

Memorandum to the File

A. In connection with Amendment No. 2 to the Settlement Agreement, the defendant banks will offer their good faith cooperation with the implementation of the settlement. Judge Korman may refer to the continued pledge of good faith cooperation in his opinion approving the Settlement Agreement.

B. Discussions between and among counsel about the issues likely to arise during the implementation phase of the settlement have resulted in general agreement that good faith cooperation in the implementation of the settlement means:

1. The defendant banks will continue to cooperate with respect to publication of their share of the approximately 26,000 names referred to in the ICEP report, subject to the checking process described in C. The defendant banks will bear their own internal expenses; other expenses will be borne by the settlement.

2. The defendant banks will continue to cooperate with respect to establishment of a consolidated electronic database concerning the approximately 46,000 accounts referred to in the ICEP report, subject to the checking process described in paragraph C. The defendant banks will bear their own internal expenses; other expenses will be borne by the settlement. The defendant banks will provide reasonable access by claims personnel to the consolidated database and to ICEP audit files prepared in connection with such accounts.

3. If a Class Member who does not appear on the list of approximately 46,000 or on other previously published lists makes a deposited asset claim, and if claims personnel find that the Class Member has provided a reasoned and satisfactory basis for a conclusion that his or her account may be under the name of a person with a Swiss address, then

the ICEP auditors' database for the relevant bank will be searched (beyond the bank's share of the approximately 46,000) for potential matches for these persons. The bank may opt to conduct the database search itself under the supervision of the ICEP auditors or to have the ICEP auditors conduct the search; under either option, the Settlement Fund shall pay for the auditors' activities. The judgment whether a Class Member has provided a reasoned and satisfactory basis for this conclusion shall be guided by the attached hypotheticals (Attachment #1), and with respect to accounts opened in the name of an intermediary, by the attached statement of Swiss law secrecy constraints (Attachment #2), and decisions of claims personnel with regard to whether a Class Member has satisfied this standard may be reviewed at the request of a defendant bank by the Court on a de novo basis. If there are name matches, then the existing ICEP electronic and hard-copy files will be searched for further information, e.g., to confirm the match, to ascertain the amount that may have been in the account, etc. The bank may opt to conduct the search itself under the supervision of the ICEP auditors or to have the ICEP auditors conduct the search; under either option, the Settlement Fund shall pay for the auditors' activities. The defendant banks will not be obligated to search beyond these existing ICEP files, but they will consider in a spirit of cooperation requests for further assistance in any particular cases where there is a reasonably strong likelihood that further assistance would provide probative information and where the costs of such further assistance do not outweigh the potential benefits. Allocation of the costs of any such further research as between the Settlement Fund and the banks will be decided on an ad hoc consensual basis at the time.

C. It is understood that the lists of approximately 26,000 and 46,000 names are being checked to eliminate errors, e.g., duplicative accounts. The ICEP auditors control this process

and make the final decision whether to eliminate an account or name from the lists. The ICEP auditors are using the previously agreed ICEP criteria with two exceptions. First, the auditors are eliminating accounts for persons domiciled in countries that were later occupied by the Nazis where the account was unquestionably closed before the actual date the country was occupied. Second, the auditors are eliminating accounts that were opened after May 9, 1945, when the War in Europe ended. The banks are paying the costs of this project.

D. It is the intent and agreement of the parties that all payments that the CRT and the CRT-SD have determined or will determine should be paid shall continue to be distributed promptly, without regard to any provisions in the Settlement Agreement or in Amendment No. 2 to the Settlement Agreement referring or relating to the "Settlement Date" or the "Final Judgment and Order." The banks do not object to the continuation of the activities of the CRT and understand that the Court may appoint the CRT-SD to play a role in determining deposited assets claims, including interest and fees. Any awards to deposited assets claimants as a result of such determinations by the CRT or the CRT-SD shall be paid directly from the Settlement Fund or the Escrow Fund, upon Court approval. Payments in connection with the publication of the names of account holders or in connection with the creation of centralized databases needed to implement the settlement shall be made from the Settlement Fund, or the Escrow Fund, with Court approval. Administrative expenses of the CRT-SD shall also be paid from the Settlement Fund or the Escrow Fund, with Court approval. The payments, awards, and/or expenses of the CRT and CRT-SD shall include, but not be limited to: (1) the expenses contemplated by Section 4.1 of the Settlement Agreement as amended by Amendment No. 2 to the Settlement Agreement; (2) the sums contemplated by Section 5.2 of the Settlement Agreement as amended by

Amendment No. 2 to the Settlement Agreement; and (3) the payments contemplated by Section 7.9 of the Settlement Agreement as amended by Amendment No. 2 to the Settlement Agreement. The escrow agents are authorized to make payments without Court approval of up to \$3 million for the purposes of funding CRT or CRT-SD functions under the settlement; additional amounts may be disbursed by the escrow agents to fund CRT or CRT-SD functions upon application to the Court, and within the Court's discretion, after hearing objections, if any, from any party.

It is also the intent and agreement of the parties that payments made or contemplated to be made pursuant to Section 5.3 of the Settlement Agreement as well as payments of deposited assets claims deemed sufficiently well documented shall be made promptly from the Settlement Fund or the Escrow Fund, upon Court approval, without regard to any provisions in the Settlement Agreement or in Amendment No. 2 referring or relating to the "Settlement Date" or the "Final Judgment and Order."

E. Having reviewed this memorandum, pursuant to which the defendant banks are acting in accordance with the substance of the ICEP's recommendations, Judge Korman has advised the parties that he will approve this aspect of the settlement.

Attachments