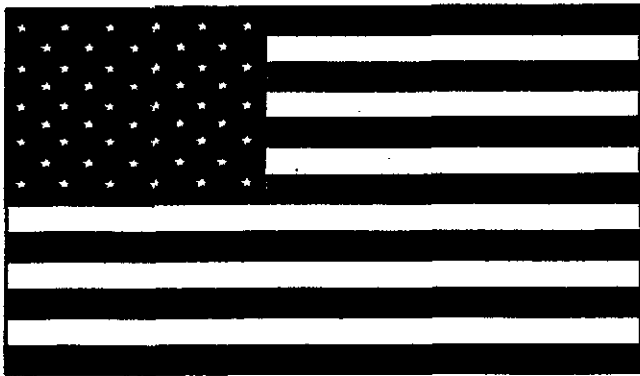
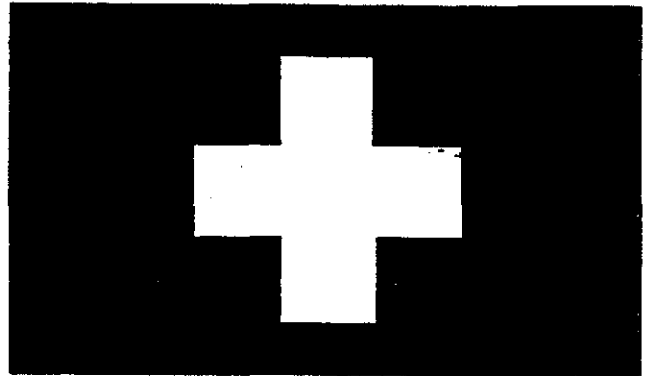


MEMORANDUM OF UNDERSTANDING



*The United States
Securities and Exchange Commission*



*The Government of
Switzerland*

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

MEMORANDUM OF UNDERSTANDING

I. Introduction

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

SEC, other representatives of the SEC, Roger M. Olsen, Deputy Assistant Attorney General, Criminal Division, Department of Justice, John R. Crook, Assistant Legal Adviser for Economic and Business Affairs, Department of State, and other representatives of the Department of State and the Department of Justice.

2. The consultations included a discussion of concerns in both countries with respect to recent cases involving persons who used Swiss banks as intermediaries to effect securities transactions in the United States, at a time when such persons may have possessed material non-public information concerning the securities involved. Trading while in possession of material non-public information (insider trading) confers an unfair advantage upon persons who engage in such trading and impairs the integrity of United States capital markets. Such conduct is a violation of the United States securities laws and insofar as it is not yet per se punishable under Swiss law is considered dishonorable in Switzerland as well.

3. The parties noted that, when it appears that a securities transaction has been made by persons while in possession of material non-public information, the SEC is responsible for conducting an investigation of the matter. This requires that the SEC be able to learn the identity of the person on

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

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

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

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

7. The parties also entered into certain understandings with respect to a private Agreement Among Members of the Swiss Bankers' Association, which is discussed in Section III of this Memorandum of Understanding and is attached hereto.

**II. Exchange of Opinions Regarding
the Treaty Between the United States
and the Swiss Confederation on Mutual
Assistance in Criminal Matters**

1. The parties note the importance of the 1977 Treaty which provides for cooperation between law enforcement authorities in connection with investigations or court proceedings involving criminal offenses, including fraud. Such cooperation may include assistance in locating witnesses, obtaining statements and testimony of witnesses, production and authentication of judicial or business records and service of judicial or administrative documents.

2. The 1977 Treaty has been used on numerous occasions by the law enforcement authorities of both nations. The parties understand that the 1977 Treaty provides an important means of obtaining information needed to enforce the criminal or penal laws of each nation and should be used to the extent feasible.

3. The parties hereby exchange opinions, pursuant to Article 39, paragraph 1, of the 1977 Treaty concerning the interpretation, application or operation of that Treaty:

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

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

(violation of business secrets) of the Swiss Penal Code. As a result, the parties understand that it will often be possible for compulsory measures to be ordered under the Treaty in order to assist the SEC in obtaining information from the banks that executed the securities transactions in the United States that are the subject of the request for assistance.

4. Paragraph 3 of Article 1 of the 1977 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." The laws of both parties provide for administrative and judicial proceedings in which sanctions and remedies are available other than prison sentences and fines imposed in criminal prosecutions. The parties have agreed in principle to an exchange of diplomatic notes to facilitate the application of the 1977 Treaty to such ancillary administrative proceedings in cases of offenses covered by the Treaty and relating to trading by persons in possession of material non-public information. Moreover, the parties

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

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

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

Federal Office for Police Matters. It would also contain certain safeguards regarding protection of customers and the sovereignty of Switzerland.

2. The said "Agreement with regard to the handling of requests for information from the SEC on the subject of misuse of inside information" which is annexed to the present memorandum will be submitted for signature by the Swiss Bankers' Association to those of the banks located in Switzerland which may trade in the United States securities markets. This agreement will also govern the relationship between the signatory banks and the clients placing orders with the signatory banks for execution in the United States securities markets.

3. As regards specific points of the private Agreement, the parties came to the following understanding:

- The private Agreement establishes certain criteria for volume and price changes in the period preceding an Announcement which, if met, shall satisfy the Commission of Enquiry that the SEC has reasonable grounds to request assistance under the terms of the private Agreement and this Memorandum of Understanding. The parties understand that these thresholds are set at high levels because they are intended to

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

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

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

administrative or judicial proceedings brought by the SEC or Department of Justice relating to trading by persons in possession of material non-public information, and may not be used or introduced as evidence in any other proceeding.

- The parties understand that information obtained through the mechanism established by this memorandum and private Agreement shall be kept to the fullest extent compatible with constitutional or legal requirements from disclosure to any other administrative body in the United States or to the public, except to the extent necessary for administrative or judicial purposes of the specific case. Each party understands that the other will use its best efforts to assert legal rights to prevent disclosure of such information other than as authorized by this memorandum or the private Agreement.

- If the Commission of Enquiry arrives at the conclusion that a client is not an insider as defined by the private Agreement, the SEC will judge this opinion as one made in good faith, use moderation and take into account the existence of this memorandum and the private Agreement when considering alternative measures.

- The parties understand that there may be instances in which the Federal Office for Police Matters may determine

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

IV. Further Consultations

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

- a. The parties understand that the SEC will exercise its best efforts to inform appropriate Swiss authorities when an investigation has been initiated with respect to transactions effected by a Swiss bank. Further communications will occur, as appropriate, as an investigation proceeds in order to assure that the interests of both nations are protected. Such contacts or consultations may be related to requests for assistance on behalf of the SEC under the 1977 Treaty or the private Agreement. The parties understand that the Government of Switzerland will use its best efforts to assure that the information obtained in such communications will not be disclosed to any person except in connection with a request for assistance by the SEC or an investigation or enforcement action conducted by Swiss authorities, and to handle such information with appropriate care to prevent it from becoming known to the bank customer or customers involved.

- b. At the termination of the private Agreement, the parties will consult regarding experience

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

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

V. Other.

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

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

3. The parties understand that the Swiss Bankers' Association will use its best efforts promptly to obtain the signatures of the banks concerned and to keep the SEC informed through the Federal Office for Police Matters of the banks which are signatories to the private Agreement.

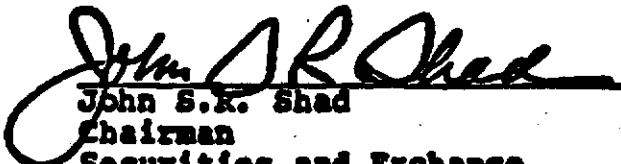
IN WITNESS WHEREOF, the respective representatives, duly authorized for this purpose, have signed this Memorandum of Understanding.


Done at Washington, D.C., in duplicate this 31st day of August, 1982.

SIGNATURES

On behalf of the Government of
the United States of America

On behalf of the
Government of Switzerland


John S.R. Shad
Chairman
Securities and Exchange
Commission


Jean Zwahlen, Minister
Chief of the Financial
and Economic Section,
Federal Department of
Foreign Affairs