Noticee (if mailed): _____

How Notice Was Given

- ☐ I gave notice by certified or registered mail to the last known address of the noticee.
- ☐ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any).
- ☐ I gave notice by handing it to the noticee.
- ☐ In the absence of a last known address of the noticee, I left the notice with the person summoned.
- ☒ No notice is required.

Signature	Title
[signature]	Revenue Agent

I certify that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the noticee consents to the examination.

Signature	Title
	Revenue Agent

Attachment to "John Doe" Summons to UBS AG

1. For each financial account maintained at, monitored by or managed through any Switzerland office of UBS AG or its subsidiaries or affiliates, if, at any time during the years ended December 31, 2002 through December 31, 2007:

(A). any United States taxpayer had signature or other authority over such account;

(B). UBS AG did not have in its possession a Form W-9 executed by the United States taxpayer; and,

(C). UBS AG did not file a timely and accurate Form 1099 with United States taxing authorities;

(i). naming the United States taxpayer; and,

(ii). reporting all reportable payments made to the United States taxpayer;

please provide all account records for the period January 1, 2002, through the date of compliance with this summons, including but not limited to:

a. documents identifying each United States taxpayer by name, address, telephone number, date of birth, or taxpayer identification number;
b. documents pertaining to any foreign entities established or operated on behalf of each United States taxpayer;
c. documents identifying any relationship managers, domestic and foreign, for each United States taxpayer during the period;
d. documents pertaining to the opening of such financial accounts and/or the creation of foreign entities created for or on behalf of each United States taxpayer during the period, including, but not limited to, desk files or other records of the relationship manager, e-mails, facsimiles, memoranda of telephone conversations, memoranda of activity, and other correspondence;
e. documents, including but not limited to, monthly or other periodic statements and records of wire transactions, reflecting the activity of such financial accounts and of such financial accounts maintained in the names of any foreign entity

established or operated on behalf of each United States taxpayer; and,

f. documents pertaining to the referral of each United States taxpayer to UBS offices in Switzerland, including, but not limited to, desk files or other records of the relationship manager, e-mails, facsimiles, memoranda of telephone conversations, memoranda of activity, and other correspondence, and records of any UBS office processing such referrals, including specifically:

   i. documents identifying the UBS office in Switzerland to which the referral was directed and any accounts established;
   ii. documents reflecting annual or other periodic balances of accounts opened at the UBS office in Switzerland receiving the referral and any activity in such accounts; and,
   iii. documents reflecting the receipt of fees by a UBS office for referral of each United States taxpayer, a UBS office servicing the United States taxpayer, or a relationship manager with respect to the referral, documents reflecting how such fees were calculated, and documents reflecting bonuses paid or evaluations given to any UBS employee with reference to such referrals.

2. Please also provide, for the period January 1, 2002, through the date of compliance with this summons, records of wire transfers, and annual account summaries or other annual statements for each domestic financial account held by any United States taxpayer (or by any foreign entity established or operated on behalf of a United States taxpayer) who, at any time during the years ended December 31, 2002 through December 31, 2007, held a Swiss UBS branch financial account with the attributes listed in Part 1(A), (B), and (C), above; or by (2) any foreign financial entity established or operated on behalf of a United States taxpayer.

3. For purposes of this summons "United States taxpayer" means any person with an address in the United States or who is known to UBS or any of its employees or agents, through its business records, anti-money laundering due diligence, or know your customer practices, or through any other means, to be a United States citizen or resident.

4. For purposes of this summons, "UBS office" means any office bearing the name UBS in whole or in part, or holding itself out to the public as part of UBS, including any office controlled by UBS AG, including but not limited to the office of the parent bank, any UBS branch office, and any subsidiary or affiliate of UBS AG.

5. For purposes of this summons, "financial account" means a bank account, securities account or other financial account of any kind.

6. For purposes of this summons, "domestic financial account" means a financial account at a financial institution doing business inside the United States.

7. For purposes of this summons, "foreign entity" means a corporation, limited liability company, international business company, personal investment company, partnership, trust, anstalt, stiftung, or other legal entity created under the laws of a jurisdiction other than the United States.

8. For the purpose of this summons, the word "documents" refers to any electronic, written, printed, typed, graphically, visually or aurally reproduced materials of any kind or other means of preserving thought or expression, recording events or activities, and all tangible things from which information can be processed or transcribed, including, but not limited to:

(A). contracts, agreements, plans, summaries, opinions, reports, commentaries, communications, correspondence, memoranda, minutes, notes, comments, messages, telexes, telegrams, teletypes, cables, facsimiles, wire instructions and electronic mail; and,

(B). video and/or audio tapes, cassettes, films, microfilm, spreadsheets, databases, computer discs and other information which is stored or processed by means of data processing equipment and which can be retrieved in printed or graphic form.

9. For the purpose of this summons, you are required to produce all documents described in this attachment, whether located in the United States, Switzerland, or elsewhere, that are in your possession, custody, or control, or otherwise accessible or available to you either directly or through other entities, including but not limited to offices of UBS AG or its

subsidiaries or affiliates (such as UBS Private Bank) in Zurich, Geneva, or Lugano. Where documents are prepared, stored or maintained in electronic form, they are required to be produced in electronic form together with any instructions, record descriptions, data element definitions, or other information needed to process them in electronic form.

Reeves Declaration
Exhibit 2

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

Carl Levin, Chairman
Norm Coleman, Ranking Minority Member

TAX HAVEN BANKS AND U. S. TAX COMPLIANCE

STAFF REPORT

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

UNITED STATES SENATE

RELEASED IN CONJUNCTION WITH THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS JULY 17, 2008 HEARING

SENATOR CARL LEVIN
Chairman
SENATOR NORM COLEMAN
Ranking Minority Member

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

ELISE J. BEAN
Staff Director and Chief Counsel
ROBERT L. ROACH
Counsel and Chief Investigator
ZACHARY I. SCHRAM
Counsel
LAURA E. STUBER
Counsel
ROSS K. KIRSCHNER
Counsel

MARK L. GREENBLATT
Staff Director and Chief Counsel to the Minority
MICHAEL P. FLOWERS
Counsel to the Minority
ADAM PULLANO
Staff Assistant to the Minority

MARY D. ROBERTSON
Chief Clerk

TIMOTHY EVERETT
Intern
ALAN KAHN
Law Clerk
JONATHAN PORT
Intern
JEFFREY REZMOVIC
Law Clerk
LAUREN SARKESIAN
Intern
SPENCER WALTERS
Law Clerk

Permanent Subcommittee on Investigations
199 Russell Senate Office Building – Washington, D.C. 20510
Telephone: 202/224-9505 or 202/224-3721
Web Address: www.hsgac.senate.gov [Follow Link to "*Subcommittees*," to "*Investigations*"]

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
STAFF REPORT
TAX HAVEN BANKS AND U. S. TAX COMPLIANCE

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# # #

LGT, like all banks in Liechtenstein, were "not as diligent as we should have been."[350] He declined to disclose whether the LRAB Foundation or Panama corporation had been formed in response to the clients' request.

C. Analysis

The LGT information reviewed by the Subcommittee investigation indicates that, too often, LGT personnel viewed the bank's role to be, not just as a guardian of client assets or trusted financial advisor to investors, but also a willing partner to clients wishing to hide their assets from tax authorities, creditors, and courts. In that context, bank secrecy laws begin to serve as a cloak not only for client misconduct, but also for banks colluding with clients to evade taxes, dodge creditors, and defy court orders.

It is also instructive that when the LGT tax scandal broke in February 2008, the immediate reaction of the Liechtenstein government was not to condemn the taxpayers who misused the jurisdiction, promise tough action against LGT if it knowingly assisted tax fraud, or pledge to disclose relevant information. Instead, the Liechtenstein government deplored the breach of its secrecy laws, expressed indignation that any country would purchase Liechtenstein financial data from a private individual, and issued an arrest warrant for the former LGT employee who allegedly disclosed the information.[351] In June 2008, an Internet website offered a $7 million reward for information leading to the arrest of the former LGT employee; the Subcommittee traced this reward offer to a web hosting company in Liechtenstein.[352]

In July, the Liechtenstein government advised the Subcommittee that it had initiated a special investigation into the conduct of LGT Bank and Mario Staggl, and established a commission to examine Liechtenstein laws, including the question of whether it does or should violate Liechtenstein law if a Liechtenstein financial institution were to aid or abet tax evasion or tax fraud by a U.S. client. When the Subcommittee asked Mr. Klein about the status of this investigation, he replied that he was not aware of it, despite his position as head of compliance for LGT Group. Liechtenstein is also considering entering into a tax information exchange agreement with the United States to provide wider cooperation in tax enforcement matters.

IV. UBS AG CASE HISTORY

UBS AG of Switzerland is one of the largest financial institutions in the world, and has one of the world's largest private banks catering to wealthy individuals. From at least 2000 to 2007, UBS made a concerted effort to open accounts in Switzerland for wealthy U.S. clients, employing practices that could facilitate, and have resulted in, tax evasion by U.S. clients. These

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[350] Subcommittee interview of Ivo Klein, head of LGT Group Compliance (7/11/08).

[351] See "Press Release from the (Liechtenstein) Office of the Public Prosecutor," (2/27/08), available at www.liechtenstein.li/en/pdf-fl-med-aktuell-staatsanwaltschaft1.pdf (viewed 7/14/08); Press Release by the Liechtenstein Police, (3/11/08); "Liechtenstein Prince Defends Bank Secrecy as Scandal Threatens Country's Haven Status," Daily Tax Report, International Tax and Accounting (2/22/08), No. ISSN 0092-6884, at 1; Mark Landler, "Liechtenstein issues international arrest warrant for tax informant," (3/12/08), International Herald Tribune.

[352] See www.eugen-von-hoffen.com (viewed 7/13/08).

UBS practices included maintaining for an estimated 19,000 U.S. clients "undeclared" accounts in Switzerland with billions of dollars in assets that have not been disclosed to U.S. tax authorities; assisting U.S. clients in structuring their accounts to avoid QI reporting requirements; and allowing its Swiss bankers to market securities and banking services on U.S. soil without an appropriate license in apparent violation of U.S. law and UBS policy. In 2007, after its activities within the United States came to the attention of U.S. authorities, UBS banned its Swiss bankers from traveling to the United States and took action to revamp its practices. UBS is now under investigation by the IRS, SEC, and U.S. Department of Justice.

A. UBS Bank Profile

UBS AG (UBS) is one of the largest banks in the world, currently managing client assets in excess of $2.8 trillion.[353] UBS is the product of a 1998 merger between two leading Swiss banks, Union Bank of Switzerland and Swiss Bank Corporation. In 2000, it grew even larger after merging with PaineWebber Inc., a U.S. securities firm with more than 8,000 brokers, nearly $500 billion in client assets, and a substantial U.S. clientele.[354]

Today, UBS is incorporated and domiciled in Switzerland, but operates in 50 countries with more than 80,000 employees, of which about 38% work in the Americas, 33% in Switzerland, 17% in the rest of Europe, and 12% in Asia Pacific.[355] UBS shares are listed on the Swiss Exchange, New York Stock Exchange, and Tokyo Stock Exchange.[356]

UBS AG is the parent company of the UBS Group which includes numerous subsidiaries and affiliates.[357] UBS Group is managed by a Board of Directors, which oversees a Group Executive Board. The Chairman of the Board of Directors is Peter Kurer; the Group CEO is Marcel Rohner.[358]

UBS Group is organized into three major business lines: Global Wealth Management & Business Banking, Global Asset Management, and an Investment Bank. UBS has one of the largest private banking operations in the world, with hundreds of private bankers dedicated to providing financial services to wealthy individuals and their families around the world. UBS also maintains a Corporate Center that provides group-wide policies, financial reporting, marketing, information technology infrastructure, and service centers, and an Industrial Holdings segment which includes UBS' own holdings and non-financial businesses.[359]

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[353] "Facts&Figures," (undated) available at www.ubs.com (viewed 5/28/08).

[354] "The Making of UBS," (undated) at 16, available at www.ubs.com (viewed 5/28/08).

[355] "Facts&Figures," (undated) available at www.ubs.com (viewed 5/28/08).

[356] UBS Annual Report 2007, Financial Statements, at 167.

[357] Id. at 25, 96-99.

[358] "Organizational Structure," (undated) available at www.ubs.com (viewed 5/28/08).

[359] UBS Annual Report 2007, Financial Statements, at 41.

UBS' private banking operations are included within the Global Wealth Management & Business Banking division, whose Chairman and CEO is Raoul Weil. That division is further divided into five regional segments: Wealth Management Americas; Wealth Management Asia Pacific; Wealth Management & Business Banking Switzerland; Wealth Management North, East & Central Europe; and Wealth Management Western Europe, Mediterranean, Middle East & Africa.[360]

In the United States, UBS maintains a large banking and securities presence, operating dozens of subsidiaries and affiliates. Its operations include a UBS AG branch office headquartered in Stamford, Connecticut; UBS Bank USA, a federally regulated bank chartered in Utah; three broker-dealers registered with the SEC, UBS International Inc., UBS Financial Services, Inc., and UBS Services LLC; and a variety of other businesses including UBS Fiduciary Trust Company in New Jersey; UBS Real Estate Securities Inc. in Delaware; UBS Trust Company National Association in New York; and UBS Life Insurance Company USA in California.[361] In 2007, UBS described its U.S. banking operations as follows: "Wealth Management US is a US financial services firm providing sophisticated wealth management services to affluent US clients through a highly trained financial advisor network."[362]

In addition to its U.S.-based operations, UBS services U.S. clients through business units based in Switzerland and other countries. For example, beginning in about 2003, UBS established "U.S. International Desks" in three of its Swiss locations, Geneva, Lugano, and Zurich. These desks, staffed with private bankers known as Client Advisors, deal exclusively with U.S. clients.[363] The U.S. International Desks originally categorized their U.S. clients according to the U.S. region where they lived, but in 2004, re-classified them according to the magnitude of their assets. "Core Affluent" clients were defined as those with assets ranging from 250 to 2 million Swiss Francs; "High Net Worth Individuals" (HNWI) had assets ranging from 2 million to 50 million Swiss Francs; and "Key Clients" had assets worth more than 50 million Swiss Francs.[364] In 2005, UBS formed a new Swiss subsidiary, called "Swiss Financial Advisers," which is an investment adviser registered with the SEC. SFA is tasked with "serving US clients outside of Switzerland." All U.S. clients of SFA are required to file W-9 Forms. UBS AG's North American International Wealth Management Division also noted that "[a]ssets of clients [in SFA are] under Swiss law," meaning that creditors seeking to attach the assets would be required to file in Swiss courts.[365] U.S. clients who are unwilling to declare their accounts to

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[360] "Global Wealth Management & Business Banking," (undated), organizational chart available at www.ubs.com (viewed 5/28/08). These five regional segments were established in a reorganization that took effect in 2007. Prior to that reorganization, the Global Wealth Management & Business Banking division had just three segments: Wealth Management US, Wealth Management International & Switzerland, and Business Banking Switzerland. UBS Annual Report 2007, Financial Statements, at 41.

[361] UBS Annual Report 2007, Financial Statements, at 96-99; Strategy, Performance and Responsibility, at 104.

[362] UBS Annual Report 2007, Financial Statements, at 41. Wealth Management US is now included within Wealth Management Americas.

[363] Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

[364] Id.

[365] UBS Minutes of Geneva Wealth Management North America International Meeting (10/13/04), Bates No. UPSI 49952-54, at 49952.

the United States are not permitted by UBS to hold U.S. securities in their Swiss accounts, but can be serviced by Client Advisors in the Geneva, Lugano, and Zurich offices.[366]

B. UBS Swiss Accounts for U.S. Clients

Although UBS has extensive banking and securities operations in the United States that could accommodate its U.S. clients, from at least 2000 to 2007, UBS directed its Swiss bankers to target U.S. clients willing to open bank accounts in Switzerland. UBS told the Subcommittee it now has Swiss accounts for about 19,000 U.S. clients with in the range of $18 billion in undeclared assets. In 2002, UBS assured its U.S. clients with undeclared accounts that U.S. authorities would not learn of them, because the bank is not required to disclose them; UBS procedures, practices and services protect against disclosure; and the account information is further shielded by Swiss bank secrecy laws. Until recently, UBS encouraged its Swiss bankers to travel to the United States to recruit new U.S. clients, organized events to help them meet wealthy U.S. individuals, and set annual performance goals for obtaining new U.S. business. It also encouraged its Swiss bankers to service U.S. client accounts in ways that would minimize notice to U.S. authorities. The evidence suggest that UBS Swiss bankers marketed securities and banking products and services in the United States without an appropriate license to do so and in apparent violation of U.S. law and the bank's own policies.

Information obtained by the Subcommittee about UBS Swiss accounts opened for U.S. citizens came in part from former UBS employee, Bradley Birkenfeld. Mr. Birkenfeld is a U.S. citizen who worked as a private banker in Switzerland from 1996 until his arrest in the United States in 2008. He worked for UBS in its private banking operations in Geneva from 2001 to 2005, until he resigned from the bank.[367] In 2007, while in the United States, Mr. Birkenfeld was subpoenaed by the Subcommittee to provide documentation and testimony related to his employment as a private banker. In a sworn deposition before Subcommittee staff, Mr. Birkenfeld provided detailed information about a wide range of issues related to UBS business dealings with U.S. clients. In 2008, Mr. Birkenfeld was arrested, indicted, and pled guilty to conspiring with a U.S. taxpayer, Igor Olenicoff, to hide $200 million in assets in Switzerland and Liechtenstein, to evade $7.2 million in U.S. taxes.[368]

(1) Opening Undeclared Accounts with Billions in Assets

From at least 2000 to 2007, UBS has opened tens of thousands of accounts in Switzerland that are beneficially owned by U.S. clients, hold billions of dollars in assets, and have not been reported to U.S. tax authorities. These Swiss accounts were opened by U.S. clients, but, for a variety of reasons, the clients did not file W-9 Forms with UBS for the accounts. Because the clients did not file W-9 reports with the bank, UBS did not file 1099 Forms with the IRS

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[366] Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

[367] Birkenfeld deposition (10/11/07), at 14. Prior to UBS, he worked for private banking operations in Geneva at Credit Suisse and Barclays Bank.

[368] United States v. Birkenfeld.

reporting the account information. UBS refers to these accounts internally as "undeclared accounts."

In response to Subcommittee inquiries, UBS has estimated that it today has accounts in Switzerland for about 20,000 U.S. clients, of which roughly 1,000 have declared accounts and the remainder have undeclared accounts that have not been disclosed to the IRS.[369] UBS also estimated that those accounts contain assets with a combined value of about 18.2 billion in Swiss francs or about $17.9 billion. UBS was unable to specify the breakdown in assets between the undeclared and declared accounts, except to note that the amount of assets in the undeclared accounts would be much greater.

These figures suggest that the number of U.S. client accounts in Switzerland and the amount of assets contained in those accounts have nearly doubled since 2002, when a UBS document reported that the Swiss private banking operation then had more than 11,000 accounts for clients in "North America," meaning the United States and Canada, with combined assets in excess of 21 billion Swiss francs or about $13.3 billion.[370] The UBS document also calculates that, in 2002, these accounts had earned the bank "net revenues" of about 150 million Swiss francs.[371] Since then, the Swiss private banking operations have reported opening many more U.S. client accounts in Switzerland with additional billions of dollars in assets.[372]

The UBS figures for 2008 also appear consistent with internal UBS documents from 2004 and 2005, which suggest that a substantial portion of the UBS Swiss accounts opened for U.S. clients at that time were undeclared. This information is contained in a set of monthly reports for select months in 2004 and 2005, which tracked key information for Swiss accounts opened for North American clients, meaning clients from the United States and Canada.[373] These reports also break down the data for both declared and undeclared accounts.[374] The data

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[369] Subcommittee interview with UBS (7/14/08).

[370] Key Clients in NAM [North America]: Business Case 2003-2005, (undated), at 26 (chart entitled, "Assessment of Current KC [Key Client] Base").

[371] Id.

[372] See, e.g., email from Martin Liechti re "Happy New Year" (undated) (stating UBS Swiss client advisors had quadrupled their intake of net new money into Switzerland from 4 million Swiss francs per client advisor in 2004 to 16 million Swiss francs per client advisor in 2006).

[373] See "BS North America Report: Overview Figures North America," prepared in July, August, September, October, November, and December 2004, and January, February, March, August, September, and October 2005. These reports appear to be excerpts from larger reports. These documents, on their face, present data for Swiss accounts opened for U.S. and Canadian clients. According to UBS, however, it is possible that the data may include some Swiss accounts opened for persons from other countries.

[374] The 2004 monthly reports, for example, show data for "W9" accounts and "NON W9" accounts, which correspond to declared and undeclared accounts. The March 2005 report provides data for "W9" accounts and "SFA" accounts, which at that time corresponded to the declared accounts, as well as data for "NON W9" accounts, which corresponded to the undeclared accounts. "SFA" refers to Swiss Financial Advisers, the UBS subsidiary in Switzerland that is a registered U.S. investment adviser, opens securities accounts only for U.S. clients who submit W-9 Forms, and reports all such accounts to the IRS. Mr. Birkenfeld told the Subcommittee that SFA was referred to within UBS as "'the declared desk.'" Birkenfeld deposition at 84. He also explained that all Swiss bankers who formerly had declared accounts had been required to transfer them to SFA. Id. at 85. That meant U.S. clients in Switzerland with accounts outside of SFA were necessarily undeclared accounts. Reports later in 2005 use different

suggests that the undeclared accounts not only held more assets, but also brought in more new money and were more profitable for the bank than the declared accounts.

The first data element in the reports is the total amount of assets in the specified accounts. Each month shows substantially greater assets in the undeclared accounts for U.S. clients than in the declared accounts. In October 2005, for example, the data shows a total of about 18 billion Swiss francs of assets in the undeclared accounts for U.S. clients[375] and 2.6 billion Swiss francs in the declared accounts.[376] Clearly, the assets in the undeclared accounts vastly outweigh the assets in the declared accounts for U.S. clients.

The monthly reports also track the extent to which the accounts brought in new money to UBS, referred to as "net new money" or NNM. The October 2005 report appears to show that, for the year to date, the undeclared accounts for U.S. clients had brought in more than 1.3 billion Swiss francs in net new money for UBS,[377] while the declared accounts had collectively lost about 333 million Swiss francs over the same time period.[378] These figures indicate that, in 2004 and 2005, the undeclared account assets were growing, while the declared account assets were shrinking.

The last data element in the monthly reports tracks the revenue generated by the accounts for UBS. Each month shows that UBS earned significantly more in revenues from the undeclared accounts for U.S. clients than from the declared accounts. For example, the October 2005 report shows that UBS obtained year-to-date revenues of about 180.9 million Swiss francs from the undeclared accounts[379] versus 22.1 million Swiss francs from the declared accounts.[380] By every measure employed by UBS in these monthly reports, the undeclared U.S. client accounts were more popular and more lucrative for the bank.

Still another UBS document, prepared in 2004 for a meeting of Swiss private banking officials in Geneva, to reach an "Executive Board Decision" on several matters, shows the

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terminology again, providing data for "US International" accounts, which correspond to the undeclared accounts, and data for a "W9 Business Row" and SFA accounts, which correspond to the declared accounts.

[375] Id. The 18 billion figure is derived from the amount shown for "US International" (18.5 billion) after subtracting the amount shown for "W9 Business Row" (0.5 billion). The Subcommittee also asked UBS to produce similar data for 2006 and 2007, but has yet to receive it.

[376] Id. The 2.6 billion figure is derived from adding together the figures shown for "W9 Business Row" (0.5 billion) and "SFA" (2.1 billion).

[377] The 1 billion figure is derived from the amount shown for "US International" (1.054 billion) after eliminating the loss shown for "W9 Business Row" (loss of 309.8 million), resulting in NNM of about 1.364 billion.

[378] The 333 million figure is derived from adding together the figures shown for "W9 Business Row" (loss of 309.8 million) and "SFA" (loss of 23.8 million).

[379] The 180.9 million figure is derived from the amount shown for "US International" (194.3 million) after subtracting the amount shown for "W9 Business Row" (13.4 million).

[380] The 22.1 million figure is reached by adding together the figures shown for "W9 Business Row" (13.4 million) and "SFA" (8.7 million).

bank's awareness of the undeclared and declared accounts opened for U.S. clients.[381] About mid-way through, this document includes two flow charts showing how a UBS client advisor should handle an account with a "U.S. person." The first flow chart shows that accounts for U.S. persons domiciled in the United States should go to certain offices if a W-9 is filed, and to the North American desk in Zurich if "no W9 form" is filed. The second flow chart shows that, for U.S. persons domiciled outside of the United States, accounts with a W-9 form should go to WBS in Zurich to the "W9 Team," while accounts with "no W9 form signed" should go to the "Country team" in the country where the U.S. person was domiciled. These two flow charts provide additional evidence that the top management of UBS in Switzerland was well aware of the bank's practice of maintaining declared and undeclared accounts for U.S. clients, and had even institutionalized the administration of these accounts in different offices.

In his deposition before the Subcommittee, Mr. Birkenfeld indicated that, while he was employed at UBS from 2001 to 2005, it was his understanding that UBS had thousands of Swiss accounts opened by U.S. clients, the majority of which were undeclared and never disclosed to the IRS. He stated that, "I didn't see anyone declare any of those [Swiss] accounts in my entire career."[382]

In the recent U.S. criminal case involving Mr. Birkenfeld, the U.S. Government filed a Statement of Facts, signed by Mr. Birkenfeld, stating that UBS Switzerland had "$20 billion of assets under management in the United States undeclared business, which earned the bank approximately $200 million per year in revenues."[383]

(2) Ensuring Bank Secrecy

UBS has not only maintained undeclared Swiss accounts for U.S. clients containing billions of dollars in assets, it has also adopted practices to ensure that, in keeping with Swiss bank secrecy laws, those undeclared accounts would not be disclosed to U.S. authorities.

Promising Bank Secrecy. UBS has assured its U.S. clients in writing that UBS will take steps to protect their undeclared accounts from disclosure to U.S. tax authorities. In November 2002, for example, senior officials in the UBS private banking operations in Switzerland sent the following letter to its U.S. clients about their Swiss accounts:

> "Dear client:
>
> "From our recent conversations we understand that you are concerned that UBS' stance on keeping its U.S. customers' information strictly confidential may have changed especially as a result of the acquisition of Paine Webber. We are writing to reassure you that your fear is unjustified and wish to outline only some of the reasons why the protection of client data can not possibly be compromised upon:

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[381] UBS presentation entitled, "North America Meeting[:] Update U.S. NewCo (W9)," (9/15/04), Bates Nos. UPSI 49907-27, at 17-18.

[382] Birkenfeld deposition (10/11/07), at 28.

[383] United States v. Birkenfeld, Statement of Facts, at 3.

"– The sharing of customer data with a UBS unit/affiliate located abroad without sufficient customer consent constitutes a violation of Swiss banking secrecy provisions and exposes the bank employee concerned to severe criminal sanctions. Further, we should like to underscore that a Swiss bank which runs afoul of Swiss privacy laws will face sanctions by its Swiss regulator ... up to the revocation of the bank's charter. Already against this background, it must be clear that information relative to your Swiss banking relationship is as safe as ever and that the possibility of putting pressure on our U.S. units does not change anything. Our bank has had offices in the United States as early as 1939 and has therefore been exposed to the risk of US authorities asserting jurisdiction over assets booked abroad since decades. Please note that our bank has a successful track record of challenging such attempts.

"– As you are aware of, UBS (as all other major Swiss banks) has asked for and obtained the status of a Qualified Intermediary under U.S. tax laws. The QI regime fully respects client confidentiality as customer information are only disclosed to U.S. tax authorities based on the provision of a W-9 form. Should a customer choose not to execute such a form, the client is barred from investments in US securities but under no circumstances will his/her identity be revealed. Consequently, UBS's entire compliance with its QI obligations does not create the risk that his/her identity be shared with U.S. authorities."[384]

This letter plainly asserts that UBS will not disclose to the IRS a Swiss account opened by a U.S. client, so long as that account contains no U.S. securities, even if UBS knows the accountholder is a U.S. taxpayer obligated under U.S. tax law to report the account and its contents to the U.S. Government.

UBS told the Subcommittee that it has no legal obligation to report such undeclared accounts to the IRS, provided that UBS ensures that the accounts do not contain U.S. securities and, thus, are not subject to reporting under the QI Program. UBS also told the Subcommittee that it recognizes that a U.S. accountholder may have a legal obligation to report a foreign trust, foreign bank account, or foreign income to the IRS. UBS pointed out, however, that those reporting obligations apply to the accountholder personally and not to UBS. UBS, thus, asserts that it has broken no law or QI obligation by allowing U.S. clients to open and maintain undeclared accounts in Switzerland, if those accounts do not contain U.S. securities.[385]

Helping U.S. Clients Avoid QI Disclosure. UBS has not only maintained undeclared accounts in Switzerland for numerous U.S. clients, it took steps to assist its U.S. clients to structure their Swiss accounts in ways that avoided U.S. reporting rules under the QI Program.

UBS informed the Subcommittee that, after it joined the QI Program in 2001, and informed its U.S. clients about its QI disclosure obligations, many of its U.S. clients elected to

[384] UBS letter addressed to "Dear client" (11/4/02).

[385] Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

sell U.S. securities or open new accounts to avoid the QI reporting obligations attached.[386] UBS told the Subcommittee, for example, that in 2001, hundreds of its U.S. clients sold their U.S. securities so that their Swiss accounts would not be covered by the QI Program. UBS told the Subcommittee that it estimates that, in 2001, its U.S. clients sold over $2 billion in U.S. securities from their Swiss accounts. UBS allowed these U.S. clients to continue to maintain accounts in Switzerland, and helped them reinvest in other types of securities that did not trigger reporting obligations to the IRS, despite evidence that these U.S. clients were using their Swiss accounts to hide assets from the IRS.

UBS also told the Subcommittee that, in 2001, about 250 of its U.S. clients with Swiss accounts took action to establish corporations, trusts, foundations, or other entities in non-U.S. countries, open new UBS accounts in the names of those foreign entities, and then, in a number of instances, transfer U.S. securities from the client's personal accounts to those new accounts. The offshore entities included corporations, trusts, and foundations set up in the British Virgin Islands, Hong Kong, Liechtenstein, Panama, and Switzerland.[387] UBS then accepted W-8BEN Forms from these offshore entities in which they claimed ownership of the assets had been transferred from the U.S. clients' personal accounts. UBS treated the new accounts as held by non-U.S. persons whose identities did not have to be disclosed to the IRS, even though UBS knew that the true beneficial owners were U.S. persons.

These facts indicate that, soon after it joined the QI Program, UBS helped its U.S. clients structure their Swiss accounts to avoid reporting billions of dollars in assets to the IRS. Among other actions, UBS allowed some of its U.S. clients to establish offshore structures to assume nominal ownership of assets, and allowed U.S. clients to continue to hold undisclosed accounts that were not reported to the IRS. Such actions, while not violations of the QI agreements per se, clearly undermined the program's effectiveness and led to the formation of offshore structures and undeclared accounts that could facilitate, and have resulted in, tax evasion by U.S. clients.

The actions taken by UBS, in many ways, matched LGT's response to the QI Program. Both UBS and LGT advised the Subcommittee that most of their U.S. clients engaged in a massive sell-off of U.S. securities after the banks signed QI agreements in 2001. In addition, both UBS and LGT allowed a number of U.S. clients to establish offshore corporations to hold U.S. securities. It appears that UBS exploited the gap between KYC rules and the QI Program in the same manner as LGT, by treating offshore corporations as non-U.S. persons for QI reporting purposes, despite knowing for KYC purposes that the offshore corporations and their assets were beneficially owned by U.S. persons. Both banks continued to maintain accounts for their U.S. clients, despite evidence that the clients were hiding their assets and accounts from the IRS. In this way, both UBS and LGT employed QI practices that kept the U.S. clients' accounts secret from the IRS and thereby facilitated tax evasion by the U.S. clients holding undeclared accounts.

The Statement of Facts in the Birkenfeld criminal case characterizes these actions as follows: "By concealing the U.S. clients' ownership and control in the assets held offshore,

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[386] Id.

[387] United States v. Birkenfeld, Statement of Facts, at 3.

defendant Birkenfeld, the Swiss Bank, its managers and bankers evaded the requirements of the Q.I. program, defrauded the IRS and evaded United States income taxes."[388]

(3) Targeting U.S. Clients

In addition to discovering that UBS maintained billions of dollars in undeclared accounts in Switzerland for U.S. clients and took steps to help U.S. client circumvent QI reporting requirements, the Subcommittee discovered that, from at least 2000 to 2007, UBS Swiss bankers engaged in an intensive effort to target U.S. clients to open Swiss accounts. UBS repeatedly sent its Swiss bankers onto U.S. soil to recruit new clients, expand existing accounts, and meet increasing business demands to bring new client money from the United States into Switzerland.

Legal and Policy Restrictions on U.S. Activities. U.S. securities law prohibits non-U.S. persons from advertising securities products or services or executing securities transactions within the United States, unless registered with the Securities and Exchange Commission (SEC).[389] In addition, securities products offered to U.S. persons must comply with U.S. securities laws, which generally means they must be registered with the SEC, a condition that may not be met by non-U.S. securities, mutual funds, and other investment products. In addition, although UBS AG is licensed to operate as a bank and broker-dealer in the United States, those licenses do not extend to its non-U.S. offices or affiliates providing banking or securities services to U.S. residents.[390] Similar prohibitions may appear in State securities and banking laws. Moreover, in provisions known as "deemed sales" rules, U.S. tax laws and the standard QI agreement require sales of non-U.S. securities to be reported by foreign financial institutions on 1099 Forms sent to the IRS, if those sales were effected in the United States, such as arranged by a broker physically in the United States or through telephone calls or emails originating in the United States.[391]

To avoid violating U.S. law, exceeding its SEC and banking licenses, or triggering 1099 reporting requirements for deemed sales, since at least 2002, UBS has maintained written policies restricting the marketing and client-related activities that may be undertaken in the United States by UBS employees from outside of the country.

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[388] Id.

[389] See, e.g., Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1):

> "(a) Registration of all persons utilizing exchange facilities to effect transactions; exemptions.
> (1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section."

[390] UBS makes this statement in its 2004 policy statement. See "Cross-Border Banking Activities into the United States **(version November 2004)**," prepared by UBS, Bates Nos. PSI-OPB 103-105, at 103 (emphasis in original).

[391] See, e.g., "U.S. Tax and Reporting Obligations for Foreign Intermediaries' Non-U.S. Securities," 47 Tax Notes Int'l 913 (9/3/07).

2002 UBS Restrictions on U.S. Activities. In 2002, for example, UBS issued a set of guidelines for its Swiss bankers administering securities accounts for U.S. clients.[392] These guidelines stated that, under U.S. tax regulations, securities trades in non-U.S. securities on behalf of a U.S. person trigger reporting requirements to the IRS under QI or IRS deemed sales rules, unless the trades are effected "by a UBS portfolio manager with discretion from a bank office of a non-US bank outside the territory of the US." To qualify for the exception and avoid reporting any securities trades or accounts to the IRS, the guidelines provide a long list of actions that UBS Swiss bankers cannot undertake with respect to their U.S. clients. Essentially, the guidelines instruct the Swiss bankers to persuade their U.S. clients to enter into a "discretionary asset management relationship" with the bank and then to "[c]ease to accept customer instructions from US territory" so that no securities trades are effected within the United States that might require reporting to the IRS.

The 2002 UBS guidelines tell the Swiss bankers, for example, to ensure that there is "no use of US mails, e-mail, courier delivery or facsimile regarding the client's securities portfolio;" "no use of telephone calls into the US regarding the client's securities portfolio;" "no account statements, confirmations, performance reports or any other communications" while in the United States; "no further instructions ... from ... clients while they are in the US;" "no marketing of advisory or brokerage services regarding securities;" "no discussion of or delivery of documents concerning the client's securities portfolio while on visits in the US;" "no discussion of performance, securities purchased or sold or changes in the investment mandate for the client" while in the United States; and "no delivery of documents regarding performance, securities purchased or sold or changes in the investment mandate for the client."

2004 Restatement of U.S. Restrictions. A 2004 UBS policy statement on "Cross-Border Banking Activities into the United States," replaced the 2002 guidelines, while repeating most of the prohibitions. This policy statement informed UBS non-U.S. bankers, for example, that U.S. Federal and State laws restrict the actions that they can take while in the United States.[393] It states:

> "UBS AG has several U.S. branches and agencies and various non-banking subsidiaries all properly licensed, but these licenses **do not** encompass cross-border services provided to U.S. residents by UBS AG offices or affiliates outside of the United States. ... Some state laws prohibit banks without a banking license from that state from soliciting deposits from that state's residents. States also may prohibit non-licensed lenders from making certain loans to consumers in such states. Any entity outside of the United States that is not registered with the SEC ... may not advertise securities services or products in the United States."[394]

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[392] See "Wealth Management and Business Banking Client Advisor's Guidelines for Implementation and Management of Discretionary Asset Management Relationship with U.S. Clients," (undated but likely late 2001). See also UBS letter to Mr. Birkenfeld (3/17/06), Bates Nos. PSI-OPB 84-85, at 1 ("[T]he rules which set forth UBS approach to servicing US resident clients have been posted on the UBS-intranet already since early 2002.").

[393] See "Cross-Border Banking Activities into the United States **(version November 2004)**," prepared by UBS, Bates Nos. PSI-OPB, at 103-105 (emphasis in original).

[394] Id.

The 2004 UBS policy statement goes on to list specific restrictions on activities that may be undertaken by its non-U.S. personnel while in the United States. These restrictions include the following:

> "UBS will not advertise and market for its services with material going beyond generic information relating to the image of UBS AG and its brand in the U.S. UBS AG may not organize, absent an opinion from Legal, events in the U.S.[395]
>
> "UBS AG may not establish relationships for securities products or services with new clients resident in the United States with the use of U.S. jurisdictional means. Thus, it must ensure that it does not contact securities clients in the United States through telephone, mail, e-mail, advertising, the internet or personal visits.[396]
>
> "UBS AG should ensure that:
> - No marketing or advertising activity targeted to U.S. persons takes place in the United States;
> - No solicitation of account opening takes place in the United States;
> - No cold calling or prospecting into the United States takes place;
> - No negotiating or concluding of contracts takes place in the United States;
> - No carrying or transmitting of cash or other valuables of whatever nature out of the United States takes place; ...
> - No routine certification of signatures, transmission of completed account documentation, or related administrative activity on behalf of UBS AG takes place;
> - Employees do not carry on substantial activities at fixed location(s) while in the United States thereby establishing on office or maintaining a place of business.[397]

In his deposition before the Subcommittee, Mr. Birkenfeld claimed to have been unaware of these types of restrictions on his conduct until a colleague brought them to his attention in May 2005, by showing him the 2004 policy statement on UBS' internal computer system.[398] He told the Subcommittee, "When I read it, I was very concerned about what was going on in the bank, because this contradicted entirely what my job description was."[399] UBS has countered that its Swiss personnel were informed about the restrictions shortly after they were re-issued, in training sessions held during September 2004, which Mr. Birkenfeld attended.[400]

Sponsoring Travel to the United States. Despite the explicit and extensive restrictions on allowable U.S. activities set out in its policy statements, in interviews with the Subcommittee,

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[395] Id.

[396] Id.

[397] Id. at 103-104.

[398] Birkenfeld deposition, (10/11/07), at 105.

[399] Id. at 106.

[400] See UBS letter to Mr. Birkenfeld (3/17/06), Bates Nos. PSI-OPB 84-85, at 84 (stating Mr. Birkenfeld had been informed of the restrictions during two training sessions in September 2004).

UBS confirmed that, from at least 2000 to 2007, it routinely authorized and paid for its Swiss bankers to travel to the United States to develop new business and service existing clients.[401] Documents obtained by the Subcommittee related to UBS Swiss bankers also frequently reference travel to the United States. A 2003 "Action Plan" for the UBS private banking operation in Switzerland, for example, called for increased client contact "through business trips" to the United States and directed Swiss private bankers to seek "active referrals from existing clients for new relationships."[402] A 2005 document called for "frequent travelling" and "selective travelling" by UBS Swiss bankers to the United States as part of the services to be provided to U.S. clientele.[403]

During his deposition, Mr. Birkenfeld told the Subcommittee that, during his years at UBS, the private bankers from Switzerland who dealt with U.S. clients typically traveled to the United States four to six times per year, using their trips to search for new clients and provide financial services to existing clients.

> "[W]e had a very large group of people in Lugano, Geneva, and Zurich that marketed directly into the U.S. market. The private bankers would travel anywhere between four and six times a year to the U.S., spend anywhere from one to two weeks in the U.S., prospecting, visiting existing clients, so on and so forth. ... As I remember, there [were] around 25 people in Geneva, 50 people in Zurich, and five to ten in Lugano. This is a formidable force."[404]

Mr. Birkenfeld testified that UBS not only authorized and paid for the business trips to the United States, but also provided the Swiss bankers with tickets and funds to go to events attended by wealthy U.S. individuals, so that they could solicit new business for the bank in Switzerland. He said that UBS sponsored U.S. events likely to attract wealthy clients, such as the Art Basel Air Fair in Miami; performances in major U.S. cities by the UBS Vervier Orchestra featuring talented young musicians; and U.S. yachting events attended by the elite Swiss yachting team, Alinghi, which was also sponsored by UBS. An internal UBS document laying out marketing strategies to attract U.S. and Canadian clients confirms that the bank "organized VIP events" and engaged in the "Sponsorship of Major Events" such as "Golf, Tennis Tournaments, Art, Special Events."[405] This document even identified the 25 most affluent housing areas in the United States to provide "targeted locations where to organize events."[406]

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[401] Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

[402] Chart entitled, "Action Plan 2003 for Country Team," (undated).

[403] "Organizational changes NAM," Powerpoint presentation by Michel Guignard of UBS private banking in Switzerland (5/10/05), at 7.

[404] Birkenfeld deposition (10/11/07), at 46, 47-48. Mr. Birkenfeld clarified during the deposition that the numbers he gave referred to "just the bankers" at the three Swiss offices.

[405] "KeyClients in NAM: Business Case 2003-2005," prepared by UBS Wealth Management (undated), at 38-39. "NAM" refers to UBS' North American division within its private banking operations in Switzerland.

[406] Id. at 40.

Mr. Birkenfeld described to the Subcommittee how Swiss private bankers used these events and other means to find new U.S. clients during their trips to the United States:

> "You might go to sporting events. You might go to car shows, wine tastings. You might deal with real estate agents. You might deal with attorneys. ... It's really where do the rich people hang out, go and talk to them. ... [I]t wasn't difficult to walk into a party with a ... business card, and then someone ask[s] you, 'What do you do?' and you say, 'Well, I work for a bank in Switzerland, and we manage money there and open accounts.' And people immediately would recognize, oh, this is someone who could open new business by opening accounts."[407]

While travel by Swiss bankers to the United States was generally not only allowed, but encouraged, UBS told the Subcommittee that, on four occasions since 2000, for a variety of reasons, it had imposed temporary bans on Swiss travel to the United States.[408] These short-term travel bans were imposed: (1) in 2001, following the 9/11 attack on the United States; (2) in 2003, coinciding with an IRS announcement of an Offshore Voluntary Compliance Initiative encouraging U.S. taxpayers with offshore credit cards to disclose their offshore accounts in exchange for avoiding certain penalties;[409] (3) in 2003 again, following the SARS epidemic outbreak; and (4) in September 2004, in response to the questioning of a UBS private banker by the IRS. Each of these travel bans was lifted shortly after it was imposed. In November 2007, however, UBS fundamentally changed its travel policy, instituting for the first time a prohibition on business travel by its Swiss private bankers to the United States, examined further below.[410]

To gain a better understanding of the extent to which UBS Swiss private bankers traveled to the United States in recent years, the Subcommittee conducted an analysis of over 500 travel records compiled by the Department of Homeland Security, at the Subcommittee's request, of persons traveling from Switzerland to the United States from 2001 to 2008, to identify UBS Swiss employees known to have provided banking and securities services to U.S. clients.[411] The Subcommittee determined that, from 2001 to 2008, roughly twenty UBS client advisors made an

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[407] Id. at 36-37.

[408] Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

[409] Id. See also Birkenfeld deposition before the Subcommittee (10/11/07), at 157. For more information about this IRS initiative, see the IRS website at www.irs.gov.

[410] See, e.g., UBS internal memorandum addressed to "Colleagues" regarding "Changes in business model for U.S. private clients," (11/15/08).

[411] To find likely UBS client advisors – as opposed to persons whose names coincidentally matched those persons identified to the Subcommittee as UBS personnel – the analysis eliminated all persons from the sample born after a given date who would be too young to be likely candidates. The data was then sorted by date traveled and the ports of entry used, to identify persons traveling at the same time to the same location. This data enabled the Subcommittee to identify UBS client advisors who, for example, made visits to Miami during the dates of the Art Basel event. The Subcommittee chose to eliminate from the analysis persons who did not appear to have a traveling correlation with other known UBS bankers or a link to a UBS event such as Art Basel, as well as persons with similar names to known UBS personnel but who reported different birthdays. The resulting figures, thus, represent a conservative analysis of the number of trips made by UBS Swiss personnel to the United States over the last seven years. The Subcommittee would like to express its appreciation for the assistance rendered by the U.S. Department of Homeland Security in securing, compiling, and analyzing this travel data.

aggregate total of over 300 visits to the United States. Only two of these visits took place from 2001 to 2002; the rest occurred from 2003 to 2008. On several occasions, the visits appear to have involved multiple UBS client advisors traveling together to UBS-sponsored events in the United States. Some of these client advisors designated their visits as travel for a non-business purpose on the I-94 Customs declaration forms that all visitors must complete prior to entry into the United States.[412] Closer analysis, however, reveals that the dates and ports of entry for such trips coincided with the UBS-sponsored events, suggesting the visits were, in fact, business-related.

For example, the Subcommittee found that at least five UBS Swiss client advisors travelled to the United States for trips coinciding with the Art Basel Art Fair, an annual UBS-sponsored event held in early December in Miami Beach since 2002. The data shows that, over the years, several UBS Swiss client advisors were in Miami during the art show, including three in 2007. On the customs forms completed over the years by UBS travelers prior to landing at Miami International airport, only one client advisor stated that the purpose of the trip was for business, while five described the visit as for pleasure. These client advisors' trips, however, coincided closely with the dates of the Art Basel event, including an invitation-only private showing. Moreover, the Subcommittee's analysis of the customs and travel records obtained from the Department of Homeland Security show that a Swiss-based UBS client advisor traveled to New England from June 20-25, 2004, a trip coinciding with the UBS Regatta Cup held in Newport, Rhode Island from June 19-26, 2004.

The Subcommittee's analysis also showed patterns of travel by Swiss-based UBS client advisors who made regular U.S. visits. One UBS employee, for example, travelled to the United States three times per year, at roughly four-month intervals, from 2003 to 2007. A senior UBS Swiss private bank official – Michel Guignard – visited the United States nearly every other month for a significant portion of the period examined by the Subcommittee. Martin Liechti, an even more senior Swiss private banking official, visited the United States up to eight times in a year.

This travel data provides additional evidence regarding the personnel and resources that have been dedicated by UBS to recruiting and servicing U.S. clients with Swiss accounts.

Assigning NNM Targets. UBS not only paid for its Swiss bankers to travel to the United States and helped them attend U.S. events to prospect for new U.S. clients, it also gave its Swiss bankers specific performance goals for bringing new money into the bank from the United States. These performance goals may have intensified the efforts of UBS Swiss bankers to recruit U.S. clients.

Mr. Birkenfeld told the Subcommittee that, during his tenure at UBS, his superiors at UBS gave him a specific, annual monetary goal, referred to as a "net new money" (NNM) target that he was expected to bring into the bank by the end of the year from U.S. clients. He said that it was his understanding that an NNM target was established for each Swiss client advisor who

[412] See Arrival-Departure Record, CBP Form I-94, for Nonimmigrant Visitors with a Visa for the United States, discussed in the website of the Customs and Border Patrol, at www.cbp.gov.

dealt with U.S. clients. He indicated that the amount varied according to the seniority and track record of the particular client advisor. He told the Subcommittee: "So my job as a private banker predominantly was to bring in net new money, and then on top of it create return on assets, ROA. ... A rough estimate would be probably to bring in probably $50 million a year or $40 million."[413]

Mr. Birkenfeld explained that the NNM target could be met by securing additional assets from existing clients or by securing one or more new clients.

> "[O]ne client could make your numbers or 10 or 25 could make your numbers. It's very hard to gauge that. And, again, when people aren't paying tax in the three areas I told you – inheritance, income, and capital gains – it's quite easy for people to bring money to you. They're very interested to bring as much money to the bank as possible."[414]

Internal UBS documents confirm that the bank carefully tracked annual figures for net new money and return on assets, among other performance measures for its Swiss private banking operations targeting clients in North America.[415] The documents also show that UBS took a variety of steps to encourage its bankers to meet their NNM goals. In 2003, for example, the head of the Wealth Management Americas division in Switzerland, Martin Liechti, sent a letter to his colleagues, urging each of them to refer at least five clients to Switzerland and promising to award the person with the most referrals with an expensive Swiss watch:

> "Net New Money is, as you know, a key element for our success. This means that we all have to work hard to achieve our NNM goals for 2003 and the years to come. In order to reach this goal, two main initiatives have been launched: The KeyClient initiative and the Referral Program within UBS. ...
>
> "Each Country Team making a referral will get 0.33% of the revenues generated by the Financial Advisor over a time period of four years. As you know, we set, at the beginning of the year, a target of 5 referrals per CA [Client Advisor] to be made. I am aware that it is a challenge to reach this goal. In acknowledgement of your effort and commitment, I would like to award the Client Advisor in each Country Team who achieves, until the 31st of December 2003, the most referrals (amount of money and number of referrals), but at least the 5 referrals set as target, with a Breitling wristwatch. The same will be valid for the Rep Officer (including all Rep Offices in Latin America) who achieves this goal. Since 2003 will be a unique 'brand year' in UBS' history, each Breitling watch we award will be 'customized' with the UBS logo."[416]

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[413] Birkenfeld deposition at 20, 23.

[414] Id. at 22.

[415] See, e.g., "BS North America Report: Overview Figures North America," prepared by UBS (July 2004) (providing data on NNM, ROA, and other performance measures for 2004 and 2005), Bates Nos. UPSI 00060246-257; "UBS Management Summary Report-Graphs" (YTD [Year To Date] October 2002), Bates No. PSI-OPB-137 (providing ROA and NNM data for Swiss offices dealing with U.S. clients).

[416] Letter entitled, "Referral Campain BU Americas," from UBS private banking head Martin Liechti to his "Colleagues," (6/2/03), apparently printed in an internal UBS publication, "PB Americas International News."

In early 2007, Mr. Liechti sent an email setting a new NNM goal for all of UBS Swiss bankers with clients in the "Americas," including the United States. His email states:

> "Welcome to the new year! I hope you enjoyed the holidays with your family and friends and took the opportunity to relax and 'recharge your batteries'.
>
> "We achieved much in 2006 and I thank you for your huge efforts and dedication to the Americas.
>
> "The markets are growing fast, and our competition is catching up. ... The answer to guarantee our future is GROWTH. We have grown from CHF 4 million per Client Advisor in 2004 to 17 million in 2006. We need to keep up with our ambitions and go to 60 million per Client Advisor! ...
>
> "Our ambitions:
>
> "100 RoA [Return on Assets]
> 60 NNM per CA [Client Advisor]
> 100% Satisfied Clients ...
>
> "In the Chinese Horoscope, 2007 is the year of the pig. In many cultures, the pig is a symbol for 'luck'. While it's always good to have [a] bit of luck, it is not luck that leads to success. Success is the result of vision and purpose, hard work and passion. ... Together as a team I am convinced we will succeed!"[417]

This email indicates that in two years, from 2004 to 2006, UBS Swiss bankers had quadrupled the amount of net new money being drawn into UBS from the "Americas," and that the bank's management sought to quadruple that figure again in a single year, 2007. This email helps to convey the pressure that UBS placed on its Swiss private bankers to bring in new money from the United States into Switzerland.

Another UBS document entitled, "KeyClients in NAM: Business Case 2003-2005," provides context for the Swiss private banking operations' focus on obtaining U.S. clients. This document observes that "31% of World's UHNWIs [Ultra High Net Worth Individuals] are in North America (USA + Canada)."[418] It also observes that the United States has 222 billionaires with a combined net worth of $706 billion.[419] This type of information helps explain why UBS dedicated significant resources to obtaining U.S. clients for its private banking operations in Switzerland.

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[417] Email from Martin Liechti re "Happy New Year" (undated).

[418] "KeyClients in NAM: Business Case 2003-2005," at 4.

[419] Id. at 5.

Massive Machine. Mr. Birkenfeld told the Subcommittee that the overall effort of the UBS Swiss private banking operation to secure U.S. clients was the most extensive he had observed in his 12 years working in Swiss private banking. He stated:

> "This was a massive machine. I had never seen such a large bank making such a dedicated effort to market to the U.S. market. And from my understanding and my work experience in Switzerland, it was the largest bank with the largest number of clients and assets under management of U.S. clients."[420]

He said that the Swiss bankers he worked with typically had an "existing book of business," that included numerous U.S. clients and had "a very regimented cycle of going out and acquiring new clients, taking care of your existing clients, make sure the revenue was there."[421] He described one private banker who saw as many as 30 or 40 existing clients on a single trip.[422] He estimated that the UBS Swiss bankers in the Geneva office where he worked maintained thousands of Swiss accounts for U.S. clients.[423]

When asked what motivated U.S. clients to open accounts in Switzerland instead of banking with UBS in their home country, Mr. Birkenfeld gave two reasons: "Tax evasion. ... And most of the time, people always liked the idea that they could hide some from their spouse or maybe a business partner or what have you, because the secrecy of having a bank account in Switzerland gave them anonymity and discretion."[424] When asked whether he ever said to his U.S. clients, "You don't have to pay taxes," or whether that was just understood, Mr. Birkenfeld responded, "It was clearly understood. Clearly understood."[425]

(4) Servicing U.S. Clients with Swiss Accounts

UBS not only allowed U.S. clients to open undeclared accounts in Switzerland and assured them it would not disclose these accounts unless compelled by law, UBS also took steps to ensure that its Swiss bankers serviced their U.S. clients in ways that minimized disclosure of information to U.S. authorities. These measures included refraining from mailing Swiss account information into the United States, ensuring Swiss bankers traveling to the United States carried minimal or encrypted client account information, and providing training to help its bankers avoid surveillance by U.S. authorities.

In his deposition, Mr. Birkenfeld indicated that, during his tenure at UBS from 2001 to 2005, he worked closely with Swiss bankers who were servicing U.S. clients in the United States. He said the Swiss bankers he worked with typically had an "existing book of business," with numerous U.S. clients, and had "a very regimented cycle of ... taking care of your existing

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[420] Birkenfeld deposition at 46.

[421] Id. at 76.

[422] Id. at 121.

[423] Id. at 71.

[424] Id. at 33.

[425] Id. at 151.

clients, mak[ing] sure the revenue was there."[426] He said: "So getting out into the field as we called it, was very, very important. You had to travel. Traveling was critical; otherwise the client would say, 'What do you mean you're not coming to visit me? What's wrong?' So, you know, you don't want to upset the client."[427]

Mr. Birkenfeld told the Subcommittee that, to his knowledge, almost all U.S. clients with Swiss accounts declined to have their account statements mailed to them in the United States.[428] Instead, UBS held client mail in Switzerland until the client was able to view the account documentation in person, after which the information was shredded. He explained:

> "You paid 500 francs a year to have all of the statements and all of the transactions held in their folder, sealed, so when they came to the bank, 6 months, a year later, they could come and look at it, go through it, and then we would shred it .... So I've had some clients who would sit there for an hour or two hours, and then they come back and say, 'Okay. Everything's fine.' And they'd give the documents and say, 'You can shred them.' And we'd go and take it in the big shredding room and just shred everything. And then you'd start from zero again."[429]

Mr. Birkenfeld said that, in between visits to Switzerland to review their account information, many U.S. clients expected their Swiss banker to visit them in the United States and provide updated information about their accounts. He said that, prior to a business trip in which they planned to meet with specific clients, UBS Swiss private bankers typically collected and reviewed the relevant client account information. He said that the Swiss bankers did not normally bring the actual account statements with them into the United States, but took elaborate measures to disguise or encrypt client information to prevent it from falling into the wrong hands. He said, for example, some bankers kept "cryptic notes" on each account and took only those notes into the United States.[430] He described one Swiss banker who directed his assistant to transcribe by hand the information in his clients' account statements onto spreadsheets, omitting any identifying information other than a code name, and then sent the handwritten spreadsheets by overnight mail to his hotel in the United States, after which he would provide the spreadsheets to his U.S. clients in individual meetings.[431] Mr. Birkenfeld described other Swiss private bankers who brought into the United States UBS-supplied laptop computers, referred to as TAS computers, programmed to receive only highly encrypted information that, allegedly, [e]ven if the [U.S.] Customs opened it, for instance, they wouldn't see anything."[432] He said

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[426] Birkenfeld deposition at 76.

[427] Id. at 76-77.

[428] Id. at 61.

[429] Id.

[430] Id. at 55.

[431] Id. at 121-122.

[432] Id. at 56-57.

that the TAS computers could be used to "access the client's private bank statements from America and print them out, as well as view and print out product offerings."[433]

UBS cautioned its bankers, when traveling to the United States, to take measures to safeguard client information and supplied the TAS computers that some Swiss bankers used. A 2004 UBS policy statement provides: "When traveling cross-border, UBS AG employees always must remember that all clients of UBS AG expect us to take all necessary steps to safeguard confidentiality. Client advisors are referred to separate guidance on the protection of confidential information and other available resources that may assist."[434] Mr. Birkenfeld told the Subcommittee that UBS also cautioned its Swiss bankers to keep a low profile during their business trips to the United States so they would not attract attention from U.S. authorities. He noted, for example, that UBS business cards did not include a reference to a private banker's involvement in "wealth management."[435] He also said that some UBS Swiss private bankers who visited the United States on business told U.S. customs officials that they were instead in the country for "pleasure."[436]

Documentation obtained by the Subcommittee indicates that UBS also provided training to its client advisors on how to detect – and avoid – surveillance by U.S. customs agents and law enforcement officers. An undated UBS training document entitled, "Case Studies Cross-Border Workshop NAM" provides a series of scenarios designed to train its personnel.[437] An excerpt from one of the scenarios is as follows:

> "After passing immigration desk during your trip to USA/Canada, you are intercepted by the authorities. By checking your Palm, they find all your client meetings. Fortunately you stored only very short remarks of the different meetings and no names.
>
> "As you spend around one week in the same hotel, the longer you stay there, the more you get the feeling of being observed. Sometimes you even doubt if all of the hotel employees are working for the hotel. A lot of client meetings are held in the suite of your hotel.
>
> "One morning you are intercepted by an FBI-agent. He looks for some information about one of your clients and explains to you, that your client is involved in illegal activities.

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[433] Id. at 55. See also reference to TAS in UBS Minutes of a May 2003 meeting of the Geneva Private Bank North America International group (5/14/03), Bates Nos. PSI-OPB-119-20 at 119.

[434] "Cross-Border Banking Activities into the United States **(version November 2004)**," prepared by UBS, Bates Nos. PSI-OPB, at 104 (emphasis in original).

[435] Birkenfeld deposition, at 158. See also UBS Minutes of a May 2003 meeting of the Geneva Private Bank North America International group (5/14/03) at 2 ("Do not indicate Wealth Management but only UBS AG on the new business cards").

[436] Birkenfeld deposition, at 166.

[437] Case Studies Cross-Border Workshop NAM, (undated) (emphasis in original). "NAM" refers to the North American division at UBS Switzerland.

"Question 1: What would you do in such a situation?

"Question 2: What are the signs indicating that something is going on?"

The document does not indicate UBS' preferred responses to these questions.

Mr. Birkenfeld told the Subcommittee that the UBS Swiss offices also employed techniques to help existing U.S. clients transfer money into and out of their accounts without identifying documentation. He noted, for example, that while he was at UBS, the bank typically wired funds and engaged in securities transactions without including client-specific information; instead the bank typically stated on the required documentation that the transaction was "on behalf of UBS for one of our clients."[438] He indicated that as the European Union tightened the rules for wire transfers, requiring the originating bank to identify the beneficial owner of the assets involved in a transaction, UBS increasingly restricted its Swiss bankers' use of wire transfers.[439] He said that UBS began to require clients to fly to Switzerland to withdraw cash from an account.

The Statement of Facts in the Birkenfeld criminal case describes additional actions taken by UBS bankers to help U.S. clients manage their Swiss accounts without alerting U.S. authorities. It states, for example, that UBS bankers advised U.S. clients to withdraw funds from their accounts using Swiss credit cards that "could not be discovered by United States authorities"; to "destroy all off-shore banking records existing in the United States"; and to "misrepresent the receipt of funds from the Swiss bank account in the United States as loans from the Swiss Bank."[440] The Statement of Facts also discloses that, on one occasion, "at the request of a U.S. client, defendant Birkenfeld purchased diamonds using that U.S. client's Swiss bank account funds and smuggled the diamonds into the United States in a toothpaste tube," presumably so that the U.S. client could obtain possession of his Swiss assets without alerting U.S. authorities.[441] It also states that Mr. Birkenfeld and his business associate Mario Staggl "accepted bundles of checks from U.S. clients and facilitated the deposit of those checks into accounts at the Swiss bank" and elsewhere, presumably to assist the clients in making transfers to their Swiss accounts, again without alerting U.S. authorities.[442]

Hold mail accounts, encrypted computers, wire transfers without client names, Swiss credit cards, requirements that clients travel outside of the United States to get information about their accounts – the consistent element in all of these UBS techniques is the effort to help U.S. clients hide assets sent to Switzerland. These UBS procedures, practices, and policies can also facilitate, and in some cases have resulted in, tax evasion by the bank's U.S. clients.

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[438] Birkenfeld deposition, at 247.

[439] Id. at 251.

[440] Birkenfeld Statement of Facts, at 3.

[441] Id. at 4.

[442] Id.

(5) Violating Restrictions on U.S. Activities

The UBS practices just described, related to Swiss banker activities undertaken in the United States to recruit and service U.S. clients, may have violated U.S. law as well as UBS policy. As explained earlier, U.S. securities and banking laws prohibit non-U.S. persons from advertising securities services or products, executing securities transactions, or performing banking services within the United States, without an appropriate license. Moreover, U.S. tax laws may require a foreign financial institution to report to the IRS on 1099 Forms sales of non-U.S. securities effected in the United States, such as by executing a transaction by a broker physically in the United States or ordering the completion of a transaction through telephone calls or emails originating from the United States.

It was to avoid violating U.S. law, exceeding its licensed activities, or triggering 1099 reporting requirements, that caused UBS to issue policy statements restricting the activities that its non-U.S. bankers could undertake while in the United States. Its 2002 and 2004 policy statements, for example, prohibited UBS Swiss bankers, while in the United States, from advertising securities products to their clients, informing clients of how their security portfolios were performing, providing copies of account statements, or using U.S. mails, faxes, telephone calls or email to discuss a client's securities portfolio.[443] UBS also prohibited its Swiss bankers from prospecting for new clients while in the United States, soliciting new accounts, or obtaining signatures on account opening documentation.

Despite these prohibitions, it appears that UBS Swiss bankers in the United States servicing U.S. clients routinely undertook actions that contravened the UBS restrictions. Mr. Birkenfeld described, for example, an art festival sponsored by UBS in Miami each year, which he attended with other Swiss bankers for the express purpose of soliciting new accounts. "We went to these events. We went to dinners, we went to art exhibitions, we went to private homes as private bankers, knowingly by management that they were paying for our hotel, paying for our airfare, paying us our salary, and getting us tickets to the UBS VIP tent to drink champagne with clients."[444] He testified that he witnessed Swiss bankers soliciting new accounts and completing account opening documentation while in the United States. He testified that in some cases, "instead of saying, 'I signed it in New York,' they brought the forms back to Geneva and they put in 'Geneva.'"[445] When asked whether he had promoted securities products during his trips to the United States, he responded, "We were promoting anything."[446]

Mr. Birkenfeld also told the Subcommittee that UBS Swiss bankers routinely communicated with their U.S. clients about the status of their accounts, including their securities portfolios. He said that some Swiss private bankers communicated with their U.S. clients by

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[443] See "Wealth Management and Business Banking Client Advisor's Guidelines for Implementation and Management of Discretionary Asset Management Relationship with U.S. Clients," (undated but likely late 2001); "Cross-Border Banking Activities into the United States **(version November 2004)**," prepared by UBS, Bates Nos. PSI-OPB, at 103-105 (emphasis in original).

[444] Birkenfeld deposition, at 114.

[445] Id. at 115, 125.

[446] Id. at 111.

telephone or fax, or by sending occasional documents to them in the United States by overnight mail.[447] He said the bankers sometimes used code names during the telephone calls, so that the U.S. client would not have to identify themselves by name, in case anyone was listening.[448] He said that U.S. clients generally did not like sending or receiving emails via computer, "because they didn't want that link, for obvious reasons."[449] Nevertheless, some clients did use email, as shown in the case involving Mr. Birkenfeld and Mr. Olenicoff, examined further below. Mr. Birkenfeld also described how Swiss bankers brought into the United States information about clients' accounts and securities portfolios. He told the Subcommittee that his day-to-day interactions with clients were in direct contradiction to the restrictions set out in UBS' policy statements. He indicated those policies simply were not enforced while he was at the bank.[450]

2007 UBS Restrictions on U.S. Activities. In June 2007, UBS issued a new version of its policy statement restricting activities in the United States by its non-U.S. bankers.[451] This document repeated the prohibitions in the 2004 policy statement, while adding extensive new restrictions. For example, the 2007 policy statement states that, while non-U.S. UBS bankers could continue to travel to the United States, "[t]ravels must be kept to a minimum," and each traveling officer must be trained in and sign a certificate confirming compliance with the travel restrictions, inform his or her superior prior to a trip of planned events and clients to be visited, and report after the trip to the supervisor about all trip developments.[452] The policy statement goes on to state that "UBS will abstain from any active prospecting of any U.S. based persons," although it would continue to accept referrals from existing clients or "U.S. Licensed Officers."[453] In addition, it states that non-U.S. UBS bankers "must abstain from any activity that could be construed as soliciting securities or banking business from persons located in the United States," and "must not give any advice to prospective or existing clients on how to evade taxes or circumvent any other relevant restrictions."[454]

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[447] Id. at 60.

[448] Id. at 63-64.

[449] Id. at 61.

[450] Mr. Birkenfeld told the Subcommittee that he was not even aware of the restrictions until May 2005, when a colleague showed him the 2004 policy statement on an internal UBS computer system. He said that after being shown the 2004 policy statement, he sent emails, in June 2005, to the UBS legal and compliance divisions asking about the contradiction between the policy statement and his day-to-day activities. He provided copies of these emails, which he said were never responded to in writing. Birkenfeld deposition, at 108-109, 125-26. He told the Subcommittee that he also brought the issue to the attention of his immediate supervisor whom he said, "yelled at me and said, 'Why are you getting everyone riled up?'" Id. at 126-27. He testified that he then brought the 2004 policy statement to two outside law firms, both of which advised him to resign. Id. at 127. Mr. Birkenfeld resigned from UBS in October 2005.

[451] See "Restrictions on Cross-Border Banking and Financial Services Activities: Country Paper USA (Effective Date June, 1st, 2007)," (otherwise undated).

[452] Id. at 4.

[453] Id. at 8.

[454] Id. at 5, 6 (emphasis in original).

2007 Travel Ban to the United States. In November 2007, UBS went further, essentially ending all travel by its Swiss bankers to the United States to solicit new business.[455] UBS stated in an internal memorandum that it had decided "to realign the business model for U.S. clients by focusing our resources on our wealth management operations based in the United States ... and UBS Swiss Financial Advisors in Zurich."[456] UBS materials stated that UBS would permit "new account opening for securities related services only within those units"[457] and would service existing U.S. clients only when those clients were outside of the United States and, for example, visiting Switzerland or utilizing telephone calls, faxes or other communication systems from outside the United States.[458] A document providing talking points to UBS bankers on how to inform their U.S. clients about the new policy suggests telling them: "Client advisors, including myself, will no longer be traveling outside of Switzerland to meet you. ... [W]e will not be able to communicate with you about your securities account when you are in the United States. ... [W]e will not be able to execute your securities instructions if we are not satisfied that you are outside the U.S. when giving such orders."[459]

The talking points also indicate that for a client who asked: "If I decide to transfer my assets to SFA [Swiss Financial Advisers], will Swiss client confidentiality still apply?," the recommended response was: "An SFA representative would be the best person to answer that question, but my understanding is that, although your information would be reported to the IRS and potentially available to the SEC, it otherwise generally would be covered by Swiss financial privacy protections."[460] For a client who asked: "What if I do not want U.S. tax reporting services or to supply a W-9?," the recommended response was: "Then you may retain your current account subject to the modifications I just described."[461] Those modifications included keeping all communications about the account outside of the United States.

According to UBS, the new policy, including the travel ban, became effective in November 2007, although a few previously planned business trips to the United States were allowed in December. UBS informed the Committee that, since January 2008, none of its Swiss private bankers has made a business trip to the United States.[462]

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[455] See, e.g., UBS internal memorandum addressed to "Colleagues" regarding "Changes in business model for U.S. private clients," (11/15/08).

[456] Id. at 1.

[457] Id.

[458] UBS prepared document with the heading, "Privileged and Confidential: Letters to Existing U.S. Clients with More than CHF 50,000 Who have Not been Informed Orally either to Retained Mail or Send to Non-U.S. Address," (undated but likely in or after November 2007) (heading using all capital letters converted to initial capital format) (apparent form letter providing guidance to U.S. clients on the November 2007 policy).

[459] UBS prepared document with the heading, "Talking Points for Informing U.S. Private Clients with Securities Holdings about the Realignment of our Business Model Plus Q&A," (undated but likely in or after November 2007) (heading using all capital letters converted to initial capital format).

[460] Id. at 3.

[461] Id. at 1-2.

[462] Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

Contrary to this representation by UBS, however, a Subcommittee review of the relevant travel data for the Swiss bankers determined that, from January to April 2008, UBS client advisors made twelve trips to the United States, travelling from Switzerland to New York, Miami, San Francisco, and Las Vegas. The Customs I-94 Forms indicate that, on half of these trips, the Swiss bankers indicated they were travelling for business purposes, while on the other half, the Swiss bankers indicated they were travelling to the United States for non-business purposes. With respect to Mr. Liechti, head of the UBS Wealth Management Americas division, the I-94 Form shows that he arrived in the United States on April 20, 2008, on business. There is no record of his departure to date.

The clear contrast between the UBS policy restrictions dating back to at least 2002, and the activities undertaken by UBS Swiss bankers while traveling in the United States, as described by Mr. Birkenfeld in his deposition, in connection with his recent indictment, and in internal UBS documents, suggests that until recently, the UBS restrictions were not being enforced. This lack of enforcement, in turn, raises concerns that UBS Swiss bankers with U.S. clients may have been routinely violating not only the bank's internal policies, but also U.S. law. UBS is currently under investigation by the SEC, IRS, and Department of Justice regarding the activities of its Swiss bankers in the United States.

C. Olenicoff Accounts

Concerns raised by the activities of UBS Swiss bankers servicing accounts for U.S. clients are further illustrated by the UBS accounts opened in Switzerland by Mr. Birkenfeld for Igor Olenicoff.

Mr. Olenicoff is a billionaire real estate developer, U.S. citizen, and resident of California and Florida.[463] He is President and owner of Olen Properties Corporation. From 1992 until 2005, Mr. Olenicoff opened multiple accounts at banks in the Bahamas, England, Liechtenstein, and Switzerland. These accounts were opened in the name of multiple offshore corporations he controlled, including Guardian Guarantee Co., Ltd., New Guardian Bancorp ApS, Continental Realty Funding Corp., National Depository Corp., Sovereign Bancorp Ltd., and Swiss Finance Corp.[464] Some of his accounts were opened at UBS in Switzerland, and for a time, Mr. Olenicoff was Mr. Birkenfeld's largest private banking client.

In 2007, Mr. Olenicoff pled guilty to one criminal count of filing a false income tax return by failing to disclose the foreign bank accounts he controlled.[465] He was sentenced to two years probation and 120 hours of community service, and paid about $52 million to the IRS for six years of back taxes, interest, and penalties owed on assets and income hidden in foreign bank

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[463] See pleadings in United States v. Olenicoff, Case No. SA CR No. 07-227-CJC (C.D. Cal.) (hereinafter "United States v. Olenicoff"); and United States v. Birkenfeld.

[464] United States v. Olenicoff, Plea Agreement for Defendant Igor M. Olenicoff (12/10/07) (hereinafter Olenicoff Plea Agreement), at 4.

[465] Id.

accounts.[466] In 2008, Mr. Birkenfeld pled guilty to conspiring with Mr. Olenicoff to defraud the IRS and avoid payment of taxes owed on about $200 million in assets transferred to accounts in Switzerland and Liechtenstein.[467]

The Subcommittee obtained a number of documents related to the Olenicoff and Birkenfeld matters which help illustrate the actions taken by UBS private bankers and others to help U.S. clients conceal their assets and evade U.S. taxes.

Account Opening. Mr. Birkenfeld told the Subcommittee that he first heard Mr. Olenicoff's name while working at Barclays Bank.[468] In 2001, soon after he began working for UBS, he contacted Mr. Olenicoff in California, flew to California for a meeting with Mr. Olenicoff and his son, and persuaded them to move their account to UBS in Switzerland.[469]

Mr. Olenicoff told Mr. Birkenfeld that he would like to open the UBS account in the name of Guardian Guarantee Corp. (GGC), one of the Bahamas corporations he controlled.[470] Mr. Birkenfeld provided the account opening documentation to Mr. Olenicoff in California, and to a Bahamas firm that administered GGC.[471] Mr. Olenicoff returned the completed forms.[472] On a UBS form that asked for the identity of the "beneficial owner of the assets" to be deposited into the account, Mr. Olenicoff identified GGC as the beneficial owner and listed himself and his son as the "contracting partners" who would inform UBS of any ownership change.[473] Mr. Olenicoff also made himself and other family members account signatories.[474] Mr. Birkenfeld agreed to open the account on those terms, even though he knew Mr. Olenicoff was the true beneficial owner of the assets, and the Bahamas corporation was being used to conceal that ownership.

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[466] See "California Real Estate Developer Sentenced for Filing a False Tax Return and Failure to Disclose Foreign Bank Accounts to IRS," in "Examples of General Tax Fraud Investigations FY2008," Internal Revenue Service, http://www.irs.gov/compliance/enforcement/article/0,,id=174630,00.html (viewed 7/14/08).

[467] Birkenfeld Statement of Facts.

[468] According to Mr. Birkenfeld, Mr. Olenicoff had been a client at Barclays Bank in the Bahamas. Mr. Birkenfeld was then working for Barclays Bank in Switzerland. He said that, after joining the QI Program in 2001, Barclays decided to close all of its Bahamas accounts with U.S. clients, including Mr. Olenicoff. Mr. Birkenfeld said that the Barclays account manager in the Bahamas telephoned him to see if the Swiss office could accept the Olenicoff account. Mr. Birkenfeld said that he was then in the process of changing jobs from Barclays to UBS. Birkenfeld Deposition at 206-209.

[469] Birkenfeld deposition at 206-209; email from Mr. Birkenld to Mr. Olenicoff and his son (7/26/01), Bates No. SW 67087.

[470] See, e.g., email from Mr. Olenicoff to Mr. Birkenfeld (10/11/01), Bates Nos. SW 66660-61.

[471] Olenicoff Plea Agreement, at 4; Birkenfeld Statement of Facts, at 5; handwritten note from Mr. Birkenfeld (undated), Bates No. SW 67527; letter from McKinney, Bancroft & Hughes of the Bahamas to Mr. Olenicoff (10/17/01), Bates No. SW 17013.

[472] Letter from Mr. Olenicoff to Mr. Birkenfeld, (10/23/01), Bates No. SW 66645.

[473] UBS Verification of the beneficial owner's identity, signed by Mr. Olenicoff and his son, (10/23/01), Bates No. SW66648. Another document identified Mr. Olenicoff as GGC's president and his son as GGC's secretary. UBS Authorized signatories (10/23/01), Bates No. SW 66649.

[474] UBS Authorized signatories (10/23/01), Bates No. SW 66649.

As part of the account opening process, Mr. Olenicoff and his son signed a UBS form that "instruct[ed] UBS AG with respect to the above mentioned account not to invest in or hold US securities within the meaning of the relevant Qualified Intermediary Agreement."[475] By ruling out U.S. security investments, the Olenicoffs ensured that the account would not be reported to the IRS under the QI Program. In December 2001, Mr. Olenicoff transferred about $89 million from Barclays Bank in the Bahamas to the new GGC account at UBS in Switzerland.[476]

Restructuring Olenicoff Assets. To help develop the Olenicoff account, Mr. Birkenfeld enlisted the services of Mario Staggl, part owner of a Liechtenstein trust company, New Haven Treuhand AG. In November 2001, Mr. Olenicoff and his son travelled to Liechtenstein and met with Mr. Staggl and his partner, Klaus Biedermann.[477] During that meeting and in subsequent discussions, Mr. Olenicoff sought advice on how to restructure his offshore assets, taking into consideration the twin goals of avoiding taxes and maintaining "anonymity."

The documents show that a number of proposals were considered. In one email, Mr. Staggl stated: "The shares in OLEN US are 'owned' by the Bahamian Company. In order to avoid any potential exposure in a tax point of view we would recommend to transfer the Bahamian company shares into a Danish Holding Company. The Danish Holding Company would be owned by the first of the Liechtenstein Trusts."[478] He also wrote:

> "The cash available for UBS and Neue Bank can basically be held by the second Liechtenstein Trust. ... There is an easy way to get around [VAT taxes] by interposing an 'off-shore' jurisdiction since services rendered and charged to non Swiss or non Liechtenstein entities are not liable to VAT. We would recommend the second Liechtenstein Trust being the shareholder of the investment 'off-shore' vehicle. The jurisdiction could be the British Virgin Islands (BVI), Panama, Gibraltar. ... The administration would be looked after by New Haven in Liechtenstein. The second advantage of interposing the 'off-shore' vehicle would lead to another 'saf[e]ty-break' in a tax and anonymity aspect."[479]

Mr. Olenicoff responded in part by stating: "It is the preference of the current holder of the stock, a Bahamian Corporation to move the ownership to an onshore entity, but one which provided complete anonymity as to the beneficial owners."[480] In a later email, Mr. Staggl observed: "Subsequent to our telephone discussion of last week your most recent e-mail made it

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[475] UBS waiver of right to invest in U.S. securities, signed by Mr. Olenicoff and his son (10/23/01), Bates No. SW 66652.

[476] Olenicoff Plea Agreement, at 4.

[477] See email from Mr. Olenicoff to Mr. Staggl, (12/1/01), Bates No. SW 65109 ("we all enjoyed our stay in your beautiful country").

[478] Email from Mr. Staggle to Mr. Olenicoff re "Various," (12/4/01), Bates No. SW 65110.

[479] Id. See also Birkenfeld Statement of Facts, at 5.

[480] Email from Mr. Olenicoff to Mr. Staggl re "Structure Discussion," (12/8/01), Bates No. SW 65111.

very clear to me – you want to become on-shore – but still maintain an off-shore status in tax and protection point of view."[481]

In late 2001, Mr. Olenicoff authorized Mr. Staggl's trust company, New Haven, to establish a Liechtenstein trust, The Landmark Settlement, and a Danish corporation, New Guardian Bancorp, on his behalf. Mr. Staggl caused to be executed a "Letter of Intent" which stated that New Haven would hold the trust property for the benefit of Mr. Olenicoff and, after his demise, for his children.[482] Mr. Staggl wrote to Mr. Olenicoff:

> "First, we will establish the Liechtenstein Trust to be known as 'The Landmark Settlement.' All the information we need in order to proceed are available at our offices. New Haven will be the trustee. Sheltons, our correspondent in Danemark, agreed to incorporate 'New Guardian Bancorp' wholly owned by the Liechtenstein 'The Landmark Settlement.'"[483]

At Mr. Olenicoff's direction, Mr. Birkenfeld arranged a transfer of $40,000 from the GGC account at UBS to finance the set up of the two new entities.[484] Mr. Olenicoff then opened accounts in the name of New Guardian Bancorp (NBG) at UBS in Switzerland and in the name of NBG and Landmark Settlement at Neue Bank in Liechtenstein.

In January 2002, Mr. Olenicoff's companion, Jeanette Bullington, opened a personal account at UBS in Switzerland.[485] As part of the account opening documentation, she signed one document instructing UBS not to invest her funds in U.S. securities "within the meaning of the relevant Qualified Intermediary Agreement."[486] She signed another stating: "I am aware of the new tax regulations. To this end, I declare that I expressly agree that my account shall be frozen for all investments in US securities."[487] These documents appear designed to ensure her account would not be disclosed to the IRS under the QI Program.

Transferring U.S. Securities Portfolio. In March 2002, Mr. Birkenfeld and Mr. Staggl helped Mr. Olenicoff transfer $60 million in U.S. securities from a "Smith Barney portfolio" to the NGB account at Neue Bank in Liechtenstein. Mr. Staggl explained that the transfer could go directly to NGB or, alternatively, to Landmark Settlement which owned NGB, but advised against sending the securities to an account opened in Mr. Olenicoff's personal name, since that could "jeopardize" the structure by exposing his association with the assets:

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[481] Email from Mr. Staggl to Mr. Olenicoff re "Structure," (Jan. 2002), Bates No. SW 67200.

[482] Birkenfeld Statement of Facts, at 5.

[483] Email from Mr. Olenicoff to Mr. Staggl re "Structure," (1/8/02), Bates No. SW 65103. See also Danish Commerce and Companies Agency Extract for New Guardian Bancorp ApS, (1/18/02), Bates No. SW 66922.

[484] See, e.g., email from Mr. Olenicoff to Mr. Birkenfeld authorizing transfer, (12/27/01), Bates No. SW 67081.

[485] UBS Verification of beneficial owner's Identity, (1/22/02), Bates No. SW 66974.

[486] UBS Waiver of right to invest in US securities, (1/22/02), Bates No. SW 66977.

[487] UBS Supplement for new Account US Status: Assets and Income/Declaration for US Taxable Persons, (undated but likely 1/22/02), Bates No. SW 66982.

> "[T]he transfer of the Smith Barney portfolio to Neue Bank ... would be [in] no danger or exposure whatsoever. ... [T]o put your mind at rest, the portfolio arriving from Smith Barney will be put into Landmark Settlement account held with Neue Bank for the time being. ... I would not recommend to open a personal account in your name since this could potentially jeopardize the structure. For the time being you and Andrei are signatories on Landmark Settlement's bank account with Neue Bank. You may remember that you signed blank account signature cards for Neue Bank at the occasion of our meeting in Liechtenstein and one card has been used for New Guardian Bancorp and the other for Landmark Settlement."[488]

In April 2002, Mr. Staggl provided Mr. Olenicoff with wire transfer instructions to move the $60 million in U.S. securities directly to the NGB account at Neue Bank. The wire transfer instructions specified, however, that Smith Barney send the securities to "Neue Bank" without specifying the ultimate recipient of the securities. Mr. Staggl's email explained: "For secrecy purpose, there is no need to mention 'New Guardian Bancorp. Aps', but, if you prefer to do so the name of the beneficiary can be mentioned."[489] The transfer took place in April.[490] Although the Neue account afterwards contained substantial U.S. securities, the account was apparently never disclosed to the IRS under the QI Program.

Many other documents reviewed by the Subcommittee demonstrate Mr. Olenicoff's direct control of the UBS accounts opened in the names of GCC and NBC and the millions of dollars in assets held within those accounts. For example, on several occasions Mr. Olenicoff directed Mr. Birkenfeld to open new accounts for the corporate entities, move substantial funds from one UBS account to another, and close two of the accounts after a new one had been opened.[491] On another occasion, Mr. Olenicoff appears to have transferred substantial real estate assets in the United States from an entity he controlled in the Bahamas, National Depository Company, Ltd., to the Landmark Settlement in Liechtenstein.[492] On still another occasion, Mr. Olenicoff authorized Mr. Birkenfeld to issue five UBS credit cards for one of the UBS corporate accounts, and then appears to have cancelled those cards two weeks later.[493]

By 2005, Mr. Olenicoff had transferred a total of about $200 million in assets into the Swiss and Liechtenstein accounts opened in the name of entities that he controlled. Although

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[488] Email from Mr. Staggl to Mr. Birkenfeld and Mr. Olenicoff re "New Guardian – Status," (3/7/02), Bates No. SW 67196.

[489] Email from Mr. Staggl to Mr. Olenicoff re "Smith Barney Transfer," (4/23/02), Bates No. SW 65120; Email from Mr. Olenicoff to Mr. Staggle re "Smith Barney Transfer," (4/25/02); Bates No. SW 67331.

[490] Olenicoff Plea Agreement, at 4-5.

[491] See, e.g., letter from Mr. Olenicoff to Mr. Birkenfeld, (4/6/02), Bates No. SW 66782; Letter from Andrei Olenicoff to Mr. Birkenfeld, (9/3/02), Bates No. SW 67659.

[492] See, e.g., email from Mr. Staggl to Mr. Olenicoff, with copy to Mr. Birkenfeld, (6/8/04), Bates No. SW 16153; letter from Andrei Olenicoff to Mr. Staggl, (undated), Bates Nos. 67934-37).

[493] Birkenfeld Statement of Facts, at 5; Letter from Mr. Olenicoff to Mr. Birkenfeld, (3/25/02), Bates No. SW 66783 (authorizing $100,000 to be transferred to a new UBS account to allow "issuance of the five credit cards we discussed"); letter from Mr. Olenicoff to Mr. Birkenfeld, (4/6/02), Bates No. SW 66782 (cancelling the five credit cards two weeks later).

Mr. Olenicoff clearly exercised control over the UBS accounts and assets, Mr. Olenicoff never submitted a W-9 Form to UBS admitting he was the beneficial owner, and UBS never filed a 1099 Form with the IRS reporting the accounts. As Mr. Birkenfeld put it, when asked if the accounts were undeclared, he responded, "Yes. Every bit."[494]

In 2005, after Mr. Birkenfeld left UBS, he and Mr. Staggl met with Mr. Olenicoff in Liechtenstein and advised him to transfer his assets from UBS to Neue Bank in Liechtenstein, "because Liechtenstein had better bank secrecy laws than Switzerland." Mr. Olenicoff agreed, and transferred his assets from UBS to Neue Bank that year.[495]

By 2007, Mr. Olenicoff's offshore assets had been discovered by the IRS. By the end of the year, he had pled guilty; Mr. Birkenfeld pled guilty by mid-2008. Mr. Staggl, who is under indictment for his role in managing the Olenicoff assets, remains at large in Liechtenstein and has been declared by the U.S. Government to be a fugitive.

The Olenicoff accounts at UBS were open for about four years, from 2001 until 2005. During that time, Mr. Birkenfeld has admitted that he conspired with Mr. Olenicoff to help him evade U.S. taxes by hiding his assets in Switzerland and Liechtenstein. To accomplish that end, Mr. Birkenfeld assisted Mr. Olenicoff in forming a Liechtenstein trust and Danish corporation by directing him to a Liechtenstein trust company that offered formation services, opening UBS accounts in the names of those entities, allowing Mr. Olenicoff to omit his beneficial ownership of the account assets on internal UBS forms, and helping him circumvent disclosure of the accounts to the IRS under the QI Program by signing forms instructing UBS not to purchase U.S. securities for those accounts. Mr. Birkenfeld allowed Mr. Olenicoff to transfer tens of millions of dollars from other offshore accounts into the new UBS accounts, with no apparent questions about the source of the funds. He took instructions from Mr. Olenicoff about how to invest the funds in the UBS accounts, using email, letters, and faxes to and from the United States, even though Mr. Birkenfeld was not licensed to handle securities in the United States.

The Subcommittee does not know the extent to which Mr. Birkenfeld's actions were typical of UBS Swiss bankers; it has been unable to obtain internal UBS account documentation comparable to the documentation obtained from LGT. Mr. Birkenfeld told the Subcommittee that he did not view his actions as out of the ordinary. If true, the Olenicoff case history may be one of many within UBS Swiss operations that raise concerns.

D. Analysis

Unlike LGT, UBS did not generally refrain from conducting banking operations within the United States. UBS Swiss bankers targeted U.S. clients, traveled across the country in search of wealthy individuals, and aggressively marketed their services to U.S. taxpayers who might otherwise never have opened Swiss accounts. UBS practices resulted in its U.S. clients maintaining undeclared Swiss accounts that collectively held billions of dollars in assets that were not disclosed to the IRS. UBS serviced these accounts, in part, by offering banking and

[494] Birkenfeld Deposition, at 209.

[495] Birkenfeld Statement of Facts, at 6; Birkenfeld deposition, at 209-210.

securities products and services within the United States that UBS Swiss bankers were not licensed to provide. Swiss bank secrecy laws hid not only the misconduct of U.S. taxpayers hiding assets at UBS in Switzerland, but also the actions taken by UBS bankers to assist those U.S. clients.

UBS has now stopped all travel by its Swiss bankers to the United States, issued more restrictive policies, and is conducting an internal review to gauge the nature and extent of the problem. UBS also cooperated with this Subcommittee in its efforts to gain a full understanding of the facts and issues.

# # #

Reeves Declaration
Exhibit 3

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Review of US Resident Non-W9 Business

Legal and Compliance

Strictly Private, Privileged and Confidential
Document Created By In House Counsel For the Purpose of Legal Advice

To: Bernard Buchs, Chief Compliance Officer WM&BB;
Ursula Suter, General Counsel WM&BB;

Version	Discussion Draft 1.2
Status	
Author(s)	J Watson, UBS WM&BB Risk and Compliance; F Zimmermann, WM&BB Legal.
Date	10 December 2004
Classification	Strictly Private, Privileged and Confidential

GOVERNMENT EXHIBIT 3

1. Introduction

1.1 Introduction and Background

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

1.2 Scope of the Review and Approach Applied

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

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

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

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

1.3 Key Findings / Conclusions

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

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

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

- 32,940 account relationships with US Resident non W-9 clients are cash accounts only. They are therefore not a factor in assessing risks regarding SEC compliance.

- The remaining account relationships (20,877) with US Resident non W9 clients have arrangements in place to the effect that UBS do not enter into postal or e-mail communication into the US regarding the portfolios (17,846 of these relationships have retained mail services and the rest provide addresses for correspondence outside the US). This obviously substantially limits the communications risks.

- The business has a mandate to strive hard to increase the number of relationships that require no (or little) communication into the US.

  Guidelines are in place (and training has been and continues to be provided) for Client Advisors indicating the limits of what they can do with respect to communicating into the US and with Cross-Border Banking Activities into the US generally. These guidelines (and further relevant information) can be found under http://bw.ubs.com/page/0/36/0,1080,636-80482-1-0,00.shtml. Advertising and events in the US by or on behalf of non-us entities are prohibited. Cold calling / prospecting in the us and use of us jurisdictional means is similarly clearly prohibited. Guidance on conduct of existing relationships is then provided. The attention paid in training, support of BU Americas International management and virtually daily contact between Legal / Compliance and the NAM team strongly indicates that the business is well aware of the sensitiveness of its services to US clients.

2. Historical Information

2.1 Analysis - 1999 to date

2.1.1 Background

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

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

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

2.1.2. Actions Taken

In January 2002, UBS implemented strict principles for servicing U.S customers under the heading "Deemed Sales Guidelines" (for full details see materials at http://bw.ubs.com/page/0/36/0,1080,636-80482-1-0,00.shtml). In essence, these boil down to a development of a "ring-fenced" service model for US Resident Non-W9 clients having securities accounts, i.e. retained mail instructions to be in place and no securities-related communications into the US. In addition, the business was asked to transfer as many advisory / non-discretionary clients as possible into discretionary mandates, primarily in order to address the deemed sales issue but also improve SEC / Securities Act compliance as a result of the mandatory "ring-fencing". In September 2004, Business Sector North America ("BS NAM") also established a "Competence Centre Deemed Sales" to further ensure implementation of agreed principles.

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

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

NAMxbordereducation.ppt

3. Present Status

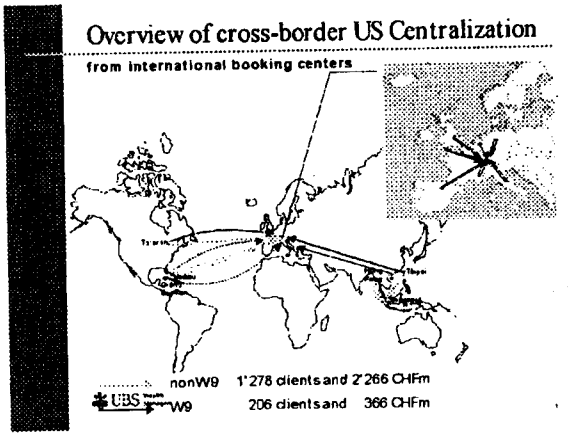
3.1 US Resident Non W9 Clients

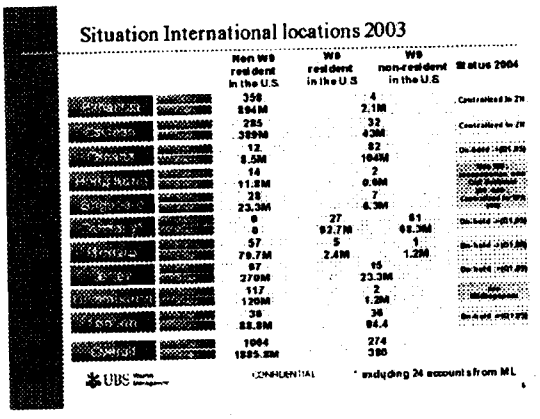
A presentation describing the breadth of the present business with US Resident Non W-9 clients has been prepared by M Guignard (Regional Market Manager BS NAM). The full presentation is embedded in this document at the end of this section and the following highlights the key aspects:

3.1.1 Centralisation Process

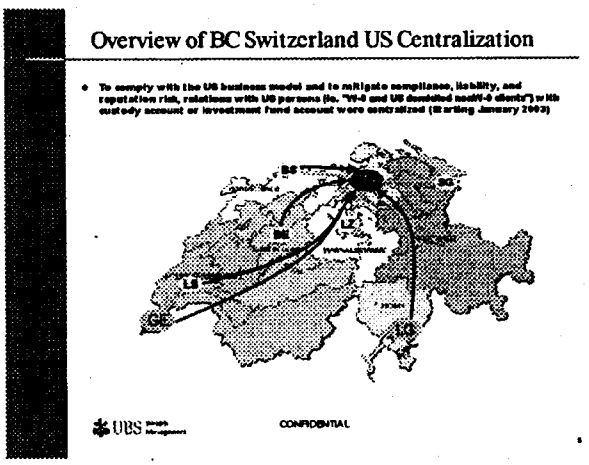
In general, US Resident Non-W9 clients are now centralised within WM&BB (excepting those with the Private Banks in SBC Wealth Management) in the Business Sector North Americas (Desks in Zurich, Geneva and Lugano). The centralisation process started in January 2003 and is over 90% complete. The aim of the centralisation exercise was to concentrate handling of these particularly sensitive client relationships in the area with the highest expertise.

The Centralisation Process started with the centralisation of all relevant clients to Booking Centre Switzerland from WM&BB's International booking centres as shown below.

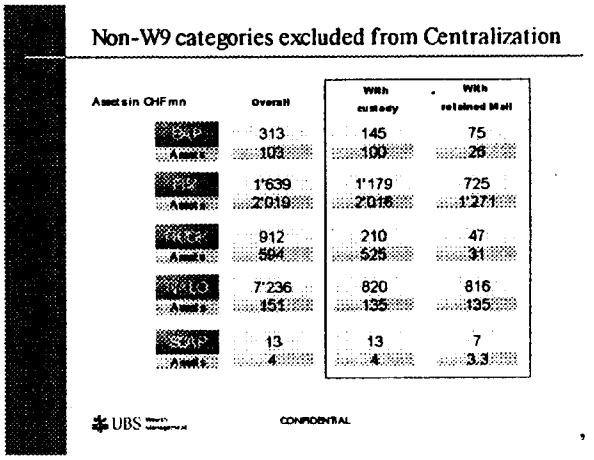




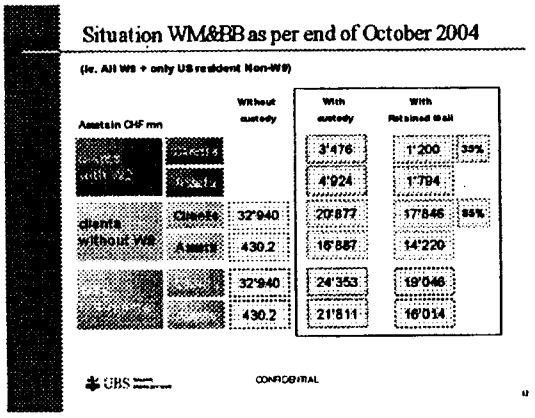
In addition, within booking centre Switzerland, all clients were centralised to the Business Sector North Americas desks in Zurich, Geneva or Lugano:



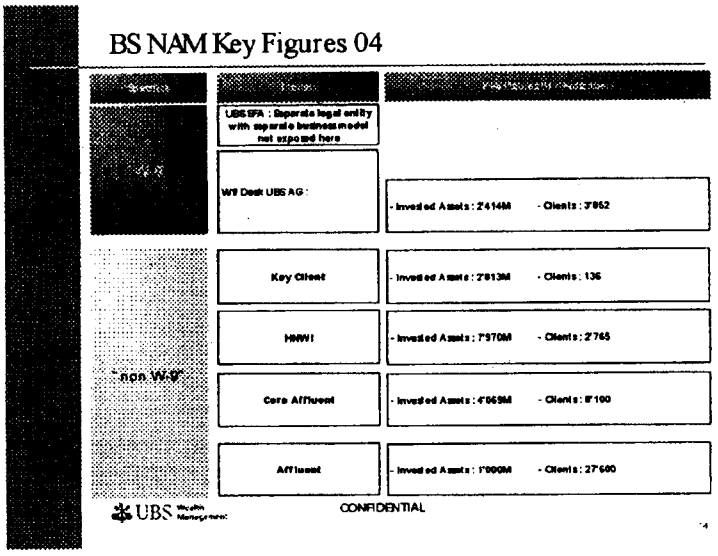
Certain categories of clients were excluded from the process as shown below. Largely these are specific client segments already handled in a distinct manner within WM&BB. BAP are employee accounts, FIM are Financial Intermediary relationships (see section 3.2 of this report), FK / GK are corporate clients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



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



This breaks down as follows in terms of client segment:



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

3.1.2 Client Advisors Travelling to the US

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

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

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

Risk_NAM_1.ppt

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

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

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

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

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

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

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

UBS Trusts, Foundations and Other UBS Administered Structures where one or more of the Beneficiaries is a US national (Number) INCLUDING TAX DOMICILE	283
Total Sum of Total Assets in Structures (in CHF)	**4'132'826'806**

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

3.4 E-Banking Relationships with US Residents

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

Client Account Numbers in Abacus with Domicile USA and E-Banking access	**2'605**
With Custody Acccount	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.

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.

Reeves Declaration
Exhibit 4

UBS Wealth Management

US Centralization Core figures and Business Model NAM

CONFIDENTIAL TREATMENT REQUESTED

U00006017

GOVERNMENT EXHIBIT 4

Regulation change and consequences on UBS's US business model

UBS Wealth Management

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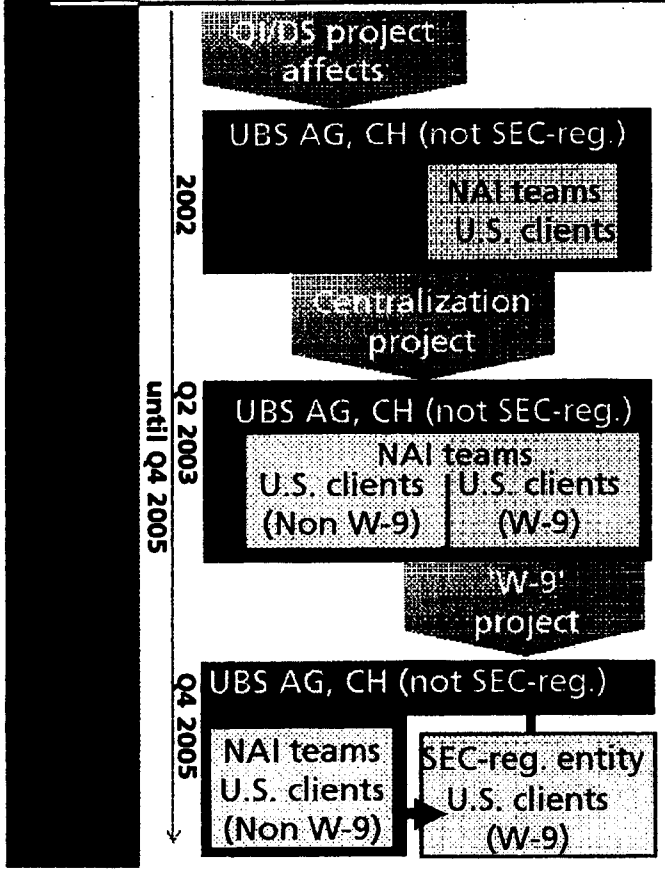
Overview of initiatives QI Deemed Sales / SEC



Measures (non-W9):
- QI: no U.S. securities
- DS: Retained mail; PM

Goal:
- Pass QI audit 03

Risks:
- Compliance Risk
- Liability Risk
- Reputation Risk

Worst consequence:
- Loss of QI status and of US banking license.
- Fines/penalties

Measures:
- Centralize U.S. clients to dedicated centers of expertise

Goal:
- Risk reduction through improved control environment

Risks:
- Limited service to W-9 clients
- Managed risks

Worst consequence:
- As above
- Further ad-hoc measures required

Measures (W-9):
- Move W-9 clients to SEC-reg. entity

Goal:
- SEC/QI compliance
- Retention / Sales

Risks mitigated:
- UBS AG and NewCo in compliance with QI/SEC
- Product/service compl. IRS tax reporting

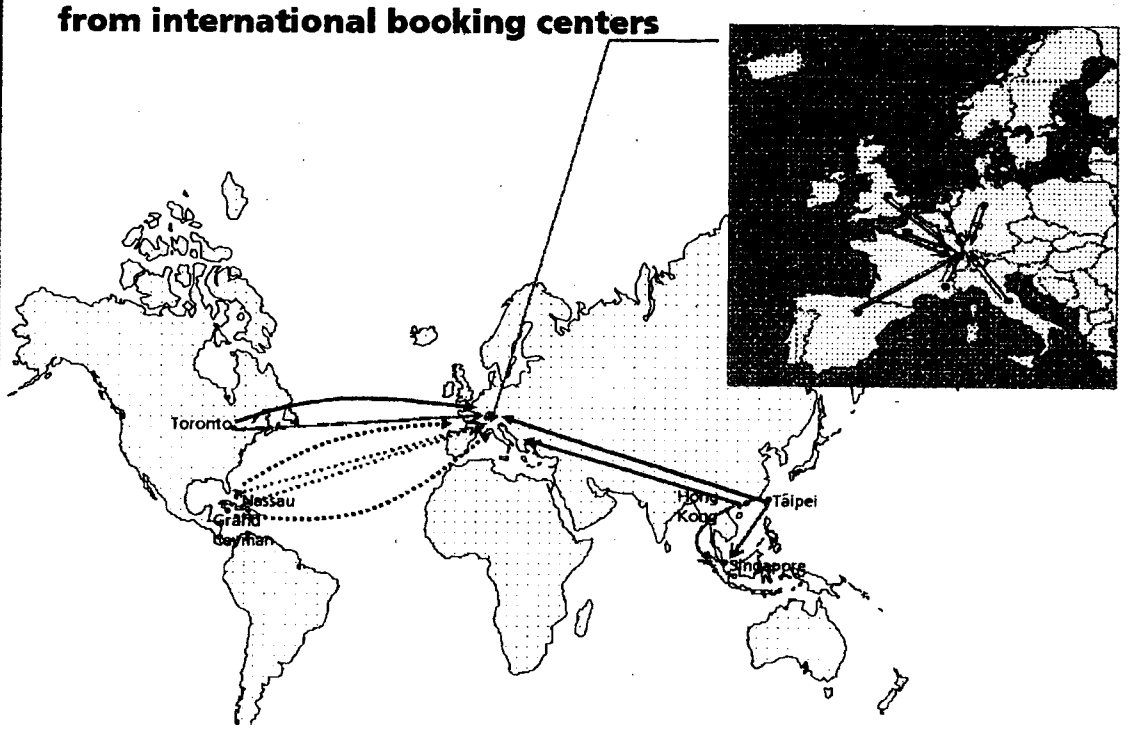
Consequence:
- Active servicing of exist. and new clients
- reduced litigation risk

US Centralization

International locations

Overview of cross-border US Centralization

from international booking centers



nonW9 1'278 clients and 2'266 CHFm

UBS Wealth Management

W9 206 clients and 366 CHFm

Situation International locations 2003

		Non W9 resident in the U.S.	W9 resident in the U.S.	W9 non-resident in the U.S.	Status 2004
Bahamas	Clients	358	4		Centralized in ZH
	Assets	894M	2.1M		
Cayman	Clients	285	32		Centralized in ZH
	Assets	389M	43M		
Canada	Clients	12	82		On-hold - (Q1/05)
	Assets	8.5M	104M		
Hong Kong	Clients	14	2		[redacted]
	Assets	11.8M	0.6M		
Singapore	Clients	28	7		
	Assets	23.3M	6.3M		
Germany*	Clients	0	27	61	On-hold - (Q1/05)
	Assets	0	62.7M	68.3M	
Monaco	Clients	57	5	1	On-hold - (Q1/05)
	Assets	79.7M	2.4M	1.2M	
Jersey	Clients	97	15		On-hold - (Q1/05)
	Assets	270M	23.3M		
Luxembourg	Clients	117	2		[redacted]
	Assets	120M	1.2M		
London	Clients	36	36		On-hold - (Q1/05)
	Assets	88.8M	64.4		
Overall	Clients	1004	274		
	Assets	1885.8M	380		

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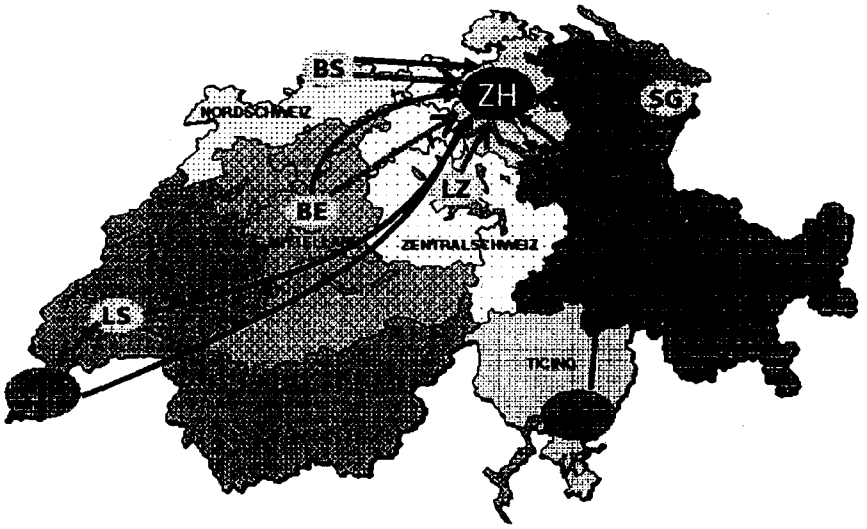
* excluding 24 accounts from ML

Booking Center Switzerland

Overview of BC Switzerland US Centralization

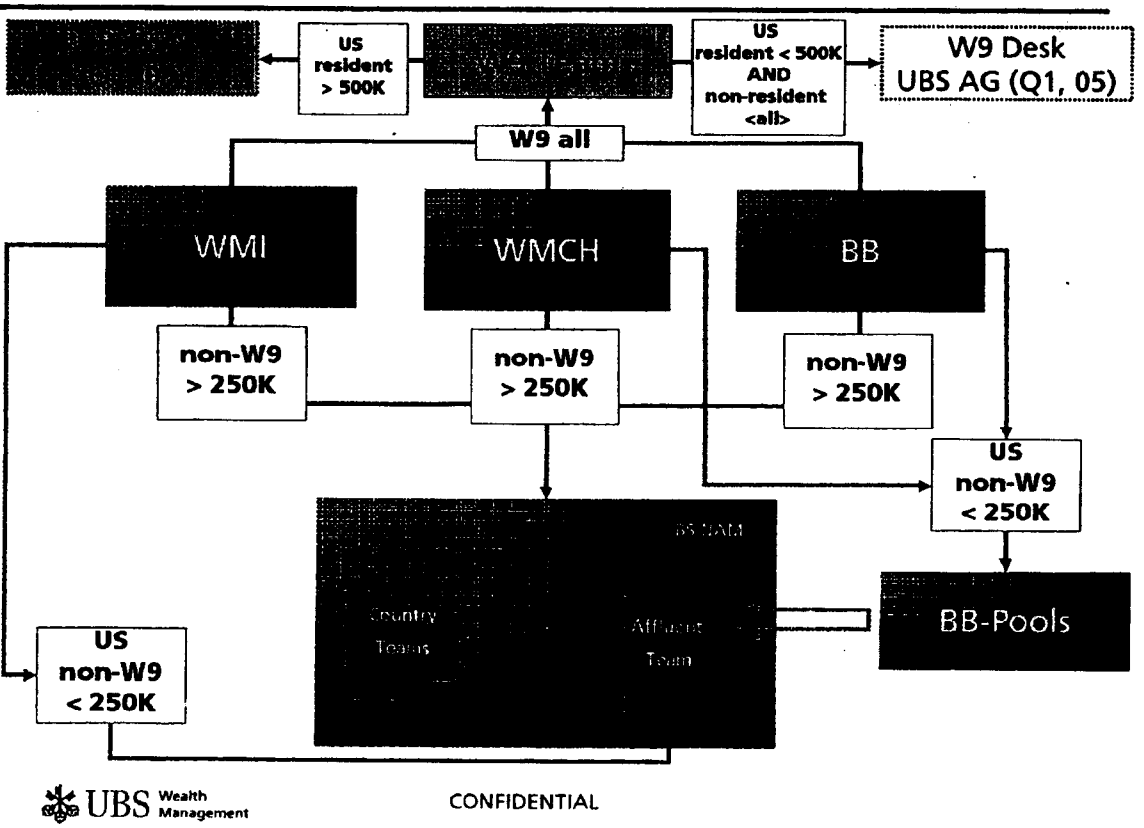
- **To comply with the US business model and to mitigate compliance, liability, and reputation risk, relations with US persons (ie. "W-9 and US domiciled nonW-9 clients") with custody account or investment fund account <u>were centralized</u> (Starting January 2003)**



Non-W9 categories excluded from Centralization

Assets in CHF mn	Overall	With custody	With retained Mail
BAP	313	145	75
FIM	1'639	1'179	725
FK/GK	912	210	47
NALO	7'236	820	816
SCAP	13	13	7

Centralization Streams



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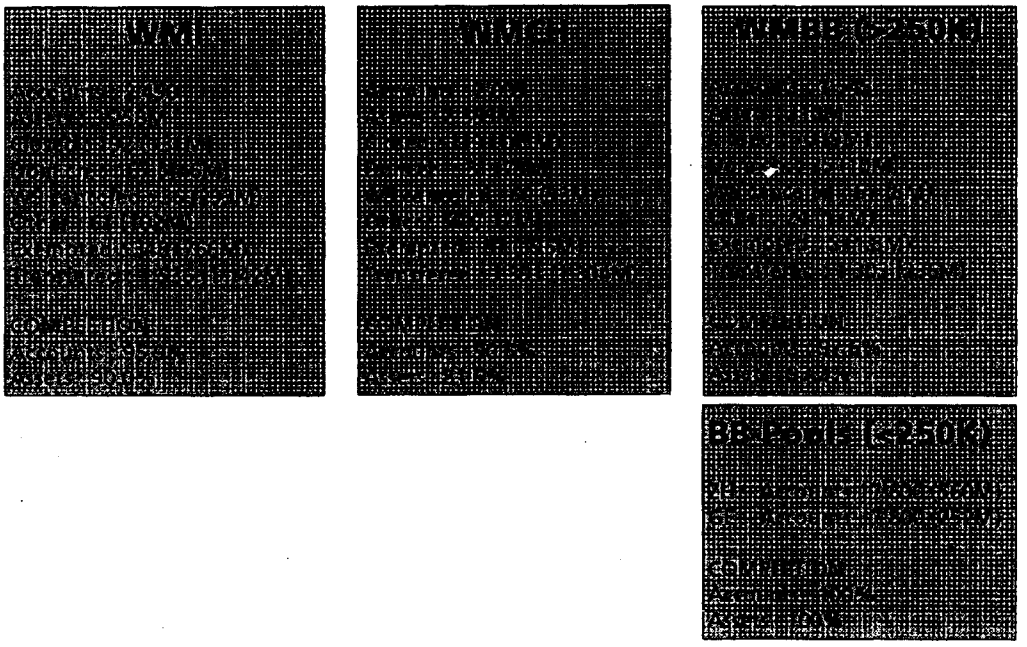
Centralization Status into NAM (September 04)



Situation WM&BB as per end of October 2004

(ie. All W9 + only US resident Non-W9)

Assets in CHF mn		Without custody	With custody	With Retained Mail	
clients with W9	Clients		3'476	1'200	35%
	Assets		4'924	1'794	
[illegible] clients	[illegible]	32'940	20'877	17'846	85%
	[illegible]	430.2	16'887	14'220	
Total U.S. clients	Clients	32'940	24'353	19'046	
	Assets	430.2	21'811	16'014	

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[redacted]

BS NAM

BS NAM Key Figures 04

Specifics	Models	Key figures 04 (as per 31.12.04)
"W-9"	UBS SFA : Separate legal entity with separate business model not exposed here	
	W9 Desk UBS AG :	- Invested Assets : 2'414M - Clients : 3'052
	Key Client	- Invested Assets : 2'813M - Clients : 136
	HNWI	- Invested Assets : 7'970M - Clients : 2'765
	Core Affluent	- Invested Assets : 4'069M - Clients : 8'100
	Affluent	- Invested Assets : 1'000M - Clients : 27'600

BS NAM Key Figures (cash ratio)

UBS

Asset Book Report Wealth Management September 2004

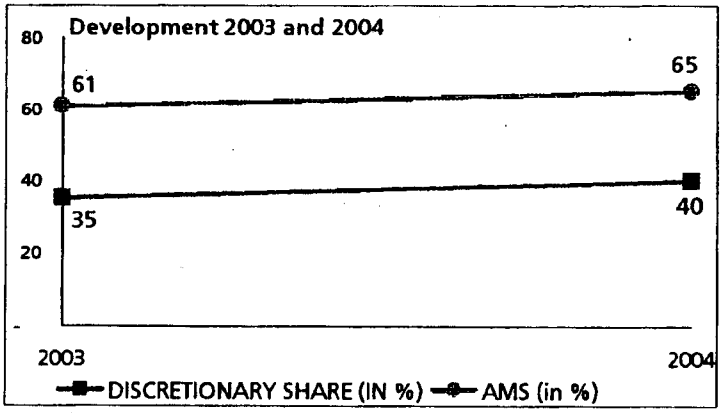
WM NORTH AMERICA NON W9 **REPORT IN CHF**

Cash, Fiduciaries and Money Market	3 479 271	22%
Bonds	3 020 867	19%
Equities	1 764 029	11%
UBS Money Market Funds	1 390 487	9%
UBS Bond Funds	1 389 265	9%
UBS Equity Funds	1 674 757	11%
UBS Strategy Funds	646 891	4%
3rd Party Investment Funds w. sales agreement	424 307	3%
Other Investment Funds	178 530	1%
Structured Products UBS and 3rd party w. sales agreement	854 505	5%
Structured Products 3rd party w/o sales agreement	46 014	0%
Alternative Investments UBS and 3rd party w. sales agreement	714 783	5%
Alternative Investments 3rd party w/o sales agreement	9 529	0%
Other Assets	186 468	1%
Total Invested Assets	**15 779 803**	**100%**
Additional (W9 Desk/Canada Dom and Int / London)	**11 328 317**	
Invested Assets (%)	**27'108'120**	

BS NAM Evolution 02-04

Development AMS and Discretionary Share Non W9 - 2003/2004

Non W9 Business	2003	2004
ACTIVELY MANAGED ASSETS (in CHFm)	9.0	10.3
AMS (IN %)	61%	65%
INVESTED ASSETS UNDER DISCRETIONARY (in CHFm)	5.1	6.2
DISCRETIONARY SHARE (IN %)	35%	40%



New Openings of US Non-W9 Relationships

Opening of US relationships in Switzerland : average of ~25 per month in 2004

Traveling (Non-W9): an average of 30 days per year [31CA's]

Overview implemented mesures since 2003

- **Implementation of UBS AG, SFA**
- **WMBB&CH wide US-Centralization with establishment of a WMI-unique Affluent segment (0-250K) as single point of entry for US clients on Swiss soil**
- **QI Deemed Sales intranet information portal**
- **NAM Center of Competence for QI Deemed Sales monitoring for WMBB&CH (since 09/04)**
- **NAM Center of Competence for functional information sharing to international locations still handling US relationships (Q1, 2005)**
- **SUBITOP restriction on opening US relationship outside of WMI BS NAM (Nov 04)**