

DEPARTMENT OF STATE
WASHINGTON

November 3, 1993

Excellency,

I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, which was signed on May 25, 1973, and entered into force on January 23, 1977 ("Treaty"), and to the Agreement of November 10, 1987.

I have the honor to refer to recent discussions between representatives of our two Governments to expand the coverage of the Treaty involving violations of the laws and regulations governing the offer, purchase or sale of securities, futures or options, in accordance with Article 1, Paragraph 3 of the Treaty. Article 1, Paragraph 3 of the Treaty provides that "the competent authorities of the Contracting Parties may agree that assistance as provided by this Treaty will also be granted in certain ancillary administrative proceedings in respect of measures which may be taken against the perpetrator of an offense falling within the purview of this Treaty."

In cases involving offenses in connection with the offer, purchase, or sale of securities, futures or options, the offenders may not only be found guilty and sentenced in a criminal proceeding but also may be subject to other sanctions in order that the harm caused by the offense is repaired or that the offenders are deterred from similar conduct in the future. It is therefore the

His Excellency

Carlo Jagmetti,

Ambassador of Switzerland.

A true copy of
the original
sent
Luis Acuña
Office of Treaty
Affairs

understanding of the Government of the United States of America that, if assistance under the Treaty could be granted with a view to possible penal proceedings, it will also be granted in connection with the following proceedings, including formal investigations that may lead to such proceedings, that are conducted by the Securities and Exchange Commission ("SEC") with respect to offenses in connection with the offer, purchase or sale of securities such as trading of securities by persons in possession of material non-public information, or by the Commodity Futures Trading Commission ("CFTC") with respect to offenses that involve the offer, purchase or sale of futures or options, and are covered by the Treaty ("violative conduct"):

(1) Suits in a court of the United States seeking permanent or preliminary injunctions or temporary restraining orders or enforcement proceedings before the SEC, the CFTC or an administrative law judge seeking cease-and-desist orders;

(2) Suits in a court of the United States or enforcement proceedings before the SEC, the CFTC or an administrative law judge seeking other equitable relief ancillary to the relief sought in paragraph (1) above, such as a freeze of assets or the disgorgement of profits gained (or losses avoided) as a result of violative conduct;

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(3) Suits in a court of the United States or enforcement proceedings before the SEC, the CFTC or an administrative law judge seeking the imposition of a civil penalty or fine, provided however, if evidence or information is obtained pursuant to a grant of assistance under the Treaty, such evidence or information shall not be used to secure the imposition of a civil penalty or fine to compel a person to act in a way that would be contrary to Swiss law;

(4) Suits in a court of the United States or enforcement proceedings before the SEC, the CFTC or an administrative law judge for an order commanding a person to comply in the future with provisions of the United States securities, futures or options laws or the rules and regulations promulgated thereunder; and

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

It is agreed that the Treaty provides an important means of obtaining information needed to enforce the criminal or penal laws of the United States and that the Treaty should be used to the extent feasible. It is further understood that an investigation by the SEC or the CFTC is to be considered an investigation for which

assistance can be furnished (if the other requirements of the Treaty are met) as long as the investigation relates to conduct which might be dealt with by the criminal courts of the United States.

I have the further honor to state, on behalf of the Government of the United States of America, that if assistance under the Treaty could be granted with a view to possible criminal proceedings in Switzerland, assistance will also be granted in connection with the following investigations and proceedings, including investigations that may lead to such proceedings, that are conducted by competent Swiss authorities with respect to offenses in connection with the offer, purchase or sale of securities, futures or options, and are covered by the Treaty:

(1) The issuance of court or administrative orders declaring a violation of, or commanding a person to comply in the future with, applicable laws or rules or regulations promulgated thereunder;

(2) The imposition of a formal prohibition to engage in a vocation, trade or business which requires a license;

(3) The revocation of a license to engage in a vocation, trade or business or the removal of a person from a particular position in a regulated entity;

(4) The imposition of a penalty or sanction under administrative law, provided however, if evidence

or information is obtained pursuant to a grant of assistance under the Treaty, such evidence or information shall not be used to secure the imposition of a penalty or sanction under administrative law to compel a person to act in a way that would be contrary to United States law; and

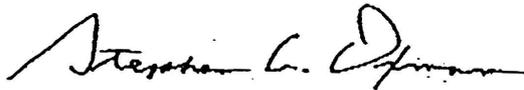
(5) The judicial confiscation of objects and assets, including freezes of assets.

If the foregoing is acceptable to the Swiss Federal Council, I have the honor to propose that this note and Your Excellency's reply thereto shall constitute an agreement between the competent authorities pursuant to Article 1, Paragraph 3 of the Treaty, which shall supersede the Agreement of November 10, 1987, and which shall enter into force on the date of Your Excellency's note in reply.

I am aware that proposed legislation on stock exchanges and securities trading, which would provide for a federal supervisory authority, is under consideration in Switzerland. In the event that relevant functions of the Swiss Federal Office for Police Matters are transferred to the federal supervisory authority pursuant to the legislation, modification of this agreement may be necessary.

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

For the Secretary of State:



The Ambassador of Switzerland

Washington, November 3, 1993

Dear Mr. Secretary:

I have the honor to acknowledge the receipt of Your Excellency's note dated November 3, 1993, which reads as follows:

"I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, which was signed on May 25, 1973, and entered into force on January 23, 1977 ('Treaty'), and to the Agreement of November 10, 1987.

I have the honor to refer to recent discussions between representatives of our two Governments to expand the coverage of the Treaty involving violations of the laws and regulations governing the offer, purchase or sale of securities, futures or options, in accordance with Article 1, Paragraph 3 of the Treaty. Article 1, Paragraph 3 of the Treaty provides that 'the competent authorities of the Contracting Parties may agree that assistance as provided by this Treaty will also be granted in certain ancillary administrative proceedings in respect of measures which may be taken against the perpetrator of an offense falling within the purview of this Treaty.'

In cases involving offenses in connection with the offer, purchase, or sale of securities, futures or options, the offenders may not only be found guilty and sentenced in a criminal proceeding but also may be subject to other sanctions in order that the harm caused by the offense is repaired or that the offenders are deterred from similar conduct in the future. It is therefore the understanding of the Government of the United States of America that, if assistance under the Treaty could be granted with a view to possible penal proceedings, it will also be granted in connection with the following proceedings, including formal investigations that may lead to such proceedings, that are conducted by the Securities and Exchange Commission ('SEC') with respect to offenses in connection with the offer, purchase or sale of securities such as trading of securities by persons in possession of material non-public information, or by the Commodity Futures Trading Commission ('CFTC') with respect to offenses that involve the offer, purchase or sale of futures or options, and are covered by the Treaty ('violative conduct'):

(1) Suits in a court of the United States seeking permanent or preliminary injunctions or temporary restraining orders or enforcement proceedings before the SEC, the CFTC or an administrative law judge seeking cease-and-desist orders;

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

- (2) Suits in a court of the United States or enforcement proceedings before the SEC, the CFTC or an administrative law judge seeking other equitable relief ancillary to the relief sought in paragraph (1) above, such as a freeze of assets or the disgorgement of profits gained (or losses avoided) as a result of violative conduct;
- (3) Suits in a court of the United States or enforcement proceedings before the SEC, the CFTC or an administrative law judge seeking the imposition of a civil penalty or fine, provided however, if evidence or information is obtained pursuant to a grant of assistance under the Treaty, such evidence or information shall not be used to secure the imposition of a civil penalty or fine to compel a person to act in a way that would be contrary to Swiss law;
- (4) Suits in a court of the United States or enforcement proceedings before the SEC, the CFTC or an administrative law judge for an order commanding a person to comply in the future with provisions of the United States securities, futures or options laws or the rules and regulations promulgated thereunder; and
- (5) Enforcement proceedings conducted before the SEC, the CFTC or an administrative law judge in which the revocation or suspension of the registration of a regulated entity, or a suspension or bar of a person from being associated with such an entity, as a result of violative conduct is sought.

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

I have further honor to state, on behalf of the Government of the United States of America, that if assistance under the Treaty could be granted with a view to possible criminal proceedings in Switzerland, assistance will also be granted in connection with the following investigations and proceedings, including investigations that may lead to such proceedings, that are conducted by competent Swiss authorities with respect to offenses in connection with the offer, purchase or sale of securities, futures or options, and are covered by the Treaty:

- (1) The issuance of court or administrative orders declaring a violation of, or commanding a person to comply in the future with, applicable laws or rules or regulations promulgated thereunder;
- (2) The imposition of a formal prohibition to engage in a vocation, trade or business which requires a license;
- (3) The revocation of a license to engage in a vocation, trade or business or the removal of a person from a particular position in a regulated entity;

(4) The imposition of a penalty or sanction under administrative law, provided however, if evidence or information is obtained pursuant to a grant of assistance under the Treaty, such evidence or information shall not be used to secure the imposition of a penalty or sanction under administrative law to compel a person to act in a way that would be contrary to United States law; and

(5) The judicial confiscation of objects and assets, including freezes of assets.

If the foregoing is acceptable to the Swiss Federal Council, I have the honor to propose that this note and Your Excellency's reply thereto shall constitute an agreement between the competent authorities pursuant to Article 1, Paragraph 3 of the Treaty, which shall supersede the Agreement of November 10, 1987, and which shall enter into force on the date of your Excellency's note in reply.

I am aware that proposed legislation on stock exchanges and securities trading, which would provide for a federal supervisory authority, is under consideration in Switzerland. In the event that relevant functions of the Swiss Federal Office for Police Matters are transferred to the federal supervisory authority pursuant to the legislation, modification of this agreement may be necessary."

I have the honor to confirm that the foregoing is acceptable to the Swiss Federal Council and this exchange of notes shall constitute an agreement between the competent authorities pursuant to Article 1, Paragraph 3 of the Treaty.

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



Carlo Jagmetti