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Bank of England

Banks Selected for Investigation

Process of Selecting the Banks

1. ICEP completed forensic accounting investigations at 254 of the 481 Swiss banks that existed in the Relevant Period (1933-1945) and for which it or a successor bank exists in some form today.¹ These 254 banks are now represented by 59 banks as a result of mergers and consolidations over half a century. The remaining 227 banks that were not investigated are almost exclusively small, local, and regional banks that had retail domestic business with few contacts with foreigners. The banks investigated account for approximately 82 percent of total Swiss bank liabilities in 1945; the banks considered most likely to have previously unreported dormant accounts.

2. The following criteria were used to select banks for the investigation:

- Whether the bank existed during the period 1933 to 1945 or acquired a bank that existed during the period 1933 to 1945;
- The size of the bank in 1945 (that is, the 1945 bank liabilities plus the liabilities of any banks currently owned that existed during 1933 to 1945);
- The number and value of dormant accounts of the bank as reported in the 1995 Survey;²
- The proportion of the bank's branches located in Swiss cantons bordering foreign countries;
- The bank's results for the 1962 Survey of Holocaust victim accounts and the extent of current claims against the bank;³

- The existence of any alleged questionable actions which was evaluated using a historical research database developed during the preparatory work of the First Phase;
- The proportion of bank branches in cantons with a high Jewish population in 1941; and
- The proportion of branches near Swiss border entry points for Jewish refugees.

3. Based on an evaluation of these factors, it was decided to review 254 banks that are now represented by 59 existing banks. One hundred and ninety-one other banks were determined not to be relevant to the investigation because they were founded after 1945 and never acquired a bank that existed during the Relevant Period. A further 205 banks that existed during the Relevant Period were categorized as discontinued because they have since been liquidated, redefined as non-banks, or no longer appear on the Swiss Federal Banking Commission register of banks.

4. As previously noted, the banks investigated by ICEP account for 82 percent of the 1945 Swiss bank liabilities. They also account for the greatest number and value of dormant accounts reported in prior surveys of dormant accounts. Specifically, these banks held:

- 99 percent of the value and 94 percent of

1 See, *infra*, Exhibit A: List of 254 Banks Investigated. There were an additional 205 banks that existed in the Relevant Period, but they no longer exist today.

2 See Annex 5: Treatment of Dormant Accounts of Victims of Nazi Persecution.

3 See *id.*

the number of dormant accounts reported to ATAG Ernst & Young in 1997;

- 91 percent of the value and 86 percent of the number of dormant accounts from the 1995 Survey;
- 97 percent of the number of claims submitted to the Swiss Banking Ombudsman;
- 98 percent of the number of 1962 claims; and
- 98 percent of the value and 96 percent of the number of 1945 freeze of German accounts.⁴

While the banks investigated were located throughout Switzerland, a large proportion were headquartered in the region between Geneva and St. Gallen.

BANKS INVESTIGATED

Large Commercial Banks⁵

5. ICEP carried out investigations at each of the three large commercial banks -- Credit Suisse Group, Swiss Bank Corporation, and Union Bank of Switzerland -- and most of their affiliates. Swiss Bank Corporation and Union Bank of Switzerland merged in 1998 to form UBS AG. These two banks were investigated separately after, as well as before, the merger. These three banks and their affiliates accounted for approximately 40 percent of 1945 Swiss bank liabilities and 141 of the number of the relevant banks that existed during the Relevant Period and still exist.

6. During the Relevant Period, the three large commercial banks were headquartered in the major centers of business -- Credit Suisse and UBS in Zurich and SBC in Basel. They participated in virtually all kinds of deposit-related activities and in many other areas of banking, including mortgage banking, custody, securities brokerage (including underwriting), securities borrowing and lending, interbank operations, foreign exchange, precious metals, documentary credits and guarantees, and fiduciary transactions.⁶

Cantonal Banks

7. Investigations were carried out at 16 cantonal banks. Because of acquisitions and mergers during and after the Relevant Period, these 16 banks account for 70 of the banks that existed during the Relevant Period. Cantonal banks, nearly all of which were founded in the nineteenth century, are banks that have been established by cantonal decree to support the economic activities of the rural and urban middle classes within their cantons. Most cantonal banks were guaranteed by their cantons and that guarantee provided these banks with a significant advantage in attracting savings deposits. They served a clientele mainly located within their own cantons, and their primary business activity during the Relevant Period was the financing of regional mortgage loans, providing financial services to individuals, small- and medium-sized industries, retail trade businesses, and hotels and restaurants.

8. During the Relevant Period, approximately 60 percent of the cantonal banks' assets were in mortgage investments. In fact, the cantonal banks had a very dominant position in the Swiss mortgage business, with more than half of the mortgage receivables financed by banks in the Relevant Period. The majority of these mortgages were residential, business, and agricultural mortgages, with only a small percentage of hotel and restaurant mortgages.

9. The cantonal banks were generally prohibited from financing unsecured loans and participating in speculative securities trading for their own account. While the cantonal banks were obligated to limit the scope of their business activities to the canton in which they were located, they were not

4 See Annex 3: The First and Second Phases of the Investigation, paragraph 51.

5 Much of the information in this section on the large commercial banks, and in the following sections on the cantonal banks, the private banks, and the banks not investigated, is drawn from a paper by Sebastien Guex & Malik Mazbouri, *Report on the Organization and Characteristics of the Swiss Banks Between 1933 and 1945* (1999).

6 Swiss National Bank, *Die Banken in der Schweiz, Statistical Report for 1996*, at 22-26 (hereinafter "Statistical Report for 1996").

necessarily prohibited from participating in foreign investment activities and from receiving foreign deposits. During the Relevant Period, cantonal banks were also active in many kinds of deposit-related activities, asset management, safe deposit boxes, project finance, precious metal and foreign exchange trading, personal loans, and bonds.

10. The cantonal banks that were not investigated account for only 4 percent of the 1945 Swiss bank liabilities and are located in smaller cities and towns in Switzerland.

Private Banks

11. Investigations were carried out at 25 private banks,⁷ which represent 43 banks that existed in the Relevant Period. Private banks were the first banks established in Switzerland, and most are organized as sole proprietorships or partnerships. One of the key distinguishing characteristics of private banks is that they were not obligated by law to publish their financial statements during the Relevant Period. Also, private banks did not have to maintain a specific ratio between equity and liabilities, as did other banks.

12. Private banks can be categorized into the following four groups:

- Banks established as early as the 18th century, which were heavily involved in international business;
- Banks that focused primarily on securities brokerage and exchange operations;
- Smaller private banks for which the primary banking activity was lending in small towns and rural areas; and
- Entities owned by foreign banks or financial institutions and whose legal form caused them to be classified as private banks.

13. During the Relevant Period, the private banks mainly managed the assets of wealthy clients. The focus of business for private banks was primarily deposits, securities transactions, securities

underwriting, safe deposit boxes, and portfolio and asset management. The private banks also had a prominent role, along with the major banks of Switzerland, in the capital markets and in the establishment of financial corporations and investment trusts. Furthermore, the private banks maintained very close relationships with the major commercial banks and finance companies.

BANKS NOT INVESTIGATED

14. The banks that were not part of the ICEP investigation account for approximately 18 percent of the 1945 Swiss bank liabilities. However, these banks also accounted for only 1 percent of the value and 6 percent of the number of dormant accounts reported to ATAG Ernst & Young in 1997. They also had only 2 percent of the number of 1962 claims, and 2 percent of the value of 1945 freeze accounts. These banks fall into the following four categories: 153 regional and savings banks, 21 cantonal banks, 7 cooperative banks, 21 foreign-owned banks or branches, and 25 other banks.⁸ Each of these types of banks is described in the paragraphs that follow.

Regional and Savings Banks

15. Regional and savings banks had a focus of business similar to that of the cantonal banks. However, most regional and savings banks operated from a single office, although some banks in this category had a branch location. As a result, regional and savings banks operated in a geographically narrower environment usually confined to the community and region near the banks' headquarters. Evaluated as a whole, regional and savings banks account for 9 percent of the total 1945 liabilities of all Swiss banks.

⁷ Although not private banks, Coop Bank, BSI-Banca della Svizzera Italiana, and Spar + Leihkasse in Bern are included in the group of banks analyzed in this section. For the purpose of statistical reporting (see Annex 4: Identification of Accounts Related to Victims of Nazi Persecution), the statistics for BSI-Banca della Svizzera Italiana and Spar + Leihkasse in Bern are included with those of the cantonal banks.

⁸ See, *infra*, Exhibit B: List of Banks Not Investigated.

16. During the Relevant Period, the Swiss National Bank grouped regional and savings banks into two different categories--(1) local, medium, and small banks and (2) savings banks. The local, medium, and small banks were classified even further into two subcategories: (1) real property lending banks and (2) other local banks. In this period, a large proportion of the assets of real property lending banks were in mortgages. A much smaller proportion of the assets of other local banks were in mortgages. After mortgages, overdraft or current account lending was the second largest category of assets. On the liability side, bonds and short-term notes and deposit and savings accounts composed the majority of liabilities for both subcategories. Most clients of these banks were local small businessmen.

17. Savings banks, on the other hand, focused on small, interest-bearing deposits. The savings banks were committed to providing these deposits to customers on a demand or short-term notice. In some cantons, deposits in amounts up to SFr. 5,000 were insured by the cantonal government. The majority of savings banks that existed in the Relevant Period were organized as cooperatives, which usually provided a limited guarantee to members. The remaining savings banks were organized as communal institutions, stock corporations, foundations, or cantonal institutes. Moreover, the size of savings banks could vary substantially and included both very small village institutions and somewhat larger entities. Although these banks were not homogeneous in nature, the scope of their business activities was generally limited to the municipality in which the bank was located.

18. Securities investments accounted for the majority of the savings banks' assets during the Relevant Period, followed by advances and fixed-term loans. While the savings banks participated in other areas of business, including foreign transactions, such areas of business never amounted to more than a small percentage of the total assets. Savings and other forms of deposits accounted for a major proportion of the liabilities in the Relevant Period.

Raiffeisenbanken

19. Raiffeisenbanken were small cooperative banks, located in rural and suburban areas, and they accounted for approximately 4 percent of the 1945 Swiss bank liabilities. As cooperatives, these banks provided members with limited guarantees on deposits, and members were obligated to contribute additional funds to cover the liabilities of the cooperative. The area of a bank's activity was limited to a small territory, usually only one town and two or three towns at most. Since these banks were managed on a local level, it was usual for bank representatives to know their clientele personally.

20. The Raiffeisenbanken were influenced by the ideal of providing mutual assistance and were created to encourage savings and to provide, on the best possible terms, small loans (usually working capital loans) primarily to farmers, but also to artisans and the rural population. These banks operated on a local basis and, while they would generally accept deposits from non-members, loans were usually only granted to cooperative members.

21. During the Relevant Period, mortgages accounted for a major percentage of the assets of the Raiffeisenbanken, followed by overdraft services and fixed-term loans. Loans were usually only granted to farmers, artisans, and construction businesses. Most of these loans were very small and rarely exceeded SFr. 5,000. Deposits, passbooks, and short-term notes accounted for a large proportion of total liabilities.

Other Banks

22. The final group of banks not investigated fall into four categories: (1) commercial banks, which includes full-service banks that focus primarily on corporate and mortgage loans; (2) banks that managed portfolios and dealt with securities, with little focus on savings deposits; (3) banks that dealt primarily in personal loans, including the financing of secured and unsecured loans; and (4) other banks that for various reasons were unlikely to have significant relevant deposits. Most of these banks

specialized in asset management, stock related transactions, or discount and consumer financing and trade financing. The 1945 Swiss bank liabilities for these banks were very small.

23. Finance companies, which were entities where at least half of the assets were securities or ownership interests acquired through corporate loans are also included in this category. Within this group, three subcategories were designated. These included holding companies, companies formed to provide financing to foreign enterprises, and companies providing financing to indigenous industrial enterprises,

including manufacturing and utility enterprises. The majority of liabilities were capital funds, followed by bond borrowings. It should be noted that during the Relevant Period, deposits, savings accounts, and short-term notes were not among the liabilities for finance companies. Large international businesses were the exclusive clientele of some of these institutions.

24. Also included in this category are three non-SFBC banks. The banks appear in Exhibit B because they had acquired an SFBC defined bank that was active in the Relevant Period.

EXHIBIT A

List of 254 Banks Investigated

Bank Name (note 1)	ICEP Audit Firm	Bank Headquarters
Aargauische Kantonalbank	CL	Aarau
Spar-und Leihkasse Oberfreiamt		Muri
Banca dello Stato del Cantone Ticino	CL	Bellinzona
Bank Falck & Cie.	DT	Luzern
Bank Julius Bär & Co. AG	DT	Zürich
Bank J. Vontobel & Co.	CL	Zürich
Bank Sarasin & Cie.	CL	Basel
Bank Blankart & Cie.		Zurich
Banque Jenni & Cie. SA		Basel
Orelli im Thalhof		Zürich
Oswald & Co.		Basel
Banque Cantonale du Jura	CL	Courgenay
Banque Cantonale Neuchâteloise	DT	Neuchâtel
Caisse d'Epargne de Dombresson		Dombresson
Caisse d'Epargne de Savagnier		Savagnier
Coopérative d'Epargne Le Semeur		La Chaux-de-Fonds
Crédit Foncier Neuchâtelois		Neuenburg
Banque Cantonale Vaudoise	CL	Lausanne
Banque Commerciale de Lausanne		Lausanne
Banque d'Escompte Suisse, agences de Leysin et Villars		Leysin/Villars
Banque d'Escompte Suisse, succursale de Vevey		Vevey
Banque de Bex		Bex
Banque d'Epargne et de Crédit, Lucens		Lucens
Banque et Caisse d'Epargne du Pays-d'Enhaut		Chateau-d'Oex
Banque Populaire de la Broye		Payerne
Caisse d'Epargne Cantonale Vaudoise		Lausanne
Caisse d'Epargne d'Aigle		Aigle
Caisse d'Epargne de Morges		Morges
Caisse d'Epargne de Ste-Croix		Ste-Croix
Caisse d'Epargne d'Orbe		Orbe
Caisse d'Epargne et de Crédit		Lausanne
Crédit Agricole de Grandson		Grandson
Crédit du Léman Vevey		Vevey
Crédit Foncier Vaudois		Lausanne
Crédit Mutuel de Ballaigues		Ballaigues
Crédit Mutuel de Bassins-Le Vaud		Bassins (Vaud)
Crédit Mutuel de Begnins		Begnins
Crédit Mutuel de Genolier		Genolier
Crédit Yverdonnois		Yverdon

Bank Name (note 1)	ICEP Audit Firm	Bank Headquarters
Union Vaudoise de Crédit		Lausanne
Banque Julius Baer (Genève) SA	DT	Genève
Basellandschaftliche Kantonalbank	CL	Liestal
Ersparniskasse des ehemaligen untern Bezirks linker Rheinseite		MuttENZ/MunChENstein
Basler Kantonalbank	CL	Basel
Baumann & Cie.	PW	Basel
Berner Kantonalbank	CL	Bern
Ersparniskasse Adelboden		Adelboden
Hypothekarkasse des Kantons Bern		Bern
Kredit- und Sparkasse Thun		Thun
Spar- und Leihkasse des Amtsbezirks Laufen		Laufen
Bordier & Cie.	CL	Genève
Zumbach & Cie.		Genève
BSI-Banca della Svizzera Italiana	PW	Lugano
Adler Bank Basel AG		Basel
Maurice Troillet, Banque Martigny		Martigny
Coop Bank	DT	Basel
Spar- und Leihkasse Olten und Umgebung		Olten
Coutts Bank (Switzerland) Ltd. (note 2)	CL	
Amortisations-Hypothekenbank AG		Basel
Bank für Anlagewerte		Zürich
Eigenheim Bank		Basel
Kobag Spar-, Bau- und Hypothekenbank AG		Basel
Credit Suisse Group (Schweizerische Kreditanstalt) (note 3)	AA	Zürich
A. Hofmann & Co. AG		Zürich
Aargauische Hypothekenbank (NAB)		Brugg
Aargauische Niederlassungen der Schweizerischen Volksbank (NAB)		Brugg
Affida Verwaltungsgesellschaft		Zürich
Allgemeine Aargauische Ersparniskasse (NAB)		Aarau
Bank Gebrüder Oechslin & Co.		Schaffhausen
Bank Heusser & Cie. AG		Basel
Bank in Zug		Zug
Bank in Zürich		Zürich
Bank Leu AG		Zürich
Bank Neumünster		Zürich
Bank Wädenswil		Wädenswil
Banque Industrielle et Commerciale de Credit		Genève
Banque Populaire de Martigny		Martigny
Ersparniskasse Laufenburg (NAB)		Laufenburg
Ersparniskasse Olten		Olten
Fides Treuhand-Vereinigung		Zürich
Freiamterbank in Wohlen (NAB)		Wohlen

Bank Name (note 1)	ICEP Audit Firm	Bank Headquarters
Gewerbebank Baden (NAB)		Baden
Obwaldner Gewerbebank		Sarnen
Schweizerische Bodenkredit-Anstalt		Zürich
Schweizerische Volksbank		Bern
Spar- und Leihkasse Zurzach (NAB)		Zurzach
Darier, Hentsch & Cie.	DT	Genève
Hentsch & Cie.		Genève
Dreyfus Söhne & Cie. AG, Banquiers	CL	Basel
E. Gutzwiller & Cie., Banquiers	CL	Basel
Gonet & Cie.	CL	Genève
Graubündner Kantonalbank	CL	Chur
Hentsch Henchoz et Cie.	DT	Lausanne
La Roche & Co. Banquiers	CL	Basel
Labhardt & Co.		Basel
Landolt & Cie.	CL	Lausanne
Lombard, Odier & Cie.	DT	Genève
Hentsch Forget & Cie.		Genève
La Societe Anonyme de Gerances et de Depots SA		Genève
Luzerner Kantonalbank	CL	Luzern
Einzinserkasse des Kantons Luzern		Luzern
Finanzbank Luzern AG		Luzern
Gewerbebank Luzern		Luzern
Volksbank Hochdorf		Hochdorf
Mirabaud & Cie.	CL	Genève
Mourgue d'Algue et Cie.	DT	Genève
Pictet & Cie.	DT	Genève
Rahn & Bodmer, Banquiers	CL	Zürich
Schaffhauser Kantonalbank	CL	Schaffhausen
Spar- und Leihkasse Ramsen		Ramsen
Sparkasse Biene, Schaffhausen		Schaffhausen
Schwyzter Kantonalbank	CL	Schwyz
Solothurner Bank SoBa	DT	Solothurn
Kantonal-Ersparniskasse Solothurn		Solothurn
Sparkasse der Amtei Kriegstetten		Kriegstetten
Spar- und Leihkasse in Bern	PW	Bern
Amtersparniskasse Fraubrunnen		Fraubrunnen
St. Gallische Kantonalbank	CL	St. Gallen
Bank in Ragaz		Bad Ragaz
Bank Niederuzwil		Niederuzwil
Ersparnisanstalt Jonschwil		Jonschwil
Schulsparverein St. Gallen		St. Gallen
Sparkasse der Administration ("Sparad")		St. Gallen

Bank Name (note 1)	ICEP Audit Firm	Bank Headquarters
Sparkasse Diepoldsau		Diepoldsau
Sparkasse Gams		Gams
Sparkasse Stein		Stein (Toggb.)
Sparverein Rorschach		Rorschach
Swiss Bank Corporation (Schweizerischer Bankverein) (note 4)	PW	Basel
Adler & Co. Aktiengesellschaft		Zürich
Aiutana Bankgenossenschaft		Zürich
Allgemeine Grundkreditbank		Basel
Amtersparniskasse Aarberg		Aarberg
Amtersparniskasse Burgdorf		Burgdorf
Amtersparniskasse Erlach in Ins		Ins
Armand von Ernst & Cie.		Bern
Bank in Burgdorf		Burgdorf
Bank in Langenthal		Langenthal
Bank J. Betschen AG		Interlaken
Banque commerciale de Sion SA, successeur de MM, de Riedmatten & Cie.		Sion
Banque commerciale et agricole E. Uldry & Cie.		Fribourg
Banque de Martigny, Closuit & Cie.		Martigny-Ville
Banque de Montana SA		Montana
Banque de Prêts SA		Lausanne
Banque d'Épargne et de Prêts de la Broye		Estavayer-le-Lac
Banque Golay & Cie.		Lausanne
Banque Populaire de Sierre		Sierre
Banque populaire Valaisanne		Sion
Banque Procrédit SA Société de Banque		Fribourg
Basler Handelsbank		Basel
Bodenkreditbank in Basel		Basel
Caisse d'épargne de Promasens		Promasens
Caisse d'Épargne du Valais, Société Mutuelle		Sion
Crédit agricole et industriel de la Broye		Estavayer
Crédit Valaisan, Société Coopérative		Sion
Eckel, Naber & Cie.		Basel
Ehinger & Cie.		Basel
Elektrowerte AG		Basel
Ersparniskasse Biel		Biel
Ersparniskasse Nidau		Nidau
Eug. von Büren & Cie.		Bern
Ferrier, Lullin & Cie.		Genève
Bank Finalba AG (Frei, Treig & Co.)		Zürich
Handwerkerbank Basel		Basel
Hypothekarbank in Winterthur		Winterthur

Bank Name (note 1)	ICEP Audit Firm	Bank Headquarters
Inlandbank-Aktiengesellschaft		Zürich
Internationale Bodenkreditbank		Basel
Jugendsparkasse Wülflingen		Winterthur
Schweizerische Elektrizitäts-und Verkehrsgesellschaft		Basel
Schweizerische Gesellschaft für elektrische Industrie		Basel
Schweizerische Spar-und Kreditbank		St. Gallen
Société financière Italo-Suisse		Genève
Société Indépendante de Banque		Genève
Spar- und Hülfskasse Madretsch		Biel
Spar- und Leihkasse Breitenbach		Breitenbach
Spar- und Leihkasse des Amtsbezirkes Büren		Büren a.d. Aare
Spar- und Leihkasse Erlach		Erlach
Spar- und Leihkasse in Oberburg		Oberburg
Spar- und Leihkasse in Schaffhausen		Schaffhausen
Spar- und Leihkasse Kirchberg		Kirchberg (BE)
Spar- und Leihkasse Koppigen		Koppigen
Spar- und Leihkasse Lyss AG		Lyss
Spar- und Leihkasse v. Fr. Stockmann		Sarnen
Sparkasse Küssnacht		Küssnacht am Rigi
Volksbank Beromünster		Beromünster
Volksbank Wolhusen-Malters		Wolhusen
W. Haerry & Co.		Reinach (AG)
Zahn & Cie.		Basel
Thurgauer Kantonalbank	CL	Weinfelden
Union Bank of Switzerland		
(Schweizerische Bankgesellschaft) (note 4)	KPMG	Zürich
Amtersparniskasse Obersimmenthal		Zweisimmen
Appenzell-Ausserrhodische Kantonalbank		Herisau
Banca Popolare di Lugano		Lugano
Banca Unione di Credito		Lugano
Bank für Graubünden		Chur
Bank in Brig		Brig
Bank in Buchs		Buchs
Banque Bugnion & Cie., Lausanne		Lausanne
Banque de Sion, de Kalbermatten et Cie.		Sion
Banque populaire de la Gruyère		Bulle
Banque Weck, Aeby & Cie.		Fribourg
Basellandschaftliche Hypothekenbank		Liestal
BDL Banco di Lugano		Lugano
Berner Handelsbank		Bern
Bündner Privatbank AG		Chur
Cantrade Banca Privata SA Lugano		Zürich

Bank Name (note 1)	ICEP Audit Firm	Bank Headquarters
Cantrade Privatbank AG		Zürich
Crédit Gruyérien		Bulle
Crédit Sierrois		Sierre
Creditanstalt in Luzern		Luzern
de Palézieux & Cie.		Vevey
Du Pasquier, Montmollin & Cie.		Neuchâtel
Eidgenössische Bank (Aktiengesellschaft)		Zürich
Ersparnisanstalt Brunnadern		Brunnadern
Ersparnisanstalt Rehetobel		Rehetobel
Ersparnisanstalt Toggenburg AG		Lichtensteig
Ersparniskassa Urnäsch		Urnäsch
Ersparniskasse des Amtsbezirks Aarwangen		Langenthal
Ersparniskasse des Amtsbezirks Wangen		Wangen an der Aare
Ersparniskasse Ursenbach		Ursenbach
Ersparniskasse von Konolfingen		Grosshöchstetten
Ersparniskasse von Nidwalden		Stans
Hülf- und Sparkasse des Bipperamtes in Wiedlisbach		Wiedlisbach
Hypothekar- und Sparkasse Aarau		Aarau
Johann Wehrli & Cie. AG		Zürich
Kreditkasse Lyss Hypothekarinstitut		Lyss
Perrot & Cie.		Neuchâtel
Pozzi & Semadeni		Poschiavo
Privatbank und Verwaltungsgesellschaft		Zürich
Rheintalische Creditanstalt		Altstätten
Rohner & Co.		St. Gallen
Schweizerische Hypotheken-und Handelsbank		Solothurn
Solothurner Handelsbank		Solothurn
Spar- und Leihkasse Düdingen		Düdingen
Spar- und Leihkasse Wangen bei Olten		Wangen bei Olten
Sparkassa Wald (App.)		Wald (App.)
Sparkasse Au		Au (SG)
Sparkasse der Gemeinde Walzenhausen		Walzenhausen
Sparkasse Gäu AG		Egerkingen/Härkingen
Sparkasse Marbach		Marbach (SG)
St. Gallische Hypothekarkassa in St. Gallen		St. Gallen
Tissières fils & Co.		Martigny
Volksbank in Visp AG		Visp
Volksbank Interlaken AG		Interlaken
Walter Kurz & Co.		Zürich
Zinstragende Ersparniskasse		Basel
Wegelin & Co.	CL	St. Gallen
Zuger Kantonalbank	CL	Zug

Bank Name (note 1)	ICEP Audit Firm	Bank Headquarters
Zürcher Kantonalbank	CL	Zürich
Leihkasse Küsnacht		Küsnacht
Sparkasse Brütten		Brütten
Sparkasse der Stadt Zürich		Zürich
Sparkasse Kollbrunn		Kollbrunn
Sparkasse Seebach		Zürich
Sparkasse Zell		Zell (ZH)
Sparkasse Zumikon		Zumikon
Total Investigated		254

Note 1: Acquired or merged banks are in roman, while surviving parent banks and subsidiaries are in bold.

Note 2: Coutts Bank (Switzerland) Ltd. existed as the four separate banks listed above in the Relevant Period.

Note 3: Under the Credit Suisse Group heading, NAB appears in parenthesis after seven banks; NAB refers to Neue Aargauische Bank, a bank founded in 1989 that consists of the seven banks noted above.

Note 4: Parts of Banque Populaire Valaisanne and Credit Valaisan, Societe Cooperative are part of both SBC and UBS. For the purpose of calculating the total number of banks investigated, these banks have been accounted for under SBC.

EXHIBIT B**List of 227 Banks that Existed in 1945 and that were Not Investigated**

Aktiengesellschaft Volta für elektrische und industrielle Unternehmungen	Caisse d'Épargne de la République et Canton de Genève
American Express International Banking Corporation	Caisse d'Épargne de la Ville de Fribourg
Amtersparniskasse in Sumiswald	Caisse d'Épargne de l'association catholique du Crêt
Amtersparniskasse Oberhasli	Caisse d'Épargne de Nyon
Amtersparniskasse Schwarzenburg	Caisse d'épargne de Prez, Corserey et Noréaz
Amtersparniskasse Thun	Caisse d'Épargne de Siviriez
Anker Bank Genève	Caisse d'Épargne de Vuisternens
Appenzell-Innerrhodische Kantonalbank	Caisse d'Épargne du District de Cossonay
August Roth	Caisse d'Épargne du District de Courtelary
Bahag Banking Limited	Caisse d'épargne du district de Moudon
Banca Solari SA	Caisse d'Épargne du District de Vevey
Bank Aufina	Caisse d'Épargne et de Crédit Mutuel de Chermignon
Bank in Gossau	Caisse d'épargne et de prêts de Châttonnaye
Bank in Langnau	Caisse d'Épargne et de Prêts de Sonvilier
Bank in Menziken	Caisse d'Épargne et de Prêts des communes d'Autigny, Cottens, Achenens
Bank- und Verwaltungs AG	Caisse d'Épargne et de Prêts du Villaz-St.Pierre de Villarimboud
Bank von der Mühl & Weyeneth AG	Caisse d'Épargne et de Prévoyance de Lausanne
Banque Cantonale de Genève	Caisse d'Épargne et de Prévoyance d'Yverdon
Banque cantonale du Valais	Caisse Hypothécaire du canton de Fribourg
Banque Charles Perreau SA	Caisse populaire d'épargne et de prêts d'Ependes
Banque Courvoisier	Compagnie de Gestion et de Banque Gonet SA
Banque de la Glâne	Crédit agricole de Chevenez
Banque de l'Etat de Fribourg	Crédit Industriel d'Alsace et de Lorraine CIAL
Banque de Paris et des Pays-Bas SA	Crédit Lyonnais
Banque Galland & Cie. SA	Crédit Mutuel de la Vallée
Banque intermédiaire des Valeurs non cotées	Darlehens- und Immobilien-Bank AG
Banque Privée SA	Darlehenskasse der Kirchgemeinde Zimmerwald
Bezirksskasse Laufen	Darlehenskasse Saas-Grund
Bezirkssparkasse Dielsdorf	Dr. Emil Friedrich
Bezirks-Sparkasse Uster	Einwohner-Ersparniskasse für den Amtsbezirk Bern
BLP Banque lausannoise de portefeuilles	Ernst Lochmann
Bonhôte & Cie.	Ersparnisanstalt Bütschwil
Bureau de Crédit SA	Ersparnisanstalt der Stadt St. Gallen
Burgergemeinde Bern. Deposito-Cassa der Stadt Bern	Ersparnisanstalt des Kaufmännischen Direktoriums St. Gallen
Burgerliche Ersparniskasse der Stadt Bern	
Caisse d'Épargne d'Aubonne	
Caisse d'épargne de Bassecourt	
Caisse d'épargne de la Paroisse d'Attalens	

Ersparnisanstalt Niederuzwil	Leih- und Sparkasse vom Seebezirk u. Gaster
Ersparnisanstalt Oberuzwil	Leihkasse Stammheim
Ersparnisanstalt Unterwasser	Lloyds Bank International Ltd
Ersparnisanstalt Zuzwil	Luzerner Landbank Aktiengesellschaft
Ersparnisgesellschaft Küttigen	Maerki, Baumann & Co.
Ersparniskasse Aeschi	NCB Bank AG
Ersparniskasse Affoltern	Neue Guyerzeller-Bank AG
Ersparniskasse Brienz	Nidwaldner Kantonalbank
Ersparniskasse der Kirchgemeinde Schwanden	Obersimmenthalische Volksbank
Ersparniskasse der politischen Gemeinde Hemberg	Obwaldner Kantonalbank
Ersparniskasse der Stadt Murten	Pasche, Lenoir & Cie.
Ersparniskasse der Stadt Solothurn	Piguet & Cie.
Ersparniskasse des Amtsbezirks Interlaken	Raiffeisenbank Böisingen
Ersparniskasse des Amtsbezirks Laupen	Rüegg & Co. A.-G
Ersparniskasse des Amtsbezirks Signau	Schoop, Reiff & Co., Aktiengesellschaft
Ersparniskasse Dürrenroth	Schweizerische Schiffshypothekenbank AG
Ersparniskasse Erlinsbach	Slavenburg's Bank (Schweiz) AG
Ersparniskasse in Schaffhausen	Società Bancaria Ticinese
Ersparniskasse Leerau	Société anonyme de Dépôts et de Gestion à Lausanne
Ersparniskasse Matt und Engi	Société Générale Alsacienne de Banque, Strasbourg, Succursale de Zürich
Ersparniskasse Niedersimmenthal	Société Ralli de Banques et de Placements
Ersparniskasse Rüeggisberg	Solothurnische Leihkasse
Ersparniskasse Speicher	Spar- und Hilfskasse in Kerzers
Ersparniskasse von Huttwil	Spar- und Kreditgesellschaft von Wohlen
Ersparniskasse Wyssachen	Spar- und Kredit-Kassa Flums
Fédération Vaudoise des Caisses de Crédit Mutuel	Spar- und Kreditkasse Suhrental
Gemeinde-Sparkassa Bühler	Spar- und Leihkassa Schmerikon
Gemeinde-Sparkasse Reute	Spar- und Leihkassa Wartau-Sevelen
Gemeindesparkasse Wolfhalden	Spar- und Leihkasse Balgach
Gewerbebank Männedorf	Spar- und Leihkasse Beringen
Gewerbebank Zürich	Spar- und Leihkasse Böisingen
Gewerbekasse in Bern	Spar- und Leihkasse Bucheggberg
Glarner Kantonalbank	Spar- und Leihkasse der Einwohnergemeinde Trasadingen
Gonet & Cie	Spar- und Leihkasse der politischen Gemeinde Kirchberg
Hugo Kahn & Co.	Spar- und Leihkasse des Bezirkes Pfäffikon
Hypothekarbank Lenzburg	Spar- und Leihkasse des Bezirkes Schleithem
J. Rinderknecht	Spar- und Leihkasse Entlebuch
Jugendersparniskasse der Gemeinde Glarus	Spar- und Leihkasse Frutigen
Jugendersparniskasse Mollis	Spar- und Leihkasse Gürbethal
Jugendersparniskasse Näfels	Spar- und Leihkasse Hallau
Jugendersparniskasse Niederurnen	Spar- und Leihkasse Huttwil
Kreditanstalt Grabs	
Kreditgenossenschaft des Sensebezirks	
Leih- und Sparkasse Eschenbach	

Spar- und Leihkasse in Belp	Sparkasse Horgen
Spar- und Leihkasse in Münsingen	Sparkasse Küsnacht
Spar- und Leihkasse Jaun	Sparkasse Limmattal
Spar- und Leihkasse Kaltbrunn	Sparkasse Männedorf
Spar- und Leihkasse Kappel	Sparkasse Mättenwil
Spar- und Leihkasse Leuk und Umgebung	Sparkasse Oberriet
Spar- und Leihkasse Löhningen	Sparkasse Oftringen
Spar- und Leihkasse Melchnau	Sparkasse Richterswil-Hütten
Spar- und Leihkasse Merishausen	Sparkasse Stäfa
Spar- und Leihkasse Neunkirch	Sparkasse Trogen
Spar- und Leihkasse Plaffeien	Sparkasse Uetikon a/See
Spar- und Leihkasse Rebstein	Sparkasse Wädenswil
Spar- und Leihkasse Riggisberg	Sparkasse Willisau
Spar- und Leihkasse Saanen	Sparkasse Zürcher Oberland
Spar- und Leihkasse Sempach AG	Sparverein Balsthal-Klus
Spar- und Leihkasse Steffisburg	Sparverein Biene, Altstätten
Spar- und Leihkasse Sumiswald	Spar-Verein Biene, Ebnat-Kappel
Spar- und Leihkasse Thayngen	Sparverein Biene, Mümliswil
Spar- und Leihkasse Wiesendangen	Sparverein Biene, Solothurn
Spar- und Leihkasse Wilchingen	Sparverein Laupersdorf
Spar- und Leihkasse Wynigen	St. Gallische Creditanstalt
Spar- und Vorschusskasse Beringen	Triba Partner Bank
Sparbank Escholzmatt AG	Urner Kantonalbank
Sparbank Triengen	Verband Schweiz. Darlehenskassen
Spargenossenschaft Madiswil	Verwaltungsbank Zürich AG
Spargenossenschaft Mosnang	Volksbank Emmenbrücke
Sparkassa Berneck	Volksbank in Reinach
Sparkasse Buchberg	Volksbank in Schüpfheim
Sparkasse der Ascoop	Volksbank Neuenkirch
Sparkasse der Gemeinde Schwyz	Volksbank Ruswil
Sparkasse des Bezirkes Hinwil	Volksbank Willisau
Sparkasse des Sensebezirks	von Ernst & Cie.
Sparkasse des Wahlkreises Thalwil	WIR Wirtschaftsring-Genossenschaft
Sparkasse Elgg	Zinstragender Sparhafen
Sparkasse Elsau	
Sparkasse Engelberg	
	Total Not Investigated
	227

The First and Second Phases of the Investigation

A. The First Phase

1. ICEP first met on August 14, 1996, and, among other actions, established a work program that included selecting audit firms to conduct the investigations and preparing written instructions for these firms. The Audit Firm Mandate and Instructions - The First Phase (the “First Phase Mandate”), which were adopted in November 1996, provided the instructions to the selected audit firms as to their duties, functions, and procedures for the first phase of the work of ICEP consisting of a program to prepare for audits followed by pilot audits of five Swiss banks.¹ At the same time, the Committee selected Arthur Andersen, KPMG Peat Marwick (“KPMG”), and Price Waterhouse to carry out the First Phase forensic accounting investigations.

2. ICEP also established a Preparatory Committee to coordinate the work of the audit firms on the First Phase, to inform the Committee on the progress of the investigation, and to develop plans and priorities for proceeding with the Second Phase forensic accounting investigations. The Preparatory Committee was composed of Mr. Ian Watt, the former head of the Special Investigations Unit at the Bank of England, Counsel for ICEP, and representatives from each of the audit firms. The Preparatory Committee held regular meetings at which each audit firm gave a detailed report on the status, methodologies, and interim results of their work. Following these reports, attention was given to budgeting, planning and prioritizing future work, establishing uniform methodologies, and advising the

audit firms on the format, content, and deadlines for reports to the IAEP.

3. The First Phase Mandate requests the selected audit firms to determine whether there are any previously unreported dormant accounts, financial instruments, and other assets that were deposited in Swiss banks before, during, or immediately after the Second World War. This search for dormant accounts also included accounts that would otherwise have been dormant “but for” the fact that the funds in the account are unavailable for reasons other than their return to the original depositors or their legal representatives. The audit firms were also instructed to identify the accounts of intermediaries or any evidence of the existence of looted assets. Such information revealed during the investigations would be brought to the attention of the Committee, which in turn would notify the Bergier Commission of this evidence.

4. The First Phase Mandate divided the investigation into two phases. There was a First Phase of extensive preparatory research on the history of money flows into Switzerland, Swiss bank organization and regulation, past efforts to identify dormant accounts, and pilot audits. The Second Phase consisted of on-site investigations at Swiss banks that existed during the 1933-1945 period.

5. It contained four general instructions to the auditors for the initial phase of the work. The auditors were to:

¹ The text of the First Phase Mandate is in Appendix E.

- determine the scope and effectiveness of the prior searches for dormant accounts at Swiss banks including the methodologies used and the degree of compliance with Swiss laws and regulations, and directives of the SBA;
- investigate the accuracy and integrity of the Swiss banks' record keeping policies with respect to dormant accounts, both before and after the accounts became dormant;
- report any evidence of misapplication or embezzlement of dormant accounts; and
- review the policies and practices regarding the payment of interest and the application of fees on dormant accounts.

6. With respect to the preparatory work, the First Phase Mandate instructed the auditors to review and analyze:

- the methods and procedures used by victims to open accounts at Swiss banks,
- the historical events surrounding the Second World War that led the victims to place assets in the Swiss banks,
- reports and official documents from the Relevant Period on capital flows into Switzerland,
- the available financial data pertaining to the Swiss banks in existence during the Relevant Period,
- victims' claims to accounts in Swiss banks, and
- the Swiss laws and regulations on the opening of accounts and record keeping requirements with respect to accounts.

The preparatory work resulted in five reports that were submitted to the Committee by the audit firms in September 1997: (1) the Review of the Swiss Banking Ombudsman, (2) the Review of the Swiss Bank Deposit Taking Laws and Regulations, Policies, and Procedures, (3) the Study of the 1962 Swiss Government Decree on Heirless Assets, (4) the 1995 Survey by the SBA of Dormant Accounts, and (5) the Swiss Bank History Project, which identified the banks that existed in the Relevant Period and their subsequent development.

7. The First Phase also included pilot audits, which were designed to test the work plan in the real world so that it could be adjusted and fine-tuned to produce a final plan that would assure comprehensive and effective investigations. The auditors were instructed to use all necessary audit and investigative techniques and procedures — to examine records, to interview of bank personnel, and to analyze available data using advanced data processing techniques. Pilot audits were conducted at: Banque Cantonale Vaudoise, Credit Suisse, Pictet & Cie, Spar + Leihkasse in Bern, and the former Swiss Bank Corporation.

8. The Committee also ordered document retention audits of five representative Swiss banks to test the status of record keeping at these banks, again as a basis for developing the most effective investigative plan. Document retention audits were conducted at: Bank Julius Baer, Banque Cantonale de Genève, Baumann & Cie, St. Gallische Kantonalbank, and the former Union Bank of Switzerland. The pilot and document retention audits were carried out in June through August 1997. In September 1997, each audit firm submitted to ICEP a summary report detailing its findings.

9. The overall result of the pilot and document retention audits was a “strategy paper,” outlining the auditors recommendations for the Second Phase investigations. The auditors believed that, since there was a vast amount of information within the Swiss banks, as well as outside the banks, the success of the Second Phase depended on the ability to manage the information in an effective and efficient manner. These recommendations included:

- use of bank task forces under the direction and supervision of the audit firms,
- development of individual strategies based on the types of information available at each bank, and
- the comparison of bank account records to third party records of victims of Nazi persecution.

The auditors also believed that the most relevant banks, more specifically the large commercial banks,

should be investigated first. In addition, the audit firms recommended that in the Second Phase investigations they should conduct general, but thorough, reviews of all documents, policies, and reports on the treatment of dormant accounts. They also proposed to interview bank employees appointed to deal with dormant accounts, and that banks prepare for the Second Phase investigations by reviewing and inventorying all documents that were greater than 10 years old. The Committee approved the strategy and unanimously agreed to proceed with the implementation of the Second Phase.

10. Finally, as a result of the pilot and document retention audits, the audit firms also reported on the banks' compliance with the December 1996 Federal Decree, which prohibited banks from destroying any records relating to accounts open or opened in the 1933-1945 period. The audit firms noted that, as a general matter, the banks had adopted instructions and temporary policies prohibiting the destruction of any relevant documents. A well-publicized incident of document destruction at the former Union Bank of Switzerland was not reviewed by the relevant audit firm at this time since it was then under investigation by authorities in Switzerland. While the audit firm found that the bank's controls appeared to be adequate, to further strengthen controls, it recommended that a second, independent person review any materials awaiting destruction in order to ensure that no relevant documents are destroyed.

11. After the completion of First Phase historical research and data gathering as well as the pilot investigations at ten banks in August 1997, on-site work by two of the audit firms (KPMG and Price Waterhouse) began at two of the large commercial banks (the former Union Bank of Switzerland and the former Swiss Bank Corporation, respectively) in September 1997. This work continued through February 1998, when the Second Phase began and when Arthur Andersen once again began its work at Credit Suisse Group. During this period, the firms made progress in identifying and reviewing relevant documents and otherwise preparing the banks for the Second Phase investigations.

12. It should also be noted that implementation of the First Phase and the beginning of the Second Phase were each significantly delayed by negotiations with the audit firms over the terms of indemnification against litigation or similar losses arising from the investigation. These concerns were prompted, in part, by the then pending class action lawsuit in New York, and required extended negotiations and substantial financial commitments to resolve. Once resolved, the investigation moved forward to meeting its goal of completion of the essential elements of the Committee's First and Second Phase Mandates by year end.

B. The Second Phase

13. Five audit firms were selected to conduct Second Phase investigations.² Arthur Andersen, KPMG, and Price Waterhouse continued to work at the large commercial banks where they conducted First Phase investigations. Coopers & Lybrand and Deloitte & Touche were added to conduct investigations at cantonal, private, and other banks, because of manpower constraints and potential conflicts of interests faced by the other three audit firms.

14. The Second Phase was the heart of the investigation — an account-by-account search. Its methodology is contained in the Audit Firm Mandate — The Second Phase (the “Second Phase Mandate”).³ With the inadequacies of past searches in mind, and the growing evidence from the preliminary document searches of the audit firms that substantial bank records would potentially permit a meaningful reconstruction of the past, the Committee adopted a comprehensive strategy for searching for the accounts of victims of Nazi persecution. The Committee sought, as a general precaution, an investigative methodology that would be resistant to the possibility that systematic manipulation of records had occurred to obscure the past (although it had no evidence that in fact such manipulation had occurred). The Second Phase Mandate thus

² See Appendix U: List of Audit Firms.

³ See Appendix J: Audit Firm Mandate – The Second Phase (January 30, 1998).

contains the following four basic elements: (1) collection of data on open, closed, and suspended accounts open or opened during the Relevant Period and the establishment of a computer database of this information; (2) matching of the database account names against the names of victims of Nazi persecution, including possible third party intermediaries of assets deposited with Swiss banks; (3) analyzing other sources of information, including official records, inside or outside of Switzerland, to seek to supplement and cross-check information about identified accounts; and (4) use of other forensic techniques to seek to determine the existence of dormant accounts as defined by the Committee.

15. In addition, the Second Phase Mandate provided that the auditors were:

- to identify the opening balance of the relevant open and closed accounts, any other available balance information, and the history of the transactions on the accounts, and in the case of closed accounts, to determine the facts and circumstances under which the accounts were closed;
- to seek evidence bearing on the proportion of the total number and value of accounts represented by missing records and to determine whether such missing records were destroyed in the ordinary course of business;
- to assess whether there is any evidence that the Swiss banks obstructed access to dormant accounts, diverted accounts to unauthorized uses, or took other actions inconsistent with the banks' fiduciary obligations; and
- to collect and analyze information on interest, fees, and charges, and to determine whether the accounts of victims of Nazi persecution were treated in the same manner as other accounts at the bank of the same type.

The Second Phase Mandate was explicit in instructing the audit firms that the term "victim of Nazi persecution" was to be broadly construed, so that it could not be used as a barrier to a complete and thorough investigation. Moreover, it provided that the audit firms should make use of bank employees

to identify, collect, and catalog data, but that the audit firms should supervise and monitor their work carefully.

16. In addition, the Committee again directed the audit firms, in cooperation with Swiss authorities, to seek to find accounts opened by intermediaries including, but not limited to, lawyers, accountants, notaries, financial consultants, or others, from records or other information available at banks, with the aim of providing this information to the Bergier Commission for further investigation in those cases where these accounts were opened for the benefit of victims of Nazi persecution.

17. The general methodology of the five audit firms conducting Second Phase investigations included "top-down" and "bottom-up" approaches. The "top-down" analysis examined the banks' highest-level financial information to determine the total on- and off-balance-sheet liabilities of Swiss banks, including data on such liabilities of non-residents of Switzerland, and the total number and value of customer accounts that were open in Swiss banks in the Relevant Period. This data could then be compared to the results of the "bottom-up" analysis, which consisted of an account-by-account search, to make as accurate an estimate as possible about the total number and value of the accounts that existed during the Relevant Period.

18. From this type of data, the audit firms have been able to develop important information on the total number of the various types of accounts that were open in Swiss banks during the 1933-1945 period, thus providing valuable data to test the completeness of the accounts databases developed as a result of the "bottom up" approach described above. In addition, from foreign liability data, developed as part of the top down analysis, the auditors were able to identify information about proportion of foreign liabilities of Swiss banks that were deposited by the non-residents of Switzerland.

19. This information was developed by obtaining official Swiss National Bank aggregate data or

individual bank data on the foreign liabilities of the investigated banks.⁴ It was supplemented by estimates of on- and off-balance-sheet exposure to foreign account holders. Tables of on-balance-sheet foreign liabilities prepared by the Swiss National Bank for Axis countries, and for countries that were occupied by the Axis powers, indicate that in 1945 the total foreign on-balance-sheet liabilities of 63 Swiss banks to Axis and Axis-occupied countries amounted to SFr. 743 million. The aggregate liability data indicates that, of the Axis and Axis-occupied countries, liabilities to French depositors amounted to 45% of the total Swiss bank liabilities to these countries, while large volumes of liabilities were owed to Italy (12%), Romania (8%), Germany (8%), Belgium (5%), and Hungary (3%). The foreign liability data has provided a valuable resource for the ICEP investigation as it indicates the importance of having information about victims of Nazi persecution who were resident in the countries to which Swiss banks had substantial deposit liabilities, such as France, Germany, and Italy.

20. The bottom up methodology has involved the establishment of databases of relevant accounts and to compare those accounts databases with databases of victims of Nazi persecution. This involved a highly labor and time intensive process of searching for and identifying relevant documents, entering data in computer readable format, and quality control checking of this data. Once the data was entered and checked, matching was initiated, followed by an analysis of the matches to determine their validity as well as the amount of balances in the matched account through research into bank branch and other records.

21. The process was complex because it involved millions of different accounts, including current accounts, safe deposit boxes, saving accounts, and custody accounts. Its complexity is compounded by the large number of mergers among Swiss banks that have involved transfers of records and the incorporation of the accounts of the acquired bank into the data processing systems of the acquiring bank,

which often resulted in losses of important data that had to be reconstructed to the extent feasible.

22. The bank databases vary in completeness; the degrees of completeness range from virtually 100% of the relevant accounts in a few private banks to a low of 30% in a few of the cantonal banks. The average is 73% for the large commercial banks, 48% for the cantonal banks, and 83% for the private banks. The overall average coverage is 60%.

23. As one method of identifying the accounts of victims of Nazi persecution, the Committee has developed or has obtained access to databases with over 5.5 million names of victims of the Holocaust. In this process, the Committee has had the benefit of work that the audit firms have done to develop information on victims of Nazi persecution, incorporated into databases with over 500,000 names. But the largest contributions to this database of victims have come from Yad Vashem, the Holocaust Memorial in Israel, and from the Holocaust Museum in Washington. In particular, as a result of a Committee sponsored project, within an extraordinarily short time, Yad Vashem was able to organize the databasing of over 5.5 million names and other identifying information on Holocaust victims for use by the Committee in the matching process.

24. In pursuing the “bottom-up” approach, the audit firms used variations of a basic four steps process: (1) collecting, reviewing, and analyzing documents; (2) creating databases of information about individual accounts; (3) matching the accounts databases to databases containing the names of victims; and (4) researching the accounts and their disposition. Each of these steps is described below.

Document Review and Analysis

25. In the first step of the investigative process, which began for two of the large commercial banks in September 1997, the auditors and bank personnel identified, gathered, and categorized all relevant

⁴ See Appendix R: Swiss National Bank Statistics on Foreign Liabilities.

or potentially relevant documentation. This step presented one of the investigation's key challenges because of the volume of available materials, which included physical and electronic records. Reviewing the physical material was time-consuming because it required a manual inventory of all archives. Examining the electronic data raised the separate challenge of devising appropriate queries to locate all potentially relevant data. Both the audit firms and the banks expended substantial resources during this step, which included the imaging of substantial volume of records into databases to be used in connection with the analysis of the accounts.

26. As part of the first step of collecting and analyzing the relevant documents at each bank, the audit firms were to determine if the banks' policies, procedures, and practices complied with the Swiss law that required the banks to maintain business records for at least ten years, and the December 1996 Federal Decree, which prohibited them from destroying any documents relating to accounts open or opened in the 1933-1945 period. The firms examined the formal policies of the banks regarding document and record retention or destruction. They also reviewed the banks' files to determine which files had actually been retained and whether or not there were any significant gaps indicating that some had been destroyed.⁵

27. From late 1997 through the spring of 1998, the audit firms carrying out the investigations devoted a great deal of effort to prioritizing the documents for further review and for scanning into image databases. Documents containing account holder names and balance data were prioritized for early inclusion in the accounts database. All of the large commercial banks maintained extensive electronic databases of current accounts from which the auditors were able to extract information for use in the accounts databases. However, one of the large commercial banks did not agree to give the firm auditing this bank direct access to its data systems; the audit firm was required to submit requests for information from the system to the bank, and these requests were then processed by bank personnel. The

auditors at this bank were able to obtain the information needed through this cumbersome procedure, but it delayed and made more complex their efforts to create an accounts database. In January 1998, Coopers & Lybrand was selected to carry out investigations at many of the cantonal and private banks, and because of the need for more resources to complete the Committee's audit program, in December 1998, Deloitte & Touche was also retained for this purpose. They too began document collection and review efforts with the aim of building the appropriate databases.

Establishment of Accounts Databases

28. The second step of the investigative process, which began in early 1998 for the three large commercial banks, and was completed for essentially all banks by April 30, 1999, required the development of accounts databases consisting of the material identified in the first step, which was organized in a manner that would facilitate subsequent analysis. This step was crucial because the accounts databases provided the foundation for identifying accounts from the Relevant Period that potentially are accounts of victims of Nazi persecution. Populating the databases was a highly labor and time intensive process of entering data in computer readable format, and conducting quality control checks of this data.

Matching

29. The third step of the investigative process involved matching account holders' names in the accounts database with names of victims of Nazi persecution obtained from third-party sources. The victim names from the Yad Vashem and other databases were used for this purpose. The firms used exact-name and near-exact name matching algorithms.⁶ Near exact name matching involved matching vowel equivalents for a, e, i, o, and u, as well as for double consonants. In June 1998, the auditors

⁵ See Annex 7: Records and Record Keeping.

⁶ See Annex 4: Identification of Accounts Probably or Possibly Related to Victims of Nazi Persecution, paragraphs 7 to 12 for a description of the matching process and its significance.

reported that the firms' initial efforts to conduct matching had demonstrated the potential usefulness of the technique.

30. Additional testing was conducted in July and August 1998 using a "fuzzy logic" matching technique. "Fuzzy" matching uses a phonetic algorithm that matches names that sound alike but are spelled differently, as opposed to exact name matching which requires the same spelling of the first and the last names on the account as is in the victim database. During these early matching exercises, the auditors also were attempting to place matches into one of four categories depending on the accuracy of the match.

31. In September 1998, before the auditors had completed the account databases, they submitted reports indicating that their matching exercises were resulting in a very large number of possible matches, that the phonetic or "fuzzy logic" matching process would result in too many false matches, and that the large number of matches would take a very long time to research. Additional matching exercises in October further demonstrated that phonetic matching generally resulted in matches equal to a multiple of the number of names contained in the accounts databases, which produced a volume of matches that the audit firms could not research in a manageable time frame.

32. Exact-name matching, on the other hand, produced useful results. Although exact-name matching produced a large number of matches, the auditors concluded that it was feasible to research those matches assuming the availability of computer databases of relevant documents that would substantially reduce research time. As a result of the October matching exercises, the auditors also concluded that categorizing matches into the categories of "highly likely" to "unlikely" was not very useful because it was based on very limited information available at the time of the matching and the results depended largely on the individual judgements of the person reviewing the matches. This created sub-

jective results that varied substantially from person to person and firm to firm. Consequently, it was decided that phonetic matching would not be used. However, investigative techniques other than matching were used to identify dormant accounts and accounts with evidence of persecution that were to be investigated. (See, *infra*, paragraphs 44 to 54).

33. After matching, the audit firms also eliminated certain accounts from further review by using the following four disqualifying factors: (1) the account holder and victim have different middle names; (2) the date of death of the victim was prior to the account-opening date; (3) the date of deportation or convoy of the victim was before the account-opening date; or (4) the difference in the dates of birth of the account holder and victim exceeded ten years.

34. In addition to exact or near exact name matching, and in the absence of phonetic name matching, other methods were used to analyze the accounts in the database that did not match for probable or possible relationships to victims of Nazi persecution. One method used bank records to identify accounts where the records indicated a persecution event, such as a concentration camp address or a notation that the account holder had died in such a camp.

35. These methods resulted in the identification of some accounts with a probable or possible relationship to victims; the auditors selected 76,491 unmatched accounts of foreigners that were open in the Relevant Period, that were inactive after 1945, and in some cases were resident in an Axis or Axis-occupied country, as well as inactive for a substantial period until they were suspended or closed. These accounts were researched together with the matched accounts to determine whether a probable or possible relationship to victims of Nazi persecution could be established. (See Annex 4, *infra*, paragraphs 15 and 16.)

Research on Ultimate Disposition

36. The fourth step of the investigative process required the firms to conduct additional research to verify the relevance of the identified accounts and determine their ultimate disposition. The audit firms' sought to identify the following types of information:

- whether the account was open or opened in the Relevant Period;
- whether the account was active or dormant after 1945;
- whether each account holder was Swiss or foreign;
- the account status – open, closed, or suspended;
- the “ultimate disposition” for the account; and
- the value of the account.⁷

37. The outcome of this research is described in Annex 3 on the results of the investigation.

ICEP's Decisions on Focusing and Completing the Investigations

38. At its January 27, 1999 meeting, ICEP further refined the methodologies of the investigation to focus the resources of the audit firms on activities that would fulfill the goals of the Second Phase Mandate.⁸ Most important, the Committee set firm goals for completing various stages of the investigative process and more clearly focused the matching and research.

39. In consultation with the Swiss Federal Banking Commission and the audit firms, ICEP set the following targets for completion of the investigatory stages of the Second Phase work: (1) completion of fact-finding, data collection, and database compilation at most banks by

March 31, 1999 and for all banks by April 30, 1999 (assuming that the banks fully cooperated) and (2) completion of all matching and research of matches for all banks by May 31, 1999.⁹

40. ICEP also made important decisions affecting the scope of the investigation. First, it excluded from further matching and research (1) small-balance savings accounts under SFr. 250, which evidence indicated were not typically held by non-residents of Switzerland, and (2) domestic Swiss accounts, unless evidence developed by the auditors suggested that they belonged to foreign account holders or their intermediaries.¹⁰ It further decided that matching and research would be performed for foreign accounts with undetermined opening dates and those accounts that were closed by unknown persons to determine the existence of information on opening dates or ultimate disposition.¹¹ ICEP also agreed that no new banks would be included in the ICEP investigation.¹²

41. In accordance with ICEP's January 27, 1999 decisions, a set of Guidelines were developed for completing the investigation.¹³ Under the Guidelines, a “Small Savings Account” was defined as those with “less than Swiss Francs 250 determined on the basis of current book values” or a savings account for which the value is unknown.¹⁴ With some limited exceptions, each audit firm was to separate out savings accounts from the accounts database.¹⁵

42. Under the Guidelines, domestic accounts were defined for the purpose of determining the accounts in the accounts database to be matched with the victims databases. This definition provided that domestic accounts were accounts held by persons or entities “classified as domiciled in Switzerland, or of Swiss nationality, in contemporaneously created bank records.”¹⁶ Persons were considered as “domiciled in Switzerland” if they had permanent Swiss addresses. Domestic accounts were to be

7 Guidelines for the ICEP Audit firms for Completion of the Forensic Accounting Investigation (February 18, 1999), Appendix Q.

8 ICEP's Decisions on Completion and Focusing on the Forensic Accounting Investigation (January 27, 1999), Appendix P.

9 *Id.* ¶ 1.

10 *Id.* ¶ 2.

11 *Id.* ¶ 4.

12 *Id.* ¶ 5.

13 Guidelines for the ICEP Audit Firms for Completion of the Forensic Accounting Investigation (February 18, 1999), Appendix Q.

14 *Id.* ¶ 44.

15 *Id.* ¶ 8.

16 *Id.* ¶ 37.

separated from the accounts databases and placed into separate domestic accounts databases.¹⁷ In addition, the audit firms were required to test both the savings and domestic accounts to determine the existence of foreign accounts — broadly defined as accounts of persons: (i) holding numbered or hold-mail accounts, (ii) of foreign nationality, (iii) of unknown nationality and foreign domicile or residence, (iv) holding accounts linked to an account described in categories (i)-(iii), (v) of Swiss nationality and a domicile or residence in an Axis or Axis-occupied country during the Relevant Period, or (vi) of unknown nationality and unknown or Swiss domicile or residence.¹⁸ If those tests indicated that 15 percent or more of the accounts were foreign accounts, the foreign accounts were to be examined to determine whether certain ultimate disposition information existed.¹⁹ If the auditors found that disposition information existed for 30 percent or more of these selected foreign accounts, the separate savings accounts and domestic databases were to be searched for foreign accounts, which were then to be reincorporated into the appropriate accounts database for matching.²⁰

43. The audit firms were required to assign priority to matching and research in the order established in the definition of foreign accounts above, giving special priority to certain suspense accounts.²¹ They were asked to use their best efforts to match and research all accounts in the account databases by May 31, 1999.²²

Selection of Other Accounts for Research

44. As the auditors analyzed the accounts remaining in the accounts databases after small savings accounts and domestic accounts were excluded, they realized that a considerable number of open, closed, and mainly suspended accounts that did not match appeared to be reasonably related to victims of Nazi persecution. They pointed to accounts of foreigners that had been open in the Relevant Period, that had been inactive for long periods after 1945, and then were placed in suspense, or were closed without any recorded reason for

closing, or for a relatively few, are still open and dormant. Accounts with these characteristics, the auditors argued, appeared to be probably or possibly related to those persons who were lost before or during the War to Nazi persecution.

45. In coming to this conclusion, the auditors also took into account the fact that, as their work progressed, it became clear that they could not positively identify the owners of a substantial number of dormant or closed accounts that appeared to be probably or possibly connected with victims of Nazi persecution. Instead, it was necessary, in order to make sense out of 50-year-old documentation with significant gaps in the record of transactional activities, to make certain presumptions in order to achieve useful results.

46. They pointed out that certain presumptions had already been made as the investigation proceeded. In fact, they noted that, based on testing, the presumption had been made that small savings accounts and accounts with permanent Swiss addresses are not accounts victims of Nazi persecution, and over 1.8 million accounts were excluded from matching based on this presumption. Even more important, they had worked under the presumption that closed accounts for which no information was available in bank records on the party to which payment had been made had in fact been paid to the proper party in the ordinary course of business.

47. Now, on the contrary, their findings indicated that the circumstances of the closing of certain accounts suggested that these closed accounts may not have been paid to the account parties or their heirs. The same type of concern also applied to certain other accounts that had been placed in suspense accounts. Based on their findings, the auditors came to the conclusion that it seemed reasonable that there

¹⁷ *Id.* ¶ 10.

¹⁸ *Id.* ¶¶ 15, 16, and 39.

¹⁹ *Id.* ¶ 15.

²⁰ *Id.* ¶ 16.

²¹ *Id.* ¶¶ 19, 20.

²² *Id.* ¶ 17.

could be a probable or possible relationship to victims of Nazi persecution of some 76,491 accounts of foreigners that were open in the Relevant Period, that were inactive after 1945, were identified by the bank as victims of Nazi persecution, and, in some cases, were resident in an Axis or Axis-occupied country during the Relevant Period as well as inactive for a substantial period until they were suspended or closed. Consequently, the auditors selected these additional open, suspended, and closed accounts with at least some of these characteristics for further research along with the matched accounts.

Other Forensic Accounting Techniques

48. The Second Phase Mandate established by ICEP also directed the audit firms to investigate dormant and closed accounts belonging to the victims of Nazi persecution through the use of other forensic accounting investigation techniques. The Mandate required as follows:

[W]here no opening, closing, or transaction records exist, use [] other forensic accounting investigative techniques to seek to determine the existence of dormant accounts as well as those accounts that should have been dormant but for the fact that the funds in the account are unavailable for reasons other than their return to the original depositors or their legal representatives.²³

49. The five audit firms that conducted the Second Phase investigations used a variety of forensic accounting investigative techniques including a review and analysis of historical events and documents, and an analysis of a bank's legal records relating to such areas as employee fraud and misconduct.

50. The audit firms reviewed numerous historical events and documents to aid their investigations. Some of these events and documents included the following:

- 1945 Freeze of German Assets;
- Documents from the United States National Archives;

- The Gentlemen's Agreement of 1937;²⁴
- 1938 Austrian Census of Jewish Assets;
- German currency restrictions;
- Transfer of customer accounts to the United States and Canada;
- Axis-occupied territory asset freezes;
- Allied meetings with Swiss authorities and banks;
- The freeze of Swiss assets in the United States; and
- Wartime evacuation of bank assets and documents.

Two of the most investigated historical events and documents were the 1945 German Asset Freeze and the National Archive documents.

51. During the Second World War, the United States authorities froze Swiss assets held in the United States. They informed the Swiss authorities that the freeze would only be lifted if the Swiss authorities performed a similar exercise to freeze the assets of German individuals, legal entities, and cooperatives held in Switzerland. In February 1945, the Swiss Government issued a decree requiring that assets held in Switzerland belonging to German nationals or those domiciled in Germany and certain occupied territories should be frozen and registered with the Swiss Compensation Office ("SCO"). From 1948 onwards, the SCO permitted the release of assets, although this required the SCO's prior written approval. The audit firms reviewed these frozen accounts to locate accounts of victims of Nazi persecution that were hidden from the Nazi authorities in Swiss banks.

52. During and immediately after the Second World War, the Allies gathered a substantial amount of economic intelligence information concerning the financial activities of the Nazi Regime, including information about banking activities in Switzerland. The information was gathered by a variety of mili-

²³ See Appendix J, Audit Firm Mandate - the Second Phase ¶ 4(d) (January 30, 1998).

²⁴ See Annex 5: Treatment of Dormant Accounts of Victims of Nazi Persecution, Exhibit A.

tary intelligence sources and governmental agencies. The United States Government declassified much of this information in 1996 and 1997. Documentation from the various sources was consolidated in the United States National Archives in College Park, Maryland and made available to the public. These documents include specific information about Swiss banking activities during and immediately after the Relevant Period. The SBA retained the Washington, D.C. law firm of Wilmer, Cutler & Pickering to analyze and index documents in the archives relating to Swiss banks. The documents contain a variety of information ranging from non-specific speculation by intelligence agents to copies of bank documents detailing customer account activity. All this material relating to specific banks was reviewed to identify accounts probably or possibly related to victims of Nazi persecution.

53. Finally, the audit firms conducted searches of the records in the banks' legal departments in an effort to identify claims to accounts made by victims of Nazi persecution or their heirs, as well as any instances of fraud committed by bank employees relating to dormant accounts of these victims.

54. Through other forensic accounting techniques, the audit firms identified over 10,000 accounts that were not identified in the general search for relevant records. These identified accounts were compiled in the accounts databases and included many cases of forced transfers of accounts in Swiss banks, including those of Austrian Jews.²⁵ The work also identified numerous cases of potential claims to accounts by victims of Nazi persecution that could not be verified because of the absence of records.

C. Costs of the Forensic Audit

55. The total costs for the auditors' First Phase preparatory work and the pilot document retention audits amounted to approximately SFr. 24.1 million. The Swiss Bankers Association funded the costs of the preparatory work, which were approximately SFr. 13.1 million. The total costs for the pilot audits amounted to just over SFr. 11 million. The costs of

these audits were paid by each individual bank audited, and these individual costs ranged from about SFr. 150,000 for a small bank to SFr. 5.1 million for the largest banks.

56. The total audit costs for the Second Phase investigations amounted to approximately SFr. 276 million. As in the pilot audits, in the Second Phase, the individual banks were responsible for paying the invoices for the work performed at their bank. The costs to each of the large commercial banks ranged from SFr. 56 million to SFr. 79 million, the costs for cantonal banks ranged from about SFr. 50,000 to SFr. 9.7 million, and the costs for private banks ranged from SFr. 38,000 to SFr. 2.0 million.

57. Audit firm budgets and bills were carefully reviewed and analyzed to identify areas in which costs could be reduced or avoided. A variety of aspects of the budgets and bills were analyzed using tables that included (1) the average hourly rates for each investigation; (2) the ratio of managers to other staff; (3) total expenses, and the ratio of expenses to total liabilities in 1945 of each bank; (4) average hourly expenses per person and for all staff; (5) total fees, and the ratio of total fees to the total liabilities in 1945 of each bank; (6) numbers of staff and the ratio of staff to total liabilities of each bank in 1945; and (7) the ratio of planning fees to total fees. In addition, the audit firms also had to keep within budgets to completion in the period after September 1998. The Committee was assisted in this effort by Tucker Alan, an accounting firm specializing in this work.

58. Many banks complained that the costs of the audits were out of proportion with the number and value of dormant accounts that existed at the banks. ICEP considered all complaints raised about the invoices and responded to the individual banks concerned. At the press conference after the January 27, 1999 ICEP meeting, Chairman Volcker

²⁵ See Annex 5: Treatment of Accounts of Victims of Nazi Persecution, paragraphs 4-8, and 24-25.

emphasized to the banks and the SBA that the aim of the ICEP investigation was not to calculate the ICEP effort in relationship to the number and amount of dormant accounts in Swiss banks of victims of Nazi persecution. Rather, he pointed out that the vital and historic goal of ICEP is to set the record straight for posterity, and the resources had to be appropriate to this goal. He suggested that a thorough and complete investigation, even though costly, that produced few dormant accounts should be much more a source of pride to the Swiss banking system than one that was inexpensive but was challenged as shallow and incomplete and that identified a few dormant accounts. He noted that it was particularly important for ICEP and the Swiss banking system to avoid repeating the record of past incomplete searches for dormant accounts that may have been proportional from the banks' point of view but that would have to be repeated again in the future.

59. The audit and administrative costs of the ICEP investigation are summarized in Table 1 below.

D. The Role of the Swiss Federal Banking Commission

60. The Swiss Federal Banking Commission is Switzerland's banking supervisory authority, a role that it assumed in 1934. As such, it functions to ensure the stability of the Swiss banking system and to maintain the Swiss banks' good reputation in the financial marketplace. Accordingly, the SFBC has a strong interest in the treatment of dormant accounts and has provided guidance to the Swiss banks regarding the handling of dormant accounts.

61. At a meeting held on January 22, 1997, the SFBC provided strong support to the ICEP investigation by declaring the ICEP investigations to be official extraordinary audits ("official special audits") under the Swiss Banking Act of 1934.²⁷ The action had the following significant legal implications:

²⁷ See Appendix G, Letter of Support from the Swiss Federal Banking Commission (Jan. 29, 1997); Banking Act of 1934, Art. 23bis ¶ 2 (Switz.); Banking Ordinance of 1972, Art. 49 ¶ 2 (Switz.).

Type of Costs	Cost (in SFr. Millions)	Funded by:
First Phase		
Preparatory Work	13.1	Swiss Bankers Association
Pilot Audits	11.0	Individual banks
Second Phase Audits	276.0	Individual banks
Administrative and Professional Fees²⁶	10.0	Swiss Bankers Association and Individual Banks
<p>²⁶ Includes part of the cost of funding the Yad Vashem database project and accounting, legal, and administrative expenses.</p>		

- The SFBC was thus empowered to compel the cooperation of any bank with the ICEP investigation, which was deemed mandatory under Swiss law.
- The auditors were given access to relevant bank files to carry out the mandate of the firms by ICEP, including files protected by bank secrecy legislation.
- The officers and employees of the audit firms undertaking the investigations, and any other persons whose services they retained, were, however, bound by the Swiss banking secrecy regulation and, consequently, were prohibited from disclosing the identity of individual customers or information that would identify them to third parties, including ICEP.²⁸
- The auditors keep all data and working papers within Switzerland, but were not restricted from making complete and comprehensive reports to ICEP.
- The auditors could share audit information from the Relevant Period with the other audit firms subject to the ICEP Mandate.
- Each of the banks was obligated to pay the costs of its own audit unless the Swiss banking community established a cost sharing plan to distribute the burden.

62. The SFBC also followed the progress of the ICEP investigation by maintaining a liaison with ICEP and attending many of the meetings of ICEP. On August 28, 1998, SFBC Chairman Dr. Kurt Hauri and ICEP Chairman Paul A. Volcker sent a joint letter to the Swiss banks informing them of the legal implications, described above, that resulted from the SFBC's designation of the ICEP audits as "official special audits."²⁹ In that same letter, Chairman Hauri and Chairman Volcker expressed their awareness of a number of concerns expressed by the banks, including, most notably, the banks' concerns about the costs of the audit. The Chairmen told the banks that the audits would be managed efficiently and that costs would be held to the lowest level possible in accomplishing the audit's objectives. To that end,

they reported that the SFBC and ICEP would continue to monitor the costs of the investigation and would work to assure the adoption of policies and procedures to hold costs down whenever possible. Chairman Hauri and Chairman Volcker also stated that to assist in the monitoring process, ICEP would instruct the auditors to establish a budget for the entire audit at each bank in which they were working. They recognized that a budget encompassing the entire audit at each bank would allow the banks to make any needed financial plans and to raise any questions that they might have about the budget.

E. Bank Cooperation

63. Overall, the cooperation of Swiss banks with a detailed, intrusive, and very costly investigation has been adequate to allow the investigation to reach its goal of finding as much of the truth about the accounts of victims of Nazi persecution as can now be determined after the passage of more than 50 years. During the First Phase pilot and document retention audits and into the Second Phase investigations, the overwhelming majority of the banks were fully cooperative. Auditors were generally given the access they required to directors and staff of each bank, to their premises, and to their records. The banks typically devoted significant internal manpower to assist the auditors, particularly to convert paper and microfiche records into computer databases, and to assist in the research of matches.

64. While the cooperation was good, it is appropriate to note that at some banks the auditors encountered limited resistance to the concept of unfettered access, arising out of the banks' concerns about complying with bank secrecy laws and protecting confidential business information. Some banks also questioned the scope of the auditors' investigation and the auditors' reports. However, in the end, the auditors were able to resolve these issues, and obtained access to the information they were seeking.

²⁸ Banking Act of 1934, Art. 47 (Switz.).

²⁹ See Appendix L, Letter from Chairman Hauri and Chairman Volcker to Banks Being Investigated (August 28, 1998).

65. After the settlement of the class action lawsuit in New York in August 1998, Swiss banks collectively took a more critical view of the investigation. This new critical attitude was reflected in a desire to circumscribe the scope of the audit, to limit its cost, and to obtain agreement on an early fixed date for its completion. In particular, some cantonal and private banks unilaterally attempted to set deadlines on the completion of the audits, or to establish budgetary restrictions that would not have allowed the completion of the auditors' work. The Committee consistently adhered to the goal of conducting a thorough, independent investigation so that the question of dormant accounts could be finally resolved.

66. These problems were worked out to the satisfaction of the Committee and almost all Swiss banks without compromising the integrity of the investigation. The issues raised about the scope of the investigation and timing of its completion were addressed by ICEP at its meeting on January 27, 1999 and resulted in the Committee's approval of plans to focus the investigation more precisely and to set firm, but achievable, targets for the completion of the work of the auditors by the middle of 1999. As a result of the measures adopted by the Committee, the overwhelming majority of banks continued to cooperate with the investigation and to assist actively in bringing it to a successful conclusion.

67. While this was the view of an overwhelming majority of banks, including the three largest commercial banks, there remained a residual few private and cantonal banks that have rejected full participation in the investigation at their banks. These banks challenged the investigation on the basis

that they have few dormant accounts and that these few accounts did not justify an intensive, costly, and intrusive investigation. They argued that they did not need a foreign investigation to certify their claimed absence of dormant accounts from the 1933-1945 period. In addition to these arguments about "proportionality," some banks also challenged the fairness and professionalism of the auditors and alleged that the auditors' reports emphasize too many small inconsequential issues and did not put their claimed overall good behavior into proper context.

68. One of these banks, Banque Cantonale de Genève, has not allowed the auditors to carry out any of their mandated functions at this bank.³⁰ Apart from the problems encountered at Bank Cantonale de Genève, two banks, Zuger Kantonalbank and Dreyfus Söhne & Cie, limited the scope of matching and analysis of matches by refusing to allow matching of the last installment of victim names from Yad Vashem and research of any matches from this work. Six cantonal banks, Aargauische, Basler, Graubündner, Schaffhauser, Thurgauer, and Zürcher, limited access to information necessary to analyze accounts in Category 3 (see Annex 3) identified as probably or possibly related to Holocaust victims through matching. This analysis would have focused mainly on filtering this Category for the purpose of determining account names that matched uniquely to names on the victims lists. As noted in the Report (footnote 15), by the conclusion of the investigation, only the refusal by Banque Cantonale de Genève to permit the investigation to go forward at this bank posed a substantial impediment to the accomplishment of the goals of the ICEP investigation.

³⁰ Banque Cantonale de Genève did not allow any audit work beyond the pilot investigation in 1997 and a preliminary Second Phase review to develop a budget for such an investigation.

Identification of Accounts Probably or Possibly Related to Victims of Nazi Persecution

Introduction

1. This Annex provides an overview of the process used to identify accounts probably or possibly related to victims of Nazi persecution. The first three sections describe the steps taken to identify those accounts: building the accounts databases, matching, and researching the matched and other selected accounts. The remaining four sections—categorization of accounts, analysis of accounts, unique name matching, and valuation—analyze the accounts probably or possibly related to victims of Nazi persecution. The investigatory process is described in further detail in Annex 2: The First and Second Phases of the Investigation, while the statistical results are the focus of this Annex.

Relevant Period Bank Liabilities and Building the Accounts Databases

2. At the outset of the investigation, the auditors had to identify, as best they could, how many accounts existed in the Relevant Period (1933-1945) and then identify account data on individual accounts for which records still exist. This section describes the audit firms' initial research on bank liabilities in 1945, the estimated number of accounts in the Relevant Period, and the scope of coverage of the accounts that was achieved by the investigation.

3. **Banks Investigated and Their Total Liabilities in 1945.** The five audit firms conducted

investigations at 59 Swiss banks, which today encompass 254 of the 481 Swiss banks that existed in the Relevant Period and that continue to exist in some form today.¹ The two largest commercial banks—Credit Suisse and UBS AG²—represent 141 of the banks that existed in the Relevant Period. The banks investigated had approximately SFr. 15.7 billion of the SFr. 19.1 billion in estimated total on-balance-sheet liabilities in 1945, or 82 percent of total bank liabilities. The audit firms estimated that SFr. 12.2 billion of the 15.7 billion total liabilities in 1945 were customer-related liabilities, and that the off-balance-sheet customer-related liabilities of these banks were approximately SFr. 20.0 billion in 1945.³

4. **Total Number of Accounts in the Relevant Period.** The auditors estimate that there were approximately 6.8 million on-balance-sheet and off-balance-sheet accounts at these 254 banks in the Relevant Period. Table 1 shows the total estimated number of accounts for large commercial, cantonal, and private banks.

1 The banks investigated are described in Annex 2: Banks Selected for Investigation. The 227 banks that were not investigated were mainly small local institutions engaged in making home mortgages and retail deposit banking with no significant contacts with non-residents of Switzerland. In this Annex, the statistics for BSI-Banca della Svizzera Italiana and Spar + Leihkasse in Bern are included with the cantonal banks and the statistics for Coop Bank are included with the private banks.

2 In 1998, the former Swiss Bank Corporation and the former Union Bank of Switzerland merged to form UBS AG. The two banks making up UBS AG were investigated separately by separate audit firms both before and after the merger.

3 For information on the foreign liabilities of certain Swiss banks, see Appendix R.

Table 1**Estimated Total Number of Accounts in the Relevant Period**

Category of Bank	Estimated Number of Accounts
Large Commercial Banks	2,590,209
Cantonal Banks	3,972,301
Private Banks	295,606
Total	6,858,116

Table 2**Coverage of Accounts**

Estimate of the Number of Accounts in the Relevant Period	6,858,116
Less Estimated Number of Accounts for which No Records Exist	(2,757,950)
Number of Accounts in Accounts Database	4,100,166
Coverage of Accounts	60%

These are accounts that were open throughout the period, as well as accounts that were open for some time during the period but were closed before 1946. The estimated total number of accounts includes both domestic Swiss accounts and accounts of foreigners. ICEP's investigation relates to accounts open or opened in the Relevant Period;⁴ accounts closed before 1933 or opened after 1945 fall outside the scope of the investigation.

5. Coverage of Total Number of Relevant Period Accounts. Databases of accounts were established at the banks investigated.⁵ These "accounts databases" contain approximately 4.1 million on-balance-sheet and off-balance-sheet accounts, or 60 percent of the total estimated 6.8 million accounts in the Relevant Period. The audit firms report that the 4.1 million accounts in the accounts databases have an estimated book value of SFr. 23.1 billion.⁶ The fact that the auditors were able to locate the names of the account holders and other identifying information for 60 percent of the 6.8 million accounts open or opened in the Relevant Period is truly

extraordinary, but still leaves an unfillable gap of almost 3 million accounts that can now never be known or analyzed for their relationship to victims of Nazi persecution.

6. Database Coverage at the Large Commercial Banks, Cantonal Banks, and Private Banks. Table 3 shows the number of accounts in the databases at the large commercial, cantonal, and private

⁴ Consequently, the audit firms were instructed to categorize all accounts identified into one of the following categories: clear evidence that the account was open before 1946, reasonable evidence that the account was open before 1946, other evidence that the account was open before 1946, and no evidence whether or not the account was open in the Relevant Period. See Exhibit A for the definitions of these categories.

⁵ At two banks (Banque Cantonale Neuchâtelaise and Morgue d'Algue & Cie), it was determined that other forensic accounting methodologies should be used to identify relevant accounts because there were insufficient numbers of foreign accounts or records of such accounts to include these accounts in a database. See Guidelines for the ICEP Audit Firms for Completion of the Forensic Accounting Investigation ¶¶ 6, 11, 12 (Feb. 18, 1999), Appendix Q.

⁶ With regards to information concerning the value of accounts, caution is urged because information on value is not available for all accounts and the value dates vary; the book value of an open account is its present value; the book value of a suspended accounts is its value at the time it was put into a suspense account; and the book value of a closed account is the value at the date closest to 1945 for which information on book value is available.

Table 3**Number of Accounts in Accounts Databases**

Category of Bank	Number of Accounts
Large Commercial Banks	1,939,992
Cantonal Banks	1,914,495
Private Banks	245,679
Total	4,100,166

banks. The estimated percentage of the number of accounts from the Relevant Period that were reviewed and included in the accounts databases at all of the banks under investigation is 60 percent. The coverage of accounts at the large commercial banks is as follows: Credit Suisse Group, 77 percent; Swiss Bank Corporation, 78 percent, and Union Bank of Switzerland, 61 percent, while the coverage for the cantonal banks is 48 percent and for the private banks is 83 percent. The differences in the coverage result from the varying degrees of documentation from the Relevant Period that still exist at each bank.

Matching

7. A key methodology in the investigation was the matching of the names of account holders in the accounts databases against names of victims of Nazi persecution. The first step in the matching process was to exclude accounts that were not relevant, and this is described in this first part of this section. The paragraphs thereafter describe the matching process and the results of matching.

8. **Accounts Excluded from the Accounts Databases.** The first step in the matching process was to refine the databases to exclude accounts that could have no probable or possible relationship to victims of Nazi persecution. While the accounts databases contain approximately 4.1 million accounts, domestic Swiss accounts⁷ and small savings accounts were excluded from the accounts databases

for the purpose of matching and research because domestic accounts were not relevant and because savings accounts were determined through research and testing to be almost exclusively domestic. These exclusions enabled the auditors to focus the investigation on foreign accounts that were plausibly related to victims of Nazi persecution.⁸ Consequently, as shown in Table 4, 1,065,630 domestic Swiss accounts and 784,791 small savings accounts were excluded from the accounts databases for the purposes of matching and research.⁹

9. **Number of Accounts Subject to Matching.** The total of 2.25 million accounts in the accounts databases were consequently subject to matching. These accounts are open, suspended, closed, or are undefined as indicated in Table 5.

7 The audit firms' determination as to whether an account was a domestic Swiss account or a foreign account was guided by the definition of foreign accounts contained in the Guidelines of February 17, 1999. See Exhibit B, *infra*, and Appendix Q. The definition of foreign accounts set forth in the Guidelines was intentionally broad, so that all possible accounts of victims of Nazi persecution could be identified. For example, if the account holder used the address of a Swiss hotel, then such account would be deemed foreign, rather than Swiss. An account was considered to be Swiss if it had a detailed Swiss address of a permanent character.

8 See ICEP Decisions Memorandum (January 27, 1999), Appendix P.

9 One approach to identifying probable or possible accounts of victims of Nazi persecution was to match the accounts databases to two lists of persons who sought refuge in Switzerland, especially a list from the Swiss Federal Archives containing 84,967 names of refugees. At all of the banks investigated, 74,824 accounts matched to the refugee lists. Of these matched accounts, surviving bank records indicate that most of these accounts were paid to the account holders or their heirs or to the Swiss Government, and they were excluded from matching and research. On the other hand, 8,727 accounts were determined to have a probable or possible relationship to victims of Nazi persecution, based in part on the results of a comparison of the Swiss refugee lists to the victims lists.

Table 4**Accounts Excluded from the Accounts Databases**

	Number of Accounts
Accounts in Accounts Database	4,100,166
Less Domestic Accounts (those with permanent Swiss Addresses)	(1,065,630)
Less Savings Accounts	(784,791)
Total Accounts Remaining after Exclusion of Domestic Accounts	2,249,745

Table 5**Accounts Subject to Matching by Account Status**

Status	Number of Accounts
Open Accounts	50,381
Suspended Accounts	56,167
Closed Accounts	1,582,262
Undefined Account Status	560,935
Total	2,249,745

The last category—“Undefined Account Status”—consists of those accounts that could not be categorized because information on the status of the account was not accessible, the records that would provide such information no longer exist, or the accounts were not matched or researched.

10. Exact and Near-Exact Matching. ICEP obtained copies of third-party databases containing the names of approximately 5.5 million names of victims of Nazi persecution.¹⁰ The audit firms then compared the accounts databases to the databases containing the names of victims of Nazi persecution and claimants using a computer program. The computer program, which used exact-name and near-exact name matching algorithms, compared the names of the account holders to the names of victims and claimants, and identified exact name and near-exact name matches. Exact name matches were those where the first name (or initial) and last name

of the account holder appeared exactly as the name of a victim in a database. Near-exact name matching involved matching vowel equivalents for a, e, i, o, and u, as well as matching for double consonants, thus allowing for certain variations in spelling to be accounted for as exact name matches. Matching for vowel equivalents (a for ä or ae; e for é or è; i for y, ey, or ii; o for oe or ö; and u for ü or ue) was necessary because the recording of vowels in the accounts databases and victims and claimants databases was not standardized; moreover, matching for double consonant equivalencies (for example, l for ll or n for nn) was also necessary to avoid overlooking obvious misspellings of the same person’s name. A broader array of consonant equivalents was not used because such expansion would be equivalent to phonetic matching, which was rejected for the reasons explained below.

¹⁰ See Annex 3: The First and Second Phases of the Investigation, paragraph 23, for information on the development of these databases.

Table 6

Results of Matching

Number of Accounts Subject to Matching	2,249,745
Less Number of Accounts Not Matched	(1,969,588)
Number of Accounts Matched	280,157
Less Number of Matched Accounts Disconfirmed	(3,252)
Number of Matched Accounts Subject to Research	276,905

11. Phonetic Matching. The audit firms extensively tested the use of phonetic or “fuzzy” name matching. This methodology uses a phonetic algorithm that matches names that sound alike but are spelled differently. For example, consonant equivalencies—ph for f or ck for c or dt for t—are used to identify names spelled differently. Phonetic matching resulted in a very large number of matches—generally, seven times the number of exact name matches. Testing revealed that phonetic matching produced many “false” matches (matches that on investigation and review prove to be false because either the name is not truly a match or the match is clearly not the same person). Researching of these false matches would have been a very inefficient and expensive use of scarce resources and would have greatly extended the time required to complete the ICEP investigation without holding out the prospect of materially improving the quality of the results. Consequently, only exact and near-exact name matching were employed. However, in the absence of phonetic matching, other methods were used to analyze the accounts in the accounts databases that did not match.¹¹

12. Overall Results of Matching. By comparing databases containing approximately 5.5 million names of victims and claimants to the 2.25 million accounts in the accounts databases subject to matching, the auditors identified 280,157 matched accounts. The overall match rate was 12 percent. Table 6 above quantifies the initial results of matching.

The audit firms reviewed the 280,157 matched accounts to identify any accounts that should not be researched because the match was not probable, and they disqualified 3,252 accounts where all name matches met one of the following four disqualifying factors:

- the account holder and the victim had different middle names,
- the difference between the date of birth of the account holder and victim was more than ten years,
- the date of deportation, convoy date, or date of death of the victim was before the account opening date, or
- the ages of the account holder and the victim were inconsistent with their status (for example, the account holder information stated a title such as “Dr.,” whereas the victim information indicated that the victim was a child).

In many cases, a number of victim or claimant names matched to the name or names on an account, but this did not increase the number of accounts to be researched because the auditors researched matched accounts **not** victims. If the matched accounts were not disqualified, then they were researched. As a result of the review of the 280,157 matched accounts, 3,252 accounts were not carried forward to the research stage.

¹¹ See, *infra*, paragraph 15.

Researching Matched Accounts and Other Selected Accounts

13. After matching was completed, the accounts had to be researched to determine their characteristics and whether they were accounts probably or possibly related to victims of Nazi persecution. This section first describes the number and types of accounts researched, and then covers the results of the research, including a description of accounts with and without probable or possible relationships to victims of Nazi persecution.

14. Number of Matched Accounts Researched. After subtracting the 3,252 disqualified accounts from the gross number of matched accounts (280,157), the total number of matched accounts subject to research was 276,905 accounts. The number of matched accounts subject to research by category of bank is shown in Table 7.

15. Additional Accounts Selected for Research. In addition to the 276,905 matched accounts, the audit firms selected an additional 76,491 unmatched accounts from the accounts databases to be researched. These accounts were selected by the audit firms because the circumstances of their opening and of their subsequent disposition indicated a probable or possible relationship to victims of Nazi persecution. For some accounts, bank records indicated evidence of persecution of an account holder, such as a concentration camp address or a notation that the account holder had died in a concentration camp. The number of unmatched accounts selected for research by category of bank is shown in Table 8. The number of unmatched accounts selected for research at each of the large commercial banks is: 21,492 at Credit Suisse Group, 21,064 at Swiss Bank Corporation, and 9,882 at Union Bank of Switzerland. A large number of unmatched accounts were also selected for research

Table 7

Number of Matched Accounts Subject to Research by Category of Bank

Category of Bank	Number of Accounts
Large Commercial Banks	198,314
Cantonal Banks	63,370
Private Banks	15,221
Total	276,905

Table 8

Number of Unmatched Accounts Selected for Research by Category of Bank

Category of Bank	Number of Accounts
Large Commercial Banks	52,438
Cantonal Banks	22,434
Private Banks	1,619
Total	76,491

Table 9**Number of Unmatched Accounts Researched by Status of Account**

Status of Account	Number of Accounts
Open Accounts	14,977
Suspended Accounts	26,925
Closed Accounts	34,589

Table 10**Total Accounts Researched**

Total Accounts Researched	353,396
Matched Accounts	276,905
Selected Accounts	76,491

at a few cantonal banks—Banque Cantonale Vaudoise (5,639); Graubündner Kantonalbank (3,723) accounts; and Zürcher Kantonalbank (2,685). The audit firms researched all 76,491 of these unmatched accounts. These accounts fall into the following categories:

16. Total Number of Accounts Researched.

The audit firms researched a total of 353,396 accounts, including 276,905 matched accounts and 76,491 unmatched accounts selected for research as recorded in Table 10. These accounts represent 16 percent of the 2.25 million accounts in the accounts databases that were subject to matching.

17. Information Required. For these 353,396 accounts, the audit firms were instructed to identify, to the extent possible, the following five types of information:

- whether the account was open or opened in the Relevant Period;
- whether the account was active or dormant after 1945;¹²
- whether each account holder was Swiss or foreign;

- the value of the account;¹³ and
- the “ultimate disposition” of the account—
 - open,
 - suspended,
 - paid to an authorized party as evidenced by an authorized party,
 - paid to an authorized party as evidenced by the bank,
 - closed to profits,
 - closed by the deduction of fees,
 - prescribed (that is, paid to the relevant Swiss canton),
 - paid to Nazi authorities,
 - paid to the Hungarian/Polish fund, or
 - closed unknown by whom.¹⁴

12 The auditors categorized all accounts as: (a) active after 1945 as evidenced by an authorized party; (b) active after 1945 as evidenced by the bank; (c) inactive after 1945; (d) inactive for some period after 1945 (e.g., records show there was no activity on the account from 1946 to 1956 but no other records relating to activity exist); (e) unknown whether active or inactive; or (f) closed before 1946.

13 The book value recorded for an open account is its present value; the book value recorded for a suspended account is its value at the time it was put into a suspense account; and the book value recorded for a closed account is its value on the date closest to 1945. Therefore, caution is urged with respect to any summations of the book values of accounts as well as estimated values.

14 An account that is closed unknown by whom is an account for which bank records no longer survive that identify who received the proceeds of the account at the time it was closed.

Table 11**Disposition of Researched Accounts - Summary**

	Number of Accounts
Total Accounts Researched	353,396
Accounts with No Probable or Possible Relationship to Victims	299,510
Accounts with a Probable or Possible Relationship to Victims	53,886

Table 12**Accounts Researched and Analyzed with No Identifiable Relationship to Victims**

	Number of Accounts
Total Accounts with No Identifiable Relationship to Victims	299,510
Accounts Determined to be Domestic Through Research	117,898
Accounts With No Reasonable Evidence of Being Open in Relevant Period ¹⁵	60,090
Accounts Closed to an Authorized Party	16,036
Accounts with Account Holder Activity After 1945 ¹⁶	26,283
Ultimate Disposition Unknown Accounts ¹⁷	56,823
Unmatched Accounts with Allied/Neutral Residence, Accounts Paid to the Swiss Government, and Accounts Paid to the Hungarian/Poland Fund ¹⁸	3,017
Accounts Published Internationally as a Result of the 1997 Survey and Other Surveys	6,723
Accounts Closed Before Axis Occupation of Residence of Account Holder	12,640

18. Accounts with No Probable or Possible Relationship to Victims of Nazi Persecution. As a result of their research of the 353,396 accounts, the audit firms identified 299,510 accounts with no probable or possible relationship to victims of Nazi persecution, and 53,886 accounts with such a relationship to victims of Nazi persecution. The 299,510 accounts were determined to have no probable or possible relationship to victims of Nazi persecution because, among other things, there were not open in the Relevant Period, they were determined to be domestic accounts as a result of further research, there was evidence of account holder activity after 1945, or other factors. Table 12 provides a listing of all of the factors for this determination and the number of accounts falling into these categories. As previously noted, domestic accounts and accounts

that were not open in the Relevant Period are not relevant to the ICEP investigation. Although 1,065,630 domestic accounts were excluded from the databases (see Table 4) in the initial filtering of these databases, further research of the 353,396 matched and other selected accounts indicated that of these accounts an additional 117,898 had evidence of being domestic Swiss accounts. Similarly, the 16,036 accounts that were closed to authorized parties (e.g., an account holder or heir of an account holder) and the 26,283 accounts that had account

¹⁵ See paragraph 4 at footnote 4 and Exhibit A.

¹⁶ See footnote 12.

¹⁷ These accounts were not matched or they did not have a residence in an Axis or Axis-occupied countries. Ultimate Disposition Unknown Accounts having either of these characteristics are contained in Categories 1, 2, and 3.

¹⁸ This line also includes 2,997 other matched accounts closed before 1946 with residence outside of Axis and Axis-occupied countries.

holder activity after 1945 (i.e., the account holder survived the war and accessed the account) are not relevant. Moreover, the 56,823 accounts for which there was no match and for which there was no record of the disposition of the account or the residence of the account holder was determined not to be relevant, were excluded because these characteristics weakened the strength of a probable or possible relationship of these accounts to victims of Nazi persecution. In addition, the 6,723 accounts that were published internationally as part of the 1997 Survey and other surveys,¹⁹ as well as 3,017 accounts for which the account holders' residence was in an Allied or neutral country, that were paid to the Hungarian/Polish fund, or to the Swiss Government, were not analyzed further. The final grouping—the 12,640 accounts closed before Axis occupation of the country of the account holder—is described in the following paragraph.

19. Accounts Closed Before Axis Occupation of the Country of the Account Holder. The 12,640 accounts that were closed before Axis occupation of the residence of the account holder were analyzed by year of closure and the country of residence of the account holder. Excluded from further review were those accounts closed before 1933 for Germany, before 1938 for Austria, before 1939 for Poland and Romania, and before 1940 for France.

Categorization of Accounts Probably or Possibly Related to Victims of Nazi Persecution

20. For the purpose of preparing the accounts with probable or possible relationships to victims of Nazi persecution for analysis by ICEP, the auditors categorized the accounts identified in the research process on a sliding scale from a high degree of probability to a reasonable possibility of having a relationship to victims of Nazi persecution. This section describes each of the categories and the number of accounts in them.

21. Categorization of Accounts. The 53,886 accounts with a probable or possible relationship to

victims of Nazi persecution were separated into four Categories—Category 1 (3,191), Category 2 (7,280), Category 3 (30,692), and Category 4 (12,723). The four categories accounts are described below, and Table 13 is an overview of the Categories. Detailed definitions of each Category are set forth in Exhibit C.

22. Category 1. There are 3,191 accounts in Category 1. Accounts in Category 1 are foreign accounts: that are an exact or near-exact name match to victims of Nazi persecution; that were open or opened in the Relevant Period (or for which there is reasonable evidence that they were open or opened in the Relevant Period); and that were inactive post 1945. These accounts were not disqualified by the disqualifying factors or previously reported to ATAG and published. Finally, they fall into one of the following “ultimate disposition” categories—open and dormant, suspended, closed to profit, closed and paid to Nazi authorities, closed as a result of fees and charges diminishing the account to zero, or closed, unknown by whom.

23. Category 2. There are 7,280 accounts in Category 2. Accounts in this category are unmatched accounts of account holders resident during the Relevant Period in an Axis or Axis-occupied country: that were open or opened in the Relevant Period (or for which there is reasonable evidence that they were open or opened in the Relevant Period); that were inactive post 1945; and that were identified by the banks holding the accounts as those of victims of Nazi persecution or that were inactive for at least ten years after the war. These accounts were not previously reported to ATAG and published. Finally, they fall into one of the following “ultimate disposition” categories—open and dormant, suspended, closed to profit, closed and paid to Nazi authorities, closed as a result of fees and charges diminishing the account to zero, or closed, unknown by whom. Other accounts that do not meet the residence requirements for this Category, but

¹⁹ See Annex 5: Treatment of Dormant Accounts of Victims of Nazi Persecution, paragraphs 50 to 57.

otherwise fall within the scope of Category 2 if they have certain special characteristics described below, are included in this Category.

24. Special Factors Accounts in Category 2.

There are 1,969 “special factors” accounts in Category 2. “Special factors” accounts are included in Category 2 because they meet all of the criteria except for residence in an Axis or Axis-occupied country but also have “special factors” indicating that the account holders were resident in an Axis or Axis-

occupied country or were otherwise to be considered as victims of Nazi persecution. These are 1,969 accounts that were held in the companies created for the purpose of holding the dormant accounts of victims of Nazi persecution, thus creating a reasonable basis for concluding that these accounts were probably or possibly related to victims. These accounts were included in a suspense account or list of accounts from the 1940s and 1950s, which meet at least one of the following criteria. Some of the accounts within the suspense account or list of

Table 13	
Overview of Categories of Accounts	
Characteristics of Each Category	
<p>Category 1</p> <ul style="list-style-type: none"> • Matched Foreign Accounts • Open in Relevant Period • Some with Evidence of Persecution • Dormant, Suspended, or Closed to Profit, Closed by Fees, Closed and Paid to Nazi Authorities, or Accounts Closed Unknown by Whom • Evidence of Inactivity after WWII 	<p>Category 2</p> <ul style="list-style-type: none"> • Unmatched Foreign Accounts • Open in Relevant Period • Residence: Axis or Axis-Occupied Country • Some with Evidence of Persecution or Inactivity • Open and Dormant, Suspended, or Closed to Profit, Closed by Fees, Closed and Paid to Nazi Authorities, or Accounts Closed Unknown by Whom • Ten years of Dormancy After WWII
<p>Category 3</p> <ul style="list-style-type: none"> • Matched Foreign Accounts • Open in Relevant Period • Residence: Axis or Axis-Occupied Country • Closed, Unknown by Whom • Absence of Evidence of Inactivity 	<p>Category 4</p> <ul style="list-style-type: none"> • Mainly Foreign Accounts, Unmatched, and Specific Country of Residence Unknown • Open in Relevant Period • Some with Evidence of Persecution or Inactivity • Open and Dormant, Suspended, or Closed to Profit, Closed by Fees, Closed and Paid to Nazi Authorities, or Accounts Closed Unknown by Whom

accounts have been matched to the database of the 1945 freeze of German assets. Some of the accounts within the suspense account or list of accounts were selected for the 1962 Survey of victims funds, or the suspense account or list of accounts was described in a bank document as a home for heirless Jewish assets. Finally, the suspense account or list of accounts include numbered accounts, which were more likely to be of foreign origin, or the suspense account or list of accounts appears to include predominantly foreign accounts.

25. Category 3. There are 30,692 accounts in Category 3. Accounts in Category 3 are accounts of account holders resident during the Relevant Period in an Axis or Axis-occupied country and that were open or opened in the Relevant Period (or for which there is reasonable evidence that they were opened in the Relevant Period). The accounts are an exact or near-exact name match to a victim of Nazi persecution and have not been disqualified by the disqualifying factors. They have not previously been reported to ATAG and published. All of these accounts are closed, unknown by whom, and it is unknown whether the account was active or inactive post 1945 because sufficient documentation with respect to these accounts no longer exists.²⁰

26. Category 4. There are 12,723 accounts in Category 4. Accounts in Category 4 are unmatched accounts that were open or opened in the Relevant Period (or for which there is reasonable evidence that they were open or opened in the Relevant Period) and that were inactive post 1945. The residence of the account holders is unknown, and none of the accounts were reported to ATAG and published. These accounts fall into one of the following “ultimate disposition” categories—open and dormant, suspended, closed to profit, closed and paid to Nazi authorities, closed as a result of fees and charges diminishing the account to zero, or closed, unknown by whom. Of these accounts, 8,437 accounts are suspended unknown and small savings type accounts and come from Swiss Volksbank (now a part of Credit Suisse Group) and Banque Cantonale

Neuchâteloise. Although these banks had a predominantly domestic retail business during the Relevant Period, they also had many contacts with foreigners. All the accounts in this Category were considered as having a sufficiently possible relationship to victims to warrant their inclusion.

Analysis of Accounts in Categories 1 to 4

27. In this section, the accounts in Categories 1 to 4 are analyzed first by ultimate disposition (Tables 14 and 15), and then by the country of residence of the account holder (Table 16) and by account type (Table 17).

28. Accounts by Ultimate Disposition Category. Table 14 shows the ultimate disposition of the accounts in Categories 1 to 4. The greatest number of accounts fall into the category closed unknown by whom (36,258), while the second largest number are suspense accounts (12,180). Table 15 provides further information on these categories by ultimate disposition and by type of bank. The three large commercial banks have the largest number of Category 1 to 4 accounts—42,575, the cantonal banks fall in the middle with 4,784 accounts, and the private banks have the least—699.

29. Table 16 analyzes the number of accounts in each category by country of residence of the account holder. The largest number of accounts with accounts holders from one country come from Germany—14,033, then France—8,812, and Austria—5,926. Bank records identifying the account holder’s residence do not exist for 13,871 accounts.

30. Table 17 analyzes the Category 1 to 4 accounts by account type. Bank records identifying the account type do not exist for approximately half of accounts—25,775. However, the greatest number of accounts are demand deposits—15,027, followed by custody accounts—5,659, and savings/passbook accounts—5,308.

²⁰ For unique name matches of accounts in this category, see paragraphs 31 to 35 and Table 18.

Table 14**Category 1 to 4 Accounts by Ultimate Disposition Categories: Number of Accounts**

	Category 1	Category 2	Category 3	Category 4	Total
TOTAL ALL TYPES	3,191	7,280	30,692	12,723	53,886
Total Open and Dormant	196	509	0	2,021	2,726
Total Suspended	1,088	1,184	0	9,908	12,180
Total Closed	1,907	5,587	30,692	794	38,980
Closed to Profit	195	551	0	237	983
Closed by Fees	228	916	0	178	1,322
Paid to Nazis	199	214	0	4	417
Closed, Unknown					
By Whom	1,285	3,906	30,692	375	36,258

Unique Name Matching

31. In order to better understand the 31,977 matched accounts that were closed unknown by whom, at the end of their work, the auditors did additional analysis of these accounts. As previously noted, an account that is closed unknown by whom is an account for which the date of closing is known or unknown and for which bank records no longer exist that show who received the proceeds of the account. This section describes the process used to identify unique name matches and the results of this work. Table 18, *infra*, presents the statistical details.

32. Unique Name Matching Tests. Three audit firms that had identified almost all the closed unknown by whom accounts in Category 3 selected those matched accounts that had special characteristics that could indicate a higher probability of these accounts having a probable or possible relationship to victims of Nazi persecution.²¹ First, as shown on Table 18, the audit firms identified 663 accounts closed unknown by whom in Category 1 and 5,776 accounts closed unknown by whom in Category 3 for which only *one* name of the 5.5 million victims

and claimants names in third party databases matched to *one* name of an account holder in the accounts databases. These matches were labeled “Accounts with a Frequency of Two” because two names matched uniquely. Because of the large quantity of names in both the victims and accounts databases, there is a high probability that these “unique name matches” relate to the accounts of identified victims of Nazi persecution. Moreover, 212 of the Category 1 unique name matched accounts and 2,803 of the Category 3 unique name matched accounts also had an additional confirming factor that the match was accurate. The additional confirming factors are as follows: the street addresses match; the birth dates match;²² all account holders match to a victim list or lists; combined surnames match; middle names match; cities match; and countries match. The number of accounts with “frequency two” name matches and no confirming factors is 451 for Category 1 and 2,973 for Category 3.

²¹ Zürcher Kantonalbank did not allow these tests to be performed at all. See Annex 3, Part E.

²² “Birth dates match (reasonable)” was used for those matches where the month and the day of the month were possibly swapped. This category was used to account for differences that could have resulted from the use of either the U.S. (month first, then day) or European style (day first, then month) of noting a date numerically.

	Large Commercial Banks	Cantonal Banks	Private Banks	Total
Category 1	2,852	228	111	3,191
Open & Dormant	172	10	14	196
Suspended	906	139	43	1,088
Closed	1,774	79	54	1,907
<i>Closed to Profit</i>	193	0	2	195
<i>Closed by Fees</i>	207	10	11	228
<i>Paid to Nazis</i>	161	26	12	199
<i>Closed, Unknown By Whom</i>	1,213	43	29	1,285
Category 2	6,946	286	48	7,280
Open & Dormant	430	67	12	509
Suspended	1,050	130	4	1,184
Closed	5,466	89	32	5,587
<i>Closed to Profit</i>	549	0	2	551
<i>Closed by Fees</i>	894	3	19	916
<i>Paid to Nazis</i>	167	47	0	214
<i>Closed, Unknown By Whom</i>	3,856	39	11	3,906
Category 3: Closed Unknown	28,974	1,299	419	30,692
Category 4	9,594	3,008	121	12,723
Open & Dormant	45	1,933	43	2,021
Suspended	8,813	1,064	31	9,908
Closed	736	11	47	794
<i>Closed to Profit</i>	235	0	2	237
<i>Closed by Fees</i>	154	0	24	178
<i>Paid to Nazis</i>	4	0	0	4
<i>Closed, Unknown By Whom</i>	343	11	21	375

Table 16**Category 1 to 4 Accounts by Residence: Number of Accounts**

	Category 1	Category 2	Category 3	Category 4	Total
TOTAL	3,191	7,280	30,692	12,723	53,886
Germany	380	845	12,808	0	14,033
France	589	2,527	5,695	1	8,812
Austria	339	289	5,297	1	5,926
Romania	48	181	485	15	729
Poland	46	138	718	0	902
Other Axis or Axis-Occupied Country	228	918	5,185	15	6,346
Deemed Foreign	208	91	8	726	1,033
Other Country	40	126	6	1	173
Allied	80	0	7	0	87
Domicile Unknown	1,228	196	483	11,964	13,871
“Special Factors” Accounts	5	1,969	0	0	1,974

33. Second, the audit firms identified 411 accounts closed unknown by whom in Category 1 and 4,283 accounts closed unknown by whom in Category 3 for which only *one* name in the victims databases matched to *two* names of account holders in the accounts databases, or vice versa, i.e. *two* victims names match *one* account holder’s name. These matches were labeled as “Accounts with a Frequency of Three.” Again, because of the large quantity of names in both the victims and accounts databases, for these “frequency three” accounts as well, there is a high probability that at least one of the two matches are those of victims of Nazi persecution. Moreover, 142 of these Category 1 unique name matched accounts and 2,138 of these Category 3 unique matched accounts also had an additional confirming factor. The number of accounts with two unique name matches and no confirming factors is 269 for Category 1 and 2,145 for Category 3.

34. Third, the audit firms identified 232 accounts closed unknown by whom in Category 1 and 4,657 accounts closed unknown by whom in Category 3 for which only *one* name in the victims databases matched to *three* or more names of account holders in the accounts databases, or vice versa, i.e. *three* or more victims names match *one* account holder’s name. These matches are called as “Accounts with a Frequency Greater than Three.” For this test, however, in order to strengthen the probability of a relationship to victims of Nazi persecution, only those accounts with the confirming factors were included.

35. In total, in Category 1, there were 1,306 of these high quality matches. In Category 3, there were 14,716 of these high quality matches. Some of these probable or possible relationship accounts with unique, almost unique, and confirming factors matches were closed after Axis occupation of the

Table 17**Category 1 to 4 Accounts by Account Type: Number of Accounts**

	Category 1	Category 2	Category 3	Category 4	Total
TOTAL	3,191	7,280	30,692	12,723	53,886
Demand Deposits	772	2,326	10,726	1,203	15,027
Savings/Passbook Accounts	457	1,451	572	2,828	5,308
Custody Accounts	469	880	4,241	69	5,659
Safe Deposit Boxes	118	142	916	64	1,240
Other Accounts	35	77	265	500	877
Unknown Account Type	1,340	2,404	13,972	8,059	25,775

country of residence of the account holder but before the end of the war, making it unlikely that they received the benefit of their accounts.

Significance of Residence in an Axis or Axis-Occupied Country

36. One criterion used in determining the probability or possibility that an account belongs to a victim of Nazi persecution was evidence of residence in an Axis or Axis-occupied country. As shown in Table 19, the combined military and civilian casualties in continental European countries is much larger than the casualties in the Jewish populations of these countries. However, Jewish deaths relative to the total Jewish population were between 6 to 149 times higher than for the death rate in the non-Jewish populations in these countries (Table 21). While some may suggest that the accounts identified by the ICEP investigation are largely accounts of the casualties of war rather than accounts of Holocaust victims, the question remains whether these victims are significantly represented among those who had Swiss bank accounts that were left unclaimed after the War. In making the judgment to include dormant accounts of those that had residences in Axis and Axis-occupied countries, con-

sideration was given to the likelihood, among other factors, that non-Jewish military personnel and civilians were more likely to have been survived by family members who could claim their accounts, whereas whole families were killed in the Holocaust (as evidenced, in particular, by the fact that a much larger proportion of the Jewish populations in Europe were killed than the general population). And those Jewish family members that did survive were often left without the personal records identifying such accounts or, in some cases, knowledge of them.

Valuation of Accounts with a Probable or Possible Relationship to Victims of Nazi Persecution

37. As part of researching the accounts with a probable or possible relationship to victims of Nazi persecution, the auditors recorded information concerning the book values of these accounts. This section summarizes the results of this research and estimates the book values of those categories for which sufficient value information was available to prepare such estimates.

38. Book value information was not available for all 53,886 accounts identified. In Category 1,

70 percent of the accounts had known values; in Category 2, 80 percent of the accounts had known values; and in Category 4, 98 percent of the accounts had known values. However, for Category 3, the largest Category of accounts, the number of accounts with known values—only 11 percent—was clearly insufficient to make a meaningful estimate of the value of that whole category of accounts. The total estimated book value for all accounts in Categories 1 and 2 is SFr. 31.5 million, and the estimated value of Category 4 is SFr. 4.2 million. Table 20 shows the number and book value of accounts in all Categories, as well as the estimated book value of Categories 1, 2, and 4.

39. These raw account valuations reported in Table 20 can be misleading in several respects. They are not available for a common date. To varying degrees, they have been diminished by fees over time or, in some cases, increased by interest payments. In no case do they reflect current fair market values.

40. Fully conscious of the difficulties and the inherent range of uncertainty in such estimates, the Committee considered various approaches to approximating such fair current values for accounts due victims. The range of uncertainty in any such approximation is reduced for those categories carrying the strongest probability of a victim relationship and the greater proportion of known account values. For Categories 1 and 2, which carry the highest probability, some 77 percent of account values are known.

41. In accordance with the recommendation set out in Part II of the Report, for the Category 1 and 2 accounts with known account values, estimates were made of those values for 1945 by adding back bank fees and subtracting interest payments before the known valuation date. Those values were averaged and projected over all the accounts in those Categories. The 1945 values were then multiplied by 10, corresponding to long-term Swiss interest rates over that period. The total fair current value of Category

1 and 2 accounts so calculated would be SFr. 411 million using the mean value of known account values, or less if the median value (SFr. 271 million) is used. Because some of these accounts will not, in fact, be resolved in favor of claimants, these estimates are highly likely to be larger than amounts actually due and awarded to victims.

42. For Category 3 accounts, the projections are substantially more uncertain. Relatively few of those accounts (11 percent) have known values. A large portion of the funds are clustered in relatively few custody accounts. These and all Category 3 accounts have been closed for reasons unknown, adding a further element of uncertainty as to the proper valuation. For those reasons, the Committee felt no reliable projection of current values properly due victims for Category 3 was feasible.²³ For Category 4, for which most account values are known, the probability of a relationship to a victim is appreciably less, and the average size of the accounts is relatively small.

43. As indicated earlier, the investigation was not and could not be complete in the sense of reconstructing all accounts in Swiss banks in 1945. Had that been possible, additional victim accounts would be identified, and some victim accounts may have been missing among the 4.1 million identified accounts. In reviewing and balancing all these considerations, the Committee believes that claims of victims can be met within the amount specified in the agreed class action settlement now being considered in U.S. District Court, with funds from that settlement available for distribution to others covered by the settlement.

²³ Some members point out that by a mechanical projection of the average values for Categories 1 and 2 over the larger number of Category 3 accounts, a present value ranging between SFr. 827 million and SFr. 1.9 billion could be calculated depending upon use of median or mean values. Given the significantly greater uncertainty attached to Category 3 accounts in the light of their closed account character, that range of values for this Category would in all likelihood very substantially exceed awards to victims ultimately determined in a claims resolution process.

Table 18**Category 1 and 3: Accounts Closed Unknown by Whom: Results of Unique Name Matching**

	Number of Accounts		
	Category 1	Category 3	Total
Accounts with Frequency of Two			
Accounts with Confirming Factors			
Street Addresses Match	2	6	8
Birth Dates Match (D/M/Y)	1	3	4
Birth Dates Match (Reasonable)	1	1	2
All Account Owners Match To Same Victim List	44	396	440
Combined Surnames Match	14	57	71
Middle Names Match	1	15	16
All Account Owners Match to Different Victim Lists	8	272	280
Cities Match	42	667	709
Countries Match	99	1,386	1,485
Subtotal	212	2,803	3,015
Accounts with no confirming factors	451	2,973	3,424
Total Accounts with Frequency of Two	663	5,776	6,439
Accounts with Frequency of Three			
Accounts with Confirming Factors			
Street Addresses Match	1	10	11
Birth Dates Match (D/M/Y)	0	1	1
Birth Dates Match (Reasonable)	5	0	5
All Account Owners Match To Same Victim List	28	387	415
Combined Surnames Match	4	33	37
Middle Names Match	1	2	3
All Account Owners Match to Different Victim Lists	23	220	243
Cities Match	18	554	572
Countries Match	62	931	993
Subtotal	142	2,138	2,280
Accounts with no confirming factors	269	2,145	2,414
Total Accounts with Frequency of Three	411	4,283	4,694
Accounts with Frequency Greater Than Three			
Accounts with Confirming Factors			
Street Addresses Match	0	0	0
Birth Dates Match (D/M/Y)	1	1	2
Birth Dates Match (Reasonable)	0	0	0
All Account Owners Match To Same Victim List	120	1,493	1,613
Combined Surnames Match	12	6	18
Middle Names Match	3	18	21
All Account Owners Match to Different Victim Lists	17	262	279
Cities Match	28	1,026	1,054
Countries Match	51	1,851	1,902
Total Accounts with Frequency Greater Than Three	232	4,657	4,889
Total Accounts with Possible Identity Matches	1,306	14,716	16,022

Table 19
Casualties and Victims of World War II for Axis and Axis Occupied Countries²⁴

Country	Total Population (millions)	Military Casualties	Civilian Casualties	All Casualties	Percentage of Population Killed	Jewish Population	Jewish Victims	Percentage of Jewish Population Killed
Germany	78.0	4,000,000	500,000	4,500,000 ²⁵	5.8	185,000	141,500	76.5
Austria	7.5	230,000	104,000	334,000	4.5	185,000	65,459	35.4
Luxembourg	0.36	4,000	1,000	5,000	1.4	3,500	1,200	34.3
France	53.3	250,000	350,000	600,000	1.1	350,000	76,134	21.8
Belgium	9.8	12,000	76,000	88,000	0.9	65,700	28,518	43.4
Netherlands	14.0	12,000	198,000	210,000	1.5	140,000	102,000	72.9
Denmark	5.1	400	1,000	1,400	0.03	7,800	116	1.5
Norway	4.0	6,000	4,000	10,000	0.3	1,700	758	44.6
Italy	57.0	330,000	80,000	410,000	0.7	44,500	6,513	14.6
Greece	9.7	20,000	140,000	160,000	1.6	66,380	59,185	89.2
Bulgaria	8.8	10,000	10,000	20,000	0.2	61,000	11,393 ²⁶	18.7
Yugoslavia	22.3	300,000	1,400,000	1,700,000	7.6	78,000	65,000	83.3
Hungary	10.7	140,000	280,000	420,000	3.9	825,000	550,000 ²⁶	66.7
Czechoslovakia	10.3	150,000	215,000	365,000	3.5	207,260	143,000	69.0
Romania	22.3	200,000	260,000	460,000	2.1	609,000	211,214	34.7
Poland	35.4	100,000	4,200,000	4,300,000	12.1	3,300,000	2,700,000	81.8
Soviet Union	264.5	13,600,000	7,000,000	20,600,000	7.8	3,020,000	2,100,000	69.5
Total	613.06	19,364,400	14,819,000	34,183,400	5.6	9,149,840	6,261,990 ²⁷	68.4

²⁴ Carola Stern et al., *2 Lexikon zur Geschichte und Politik im 20. Jahrhundert*, (Verlag Kiepenheuer & Witsch, Cologne 1971); Kurt Zentner, *Illustrierte Geschichte des Weltkriegs* (Südwest Verlag, Munich, 9th ed. 1975); Wolfgang Benz (publisher), *Dimension des Völkermords. Die Zahl der jüdischen Opfer des Nationalsozialismus* (Quellen und Darstellungen zur Zeitgeschichte, published by the Institut für Zeitgeschichte, Vol. 3, Oldenburg Verlag, Munich 1991).

²⁵ Without victims of expulsions.

²⁶ Including victims in regions annexed during 1940/41.

²⁷ According to Benz, *supra*, the total number of Jewish victims ranges between 5.29 million and slightly above 6 million.

Table 20
Category 1 to 4 Accounts: Book Value Analysis

	Number of Accounts	Number of Accounts with Value	% with Value	Known Book Value of Accounts with Value (SFr.)	Average Book Value per Account	Estimated Book Value for All Accounts* (SFr.)
Total Category 1 & 2	10,471	8,077	77%	24,333,129	3,013	31,549,123
Category 1	3,191	2,237	70%	6,772,339	3,027	9,659,157
Open and Dormant	196	189	96%	1,172,430	6,203	1,215,788
Suspended	1,088	1,059	97%	438,454	414	450,432
Closed	1,907	989	52%	5,161,455	5,219	9,952,633
Category 2	7,280	5,840	80%	17,564,790	3,008	21,898,240
Open and Dormant	509	504	99%	2,846,137	5,647	2,874,323
Suspended	1,184	1,133	96%	1,133,733	1,001	1,185,184
Closed	5,587	4,203	75%	13,584,920	3,232	18,057,184
Category 3: Closed	30,692	3,327	11%	66,876,176	20,101	**
Category 4	12,723	12,500	98%	4,121,715	330	4,195,246
Open and Dormant	2,021	2,017	100%	375,653	186	376,699
Suspended	9,908	9,864	100%	2,995,250	304	3,008,611
Closed	794	619	78%	750,812	1,213	963,077

* The estimated value was calculated by dividing the known book value of accounts with value by the number of accounts with value and multiplying the result by the number of accounts. Because these calculations are based on differing averages, amounts in the estimated book value column do not sum exactly to the total.

** Value information is only available for 11% of the accounts in this category. The accounts for which there is value information are securities custody accounts with high average values that are not representative of valuations of similar types of accounts in other categories. The relatively small number of accounts for which values are available in this category, combined with the apparently unrepresentative values contained in this sample, indicate that any valuations of this category would be inaccurate and misleading.

EXHIBIT A

Definitions of Open in The Relevant Period

Accounts could not be considered as having a probable or possible relationship to victims of Nazi persecution unless they were open in the Relevant Period. This Exhibit A contains the definitions used to determine whether accounts met this important criteria.

(a) **Clear Evidence.** There is clear evidence that an account was open before 1946 if:

- bank documents indicate the account was open before 1946, or
- the account is part of a bank created database identified as being composed of accounts from the Relevant Period.

(b) **Reasonable Evidence.** There is reasonable evidence that an account was open before 1946 if:

- the account number was from a series of account numbers that were used exclusively in the Relevant Period,
- the account was identified in any wartime freeze,
- the account was booked to suspense by 1955 (indicating it had been dormant for 10 years),
- the account was considered by the bank for a survey of dormant accounts of victims of Nazi persecution,
- the bank at which the account was opened no longer existed after 1945,
- the bank form containing the evidence of the opening date was no longer used after 1945,
- a logo for the bank that was no longer used after 1945 appears on the evidence of the account opening date, or
- the account holder had another account for which there is reasonable evidence that the account was open in the Relevant Period.

(c) **Other Evidence.** The category “Other Evidence Account Open Before 1946” is a subjective category that involves consideration by the audit firm of many pieces of evidence surrounding an account, and consequently, it is not possible to set forth the specific types of evidence that fall within this category.

(d) **No Evidence.** Finally, if there is no evidence regarding the account opening date, the account is classified as “unknown whether open in the Relevant Period.”

EXHIBIT B

Definition of Foreign Account

Accounts could not be considered as having probable or possible relationship to victims of Nazi persecution if the account holder was a resident of Switzerland. This Exhibit B contains the definition of a Swiss resident as well as a definition of “foreign accounts” that qualified for further research to determine whether there is a probable or possible relationship of the account holder to a victim.

An account was considered to be Swiss if it had a detailed Swiss address of a permanent character. “Foreign Accounts” were defined as accounts of persons:

- (1) holding numbered or hold-mail accounts;
- (2) of foreign nationality;
- (3) of unknown nationality and foreign domicile or residence;
- (4) holding accounts linked to an account defined in (1)-(3) above;
- (5) of Swiss nationality and a domicile or residence in an Axis or Axis-occupied country during the Relevant Period, or
- (6) of unknown nationality and unknown or Swiss domicile or residence.

Although the above definition of “foreign accounts” is very broad, only 3 percent of the 48,058 accounts had a residence in other than an Axis or Axis-occupied country. This small percentage is nevertheless considered to be eligible for inclusion in one of the four probable or possible Categories because they met the Category criteria and consideration was given to the fact that the substantial movement of people, especially refugees from Nazi persecution, among countries during the Relevant Period made foreign addresses used in documents, such as bank records, unreliable.

EXHIBIT C

Definitions of Categories of Accounts

Category 1. Category 1 accounts are:

- (1) foreign accounts,
- (2) that are an exact or near-exact name match to victims of Nazi persecution,
- (3) open or opened in the Relevant Period (or for which there is reasonable evidence that they were open or opened in the Relevant Period)
- (4) inactive post 1945, inactive for some period post 1945, or unknown whether active or inactive post 1945,
- (5) that have not been disqualified by the disqualifying factors,
- (6) that have not previously been reported to ATAG and published, and
- (7) that fall into one of the following “ultimate disposition” categories:
 - open and dormant,
 - suspended,
 - closed to profit,
 - closed and paid to Nazi authorities,
 - closed as a result of fees and charges diminishing the account to zero, or
 - closed, unknown by whom.

Category 2. Category 2 accounts are:

- (1) unmatched foreign accounts of account holders resident during the Relevant Period in an Axis or Axis-occupied country,
- (2) open or opened in the Relevant Period (or for which there is reasonable evidence that they were open or opened in the Relevant Period),

- (3) inactive post 1945, inactive for some period post 1945, or unknown whether active or inactive post 1945,
- (4) that have not been previously reported to ATAG and published,
- (5) that were identified by the banks holding the accounts as those of victims of Nazi persecution or that were inactive for at least ten years after the war, and
- (6) that fall into one of the following “ultimate disposition” categories:
 - open and dormant,
 - suspended,
 - closed to profit,
 - closed and paid to Nazi authorities,
 - closed as a result of fees and charges diminishing the account to zero, or
 - closed, unknown by whom.

Other accounts that do not meet the residence criteria may fall within the scope of Category 2 if “special factors” exist that indicate that the accounts are probably or possibly related to victims of Nazi persecution.

Category 3. Category 3 accounts are:

- (1) foreign accounts (as defined in the Guidelines) of account holders resident during the Relevant Period in an Axis or Axis-occupied country,
- (2) that are an exact or near-exact name match,
- (3) open or opened in the Relevant Period (or for which there is reasonable evidence that they were open or opened in the Relevant Period),
- (4) that have not been disqualified by the disqualifying factors,
- (5) that have not previously been reported to ATAG and published,
- (6) unknown whether active or inactive post 1945, and
- (7) that are closed, unknown by whom.

Category 4. Category 4 accounts are:

- (1) unmatched foreign accounts (as defined in the Guidelines),
- (2) open or opened in the Relevant Period (or for which there is reasonable evidence that they were open or opened in the Relevant Period),
- (3) that have not previously been reported to ATAG and published,
- (4) inactive post 1945, inactive for some period post 1945, or unknown whether active or inactive post 1945,
- (5) that fall into one of the following “ultimate disposition” categories:
 - open and dormant,
 - suspended,
 - closed to profit,
 - closed and paid to Nazi authorities,
 - closed as a result of fees and charges diminishing the account to zero, or
 - closed, unknown by whom, and
- (6) the residence of the account holder is unknown.

For all of these Category 4 accounts, the residence of the account holder is unknown.

Treatment of Dormant Accounts of Victims of Nazi Persecution

A. Introduction and Summary

1. Part I of the Report (paragraph 41) states that for victims of Nazi persecution there was no evidence of systematic discrimination, obstruction of access, misappropriation, or violation of document retention requirements of Swiss law. However, the Report also criticizes the actions of some banks in their treatment of the accounts of victims of Nazi persecution. The word “some” in the preceding sentence needs to be emphasized since the criticized actions refer mainly to those of specific banks in their handling of individual accounts of victims of Nazi persecution in the context of an investigation of 254 banks covering a period of about 60 years. For the criticized actions, the Report also recognizes that there were mitigating circumstances for the conduct of the banks involved in these activities. The Report acknowledges, moreover, that there is ample evidence of many cases in which banks actively sought out missing account holders or their heirs, including Holocaust victims, and paid account balances of dormant accounts to the proper parties. Nevertheless, the Committee believes the criticized actions are of sufficient importance that it is desirable to document in this section the things that did go wrong so that it is possible to learn from the past rather than repeat its mistakes.

2. The Committee’s criticism is very substantially influenced by the fact that on two opportunities that clearly could have been used to address this problem in a straightforward and forthright way in

1956 and 1962, when memories were fresh and much more documentation was then still available, banks either used these occasions to deliberately minimize the problem in an attempt to avoid the threat of legislation (1956), or responded inadequately or not at all to a law that was too narrowly drawn and very poorly enforced (1962). Thirty-three years later, a further survey with an enlarged scope of search in 1995 still produced less than complete results, identifying 778 accounts of foreigners with SFr. 38 million; amounts that were soon eclipsed in 1997. With a much broader but still limited search program, the situation improved markedly in 1997, resulting in the identification of 5,570 foreign accounts with a total value to SFr. 72 million, and almost 75,000 accounts of persons with domestic or unknown residence or domicile.

3. The Committee is also influenced in its judgment by the fact that, although it is truly remarkable that some documentation for 60 percent of the 6.8 million accounts that are estimated to have existed at the investigated Swiss banks in the Relevant Period is still available, records for approximately 2.8 million accounts have not survived, leaving a substantial part of the account documentation from the Relevant Period unavailable for matching and research. The Committee is also concerned that in some of the cases cited by the auditors it is clear that the problems described are not isolated cases. This also extends to the actions evidenced in approximately 2,300 identified cases of closing accounts to fees and charges and to banks’ profits.

4. It is in this context that the Committee evaluates the specific instances cited by the auditors of withholding information about closed accounts from Holocaust victims, charging research or one-off fees to close accounts and prevent registration in dormant account surveys, closing inactive accounts by taking them into profits, failing to keep adequate records of suspended accounts, and closing accounts by attrition through maintenance and other fees. Some of these specific cases of inappropriate treatment are covered in other sections of this Report. This section summarizes, in the paragraphs that follow, specific cases identified in the investigation:

- In 49 cases, when approached by heirs of victims of Nazi persecution enquiring about accounts, two of the large commercial banks failed to provide available information to the claimants or misinformed the claimants that the accounts involved had been closed and the proceeds transferred to Nazi authorities;
- Some 2,300 identified accounts of Holocaust victims and others were closed by fees and to banks profits. Although banks did not discriminate against victims of Nazi persecution with regard to interest paid on their accounts versus accounts of other foreigners, banks continued to assess regular fees and charges against the accounts of victims of Nazi persecution until the balances were reduced to zero, even though the bank may have known or should have known that the account holder would not be returning to claim the account. Banks unilaterally changed dormant accounts to numbered-hold mail accounts, which had higher fees;
- Some 500 accounts of victims of Nazi persecution that were registered for the 1962 Survey were charged special research fees of SFr. 100 to SFr. 200 to be registered and in the case of at least 62 accounts, the application of the research fee extinguished the accounts so that they were not reported;
- Banks transferred some 400 accounts to the Nazi authorities (in some cases where they knew or should have known that the

transfer was ordered by the account holder under duress); and

- Victims of Nazi persecution were not reported in prior surveys because the term “victim of Nazi persecution” was narrowly defined, accounts were substantially under reported, or banks failed to participate at all in the surveys. Each successive survey produced more and more accounts, despite the passage of time.

B. Examples of the Treatment of Accounts of Victims of Nazi Persecution

Treatment of Heirs of Victims Inquiring About the Existence of Accounts

5. Evidence of a practice of failing to inform or misinforming heirs of victims of Nazi persecution who contacted the banks concerning the existence of closed accounts was found in 48 cases at two large commercial banks, while evidence of one case was found at the third large commercial bank.

6. In 45 of these cases, one bank failed to inform claimants of the existence of closed accounts, many of which were the subject of forced asset transfers to Nazi Germany. The bank told the claimants that no accounts existed, and no mention was made of the fact that there had been an account that was now closed. A 1949 bank legal department memorandum attempted to justify this policy:

This correspondence shows that [the account holder] was forced by the German authorities to deliver the securities deposited with our bank to Deutsche Bank. For this reason we are careful about providing information and refuse to give any information. If necessary we refer to the fact that 10 years have since passed so that we are now no longer obligated to retain the correspondence.

A second example of this practice related to an account of a Polish man who died in Auschwitz in

1942 and whose son contacted the bank several times. He was informed by the bank that no assets were held in the Zurich branch, but was never informed about an account held in the Basel branch of the bank that had been closed in 1938. The bank was apparently concerned about litigation from account holders whose assets had been looted by the Nazis.

7. A similar approach to responding to claims to closed accounts was followed by another large commercial bank. Legal department documents from 1953 and 1969 outline recommended procedures for responding to claims of Jewish account holders and their heirs whose assets were transferred to Germany in the 1930s. A letter from 1969 recommends that

in the case of inquiries about Jewish clients whose assets had to be transferred on their instructions to Germany during the 1930s, or with regard to inquiries received from their heirs, we have always responded that we could not supply the requested information as we are only obliged to retain ledgers and correspondence for a period of 10 years.

The legal department recognized that because the transfer orders were made under duress the risk existed that the bank might be liable to restore the accounts to the rightful owners. However, the legal department noted that claims by non-Jewish German nationals were not considered a potential liability, which suggests that the bank treated inquiries from Jewish customers with assets transferred to Germany in the 1930s differently from those received by non-Jewish German nationals. The management of the bank apparently endorsed these procedures in December 1969. An internal memorandum from 1975 confirms that the unequal treatment of Jewish claimants and their heirs was the direct result of the bank's concern that it may ultimately be held liable for the transfer of assets belonging to Jewish account holders to Germany. The audit firm reported details of three instances of this practice. One instance involved a custody account containing stocks with a nominal value of SFr. 25,000 which

were closed in 1938 and repatriated to Austria, and two other instances related to a savings account with a balance of SFr. 1,000 which was transferred to the Reichsbank in Berlin in August 1938.

8. While there is no evidence of a practice of failing to inform claimants was found at the third large commercial bank, there is evidence of one case in which the bank provided misleading information to an enquiring claimant. The heir of a French account holder requested details of a specific relationship with a bank branch. Although the bank had a copy of the account agreement on file, with a handwritten note stating that the account was closed in 1972 because of the deduction of fees, the response to the claimant did not mention this. Rather, the response stated only that no such account existed at the time of the claim.

Diversion of Funds From Dormant Accounts of Victims of Nazi Persecution

9. One case of improper treatment of a dormant account of a victim of Nazi persecution occurred at a large commercial bank. In this case, the bank invested in equity securities against the clear instruction of its client, who had authorized investment only in fixed income securities, and then the bank took the profits into its own account and may have recreated the account documentation. Specifically, an account was opened in 1930 by a Russian Jew, who had instructed the bank to invest in less-risky, fixed-income securities. By 1962, the account was worth over SFr. 1 million, due largely to investment returns on stock purchases. Bank memoranda state that the bank could "cream off" the returns on the investments and recreate the account documentation as if no profits had been earned. The bank transferred SFr. 488,600 to its own account, and the customer's account was debited SFr. 1,061.40 for charges and commissions. Further documentation of the incident refers to such transfer "as usual" "to accumulate reserves." This statement may suggest that there were other similar instances; however, no other similar cases were identified by the audit firm

carrying out the investigation at this bank. When the customer's heirs sought information on the account, the bank informed them that the Swiss Government had determined that the law protecting dormant accounts of victims of Nazi persecution did not apply in the case because the account holder had died of natural causes. According to the bank's reporting of such accounts in the 1962 Federal Decree, this account was not reported to the Swiss Government. Only after the Swiss Banking Ombudsman led the bank to conduct a search for the account were the heirs informed of the account's existence. The bank has now settled with the account holder's heirs.

10. At one cantonal bank, there is evidence of suspicious activity relating to an account of a victim of Nazi persecution. A large depot account was opened in 1934 with a value of FF 1,470,000 in the names of a director and former director of the bank. In 1938, the name of the account was changed to the 'XYZ' trust; the name of the beneficial owner matched to the name of a victim of Nazi persecution. Evidence shows that the bank director was concerned about the disappearance of the beneficial owner who may have been deported to Theresienstadt in 1942. The bank director prevented the submission of the account to the Swiss Compensation Office in 1945, but it may have been submitted in 1952. Some securities were transferred into depot accounts in the name of the director and former director in 1938; these accounts had no withdrawals until they were closed in 1951. The depot account was closed in 1956, but there is no evidence about to whom the account was closed.

11. At one private bank, a long dormant, foreign account was mismanaged by a former bank employee under the direction of a former partner, and thereafter, the bank misreported the account balance when the dormant account was reported for the 1997 Survey. The dormant account's balance was reduced from SFr. 65,850 at the end of 1990 to SFr. 557 by the end of 1994 as a result of losses from inappropriate derivative and security trades. Other accounts were similarly mismanaged. While

current clients were repaid for the losses, no actual reimbursement or specific provision was made for the dormant account, which was knowingly reported in 1997 to ATAG Ernst & Young at a minimal value that did not reflect that actual value of the account. The bank has since reported the correct value of the account to ATAG Ernst & Young.

Assessing Regular Fees and Charges on Accounts of Victims of Nazi Persecution and Closing Such Accounts to Profit and Loss

12. As a result of the investigation, some 2,300 accounts of bank clients that were closed through the application of fees and charges and closed to profit and loss were identified; 13 such accounts are from cantonal banks, and 63 are from private banks. Nevertheless, it is important to note that, with respect to the application of interest and fees, no evidence was found of discriminatory treatment of accounts of victims of Nazi persecution. (Regarding the standard interest and fees and rates, see, *infra*, Exhibit A).

13. While it is common banking practice to assess fees and charges for services and for *de minimis* account balances on inactive accounts to be closed as a result of ongoing account administration, the appropriateness of continuing such practices in the case of accounts of victims of Nazi persecution, who the bank may have suspected or known would not return to claim their accounts, may be questioned. Moreover, evidence was found of fee closings of accounts with balances too large to be considered *de minimis*. At one large commercial bank, four accounts closed by fees had balances in excess of SFr. 1,000; the largest balance extinguished by a single fee application was SFr. 4,761.70. The banks also took the balances of accounts into profits.

14. Some banks transferred dormant accounts to pooled or suspense accounts in order to preserve the assets without fees but also without interest. However, others banks did not, or even continued

to assess fees on dormant suspense accounts. In 1964, one large commercial bank ordered that suspense accounts used for the collection of dormant accounts be closed and de-pooled, and all fees and charges that had been suspended while the individual accounts were pooled were applied retroactively. Similarly, at one cantonal and one private bank, fees were still assessed on the individual dormant accounts transferred into a pooled account.

15. Evidence was found that banks also collected fees and charges for safe deposit boxes by opening the safes and selling valuables in them. For example, at one large commercial bank, there were three instances where the bank had periodically forced open dormant safe deposit boxes and sold some of the assets within the safes to cover unpaid rental costs. In each instance, enough assets were removed and sold to cover past as well as prospective rental fees. The bank maintains that it simply took the fees that it was entitled to in accordance with the contractual arrangements for the rental of the safe. However, in order to preserve the assets, the bank could have transferred the contents of these safes into a general safe when it became apparent that the account was inactive.

16. In another case, the bank continued to assess fees and charges on a safe, although there were clear instructions from the account holder bequeathing the contents to a particular person. The safe deposit box was rented by a customer that the bank assumed was a victim of Nazi persecution. Despite the account holder's instructions, the bank held the account (and charged fees, eroding the asset value) for a period of 26 years after the bank reported the customer as a victim of Nazi persecution.

17. Of the 2,300 accounts of bank clients closed by fees and to profit and loss that were identified as a result of the investigation, approximately 900 accounts were closed to profit and loss. Seven of such accounts are from private banks and none are from the cantonal banks, although the practice of writing accounts off to profit and loss was identified at least one cantonal bank. Evidence was found of over

1,300 accounts that were closed through the application of fees and charges. One large commercial bank also unilaterally changed the status of an account, which resulted in higher fees being assessed.

18. Traditionally, small accounts are “written off” to decrease the administrative burden of accounting for them. To implement this policy, some of the banks had appropriate written procedures pursuant to which dormant accounts with a balance under a certain amount (e.g., SFr. 100) could be transferred to the bank's profit and loss account after a letter had been written to the customer and the customer did not respond. In some cases, however, groups of accounts and individual accounts were transferred to profit and loss without following any notice procedure or without being under the stated limit contained in the written procedures.

19. In some cases, however, good records were kept and banks paid claimants that appeared after periods of dormancy. The following description of accounts taken into profit and loss at one bank reflects actions of some other banks as well. One large commercial bank, according to a July 7, 1997 memorandum closed at least 42 accounts with balances totaling SFr. 77,000 to its profit and loss account in October 1962, shortly before the passage of the 1962 Federal Decree,¹ but after the Federal Council had approved the message addressed to the Federal Assembly regarding the draft decree. Thus, these accounts were not registered in the 1962 Survey. The July 7, 1997 memorandum also remarked that some of the account-holders' names appeared to be Jewish.

20. Two other examples of accounts being taken into profit and loss also come from this bank. First,

1 Federal Resolution on the Assets in Switzerland of Foreigners or Stateless Persons Who Have been Victims of Racial, Religious and Political Persecution (December 20, 1962). The 1962 Decree enacted by the Swiss Parliament required that assets of any type, whose last known owners were foreign or stateless persons for whom there had been no “reliable news” since May 9, 1945, and who were known or assumed to have been victims of racial, religious, or political persecution, be registered with an authority to be determined by the Federal Council of Ministers. The Decree also required that notification be furnished of all changes to the assets that took place since the disappearance or absence of their owner.

at one branch, a voucher was found stating that the asset holder had died in Auschwitz in 1943. The bank believed that the asset owner's heirs lived in Romania. The last transaction on the account was a debit of SFr. 638, which had been paid to an Amsterdam bank in 1955. According to the branch's records, the account balance of SFr. 1,095 was posted in November 1967 to the bank's profit and loss account. Second, an account with an Albanian account holder had no transactions after 1939. In 1940, the bank had received written notice from the customer stating that the bank should continue to hold mail. In 1962, the account, which had a balance of SFr. 4,255, was transferred to the bank's profit and loss account. In 1992, the money was paid to persons who held powers-of-attorney.

Special Fees Imposed on Accounts of Victims of Nazi Persecution

21. These search fees usually ranged from nil to SFr. 200, with the average fee at most banks being less than SFr. 10. However, at one of the large commercial banks, the auditors reported that research charges ranged from SFr. 100 in 1966 to SFr. 1,000 in 1986 (for a search of all branches in Switzerland) based upon the scope of the search. An internal bank directive at the same bank in 1990 indicated a Switzerland-wide research fee of SFr. 2,000 to 3,000. All of the large commercial banks charged special research fees, ranging from SFr. 50 to SFr. 300, to accounts of victims of Nazi persecution at the time of their registration for the 1962 Survey. This Survey applied to assets owned by known or suspected victims of Nazi persecution about whom no reliable information was available since 1945. A minimum charge of SFr. 100 was deducted directly from these accounts at one bank; while another bank charged a "maximum fee" of SFr. 100, 18 accounts with balances in excess of SFr. 100 were extinguished as a result of the fee. The latter bank had originally considered applying a fee of SFr. 50, but management indicated that for accounts of SFr. 300 or less, a maximum fee of SFr. 300 could potentially be assessed, thus eliminating the accounts and, therefore, the need for registration under the Sur-

vey. However, the SBA rejected the SFr. 300 fee as excessive, and mandated a maximum fee of SFr. 100. In many cases, the application of these fees resulted in the accounts being extinguished and other and, consequently, they were not registered for the Survey.

Transfers of Accounts to Nazi Authorities

22. As a result of the investigation, approximately 400 accounts of victims were identified that were transferred to the Nazi authorities. The dilemma faced by the banks was whether to make the transfer if they knew or should have known that the transfer order was the product of duress and whether the risk of harm to the account holder would be increased or decreased by such transfer. As many as 180 accounts had account holders whose names matched to a database of names of persons who registered Swiss bank accounts as part of the 1938 Austrian Census of Jewish Assets; at least 70 accounts identified by the investigation were among those that were reported in the census. Two instances of accounts transferred to Nazi authorities, as well as case that made it to a New York court, are described below.

23. In 1932, advertisements appeared in a Swiss newspaper offering loans to Swiss bank employees; they were part of a scheme to purchase information from the employees regarding the names of Germans who held accounts in Swiss banks in exchange for a commission based on the total account value. One employee of a large commercial bank, who was arrested with the bank's assistance, was convicted by Swiss authorities for espionage activities, in part, for providing account details of Germans owning Swiss bank accounts to the Nazis. At the time of his arrest, funds from 20 of the 74 accounts that he had disclosed to the Nazis had already been transferred to Germany.

24. In another case, another large commercial bank refused a request by an account holder to transfer funds, but then followed transfer instructions

made by a Nazi trustee. The account holder, having sought refuge from Nazi persecution in Chile, directed the bank to release funds to pay for food packages for his wife, who was interned in a concentration camp. The bank refused to release the funds, which were frozen, in accordance with Swiss federal directives and directives issued by the Dutch government in exile. However, in contrast to the bank's stance on the release of funds at the request of the account holder, the Bank carried out instructions issued by the Nazi trustees of the account to transfer funds to the Reichsbankdirektorium in Berlin and to a bank in Luxembourg.

25. A similar case, which came before a court in New York,² involved an Austrian victim of Nazi persecution who wrote a letter to a distant relation indicating that the bonds held by the Swiss bank should only be delivered to the plaintiff in Zurich as he was in "protective custody." This letter was sent to the bank, which acknowledged its receipt. However, thereafter, the bank transferred the funds to the account of a Viennese bank pursuant to a transfer instruction, which was signed by the account holder under duress. After being released from the concentration camp, the account holder wrote the bank requesting the bonds, and the bank replied stating that the bonds had been sold pursuant to his instructions. In reaching its verdict in favor of the victim, the court concluded that the bank was required to act in prudent manner and in good faith and that the bank had to exercise the proper degree of care in light of the knowledge that it had.

C. Prior Surveys of Dormant Accounts

26. Since 1945, Swiss banks made a number of efforts to identify assets in their possession that belonged to victims of Nazi persecution. These surveys were conducted following governmental pressure or mandate, and they were generally initiated at the direction of the Swiss Bankers Association ("SBA"). These surveys can be summarized as follows:

- 1947 The SBA asked its members to report their "heirless assets" in order to identify assets that belonged to assumed or known victims of Nazi violence.
- 1950 Pursuant to an agreement with Poland, the Swiss Federal Political Department asked the SBA to identify assets belonging to Polish nationals living in Poland in September 1939, from whom nothing had been heard since May 9, 1945.
- 1956 In response to pressure from Jewish organizations, the SBA surveyed its members to establish whether the banks held heirless accounts for which the account holders were either known or assumed to be victims of Nazi persecution in Germany.
- 1962 The Swiss Parliament passed a decree requiring reporting by financial intermediaries (not limited to banks) possessing assets belonging to foreign or stateless persons from whom there had been no "reliable news" since May 9, 1945, and who were known or assumed to be victims of racial, religious, or political persecution.
- 1995 The SBA conducted two surveys of its member banks in Switzerland and Liechtenstein to determine the number and value of bank accounts belonging to foreigners.
- 1997 After the initiation of the ICEP investigation and on the recommendation of ICEP, the Swiss Federal Banking Commission ("SFBC") required Swiss banks to report to ATAG Ernst & Young ("ATAG") foreign accounts, Swiss accounts, and accounts of persons of unknown or uncertain domicile that were opened before May 9, 1945, and dormant since at least that time.

27. As shown in Table 1, the four surveys before 1990 yielded scant results; however, with each subsequent survey, more assets pertaining to persecuted individuals were reported. There are a variety

² *Albers v. Credit Suisse*, 188 Misc. 229 (N.Y. Civ. Ct. 1949).

of explanations for the substantial under-reporting in the early surveys, but some of the main causes can be attributed to the Swiss banks use of narrow definitions of “dormant” accounts; their exclusion of certain types of accounts from their searches or inadequate research; their failure to investigate accounts under certain minimum balances; or their failure to consider account holders to be victims of Nazi violence or persecution unless relatives made such claims at the bank. It should be noted that each

survey was conducted independently. Some accounts reported in the earlier surveys may have also been reported in later surveys. Even though the 1962 Surveys and those thereafter revealed increasingly more accounts, it was not until 1997, after the ICEP investigation was underway, that the major increase in the number and value of reported accounts occurred. The following description of each survey includes some analysis of bank responses to the surveys.

		1947	1956	1962	1995** (Foreign)	1997‡ (S/U)	1997‡ (Foreign)
Bank Totals*	Accounts	Unknown	86	739	775	74,496	5,570
	Value (SFr. 000's)	482	862	6,219	38,700	12,850	74,386
Large Bank	Accounts	0	7	167	55	9,650 _f	311
	Value (SFr. 000's)	0	64	1,300	834	9,281 _f	14,605
Large Bank	Accounts	0	36	255	135	5,381	529
	Value (SFr. 000's)	0	42	2,716	10,341	1,537	12,217
Large Bank	Accounts	0	13	77	290	3,363	892
	Value (SFr. 000's)	0	82	656	11,400	1,279	31,868
Cantonal	Accounts	0	14	106	2,280	44,823	1,736
	Value (SFr. 000's)	0	422	874	5,112	5,659	5,551
Private	Accounts	0	2	84	94	7,950	118
	Value (SFr. 000's)	0	0	680	2,602	1,315	370
<p>* The “totals” contained in this table do not necessarily reflect adding together the totals presented for each bank; they may include assets reported by non-banks.</p> <p>** The sum of individual banks exceeds the “totals” as the “totals” reflects results from the Main Survey only, and some of the individual bank reports did not distinguish between Main Survey and Preliminary Survey results; amounts include all domestic and foreign accounts reported.</p> <p>‡ “Totals” may be less than or greater than the sum of individual banks due to two factors: (1) where applicable, 1997 results include subsequent submissions, and (2) where bank reports did not adequately identify accounts as foreign, some foreign accounts may have been classified as unknown accounts.</p> <p>S/U Swiss and unknown domiciled accounts only.</p> <p>F Accounts where domicile is known to be foreign only.</p> <p>f For consistency with other bank reports, accounts valued as less than SFr. 100 were added to this total.</p>							

1947 Survey

28. The “General Survey of Assets Presumed to Belong to Victims of Nazi Persecution” (the “1947 Survey”) arose out of Switzerland’s participation in the Washington Agreement of 1946, which obligated Switzerland to help the Allies identify those heirless assets located in Switzerland belonging to victims of Nazi persecution. The SBA requested that all member banks provide details of assets they managed for people in two categories: (1) those the banks knew to be victims of Nazi persecution and who had no heirs, and (2) those the banks suspected might be victims of Nazi persecution and who had no heirs. The survey requested information on the value of the assets, the ownership of the assets, and the nationality and domicile of the owners. In defining those persons who would be considered victims, the survey included citizens of the states formerly occupied by Germany and German citizens who were deported or died in concentration camps or prisons. Additionally, the survey included any estates of people in jurisdictions where the 1945 freeze of German assets applied and where the fate of the owner was unknown.

29. One large commercial bank’s approach to identifying accounts for the 1947 Survey was based on whether the bank had contact with people who claimed the assets in question because (1) it was considered common to not have contact with account holders for a long period of time and (2) the bank did not have any indication that its account holders were victims of Nazi persecution. In a letter to the SBA, the bank explained:

Since the end of the war, it has not been possible to maintain normal written correspondence, in particular with Germany and the Eastern countries. The customers who reside there also had in many cases no opportunity to contact us. It is therefore not unusual that, in individual cases, we have not heard anything for some years.

As a result, the bank did not report any accounts as satisfying the SBA’s criteria for the 1947 Survey.

30. The 1947 Survey did not produce a great deal of information. It was a relatively informal survey ignored by some banks and not taken seriously enough by others. The survey reported assets with a total of only SFr. 482,000. Interestingly, the assets reported were divided into three categories instead of the two originally prescribed. Of the SFr. 482,000, none could be directly attributed to persons who were definitely victims of Nazi persecution. SFr. 208,000 likely belonged to victims of Nazi persecution, and SFr. 274,000 were attributable to persons who were believed to have been murdered.

1950 Survey

31. The 1950 Survey focused purely on identifying Polish assets located in Swiss banks and was an ancillary result of a 1949 agreement between Switzerland and Poland. Under that agreement, the Swiss agreed to provide Poland with assets held in Switzerland that belonged to Polish nationals residing in Poland as of September 1, 1939, and from whom the asset custodians had not heard anything since May 9, 1945. Accordingly, the SBA requested its member banks to provide any responsive information as part of an initial survey.

32. On July 4, 1950, the SBA provided in a letter to the Swiss Federal Political Department that SFr. 598,762 in Polish assets were held in Swiss banks. The Swiss Federal Political Department had anticipated that the amount would be closer to SFr. 2 million, and the SBA had projected SFr. 1 million based on earlier estimates of its members. Nonetheless, even the modest amounts reported were not confirmed to be heirless assets. The SBA concluded that the banks needed to be surveyed again.

33. Based on the meager results of the first request, a circular was sent to all members of the SBA and the Union of Swiss Life Insurance companies on July 13, 1955. This time, the instructions were more specific. Banks were to report “assets of Polish holders of Deposit and Custody accounts

domiciled in Poland on 1 September 1939 who had not been in contact with the bank since 9 May 1945 and where the bank had no positive indication that they had survived the war.” While not fundamentally different than the previous directive, this instruction had limitations such as not including institutions or Polish account holders with dual nationality. As a result of these limitations, only SFr. 22,300 in assets were reported.

34. Following an examination in 1955, the Swiss Federal Political Department reported to the Swiss Embassy in Warsaw on January 14, 1958 that the total amount of relevant Polish assets held by Swiss banks totaled SFr. 17,550 and those held by Swiss insurance companies was SFr. 849. They cited a number of explanations for the great discrepancy between the previous numbers and the revised numbers, including the following: overestimation of looted Polish assets after World War II; overestimation of assets that arrived in Switzerland before the war; lack of a detailed survey of assets; and the fact that most asset holders or beneficiaries contacted the banks following the 1950 report. The amounts owed to Poland were finally paid in July and August 1960, and consisted of SFr. 15,498.

1956 Survey

35. The 1956 Survey was initiated by the SBA in an attempt to influence the Swiss legislature’s efforts to enact specialized legislation that would require Swiss banks to provide information on dormant accounts. This survey required the Swiss banks to report dormant accounts that pertained to either “assets belonging to clients who were known victims of Nazi persecution and who had no known heirs or other representatives” or “assets belonging to clients who might be expected to have been victims of Nazi persecution and who had no known heirs or other representatives.” One large commercial bank explained to the SBA that it would only become aware of known victims of Nazi persecution when it was contacted by family members of victims or people with power of attorney for the

owners, in which case the assets would not be heirless. The bank emphasized that it is quite normal to not hear from some of its customers for 10 years or more. Consequently, the bank did not report any dormant accounts where the holders were known to be victims of Nazi persecution, but it did report some accounts whose account holders were suspected victims of Nazi persecution.

36. The scope of this survey was quite narrow and did not provide any guidance on defining the categories of assets that were to be reported. The SBA requested that the banks provide information on each account holder’s nationality, domicile, and the total value of the assets held by the bank. However, this information was required on an aggregate basis, so individual account information was not provided.

37. A most interesting aspect of the 1956 Survey is the manner in which it was initiated; the SBA apparently understood that the threatened legislation would not be enacted if the survey showed that the value of accounts was below SFr. 4 million. Thus, the SBA seemed to have a motivation to keep the numbers as low as possible. In fact, a letter from the SBA to its board members dated June 7, 1956, which included a discussion of the survey, stated “[a] meager result from the survey will doubtless contribute to the resolution of this matter in our favor.”

38. Not surprisingly, the results of this survey were quite modest. Only four accounts were reported as being dormant accounts pertaining to known victims of Nazi persecution, while 82 dormant accounts pertain to assumed victims of Nazi violence. Only six cantonal banks participated in the survey; they reported a total of 14 accounts. Only one private bank reported accounts, and it reported only two accounts. The total value for the 86 accounts was SFr. 862,410. These results led the SBA to state in a letter to the Swiss President that the problem “by no means [had] the significance which the other side is constantly attempting to ascribe to it.”

1962 Survey

39. The 1962 Survey was initiated as a result of the Swiss Federal Parliament passing a Federal Decree on December 20, 1962 addressing “assets in Switzerland of foreign or stateless persons subject to racial, religious or political persecution.” The decree provided:

Assets of any type located in Switzerland, whose last known owners are foreign nationals or stateless persons about whom no reliable information has been received since 9 May 1945 and who are known or presumed to have fallen victim of racial, religious or political persecution, shall within six months from the date on which this resolution comes into force be registered with an authority to be determined by the Federal Council of Ministers with notification of all changes to the assets that have taken place since the disappearance of their owner or his or her absences without information as to his or her whereabouts.³

The decree also mandated “[i]f there be any doubt over an obligation to register, the case must be presented to the registration authority for decision.”

40. Following the Federal Decree, several meetings were held involving the SBA and the in-house lawyers of each member bank. Although it is not clear who was present at each meeting, the meetings resulted in consensus decisions as to the manner in which the Federal Decree should be administered. These meetings resulted in the following recommendations:

1. All assets of people clearly of Jewish descent whose domicile was Germany or German-occupied territories west of the Iron Curtain should be registered if the banks had no contact with them since May 9, 1945. By definition, these people were considered to be victims of Nazi persecution so long as there was no indication that they were Swiss. Jewish name experts were expected to be consulted where there was doubt as to the ethnicity of the person’s name.

2. Doubtful cases should be registered where the same conditions apply as in item 1, except their domicile is behind the Iron Curtain or it is only probable that they are of Jewish descent. If the domicile of an account holder with a Jewish name was not known, they should be listed as a doubtful case. If a client is domiciled in France, they should be registered as a doubtful case.
3. Register all other cases where it is known the account holders were victims of racial or political persecution and all other conditions in item 1 above apply.
4. No other cases should be reported and balances below SFr. 100 should not be reported. This rule was applied because the minimum fee for researching an account would be SFr. 100, while banks could charge more if the search required an extensive effort. Where there had been no contact with the client since 1933, those accounts should not be reported.

41. In connection with the survey, a restrictive interpretation of “victim of racial, religious, or political persecution,” that included only individuals who “died a violent death or were missing because of the reasons for persecution as specified in the law,” was applied by the Registration Office. (This office was responsible for registering each individual asset and for “determining whether it fell within the scope of the 1962 Decree, collecting claims by victims of Nazi persecution or their heirs, and attempting to match them with registered assets.” Other duties of the Registration Office were to transfer the so-called trivial assets to an unclaimed assets fund and to monitor the subsequent distribution of claimed and unclaimed assets.)

42. One large commercial bank reviewed external Jewish publications and employed a rabbi, a Jewish historian, and a Yiddish author to assist in determining those account holders that had Jewish names. After the process of determining the Jewish

³ Federal Decree of Dec. 20, 1962, Art. 1 (Switz.).

names, the bank did not decide that all possible Jewish names should be reported, but excluded account holders with a name that could have been Christian or Jewish. These exclusions narrowed the number of accounts reported. A legal department memorandum indicates the restrictive view taken towards reporting:

during our research we have constantly found it necessary to reduce the number of cases to declare, since at each examination... we encountered new doubts and concerns for our clients...the Federal Decree should be interpreted strictly and with restriction.

The extent to which the bank continued to restrict the number of accounts was evidenced by its preliminary and final numbers; less than one-third of the accounts preliminarily considered were actually reported. The accounts were not reported for the following reasons: no evidence of persecution (238 cases), account balance too small (51 cases), contact with account holder (48 cases), account holder is a company (16 cases), the account balance was under the limit set by the Registration Office (originally, SFr. 100, then SFr. 500, and finally, SFr. 1,000) (8 cases), and empty safes (4 cases). This bank, like the other large commercial banks (see paragraph 21), charged a special research fees on the accounts. Generally, the bank charged SFr. 100 per account, but a maximum fee was SFr. 300, which was charged on an account with a value of SFr. 24,000. And, in a number of cases, no fee at all was imposed.

43. One cantonal bank that participated in the Survey limited its search for accounts to “hold mail” accounts and the decision as to whether an account holder was Jewish was not based on any formal documentation or the opinion of any advisors.

44. Despite these limitations, the results of the 1962 Survey were more substantial than any prior survey. Swiss banks registered a total of 739 accounts worth over SFr. 6.2 million. Eight cantonal banks participated in the survey and reported a total of 106 accounts. Six private banks reported a total of 84 accounts. Furthermore, private individuals,

trading companies, and partnerships were required to comply and did so to the extent of 445 more accounts worth over SFr. 3.6 million. The values reported by the banks were over seven times those reported in the 1956 Survey.

45. When the Registration Office had completed its work, the SFr. 9.8 million in assets, which had increased to SFr. 11.2 million due to interest, revaluation of assets, and application of charges, had been disposed as follows:

- Heirs identified = SFr. 3.7 million
- Swiss Federation of Jewish Communities = SFr. 2.1 million
- Swiss Central Office for Refugee Aid = SFr. 1.1 million
- Polish Unclaimed Asset Fund = SFr. 464,000
- Hungarian Unclaimed Asset Fund = SFr. 325,000
- Outside of the Scope of Decree = SFr. 3.5 million

Those assets that were determined to be outside the scope of the decree remained with the asset managers or banks.

1995 Survey

46. Prompted by increased publicity concerning the amount of assets held by Swiss banks that belonged to victims of Nazi persecution, the SBA conducted another survey in 1995. The 1995 Survey was comprised of a preliminary survey (the “Preliminary Survey”) and a main survey (the “Main Survey”). The Preliminary Survey asked 19 SBA member banks to establish the number and value of foreign accounts that had been opened prior to May 9, 1945 and had been dormant for the previous 10 years (i.e., 1985 to 1995). In the Main Survey, 442 financial institutions were asked to identify foreign accounts dormant since May 9, 1945. Although this survey requested the reporting of accounts regardless of the value of their balance, accounts that belonged to clients with a Swiss domicile were reported but were not published by the SBA.

47. Also, similar to the previous surveys, there may have been a bias inherent in the 1995 Survey. In its board minutes, the SBA stated the purpose of the survey was to show:

that the [1962] Survey...was done in a thorough fashion and to show that speculations which say that huge amounts were held back is at most a rumor...so that these partly unfounded press speculations can be refuted through a coordinated public affairs campaign.

48. The methodology used to identify reportable accounts by one bank limited the accounts that it reported. This bank researched its computer system to identify accounts to be reported, but excluded from consideration certain accounts, including passbook accounts and accounts previously booked to suspense.

49. The SBA reported the results of the Preliminary Survey in September 1995; a total of 893 dormant accounts valued at SFr. 40.9 million had been reported. However, the results released for the Main Survey were lower due to the restrictions placed on that survey. The Main Survey results showed a total of 775 accounts of foreigners with a value of SFr. 38.7 million.

1997 Survey

50. The 1997 Survey was the most recent attempt to locate the assets of victims of Nazi persecution held in Swiss banks. In June 1997, many months after ICEP had been established and at the same time that the pilot audits were initiated, the SFBC instructed all Swiss banks to report all accounts opened before May 9, 1945 and dormant since that time to ATAG Ernst & Young ("ATAG"). The following categories of accounts were to be reported:

- (1) All foreign accounts (excluding passbook accounts), custody accounts, and safes or safe deposit boxes opened prior to May 9, 1945 and dormant since that time were to be reported to ATAG by July 7, 1997.

- (2) All Swiss accounts and accounts held by customers of unknown or uncertain domicile opened prior to 1945 and dormant since that time were to be reported to ATAG by September 15, 1997. All passbook accounts were included in this category.

Once this information was received by ATAG, three different lists were published in newspapers worldwide and on the Internet. List One pertained to non-Swiss customer accounts (excluding passbook and savings accounts) reported in July 1997. List Two pertained to non-Swiss customer accounts reported in October 1997 and included savings and deposit passbooks reported and other additional accounts not reported in July 1997. List Three pertained to Swiss nationals and customers of unknown nationality or domicile reported in October 1997. This later list contained 74,496 accounts with a value of SFr. 12.9 million. Of these, 10,758 accounts were published, and 63,738 accounts with balances less than SFr. 100 were submitted to ATAG but were not published. The following is a more detailed analysis of the accounts reported in July and October 1997, and the banks submissions with respect to these two lists.

51. The results of the 1997 Survey, utilizing much more comprehensive but still limited search criteria, again eclipsed that of any previous survey. The required July submissions totaled 1,883 accounts with a total value of over SFr. 68.1 million. For the October submissions, 3,687 foreign accounts were reported having a value of over SFr. 6.2 million. Table 2 shows the overall results of the 1997 Survey.

52. For the 1997 Survey, the cantonal banks reported the greatest number of accounts (3,330), followed by the large commercial banks (1,817). Table 3 shows the number of accounts reported by bank category.⁴

53. Of the 5,570 accounts reported, the accounts with the highest values were 543 securities/custody

⁴ For a description of each of these bank categories, see Annex 2: Banks Selected for Investigation.

Table 2
Overall Results of the 1997 Survey
(Foreign Accounts)

	Number of Banks Reporting Accounts	Number of Accounts Reported	Value of Accounts (SFr.) (as of 5/4/98) ⁵
July 1997	65	1,883	66,169,152
October 1997	57	3,687	6,179,180
Total	N/A	5,570	72,348,332

⁵ The banks originally reported an aggregate balance on all published accounts of SFr. 68.6 million; however, this amount was later adjusted to SFr. 72.3 million. In addition, some banks have continued to report additional accounts to ATAG after September 1997.

Table 3
Number and Value of Accounts Reported by Type of Bank
(1997 Survey – Foreign Accounts)

	Number of Accounts	Value of Accounts (SFr.)
Foreign Banks	131	441,615
Large Commercial Banks	1,817	64,362,966
Commercial and Administrative Banks	53	400,732
Cantonal Banks	3,330	6,267,126
Private Banks	78	595,238
Cooperative Banks	1	295
Regional Banks	153	201,517
Swiss National Bank	7	78,843
Total	5,570	72,348,332

Table 4
Accounts Reported by Account Type and Value

Description	Number of Accounts	Value of Accounts (SFr.) (as of 5/4/98)	Average Value per Account Type (SFr.)
Securities/Custody Accounts	543	65,192,120	120,059
Savings Accounts	1,994	1,982,048	994
All others	2,937	5,171,971	1,761
Safe Deposits	96	2,193	23
Total	5,570	72,348,332	N/A

accounts that had a total value of approximately SFr. 65.2 million. Table 4 sets forth the number of accounts per account type, the total value of these accounts, and the average value per account type.

54. Moreover, of the 5,570 accounts reported in 1997, approximately 50 percent had values under SFr. 100, 20 percent had values between SFr. 100 and SFr. 1,000 and 10 percent had values over SFr. 10,000. Table 5 sets forth further information concerning the values of the accounts.

55. With respect to the nationality of the account holders, the greatest number of accounts related to account holders from Germany (1,156 accounts), France (875 accounts), and Italy (522 accounts). However, for many accounts (2,162), the nationality of the account holder was unknown. Table 6 identifies the top ten countries of nationality of account holders for the accounts reported in the 1997 Survey, which represent 94 percent of the total number of accounts reported and 81 percent of the total value of accounts reported.

56. All of the accounts identified as a result of ICEP's investigation⁶ were not reported and published as part of the 1997 Survey. At one large commercial bank, the audit firm reported that, although the bank undertook systematic procedures to identify dormant accounts for the 1997 Survey, the audit firm identified 55 additional accounts that met the 1997 Survey criteria but were not reported by the bank, mainly because of the time pressures on the bank to report the accounts. The audit firm at another large commercial bank similarly concluded that the large commercial bank had generally adhered to the scope and terms of the various surveys, and the significant increases in accounts reported for more recent surveys can be attributed to each survey providing broader terms, technological advances, improvements in the quality of data resulting from the bank's efforts to identify accounts, as well as the expansion of the scope of the search to include closed accounts. The efforts can be largely attributed to the ICEP investigations.

⁶ For a detailed description of the categories of accounts, see Annex 4: Identification of Accounts Probably or Possibly Related to Victims of Nazi Persecution.

Table 5
Values of Accounts Reported per Value Category

	Number of Accounts	Value of Accounts (SFr.) (as of 5/4/98)
Unknown Value	116	NA
Less than SFr. 0	14	-888
Less than SFr. 100	2,741	65,330
SFr. 100 to SFr. 1,000	1,154	414,644
SFr. 1,000 to SFr. 10,000	969	3,168,643
Greater than SFr. 10,000	576	68,700,602
Total	5,570	72,348,332

Table 6
Accounts Reported by Nationality of Account Holder
(Top 10 Countries)

Country	Number of Accounts	Value of Accounts (SFr.)
Unknown	2,162	19,805,706
Germany	1,156	4,100,091
France	875	23,016,138
Italy	522	3,000,754
Austria	202	925,873
Switzerland	99	1,955,085
Spain	64	1,633,466
Romania	48	2,880,401
United Kingdom	44	1,522,592
Poland	41	125,541
Total	5,213	58,965,647

57. Similarly, many accounts that should have been reported as part of the 1997 Survey were identified at the cantonal banks. At one cantonal bank, the bank identified over 3,000 accounts that they analyzed for reporting under the survey, but the bank's board of directors decided that a violation of bank secrecy could not be risked and the names of the account holders were not disclosed to ATAG. Similarly, some 2,000 suspense accounts (almost exclusively Swiss accounts) that were not reported to ATAG as a result of oversight were identified by the audit firm at another cantonal bank. Another cantonal bank did not quality control check data input into a spreadsheet, and consequently, some 760 accounts that should have been reported were not reported. Another 531 accounts that should have been reported to ATAG were identified by the audit firm conducting the investigation at this bank. Another cantonal bank did not include any depot or current accounts in its analysis, but only focused on savings passbooks. Many of the accounts identified were not reported because the bank determined that they were outside of the scope of the survey; however, the audit firm believes that 525 accounts should have been reported.

EXHIBIT A

Standard Fees and Charges on Swiss Bank Accounts

Treatment of Domestic As Compared to Foreign Account Holders

58. While Swiss banks commonly distinguished between foreign customers and domestic customers (Swiss citizens and non-Swiss persons domiciled in Switzerland) in terms of the rate of interest paid, no evidence of discrimination in the rate of interest paid by the banks on accounts of victims of Nazi persecution versus other foreigners was found.

59. In the late 1930s and thereafter, when economic conditions in Europe or the world contributed to a heavy inflow of foreign capital into Switzerland, so-called "Gentleman's Agreements" were

entered into by the Swiss National Bank and the Swiss banks. The objective of these agreements was to reduce the inflow of Swiss-franc-denominated short-term deposits from foreigners domiciled abroad (Swiss francs were then deemed a "safe" currency), and the holding of Swiss francs in general by foreigners. The agreements prohibited (or reduced) the payment of interest to foreign account holders, and some banks imposed fees on foreign accounts that were not applied to domestic accounts. Such agreements were signed in 1937, 1950, 1955, and 1960. These agreements were implemented by most of the Swiss banks.

60. Independent of the "Gentlemen's Agreements," however, there was evidence of preferential treatment of Swiss over foreign account holders. For example, one cantonal bank was reported not to have credited interest to any foreigners' accounts after 1933, prior to the Gentlemen's Agreement of 1937, and to have continued that practice until 1967. One private bank, as a matter of policy, has never paid interest on accounts held in foreign currencies or on accounts held by foreigners.

Standard Interest and Fees on Accounts

61. Many banks offered a variety of products and services; each having its own applicable interest rate and fees, which changed over time. The most common account types offered were savings, passbook, deposit, and current accounts. In addition, many of the banks also offered depot or custody accounts, and safe deposit boxes. The rates of interest and related fees and charges for each type of account are described below.

Savings and Passbook Accounts

62. Savings accounts were the most common account available to customers at most of the banks. The interest rate earned on savings accounts ranged from 1.5 to 5.5% at the various banks during the Relevant Period. The average rate of interest earned

during the Relevant Period was 3.5%. At most banks implementing the Gentlemen's Agreement of 1937, no interest was paid to foreign account holders. At others, a lower rate of interest was paid. For example, at one cantonal bank, domestic savings account holders earned 2.5 - 3% on their account balances annually, while foreign account holders earned only 1.5 - 2% annually during the Relevant Period.

63. With respect to passbook accounts, auditors at one of the large commercial banks reported interest rates paid on savings passbooks accounts in the some general range as for savings accounts. In addition, at this bank, savings accounts had limitations ("caps") on the amount in an account that would receive the stated interest rate. For example, from 1979 through 1982, when the interest rate varied from 2% to 4%, the rate of interest applied on amounts over SFr. 250,000 was 1%. In addition, during the Relevant Period, many of the banks charged a fee of SFr. 1 or 2 if customers chose to have the bank retain their passbook for them, eliminating the need for the account holder to appear at the bank to receive the interest due on the account each year. One was reported to have charged a uniform annual fee of SFr. 2 to all foreign savings booklet holders. Other than the passbook fee, many of the banks applied no fees or charges to such accounts.

64. At one bank, a 1947 audit indicated that the bank had not paid any interest on deposit and savings books held by Germans in Germany since January 1, 1947. At another bank, it was noted that no interest had been paid to more than 60 German accounts between 1933 and 1957. In 1957, the bank's headquarters sent an order to several branches directing them to apply interest on German accounts only where the account holders specifically requested such payments.

Deposit and Current Accounts

65. Current accounts, also referred to today as demand deposit accounts, were the common ac-

counts used for customers' day-to-day financial transactions. These accounts were used both for individuals and corporate entities. The defining feature of these accounts was the ability to deposit and withdraw money from the account at any time without notice. For this demand privilege, current accounts during the Relevant Period generally earned a very low rate of interest ranging from 0.5 to 3.75%, with the rates at most banks hovering between 0.5 and 1.5%. At one of the large commercial banks, the interest rate for current accounts was 0.5% from 1939 through 1978 and then .25% through 1991 (with the exception of 1987 at 0.75%). However, current accounts denominated in foreign currencies did not receive interest. Another of the large commercial banks disclosed that the bank abided with the "Gentlemen's Agreement" by not paying interest on current accounts to foreign customers, including those accounts denominated in Swiss francs. Current accounts denominated in foreign currencies received no interest regardless of the owners' nationalities.

66. Also, at most banks, current accounts were subject to an annual fee ranging from SFr. 1 to SFr. 50, with most banks charging an annual fee of less than SFr. 10 during the Relevant Period. In addition, most of the banks charged an interest fee on overdrafts. While information with regard to the specific rates charged was limited, the audit firms determined that the average fee charged was 4%.

Custody or Depot Accounts

67. Custody or depot accounts were designed so that the bank could hold and preserve securities and other assets owned by the customer. The bank served as a custodian of the customer's assets, as a fiduciary holding the account in trust for the benefit of the customer. Any increase or decrease in the value of the account was to the customer's account rather than the bank's.

68. Most banks charged an annual fee to these accounts equaling a percentage of the account balance. These fees varied based upon the contents of

the account. For example, at one private bank, the annual fee for a custody account containing bonds was SFr. .6 per SFr. 1,000, and the annual fee for a custody account consisting of stocks was SFr. .15 per security.

69. Many of the banks specified a minimum fee for custody accounts, ranging from SFr. 3 to SFr. 20 during the Relevant Period. One of the large commercial banks had a minimum SFr. 3 charge on custody accounts during 1940 through 1944, while the standard custody account fees ranged from 0.1% to 0.125% for much of the Relevant Period.

70. Most banks also charged a transaction fee each time a security was bought or sold on behalf of the account holder.

Safe Deposit Boxes

71. Most Swiss banks offered customers safe deposit boxes, available in various sizes with corresponding rental fees. Generally, the safe deposit box could be opened with two keys, one was held by the bank and the other by the customer. While the bank had no knowledge of the contents of the safe deposit box, they were typically used for the storage of documents, securities, precious metals, and jewelry. The bank was responsible for the security of the contents and was liable for any damages or loss.

72. Most banks offered two size boxes and the annual rental fees ranged from SFr. 7 to SFr. 10 for small boxes and from SFr. 20 to SFr. 80 for larger boxes during the Relevant Period. One of the large commercial banks charged a wide range of fees for safe deposit boxes that varied between branches and over time.

73. At one of the large commercial banks, the auditors noted a policy of charging foreign customers double the amount charged to a Swiss national for the same service. However, the official charges from this period provided by the large commercial bank do not stipulate double rents for foreign customers.

Numbered and Hold Mail Account Fees

74. Numbered account fees are applied to those accounts for which a special number or code is used to identify the customer relationship instead of the customer's name. The customer's name and the account number are kept in separate ledgers and only designated bank staff are aware of an account holder's identity. The "numbering" of an account effectively reduces the number of bank employees who are aware of the identity of the depositor. At one large commercial bank, all foreign accounts in one region were apparently always numbered accounts, whereas other regions opened both named and numbered accounts for foreign account holders. The annual fees for a numbered account ranged from zero to SFr. 10 during the Relevant Period at the large commercial banks; however, today, the annual charge is SFr. 200.

75. Hold mail fees are charged for mail held at bank at the customer's request. Such fees may also be imposed by the bank when mail is returned to the bank by the postal service as a result of an incorrect mailing address. Hold mail fees are most often charged in relation to with custody, passbook, and current accounts. The fee was typically reflected in the customer's current account statement. At one large commercial bank, for passbooks, hold mail fees were SFr. 10 for most of the 1939-1998 period. For custody accounts, hold mail fees ranged from SFr. 3 in 1946, to SFr. 50 during the 1980 to SFr. 200 in the 1990.

Administrative, Closing, and Other Fees

76. Many of the Swiss banks also charged an administrative fee on all accounts to cover the administrative costs incurred by the bank. These fees were charged on an annual basis and ranged from SFr. 100 to SFr. 250 during the Relevant Period. In addition, at one of the cantonal banks, a special charge for administrative costs of SFr. 100 was applied to dormant account reported in the 1962

survey which had not been claimed by 1967. Several of the banks imposed a closing fee when an account was closed, either by the account holder or by the bank itself. These fees ranged from SFr. 6 to SFr. 20 at the various banks.

Fees and Charges Applied to Dormant Accounts Suspended or Pooled Accounts

77. Accounts that were deemed dormant due to a lack of activity by or communication with the account holder for a specified amount of time (ranging from 10 to 20 years) were transferred by the majority of the banks into suspense or pooled accounts. (One of the large commercial banks transferred such monies into a pooled account after only five years of inactivity.) Once transferred into a pooled account, these accounts were generally no longer subject to any previously applicable fees or charges.

78. Similarly, at most banks, once transferred into the pooled account, the funds no longer earned interest. For example, at one large commercial bank, in accordance with bank policies, there was no evidence that fees were charged for moving dormant accounts to a collective account, and that once deposited in a collective account, no further fees or

interest was charged or earned. Most of the banks' policies allowed for the award of retroactive interest if a valid claim to those funds arose subsequent to the pooling of the account.

Standard and Research Fees on Dormant Accounts

79. Policies varied at each of the banks with regard to the fees and charges to be applied to dormant accounts. Most of the banks treated dormant accounts like any other account, applying all of the regular fees and charges, although some banks charged no fees on dormant accounts. However, when fees were charged, these fees often reduced the account balance to zero because the banks discontinued paying interest on the account once they were classified as dormant. See, *supra*, paragraphs 12-20.

80. In addition to the regular standard annual fees associated with each account type, many banks charged a search fee if research was conducted to identify a dormant account for a survey of such accounts, or if a claim was made to a dormant account. The amount of the search fee varied among the banks and was often based on the extent of research necessary to determine the rightful owner. See, *supra*, paragraph 21.

Potential Intermediary Accounts and Looted Assets

A. Results of the ICEP Investigation

Intermediaries

1. The Second Phase Mandate provided that the audit firms:

[I]n cooperation with Swiss authorities, including the Bergier Commission, shall seek to find accounts opened by intermediaries including, but not limited to, lawyers, accountants, notaries, financial consultants, or others, from records or other information available at banks, with the aim of determining whether such accounts were opened for the benefit of victims of Nazi persecution.¹

Intermediaries, often Swiss professionals such as lawyers, accountants, and asset managers, acted on behalf of the beneficial owner of an account for the purpose of protecting the anonymity of the beneficial owner. When an intermediary was used, the account was in the name of the intermediary or a Swiss-domiciled company founded for that purpose. During the Relevant Period, Swiss banks were not obliged to know the identity of the beneficial owner of deposits and therefore, when an intermediary was used, the bank records would not normally provide information as to the beneficial ownership of the account.

2. There is evidence that victims of Nazi persecution used intermediaries to deposit funds with

Swiss banks in an effort to protect their assets from the Nazis. Intermediaries were also used to facilitate ransom transactions, which involved a payment to Nazi authorities in exchange for assured safe passage to a neutral country. There is also evidence that the Nazis used intermediaries in their efforts to launder money out of Germany. Those accounts may have held looted assets and are discussed in paragraphs 11 to 16.

3. The audit firms found some evidence of intermediary accounts at many banks. Their reporting on intermediaries was necessarily focused on the matched accounts resulting from the comparison of the accounts databases to a database containing the names of intermediaries. Such matched accounts are only an indication that the accounts may be accounts of potential intermediaries and not that they are, in fact, intermediary accounts. A substantial number of Relevant Period accounts (34,401) were matched. Matching of intermediaries names against the databases of accounts will, however, result, to some unknown extent, in the identification of normal fiduciary business of the intermediaries. The audit firms also reported that research other than matching identified another 1,688 potential intermediary accounts. ICEP requested that the audit firms provide the list of matches to the Bergier Commission.

¹ Audit Firm Mandate – The Second Phase, ¶ 5 (January 30, 1998), see Appendix J.

General Methodology

4. The audit firms used a database containing names of known, suspected, and potential intermediaries (the “Potential Intermediary Database”). The database was compiled from the lists in Table 1. The database contained a total of 4,025 names, but, obviously, only a small fraction of this rather complete database could have been intermediaries for victims of Nazi persecution. A number of firms also matched the names of intermediaries identified as being involved in Jewish ransom transactions.

5. One audit firm compiled an additional list of intermediaries that it used for matching from the following sources:

- The historical research database established in the First Phase, which identifies various lawyers and other third parties having links to Jewish clients;
- U.S. National Archive material obtained by the U.S. law firm representing the SBA, Wilmer Cutler & Pickering, and others;
- special investigations of the Swiss Compensation Office;

- an interview with a retired Jewish banker who is a relative of one of the founders of a private bank;
- registrations in the 1962 Survey; and
- claims during the 1962 Survey process.

The list created by the audit firm was matched against the Potential Intermediary Database, and duplicate names were eliminated from the audit firm’s list. The resulting list, containing 1,837 names, was then used for matching.

6. The audit firms matched the accounts database for each bank, which databases collectively contain approximately 4.1 million accounts, against the Potential Intermediary Database on an exact and near-exact name basis to generate a list of possible intermediaries who had accounts at the bank during the Relevant Period. A name match alone does not prove that the account holder and the potential intermediary are the same person nor does the existence of an account in the name of a potential intermediary mean that the account funds belonged to a third party. The aim was to identify potential intermediary accounts that could be followed up by the Bergier Commission.

Table 1

Description	Number of Names	Sources
Swiss Lawyers who practiced during the Relevant Period	1,395	Swiss Federation of Lawyers (Zurich list)
Swiss intermediaries	126	U.S. National Archives
Swiss lawyers in Zurich allegedly hiding German assets	66	U.S. National Archives
Swiss lawyers in Lugano and Lucerne allegedly hiding Nazi assets	27	U.S. National Archives
Attorneys who acted as possible intermediaries	2,411	Swiss telephone books (1930-1950) and Registry of Swiss Lawyers

Results of Analyses

Large Commercial Banks

7. At a large commercial bank, the matching of the Potential Intermediary Database to the accounts database, resulted in a total of 19,923 matched accounts. The audit firm reported that 164 of these matched accounts resulted from using a list of the names of 23 lawyers identified as being involved in ransom transactions, which involved payment by individuals, families, or intermediaries to Nazi authorities to assure safe passage to a neutral country. Five intermediaries' names matched with many accounts; these five individuals' names matched, respectively, to 11, 16, 24, 26, and 28 accounts. The audit firm reports that the name of one intermediary (a Dutch lawyer who appeared to have been involved in a large number of ransom transactions in 1942) matched to six accounts. Research revealed evidence that the intermediary was convicted of embezzling ransom money from Dutch Jews in 1942. This audit firm also identified another 1,326 matched accounts relating to an additional 1,837 names of possible intermediaries.

8. At another large commercial bank, there were 5,777 accounts that matched to the Potential Intermediary Database. At a third large commercial bank, the audit firm reported 8,245 accounts that matched to the Potential Intermediary Database.

Cantonal Banks

9. Matching the accounts databases at the cantonal banks to the Potential Intermediaries Database, the audit firms identified 19,805 accounts that potentially relate to intermediaries. One audit firm reported another 76 potential intermediary accounts that were identified as a result of other research. It reports that many matches were to known Nazi sympathizers and senior Nazi officers.

Private Banks

10. Matching the accounts databases at the private banks to the Potential Intermediaries Database,

the audit firms identified 3,432 accounts that potentially relate to intermediaries. They also reported another 13 potential intermediary accounts that were identified as a result of other research.

Potentially Looted Assets

11. With respect to looted accounts, ICEP instructed the audit firms as follows:

if during their investigation of banks as part of the Second Phase FAI, the firms find any evidence of accounts looted by Nazis, they shall report this information to [ICEP] so that [ICEP] can refer it to the proper Swiss authorities.²

The audit firms identified as looted assets those accounts where the customer's assets have been transferred to a third party without the customer's consent or under duress. Asset looting continued as Germany annexed or invaded countries during World War II. The activity was accompanied by increased Nazi espionage in Switzerland directed towards obtaining information on accounts held in Switzerland by German nationals. Although not looted assets insofar as a Swiss bank is concerned, the audit firms also identified instances where customers were obligated by the Nazi authorities to repatriate and convert their foreign assets. These forced transfers followed, in particular the re-introduction of currency control laws in July 1931, as subsequently modified, which made it illegal for German residents to export or to fail to report foreign currency held outside of Germany. Jewish individuals were required to disclose their foreign assets to the Nazi authorities who subsequently confiscated them.

12. Some of the audit firms matched the accounts databases to a database containing the names of some 1,934 persons who potentially acquired looted assets (for example, senior Nazi officials, European Nazi collaborators, etc.). The total number of Relevant Period accounts that were matched

² See Annex J. FAI is an abbreviation for Forensic Accounting Investigation.

is 1,622; however, such accounts are potentially looted assets accounts for which further investigation (by the Bergier Commission) will be necessary to determine the facts. (See also Annex 5, paragraph 22 for a discussion of coerced transfers.) The results are described in further detail below.

General Methodology

13. The audit firms used a database containing names of individuals and entities who held potentially looted assets or were involved in transactions with looted assets (the “Potential Looted Assets Database”). The database containing 1,934 names was compiled from the lists in Table 2. The audit

firms matched the accounts database for each bank, which databases collectively contain approximately 4.1 million accounts, against the Potential Looted Assets Database on an exact and near-exact name basis to generate a list of accounts that may have held looted assets.

Results of Analyses

Large Commercial Banks

14. At the large commercial banks, matching the Potential Looted Assets Database to the accounts databases, resulted in a total of 833 matched accounts at two of the banks and no matches at one of the banks.

Table 2

Description	Number of Names	Sources
German-owned firms or individuals in Switzerland and Liechtenstein	730	U.S. National Archives
Swiss companies allegedly owned by Germans	440	U.S. National Archives
Senior Nazi officials	349	Simon Weisenthal Center
European Nazi collaborators, informers	127	U.S. National Archives
Galleries, dealers, and individuals allegedly receiving looted art	52	U.S. National Archives
Banks and finance companies allegedly hiding German assets	40	U.S. National Archives
Enemy assets in Switzerland	13	U.S. National Archives/files of Ministry of Economic Welfare
Enemy individuals who allegedly transferred assets to Swiss banks	11	U.S. National Archives
Officials in German financial institutions	172	FDR Library

Cantonal Banks

15. At the cantonal banks, matching the Potential Looted Assets Database to the accounts databases, resulted in a total of 1,754 matched accounts. Twenty additional potentially looted accounts were identified as a result of other research by the audit firms.

Private Banks

16. At the private banks, matching the Potential Looted Assets Database to the accounts databases, resulted in a total of 39 matched accounts. Four additional potentially looted accounts were identified as a result of other research by the audit firms.

B. Cooperation with the Bergier Commission

17. In December 1996, the Independent Commission of Experts: Switzerland – Second World War (the “Bergier Commission”) was created by a federal decree of the Swiss Parliament to conduct historical and legal research into a number of topics relating to Swiss commercial and political activity during World War II.³ The independent members of the Bergier Commission were nominated by the Swiss Government, and Professor Jean François Bergier was selected as president of the

Commission. The Commission is divided into teams in the following areas: Banking and Insurance; Industry; Foreign and Refugee Policy; Foreign Trade and Special Issues; Historical Testament (“Zeitzeugenstelle”); U.S. Archives; and Germany. The work performed by the U.S. Archives and the Germany teams includes the retrieval of relevant historical documentation from the U.S. National Archives and the German Federal Archives.

18. The Bergier Commission, together with ICEP, agreed to a Statement on Coordination and Cooperation providing that, to accomplish the separate goals of each group, they would share information in areas of mutual interest.⁴ In light of the Statement, ICEP requested that the audit firms meet with members of the Bergier Commission to discuss the status of their respective projects, identify potential sources of information, explore other opportunities for the exchange of information, as well as turn over to the Bergier Commission the evidence they have developed with respect to intermediaries and looted assets.

³ See the Decree Concerning the Historical and Legal Investigation of the Fate of Assets Which Reached Switzerland as a Result of National Socialist Rule (December 13, 1996), Appendix F.

⁴ See Statement of Coordination and Cooperation, Appendix K.

Records and Record Keeping

Introduction

1. Pursuant to the First and Second Phase Mandates,¹ the audit firms were asked to report on the various banks' record keeping practices during the Relevant Period and thereafter. In particular, the audit firms were asked to include an analysis of the following issues in their reports: the bank's practices regarding the retention and destruction of records, storage, or archiving systems, including a report on the banks' compliance with Swiss laws and regulations on destruction of bank records; circumstances relating to any missing or destroyed records, with an emphasis on whether or not those records were destroyed in the ordinary course of business as part of the bank's regular records storage policy; and any evidence of deliberate or inadvertent record keeping errors or misclassification of accounts, including any irregularities in the banks' record keeping.

2. This section discusses the findings and conclusions of the audit firms relating to these mandated inquiries into the Swiss banks' record keeping activities. It begins with an overview of the relevant Swiss laws, regulations, and guidelines relating to record keeping.

Swiss Laws, Regulations, and Guidelines on Record Keeping

The Swiss Code of Obligations

3. Pursuant to the Swiss Code of Obligations, which has been in effect since the 1880s, Swiss

banks are required to maintain business records for at least 10 years.² The third, and current, edition of the applicable provision states:

“Any person who has a duty to maintain business records, must preserve them, the business correspondence, and the accounting vouchers for 10 years.

Business accounts and the balance sheet shall be preserved in the original; other business records may be preserved in facsimile, business correspondence and accounting vouchers as facsimile or in data banks, if the records agree with the original documents and can at any time be made legible. The Federal Council has the authority to issue further regulations.

Records in facsimile or data banks have the same evidentiary value as the documents themselves.”³

Ordinance of the Federal Council

4. On June 2, 1976, the Federal Council issued an ordinance defining the procedures to be followed by an organization regarding the transferring of business records to image carriers or electronic data. The ordinance stated that the systems on which the records were transferred must be operable throughout the records' retention period. It also stated that

1 Audit Firm Mandate and Instructions – The First Phase ¶¶ 10(b), 11(a), 17(b) (November 19, 1996), Appendix E; Audit Firm Mandate – The Second Phase ¶ 9 (January 30, 1998), Appendix J.

2 Swiss Code of Obligations, Art. 962.

3 *Id.* (as of July 1, 1976).

the records must be indexed and referenced properly, as well as be reviewed for legibility.

Guidelines of the Federal Office of Justice

5. Also, in 1976, the Federal Office of Justice issued guidelines for procedures and requirements for recording and retaining documents in electronic media. The guidelines defined procedures that must be followed when microfilming documents and addressed the issues of data security and the effects of changes to computer systems.

Federal Decree of December 13, 1996

6. The Federal Decree of December 13, 1996, prohibits the destruction, transfer abroad, or the making less accessible of any existing records that could be useful to the Bergier Commission's investigation.⁴ Furthermore, it provides that certain experts (as defined by the Federal Council) may have access to these records. The decree also provides for strict punishment for any person who intentionally or negligently violates the decree.

7. ICEP recognized that document retention was crucial to the success of the investigation and that it was important to demonstrate to Swiss banks and to the public its serious concerns about compliance with the Decree. Consequently, after the document destruction incident in January 1997 described in paragraphs 27 and 30 below, the Committee decided to make targeted document retention investigations of ten representative Swiss banks, five as part of the pilot investigations and five as part of specifically targeted document retention reviews, all as described in Annex 3.

Federal Banking Commission, February 1997

8. On February 28, 1997, the Swiss Federal Banking Commission required external bank auditors to determine during their normal audit whether

the bank has complied with the records regulations and to state their results in the audit report.

Swiss Banks' Document Storage, Retention, and Destruction Policies

9. Based on their review of the record keeping policies and practices of the Swiss banks under investigation, the audit firms concluded that the banks generally complied with Swiss law on record keeping, with a few exceptions that are described below.

Large Commercial Banks

10. At one large commercial bank and its subsidiaries, the audit firm carrying out the investigations of these banks concluded that it found no evidence at the bank or at any of its subsidiaries that suggested they destroyed documents in a manner that was in violation of Swiss law. In accordance with Swiss law and regulations, the bank's policy during the Relevant Period and continuing to the present day has been to keep all correspondence and accounting records for a period of ten years. The audit firm noted that the bank retained large quantities of both relevant and non-relevant documents that it legally was permitted to destroy. The audit firm concluded that the bank's document retention practices appeared to have been influenced by available archive space and the attention that particular bank managers placed on record retention at various times.

11. The bank's current guidelines dictate that document destruction records also should be maintained for a period of a least ten years following the year in which the documents are destroyed. Prior to the issuance of the December 1996 Federal Decree, the bank's method and location of document destruction varied depending upon the classification, type, and volume of material to be destroyed. The audit firm visited various branches of this bank that were

⁴ Federal Decree Concerning the Historical and Legal Investigation of the Fate of Assets Which Reached Switzerland as a Result of National Socialist Rule, Art. 4 (December 13, 1996), Appendix F.

open during the Relevant Period to compare the legal requirements and the bank's policy regarding record retention with the bank's actual practice. The audit firm reviewed the destruction logs at these branches and observed that document destruction was conducted regularly and systematically, and was recorded. For example, the audit firm reported that between 1946 and 1955, material was destroyed every two years in a bank acquired by a large commercial bank. Between 1955 and 1973, eight branches destroyed material on a yearly basis. Between 1974 and 1988, material was destroyed sporadically. Between 1988 and 1992, no detailed destruction logs were available. The bank's records regarding document destruction also revealed that at one point material had been handed over to a third-party destruction company and that the material had been destroyed in the presence of the individual who created the document destruction record.

12. The audit firm noted, however, that it located no destruction logs at one branch location of a large commercial bank despite the fact that a 1941 bank instruction stated that document destruction details should be maintained. The audit firm reported that, in one of the acquired banks, based upon the information contained in the destruction logs, it was evident that documents from the Relevant Period were destroyed up until 1967. Nevertheless, upon its review of the destruction logs at this bank's branches, the audit firm determined that for the period from 1967, the only period for which detailed information was available, the branches adhered to both the legal requirements and to the bank's internal guidelines regarding document destruction.

13. When it examined this large bank's subsidiaries, the audit firm reported that it found limited information in their archives relating to document retention policies during and after the Relevant Period. It said that the best source of information regarding the subsidiaries' archiving procedures during the Relevant Period came from an internal audit in 1948. The internal auditors noted at that time that "the destruction of the business files which are more

than ten years old has a good influence on the space in the archive," and the internal audit report recommended that files should be destroyed as soon as permitted.

14. At another large commercial bank, the audit firm carrying out the investigation also found documents from the Relevant Period that could have been destroyed many years ago. It reported that this bank's document retention period was ten years from the end of a customer relationship or from the closure of an account. Most of the surviving records relate to accounts that are open today. The audit firm noted that the documents that survived from the Relevant Period, excluding opening records for open accounts, appear to have done so by accident. It found that the great majority of missing documentation relating to the Relevant Period was missing due to destruction of records in the ordinary course of business. For those accounts that are closed, there is a significant gap in the records up to 1986. The audit firm notes that this might not have been the case had 8,677 microfilm rolls of archived documents not been destroyed by the bank in 1994.

15. The audit firm reported that the bank issued a directive on February 21, 1997 stating that no documents dated prior to October 1, 1996 should be destroyed. However, the directive stated that an exception could be made regarding documents dated between January 1, 1976 and September 30, 1996, provided that the documents did not contain information concerning the history of Switzerland during World War II. Documents originating between those dates could be destroyed only after the individual seeking destruction filed a request with a certain bank officer and had it countersigned by the head of the department concerned, stating the reasons for the destruction and all details relating to the documents involved. As a result, a bank officer received regular requests to destroy documents. The audit firm reviewed the document destruction requests from the period of February 1997 to June 1998. It found that of the 233 requests to destroy documents, 223 were approved. The audit firm's

examination of the requests for document destruction indicated that the documents in question dated from the mid-1980s and generally were copies of originals retained elsewhere in the bank. The requests that were denied involved documents that related to client relationships and to other information considered by the bank officer to be of importance.

16. In June 1998, this large bank's legal department amended the February 21, 1997 directive. As a result, no documents dated prior to October 1, 1996 could be destroyed, and document destruction requests no longer could be made to the bank officer and the legal department. A more detailed discussion of the June 1998 amendment is in paragraph 34.

17. Although the audit firm found four specific instances in which some documents at this bank had been destroyed in error in 1997 and 1998 (see paragraphs 27 to 34), it saw no evidence of systematic document destruction relating to the Relevant Period following the enactment of the December 1996 Federal Decree.

18. At a third large commercial bank, the audit firm identified no evidence that the bank had breached document retention requirements as set out in the Swiss Code of Obligations and the December 1996 Federal Decree. It reported that due to the bank's decentralized structure, until recent years, there have been inconsistencies in record keeping at the local level; the arrangement of similar documentation varied from one bank location to another. For example, the same documentation was stored alphabetically in one location and chronologically in another. Prior to 1970, policies and procedures at this bank regarding document retention were communicated through circulation letters that the bank distributed to all branches, although the audit firm discovered some evidence that the branches did not follow strictly these record keeping policies. For example, the audit firm questioned whether destruction of files that had been evacuated from one branch

to two other branches was conducted in accordance with record keeping policies.

19. The audit firm reported that record retention periods at this large bank often have been governed by considerations other than by bank policy. For example, the bank's archivists have tended to retain documents until they were prompted to destroy them -- either by a specific internal directive or by space constraints.

20. The audit firm reviewed this bank's documents in four separate regions. In one region, the audit firm located detailed documents relating to frozen German assets. In another region, the audit firm discovered almost no documents regarding German clients, but found numerous documents regarding clients of other nationalities, raising the possibility that documents related to German clients during the Relevant Period may have been removed from this region intentionally.

21. Until 1995, this large bank had no special procedures for maintaining records for dormant accounts because it considered such accounts to be open, and it thus maintained those accounts in accordance with regular bank procedures. After 1995, all dormant accounts dating from 1934 to 1946 were centralized in one location. The files relating to dormant accounts with opening dates prior to May 9, 1945 and files identified as belonging to potential Holocaust victims were centralized in a distinctive archive. Accordingly, the audit firm concluded that the bank's policy on dormant accounts appears to have been followed.

22. With certain exceptions, this large bank did not retain lists of records destroyed in the normal course of business and in accordance with Swiss law. However, the bank legally was not required to do so. Therefore, large quantities of documents relating to accounts from the Relevant Period have been destroyed in the normal course of business without record.

23. However, the audit firm examining this large bank stated that the volume of surviving documentary evidence that it found that was of relevance to the investigation was more extensive than it expected. This was due to the fact that the bank retained large quantities of documents that it legally could have destroyed years ago.

Cantonal and Private Banks

24. The investigations of various cantonal and private banks revealed that most banks complied with Swiss law and maintained relevant documents for at least ten years, and only a few instances where cantonal banks violated bank policy or Swiss law on records retention (see paragraphs 36 to 38). In accordance with Swiss law, the banks retained documents for at least ten years. Furthermore, although the banks could have destroyed many documents after ten years, the audit firms observed that many banks retained documents longer, including documents from the Relevant Period.

25. The audit firms noted that the amount of documentation retained varied from bank to bank as a result of differences in the banks' implementation of the ten-year retention law. For example, although some customer name information generally was available at each bank, some private banks possessed enough documentation to reconstruct a database containing a complete history of account holder names for the Relevant Period. Moreover, one audit firm reported that implementation of the ten-year document retention policy sometimes differed within the individual banks themselves. For example, at one bank, bank personnel managing certain branches apparently disregarded instructions from the main branch and independently decided what documents to retain. Therefore, certain branch locations maintained different quantities and types of documents from the Relevant Period.

26. In general, most cantonal and private banks destroyed transactional records in the ordinary course of business and in accord with Swiss law.

Therefore, little transactional information is available relating to accounts closed prior to 1986.

Irregularities in Record Keeping

Document Destruction

Large Commercial Banks

27. At one large commercial bank, there were four instances of irregular document destruction that were reported by an audit firm. The first incident occurred in January 1997, after enactment of the December 1996 Federal Decree.⁵ A security guard employed by another company identified two containers set aside for destruction in the bank's shredding room. The documents contained what appeared to be historical material. The security guard removed some of the documents from the bank and delivered them to a local Jewish organization and to a member of the press. The member of the press gave the documents to the criminal investigation authorities in Zurich.

28. The bank investigated the incident and discovered that its own archivist had transferred the documents, which originated from the archives of another bank that was acquired in 1945, from the bank's historical archive to its shredding room for destruction on two occasions: the first set on January 3, 1997, and the second set sometime between January 8 and January 10, 1997. The first set of documents was destroyed, and as a result of an internal investigation, the second set was transferred to the Zurich District Attorney's office. The contents of the first set of documents is unknown because no record was kept of the documents that the other bank had transferred to the bank's historical archive, and the historical archive kept no record of the documents designated for destruction. The bank questioned the archivist regarding the incident, but he could not recall accurately the contents of the documents that had been destroyed. A number of the documents confiscated by the Zurich District

⁵ See Appendix F.

Attorney's office contained information on the originating bank's business in Germany during the Relevant Period. It is unknown whether similar types of documents were among those destroyed.

29. ICEP expressed its serious concern over this incident involving the destruction of documents potentially relevant to its investigation. In response to ICEP's concern, two representatives of the bank provided a briefing on the situation at ICEP's January 30-31, 1997 meeting. The bank's representatives spoke of the bank's commitment to ICEP's efforts and stressed that the bank would place no obstacles in the way of ICEP's investigation. They apologized for the document destruction. The bank's representatives described the bank's investigation into the incident and reviewed the internal measures taken by the bank to prevent the destruction of relevant documents. They explained that although the bank had disseminated an internal memorandum on December 10, 1996 (before enactment of the Federal Decree of December 13, 1996) that instructed the staff to preserve documents subject to discovery in the New York Holocaust Victims' Assets litigation, the archivist involved in the shredding incident did not receive a copy of the memorandum. Moreover, the bank representative assured the ICEP members that the bank was redrafting its instructions to include specific reference to the Federal Decree of December 13, 1996, and the criminal sanctions to be imposed on individuals who violate it. The bank's representatives assured the ICEP members that the document destruction was not intentional even though it was a breach of the December 1996 Federal Decree.

30. The bank's representatives then stated that the bank had implemented several measures regarding document preservation: (1) it undertook an internal audit of all of the bank's branches and subsidiaries, worldwide, to investigate any actions relating to destruction of documents during 1996; (2) it was undergoing an internal review of document preservation methods; (3) it was undergoing a review by outside auditors concerning whether its December 10, 1996 notice adequately satisfied the

requirements of the Federal Decree and whether the bank had an adequate methodology in place to identify those documents that were covered by the Decree; and (4) it was continuing to review the requirements of the Federal Decree and the court-ordered discovery in the New York litigation.

31. The second incident occurred in April 1998. The audit firm investigated one of the bank's archives, which was comprised of two filing cabinets. The archivist responsible for the archive claimed that the contents of the filing cabinets had been approved for destruction by a bank officer. However, the archive included documents related to international fund transfers, including some dated prior to 1945. The bank's internal audit department prepared a report on this incident and presented it to the audit firm. The report stated that a detailed list of documents in the archive had been prepared for the bank officer to approve, but that only some of these documents, for instance blank forms, had, in fact, been approved for destruction. Even though the relevant documents within the archive were not approved for destruction, error might have led to the whole contents of the cabinet being destroyed and relevant documents could therefore have been destroyed.

32. A third incident arose when in May 1998, the audit firm attempted to review the contents of an archive identified by the bank's legal department. The archive could not be located, and it became evident that the archive had been destroyed. A bank officer stated that the archive sticker must have fallen off when the cleaning staff removed the archive. Later, a bank officer checked the contents of the two boxes constituting the archive, which contained triplicates of the documents in question; therefore, he allowed the documents to be destroyed. The audit firm concluded that documents that might have been deemed to be relevant to the investigation nevertheless were destroyed.

33. The fourth incident also arose in May 1998. The audit firm visited the bank's archive again and discovered that another archive had been destroyed. Included among those documents that had been

destroyed were some dating from 1948 to 1985. In a report on the incident, a bank officer stated that the documents that were destroyed had been checked earlier and were found not to contain any relevant material covered by the December 1996 Federal Decree.

34. In June 1998, following these four incidents in which potentially relevant documents had been destroyed, the bank's legal department issued a new directive to strengthen the bank's position on document retention. The directive stated that absolutely no documents dated prior to October 1, 1996 were to be shredded. The directive continued that the person in charge of dormant accounts is the only person authorized to grant exceptions or to authorize shredding of documents of any kind. The person responsible for approving destruction at the bank stated to the audit firm on September 11, 1998 that he would approve of destruction of a document only if the individual making the request could prove beyond doubt that there were other copies of the document available elsewhere within the bank.

Cantonal and Private Banks

35. As previously noted, the audit firms' investigations of various cantonal and private banks revealed only a very few instances in which cantonal banks violated bank policy or Swiss law on document retention; most banks complied with Swiss law and maintained relevant documents for at least ten years. The following instances were reported by the auditors that conducted the investigations at the cantonal and private banks.

36. An audit firm reported that, in 1996 and 1997, one cantonal bank overwrote and permanently lost data from 1986 and 1987 that had been stored in computer files. In its defense, the bank stated that while it inadvertently lost the information during its regular year-end closing procedures, it still retained the corresponding paper records. The bank did not see its destruction of electronic data as a violation of the December 1996 Federal Decree. However, the audit firm stated that while the bank's

impression technically may be accurate, the audit firm viewed the retention of data in electronic form as important to the bank's ongoing ability to research potential dormant accounts.

37. The same audit firm also reported that, from February to July 1997, another cantonal bank conducted its own investigation of its branches to assess their adherence to the December 1996 Federal Decree. The audit firm said that the bank's analysis identified four instances of non-compliance with the decree's instructions: in three instances, documents had been destroyed inappropriately after the federal decree was enacted and in one instance, a bank employee had no knowledge of the federal decree. The audit firm reported that it appeared that the documents destroyed were from 1986; however, it could not be certain because the bank did not keep a destruction log.

38. As part of its work for the publication of dormant accounts in July and October 1997, Banque Cantonale Vaudoise undertook an analysis of those accounts for which it only has account holder name details without any details of the account opening date. When the audit firm working at this bank requested a copy of this analysis, the firm was informed that these work papers were destroyed and that the bank was otherwise unable to explain to the firm which individual accounts were assessed in this way and which accounts had been considered for publication. The destruction of these records appears to be inconsistent with the requirements of the December 1996 Decree on retention of records. The failure is all the more important because this bank did not permit until late September 1999 the matching of its account records against the databases of victims of Nazi persecution as part of one of the standard procedures used by the ICEP mandated audit firms to identify accounts related to those of victims of Nazi persecution.

Incomplete Records

Large Commercial Banks

39. At one large commercial bank, an audit firm

noted that upon examination of the bank's database of dormant or potentially dormant accounts, it found approximately 41,000 customers, representing a value of SFr. 17,100,000. However, the audit firm stated that there was no record of the opening dates for these accounts. According to the audit firm, this type of uncertainty exists because the bank used "cluster account" account opening dates when the accounts were created. The bank was unable to provide an explanation for its incomplete records.

40. At another large commercial bank, another audit firm reported an irregularity when it reconciled one of the bank's general ledger suspense account balances, which was maintained at one of the bank's branches. The suspense account balance amounted to SFr. 9,285,000. The audit firm was only able to identify the account holders for 91.4% of the suspended balances. Moreover, the audit firm stated that to the extent that balances were not identifiable from these lists, it represents a breach of the bank's own document retention policies. The audit firm reported that the bank's breach was serious because certain account holders were no longer identifiable. Subject to this finding regarding the suspense accounts, the audit firm reported that it saw no loss or destruction of documents that may have been of potential relevance to the investigation other than what was in the ordinary course of the bank's operations and in accordance with Swiss legal requirements at the relevant time.

Cantonal and Private Banks

41. An audit firm's investigation of one cantonal bank's record keeping practices found that the bank had misplaced some documents from the bank's archives that dated from the Relevant Period. Specifically, a number of original documents from the Relevant Period, whose existence the audit firm had confirmed during its spring 1998 investigation, could not be located when the audit firm asked to see them

again in connection with its investigation of specific accounts. The documents related to affidavits concerning foreign securities from the 1940s and a file of old customer correspondence. The audit firm believes that the bank misfiled these documents in the archive due to a weakness in the organization of the archiving system; documents in the archive did not bear the catalogue reference number, and when a document is removed from its file location, it is difficult to identify the location to which the document must be returned.

42. At another cantonal bank, the audit firm focused on the handling of accounts designated as "hold mail." The bank designated accounts as such when the client requested that all correspondence with the client be held at the bank. In internal reviews dating from 1938, the bank's own audit department expressed some concerns regarding the bank's control over these accounts, given that the bank could not verify that the account holder was still alive, let alone authorizing transactions effected by the bank. The comments in the bank's internal reports provide some evidence of irregularities in record keeping, although the audit firm could locate no corroborating independent evidence as support.

43. For one of the private banks, the auditors reported that during the Relevant Period, the bank had no internal policies or procedures for accounting, record keeping, and archiving, and that even to this date, the bank still has no written directive on archiving. The bank's only policy in this regard is that all documents are to be kept for a minimum of ten years. Thus, although the audit firm noted that the bank kept a significant amount of information on the Relevant Period, there was an "information gap" from the late 1940s to the early 1960s that could not be explained because of the lack of bank archiving policies.

The Claims Resolution Tribunal for Dormant Accounts in Switzerland

Origins of the Claims Resolution Process

1. A review of dormant accounts in Swiss banks in 1995 by the Swiss Bankers Association (“SBA”) identified approximately SFr. 38 million in dormant accounts.¹ However, no procedure had been established for potential beneficiaries of such deposits to establish their right to them. At the ICEP meeting on January 30-31, 1997, the Committee discussed the establishment of a mechanism to determine the entitlement of specific individuals to particular dormant accounts. The Committee was of the view that a credible and expeditious quasi-judicial process was necessary to give the claimants the “day in court” that they had sought for so many years and to provide a definitive end to this chapter in financial history. ICEP discussed the establishment of a forum in which all claimants, regardless of nationality, would be treated equally, claims could be presented for a prompt decision, and bank liability could be definitively determined. Bearing these needs in mind, the SBA, the Swiss Federal Banking Commission (“SFBC”), and the Committee agreed that the claims settlement process should be international, based upon full disclosure of available data identifying the depositors of the dormant accounts, and should be speedy, with a relatively short time for both the submission of claims and the decision on the validity of submitted claims.

2. After giving this matter further consideration, following its meeting on June 2-3, 1997, ICEP

announced that it would recommend a set of procedures for the claims resolution process that were tailored to the special circumstances of long dormant accounts and needy potential beneficiaries.² The objective was to establish an expeditious judicial process, working under liberal rules of evidence, that would fairly and objectively determine the legitimate owners or heirs of the assets in dormant accounts identified by the auditors. ICEP further agreed that if governmental participation to achieve finality was not found to be feasible, or was unachievable within a reasonable timeframe, a voluntary claims settlement process would be desirable.

3. In consideration of these recommendations, on June 13, 1997, the SFBC proposed the publication, in July and September of 1997, of the names on dormant accounts identified by the banks. Claimants would then have six months from the date of publication to file a claim with ATAG Ernst & Young (“ATAG”), who would then transfer the claim to the appropriate bank. The SFBC proposal called for a privately-organized, independent tribunal to be created to determine the validity of claims to foreign accounts.

4. In late-June 1997, the SFBC, ICEP, and the SBA agreed on a comprehensive claims resolution process for dormant accounts in Swiss banks.³ The

1 See Annex 5: Treatment of Dormant Accounts of Victims of Nazi Persecution, paragraphs 46 to 50.

2 ICEP Press Release (June 3, 1997), see Appendix D: ICEP Press Releases.

3 ICEP Press Release (June 25, 1997), see Appendix D.

major elements of the agreed-upon process were as follows:

5. As a first step, the SFBC would send a circular letter to the Swiss banks requiring them to report all accounts of residents and non-residents of Switzerland that had remained dormant since 1945. The names and other information relating to these accounts would be published, and a center would be established to receive claims to ownership of the published dormant accounts. This administration center, managed by ATAG, would provide information to claimants; register all submitted claims; and prepare a file on each claim for use in the claims resolution process. An independent and objective international claims resolution panel would be established to definitively and equitably decide the claims, operating under liberal rules of evidence, with its decisions in the form of written opinions, taken after due consideration of the representations of the claimants. The proposed international claims resolution panel would be independent, but formally initiated by a foundation established by the SBA in consultation with ICEP, and would be comprised of persons with experience in adjudication and banking. The panel was to have a majority of international members and a Swiss chairman.

6. The SFBC ordered that names and identifying data for all foreign dormant accounts for the pre-1945 period be submitted to ATAG by July 7, 1997, with domestic accounts (including passbook accounts and those persons of unknown residence or domicile) to be published soon thereafter. The list of dormant accounts of foreign residents or nationals was widely published in newspapers in many countries on July 23, 1997, and the list of Swiss dormant accounts was made available in Switzerland on October 20, 1997. It was also agreed that additional dormant accounts would be published as the information became available. For foreign accounts, information on the claims process and claim forms were made available to potential claimants by July 23, 1997, at ATAG contact offices in Switzerland, Israel, the United States, and other countries.

7. Claims by depositors or their successors in interest were required to be submitted six months from the publication of the name of a dormant account holder, a date which was subsequently extended due to the continuing influx of claims. A Claims Resolution Tribunal (“Tribunal”), described in the following section of this Annex 8, was required to decide claims, with interest or other appropriate adjustments related to fees or other charges, within six months after the end of the period for the submission of claims. Any dormant accounts of victims of Nazi persecution for which no valid claimants were identified would be used for charitable purposes to be decided after consultation with all interested parties.

The Independent Claims Resolution Foundation

8. At its meeting in early September 1997, ICEP endorsed the establishment of an Independent Claims Resolution Foundation (“Foundation”) to sponsor the claims settlement process, overseen by a Board of Trustees.⁴ The Foundation was established pursuant to the Swiss Civil Code, and is financed by the SBA. A foundation, pursuant to the Swiss Civil Code, is a legal entity which, after its formation, has its own legal existence and is independent from its founders. It was determined, after much discussion among the parties involved, that this would be the appropriate entity to establish and supervise the Tribunal within the context, of course, of preserving the decision-making independence of the Tribunal.

9. The purpose of the Foundation, as stated in its Charter,⁵ was to set up and supervise a Tribunal that would provide persons, organizations, or entities, or their successors in interest, an easily accessible, expedited and equitable procedure to resolve their claims to Swiss bank accounts that (i) had been dormant since the end of the Second World War (May 8, 1945) and (ii) were opened by persons of

⁴ ICEP Press Release (September 4, 1997), see Appendix D.

⁵ Charter of the Independent Claims Resolution Foundation (adopted Oct. 15, 1997), see Appendix I.

non-Swiss nationality or residence or Swiss citizens who may have acted as intermediaries for victims of Nazi persecution. The Foundation would also appoint arbitrators to serve on the Tribunal who, as stated in the Foundation's charter, would be judicially independent. The Tribunal was also fully independent of other organizations, both Swiss and foreign, governmental and private.

10. In a September 29, 1997 press release,⁶ ICEP announced that the Board of Trustees of the Foundation ("Board of Trustees") would be composed of three ICEP members: ICEP Chairman Volcker (as Chairman of the Foundation Board), ICEP alternate member René Rhinow (Professor of Law and Swiss Senator), and ICEP alternate member Israel Singer (Secretary General, World Jewish Congress). The Foundation's Charter provided that the Board of Trustees would have the ultimate direction of the affairs of the Foundation. The Trustees were given the power to commission a panel of experts to report to them on the proper adjustment of claims awards to take into account interest, bank fees, and other similar issues. In addition, the Trustees were responsible for promulgating rules of procedure for the Tribunal, appointing a chairperson for the Tribunal, and appointing foreign and Swiss arbitrators with experience in international adjudication to hear claims and apply a relaxed standard of proof, recognizing the difficulty of presenting evidence given the tragic circumstances of the Holocaust and World War II. As explained in the September 29, 1997 ICEP announcement, the arbitrators would preside over a Fast Track procedure, involving a single arbitrator for uncomplicated cases, and also sit in panels of three arbitrators in more complicated or contested cases.

11. The Board of Trustees of the Foundation held its first meeting on October 15, 1997, at which it appointed Professor Hans Michael Riemer as Chairman of the Tribunal, approved the Foundation's Charter and By-laws, and selected an initial five of the 17 distinguished arbitrators, lawyers, judges and financial advisors who make up the panel of arbitrators. Six months later, the Foun-

dation announced the appointment of additional arbitrators. Of the now seventeen arbitrators, five are from Switzerland, four from the United States, four from Israel, and one each from Belgium, Canada, Cyprus, and the United Kingdom.⁷ Professor Thomas Buergenthal was appointed as a Vice Chairman of the Tribunal on May 27, 1999.

The Rules of Procedure

12. At the meeting on October 15, 1997, the Board of Trustees also adopted the Rules of Procedure for the Claims Resolution Process ("the Rules").⁸ The Rules of Procedure were the result of a drafting process that spanned several months and involved the participation and cooperation of ICEP and the Swiss banks. These rules regulate the proceedings before the Tribunal. Under these rules, claimants retained the option of bringing their claims before either the Tribunal or other courts.

13. The Tribunal was designed to offer a number of distinct advantages. It was free for claimants, with all costs being borne by the SBA. It was made up of experienced international arbitrators, with special knowledge and expertise in adjudicating these specific types of claims, and the applicable rules of evidence were more relaxed than those applied in most courts or in other forms of commercial arbitration.

14. The Rules defined the jurisdiction of the Tribunal to include all claims in connection with accounts, dormant since 1945, that had been opened by non-Swiss nationals or those accounts opened by Swiss nationals if they may have been held by a Swiss intermediary for a victim of Nazi persecution. After ATAG received a completed claim form and any further documentary evidence from a claimant, the claim form and accompanying documents were forwarded to the relevant bank, which would make a determination whether it was willing, based on the information available at that time, to disclose

⁶ See Appendix D: ICEP Press Releases.

⁷ See Exhibit A, *infra*, for a list of the Tribunal arbitrators.

⁸ Rules of Procedure for the Claims Resolution Process (adopted Oct. 15, 1997), see Appendix H.

to the claimant the account balance and the name of the bank at which the account had been opened. If the bank agreed to disclose that information, it would sign a Claims Resolution Agreement that would also be sent by ATAG to the claimant for signature. Once the agreement had been signed by both parties, the file, containing the claim form and all the bank records concerning the dormant account, would then be sent by ATAG to the Tribunal. If the bank failed to respond within twenty days, or declined to disclose its name and the amount held in the dormant account, then ATAG would present the claim to the Tribunal for an Initial Screening by a Sole Arbitrator.

15. The Initial Screening process would determine only whether a claimant had provided adequate information to support a finding of a plausible claim to the account, thus triggering disclosure to the claimant of the bank where the account was located and amount held. Article 10 of the Rules provided that a Sole Arbitrator should order such disclosure unless:

- (i) the claimant had not submitted any information on his or her entitlement to the dormant account, or
- (ii) it was apparent that the claimant was not entitled to the dormant account.

16. A claimant denied disclosure on initial screening could appeal that decision within thirty days. If not successfully challenged on appeal, the decision would constitute a final, adverse resolution of the claim.

17. Once the relevant information was disclosed to the claimant, the claim would be decided on the merits, by one of two procedures. Claims could be submitted to a Sole Arbitrator for Fast Track review at the request of the Swiss bank or upon agreement of all parties involved, including cases in which the bank and the claimant have agreed to a proposed settlement. All claims submitted for Fast Track treatment were to be resolved within thirty days.

18. In order to make an award to a claimant

under the Fast Track procedure, the arbitrator is required to find:

- (i) that the claimant had satisfied the “relaxed standard of proof” defined in the Rules of Procedure, which essentially required a showing that all information had been submitted that could reasonably be expected under the circumstances, and no reasonable basis existed to conclude either that the claim was affected by fraud or forgery, or that others may have an identical or better claim to the account.⁹ If that standard was met, the claimant had satisfied the requirement of showing that his or her claim was “plausible;”
- (ii) that the payment offered by the Swiss bank to the claimant complied with the guidelines on interest and fees recommended by an international panel and adopted by the Board of Trustees; and
- (iii) that the claim did not have to be referred to a panel of three arbitrators for any of the reasons set forth in the Rules of Procedure, which include the possible involvement of an intermediary or looted assets.¹⁰

19. Aside from Initial Screening and Fast Track cases, all claims were subject to the Ordinary Procedure, either by a Sole Arbitrator (in cases of assets below SFr. 3,000) or by a panel of three arbitrators. The Ordinary Procedure involved a full review of the claim and all available evidence, under an expedited procedure.

20. In order to make the process understandable to claimants without legal representation, the Rules allowed the arbitrators great procedural flexibility to take into account the claimant’s age, primary language, and place of residence. While the rules expressed a preference for a document-only arbitration, arbitrators were allowed to conduct their own factual investigations by any means that they deemed appropriate to each claimant’s situation.

⁹ Rules of Procedure for the Claims Resolution Process, Arts. 12, 22, see Appendix H.

¹⁰ *Id.* Art. 12.

Implementation of the Claim Resolution Process

21. The work of the Tribunal has been facilitated by its Secretariat which is made up of approximately thirty lawyers, twenty of whom have worked full time for the Tribunal. In addition, the Secretariat employed an administrative staff of six. Almost half of the full-time lawyers making up the Secretariat have been non-Swiss. The Tribunal has a Policy Steering Committee, chaired by Tribunal Chairman Riemer, and several other committees. Vice Chairman Buergenthal now devotes full time to the work of the Tribunal during a leave of absence from George Washington University Law School.

22. The Tribunal received 9,778 claims to some 2,500 of the 5,570 accounts published in July and October 1997.¹¹ There was an average of four claims per account, while one account drew 126 claims. Multiple claims were filed by some individuals; the total number of claimants was approximately 7,200. Claimants were from 75 different countries; most of the claims came from the United States (20%), followed by Germany (12%), France (12%), Israel (9%), and Argentina (6%). Claims were submitted in 20 different languages.

23. As of November 15, 1999, the Tribunal had rendered 1,281 awards of more than SFr. 23 million of the SFr. 66 million in value of the accounts actually claimed, without taking into account any current value adjustment or adding back fees and charges.¹² In this process 5,415 claims were denied, and 544 were approved to proceed to arbitration. In the initial screening process, claims are denied if claimants have not made a plausible case of a relationship to the account holder of the account for which the claimant has made a claim. Claimants can appeal a denial decision, and, in 47 of these cases on appeal, a claims panel ordered disclosure. Some claims have been withdrawn voluntarily by claimants, and some remain pending with the Tribunal. The Tribunal has completed almost all of the initial screening cases, and it now expects to be able to

finish the remaining fast track cases by the end of 1999, leaving mainly the more complex ordinary procedure cases to be fully resolved by the middle of 2000.

Possible Improvements in the Claims Resolution Process

24. The Tribunal has given consideration to improvements in the procedures that might be used with respect to any accounts that may be adjudicated in the future as a result of the ICEP investigation. It has explored the most effective way to maintain a fair and effective claims resolution process, but still speed the decision making process while reducing costs. The focus on this exploration has been on minimizing formal procedures and utilizing to the extent possible an administrative methodology for initial determination of sufficiency of the information provided by claimants as well as for expeditiously resolving claims for lower value accounts.¹³

25. The CRT has given considerable thought to the criteria that administrators could use for both judging information sufficiency and relatively small claims. For example, on informational sufficiency, the following criteria could be used to deny claims:

- (a) the claim is based solely on a statement by a claimant that his or her relative has the same last name as the account holders;
- (b) it is apparent that the claimant's relative and the account holder are not the same person;
- (c) the claimant has not asserted any relationship to the account holder which, according to predetermined rules, would justify entitlement to the account; or
- (d) a claimant with a closer relationship to the account holder has filed a claim to the account.

11 Another 6,000 claims were filed to accounts not on the published lists. For more details on the 1997 Survey, see Annex 5: Treatment of Dormant Accounts of Victims of Nazi Persecution, paragraphs 50 to 57.

12 The total value of the 5,570 foreign accounts published in July and October 1997 amounts to SFr. 72 million.

13 Special rules (in the form of presumptions) would have to be established for Holocaust victim accounts that are closed without information on the beneficiaries or value of the account to determine whether the account holders or their heirs had previously received the proceeds of the account and about the amounts to be paid where valid claims have been determined.

26. Similarly, in the case of claims of SFr. 10,000 or less (adjusted current value), where no other claimant has demonstrated a better claim, an award could be made in an administrative proceeding to claimants that met all of the following criteria:

- (a) the claimant has provided plausible evidence that the account holder is a victim of Nazi persecution;
- (b) the claimant has identified a person with precisely the same name as the account holder, or the claimant has identified a person with a substantially similar name to the account holder and has provided a plausible explanation for the difference in names;
- (c) the claimant has identified his or her precise relationship to the account holder and the relationship identified by the claimant is one that justifies entitlement to the account, according to a predetermined list to be established;
- (d) the claimant has drawn a connection to the published place of residence of the account holder; and
- (e) the claimant has matched **any** of certain unpublished information if such information is available in the records of the bank.¹⁴

27. Based on these criteria, a set of procedures could be used as part of a claims resolution procedure containing the following elements:

1. an administrative claims process for accounts up to SFr. 10,000 with decisions on these accounts by the CRT secretariat under the supervision of its Chairman and Vice Chairman,
2. an administrative - arbitral process before a sole arbitrator for claims to accounts over SFr. 10,000 and under SFr. 50,000; the admissibility of claims will be decided in the first instance by the Secretariat (on appeal by a sole arbitrator) and entitlement will be decided by a sole arbitrator, and
3. an arbitral process for claims over SFr. 50,000; the admissibility of a claim, as well as entitlement, will be decided by a

single arbitrator, and a denial of entitlement may be appealed to a three arbitrator panel.

28. The criteria developed by the CRT demonstrate the substantial expertise that has been accumulated in CRT. In considering the arrangements that are appropriate for accounts that are to be resolved in the future as a result of the ICEP investigation, the task is to utilize the elements of the Tribunal that have worked well in adjudicating the claims to the accounts published in July and October 1997, while combining them with other arrangements that will assure fair treatment of claimants and also expedite the decision-making process.¹⁵

Report of the Panel on Interest, Fees, and Other Charges

29. At its September 4, 1997 meeting, ICEP decided to establish a panel of experts to advise on the adjustment factor to be applied to the 1945 balance of an account in order to calculate its present value. In late October 1997, the Board of Trustees of the Foundation announced the establishment of the Panel of Experts on Interest, Fees, and Other Charges (“the Kaufman Panel”), which was chaired by Henry Kaufman, noted financial economist and former chief economist of Salomon Brothers and also consisted of Walter Ryser, Emeritus Professor of Tax and Commercial law at Berne University, and Elhanan Helpman, Professor of Economics at Harvard University and former Professor at Tel Aviv University. The Board of Trustees of the Foundation called on the panel to apply its expertise, in accordance with the policy guidance discussed in ICEP and adopted by the Board, to assist in

¹⁴ The unpublished information could include: the account holder’s maiden name; the name of the account holder’s spouse; the street address listed in the bank’s documents; the signature of the account holder or, where relevant, holder of power of attorney; the account holder’s birth year; the account holder’s profession; or the relationship to a holder of power of attorney, where relevant.

¹⁵ Because of the different levels of probable or possible relationship to victims of Nazi persecution of the accounts identified in the ICEP investigation, and in particular, between those in Categories 1, 2 and part of 3 and those in the remainder of Category 3 and in Category 4, it would be appropriate for awards arising from the first group of accounts to be paid directly by banks for credit against the settlement, while the awards made from the second group of accounts would be paid from the settlement itself.

establishing an adjustment for interest or other returns on dormant deposits or other assets of victims of Nazi persecution, as well as for fees and charges on these accounts, to reflect the unintended long-term character of these assets.¹⁶ The Board of Trustees would rely on the panel's advice in order to establish guidelines for the Tribunal on determining the appropriate principal value of accounts and the appropriate return.

30. In February 1998, instructions were submitted to the Kaufman Panel that requested recommendations on four specific matters: the special interest rate adjustment for deposit accounts, a standard rate of return for managed accounts, a contractual interest rate adjustment, and the appropriate level for bank fees and charges to be applied to the accounts.

31. On September 8, 1998, the Kaufman Panel submitted its final report to the members of ICEP.¹⁷ The Chairman, Mr. Henry Kaufman prefaced the panel's recommendations by enumerating several important factors that had influenced their decisions. He noted that it was critical to recognize the unusual economic and financial backdrop that had prevailed in the 1940s and indeed for at least the early post-World War II years. He emphasized that investment alternatives had been limited and had consisted primarily of government bonds and securities, and that a diversity of foreign obligations were not an option at that time in Switzerland. Other considerations included the fact that the Swiss equity market had been exceedingly small and not very liquid. Institutional portfolio management had generally been rather passive and had consisted virtually entirely of fixed-income obligations. Dynamic portfolio management, the measuring of portfolio performance, the rapid growth of mutual funds, and international portfolio investing were of recent vintage and had generally been driven by American market participants, not by Swiss institutions.

32. The Kaufman Panel also recognized the very unusual characteristic of the funds of Holocaust victims; the involuntary dormancy of the accounts

that had prevented the owners from making any investment decisions. This influenced the panel's decision concerning the return on the investment as well as the appropriate fees that should be charged. The panel took the view that the dormancy should begin January 1, 1945 and, that for cases in which the balance was unknown at the beginning of the dormancy, it was advisable to take the amount shown at the earliest entry date on the books of the institutions (usually 1986) and to discount it back to 1945. The Kaufman Panel's detailed recommendations on four categories of accounts: (1) demand, savings, and time deposits; (2) bonds; (3) equities; and (4) managed accounts are detailed in the full text of the Panel Report at Appendix M.

33. After considering the Kaufman Panel Report, the Board agreed to propose that for victims of Nazi or other governmental persecution during the relevant period: (1) service charges would be eliminated; (2) an amount equal to fees and charges since dormancy would be added back to the 1945 principal value, and (3) the applicable rate of return would be anchored to a market rate of return, namely, an adjustment factor of ten. In addition, the Board proposed that the very few managed securities accounts that existed in the Relevant Period would have an adjustment factor of 16 as recommended by the Kaufman Panel.

34. The Committee proposed that a commercial rate of return be applied to accounts held by individuals who had not been subject to Nazi persecution. This proposal also provided that the arbitrators of the Tribunal could, on a case-by-case basis, recommend that the bank and the claimant agree to a more generous rate. In February 1999, the Board of Trustees of the Foundation had passed a resolution necessary to implement the Kaufman recommendations.

¹⁶ See Annex 5, Exhibit A regarding the standard fees and charges on Swiss bank accounts in the 1933-45 period.

¹⁷ The full text of the Panel Report is in Appendix M.

EXHIBIT A

Chairman and Vice Chairman

Chairman, Hans Michael Riemer of Switzerland is a Professor of Private Law at the University of Zurich and a judge of the Court of Cassation of the Canton of Zurich. Since 1991/92, he served as a substitute judge of the Swiss Federal Supreme Court.

Vice Chairman, Thomas Buergenthal of the United States is a Professor at the George Washington University Law School. He has served as a judge, Vice President, and President of the Inter-American Court of Human Rights, as well as judge, Vice President, and President of the Administrative Tribunal of the Inter-American Development Bank.

Arbitrators

Hadassa Ben-Itto of Israel retired from her service of 31 years as a judge in Israeli courts at all levels, including as Vice President of the Tel-Aviv District Court and as Acting Justice of the Supreme Court of Israel.

Robert Briner of Switzerland is President of the ICC Court of International Arbitration and a Partner in a Geneva law firm. Formerly, he was President of the Iran-U.S. Claims Tribunal in The Hague.

L. Yves Fortier of Canada is a Partner of the law firm Ogilvy Renault in Montreal. He served as Canada's Ambassador and Permanent Representative to the United Nations and was a Member of the Permanent Court of Arbitration in The Hague.

David Friedmann of Israel is a banker of long experience and was formerly CEO of Bank Leumi. He is currently Chairman of the Board of Union Bank of Israel.

The Right Hon. The Lord Higgins of the United Kingdom, was a Member of Parliament and Chairman of the Treasury Committee of the House of Commons. As a current member of the House of Lords, he is a Conservative Party spokesman on social issues.

Howard Holtzmann of the United States is an international arbitrator of long experience and was the senior U.S. member of the Iran-U.S. Claims Tribunal in The Hague from 1981 to 1994.

Andrew J. Jacovides of Cyprus served as Ambassador of Cyprus to the United Nations, Germany, and the United States. He is currently on the ICSID panels of arbitrators and conciliators.

Franz Kellerhals of Switzerland is a Partner in the law firm Kellerhals & Partner in Berne and a Professor of Civil Procedure at Berne University. He had served as president, member, and counsel in various international arbitrations.

Hans Nater of Switzerland is a Partner in the law firm Stiffler & Nater and specializes in arbitration. He is on the Swiss list of ICC-Arbitrators.

Roberts B. Owen of the United States is a Senior Counsel (retired) of the law firm Covington & Burling in Washington, D.C. He is the presiding arbitrator (appointed by the International Court of Justice) for the Brcko Controversy in Bosnia-Herzegovina. Formerly, he was the Legal Advisor of the U.S. State Department.

William W. Park of the United States is a Professor of Law at Boston University and Counsel at the law firm Ropes & Gray in Boston. He is Vice President of the London Court of International Arbitration.

Doron Shorrer of Israel is a former Commissioner of Insurance and Director General of the Ministry of Transport of Israel. He is an independent economic and financial advisor, and Chairman of the Board of Mivathim, Israel's largest pension fund.

Zvi Tal of Israel is a distinguished legal scholar and former Member of the Supreme Court of Israel.

Jean-Luc Thévenoz of Switzerland is a Professor at the Law Faculty of the University of Geneva and Director of the Center for European Legal Studies - Banking & Financial Law. He is a member of the Swiss Takeover Board.

Hans Van Houtte of Belgium is a Professor of Law at the University of Leuven, a International Commissioner of the Real Property Claims Commission (Bosnia), and panel member of the United Nations Compensation Commission.

Swiss Law on the Treatment of Dormant Accounts: A Comparison to European and U.S. Law

Introduction

1. This annex surveys the legal obligations of banks with respect to dormant accounts in Switzerland, Germany, France, Belgium, the United Kingdom, and five individual states in the United States – Texas, Massachusetts, New York, California, and Florida – during the World War II era and presently. The following issues are addressed: (1) whether dormant accounts eventually escheat, or are paid to, to the sovereign; (2) whether the banks and/or the sovereign are under a duty to notify the account holders or their heirs of the existence of a dormant account; (3) whether the banks and/or the sovereign are obligated to repay rightful owners the dormant accounts, and if so, the period of time for which the obligation stands; (4) whether there are any particular procedures for claimants to recover a dormant account; and (5) whether there have been or are currently any efforts to reunite victims of Nazi persecution or their heirs with dormant accounts. As part of this survey, an unsuccessful attempt was made to identify the number and value of dormant accounts from the Relevant Period in each country or state. The information was found lacking; however, some countries have established commissions to look into the issue of dormant accounts of victims of Nazi persecution, and such efforts are noted.

2. To summarize, the Swiss system of law and banking practice is designed to produce dormant accounts that can remain with the banks until such time as they are claimed by the account holders or

their heirs. Laws on the treatment of dormant accounts that are similar to those in Switzerland apply to dormant accounts in Germany and the United Kingdom and to private banks in Belgium. On the other hand, France and the United States have laws providing that abandoned, dormant accounts are transferred to government authorities after 3 or 5 years (depending on the law of the particular state of the United States) or after 10 years on the initiative of the bank or in all cases after 30 years (in France).

Germany

3. Neither the German Reich nor its legal successor, the Federal Republic of Germany, has enacted a law specifically on dormant bank accounts. However, since 1900, the State has been the statutory heir of the assets of a deceased person leaving no heirs.¹ The State Treasury receives the unclaimed funds after the Probate Court decides that “a period reasonable under the circumstances” has lapsed.² Public notice of the unclaimed funds be posted at least once in the federal gazette and on the notice-board of the court with jurisdiction over the matter.³ The Treasury may take the inheritance if, after the expiration of three months from the period of notification prescribed by the Probate Court, no action has been instituted regarding the funds.⁴

¹ The Statutory Right of Inheritance of the Treasury was enacted in 1900 and remains the law today. § 1936 of the German Civil Code (“BGB”).

² § 1964 BGB (F.R.G.).

³ § 1965 BGB (F.R.G.).

⁴ § 1965 BGB (F.R.G.).

4. Under German law, a bank account is deemed a claim of the account holder against the bank. The claim of an account holder or his heirs to an unclaimed bank account may be barred after 30 years.⁵

5. During World War II, the legal system of the German Reich was designed to transfer all Jewish assets to the Reich, and many laws were suspended until 1945.

6. After World War II, a system of restitution and compensation was established for West Germany by the U.S. military government. One major goal of this system was to transfer all bank accounts, stocks, and other assets that were confiscated during the Nazi regime to victims of Nazi persecution, their heirs, and Jewish successor organizations.⁶ Banks were required to submit records to registration centers and failure to comply with this reporting requirement was punishable by up to five years of imprisonment.⁷ Assets for which there were no surviving heirs were to vest with “Jewish successor organizations.”⁸

7. The Federal Republic of Germany was to compensate all persons with claims relating to identifiable property, including stocks and bank accounts located in West Germany and West Berlin, under the Allied restitution program and the German restitution program.⁹ All property that had been confiscated in Germany and which had been brought later to the Federal Republic of Germany from occupied territories, including concentration camps, was retransferred to the rightful owner or compensated for.

8. By contrast, in the Soviet Zone of Occupation, movable and immovable property that had been seized in any manner by the Nazi Government was to be returned to political parties, trade unions, cooperative unions, and other democratic organizations registered in the Soviet Zone of Occupation.¹⁰

9. Furthermore, Jewish property transferred to the German Reich, to the extent that it was located

within the territory of the Soviet Zone of Occupation, was deemed to be sequestered.¹¹ The entire seized and confiscated property was to be placed at the disposal of the regional administrative authorities of East Germany.¹² After foundation of the German Democratic Republic, the sequestration of Jewish property was repealed in 1950,¹³ and the property was placed at the disposal of the government of the German Democratic Republic.

10. In light of the reunification of Germany in 1990, the Federal Republic of Germany has passed laws providing restitution or compensation for all claims, including those to bank accounts, of victims of Nazi persecution in former East Germany.¹⁴

11. Since December 31, 1978, no legal claims that have not been asserted since May 8, 1945 may be filed against banks for accounts opened before the end of World War II.¹⁵

5 German law provides that the applicable statute of limitations period is thirty years. §§ 194, 195 BGB. The German courts, however, have not decided whether the limitation period begins from the last contact of the bank with the account holder or if other circumstances must be taken into consideration as well. In the context of savings accounts, the *Court of Appeal Schleswig* decided that only a notice of termination by the holder of the account would trigger the statute of limitations. Dormant savings accounts can therefore only exist if the account holder dies after sending a notice of termination to the bank and has not withdrawn the money from the account. This decision has not yet been applied to other forms of bank accounts or bank deposits.

6 In furtherance of this goal, the U.S. military government enacted Law no. 59 on the Restitution of Identifiable Property (“USREG”). Gesetz Nr. 59 – Rückerstattung feststellbarer Vermögensgegenstände.

7 *Id.* arts. 73, 75.

8 *Id.* art. 10.

9 The Federal Republic of Germany enacted the Federal Law on the Settlement of Restitutionary Monetary Obligations of the German Reich and Equivalent Legal Entities (“BRüG”) for West Germany. Bundesgesetz zur Regelung der rückerstattungsrechtlichen Geldverbindlichkeiten des Deutschen Reichs und gleichgestellter Rechtsträger vom 19. Juli 1957, Bundesgesetzblatt I 1957 S. 734.

10 Order No. 82 by the Soviet Military Administration in Germany (“SMAD”) dated April 29, 1948 regulating the return of property that was seized by the Nazi government to democratic organizations. Sowjetische Militäradministration in Deutschland.

11 SMAD Order No. 124 (October 30, 1945).

12 SMAD Order No. 97 (March 29, 1946).

13 Order of the Soviet Control Commission (May 4, 1950).

14 The Law on the Settlement of Open Property Issues, Gesetz zur Regelung Offener Vermögensfragen vom 23.9.1990 in der Fassung vom 24.7.1997, Bundesgesetzblatt I. 1997, S. 1823. The Jewish Claims Conference is named as the successor organization authorized to file claims with regard to Jewish property that has been confiscated or that fell to the treasury as statutory heir in former East Germany. *Id.* Section 2. The Nazi Victim Compensation Law of September 27, 1994, NS-Verfolgten-Entschädigungsgesetz vom 27.9.1994, Bundesgesetzblatt I, S. 2632.

15 Law Concluding the Currency Reform of December 17, 1975 (“Currency Reform Law”); Gesetz zum Abschluß der Währungsumstellung vom 17. Dezember 1975, Bundesgesetzblatt I 1975, S. 2123.

12. The Federal Association of German Banks states that it is an internal policy of its members to initiate research to locate the holder of an account that has been dormant for an unusual period of time. As an example, the internal guidelines of the Deutsche Bank provide that where the place of residence of the holder of a bank account, security deposit, or safe deposit box is unknown, the bank must investigate whether the holder is deceased or has moved to a new residence without providing notice to the bank. The Deutsche Bank Guidelines also provide that bank accounts exceeding DM 1,000 or security deposits cannot be closed and never become dormant. Bank accounts with a balance of less than DM 1,000 are transferred to a collection account located at Deutsche Bank when they have been dormant for two years and the bank is unable to locate the holder with reasonable efforts. The transfer of these smaller accounts is carefully documented and the documentation is kept by the bank for thirty years.

France

13. In France, the State receives unclaimed estates, assets that are unclaimed and without an owner, and assets that have been dormant for more than 30 years.¹⁶ The State, however, may only seize assets that form an estate following the sending of a notice of possession. Deposits of cash and securities with banks revert finally to the State when no justified claim from any heir or assign is received over a period of 30 years.¹⁷ The period for claiming a bank account is 30 years.¹⁸ Similarly, amounts deposited with the Deposit and Consignment Office (Caisse des Dépôts et Consignations) belong to the State when 30 years have passed without a payment or repayment transaction.¹⁹ In the six months before the expiration of the 30 year period, the Deposit and Consignment Office was required to notify the interested parties of which it had knowledge by registered letter of the forfeiture. The notice was to be sent to the last known residence of the depositor or, if no residence was known, to the state prosecutor. There was also a requirement for

publishing the date and place of the deposit and the names of interested parties in the bulletin issued by the French Republic.

14. During World War II, the Germans in occupied France and the Vichy Government undertook the “Aryanisation” of Jewish assets. Deposits of Jewish account holders with banks, notary publics, or other persons or entities in the occupied part of the country were frozen.²⁰ Approximately 67,000 deposit accounts, securities accounts, and savings accounts were declared frozen to the General Commission for Jewish Affairs in 1941.

15. After the liberation of France, a number of measures were undertaken by the French authorities to restore the assets of those individuals who had suffered from the criminal activity of the military occupation forces and their accomplices. The Deposit and Consignment Office was required to refund any deposited amounts to the holders of accounts listed in its records.²¹ A spouse was permitted to withdraw deposited sums if he or she produced a deportation certificate and if he or she entered into an undertaking to refund the amount in the event that the deportee returned.²² For amounts over FF 10,000, a temporary administrator from among the asset owner’s relatives by blood or marriage was to be appointed and was to be given the status of a legal representative enabling the relatives to obtain reimbursement of all escrowed sums.²³

16. Present day laws authorize institutions holding deposits of cash or securities to close accounts on which there has been no movement recorded for a period of ten years.²⁴ The Deposit

¹⁶ Civil Code (Fr.).

¹⁷ State Property Code, Code du domaine de l’Etat, Art. L. 27 (Fr.).

¹⁸ Law of April 26, 1926, Art. 35 (Fr.).

¹⁹ Law of April 16, 1895, Loi portant fixation du budget général des dépenses et des recettes de l’exercice 1895, Bull. des Lois, 12e S., B. 1693, n°29 370 (Fr.).

²⁰ German Order of May 28, 1941 and an Act of July 22, 1941.

²¹ Government Order of November 14, 1944 (Fr.).

²² *Id.* as extended on March 25, 1945.

²³ Government Order of April 15, 1945 (Fr.).

²⁴ Law no. 77-4 of January 3rd, 1977 art. 2 Amending Article 189 bis of the French Commercial Code “concernant la prescription en matière commerciale” (prescription concerning commercial matters) (J.O. 4 janv. 1977).

and Consignment Office is empowered to receive such accounts.²⁵ Furthermore, a bank must disgorge to the tax bureau all deposits or credits of cash or securities that have been dormant for 30 years and that have not been deposited with the Deposit and Consignment Office.²⁶ Banks may deposit with this office funds that have remained dormant for ten years.²⁷ Six months prior to the deposit with the Deposit and Consignment Office, the bank must notify the rightful claimants of which they have knowledge of the existence of the dormant assets by registered letter sent to their last known domicile.

17. The Deposit and Consignment Office is obligated to transfer to the State the balance, plus interest, of any account for which there has been no payment or repayment order, and for which no payment requisition has been received by the office over a continuous period of 30 years. The statutory public notification procedure (that is, informing those concerned by registered letter of the forthcoming forfeiture along with publication in the government bulletin of the names and addresses of the owners of the relevant sums) is applied in all cases where the amounts involved exceed FF 1,000.²⁸

18. At this point in its investigation, the Deposit and Consignment Office has been able to find evidence of repayment of 166 deposits to victims or heirs and assigns, out of a total of over 7,000 repayments made since the end of 1944. Generally, the amounts plus interest were refunded by bank transfer or postal order to the rightful owners on production of proof of identity. The deposited funds could be transferred to the owner's bank or postal cheque account at the request of an interested party irrespective of his capacity or authority. In exceptional cases, the Deposit and Consignment Office reimbursed balances of less than FF 5,000 to spouses on presentation of a certificate, issued by the government, vouching for the fact that the owner of the escrowed sum had been deported and had not yet returned.

19. In 1997, the Study Mission into the Looting of Jewish Assets in France was established to

examine the conditions under which assets belonging to individuals considered to be Jewish by the military occupier and the Vichy authorities were confiscated or, in general terms, acquired by fraud, violence, or other culpable means. The Study Mission into the Looting of Jewish Assets in France is an attempt to evaluate the extent of this theft and to indicate the identity of the private individuals and legal entities it benefited. The Study Mission has also been asked to determine what happened to the assets involved during the period between the end of the war and the present day and to endeavor to locate their whereabouts and legal status. The Study Mission has set up two separate supervisory committees to investigate the issue of heirless property.

20. In March 1998, the Banking Supervisory Committee was established to investigate whether the French banking and financial system still holds funds, securities, or safe deposit box contents that belonged to victims of Nazi persecution who perished during World War II. For this purpose, the Supervisory Committee oversees the work done in credit institutions and investment firms, proposes investigative methods, and compiles the findings. An inventory is to be made of dormant or heirless safe deposit boxes in institutions after the war that may have belonged to such victims. The investigation is also addressing the current accounts held with the post office, passbook savings accounts frozen in 1941, and heirless estates that have reverted to the State. The Deposit and Consignment Office is also undertaking an analysis on asset looting and asset restitution.

Belgium

21. In Belgium, accounts opened at the Caisse Générale d'Épargne et de Retraite, a publicly owned savings bank, that had not been the object of any

25 Decree n°79-894 of October 15, 1979 "portant application de la loi n. 77-4 du 3 janvier 1977 modifiant l'article 189bis du Code de commerce concernant la prescription en matière commerciale", J.O. 19 Oct. 1979.

26 Decree no. 79-894 art. 2 set forth at Article R. 47 of the State Property Code (Code du domaine de l'Etat).

27 Law no. 77-4 of January 3, 1997 art. 2 set forth at Article R. 47-1 of The State Property Code (Code du domaine de l'Etat).

28 Law No. 67-1172 of December 22, 1967, art. 25.

transaction for a period of 30 years became the property of the Caisse.²⁹ Similarly, all sums deposited with the Deposit and Consignment Office become property of the State if the account has not been the object of any transaction for a period of 30 years and no request for restitution of the account has been made.³⁰

22. With respect to private bank deposits, during the 1930s and 1940s and today, a bank deposit creates a claim for the account holder to the credit balance of the account.³¹ An account holder cannot claim a balance after ten years following the closure of the account, and a claim to the interest on the capital amount is prescribed after five years following the closure of the account.³² The ten or five year period is only triggered on the day of the closure of the account. Unlike other countries, such as France, Belgium does not have a law allowing banks to close dormant accounts when they have not been the object of any transaction for a certain period and to pay the balance to an institution designated by the State. Hence, the time period for claiming an account never begins to run for a dormant account except in the case of contractual arrangements that specify otherwise. In its contract with an account holder, a bank may stipulate that the absence of any transaction for a certain time period can result in the automatic closure of the account. However, the contents of safe deposit boxes remain the property of the depositor and are generally not subject to extinctive prescription.

23. During the period from 1940 to 1942, the German Military Command issued a number of “ordonnances” for the systematic confiscation of Jewish bank accounts and deposits.³³ After the liberation of occupied Belgium, all assets formerly under enemy control were sequestered and all banks were required to declare their assets.³⁴

24. In order to recover funds in a dormant account, a claimant must prove that the bank is obligated to pay the amount claimed. If the claimant is a decedent’s heir, the claimant must prove that the depositor has died and that he/she is the legitimate

heir to the estate. A fast-track procedure was introduced to alleviate the burden of heirs to legally establish the death of their family members who disappeared between May 10, 1940 and December 31, 1945.³⁵ When these heirs cannot produce an official death certificate, they can request the court to pronounce a declaratory “judgment of decease,” which has the same legal effect as a death certificate. In the alternative, a competent Minister, acting *ex officio* or upon request, can render a decision establishing a presumption of death of individuals who probably perished during World War II. It is the burden of the claimant to establish that he made a deposit with the bank pursuant to a contract obligating the bank to return the funds upon his request. When such evidence is produced, the bank must then establish that it is under no obligation to return the funds. When the claimant is unable to produce evidence that he opened an account, he can request that the court order disclosure by the bank of its archives.

25. In 1997, the Commission for the Study of the Fate of the Assets of the Belgian Jewish Community was established.³⁶ The commission’s goal is to examine and clarify the status of Jewish assets in Belgium that had been confiscated or abandoned during World War II.³⁷

29 Law of 16 March 1865, Art. 35 ff (Belg.).

30 Royal Decree of March 18, 1935, Art. 25 (Belg.).

31 Thus, an account holder only has a debt related right (*droit personnel*), as opposed to a material property related right (*droit reel*), to the credit balance and accrued interest. Personal rights are subject to “extinctive prescription.” Extinctive prescription means that the creditor can no longer claim payment of the credit balance after a certain period of time has elapsed.

32 Articles 2262bis, §§ 1 and 2227 of the Belgian Civil Code. This ten-year period was introduced by a law of June 10, 1998. Before this legislation, prescription only occurred after thirty years.

33 Pursuant to an ordonnance of August 23, 1940, Belgian banks were obligated to register as “Devisenbanken,” banks approved and controlled by the German Military Command. An ordonnance of May 31, 1941, required Jews to transfer all their accounts to a Devisenbank. By ordonnances of April 22 and August 1, 1942, Jewish assets were confiscated by the German Military Command.

34 The Law-Decrees of August 23 and October 6, 1944 (Belg.), respectively, provided that all assets under enemy control were sequestered with the Office for Economic Recovery and required all banks to declare their assets to the Finance Ministry.

35 Law of August 20, 1948 (Belg.).

36 Royal Decree of October 28, 1997 (Belg.) establishing the “Commission d’Etude sur le Sort des Biens des Membres de la Communauté Juive de Belgique Spoliés ou Délaiés pendant la Guerre 1941-45.”

37 Article 5 of the Royal Decree grants sweeping powers to the commission with respect to access to documents and/or materials held by both public and private banks. Article 6 provides for criminal sanctions against anyone who hides or destroys documents and/or materials or simply hinders the access to these documents by the commission.

United Kingdom

26. There is no difference between the treatment of dormant accounts in the United Kingdom³⁸ during the Relevant Period and today. A bank must repay on demand cash deposits.³⁹ With respect to a dormant account, a demand for payment must be made and only then does the six-year time period for claiming such an amount start.⁴⁰

27. A bank's obligations to repay money on a bank account is, therefore, triggered when a demand is made. On a proper demand being made, the bank will be required to transfer the bank's balance plus any accumulated interest. For this purpose, it would not matter that no demand had previously been made since the opening of the account. The account holder is always able to make a claim for the account.

28. There is no standard treatment of dormant accounts by banks in the United Kingdom. For example, at NatWest Bank, an account automatically becomes dormant after five years of inactivity. The funds are then placed into a suspense account. An account holder need only write to the bank to reclaim the funds. The funds, however, do not accrue any interest after the account has become dormant. Another bank – Abbey National Bank – places a dormant indicator on an account eighteen months after a bank letter to the account holder has been returned by the post office. The funds remain in the customer's account until the holder produces identification or the holder's death certificate is produced. Coutts & Co., a bank with a relatively small client base (about 50,000 clients) classes an account as dormant if there has been no entry in an account for at least two years and all reasonable attempts to contact the client have failed.

29. Thus, the procedures by which banks handled dormant accounts have varied. Consequently, in July 1996, the British Bankers Association, as part of their review of the Banking Code, attempted to standardize the treatment of dormant bank accounts. Toward this end, they produced a standard Dormant Bank Account claim form.

United States

Escheat Laws of the 1930s and 1940s

30. In the United States, it is a recognized principle that states, as sovereigns, may take custody or assume title to abandoned personal property.⁴¹ This process of taking custody and assuming title is commonly referred to as escheat. The escheat laws of Texas, Massachusetts, New York, California, and Florida are reviewed below.

Texas

31. During the 1930s and 1940s in Texas, the right of the State to bring an action of escheat depended upon whether there had been "reasonable diligence" used to discover claimants of the estate.⁴² An account was deemed abandoned if no lawful claim had been asserted for more than seven years and all beneficiaries had been absent for more than seven years.⁴³

32. All accounts deemed abandoned were to be paid to the State Treasury.⁴⁴ Someone claiming title to an account that escheated to the State was required

38 This section refers only to the laws of England and Wales.

39 *Clare & Co. v. Dresdner Bank*, [1915] KB 576.

40 Under Section 5 of the Limitation Act of 1980 and similar predecessor legislation, an action may not be brought after the expiration of six years from the date on which the cause of action accrued. In relation to debt recovery, time does not begin to run until there is a debt presently due and payable. In *Joachimson v. Swiss Bank Corporation*, 1921 3 KB 110, the Court held that a bank is not liable to pay the customer the full amount of his balance until demand is made. The Court further held that "the practical bearing of this decision [as to the necessity for a demand] is on the question of the statute of limitations . . . the result of this decision will be that for the future bankers may have to face claims for balances on accounts that have remained dormant for more than six years." *Id.* at 130-131. Thus, under *Joachimson*, time does not begin to run against the customer until demand for payment has been made, irrespective of the amount of time that has elapsed since the last transaction relating to the account. See, however, the Court of Appeal decision *Mahomed v. Bank of Borada* (November 16, 1998) which held that if, following a demand for payment, the dormant account holder did not renew his claim within six years and the bank closed the account or transferred the account to a suspense account, the dormant account holder would be time-barred from making a fresh demand.

41 *Delaware v. New York*, 507 U.S. 490, 497, 113 S. Ct. 1550, 1555 (1993) (citing *Christianson v. King County*, 239 U.S. 356, 365-66, 36 S. Ct. 114, 118 (1915), *Cunnius v. Reading School Dist.*, 198 U.S. 458, 469-76, 25 S. Ct. 721, 724-27 (1905), *Hamilton v. Brown*, 161 U.S. 256, 263-64, 16 S. Ct. 585, 587-88 (1896).)

42 Tex. Civ. Stat. Ann. §§ 3272-3289 (repealed 1984); *Manion v. Lockhart*, 114 S.W.2d 216, 218, (Tex. 1938). *Robinson v. Texas*, 87 S.W.2d 297, 298 (Tex. Civ. App. 1935).

43 *Texas v. Reconstruction Finance Corp.*, 258 S.W.2d 869, 872 (Tex. Civ. App. 1953).

44 *Manion*, 114 S.W.2d at 218.

to institute a suit against the State within two years after the account had escheated.⁴⁵ Essentially, the purpose of Texas' escheat laws was to treat the State Treasurer as trustee for abandoned accounts, subject to certain regulations regarding time restrictions.⁴⁶

Massachusetts

33. During the 1930s and 1940s in Massachusetts, inactive accounts became property of the State on the application of the attorney general and after public notice.⁴⁷ Inactivity was determined by an absence of transactions for more than 30 years.⁴⁸ So long as no claimant was known, and a depositor could not be found, an account was to escheat to the State.⁴⁹

34. Essentially, the State served as a trustee for the owner of the account.⁵⁰ Anyone having and establishing a lawful right to an account that had escheated to the State was entitled to the account. In order to retrieve an account that had escheated to the State, it was necessary to file a petition with the court.⁵¹ The court then determined if the claimant was the rightful owner of the account and ordered payment to the claimant accordingly.⁵²

New York

35. In New York, since 1835, holders of unclaimed property are to report and transfer the property to the State after a specified period of time, and the State is to maintain custody of the property until such time as the rightful owner comes forward with adequate proof of ownership.⁵³ During most of the 1930s and 1940s, all banks organized under the laws of the State of New York were required to report to the superintendent of banks any amount of ten dollars or more that remained unclaimed for 15 years⁵⁴ as of July 1st of the year in question.⁵⁵ Banks were to publish a list of names and addresses of "persons appearing as the owners of unclaimed amounts" in a newspaper published wherever the bank was located "annually for not less than five years."⁵⁶ Banks were to transfer the reported accounts to the State no later than November 10 of each year.⁵⁷ Importantly, banks were not responsible for erroneously

transferring to the State accounts as unclaimed or abandoned property.⁵⁸

California

36. During the 1930s and 1940s in California, bank funds could be declared abandoned and escheat to the state after 20 years of inactivity from the date of the deposit.⁵⁹ When the attorney general learned of abandoned deposits, he was to commence an action against the bank and the account owners on behalf of the State in order to recover the property.⁶⁰ If the court determined that the fund was unclaimed, then judgment was rendered in favor of the State, and the court declared that the money had "escheated."⁶¹ Even after the adjudication, any person not a party to the escheat judgment could sue the State to recover the money for a period of five years.⁶²

Florida

37. During the 1930s and 1940s, the holder of unclaimed funds was to file a bill of complaint in the circuit court when the lawful owner of those funds could not be found.⁶³ The action was to be

45 *Id.* at 217.

46 *Id.* at 218.

47 *Malone v. Provident Institution for Savings*, 896 N.E. 912, 912 (Mass. 1909), *aff'd.*, 221 U.S. 660, 31 S. Ct. 661 (1911).

48 *Id.* According to the Commonwealth, such a long duration of inactivity furnished a strong presumption that an account has been abandoned. *Id.* at 913-14.

49 *Id.*

50 *Id.* at 914.

51 *Id.* at 912.

52 *Id.*

53 New York's unclaimed property statutes, now commonly known as the "Abandoned Property Law" trace their roots to 1835. N.Y. Aband. Prop. Law (McKinney 1991).

54 Prior to the statutes' amendment in 1937, unclaimed funds were not deemed abandoned until 22 years had passed without contact with the account holder.

55 N.Y. Banking Law § 126 (Gould 1942) (applicable to banks and trust companies), N.Y. Banking Law § 169 (Gould 1942) (applicable to private bankers) and N.Y. Banking Law § 256 (Gould 1942) (repealed 1943) (applicable to savings banks).

56 *See, e.g.*, N.Y. Banking Law § 126(2)(Gould 1942).

57 *See, e.g.*, N.Y. Banking Law § 127 (Gould 1942).

58 *See id.* ("No action shall be maintained against any bank or trust company for the recovery of moneys paid over to the state comptroller pursuant to the provisions of this section or for damages alleged to have resulted from any such payment.")

59 Cal. Civ. Proc. Code, § 1273 (A.V. Lake 1935) (repealed 1945).

60 *See Matthews v. Savings Union Bank and Trust Co.*, 184 P. 418, 419 (Cal. Ct. App. 1919).

61 *Id.*

62 *Id.*

brought against all person or entities known or unknown, after a reasonable investigation and proper service, who may have had a right to such funds.⁶⁴ If the circuit judge could not determine the lawful owner of the funds, the holder of the funds was obligated to deliver them to the State Treasurer.⁶⁵ The State Treasurer was obligated to keep the funds in a separate account for five years during which time an interested party could file a claim in the circuit court.⁶⁶ If no claims were brought during the five-year period, the State Treasurer could credit the unclaimed property to the state school fund.

Current Escheat Laws

38. In 1955, a uniform law on unclaimed property was recommended for enactment by all states.⁶⁷ It provides that holders of unclaimed property are to report and transfer the property to the individual State, that the State is to maintain custody of the property until such time as the rightful owner comes forward with adequate proof of ownership; and that the owner is to receive notice by publication and otherwise. The objectives are to protect owners by locating them and restoring their property to them, as well as to give the State, rather than the holders of the unclaimed property, the benefit of its use. Over 30 states have enacted the Uniform Unclaimed Property Act in whole or in part.⁶⁸ The following is an analysis of the current law in Texas, Massachusetts, New York, California, and Florida. Only Florida has adopted the uniform law in total.

Texas

39. Texas has not adopted in total the uniform law of unclaimed property. In Texas today, an account is deemed inactive if there has been no activity in the account for more than one year.⁶⁹ Inactive accounts are presumed abandoned if:

- (1) the account...has been inactive for at least five years⁷⁰ [since the date of the depositor's last transaction or correspondence concerning the account];
- (2) the location of the depositor of the

- account...is unknown to the depository; and
- (3) the amount of the account... ha[s] not been delivered to the [State] comptroller....⁷¹

40. A holder of an abandoned account must file a detailed report with the State Comptroller.⁷² The purpose of the report is to remove abandoned accounts from the possession of the current holder, relieve the holder of any further liability regarding the accounts, put the accounts in the hands of the State, and provide a means for reclaiming the accounts.⁷³ Each holder of an abandoned account must deliver the account to the Comptroller along with the report.⁷⁴ Upon receipt of an account over \$100, the Comptroller must notify each reported owner

63 Florida's unclaimed property law was first enacted in 1927 by Laws of Florida, 1927, Chapter 12035, Section 1. This law was later codified in the first official version of the Florida Statutes in 1941 as Section 69.04-69.08. Fla. Stat. Ann. §§ 69.04-69.08 (1941) (repealed 1965).

64 *Id.* § 69.05.

65 *Id.* § 69.06.

66 *Id.* § 69.07.

67 The Disposition of Unclaimed Property Act was drafted by the National Conference of Commissioners on Uniform State Laws.

68 Alaska, Arizona, Colorado, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virgin Islands, Virginia, Washington, Wisconsin, and Wyoming have adopted the Uniform Act in total.

69 Texas Prop. Code Ann., § 73.003 (West Supp. 1999). In 1961, the Texas Legislature enacted Article 3272(a) covering property subject to escheat. See *Southern Pacific Transport Co. v. State of Texas*, 380 S.W.2d 123, 124 (Tex. Civ. App. 1964). Article 3272(a) was replaced in 1984 by Title 6 of the Texas Property Code. Chapter 73 of Title 6 pertains to inactive accounts held by banking organizations.

70 Prior to 1985, the dormancy period for abandoned accounts was seven years. *Id.* § 73.101, Historical and Statutory Notes (West 1995).

71 Tex. Prop. Code Ann. § 73.101 (West Supp. 1999).

72 *Id.* § 74.101 (West 1995 and Supp. 1999).

(c) The property report must include:

- (1) the name and social security number, if known, and the last known address, if any, of each person who, from the records of the holder of the property, appears to be the owner of the property, or the name and address, if known, of any person who is entitled to the property;
- (2) a description of the property, the identification number, if any, and if appropriate, a balance of each account, except as provided in Subsection (d);
- (3) the date the property became payable, demandable, or returnable;
- (4) the date of the last transaction with the owner concerning the property; and
- (5) other information that the comptroller by rule requires to be disclosed as necessary for the administration of this chapter.

(d) Amounts due that individually are less than \$50 may be reported in the aggregate without furnishing any of the information required by Subsection (c).

Tex. Prop. Code Ann. § 74.101 (West 1995 and Supp. 1999).

73 See *Texas v. Melton*, 970 S.W.2d 146, 148 (Tex. App. 1998), *aff'd.*, 993 S.W.2d 95 (Tex. 1999). The holder must also keep a record of the account information for ten years. Tex. Prop. Code Ann. § 74.103 (West Supp. 1999).

74 See Tex. Prop. Code Ann. § 74.301 (West Supp. 1999).

within the calendar year.⁷⁵

41. On receipt of an account, the State assumes custody and responsibility for the safe keeping of the account.⁷⁶ Any accounts received must be deposited in the General Revenue Fund with which the Comptroller has the authority to invest in various state-approved funds.⁷⁷ A holder who delivers an account in good faith is relieved of all liability to the extent of the value of the account for any claim that may arise. Additionally, the Attorney General will defend the holder against such claims.⁷⁸

42. There is no time limit with respect to filing a claim for an abandoned account. Any claim filed after receipt of an account is handled by the Comptroller.⁷⁹ The Comptroller maintains a sophisticated web site⁸⁰ and a toll free number where individuals may search to determine whether they are the rightful owners of abandoned accounts that have escheated to the State. The State charges a handling fee for most claims.⁸¹

Massachusetts

43. In Massachusetts, since 1950⁸² and still today, a deposit of property is presumed abandoned if there has been no transaction or communication with respect to that property within three years.⁸³ Within one year thereafter, the holder is obligated to report abandoned property to the State Treasurer.⁸⁴

44. Every person holding an account presumed abandoned is to report the account to the State Treasurer.⁸⁵ Additionally, if the account contains at least \$100, the holder must send the owner notice that the account is to be surrendered to the custody of the State within 60 days of the filing of the report.⁸⁶ Furthermore, no holder may impose any charges with respect to dormancy or inactivity on a bank account, or cease payment of interest, unless such charges were specifically agreed to by both parties, the customer is notified prior to the imposition of such charges, and it is not the policy of the holder to waive these types of charges.⁸⁷

45. If an account remains unclaimed, the holder must pay or deliver the account to the Treasurer of the State by May first of each year.⁸⁸ The Treasurer in turn must publish a notice, no later than March first of the same year following the report, at least once a week for two consecutive weeks in an English speaking newspaper of general circulation in each county in which an apparent owner had a last known address.⁸⁹ Notice is required for accounts worth at least \$100.⁹⁰ Any account surrendered to the Treasurer vests in the Commonwealth.⁹¹ Any money received is then placed in a special fund known as the Abandoned Property Fund. Whenever the amount of this fund exceeds \$500,000, the

75 Such notice must be provided:

(a) . . .

(1) in the county of the property owner's last known address; or
(2) in the county in which the holder has its principal place of business or its registered office for service in this state, if the property owner's last address is unknown.

(b) The notice must state that the reported property is presumed abandoned and subject to this chapter and must contain:

(1) the name and city of last known address of the reported owner;
(2) a statement that, by inquiry, any person possessing a legal or beneficial interest in the reported property may obtain information concerning the amount and description of the property; and
(3) a statement that the person may present proof of the claim and establish the person's right to receive the property.

Tex. Prop. Code Ann. § 74.201 (West Supp. 1999).

Notice is not required for items worth less than \$100, unless the Comptroller determines that notice is in the public interest. Tex. Prop. Code Ann. § 74.202 (West Supp. 1999). Between 1985 and 1997, this figure was \$50. *Id.* at Historical and Statutory Notes.

76 *Id.* § 74.304 (West Supp. 1999).

77 *Id.* § 74.601 (West Supp. 1999).

78 *Id.* § 75.405 (West Supp. 1991).

79 Tex. Prop. Code Ann. § 74.501 (West Supp. 1999).

80 See Texas Comptroller of Public Accounts at <<http://www.window.state.tx.us/comptrol/unclprop/unclprop.html>> (visited August 25, 1999).

81 Claims over \$500 are charged a 1.5% fee; claims between \$100 and \$5000 are charged a 1% fee and claims under \$100 are without fee.

82 In 1950, the State Legislature enacted the Massachusetts Abandoned Property Act. Mass. Gen. Laws Ann. ch. 200A (West 1990 and Supp. 1999).

83 The length of the dormancy period has been reduced from 15 to 3 years. The dormancy period was fourteen years from 1950–1975; ten years from 1975–1980; seven years from 1980–1981, and five years from 1981–1992. *Id.* § 3, Historical and Statutory Notes (West 1990 and Supp. 1999).

84 Mass. Gen. Laws Ann. ch. 200A, §§ 3, 7 (West Supp. 1999).

85 Mass. Gen. Laws Ann. ch. 200A, § 7 (West Supp. 1999).

86 This value was \$25 from 1950 to 1984 and \$50 from 1984 to 1992. Mass. Gen. Laws Ann. ch. 200A, § 7, Historical and Statutory Notes (West 1990 and Supp. 1999).

87 Mass. Gen. Laws Ann. ch. 200A, § 15C (West 1990).

88 *Id.* § 8A (West Supp. 1999).

89 *Id.* § 8 (West Supp. 1999).

90 This value was \$25 from 1950 to 1984 and \$50 from 1984 to 1992. Mass. Gen. Laws Ann. ch. 200A, § 7, Historical and Statutory Notes (West 1990 and Supp. 1999).

91 *Id.* § 9 (West 1990).

excess is credited to the General Fund.⁹² Anyone claiming an interest in accounts surrendered to the Treasurer may establish their claim at any time. The Treasurer possesses full and complete authority to determine all such claims. Massachusetts currently has an internet site which contains lists of individuals and organizations who may be entitled to unclaimed assets.⁹³

New York

46. In New York today, unclaimed bank accounts are deemed abandoned property when the funds have remained unclaimed by the owner for five years, rather than 15 years.⁹⁴

47. There is no threshold reporting requirement: all unclaimed funds, regardless of amount, must be reported to the State.⁹⁵ The requirement to report such accounts to the State now applies to all banking organizations “organized under or subject to the provisions of the laws of [New York], or of the United States, [except for] federal reserve banks,” not just those banks incorporated in the state of New York.⁹⁶ In addition, the State now pays interest on interest-bearing items (such as savings accounts) for a period of five years after it obtains custody of the property.⁹⁷

48. While the changes to the Abandoned Property Law since the 1930s and 1940s have been motivated by the State’s desire to increase the hefty interest income generated by its custody of abandoned property, changes in communication technology have facilitated the process of identifying and locating the rightful owners of unclaimed funds. The Office of the State Comptroller, which is responsible for the administration of claims to abandoned property, has a toll-free telephone number and an internet web site that potential claimants may use to check the list of unclaimed property holders.⁹⁸

California

49. California has enacted a modified version of the Uniform Disposition of Unclaimed Property

Act.⁹⁹ Deposits held by banks are presumed abandoned if the owners have not, within three years, caused activity in the accounts or with respect to them.¹⁰⁰ Banks must make reasonable efforts to notify customers with accounts of \$50 or more¹⁰¹ by mail that the account is to escheat to the State.¹⁰² Notice must be given either between two and two and one-half years after the date of last activity or between six and twelve months before the account becomes reportable to the State Controller.¹⁰³ The holder of the abandoned property is required to report the existence of the property to the Controller before November 1 of each year.¹⁰⁴

50. Within one year after the delivery of the escheated property to the Controller, the Controller must publish a notice in a newspaper of general circulation detailing the available information about the property.¹⁰⁵ Any person claiming an interest in the property may file a claim with the Controller at any time.¹⁰⁶

⁹² *Id.* § 9(e).

⁹³ This site is located at <<http://www.state.ma.us/scripts/treasury/abp.asp>> (visited on August 25, 1999).

⁹⁴ In 1943, the New York legislature consolidated its banking statutes and enacted Section 300 of the Abandoned Property Law, which is still in force today. N.Y. Aband. Prop. Law § 300 (McKinney 1991 and Supp. 1999).

⁹⁵ *Id.*

⁹⁶ N.Y. Aband. Prop. Law § 103(c) (McKinney 1991). The difference has significant implications since many large national banks have headquarters in New York, irrespective of their state of incorporation. Since the Abandoned Property law was enacted in 1943, there have been numerous high profile cases regarding the respective rights of the different states to claim custody of dormant accounts. *See, e.g., Delaware v. New York*, 507 U.S. 490, 113 S. Ct. 1550 (1993) (finding that states as sovereigns may take custody of abandoned personal property located or held in the state, regardless of the beneficial owner’s last known address or the banking organization’s state of incorporation.)

⁹⁷ *See* N.Y. Aband. Prop. Law § 1405 (McKinney 1991).

⁹⁸ *See* <<http://www.osc.state.ny.us/ouf/>> (visited August 25, 1999).

⁹⁹ Cal. Civ. Proc. §§ 1500-1580 (West 1982 and Supp. 1999).

¹⁰⁰ *Id.* § 1513. In 1988, the statute was amended to lower the time of allowed inactivity from seven years to five years. In 1990, the statute was amended to decrease the time of allowed inactivity from five year to three years. *Id.* § 15133, Historical and Statutory Notes (West Supp. 1999).

¹⁰¹ *Id.* § 1513.5 and Historical Statutory Notes (West Supp. 1999). Notice is not required for accounts of less than \$50. In 1996, the threshold amount was changed from \$25 to \$50.

¹⁰² *Id.* § 1513.5(a).

¹⁰³ *Id.* In 1990, the notice provision was amended from between three and three and one-half years to between two and two and one-half years. *Id.* Historical and Statutory Notes.

¹⁰⁴ *Id.* § 1530 (West Supp. 1999).

¹⁰⁵ *Id.* § 1531 (West Supp. 1999).

¹⁰⁶ *Id.* § 1540 (West Supp. 1999).

Florida

51. Florida adopted the uniform act on unclaimed property.¹⁰⁷ Bank accounts are presumed abandoned after five years of inactivity.¹⁰⁸ The Florida statute provides that holders of property presumed abandoned must file a report to the Department of Banking and Finance before May 1 of each year detailing the property held.¹⁰⁹ Not more than 120 days prior to filing the report, the holder of the property must send written notice to the apparent owner at the last known address informing the owner of the existence of the property.¹¹⁰ The State is then required to make a single attempt to notify owners of the existence of abandoned property held by the department using any cost-effective means.¹¹¹ Such notice is required to be made within 13 months following the receipt of the report from the holders of the property.¹¹² The State retains up to \$3 million of the obtained abandoned properties in an account and any funds in excess of the \$3 million are deposited in the State School Fund.¹¹⁴ Anyone claiming an interest in the property may file a claim with the department at any time.¹¹⁵

Switzerland

52. In Switzerland, the relationship between banks and their customers is governed by the contract between them and the general terms of the documentation signed by the customer at the time the account was opened. Other relevant law is only considered secondarily to the specific provisions of the contract.¹¹⁶

53. During the 1930s and 1940s, most of the contractual relationships between the banks and their customers were governed primarily by the “General Conditions” signed by the customers at the time the account was opened. While the terms of the contract varied depending on the requirements of the parties, customer contracts were generally highly standardized. General provisions usually included a right of set-off and a right of lien in favor of the bank with respect to claims on debts due from the customer. Provisions of the Code Civil and Code of Obligations would apply only to the extent that the

“General Terms and Conditions” were silent on the point at issue, except for a limited number of mandatory provisions and the principle of good faith that would apply in all cases. Under Articles 2 and 3 Code Civil, every person is bound to exercise their rights and fulfill their obligations according to the principles of good faith. The bank, therefore, was expected to exercise the principle of good faith, embracing the concept of mutual trust, in its dealings with its customers.

54. There were no specific statutes during the 1930s and 1940s requiring notification to dormant account holders. Generally, however, the banks attempted to notify the owners of dormant savings and deposit passbooks before closure of an account. Named passbook holders were notified of the closure by a letter sent to the last known address. For bearer passbooks, holders were generally notified by public announcements in official publications for the cantons where the banks operated and in the Swiss Commercial Gazette. Certain cantons had laws requiring that the details about dormant accounts be published in the Swiss Commercial Gazette or in the relevant cantonal newspaper. For those accounts where the account holder did not come forward, the accounts were closed and amounts transferred to the appropriate funds in accordance with the relevant Swiss legislation.

107 Florida’s current Disposition of Unclaimed Property Law was enacted by Laws of Florida (LOF), 1987, ch. 87-105. This law essentially repealed the former unclaimed property provisions and replaced it with the Uniform Disposition of Unclaimed Property Act.

108 Fla. Stat. Ann. § 717.106 (West Supp. 1999).

109 The report must detail accounts of \$50 or more. Accounts of less value may be reported in the aggregate. *Id.* § 717.117 (West Supp. 1999).

110 *Id.*

111 *Id.* § 717.118 (West Supp. 1999).

112 *Id.*

113 *Id.* § 717.123 (West Supp. 1999).

114 *Id.*

115 *Id.* § 717.124 (West Supp. 1999).

116 Significant areas of civil legislation as it relates to agreements between parties are codified in the Swiss Civil Code and the Swiss Code of Obligations. These statutory laws became effective on January 1, 1912. The Code of Obligations pertains to certain aspects of civil legislation as they relate to the responsibilities of the parties to an agreement. The contractual relationship between a banks and its customer may be governed by various general provisions contained in the Code of Obligations but there is no specific provision regarding the relationship between a bank and its customer. The Code of Obligations was substantially revised in 1936, and this later version remained in force until 1992 when it underwent further revisions..

55. Claims to bank accounts must be made within ten years of when the claim becomes due, whether or not the claimant has knowledge that the claim is due.¹¹⁷ A claim to an account does not become due as long as the relationship between the bank and its customer is ongoing and has not been terminated. It has not been determined whether the ten-year statute of limitation could apply to accounts with respect to which the account holder has not terminated the relationship and the bank's notification of termination of the relationship at the client's last known address was unsuccessful.¹¹⁸

56. During the 1930s and 1940s, as well as today, a person can be declared absent by the court if the person disappeared under circumstances of mortal danger or has not been heard of for a long time.¹¹⁹ The declaration of absence can be requested one year after the mortal danger or five years after the last communication. The court will then order that a notice be published and if no information about the person is received within the time prescribed by the judge in the publication of the notice, which is at least one year, the court can declare the person dead.¹²⁰ It has been admitted by the courts that this procedure could also be applied to foreigners whose last domicile was outside of Switzerland when the sole purpose of the procedure is to deal with assets left by them in Switzerland.¹²¹

57. If, after publication of the account, no heir is identified, then, in the case of assets of Swiss citizens, the estate will be managed by an appointed curator.¹²² In the case of assets left at a bank, the appointment of a curator is necessary because it is not acceptable for the bank, as debtor, to manage the assets of its creditor.¹²³ If the official management of the estate by a curator has lasted for more than ten years or the account holder would have reached the age of 100 years, then the judge may declare the heir absent. If no one claims to have an interest in the funds within a period set by the judge, then the funds revert to the canton or the municipality that would inherit if the absent person had no heir.¹²⁴ The canton or the municipality remains responsible, however, to the beneficiaries to the dormant accounts.¹²⁵

58. It has not been determined whether this procedure of appointing a curator for unclaimed assets could also be initiated for and applied to assets of a foreigner whose last domicile was outside of Switzerland. The relevant provisions of the Code Civil do not contain a rule regarding international jurisdiction or a conflict of laws rule. It is usually admitted, however, that the issue is a succession law issue, which as such should be governed by the law of the account holder.

59. There was much debate in Switzerland on the fate of heirless assets during the period from the end of World War II up to the Federal Decree of 1962.¹²⁶ In 1947, a federal decree providing for the registration of assets dormant since May 9, 1945 was drafted, but the decree was never enacted. Again in 1952, the Government tried to revive legislation pertaining to the issue of heirless assets. For a decade thereafter, discussions as to the merits of the proposed legislation continued between the Federal Justice Department, the Department of Foreign Affairs, the SBA, SBA member banks and organizations representing Jewish interests. The SBA and its members generally resisted such legislation. They argued that the existing legal framework was sufficient to manage the issue. They also sought to demonstrate that the value of such assets was not sufficiently great to justify the introduction of new legislation.¹²⁷

60. In 1962, a Federal Decree was approved requiring the registration of Swiss assets belonging to foreigners or stateless persons who were victims of racial, religious or political persecution.¹²⁸ The decree was enacted on September 1, 1963. The decree

117 Code of Obligations, arts. 127, 130 (Switz.).

118 The statute of limitations is also suspended as long as the claim cannot be asserted in a Swiss Court. Code of Obligations art. 134 (Switz.). Moreover, the statute of limitations would not begin to run if the creditor were unable to pursue its claim because of force majeure, such as war. Becker, Kommentar 1941, N. 9 at Art. 134; ATF 90 II 428 (1964).

119 Code Civil art. 35 (Switz.).

120 Code Civil art. 36 (Switz.).

121 ATF 46 II 496 (Switz. 1920).

122 Code Civil art 548 (Switz.); Code Civil art. 393 (Switz.).

123 ATF 51 II 264 (Switz. 1926).

124 Article 550 Section 2 Code Civil (Switz.).

125 Article 550 Section 3 Code Civil (Switz.).

126 See Annex 5: Treatment of Dormant Accounts of Victims of Nazi Persecution.

127 See *id.* paragraphs 28 to 45.

contained a simplified procedure for the declaration of absence and the call for heirs. It also provided that dormant accounts without any heirs would be disposed of to the benefit of humanitarian funds.

61. The reported assets were transferred to the Unclaimed Assets Fund and were distributed to claimants and charities. In addition, it appears that certain reported assets were returned to the banks. The authority in charge of receiving the reports limited its work to receiving the declarations and comparing the claims with the names on the declarations. No independent inspection or audit was undertaken.¹²⁹

62. Moreover, there were a number of problems with the management and treatment of dormant accounts under the 1962 Decree. For example, the authorities refused to provide the Swiss Consulate in New York with sufficient declaration forms, causing much delay in the filing of claims. Additionally, the authorities refused to acknowledge 224 cases stating that the account holder was not a victim of Nazi persecution, but instead died of natural causes, such as starvation or insufficient medical treatment. Finally, the Swiss Justice Department stated that it would make no publication with respect to account holders of the former East Bloc under the theory that criminal sanctions could be imposed against those individuals by the communist authorities in such countries. Dormant accounts from Eastern Bloc depositors represented SFr. 4.80 million or 47 percent of all reported accounts. The Unclaimed Assets Fund was formally closed in 1980.

63. Switzerland, unlike other countries such as France and the United States, does not have a statute that requires the handing over of dormant accounts to the State. Instead, the Swiss banks may voluntarily begin a proceeding to declare the account holder absent, and this proceeding triggers the notification process by which existing claimants and heirs can be located. With respect to assets of Swiss citizens, if no rightful owner is found, an interim curator is appointed for at least a ten-year period. However, it is unknown whether this procedure

could be applied to assets of foreigners as well. Moreover, the fate of the assets of foreigners whose last domicile was outside of Switzerland is a succession issue that is governed by the law of the country of the foreigner. Thus, it is unclear how assets of foreign account holders should be managed. If Swiss law was applied, once the ten-year interval has lapsed, a judge could declare that there is no heir to the account holder, and the funds could be vested with the canton or municipality. Switzerland's requirement for judicial declaration of absence prior to escheat is unlike some jurisdictions that permit the automatic escheat to the sovereign. The ten year dormancy period, however, is consistent with the prescribed dormancy periods of other jurisdictions. Additionally, Switzerland follows the modern trend and allows beneficiaries to claim dormant accounts from the canton or municipality holding the funds at any time.

Conclusion

64. Most jurisdictions have statutory laws providing for the escheat to the State of dormant bank accounts after a period of time. The purpose behind escheat laws in general is to protect the rights of beneficial owners to dormant assets as well as to allow the sovereign the use of the property during its dormancy. The trend of the existing laws seems to be that the period of dormancy prior to escheat is becoming shorter. Enhancements in technology have made it easier for beneficial owners to locate dormant assets. Most jurisdictions also require that a good faith attempt be made by the account holder to notify the rightful owners of the existence of such assets. Furthermore, many jurisdictions have no limit on the time in which beneficial owners can claim the assets.

¹²⁸ See *id.* paragraphs 39 to 45.

¹²⁹ The authority requested the judicial appointment of a curator for 824 cases. The authority in conjunction with the appointed curators sought possible beneficiaries in cases where the assets were more than SFr. 500. Beginning in March 1970, the threshold for petty cases was raised to SFr. 1,000.

