

MEMORANDUM OF UNDERSTANDING



*The United States
Securities and Exchange Commission*



*The Government of
Switzerland*

*Washington, D.C.
August 31, 1982*

MEMORANDUM OF UNDERSTANDING

I. Introduction

1. This MOU is a statement of intent setting forth the understandings reached by the delegations of Switzerland and the United States acting on behalf of their respective governments ("the parties") to establish mutually acceptable means for improving international law enforcement cooperation in the field of insider trading. These understandings continue a long tradition of law enforcement cooperation between Switzerland and the United States and were reached in the course of consultations between representatives of Switzerland and the United States in Bern on March 1 and 2, 1982, and in Washington, D.C. on August 30 and 31, 1982. The Swiss delegation was headed by Minister Jean Zahlen, head of the Economic and Financial Section of the Federal Department of Foreign Affairs, and included other representatives of the said department, Lutz Krauskopf, Deputy Chief of Division, and Lionel Frei, Chief of Section, in the Federal Department of Justice and Police, and representatives of the Federal Banking Commission and the Swiss National Bank. The delegation of the United States included John M. Pedders, Director of the Division of Enforcement of the Securities and Exchange Commission ("SEC"), Edward F. Greene, General Counsel of the

whose behalf the transaction was effected and other relevant information. However, Swiss law prohibits banks in principle from disclosing information with respect to a customer utilizing its services.

4. The parties concluded that the conduct of persons who utilize Swiss banks to effect securities transactions in the United States, in order to take advantage of material non-public information, is detrimental to the interests of both nations.

5. On the basis of the foregoing consultations, the parties reaffirmed the two countries' interest in mutual assistance in law enforcement matters in accordance with mutually acceptable procedures and in conformity with international and national law, in particular assistance with respect to transactions effected by persons in possession of material non-public information.

6. During the consultations the parties engaged in an exchange of opinions pursuant to Article 39, paragraph 1 of the Treaty Between the United States and the Swiss Confederation on Mutual Assistance in Criminal Matters, which became effective on January 23, 1977 (the "1977 Treaty"). Section II of this Memorandum of Understanding memorializes the exchange of opinions and related understandings that the parties have reached.

- a. Article 1, paragraph 1 of the 1977 Treaty provides that the Contracting Parties undertake to afford each other, in accordance with provisions of the Treaty, mutual assistance in "investigations or court proceedings in respect of offenses the punishment of which falls or would fall within the jurisdiction of the judicial authorities of the requesting State or a state or canton thereof." This means, for example, that an investigation by the SEC should be considered an investigation for which assistance could be furnished (if the other requirements of the Treaty are met) as long as the investigation relates to conduct which might be dealt with by the criminal courts.

- b. The 1977 Treaty requires that a particular offense be a crime under the laws of each nation in order for compulsory assistance to be required under the Treaty. The parties understand that transactions effected by persons in possession of material non-public information could be an offense under Articles 148 (fraud), 159 (unfaithful management) or 162

undertake to consider whether comparable diplomatic notes should be exchanged with respect to other offenses relating to securities transactions covered by the Treaty.

III. The Private Agreement Among Members of the Swiss Bankers' Association

1. The parties recognize that there may be securities transactions effected in the United States by Swiss banks acting on behalf of persons who possess material non-public information, for which compulsory measures would not be available under the 1977 Treaty. Such assistance could not be ordered if available information did not indicate the existence of an offense under the Swiss Penal Code. As the Swiss Federal Council will submit to the Parliament a bill on the misuse of inside information, this lacuna could be filled. For cases in which the Treaty is not applicable, or in which it is not possible to gather evidence by employing compulsory process, pending the enactment of such legislation, the parties discussed a proposed private Agreement under the aegis of the Swiss Bankers' Association, which would permit participating banks to disclose the identity of a customer and certain other relevant information, under certain specified circumstances, in response to a request made by the Department of Justice on behalf of the SEC and processed through the

define the circumstances under which the Commission of Enquiry "shall" be satisfied that the SEC has reasonable grounds to make the request. In all other cases in which the criteria are not met, the parties understand that the Commission of Enquiry will be required to review the information submitted by the SEC to decide whether it is reasonably satisfied that the SEC has reasonable grounds to make a request. Accordingly, the parties understand that a failure by the SEC to meet the threshold criteria specified in the private Agreement shall not result in any presumption that the SEC does not have reasonable grounds to make the request for assistance under the terms of the private Agreement and this Memorandum of Understanding.

- The parties understand that the failure of a bank customer to provide information which may demonstrate that the transaction in question was not made in violation of the United States securities laws, as provided for by the private Agreement, shall not result in any presumption of guilt.

- The parties understand that information obtained through the mechanism established by this memorandum and the private Agreement will be used or introduced as evidence only in

that a report submitted by a bank pursuant to the terms of the private Agreement may not be transmitted to the SEC without considerable harm either to the essential interests of Switzerland or to third persons who appear to have no relationship to the offense which gave rise to the request for assistance. In such cases, it is understood that the Federal Office for Police Matters will use its best efforts to adapt the report so that useful information may be provided to the SEC without causing such harm to the interests of third persons or to Switzerland. In the same spirit, it is understood that the SEC will judge this opinion as one made in good faith and use moderation when considering alternative measures.

IV. Further Consultations

1. In order to continue and improve international law enforcement cooperation in a manner consistent with the interests of both nations, the parties understand that the SEC and the Federal Office for Police Matters will undertake further contacts or consultations in the future when the need to do so is recognized mutually.
2. There will be contacts or consultations between the parties concerning the following matters:

under the private Agreement and the 1977 Treaty as well as the effect of such termination on this memorandum.

- c. The parties agree that any questions or disputes between them with respect to the interpretation or application of this Memorandum of Understanding, the exchange of opinions included herein pursuant to Article 39, paragraph 1, of the 1977 Treaty or the operation of the private Agreement shall be settled by means of consultations.

V. Other.

1. Notwithstanding any other provision herein, the parties agree that this Memorandum does not modify or supersede any laws or regulations in force in the United States or Switzerland.

2. The parties agree that they do not intend to confer any right on any customer of a bank which is a signatory of the private Agreement to judicial review in the courts of the the United States with respect to any decision to disclose information to United States' authorities under the terms of the private Agreement.

14th July, 1982

A G R E E M E N T X V I

**of the Swiss Bankers' Association with
regard to the handling of requests for
information from the Securities and
Exchange Commission of the United States
on the subject of misuse of inside
information**

In consideration of the inquiries from the Securities and Exchange Commission (hereafter : SEC) of the United States on the misuse of inside information and so far as the banks cannot be obliged to furnish information to the appropriate Swiss authorities for submission to the SEC in a legal assistance procedure, the member banks of the present Agreement (hereafter : the banks) undertake to respect the following stipulations :

Article 2

1. The Board of Directors of the Swiss Bankers' Association shall appoint a Commission of inquiry (the "Commission") composed of three members and three deputies. Neither the members of the Commission nor their deputies may exercise an executive function in a company which is subject to the Federal Law on Banks and Savings Banks.
2. As selected representatives of the banks in accordance with Article 47, paragraph 1, of the Federal Law on Banks and Savings Banks, the members of the Commission, their deputies and staff are bound by the rule of banking secrecy for all the facts of which they are apprised in the course of the procedure set out by the present Agreement.
3. The Commission shall be domiciled at the offices of the Swiss Bankers' Association.
4. The Commission shall organize its own secretariat.

(ii) it has other material indications that the transactions referred to in 3. above were made in violation of U.S. insider trading laws. The Commission shall be satisfied in all cases in which the daily trading volume of such securities increased 50 % or more at any time during the 25 trading days prior to such announcement above the average daily trading volume of such securities during the period from the 90th trading day to the 30th trading day prior to such announcement or the price of such securities varied at least 50 % or more during the 25 trading days prior to such announcement. In all other cases, the Commission shall review the information submitted by the SEC to decide whether it is reasonably satisfied that the SEC has reasonable grounds to make the Inquiry;

5. the Inquiry is accompanied by an undertaking by the SEC not to disclose the information to be provided pursuant to Article 4.3. to any person except in connection with an SEC investigation or a law enforcement action initiated by the SEC against alleged purchasers or sellers of the Company's securities or ^{put or} call options therefore for violations of U.S. insider trading laws in connection with the Acquisition or Business Combination.

4. Together with the report, the bank shall file with the Commission all materials received from the customer.

5. If the Commission needs further information for the sake of the Inquiry, it will approach the SEC through the Federal Office for Police Matters.

Article 6

The customer, within the meaning of Articles 2 to 5 hereof, includes the beneficial owner of the assets identified in accordance with the Articles 3 to 5 of the Agreement dated July 1, 1982 on the observance of care in accepting funds and on the practicing of banking secrecy.

Article 8

In the case of any doubt arising as to the material accuracy of the report furnished by the bank, the Commission by itself or the SEC, through the appropriate channels, may request the Federal Banking Commission to examine whether the report given conforms to the facts and to the present Agreement. The bank shall provide all information needed for examination. If any material inaccuracy is discovered, an amended report showing the correct information shall be forwarded to the Federal Office for Police Matters, to be forwarded to the SEC. Any other appropriate measures of the Federal Banking Commission in accordance with the provisions of the Federal Law on Banks and Savings Banks are reserved.

to the SEC the Commission's report pursuant to Article 7, or

- (ii) a request for review pursuant to Article 8 hereof is received, on the sixtieth day after the date of receipt of such inquiry where no amended report pursuant to Article 8 hereof has been issued, or on the tenth day after the date any amended report under Article 7 which has been issued is forwarded to the SEC, whichever is earlier, or
 - b) the proceedings in a U.S. court have terminated in a final judgement, by consent or otherwise, not adverse to the customer, or
 - c) the SEC consents in writing.
4. The evidentiary proof concerning the conditions listed under 2 a), b) and c) and 3 a), b) and c) hereof shall be communicated through the Federal Office for Police Matters.

Article 11

The Agreement is in force for a fixed period of three years as from It shall be thereafter renewed on a year to year basis if not terminated by one of its members by giving advance notice of at least six months addressed to the Swiss Bankers' Association. In the case of its being terminated, all parties to the Agreement must be informed thereof without delay; they then have the right, within a month from that date, to become a party to such termination even when there is no longer six months to run up to the expiration of the termination term. The Agreement shall remain in force and effect for those members who have not terminated it.

The Agreement will be abrogated in the case of the Swiss legislature enacting legislation on the misuse of inside information.

In the case of the Agreement being abrogated, proceedings already instituted with the Federal Office for Police Matters will be carried through to settlement.

MEMORANDUM OF UNDERSTANDING

BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF SWITZERLAND ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS AND ANCILLARY ADMINISTRATIVE PROCEEDINGS

I. Introduction

1. This Memorandum of Understanding (MOU) is a statement of intent setting forth the understandings reached by the delegations of the United States and Switzerland acting on behalf of their respective executive authorities (the Parties) to improve their cooperation in the field of international law enforcement. These understandings continue a long tradition of law enforcement cooperation between Switzerland and the United States and were reached in the course of consultations between representatives of Switzerland and the United States.

On the basis of the foregoing consultations, the Parties reaffirmed the two countries' interest in mutual assistance in criminal matters and ancillary administrative proceedings under Article 1 of the Treaty between the Government of the United States of America and the Government of Switzerland on Mutual

or tax fraud as defined under Swiss law. Such cooperation may include assistance in locating and hearing witnesses, producing and authenticating judicial or business records and serving judicial or administrative documents.

2. The Treaty, in particular, has been used on numerous occasions by the law enforcement authorities of both countries. The Parties understand that the procedures provided by the instruments should be used as a first resort whenever available and to the extent applicable. The Parties will use their best efforts to interpret and apply the instruments to provide assistance when requested by the Central Authority of the other Party and to streamline the implementation process of the instruments in order to improve their practical availability and effectiveness.

III. Early Warning/Consultations

1. In order to continue and improve international law enforcement cooperation in a manner consistent with the interests of both countries, the Parties understand that the appropriate authorities will undertake contacts or consultations in the future when the need to do so is recognized mutually.

may prejudice the successful completion of an investigation or proceeding; and

(c) the Central Authorities have had 30 days, or other mutually agreed period of time, within which to consult in an effort to resolve the matter to their mutual satisfaction. .

Even where the above conditions have been met, the Parties will continue to exercise moderation and restraint in undertaking to enforce unilateral compulsory measures to which the other objects or to block enforcement of such measures.

4. The Parties understand further that they will use their best efforts to insure that the information obtained in such communications is handled with appropriate care to prevent it from becoming public and, in particular, will not be disclosed to any person except officials dealing with the case concerned and, once an official request has been presented, parties having a right of appeal in connection with the handling of the request.

IV. Moderation and Restraint

Where the above-mentioned mechanisms are not available to obtain evidence in areas covered by this MOU the Central Authorities will, with a view to avoiding or minimizing

counterfeiting, extortion, robbery or terrorism (which may also involve money laundering) can be circumstantial evidence of the existence of organized crime.

In view of these considerations, the Parties understand that the Central Authorities will continue their practice of using their best efforts to interpret and apply the instruments, in particular, such provisions that deal with organized crime and drug trafficking, in such a way as to provide assistance to the widest extent possible.

VI. Legal Status

This MOU is not intended to create legal obligations. It embodies statements of intent of the two Parties. The Parties further understand that this MOU does not modify or supersede any laws or regulations in force in Switzerland or in the United States. This MOU is not intended to create any rights enforceable by private parties and does not impose any obligations on the legislative and judicial branches of the Parties.

DEPARTMENT OF STATE
WASHINGTON

November 10, 1987

Excellency,

I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, which was signed on May 25, 1973, and became effective on January 23, 1977 ("Treaty"), and in particular to Paragraph 3 of Article 1. That provision provides that "the competent authorities of the Contracting Parties may agree that assistance as provided by this Treaty will also be granted in certain ancillary administrative proceedings in respect of measures which may be taken against the perpetrator of an offense falling within the purview of this Treaty."

In cases involving trading of securities by persons in possession of material non-public information, the offenders may not only be found guilty and sentenced in a criminal proceeding but also may be subject to other sanctions in order that the harm caused by the offense is repaired or that the offenders are deterred from similar conduct in the future. It is therefore the understanding of the United States Government that, if assistance under

His Excellency

Klaus Jacobi,

Ambassador of Switzerland.

provisions of the United States securities laws or the rules and regulations promulgated thereunder; and

(5) Enforcement proceedings conducted before the SEC or an administrative law judge in which the revocation or suspension of the registration of a regulated entity, or a suspension or bar of a person from being associated with such an entity, as a result of violative conduct is sought.

It is agreed that the Treaty provides an important means of obtaining information needed to enforce the criminal or penal laws of the United States and that the Treaty should be used to the extent feasible. It is further understood that an investigation by the SEC is to be considered an investigation for which assistance can be furnished (if the other requirements of the Treaty are met) as long as the investigation relates to conduct which might be dealt with by the criminal courts of the United States.

I have the further honor to state, on behalf of the United States Government, that if assistance under the Treaty could be granted with a view to possible criminal proceedings in Switzerland, assistance will also be granted in connection with the following investigations and proceedings, including investigations that may lead to such proceedings, that are conducted by competent Swiss

Article 1, Paragraph 3 of the Treaty, which shall enter into force on the date of Your Excellency's note in reply.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

A handwritten signature in cursive script, reading "Roxanne L. Ragsway". The signature is written in dark ink and is positioned to the right of the typed text "For the Secretary of State:". The signature is fluid and somewhat stylized, with a large initial 'R' and a long, sweeping tail on the 'y'.