

Helen B. Junz  
Special Master  
Holocaust Victim Assets Litigation  
Case No. CV 96-4849  
P.O. Box 9564  
8036 Zurich  
Switzerland

April 21, 2009

The Honorable Edward R. Korman  
United States District Judge  
United States District Court  
for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Dear Judge Korman:

With the end of the claims resolution process imminent you requested that we provide as much clarity as possible about both the actual dollar amount of payments from the Settlement Fund still in the pipeline and those the Court yet needs to consider. A main element of the current uncertainty about the actual amounts still to be paid is the exchange rate volatility of the past period. Accordingly, I discuss below some thoughts of how one might deal with this issue.

At the time of the Settlement Agreement, the settlement amount was set in US dollars and the defendant banks deposited the agreed amount of US\$ 1.25 billion into the Settlement Fund in US dollars, in four instalments between November 23 1998 and November 23, 2001. Under the leadership of Paul Volcker and Michael Bradfield, the claims process commenced following publication of an agreed set of names of Holocaust-era Swiss bank account owners (the "CRT-II process") in 2001.<sup>1</sup> Awards to Deposited Assets Class members were based on the awardable Swiss franc ("SF") value of the assets they or their relatives had held in Swiss bank accounts. This means that, as the Settlement Fund is held in US dollars, that the Court in approving award batches releases the requisite approved award amounts in US dollars at the exchange rate for the Swiss franc of the day.

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<sup>1</sup> The list of names of account owners, published 11 February 2001 pursuant to authorization by the Swiss Federal banking Commission, covered approximately 21,000 accounts of the approximately 36,000 identified by the ICEP audit as "probably or possibly" belonging to Holocaust victims (see First Periodic Report of the CRT II Process, dated 31 July 2002).

For CRT II, through Batch 184 which was approved by the Court on February 13, 2009, the total value of awarded accounts, including appeals, amounted to SF 586,839,715.87, which was paid out at US\$ 469,236,353.23. The implicit exchange rate for payments made over the period thus was US\$ 1=SF 1.2506.

In my Memorandum to the Court, dated October 10, 2008, I recommended that the current set of presumptive values be adjusted in the light of a review of the data on account values that now are available to the CRT. At the time, I estimated that adoption of my recommendation, covering accounts already awarded through October 1, 2008 plus a then projected total of 337 yet to be awarded accounts, would amount to SF 290,976,899 or, at an exchange rate of US\$ 1=SF 1.10, to US\$ 264,524,454.<sup>2</sup> Together with amounts already paid out and the remainder due on amendments relating to the account information made available by Credit Suisse last year, the grand total of past and projected payments to Deposited Assets Class members then was estimated at US\$ 812,652,551.

Since I wrote, the exchange rate of the US dollar against the Swiss franc, as noted above, has swung considerably: from around SF 1.10 to the dollar in late September/early October to a high of SF 1.22 on December 5, to a low of SF 1.04 on 29 December, 2008, up again to an average of SF 1.17 for February 2 – March 18, 2009, with once more a significant drop in the remainder of March and a strengthening in April, which brought the rate back up to SF 1.17. This type of volatility has been typical of the recent period. In fact, for the year 2008 as a whole, the spread between the high and the low rate at 24.1 percent was only marginally exceeded once since the inception of the Settlement Fund, when a spread of 24.3 percent was recorded in 2002. With the award part of the claims resolution process on the brink of being concluded and the closing down process having been initiated, I share the Court's concern that it is increasingly important to achieve clarity about the actual payments yet to be made from the Settlement Fund, including those that would result if the Court decided to adopt my recommendation to adjust presumptive values. Thus, it appears indicated that the source of instability inherent in these exchange rate swings should if at all possible be removed.

Obviously fixing the exchange rate, never an easy matter, is yet more so under current global economic conditions and I would not recommend that this be done for the few awardable claims that need yet to be resolved, if only for reasons of equal treatment. However, if the Court decides to adjust the current set of presumptive values, given the large number of awards and potential amounts involved, it would make sense to fix the exchange rate for payment of these adjustments. In as much as 88 percent of the 4,521 accounts awarded under CRT II through April 21, 2009 were paid at presumptive value, and as presumptive value awards were

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<sup>2</sup> Please note that the number of accounts yet to be awarded does not include a small number of complicated cases yet to be resolved; payments on these, if resolution leads to awards, would largely be in excess of average account values. The estimate of total forward payments also does not include possible awards consequent upon successful appeals.

made throughout the CRT's lifetime, beginning with Batch 1, the vast majority of claimants is involved. Thus, fixing the exchange rate for presumptive value amendments would not raise general questions of equity. The advantages of doing so are obvious: a fixed rate first, would allow the Court to know precisely what amounts are being committed and second, would allow the work of amending the large number of awards paid at presumptive value to go forward in one stage, thus materially increasing the efficiency of implementation. This latter consideration is of special importance in this closing down period, when staff is being released progressively.

If a fixed exchange rate is to be adopted for amending awards paid at presumptive value, the question obviously is at what level it should be fixed. As noted above, any such amendments would affect the vast majority of successful claimants and would go back to 12 November 2001, when the Court approved the first Batch of CRT II awards. It therefore would seem appropriate to consider using the average exchange rate at which SF account values were awarded over the period from November 12, 2001, when Batch 1 was approved by the Court, through the last Batch preceding any Court decision on this issue. At this time, this would be through Batch 184, which was approved on February 13, 2009. That rate, as noted above, was US\$ 1=SF 1.25. However, the very early period of the CRT II claims resolution activity coincided with the significant downward adjustment of the exchange rate of the dollar vis-à-vis European currencies, including the Swiss franc. This adjustment took the US dollar down from a rate of US\$ 1=SF 1.67 on November 13, 2001 to an average of SF 1.30 in the fourth quarter of 2003, by which time the structural adjustment could be considered completed.

In view of the above, I believe it would be appropriate to fix the exchange rate on basis of which potential adjustments to the current presumptive values would be paid at the average rate prevailing between October 1, 2003 and the date of a Court decision on this issue. As of today, this average rate would be US\$ 1=SF 1.21. This rate also equals the average registered between November 13 and December 9, 2008 and thus is well within the bounds of recent experience.

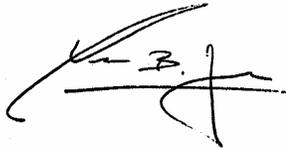
I attach for your convenience the summary Table 5 (renumbered Table 1) from my October 10, 2008 Memorandum, which was based on data through Batch 172 and the then prevailing exchange rate of US\$ 1=USF 1.10, updated through Batch 184. I am pleased to be able to tell you that the update fully confirms the earlier estimate. The award of an additional 292 accounts since early October 2008 was largely in line with the forward estimates. The two estimates thus show only a trivial difference: the updated grand total is now estimated at US\$ 812.7 million (at the SF 1.10 per dollar exchange rate for estimated forward payments), which is just over US\$ 53,000 above the October 2008 estimate.

I further attach Table 2, which shows the cost of adjusting the current set of presumptive values at the proposed fixed rate of US\$ 1=SF 1.21, while the estimated cost of yet to be awarded accounts (column 1) is converted at the current exchange rate of US\$ 1=SF 1.17.

The bottom line is that if the rate at which presumptive value adjustments are made, if approved by the Court, were to be fixed at SF 1.21 to the dollar, the grand total of already paid amounts and projected payments is estimated at US\$ 788,809,059, of which US\$ 236,205,476 is accounted for by the estimated cost of the presumptive value adjustment. At the current exchange rate of SF 1.17, the estimated cost of the presumptive value adjustments would rise to US\$ 244,280,876, resulting in a the grand total of US\$ 796,884,460. These totals exclude, as noted in my October Memorandum, any payments that may be awarded on appeals as well as a number of complicated cases yet to be resolved, which if awarded would involve above average amounts.

As always, I would be pleased to respond to any questions and comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'H. B. Junz', with a stylized flourish extending from the end.

Helen B. Junz

**Table 1: Table 5 of October 10, 2008 Memorandum updated through Set 184,  
 Projected payments for yet to be awarded accounts,  
 cost of adoption of proposed presumptive values, and  
 estimated total Settlement Fund payments  
 (Awarded accounts through April 21, 2009)  
 (In US dollars, US\$ 1=SF 1.10)**

| <b>Account Type</b>                               | <b>Yet to be awarded accounts<br/>(45)<br/>(1)</b> | <b>Adjustment to proposed presumptive values awarded and projected accounts<br/>(2)</b> | <b>Total forward payments<br/>(3)=(1)+(2)</b> |
|---|--|---|---|
| <b>Savings accounts</b>                           | 51,544   | 189,069   | 240,613                                       |
| <b>Demand deposits</b>                            | 565,013  | 5,966,769   | 6,531,782                                     |
| <b>Custody accounts</b>                           | 2,978,576  | 244,060,026   | 247,038,602                                   |
| <b>Safe deposit boxes</b>                         | 14,091   | 9,455,614   | 9,469,705                                     |
| <b>Unknown accounts</b>                           | 1,012,795  | 0   | 1,012,795                                     |
| <b>Other accounts</b>                             | 0  | 154,545   | 154,545                                       |
| <b>Total</b>                                      | <b>4,622,018</b>                                   | <b>259,826,023</b>  | <b>264,448,041</b>                            |
|   | <b>Plus Paid through April 21, 2009</b>            |   |   |
| <b>Paid through Set 184<sup>1</sup></b>           | 548,258,096  |   | 548,258,096                                   |
| <b>Grand Total Paid and Projected<sup>2</sup></b> | <b>552,880,096</b>                                 | <b>259,826,023</b>  | <b>812,706,137</b>                            |

Note: Totals may not add due to rounding.

<sup>1</sup> Approved February 13, 2009; includes US\$ 469,236,353.23 paid under CRT II, US\$ 18,184,492.00 paid under CRT I, and US\$ 60,837,251.13 paid under the Plausible Undocumented Award (PUA) program. These total US\$ 548,258,096.36.

<sup>2</sup> As noted in the text, the projection of accounts yet to be awarded does not include a few complicated cases yet to be resolved; payments on these, if resolution leads to awards would largely be in excess of average account values. Furthermore, total forward payments do not include possible awards consequent upon successful appeals.

Note 1: Difference from the October 10, 2008 grand total estimate: plus US\$ 53,586.

**Table 2: Fixed exchange rate of US\$ 1=SF 1.21 for presumptive value adjustments, current exchange rate of US\$ 1=SF 1.17 for projection of yet to be awarded accounts, cost of adoption of proposed presumptive values, and estimated total Settlement Fund payments (Awarded accounts through April 21, 2009) (In US dollars)**

| <b>Account Type</b>                               | <b>Yet to be awarded accounts<sup>1</sup><br/>(45)<br/>(1)</b> | <b>Adjustment to proposed presumptive values awarded and projected accounts<sup>2</sup><br/>(2)</b> | <b>Total forward payments<br/>(3)=(1)+(2)</b> |
|---|--|---|---|
| <b>Savings accounts</b>                           | 48,460   | 171,881   | 220,341                                       |
| <b>Demand deposits</b>                            | 531,209  | 5,424,335   | 5,955,544                                     |
| <b>Custody accounts</b>                           | 2,800,370  | 221,872,751   | 224,673,121                                   |
| <b>Safe deposit boxes</b>                         | 13,248   | 8,596,012   | 8,609,260                                     |
| <b>Unknown accounts</b>                           | 952,201  | 0   | 952,201                                       |
| <b>Other accounts</b>                             | 0  | 140,496   | 140,496                                       |
| <b>Total</b>                                      | <b>4,345,487</b>   | <b>236,205,476</b>  | <b>240,550,963</b>                            |
|   | <b>Plus Paid through April 21, 2009</b>                        |   |   |
| <b>Paid through Set 184<sup>3</sup></b>           | 548,258,096  |   | 548,258,096                                   |
| <b>Grand Total Paid and Projected<sup>4</sup></b> | <b>552,603,096</b>   | <b>236,205,476</b>  | <b>788,809,059</b>                            |

Note: Totals may not add due to rounding.

<sup>1</sup> Yet to be awarded accounts converted at current rate of US\$ 1=SF 1.17.

<sup>2</sup> Adjustment to proposed presumptive values converted at proposed fixed rate of US\$ 1=SF 1.21.

<sup>3</sup> Approved February 13, 2009; includes US\$ 469,236,353.23 paid under CRT II, US\$ 18,184,492.00 paid under CRT I, and US\$ 60,837,251.13 paid under the Plausible Undocumented Award (PUA) program. These total US\$ 548,258,096.36.

<sup>4</sup> As noted in the text, the projection of accounts yet to be awarded does not include a few complicated cases yet to be resolved; payments on these, if resolution leads to awards would largely be in excess of average account values. Furthermore, total forward payments do not include possible awards consequent upon successful appeals.