

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE: :
HOLOCAUST VICTIM ASSETS :
LITIGATION :

Case No. CV 96-4849 (ERK)(MDG)
(Consolidated with CV 96-5161
and CV 97-461)

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This Document Relates to: All Cases
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**CRT SPECIAL MASTER JUNZ' PROPOSAL FOR ADJUSTMENT
OF DEPOSITED ASSETS CLASS PRESUMPTIVE VALUES IN THE CONTEXT OF
THE SETTLEMENT AGREEMENT AND THE DISTRIBUTION PLAN**

JUDAH GRIBETZ
Special Master

SHARI C. REIG
Deputy Special Master

Bingham McCutchen LLP
399 Park Avenue
New York, New York 10022
December 19, 2008

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**CRT SPECIAL MASTER JUNZ' PROPOSAL FOR
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PLAN**

We submit this report at the request of the Court, with reference to Claims Resolution Tribunal ("CRT") Special Master Helen Junz' recommendation to adjust the "presumptive values" as currently used by the CRT to award accounts for which no known value could be found. The Court has requested that Special Master Junz' recommendation be placed in the context of the Settlement Agreement and the Plan of Allocation and Distribution of Settlement Proceeds ("Distribution Plan"). This report will be available on the Internet site for this settlement, www.swissbankclaims.com, as well as the Court's docket.

"Presumptive values," or average values, have been utilized by the CRT to determine the amount of an award for a particular Holocaust-era Swiss bank account where bank records containing the actual valuation data no longer exist. CRT Special Master Helen Junz has conducted an extensive examination of the data underlying the presumptive values currently in use as part of the Deposited Assets Class claims process.¹ Dr. Junz' studies have revealed that the average value of a Swiss bank account owned by a Holocaust victim is significantly higher

¹ Dr. Junz has extensive experience in international finance. As Judge Korman observed in his Memorandum & Order dated November 29, 2006 (available at [www.swissbankclaims.com\(chronology\)](http://www.swissbankclaims.com(chronology))): "Prior to her appointment [as CRT Special Master on April 13, 2004] Dr. Junz, who is an economist, had a distinguished career as a national and international public servant. She served in senior positions at the Board of Governors of the Federal Reserve System of the United States, at the Economic Council of the President in the White House; as Deputy Assistant Secretary at the Department of the Treasury and subsequently at the International Monetary Fund. Her involvement with the analysis of Holocaust era asset questions came in 1997 when Paul Volcker asked her to produce a study of the wealth of the Jewish population in Europe at the eve of the Nazi era to provide a touchstone against which he and the Independent Committee of Eminent Persons ('ICEP'), which he chaired, could assess the results of their audit of Swiss banks. The study was published as a book entitled, *'Where did all the money go? Pre-Nazi Era Wealth of European Jewry'* (Staempfli Publishers Ltd., Berne, 2002). Subsequently she guided the economic and financial research for the U.S. Presidential Advisory Commission on Holocaust Era Assets, served as a member of the Independent Commission of Experts Switzerland - Second World War (the Bergier Commission); advised the van Kemenade Commission (Dutch commission) on aspects of Jewish-owned wealth in the Netherlands; produced, in collaboration with her co-authors, a study for the Austrian Historical Commission and was a fellow at the Center for Advanced Holocaust Studies at the U.S. Holocaust Memorial Museum."

than the amounts that were estimated at the inception of the payment program. Based on her analysis, she has recommended that the Court adjust the presumptive values, which date from the adoption in 2001 of the rules governing the Deposited Assets Class claims resolution process, to take into consideration the additional information that has become available as a result of the CRT's efforts to analyze and award Deposited Assets Class claims.

Special Master Junz has filed several reports discussing her presumptive value recommendations: her initial report of March 21, 2006 (hereinafter, the "Junz Presumptive Value Memorandum of March 21, 2006"), updated at the request of the Court on May 14, 2007 ("Junz Updated Memorandum of May 14, 2007"), supplemented on July 15, 2007 (the "Junz Supplemental Memorandum of July 15, 2007") and updated again on October 10, 2008 (the "Junz October 10, 2008 Report"). It is our understanding that the October 10, 2008 Report confirms Dr. Junz' earlier conclusions regarding the appropriateness of amending the set of presumptive values currently used by the CRT, and that it incorporates a great deal of information that was made available to the claims process only within the last year. As more fully discussed below, we further understand that with this additional data and the fact that the CRT is very close to completing the processing of awards, Special Master Junz considers that her finding of the need for an upward adjustment of the set of presumptive values can be viewed as final.

Our report is intended only to place Special Master Junz' recommendation in the context of the Settlement Agreement and the Distribution Plan. Obviously, it cannot substitute for her reports. For convenience, copies of Special Master Junz' reports to the Court on presumptive value are annexed hereto.

As discussed in greater detail below, Special Master Junz' recommendation to adjust presumptive values to reflect the information that has become available to the claims process since the adoption of the current set of presumptive values in 2001 would have a

substantial impact upon the amounts ultimately distributed to members of the Deposited Assets Class. In fact, based upon Dr. Junz' projections concerning the number of accounts remaining to be awarded, there may be a shortfall in the sums needed to repay bank depositors. The total amount payable to the Deposited Assets Class would be \$812.7 million according to Special Master Junz' October 10, 2008 estimate, exceeding the allocated sum of \$800 million by over \$12 million.²

I. The Status of Distributions to Date

The Settlement Agreement executed by counsel for the parties and approved by the Court required that, in return for releases of Holocaust-era claims against Swiss financial institutions and other Swiss entities, each of the five Settlement Classes was to receive compensation from the \$1.25 billion Settlement Fund. As reported on the Internet site, *www.swissbankclaims.com*, of September 30, 2008, more than \$1 billion has been approved for distribution or allocation to over 448,000 Holocaust victims or their heirs.³ Since September 30, 2008, additional payments have been made so that as of December 18, 2008, a total of \$1,062,245,236 has been approved for distribution or allocation.⁴

² See Junz October 10, 2008 Report, at 15, 16. Special Master Junz' calculation was based on the then-prevailing exchange rate of US \$1 = SF 1.10. However, she pointed out that "given the large swings in the exchange rate of the US dollar vis-à-vis the Swiss franc over the past year, and the important effect of a change of even a few basis points on the total amounts," she also calculated the "overall total at exchange rates of US \$1 = SF 1.05 and US \$1 = SF 1.15 as well." As of December 17, 2008, the exchange rate was US\$1 = SF 1.10, which is the central rate used in Special Master Junz' calculations.

³ The Distribution Statistics, as well as other detailed information concerning the settlement and its implementation, are available on the Internet at *www.swissbankclaims.com*.

⁴ See Distribution Statistics; see further "Memorandum & Order Approving Set 183: 30 Awards, 3 Award Amendments and 1 Award Denial Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Payment from the Settlement Fund," December 18, 2008 ("December 18, 2008 Order Approving CRT Set 183"). The number of Holocaust victims and heirs who have received compensation also has increased since September 30, 2008; the information currently is being tabulated and updated Distribution Statistics will be posted on the Internet.

Specifically, the following distributions have been made thus far to the five categories of "Victims or Targets of Nazi Persecution" and the five classes specified under the Settlement Agreement⁵:

- **Deposited Assets Class:** As reported on the Internet site, as of September 30, 2008, \$510,187,397 had been authorized for payment to 17,368 Holocaust victims or their heirs for the return of Swiss bank accounts. Those numbers have since increased as additional claims are processed so that as of December 18, 2008, a total of \$545,814,793.56 has been authorized for payment to this Class.⁶ Claims analysis is conducted by the CRT, an administrative agency created and operating under the authority of the Court. The claims process operates in Zurich and New York under the supervision of the Special Masters. More than 35,000 claim forms were filed in response to lists of Holocaust-era Swiss bank accounts published in 2001 and 2005. In an effort to ensure that all possible claims were analyzed, on July 30, 2001, the Court authorized analysis of an additional 70,000 Initial Questionnaires (IQs), of over 600,000 questionnaires submitted in total. While generally considerably less detailed than the claim forms, the IQs nevertheless may have included information sufficient to enable the CRT to analyze the claimant's possible entitlement to a Swiss bank account. Awards are made for plausible claims for which account documentation exists. Payments vary depending upon the nature of the account, the availability of bank records, and other factors. As of the current date, the average value of an award is \$147,839.45.⁷
 - As part of the distributions described above, the Court has approved payments in the amount of \$5,000 each for plausible undocumented claims; i.e., claims plausibly indicating entitlement to a Swiss bank account, but for which bank documentation has not been provided or is no longer available due to the banks' destruction of records relating to millions of Holocaust-era accounts. Among the criteria considered in determining such claims are the account owner's relationship to Switzerland; efforts made by the claimant or other family members to retrieve Swiss bank accounts prior to the finalization of the Settlement Agreement; the relationship between the claimant and the account owner; and other factors.⁸
 - It is anticipated that substantially all claims analysis will be close to completion by the end of 2008. Appeals may be filed with the CRT Special Masters Michael

⁵ With the exception of Slave Labor Class II, under the terms of the Settlement Agreement negotiated by the parties, a class member must be a "Victim or Target of Nazi Persecution" to receive compensation; i.e., "Jewish, Romani, Jehovah's Witness, homosexual or physically or mentally disabled or handicapped."

⁶ See December 18, 2008 Order Approving CRT Set 183; see also n. 4 *supra*.

⁷ See Letter to the Court of December 18, 2008 from the CRT submitting Set 183. In calculating average values, three awards were excluded because their large size would have skewed the results: a \$21.9 million award issued in April 2005, and two related awards issued subsequently (\$15.7 million and \$9.6 million respectively).

⁸ See Letter to the Court of February 15, 2006 from Judah Gribetz and Shari C. Reig recommending payment of Plausible Undocumented Awards; see also Order of February 17, 2006 adopting the recommendations.

Bradfield and Helen B. Junz and these are reviewed in accordance with the CRT Rules and other applicable legal principles.

- **Slave Labor Class I:** To date, \$287,150,750 has been authorized for payment to 197,980 surviving slave laborers (or, for those who passed away on or after February 15, 1999, their heirs). Under the terms of the Settlement Agreement, the class consists of persons who performed slave labor for German companies which transacted the proceeds of the slave labor through Swiss financial entities. As demonstrated in the Distribution Plan, the historical record indicates that virtually all German slave labor-using companies as well as the Nazi Regime itself banked with Swiss financial institutions, warranting the presumption that all slave labor proceeds were transacted through Switzerland. Therefore, all former slave laborers were eligible as members of Slave Labor Class I for payment of \$1,450 each. Virtually all of these survivors also were eligible for payment from the separate German Foundation "Remembrance, Responsibility and Future." Of the over \$287 million approved for distribution by the Court, \$252 million has been authorized on behalf of 173,926 Jewish slave laborers, and \$35 million on behalf of 24,054 Romani, Jehovah's Witness, homosexual and disabled slave laborers, through programs supervised by the Special Masters and the Court and implemented by the Conference on Jewish Material Claims Against Germany (Claims Conference) and the International Organization for Migration (IOM). The Slave Labor Class I program, including appeals, essentially is complete.
- **Slave Labor Class II:** \$826,500 has been authorized for payment to 570 survivors (and certain heirs) who performed slave labor on behalf of companies owned by Swiss entities. As with Slave Labor Class I, eligible class members have received payments of \$1,450 each. Each claimant was required to demonstrate that he or she performed slave labor for a specific Swiss-owned company. The Slave Labor Class II program, which is now complete, was administered by the IOM under the supervision of the Court and Special Masters.
- **Refugee Class:** \$11,600,000 has been authorized for payment to 4,158 survivors and certain heirs who were expelled from or denied entry into Switzerland (such payments were made in the amount of \$3,625 each), or were admitted into Switzerland but mistreated (such payments were made in the amount of \$725 each). The Refugee Class program was operated by the Claims Conference and IOM under the supervision of the Court and Special Masters, and is now complete.
- **Looted Assets Class:** \$205 million has been authorized for distribution or allocation on behalf of the neediest Holocaust survivors around the world, all of whom are presumed to have been subject to looting during the Nazi era. These needy survivors receive food, medical assistance, emergency grants, winter relief and similar aid under a *cypres* remedy adopted by the Court in November 2000 as part of the Distribution Plan and upheld by the Court of Appeals in July 2001. On June 19, 2006, the United States Supreme Court denied *certiorari* and therefore did not consider an appeal filed by certain United States survivors. Programs on behalf of Romani, Jehovah's Witness, homosexual and disabled victims, administered by the

IOM under the supervision of the Court and Special Masters, were completed in January 2006 and resulted in more than \$20,500,000 in assistance to 73,840 needy survivors in Central and Eastern Europe. Programs on behalf of the neediest Jewish survivors are scheduled to continue through mid-2011 under the terms of the Distribution Plan. Annual distributions total approximately \$18.45 million. The programs assisting needy Jewish survivors are administered under the supervision of the Court and Special Master by the Claims Conference and the American Jewish Joint Distribution Committee (JDC). Thus far, the Court's Looted Assets Class programs have assisted more than 228,700 needy survivors.

II. The Deposited Assets Class: The Adoption of Presumptive Values to Compensate for the Banks' Destruction of Documents Relating to Actual Account Values

To place Special Master Junz' presumptive value recommendations in context, it is useful to revisit the events that led to the Deposited Assets Class claims process and the adoption of "presumptive values" where actual account data has been destroyed or is otherwise unavailable to the CRT.

A. The Volcker Committee Audit Reveals the Destruction of Records Relating to Holocaust-Era Swiss Bank Accounts

In 1996, due to mounting pressure from Holocaust victims and heirs and renewed media attention, an investigation of Swiss accounts took place following Switzerland's agreement to relax its bank secrecy rules. The inquiry was led by Paul Volcker, former Chairman of the United States Board of Governors of the Federal Reserve System. The investigating committee, known as the Independent Committee of Eminent Persons ("ICEP") but often referred to as the Volcker Committee, had two main objectives as stated in its final report: to "identify accounts in Swiss banks of victims of Nazi persecution that have lain dormant since World War II or have otherwise not been made available to those victims or their heirs" and "to assess the treatment of the accounts of victims of Nazi persecution by Swiss banks."⁹

⁹ Special Master's Proposed Plan of Allocation and Distribution of Settlement Proceeds, September 11, 2000, adopted in its entirety by the Court on November 22, 2000, 2000 WL 33241660 (E.D.N.Y. November 22, 2000), *aff'd*, 413 F.3d 183 (2d Cir. 2001) (*reissued as a published opinion, July 1, 2005*) (hereinafter, "Distribution

On December 6, 1999, the Volcker Committee released its final report. Its research showed that some 6.8 million Swiss bank accounts were open or opened during the relevant period of 1933-1945. Of these, the banks had destroyed documents relating to approximately 2.7 million accounts. Despite this massive document destruction, records still remained for approximately 4.1 million Holocaust-era Swiss accounts. The auditors conducted research on approximately 300,000 of these 4.1 million accounts. The Volcker Committee determined that of the 300,000 accounts investigated, a total of approximately 54,000 (specifically 53,886) had a “probable” or “possible” relationship to victims of Nazi persecution.¹⁰ These 53,886 accounts -- subsequently reduced to 36,000 by a so-called “scrubbing” process -- were to constitute the Accounts History Database (“AHD”); *i.e.*, the database of accounts that would be made available to the CRT for use in the claims process. The Volcker Committee further recommended that approximately 21,000 of the 36,000 AHD accounts should be published. The remaining approximately 15,000 accounts were not to be published, but were to be available to the CRT for review in the event that a Holocaust victim or heir submitted a claim that appeared to match to the unpublished account. The Volcker Committee concluded that the value of the accounts in the AHD was approximately \$643 million to \$1.36 billion, including interest.¹¹

As to the bulk of the 4.1 million Holocaust-era accounts for which records continued to exist, but which were not included as part of the AHD, the Volcker Committee recommended that those remaining accounts should be consolidated into a “Total Accounts Database” (TAD) that also would be available for use in a claims process.¹²

Plan”), at 52-53, citing Independent Committee of Eminent Persons, *Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks* (Berne: Staempfli) (“Volcker Report”), at ¶ 3.

¹⁰ Distribution Plan, at 57, citing Volcker Report, at ¶ 30.

¹¹ See *infra* for a more detailed discussion of the Volcker Committee’s estimate of account values.

¹² Distribution Plan, at 58-59, 98-99, citing Volcker Report., at ¶ 65-67.

On the same date that the Volcker Committee released its report, the Swiss Federal Banking Commission ("SFBC") announced that it alone was responsible for decisions on publishing further lists of accounts, and that it would conduct additional analysis before reaching a decision on the Volcker Committee recommendations sometime in the first quarter of 2000. Several months later, on March 30, 2000, the SFBC announced that it had authorized the Swiss Banks to publish the accounts that were deemed by the Volcker Committee "to have a probability of being related to victims of the Holocaust" and to create a central database containing the accounts which "the Volcker Committee considers to be probably or possibly related to Holocaust victims." As noted above, the number of accounts recommended for publication ultimately was set at 21,000, while the number of accounts recommended for inclusion in the "central database" -- the Accounts History Database (AHD) -- was reduced from the original 54,000 to 36,000. The SFBC declined to adopt the Volcker Committee's recommendation to create a Total Accounts Database for all of the 4.1 million accounts that existed in Swiss Banks in the relevant 1933-1945 period.¹³

Accordingly, from the outset, the claims process for the Deposited Assets Class was shaped by several limitations significantly restricting the CRT's access to Holocaust-era bank records: (1) documentation relating to one-third of 6.8 million accounts had been destroyed; (2) of the still-remaining 4.1 million accounts, access generally was to be provided only to 36,000 accounts, the so-called "AHD"; (3) of the 36,000-account AHD, publication was limited to 21,000 accounts¹⁴; (4) information relating to accounts in the AHD was required to be reviewed by a "Data Librarian" who would determine what information could be viewed by the CRT, and what was to be redacted in accordance with Swiss banking secrecy requirements; and (5) even for the 36,000 accounts in the AHD, not all bank records were available: some had been destroyed, while others were not included in the database provided to the CRT.

¹³ Distribution Plan, at 57.

¹⁴ In 2005, after continuing litigation, approximately 3,000 additional accounts were published for a total of approximately 24,000 published accounts.

B. The Decision to Use Presumptive Values in the Deposited Assets Class Awards Process Where Actual Account Values Are Unavailable

One key piece of information that was missing from many of the AHD accounts was the actual value of the account. To ensure that Holocaust victims and heirs were not penalized by the lack of data -- since the destruction of documents relating to account values was the responsibility of the banks, not the claimants -- the Distribution Plan recommended that when the claims process was under way, it would be appropriate for the Court to adopt certain presumptions that would apply when the bank records did not contain information about who closed the accounts, and/or how much they were worth.

Thus, the Distribution Plan observed that any such rules “should provide for the adjudication of well-supported claims of Nazi victims when an account has been closed but it is unknown who actually received the benefit of the account. In this situation, or in a similar situation when the amounts of accounts are unknown, it is appropriate to rely on presumptions to assist in the adjudication of such claims. For example, it is appropriate to make an award to a claimant of a closed account if the account holder perished in a concentration camp. If the amount in the account is unknown, it is also appropriate to make an award based on the average value of the type of account. As with all other aspects of the claims process, the Court will have the discretion to adjust such awards to assure fairness among all claimants.”¹⁵

In practice, the Court has adopted a variety of presumptions that have assisted in easing some of the burdens upon claimants to accounts where documentation has been destroyed by the Swiss banks. These rules are based upon solid evidence emerging from the claims resolution process. Thus, for example, the Court has adopted the adverse inference, which presumes that an account was closed improperly and by someone other than the actual owner where the bank records do not demonstrate who closed the account; the presumption that a Holocaust victim who reported his or her assets to the Nazi authorities may have underreported

¹⁵ Distribution Plan, at 109-110.

the actual value; and the presumption that the Swiss banks charged fees and failed to pay interest on accounts owned by Holocaust victims.¹⁶

To fill the gap posed by incomplete bank records, which may document the existence of an account, but contain nothing about the account's value, the Court has authorized awards to be made at designated "average" amounts based on the type of account. These average amounts -- or "presumptive values" -- were assigned by the Volcker Committee auditors after the Distribution Plan had been approved on November 22, 2000 and the claims process was under way. Specifically, the presumptive values were included in the proposed CRT Rules recommended to the Court on February 1, 2001 by Paul Volcker and Michael Bradfield (who had served as counsel to ICEP); both individuals had been appointed by the Court on December 8, 2000 to serve as CRT Special Masters. The CRT Rules, including the presumptive values, were adopted by the Court on February 5, 2001.

The presumptive values currently in use were based on the best data available as of early 2001. The presumptive value for a savings account was calculated at a 1945 value of SF 830; for a demand deposit account, SF 2,140; for a custody account, SF 13,000; for a safe deposit box, SF 1,240; for an account of unknown type, SF 3,950; and for other accounts which do not fall into the above categories, SF 2,200. A multiplier has been utilized to bring these amounts to current values.¹⁷

¹⁶ For a more detailed listing of some of the presumptions the Court has adopted in favor of claimants, *see* Order of November 29, 2006, Appendix A ("Selected amendments and clarifications to the rules and guidelines used by the CRT in the claims resolution process")(available at www.swissbankclaims.com (*chronology*)).

¹⁷ *See* CRT Rules, Article 31.

C. The Claims Process Has Revealed New Information Impacting the Original Presumptive Value Recommendations

1. Summary of the new data

In the several years that have passed since the auditors' original assessment of the average values of the accounts in the Account History Database (AHD) made available to the claims process, a great deal of new information about these accounts has come to light, including a significant body of data concerning actual -- as opposed to estimated -- account values. Special Master Junz explains that the presumptive values currently in use do not reflect the following important facts revealed only as a result of years of analysis of materials located by the CRT in connection with the claims process:

- The original presumptive values were extrapolated from only a portion of the data analyzed by the Volcker Committee auditors. As Special Master Junz puts it, "with respect to the presumptive value calculations, only part of the known balance information was utilized."¹⁸ As noted above and discussed in further detail below, the auditors divided the Holocaust-era Swiss bank accounts that they investigated into four categories. Only the account information from "Category 1" and "Category 2" accounts was used to calculate average values. Account information relating to "Category 3" and "Category 4" accounts was deemed unreliable. For Category 3, the auditors were unsure whether the accounts belonged to Holocaust victims. Further, the auditors believed that the value data were spotty (and skewed) and therefore could not be extrapolated to the entire database. However, the claims process has since revealed that the Category 3 information actually was just as reliable, and perhaps even more so, than the data underlying Categories 1 and 2: *first*, Category 3 accounts clearly belonged to Holocaust victims, and *second*, the valuation data actually are continuous and in fact representative of the database. Therefore, in retrospect, the exclusion of Category 3 information by the auditors in determining presumptive values has proven to have been inappropriate. The exclusion of Category 3 information has had a significant impact upon the amounts awarded to date, because "Category 3" accounts are often large custody accounts holding securities, and constitute a substantial percentage of the number and value of awards issued to date.
- That the "Category 3" data should be included in any assessment of account values was made even more obvious when the CRT received, only within the last year, extensive information from one of the two defendant banks, Credit Suisse. The new data was provided to the CRT quite late in the claims process and only after many earlier unsuccessful efforts to obtain such information. The Credit Suisse materials reveal

¹⁸ Junz Presumptive Value Memorandum of March 21, 2006, at 3.

actual account values for 239 custody accounts, virtually all of which were “Category 3” accounts and, until now, had been considered to be of unknown value. The majority of these accounts in fact already had been awarded at *presumptive* values. Nearly all of these awards now have been adjusted to *actual (known)* values through amendments approved by the Court. The new account information is important not only because the owners and heirs of these particular accounts now have received a full return on these accounts, but because the new data about the 239 custody accounts also impact the presumptive value estimates across all of the auditing categories.¹⁹

- ***Significantly, custody accounts have constituted approximately 30% of the accounts awarded in the claims process to date, and even more significantly, approximately 70% of the value of all CRT-II awards.***
- The ICEP auditors issued their presumptive value recommendations for custody accounts based upon their assessment of the average value of the 397 known-value custody accounts available at the time of the audit. ***The recently-disclosed Credit Suisse information brought the number of known-value custody accounts in the CRT database as of October 10, 2008 to 892. This number is more than double the 397 accounts on which the auditors based their calculations.*** Therefore, the CRT’s known-value custody account database is substantially improved from that available to the auditors.
- Even before receiving valuation information for the 239 Credit Suisse accounts, the CRT clearly had located a significant amount of information that had not been available to or fully analyzed when the auditors issued their original presumptive value recommendations. Whereas the ICEP auditors sometimes reported that the accounts they reviewed were of unknown value or unknown type, in the course of processing claims, the CRT in many instances has been able to determine the account value or account type. In fact, ***“more than one half of the accounts awarded under CRT II that were reported in the original AHD as having no known balance were found by the CRT in the course of its award determination to have values after all.”***²⁰ Special Master Junz’ recommendations have taken into consideration all of this more recently available information about account values, which again serves to improve the quality of the database.
- The ICEP auditors based their presumptive value estimates upon their analysis of 7,797 accounts of known value, of a total database of 53,957 accounts (an amount slightly higher than the 53,886 cited in the Volcker Report)²¹; i.e., 14.5%. Special Master Junz bases her proposals upon her analysis of 6,945 accounts of known value, of a total database of 38,624 accounts; i.e., 18%. Therefore, proportionate to the total data available, Special Master Junz worked with a somewhat higher percentage of known-value accounts than did the ICEP auditors. Furthermore, the number of known-value accounts studied by Special Master Junz (6,695), at 89% of the total number of known-

¹⁹ See Junz October 10, 2008 Report, at 2 *et seq.*

²⁰ Junz October 10, 2008 Report, at 7 (emphasis added).

²¹ See Junz October 10, 2008 Report, at 6, n.12.

value accounts reviewed by the ICEP auditors (7,797), is not significantly different. This is especially so when taking into account the fact that much of the difference arises from a lower number of savings accounts in the CRT database at the same time that savings accounts constitute less than 7% of the number of accounts awarded by the CRT.²²

2. *According to the auditor who led the ICEP investigation that established the current set of presumptive values, it is appropriate to revisit the original presumptive value calculations to take into consideration information that became available after the completion of the audit.*

Special Master Junz' presumptive value recommendations have been commented on by Frank Hydoski, the auditor who led the original ICEP work that established the total and average values of the Holocaust-era Swiss bank accounts. At the time of the audit, Mr. Hydoski was a partner at Price Waterhouse, one of the five ICEP audit firms. Mr. Hydoski thus was closely involved with the original analysis of the data and oversaw the calculation of the presumptive value figures that are now in use.

Mr. Hydoski has advised the Court that a reanalysis of the presumptive values in light of the new information disclosed during the claims process is "a sound undertaking":

"In short, it seems to me that it would be a sound undertaking to:
(1) add new information to the data used originally to calculate the average balances; (2) recalculate the average balance amounts; and
(3) adjust presumptive values, if there are material changes.

.... It is clear from the data provided in Dr. Junz's original letter and the two updates that the CRT has in fact gathered considerable additional information of a kind and quality that should be taken into account in these statistical calculations. I would add that such data would have been used in the 1999 calculations [leading to the current presumptive values] had it been available."²³

Accordingly, the auditor who originally investigated the relevant account information has made it clear that the new valuation data that has become available as a result of

²² See Junz October 10, 2008 Report, at 10.

²³ Letter from Frank Hydoski to Hon. Edward R. Korman, December 1, 2008.

the claims process should be taken into consideration in determining presumptive values. As he has indicated, had the auditors themselves had this information, they too would have used it.

3. *The Courts have previously indicated that members of the Deposited Assets Class have the strongest claims.*

This Court as well as the United States Court of Appeals have recognized that the claims of the Deposited Assets Class are the strongest of the five categories of claims created under the Settlement Agreement. The Courts have stressed that it is only the bank account claims that can be accurately valued. *See In re Holocaust Victim Assets Litigation*, 14 Fed. Appx. 132, 135 (2d Cir. July 26, 2001), reissued as a published opinion, 413 F.3d 183, 186 (2d Cir. 2005) (affirming allocation of up to \$800 million for Deposited Assets Class claims because the “existence and estimated value of the claimed deposit accounts was established by extensive forensic accounting” and “these claims are based on well-established legal principles, have the ability of being proved with concrete documentation, and are readily valuated in terms of time and inflation”; “[b]y contrast, the claims of the other four classes are based on novel and untested legal theories of liability, would have been very difficult to prove at trial, and will be very difficult to accurately valuate”); *In re Holocaust Victim Assets Litig.*, 270 F.Supp.2d 313, 321 (E.D.N.Y. 2002) (“The heart of this case and the only cause of action capable of surviving a motion to dismiss turned on the failure of Swiss banks to honor their contractual and fiduciary duties to their depositors The other claims against the Swiss banks, while not without a moral basis, were not sustainable”); *In re Holocaust Victim Assets Litig.*, 302 F.Supp.2d 89, 93-94 (E.D.N.Y. 2004), *aff’d.*, 424 F.3d 132 (2d Cir. 2005), *cert. denied*, 126 S.Ct. 2891 (2006) (Court noted the “legal and moral obligation to the Deposited Assets Class not to use the funds that belong to it for a *cypres* distribution until I am *certain* that the claims to those funds will not exceed the amount set aside”) (emphasis in original).

Given the new information that has become available as a result of the claims process, the Court should consider whether this data should be taken into consideration to “accurately valuate[]” the payments that are to be made to the owners of Holocaust-era Swiss bank accounts.²⁴

We note that members of the four non-Deposited Assets Classes have received payments higher than the amounts originally proposed under the Distribution Plan. On September 25, 2002, the Court authorized a 45% increase in payments to the Looted Assets Class, so that \$145 million rather than \$100 million would be available for the neediest Holocaust victims around the world. That amount later was supplemented on November 17, 2003 by an additional \$60 million, with the result that the Looted Assets Class allocation has more than doubled from the \$100 million provided under the Distribution Plan, to \$205 million. In its September 25, 2002 Order, the Court also authorized a 45% increase in payments to members of Slave Labor Class I (from \$1,000 to \$1,450) and the Refugee Class (from \$500 to \$725, and \$2,500 to \$3,625, respectively).²⁵ After the resolution of certain issues relating to Slave Labor Class II, the Court approved a similar 45% increase in payments to those class members (from \$1,000 to \$1,450).²⁶ To date, the two Slave Labor Classes, the Refugee Class and the Looted Assets Class have received over \$500 million of the \$1.25 billion settlement.

III. The Derivation of the Current Presumptive Values

As has been noted, Special Master Junz’ recommendation to adjust the presumptive values is based upon information that is considerably more complete and accurate than that available at the time of the Volcker Committee audit. To understand the significance

²⁴ *In re Holocaust Victim Assets Litig.*, 413 F.3d at 186.

²⁵ See Order of September 25, 2002; Order of November 17, 2003.

²⁶ See Order of June 22, 2004.

of this information, Special Master Junz examined and set out the auditors' original analysis in some detail in her reports, as drawn on in part below.²⁷

A. The Volcker Report: The Determination of Account Categories and Estimated Values

The Distribution Plan recommended that up to \$800 million should be allocated to the Deposited Assets Class for repayment of Holocaust-era Swiss bank accounts. That decision was based largely upon the valuation estimates set forth in the December 6, 1999 Volcker Report. As noted above, the Volcker Report explained that approximately 6.8 million Swiss accounts had existed that had been open or opened during the Holocaust era (1933 to 1945, the "Relevant Period" as defined under the terms of the Settlement Agreement). Of these 6.8 million accounts, records pertaining to approximately 2.7 million had been destroyed, while records still remained for 4.1 million accounts. The auditors ultimately conducted research on approximately 300,000 of these 4.1 million accounts. The Volcker Committee determined that of the 300,000 accounts researched, a total of approximately 54,000 (subsequently reduced to 36,000 accounts through "scrubbing") "probably" or "possibly" had belonged to Nazi victims. This is the so-called "Account History Database" or AHD.

The Volcker Report classified the AHD accounts into four different categories. "Category 1" was comprised of 3,191 accounts. These were accounts "that remain open and dormant, were placed in suspense accounts, or closed after some period of dormancy, and matched exactly or almost exactly with names of known Holocaust victims or claimants."²⁸ Of the Category 1 accounts, 70% had known values.²⁹

²⁷ See Junz Presumptive Value Memorandum of March 21, 2006, at 7 *et seq.*

²⁸ Volcker Report, at 10-11; *see also id.*, Annex 4 ("Identification of Accounts Probably or Possible Related to Victims of Nazi Persecution"). The "Relevant Period" was defined as the "period from January 1, 1933 to December 31, 1945." *Id.* at Appendix V (Glossary).

²⁹ *Id.*, at 72 (Annex 4).

“Category 2” consisted of “7,280 accounts that do not meet the exact or near-exact name matching test, but nonetheless have other characteristics that suggest that there may be a probable or possible relationship between the account holders and victims of Nazi persecution -- Relevant Period accounts of people who were resident in an Axis or Axis-occupied country during that Period, that were either inactive for at least 10 years after 1945 or, in some cases, identified by the bank as the account of a victim, or otherwise met certain criteria.”³⁰ Of the Category 2 accounts, 80% had known values.³¹

After “adding back bank fees and subtracting interest payments before the known valuation date,” and multiplying 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 accounts values, or less if the median value (SFr. 271 million) is used.”³² As calculated in the Distribution Plan (September 11, 2000) at the then-prevailing exchange rate (U.S. \$1.00 = SFr. 1.7754), the value of the Category 1 and 2 accounts would have been approximately \$231.5 million using the mean, and \$152.6 million using the median.³³

However, significantly, the bulk of the AHD was concentrated not in “Categories 1 and 2,” but in “Category 3.” Category 3 consisted of “a much larger number of closed accounts -- 30,692 -- open in the Relevant Period by residents of Axis or Axis-occupied countries, matched exactly or almost exactly to names of victims,” which “were closed (except for Germany) during or subsequent to the year of Axis occupation of the country of residence of the account holder or after the war. These characteristics are indicators of a probable or possible relationship of these accounts to victims.” The Volcker Report noted that “these accounts have

³⁰ *Id.*, at 11 (footnotes omitted). The “name matching test” referred to the matching of account owner names to names appearing on victims’ lists, including then-available lists from Yad Vashem and other sources.

³¹ *Id.*, at 72 (Annex 4).

³² *Id.*, at 72 (Annex 4).

³³ Distribution Plan, at 96.

no direct evidence of an extended period of dormancy, or of unauthorized closure, important elements of the presumption that there was a relationship to a victim.” However, the Report also pointed out that “14,716 of these accounts have unique name matches or have confirming factors,” and a total of “15,980” had “unique or almost unique matches.” These name matches therefore indicated “a significantly higher probability that the relationship of these accounts to victims is not simply a coincidence of common names but are genuine matches between account holders and victims of Nazi persecution.”³⁴

Weighing against these indications that the Category 3 accounts belonged to Nazi victims, however, was the relative lack of other data about these accounts, including their values. Thus, when the audit was conducted, it appeared that “only 11 percent” of the Category 3 accounts had known values, and a “large portion of the funds” seemed to be “clustered in relatively few custody accounts.” For these reasons, the Volcker Committee auditors concluded that “no reliable projection of current values properly due victims for Category 3 was feasible.”³⁵ Nevertheless, some members of the Volcker Committee “point[ed] 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.”³⁶ Based on the exchange rates prevailing as of the date the proposed Distribution Plan was filed, September 11, 2000, these Category 3 account values were worth between approximately \$465.8 million and \$1.07 billion.³⁷

³⁴ Volcker Report, at 11 (footnote omitted).

³⁵ *Id.*, at 72 (Annex 4).

³⁶ *Id.*

³⁷ Distribution Plan, at 97, n. 309.

“Category 4,” according to the Volcker Report, consisted of “12,723 nominally foreign accounts open in the Relevant Period that could not be matched to victim names and lacked evidence of a residence by an account holder in an Axis or Axis-occupied country during the Relevant Period. Some 8,400 suspended, unknown and savings type accounts in this Category 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 of the accounts in this Category were considered as having a sufficiently possible relationship to Holocaust victims to warrant their inclusion in Category 4.”³⁸ In Category 4, 98% of the accounts had known values. The estimated value of all Category 4 accounts was SFr. 4.2 million,³⁹ or approximately \$23.7 million as of the date of the Distribution Plan.⁴⁰

Thus, including the estimate of the Category 3 account values proposed by some members of the Volcker Committee, and based on the exchange rates in effect as of the date the Distribution Plan was filed, the total value of all four categories of AHD accounts was between \$642 million and \$1.36 billion. Although the midpoint of that range is approximately \$1 billion, the Distribution Plan conservatively recommended that \$800 million be set aside for the Deposited Assets Class.⁴¹

³⁸ Volcker Report, at 11 (footnote omitted).

³⁹ *Id.*, at 72 (Annex 4).

⁴⁰ Distribution Plan, at 97.

⁴¹ In 2003, the CRT reexamined the AHD valuation data. Although the AHD by then had been reduced from 54,000 to 36,000 accounts, at the multiplier of 12 then used to bring the accounts up to present-day values, and at the then-prevailing exchange rate of US \$1 = SF 1.35, the CRT estimated the value of these 36,000 accounts to be approximately \$1.63 billion. This amount was considerably greater even than the \$1.36 billion “high-end” estimate of the ICEP auditors, even though it was based upon an Account History Database that had been reduced after the audit by the “scrubbing” of some 18,000 accounts. The CRT’s 2003 inquiry clearly confirmed the observation of the Court and the Volcker Committee that the value of the accounts in the AHD alone could be significantly higher than the Settlement Fund amount of \$1.25 billion. *See* Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds, October 2, 2003 (Judah Gribetz, Special Master and Shari C. Reig, Deputy Special Master), at 16 n.17, 34-35 (discussing CRT’s 2003 analysis of AHD values).

As the Court has observed, “the significance of the report of the Volcker Committee, which included three members appointed by the Swiss Bankers Association, is that it provided legal and moral legitimacy to the claims asserted here on behalf of the members of the Deposited Assets Class. The findings suggest that the value of deposited assets held by the Swiss banks could exceed the \$1.25 billion settlement amount.”⁴² The Court further noted that “it is only the successful campaign that the Swiss banks waged to prevent disclosure before records were destroyed, Volcker Report ¶¶ 41(b), 48, that gave rise to the legal and practical impediments to the successful litigation of this case by the vast majority of individuals to whom money is justly due.”⁴³

B. Special Master Junz’ Reexamination of the Available Account Valuation Data

Special Master Junz has advised the Court that shortly after her appointment as CRT Special Master on April 14, 2004, she “started monitoring the relationship” between “the award amounts that the Court has approved under CRT-II on accounts for which the value of the account balance was known (‘known value accounts’) and those awarded at presumptive value in the light of the experience gained thus far.”⁴⁴ Special Master Junz noted a disparity in these values.

Her observations amplified an issue earlier called to the attention of the Court and Special Master Gribetz in January, 2004. At that time, at least two class members had responded to the Court’s request for proposals for the use of residual funds, if any, remaining from the \$800 million allocated to bank accounts, by contending that it was premature to focus upon “residual funds” when it was clear that many accounts were being undervalued. These class members

⁴² *In re Holocaust Victim Assets Litig.*, 105 F.Supp.2d 139, 153 (E.D.N.Y. 2000), citing Volcker Report Annex 4 ¶¶ 41-42 and n. 23.

⁴³ *Id.*

⁴⁴ See Junz Presumptive Value Memorandum of March 21, 2006, at 1. It should be noted that under Swiss law as well as the terms of the Settlement Agreement and related agreements, the bank records analyzed by Special Master Junz and the CRT are subject to Swiss privacy law as applied to the claims process.

observed that awards paid for accounts with valuation documentation (known value accounts) were significantly higher than awards for accounts for which valuation documentation had been destroyed (unknown value accounts), thus calling into question the presumptive values currently in use. As noted by one of the individuals who brought the valuation issue to the Court's attention: "[T]he average value of all the accounts where the documentation relating to value has not been destroyed is much higher than the average value of all the accounts where the documentation has been destroyed."⁴⁵

As Special Master Junz explained in her Presumptive Value Memorandum of March 21, 2006, upon recognizing in 2004 that a disparity seemed to exist and having monitored it since, she conducted "a detailed comparison of the present presumptive value as derived by ICEP's auditors from the approximately 54,000 ... accounts that they initially identified in their audit of Swiss banks as probably or possibly having belonged to Holocaust victims with, on the one hand, the 37,373 accounts in the database the CRT has available for matching names on claim forms (the Account Histor[y] Database or 'AHD'), and on the other hand, the account value information drawn from the 3,327 accounts awarded [as of March 21, 2006]."⁴⁶

Since the completion of the original study in March, 2006, the AHD has continued to increase and to be refined, and it now includes 38,624 accounts. Special Master Junz refers to this as the "Total AHD plus."⁴⁷ The 38,624 accounts include the 36,131 AHD accounts as determined by the ICEP auditors, as well as additional accounts identified by Special Master Junz and the CRT from other sources such as archival research, including the still-

⁴⁵ Junz Presumptive Value Memorandum of March 21, 2006, at n. 2, citing January 30, 2004 Letter to the Court and to Special Master Gribetz; *see also* January 15, 2004 Letter to the Court and to Special Master Gribetz. The letters were submitted to the Court and the Special Master in response to the Court's November 17, 2003 Order calling for proposals for the possible use of residual funds, if any.

⁴⁶ Junz Presumptive Value Memorandum of March 21, 2006, at 2.

⁴⁷ Junz Updated Presumptive Value Report of October 10, 2008, at 2 n.4. The difference between the "Total AHD-plus" of 38,624 accounts and the "AHD-plus" of 26,362 is due to the exclusion of "Category 4" accounts. Special Master Junz agrees with the auditors' determination that "Category 4" account values should not be taken into consideration in calculating the average of known-value accounts.

accessible records for the 1938 Census of Jewish-owned assets conducted by the Nazi authorities in Germany and Austria and similar data from elsewhere; bank files located since the completion of the audit; and documentation provided by claimants.

Moreover, Special Master Junz expanded her inquiry. She investigated not only the disparity between the average values of the known-value accounts *actually awarded to claimants* as compared to the ICEP presumptive values. She also contrasted the ICEP values with the average values of *all known-value accounts in the AHD, whether awarded or not*. To that end, she studied the average values of the 6,945 known-value accounts available to the CRT for analysis, a portion of which have been awarded thus far.

Given the two sets of data available for contrast with the ICEP values, Special Master Junz' proposal to increase presumptive values appears conservative. As the following table indicates, the average values for the known-value accounts that already have been paid generally are higher than the average values for all known-value accounts in the Total AHD (both paid and unpaid). However, Special Master Junz is recommending that the new presumptive values be based on the somewhat lower Total AHD-plus calculations, which include data from both awarded and unawarded known-value accounts:

Account Type	ICEP Auditors' Recommendations: Current Presumptive Values	Average of Known-Value Accounts Awarded through CRT Set 172	Average of All Known-Value Accounts (Awarded/Unawarded) in the Total AHD-plus	Special Master Junz' Recommendations
Savings Accounts	830	899	892	900
Demand Deposits	2,140	3,017	2,477	2,500
Custody Accounts	13,000	42,083	31,000	31,000
Safe Deposits	1,240	11,291	5,306	5,300
Unknown Accounts	3,950	4,804	2,961	3,950
Other Accounts	2,200	3,505	3,908	3,900

NOTE: The data in this table is set forth in the Junz October 10, 2008 Report, at 11 (Table 3) and 13 (Table 4a). Special Master Junz further explains that (1) all amounts are in Swiss francs at 1945 values, and (2) a number of "outlier accounts" have been excluded from the calculation of average account values.

As this table indicates, the difference is especially significant for custody accounts (SF 42,083 versus SF 31,000), which, as noted above, constitute some 70% of all payments to date. The reason for using the broader database is obvious: the statistical soundness of the results is ensured by the enlarged number of observations. The value information for the Nazi victim accounts that thus far it has not been possible to award, is just as indicative as for the accounts that have been awarded. Thus, perhaps also erring on the side of caution, Special Master Junz has recommended presumptive value adjustments that are derived from the broader database, i.e., the average of both paid and unpaid known-value accounts. The proposed adjustments nevertheless represent a significant increase from the presumptive values recommended by the ICEP auditors and still in use at this date.

Special Master Junz has noted that in view of the thousands of accounts available for study, “[s]tatistically, the proposed new array of presumptive values is well based, and that, in fact, the number of observations from which these proxy values are derived generates greater confidence than that on which the ICEP auditors’ values rest. With the number of known-value accounts augmented by the 239 accounts for which value information could be obtained on basis of the portfolio content included in the documentation recently provided by *Credit Suisse*, plus the additions made in the normal course of events, this conclusion has further gained in strength.”⁴⁸

Special Master Junz has emphasized four reasons for the disparity between the average values the ICEP auditors had determined, and the average values that she has now calculated based on the updated database and documentation. These factors are described below.

1. Valuation data for accounts closed unknown by whom (“Category 3” accounts) should have been taken into consideration by the ICEP auditors in determining presumptive values.

The first and most significant factor impacting the valuation of accounts of unknown value, according to Special Master Junz, is that the ICEP auditors excluded “Category 3” accounts from their determination of presumptive values.⁴⁹ Special Master Junz concludes in the light of current information that that decision was not warranted. It excluded a very important part of available data for reasons that experience has shown did not hold, and thereby prejudiced, generally in a downward direction, the recommended amounts payable for accounts for which valuation data had been destroyed.

As described above, in their investigation of Holocaust-era Swiss accounts, the ICEP auditors divided the accounts deemed “probably” or “possibly” to have been owned by

⁴⁸ Junz October 10, 2008 Report, at 9. The Credit Suisse accounts are discussed in greater detail at pages 1-5 of the Junz October 10, 2008 Report, and also are summarized *infra*.

⁴⁹ Junz Presumptive Value Memorandum of March 21, 2006, at 11.

victims into four categories. In her original March 21, 2006 memorandum on presumptive values, Special Master Junz noted that, according to the Volcker Report, these categories were “ranked on the basis of various characteristics by degree of probability of their owners having been victims of Nazi persecution.”⁵⁰

In assessing the presumptive values that were to be assigned to accounts of unknown value, the auditors further classified the accounts by type: custody accounts (generally holding securities), demand deposit accounts, savings/passbook accounts, safe deposit boxes, “unknown” types of accounts (the account type is not indicated in the bank records), and “other” types of accounts (the account type is indicated in the records, but it is not one of the four other major types).

The auditors then studied the accounts for which valuation data still existed. Because such a high percentage of accounts in Categories 1 and 2 had known values (70% of “Category 1” accounts and 80% of “Category 2” accounts), the auditors considered these data sufficiently reliable for determining the average value by account type. These average values, by account type, then were used as “proxy” values for accounts of unknown value. Thus, for example, a safe deposit box of unknown value was presumed to have the same value as the average of the known-value safe deposit boxes in Categories 1 and 2. These “proxy” values were adopted in the CRT Rules as the “presumptive values” depending upon the type of account.

The auditors did not use the value information for known value Category 3 accounts because the data were “deemed to be statistically unreliable.”⁵¹ Only 11% of these accounts had known values, and these known values were deemed to be “clustered” in a relatively small number of custody accounts.⁵² Nevertheless, Category 3 accounts constitute a

⁵⁰ *Id.*, at 3.

⁵¹ Junz Presumptive Value Memorandum of March 21, 2006, at 3. As set forth above, Category 3 accounts were determined by the auditors to have been closed; however, due to the destruction of bank records, it is unknown who closed the account, or whether it was closed properly.

⁵² Volcker Report, at 72 (Annex 4).

very high percentage of all accounts in the AHD. Of the original approximately 54,000 AHD accounts, more than half (57%) -- 30,792 -- were "Category 3" accounts. The "scrubbing" process reduced the AHD to 36,131 accounts, and by early 2006 (i.e. just prior to Special Master Junz' completion of her initial presumptive value study of March 21, 2006), this number had been augmented from other sources to 37,373 accounts and now stands at 38,624 accounts.⁵³ Almost half of all AHD accounts are "Category 3" accounts.⁵⁴

As Special Master Junz reports, the auditors believed that the valuation data that did exist for Category 3 accounts was skewed toward high-value accounts.⁵⁵ Further, for many of the accounts, there was "no direct evidence of an extended period of dormancy, or of unauthorized closure, important elements of the presumption that there was a relationship to a victim."⁵⁶ Nevertheless, as the auditors also determined, there was other evidence to indicate that these accounts did in fact belong to Holocaust victims: "14,716 of these accounts have unique name matches or have confirming factors," and a total of "15,980" had "unique or almost unique matches." These name matches therefore provided "a significantly higher probability that the relationship of these accounts to victims is not simply a coincidence of common names but are genuine matches between account holders and victims of Nazi persecution."⁵⁷

The claims process has demonstrated that the decision to exclude the known Category 3 account values from the presumptive value calculations, in retrospect, was flawed for two reasons. First, according to Special Master Junz, it has become clear as a result of claims analysis that many of the "Category 3" accounts were indeed owned by victims of the Holocaust. Because the Settlement Agreement applies only to "Victims or Targets of Nazi Persecution," by definition, only an account determined to have belonged to someone who was or was believed to

⁵³ See Junz October 10, 2008 Report, at 2, n.4) (describing the "Total AHD plus").

⁵⁴ Junz Presumptive Value Memorandum of March 21, 2006, at 10 (Table 3).

⁵⁵ *Id.*, at 11.

⁵⁶ Volcker Report, at 11 (footnote omitted).

⁵⁷ *Id.*

be a “victim or target” -- i.e., “Jewish, Romani, Jehovah’s Witness, homosexual or physically or mentally disabled or handicapped” (*see* Settlement Agreement, at Par. 1) -- has received an award under the Court-supervised CRT process. In fact, three-fifths of all bank accounts awarded to date have been Category 3 accounts.⁵⁸

Second, the claims process has further revealed that rather than the known value accounts in Category 3 missing a large number of low-value accounts, and thus being improperly skewed toward high-values, Categories 1 and 2 may be missing a large number of high-value accounts and thus may be improperly skewed toward those with low values. In other words, it appears that a considerable number of high-value Category 1 and 2 accounts are missing from the AHD because the documentation for these accounts either was destroyed, or was not properly recorded in the audit or has turned out to be obtainable from other sources.⁵⁹

Thus, as Special Master Junz has explained, the claims process has yielded information lacking at the time of the audit. To the extent that the claims resolution process has shown that the majority of the awarded accounts are Category 3 accounts, it is clear that Category 3 accounts were just as likely to have belonged to Holocaust victims as accounts in Categories 1 and 2 (the two categories upon which the auditors relied in assessing presumptive values). In fact, as noted, the Category 3 accounts constitute three-fifths of all accounts that have been awarded to date. In addition, the actual values that have been revealed during the claims process suggest that data about higher-value accounts may be missing from the available bank records, and particularly at the time of the audit.

⁵⁸ Junz October 10, 2008 Report, at 11 n.25.

⁵⁹ Junz Presumptive Value Memorandum of March 21, 2006, at 11.

2. The CRT has identified values for accounts that were previously reported by ICEP auditors as being of “unknown” value.

Even before Credit Suisse came forward with account information that raised the number of known-value custody accounts available for analysis to more than twice that on which the ICEP auditors based their calculations, the CRT already had determined that there was important information in the bank files that had not been reported by the auditors.

Special Master Junz explained in her March 21, 2006 memorandum that the auditors had recorded many accounts as being of unknown value. Yet values for these very same accounts later were discovered in the bank documentation by the CRT staff in the course of their processing of Deposited Assets Class claims. Special Master Junz observed that the auditors had a “difference[] in focus”⁶⁰ as compared with the CRT. Specifically, Special Master Junz stated that “the focus of the audit was on the discovery of the relevant accounts, and the recording of balance values and type of account information, though important, was not the primary objective, especially given the prevailing time and expenditure constraints.”⁶¹ Thus, whereas the auditors were concentrating upon whether an account probably or possibly had belonged to a Nazi victim, the CRT in the normal course of award determinations scrutinizes the bank files to resolve a variety of other questions, including, among others, the type of the account, and its value.

The CRT’s analysis has yielded a significant amount of new information about account values. In fact, as Special Master Junz has observed: *“more than one half of the accounts awarded under CRT II that were reported in the original AHD as having no known balance were found by the CRT in the course of its award determination to have values after all.”*⁶²

⁶⁰ Junz Presumptive Value Memorandum of March 21, 2006, at 2; *see also* Junz Updated Memorandum of May 14, 2007, Appendix I, at 1.

⁶¹ Junz Presumptive Value Memorandum of March 21, 2006, at 15; *see also* Junz Updated Memorandum of May 14, 2007, Appendix I, at 3.

⁶² Junz October 10, 2008 Report, at 7 (emphasis added).

Special Master Junz explains that “[i]n many cases this value information was actually available in the bank files, in others it involved obtaining price quotations for listed assets and in yet others value information came from outside sources. The values thus obtained notably tended to average above the corresponding ICEP proxy values by significant margins. This was especially so for accounts in Category 2 and for custody accounts across the board, including those in Categories 1 and 2. These differences point to the auditors having missed a considerable number of relatively high balance values in the two Categories on which they based their determination of proxy values. This, in turn also did much to moot the auditors’ objection to the inclusion of Category 3 in the proxy value determination, which rested on their opinion that high value custody accounts were clustered in that Category.”⁶³

Now that the CRT has discovered value data for a great many accounts that the auditors originally reported to be of “unknown” value, it is for the Court to decide whether to take into consideration this new information in compensating the Holocaust victims and heirs who own these accounts.

3. The current presumptive values do not reflect the “post-scrubbing” account structure and values.

A third reason for the discrepancies between Special Master Junz’ calculations and those of the ICEP auditors is what the Special Master describes as a “difference[] in coverage.”⁶⁴ The so-called “scrubbing” of some 18,000 accounts from the original 54,000-account AHD, resulting in an AHD of approximately 36,000 accounts, affected the average values derived by the auditors. The “scrubbing” process removed accounts from the original 54,000-account AHD to eliminate “duplications and other technically-based unwarranted inclusions,” and the AHD was expected to be reduced to “between 45,000 and 50,000” relevant

⁶³ Junz October 10, 2008 Report, at 7.

⁶⁴ Junz Presumptive Value Memorandum of March 21, 2006, at 2; *see also* Junz Updated Memorandum of May 14, 2007, Appendix 1, at 1.

accounts.⁶⁵ “However, in the run-up to the publication of the 2001 list of names of Account Owners, the banks made further representations for additional exclusions, resulting in the elimination of more than twice the number of accounts ICEP had thought reasonable As a result of this scrubbing process the structure of the AHD as concerns both types of account and accounts with known balances differs inherently from that of the ICEP database. Accordingly, differences in average values by type of account could be expected as well.”⁶⁶

In other words, the “Total AHD plus” available to the claims process is not identical to the database that the auditors reviewed in assessing account values. In fact, a significant number of the accounts originally contained in the AHD were removed by scrubbing (a reduction from approximately 54,000 to 36,000 accounts), while other accounts were added as a result of independent CRT investigation of archival documentation and other sources. Since the database itself has changed, it is not surprising that the valuation information for this database now differs as well.

4. The CRT has changed valuation procedures relating to interest and securities, and to book value generally.

Finally, according to Special Master Junz, “changes in valuation procedures have had the effect of increasing average base (1945) values of certain known balances.”⁶⁷ One such area involves calculation of interest. The auditors, in estimating values, “being unable to ascertain whether interest had been credited or not, deducted interest from all normally interest-earning accounts. The Court, in contrast, on basis of evidence that banks often suspended interest payments on dormant accounts, determined that interest not be deducted absent evidence [i.e. bank documentation] that it had in fact been credited.”⁶⁸ This determination “obviously had

⁶⁵ Junz Presumptive Value Memorandum of March 21, 2006, at 3; *see also* Junz Updated Memorandum of May 14, 2007, Appendix I, at 2.

⁶⁶ Junz Presumptive Value Memorandum of March 21, 2006, at 3-4.

⁶⁷ *Id.*, at 4.

⁶⁸ Junz Presumptive Value Memorandum of March 21, 2006, at 4; Junz Updated Memorandum of May 14, 2007, Appendix I, at 4; *see also* Order of October 12, 2004.

the effect of raising average 1945 known values of savings and custody accounts in the AHD and in the CRT's awarded accounts database above the proxy values [the auditors] calculated for these types of account."⁶⁹

Account values assessed during the claims process thus are higher than the amounts estimated by the auditors because, at the Court's direction, the CRT no longer assumes that interest had been credited to victim accounts.⁷⁰ Therefore, the CRT no longer automatically deducts this interest when calculating award amounts.

The CRT also uses different procedures in valuing securities. The CRT "in determining award amounts has endeavored to ascertain the market value of account assets as close to their final disposition date as possible, whereas the ICEP audit recorded available book values, which frequently were as of the deposit date and more often than not reflected nominal rather than market values. Obviously, these differences in approach result in significant differences in account valuation, but whether they work to add or subtract from the average values recorded in the ICEP audit depends on each case."⁷¹

5. The new information from Credit Suisse confirms Special Master Junz' conclusions.

Special Master Junz' recommendations are based on her careful analysis of data that has come to light only through the CRT's continuing requests for and evaluation of relevant materials throughout the claims process. A substantial amount of this information has been provided to the CRT only within the last several months. In February and April of 2008, the CRT received new materials from defendant Credit Suisse after years of discussions with the Bank. During that period, the CRT had sought to obtain Credit Suisse account data and other

⁶⁹ Junz Presumptive Value Memorandum of March 21, 2006, at 5.

⁷⁰ See, e.g., Order of October 12, 2004 and January 5, 2005 (explaining rationale for using the higher of known or presumptive value); see also Order of November 29, 2006 (providing examples of upward adjustment of account value where known value is suspect).

⁷¹ Junz October 10, 2008 Report, at 9.

information beyond that which had been provided through the ICEP audit, much in the same manner that the other defendant bank, UBS, has provided ongoing assistance to the CRT in connection with several hundred accounts. The CRT's effort to obtain further bank data, and its eventual success, was the direct result of the Court's decision to hold the defendant banks to their duty to cooperate in good faith with implementation of the Settlement Agreement as a condition to the Settlement's approval.⁷² Because of this commitment, Holocaust victims and their heirs have access to data that continues to be revealed even after 60 years and a determined effort by the banks to destroy account information.

The new materials from Credit Suisse unexpectedly provided the CRT with account valuation information for 239 custody accounts. Most of these accounts already had been awarded, albeit at presumptive value because the actual values of these accounts were not available in the materials to which the CRT had access at the time that it had analyzed and recommended payment of the particular accounts at issue.

As Special Master Junz explains, the "wealth of new information about the assets contained in these accounts and their disposition" has had "two profound implications" for the Deposited Assets Class:

"First, [the new data on the 239 accounts] allows the claims resolution process to restore to the Account owners or their heirs the actual -- rather than a proxy -- value of their known deposited assets. This means, however, that first the appropriate value of a host of securities, coins and precious metal had to be determined; the newly available disposition information had to be analyzed and then the award amounts of all already awarded accounts among the 239 had to be re-evaluated in the light of the new documentation."⁷³

⁷² See Junz October 10, 2008 Report, at 1 (the data from Credit Suisse was disclosed "in the course of so-called 'voluntary assistance'", an "integral part of the banks' pledge to cooperate with the implementation of the Settlement Agreement"; the Court "has noted that 'This is a pledge that reflects their legal obligation. It is one to which I intend to hold them'", citing *In re Holocaust Victim Assets Litig.*, 105 F.Supp.2d 139, 158 (E.D.N.Y. 2000).

⁷³ Junz October 10, 2008 Report, at 3.

In fact, the CRT's analysis of the new data from Credit Suisse has resulted in significant additional payments to many Holocaust victims and their heirs, who previously had received awards based on presumptive values. The new award amendments totaled over \$34 million as of October 10, 2008, and the anticipated total for all amendments as well as several new accounts located within the Credit Suisse data is close to \$39 million.⁷⁴

Second, the recently-provided materials from Credit Suisse confirm the importance of revisiting the original presumptive values. The Credit Suisse information is of particular significance because it relates almost exclusively to custody accounts. As noted previously, custody accounts comprise more than two-thirds of all Deposited Assets Class payments to date. The new Credit Suisse data more than doubles the number of known-value custody accounts as compared with the number originally analyzed by the ICEP auditors:

“[T]he fact that 239 Custody accounts have been added to the stock of known-value accounts in the Total AHD-plus ... obviously affects the average value of these accounts and, consequently impacts the calculation of any revised presumptive value for Custody accounts. Given the large relative importance of Custody accounts in the award process -- under CRT II, of a total of 4,229 accounts awarded through batch 172 (approved by the Court on September 25, 2008), 1,263 or 30 percent were Custody accounts, and, more telling, just under 70 percent of the total [CRT-II payments awarded thus far] relates to Custody accounts -- any change in the proposed presumptive value for this type of account could materially alter the previously estimated cost of the adjustment of the current set of presumptive values. Furthermore, the addition of 239 known-value Custody accounts to the estimation base for the revision of the current presumptive values raises the number of such accounts to 892, well over twice the number on which the ICEP auditors calculated the present presumptive values. Thus, ... their inclusion further strengthens the already sound statistical base for the revision of the currently used presumptive values.”⁷⁵

⁷⁴ Junz October 10, 2008 Report, at 5.

⁷⁵ Junz October 10, 2008 Report, at 3-4.

In addition, the recently obtained data concerning the 239 Credit Suisse accounts further confirm the centrality of the “Category 3” accounts to an analysis of account values. As Special Master Junz notes, “[o]f the 239 accounts 205, or 86 percent, were Category 3 accounts.” Virtually all of these accounts have been awarded. Thus, they indisputably belong to Holocaust victims or heirs (because a prerequisite to an award is that the owner is shown to have been a “Victim or Target of Nazi Persecution” as required under the Settlement Agreement). The auditors’ concern that these might not be victim accounts clearly has been resolved by the information disclosed about the account owners as a result of the claims process.

IV. The Impact of Special Master Junz’ Proposed Adjustment of Presumptive Values Upon Projected Deposited Assets Class Payments

According to Special Master Junz, as of October 10, 2008, when she analyzed the impact of the new data from Credit Suisse upon presumptive values, “the estimated number of accounts yet to be awarded” was projected to be 337, with an estimated value of approximately \$36.2 million before any adjustment of presumptive values.⁷⁶ If all 337 accounts are in fact awarded, Special Master Junz projects that a total of \$548.1 million will have been distributed to members of the Deposited Assets Class.⁷⁷

A substantial proportion of these awards are expected to warrant further payments if the Court adopts Special Master Junz’ presumptive value recommendations at 100% of the proposed adjustment. For owners of custody accounts and safe deposit boxes in particular, the increases will be significant. Thus:

- For savings accounts, for which the current presumptive value for accounts of unknown value is SF 830 (using 1945 values, and prior to

⁷⁶ Junz October 10, 2008 Report, at 14.

⁷⁷ See Junz October 10, 2008 Report, at 15. This number “does not include potential payments in excess of average award amounts relating to a couple of dozen complicated cases yet to be resolved.” Junz October 10, 2008 Report, at 15, 16 (Table 5, n. 1).

application of the multiplier, currently at 12.5), the presumptive value would increase to SF 900. At current values, applying the multiplier of 12.5, and at the current exchange rate of US \$1 = SF 1.10, the value of the awarded account would increase from \$9,432 to \$10,227.⁷⁸

- For demand deposits, for which the current presumptive value for accounts of unknown value is SF 2,140, the presumptive value would increase to SF 2,500 (i.e., at current values, from \$24,318 to \$28,409).
- For custody accounts, for which the current presumptive value for accounts of unknown value is SF 13,000, the presumptive value would increase to SF 31,000 (i.e., at current values, from \$147,727 to \$352,273).
- For safe deposit boxes, for which the current presumptive value for accounts of unknown value is SF 1,240, the presumptive value would be increased to SF 5,300 (i.e., at current values, from \$14,091 to \$60,227).
- For accounts of unknown type (as a result of destruction of relevant bank records), for which the current 1945 presumptive value is SF 3,950, Special Master Junz proposes no adjustment (thus, at current values and an exchange rate of US \$1 = SF 1.10, the dollar amount of the award will remain at \$44,886).
- For “other” accounts (i.e., those which do not fall within one of the above categories), for which the current 1945 presumptive value for accounts of unknown value is SF 2,200, the presumptive value would be increased to SF 3,900 (i.e., at current values, from \$25,000 to \$44,318).

In total, an additional \$264.5 million in award amendments would be required to adjust presumptive values at 100% of the proposed amount. If, in addition to the presumptive value adjustment, all of the projected accounts remaining to be awarded are in fact paid, “the grand total of past and future payments [would equal] US\$ 812.7 million.”⁷⁹ The \$800 million allocated to the Deposited Assets Class therefore would be exceeded by more than \$12 million.⁸⁰

It is for the Court to determine whether to authorize an adjustment of presumptive values in accordance with Special Master Junz’ recommendations, and within the limits of the

⁷⁸ See Junz October 10, 2008 Report, at 13, 14 (Tables 4a and 4b).

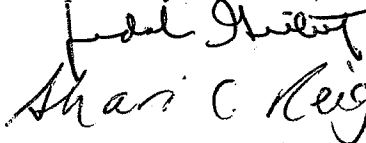
⁷⁹ October 10, 2008 report, at 15.

⁸⁰ As previously noted, the exchange rate is now US\$ 1 = 1.10 SF, the central rate used in CRT Special Master Junz’ calculations.

\$800 million available for Deposited Assets Class claims. Should the Court be so inclined, it might be appropriate for the CRT now to begin to prepare the materials necessary to provide for supplemental payments for all awards that may be eligible for upward adjustment on a retroactive basis. A great many claimants to previously-issued awards will receive additional payments, and it is imperative that any supplementation of earlier awards not interfere with the completion of the CRT's work, including its finalization of decisions on accounts and claims that have not yet been treated. At the same time, the CRT's staffing levels both in Zurich and New York will continue to decrease as the claims program winds down. Given these considerations, at the same time that the Court considers whether and to what extent to adopt Special Master Junz' proposal, the Court may wish to consider whether it would be appropriate for administrative activities necessary to issue the supplemental payments to begin immediately, such as the preparation of Acknowledgment Forms (required to release funds to recipients), notification letters, and other documentation. Actual supplemental payments, if any, may be issued when all CRT determinations have been completed, at which point a more precise amount remaining for distribution to the Deposited Assets Class will be known.

Dated: New York, New York
December 19, 2008

Respectfully submitted,

Handwritten signatures of Judah Gribetz and Shari C. Reig.

Judah Gribetz
Shari C. Reig

EXHIBIT A

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.

D+7

March 22, 2006

★ MAR 31 2006 ★

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

BROOKLYN OFFICE

96w4849

Dear Judge Korman:

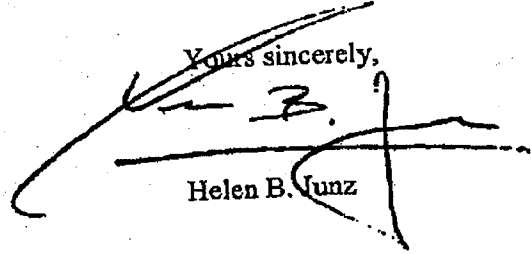
Please find attached my note in which, after sustained monitoring of the question, I propose adjustments to the set of presumptive values presently used to establish award amounts for accounts for which no balance value can be established.

The estimated cost of adopting the proposed adjustments would amount to US\$ 179,270,216 for already awarded accounts (through Set 94) and US\$ 106,017,727 for the projected awards from the remaining stock of claims in CPS, for a total of US\$ 285,287,943. This would put the grand total of payments for deposited assets, already awarded and projected from CPS, at US\$ 737,204,341.

The average account values on which these totals are based include adjustments to 1945 values for deducting interest from post-1945 balances only if and when it is clear that interest had been credited by the banks and for adopting the guidelines for valuing securities. These adjustments also entail amendments to a few already awarded accounts. At the proposed presumptive values, these are preliminarily estimated to affect 20 accounts at a cost of US\$ 1,154,104.

The estimated amendments together with the grand total postulated above come to US\$ 738.4 million. Addition of the US\$ 65 million estimated for awards under Category 3 would put payments for deposited assets at US\$ 803.4 million. This total does not yet take into account potential adjustments to MPM awards, which may be appropriate given the award amounts established for Category 3 and the adjustment of minimum award amounts associated with the proposed presumptive values.

Yours sincerely,



Helen B. Junz

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

March 21, 2006

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:

I am writing to propose a set of adjustments to the presumptive values currently employed by the CRT to establish award amounts for accounts for which no balance information is known ("unknown value accounts"). The Court approved the present schedule of presumptive values by type of account as part of the initial set of Rules Governing the Claims Resolution Process on February 5, 2001, following a hearing on the proposed Rules, which included the subject of presumptive values, held by Special Masters Paul Volcker and Michael Bradfield on January 19, 2001.

I. Summary

In as much as presumptive values were established at the very beginning of the claims resolution process, I thought it worthwhile to review the relationship between the award amounts that the Court has approved under CRT-II on accounts for which the value of the account balance was known ("known value accounts") and those awarded at presumptive value in the light of the experience gained thus far.¹ I therefore started monitoring this relationship in early May, 2004, shortly after my appointment as Special Master on April 14, 2004, at which time 1,989 accounts had been awarded under CRT-II through Set 43 and have done so up to and including Set 94, the latest set of award decisions approved by the Court, reporting my findings to the Court from time to time.^{2,3} Over this period the data set has grown by over three-

¹ Accounts with a known value that fell short of the established averages under circumstances considered not reliable by the Court are awarded at presumptive value as well and are in the CRT statistics categorized, together with accounts for which the value is unknown, as "presumptive value accounts." In what follows "known value accounts" are defined as all accounts with a known value regardless of their size or whether they were awarded at their known value or at presumptive value.

² See e.g. my "Note on Accounts Awarded: Equity Question - Are Claimants receiving Presumptive Value Awards being Short-changed?" dated May 7, 2004 and my memorandum, dated July 24, 2005, on this topic. My attention has also been drawn to the fact that some Claimants singled out apparent anomalies they saw in the presumptive values used by the Court for comment on the Special Masters' Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds (the "Interim Report"). For instance, Tim Schwarz noted that "the average value of all the accounts where the documentation relating to value has not been destroyed is much higher than the average value of all the accounts where the documentation has been destroyed." Tim Schwarz, Letter to

fifths (63 percent) to 3,237 accounts and the number of known value accounts has increased about equally (64 percent) from 598 to 978.⁴ At the same time, the conclusions and implications that can be drawn from this cumulative evidence have proven remarkably stable, thereby increasing the confidence that can be placed in their reliability. Consequently, we can now assume with greater certainty that the data is telling us that the disparity between the proxy values for unknown account balances (presumptive values) employed in the award process and the average known values found for actual awarded accounts is not just an anomaly, but points to an underlying discrepancy. This in turn, has prompted a more thorough examination of this issue.

This examination involved a detailed comparison of the present presumptive values as derived by ICEP's⁵ auditors from the approximately 54,000 (53,886) accounts they initially identified in their audit of Swiss banks as probably or possibly having belonged to Holocaust victims with, on the one hand, the 37,373 accounts in the database the CRT has available for matching names on claim forms (the Account Historical Database or "AHD")⁶, and on the other hand, the account value information drawn from the 3,327 accounts awarded to date.

The conclusion drawn from these comparisons is that the ICEP presumptive values, indeed, are not fully representative of the CRT data. In the main, discrepancies have arisen because of:

- 1) differences in coverage;
- 2) differences in focus; and
- 3) differences in valuation procedures.

Honorable Edward R. Korman and Special Master Judah Gribetz, January 30, 2004, para. 3. Further, E. Randol Schoenberg requested that the CRT and the Court reconsider the average payout rule, noting "it does appear that the 'average' award is far less than the average of the awards for which the deposited amount is known." E. Randol Schoenberg, Letter to Honorable Edward R. Korman and Special Master Judah Gribetz, January 15, 2004, para. 4

³ Set 75, approved by the Court on April 11, 2005 consists of one very high known value award amounting to SF 26,450,993.36, equal to US\$ 21,860,325.09 and, unless noted otherwise, is excluded from the present consideration because, as an extreme outlier, it would bias the results materially.

⁴ The total number of known value accounts awarded thus far includes 4 negative and 2 zero value accounts as well as 7 obvious outliers. These accounts are excluded for purposes of comparison with the set of presumptive values. Thus, the total of known value accounts included in the 3,237 awarded accounts is 982. As negative value accounts have generally been excluded, the total number of awarded known value accounts referred to here in what follows is 978; the number on which the determination of proxy values is based excludes not only negative value, but also zero value accounts and outliers and thus totals 969. Further, as noted above, the current analysis excludes Set 75. Thus the number of accounts awarded under CRT II actually totals 3,238.

⁵ The Independent Committee of Eminent Persons known as "ICEP" or, after its Chairman, as the "Volcker Committee" was established on May 2, 1996 to investigate "the fate of funds entrusted to Swiss banks by victims of Nazi persecution." Independent Committee of Eminent Persons, *Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks*, Staempfli Publishers Ltd. (Berne), December 6, 1999 ("ICEP Report"), p. 2, para. 4.

⁶ The AHD consists of the 36,131 accounts to which the auditors had reduced the initial ICEP database, augmented to 37,373 by account information from other sources. The reduction was the result of the implementation of the Volcker Committee's review of the initial database and the additional representations made by the banks in its course.

The underlying information and analysis that led to these conclusions are set out in some detail in the Background and Analysis section below. Therefore, I will touch here only briefly upon each of the three explanatory factors:

Re 1) With respect to coverage, two sets of exclusions are of relevance. First, with respect to the presumptive value calculations, only part of the known balance information was utilized. As noted above, the ICEP auditors found 53,886 accounts to be relevant to ICEP's mandate. They subdivided these accounts into four Categories, ranked on the basis of various characteristics by degree of probability of their owners having been victims of Nazi persecution.⁷ In the summer of 1999, as ICEP's work drew to its conclusion, Special Master Michael Bradfield (then Counsel to ICEP) asked Price Waterhouse Coopers ("PW"), one of the five auditing firms conducting the Swiss bank audit, to estimate the total value of accounts in Categories 1-4 on the basis of certain assumptions.⁸ This involved, *inter alia*, the derivation of proxy values for accounts without known balances. PW, after analyzing the data, suggested, and Special Master Bradfield agreed, that "...it made more sense to use the category 1-2 analysis when estimating the value of aggregate accounts because the underlying data seemed more reliable."⁹ Exclusion of Category 3 was suggested because the value information it contained was deemed to be statistically unreliable and that of Category 4, because it consisted largely of small savings accounts, and among the four categories was the one with the least likely association with victim accounts. The proxy values thus derived by PW became the presumptive values presently used in CRT award decisions. However, in our examination of the value information in the AHD and in the actual award experience, the reasons for excluding Category 3 from the average value calculations no longer appeared warranted.

The second notable difference lies in the exclusion of almost 18,000 accounts from the initial ICEP database, in part at the request of the banks. Although the Volcker Committee found that the "filtering down [of] the 4.1 million accounts in the database to 53,886 accounts was in many respects cautious,"¹⁰ they also considered that these accounts included some duplications and other technically-based unwarranted inclusions. Eliminating these would result in a reduction of the total number of relevant accounts to between 45,000 and 50,000. However, in the run-up to the publication of the 2001 list of names of Account Owners, the banks made further representations for additional exclusions, resulting in the elimination of more than twice the number of accounts ICEP had thought reasonable. This elimination procedure became known as the "scrubbing process."¹¹ As a result of this scrubbing

⁷ ICEP Report, p. 20 and Annex 4, p. 7.

⁸ These assumptions included: "(1) that valid claims would be presented for all accounts, and hence all accounts would be paid out; (2) the adjusted balance of accounts (the balance as of 1945) would be multiplied times ten to approximate the investment value of the accounts as of 1999; and (3) a proxy value would be used for the adjusted value of accounts without known balances." Memorandum from Frank Hydoski, Price Waterhouse Coopers to Michael Bradfield, dated July 18, 2002, henceforth "Hydoski Memorandum," p. 1.

⁹ *Idem*, p. 2. This conclusion is also alluded to in the discussion in the ICEP Report of the difficulties inherent in estimating the total value of the accounts in the ICEP database. See ICEP Report, p. 72, para. 39 - 42 and footnote 23.

¹⁰ ICEP Report, p. 12.

¹¹ Referred to as such in a PW Memorandum to Files, dated October 10, 2000, see pp. 9 ff and p. 15. Further, the Court referred to the scrubbing process in its July 26, 2000 "fairness" opinion, but the results of scrubbing at that time (July 2000) differed considerably from the eventual number that was

process the structure of the AHD as concerns both types of account and accounts with known balances differs inherently from that of the ICEP database. Accordingly, differences in average values by type of account could be expected as well.

Re 2) With regard to the focus of the ICEP investigation and that of the CRT's award decision process, the differences are obvious, though their effect on the presumptive value determination has become discernible only over time. The basic difference is that ICEP's priority lay in determining which of the 6.8 million accounts that existed during the relevant period had probably or possibly belonged to victims of Nazi persecution. Registering book values and even account types, while important, was of lesser import especially under the given time and cost constraints. For the CRT, the determination of the value of account balances and of the type of accounts, of course together with the identification by the Claimant of his/her relationship to the Account Owner, is of prime importance. Thus it is not surprising that the CRT in the course of its work has found value information for many accounts for which the ICEP audit did not furnish any such data and that it has ascertained the type of account in many instances in which the ICEP audit recorded an unknown type of account.¹²

Re 3) Finally, changes in valuation procedures have had the effect of increasing average base (1945) values of certain known balances. For example, the Volcker Committee recommended that "...the earliest known account values should be identified and adjusted to 1945 values by adding back estimated bank charges and deducting estimated earned interest, if any."¹³ PW in its value estimation, being unable to ascertain whether interest had been credited or not, deducted interest from all normally interest-earning accounts. The Court, in contrast, determined that interest not be deducted absent evidence that it had in fact been credited. This obviously had

reached: "On February 23, 2000, the Volcker Committee announced that a review of the approximately 54,000 accounts identified as 'probably' or 'possibly' related to victims of Nazi persecution resulted in the elimination of certain accounts because they were duplicates or because of other technical factors, reducing the total number of such accounts to between 45,000 and 50,000 [citation omitted]." *In re Holocaust Victim Assets Lit.*, 105 F.Supp.2d at 151. In its February 2004 opinion addressing the banks' behavior, the Court provided a more critical analysis of the final results of the "scrubbing" process: "[T]he conservative estimate of 54,000 relevant accounts was met with surprise and disfavor by the SBA and the Swiss Federal Banking Commission ('SFBC'). The SBA and SFBC thus turned to the same auditors the Volcker Committee had employed and asked them to further 'scrub' the accounts the auditors had identified. The banks came forward with additional information from bank records and asked the auditors to once again eliminate from the list accounts that were opened after 1945, accounts that had closing dates before the dates of occupation, accounts with any activity after 1945, and duplicate accounts from the list of probable and possible accounts. See CRT-II Rules, at 2. After completing two rounds of this 'scrubbing,' the auditors decided that of the 54,000 accounts previously identified, there were only 21,000 accounts that 'probably' belonged to Nazi victims, and 15,000 accounts that 'possibly' belonged to Nazi victims. The auditors arrived at this conclusion even though they were theoretically searching for the same excluding characteristics as they had sought when employed by the Volcker Committee." *In re Holocaust Victim Assets Lit.*, 302 F.Supp.2d 59, 80 (E.D.N.Y. 2004).

¹² Though this result, as noted, was to be expected, the extent appears surprisingly large. However, part of the difference may lie in the way in which the auditors handed the AHD on to the CRT: it may be that some information fields turned out unreadable so that the actual number of unknown value and unknown type of account instances may not have been quite as large as the usable data imply. Still, the additional information found by the CRT appears to go a considerable way toward explaining the disparities between the ICEP proxy values and the average values in the AHD and the actual award data.

¹³ ICEP Report, p. 22.

the effect of raising average 1945 known values of savings and custody accounts in the AHD and in the CRT's awarded accounts databases above the proxy values PW calculated for these types of account.

Given these findings and conclusions, I recommend that the set of presumptive values used by the CRT to award accounts for which balances are unknown be based on the average known values of all accounts in the AHD, except Category 4, but including the known values of accounts added from sources other than the ICEP investigation, which are contained in the additionally created Categories 5 and over. Proxy values so derived would be more representative of the universe of awardable accounts than those the ICEP auditors calculated in 1999 reasonably could have been. At the same time, maintaining the exclusion of Category 4 helps ensure that the proxies continue to reflect as closely as possible accounts that ICEP deemed most likely to have belonged to victims of Nazi persecution. Furthermore, the number of known value accounts in the AHD database, excluding Category 4, at 6,320, as compared with the 7,797 observations from which the present presumptive values are derived, provides an adequate statistical basis for the proxy determinations. This is the more evident as the average values drawn from the 11,083 known value observations included in the full AHD (including Category 4) support the results of the smaller sample with both showing average known values well in excess of the present presumptive values for five of the six types of account considered by the CRT. The exception was the unknown type of account ("unknown account"), for which average known values calculated from both the full AHD and the AHD excluding Category 4 fell below the associated presumptive value.

Table 1. Comparison of Number and Average 1945 Value of known value Accounts, ICEP, all Awarded Accounts and AHD (in units and Swiss francs)

Account Type	ICEP auditors known value accounts in Categories 1 and 2 on which present presumptive values are based		All awarded known value Accounts through Set 94		AHD All Accounts, including Sub-Accounts			
	Number of accounts	Present Presumptive Value	Number of accounts	Average Value	Categories 1, 2, 3 and 5		Cat 4-5	
					Number	Average Value	Number	Average Value
Savings Accounts	1,800	830	101	1,129	873	1,096	3,316	1,045
Demand Deposits	2,461	2,140	348	3,103	2,731	3,239	3,686	2,514
Custody Accounts	397	13,000	164	44,310	618	30,396	636	29,929
Safe Deposit Boxes	42	1,240	9	9,174	41	9,122	43	8,729
Unknown Account	3,009	3,950	344	5,239	2,005	3,260	3,348	2,093
Other Accounts	88	2,200	3	8,130	54	9,969	54	9,969
Total	7,797	3,890	969	16,586	6,322	9,514	11,083	9,047

Note: All awarded known value accounts exclude 6 negative or zero value accounts and 7 outliers.

Furthermore, for most account types the average known values calculated from the AHD, excluding Category 4, turned out to be remarkably close to the average values drawn from actual experience. The Court has awarded 3,237 accounts, including 978 known value accounts to date (through Set 94). The average values of these accounts exceed present presumptive values by considerable margins for each of the six account types and four of these six account types virtually mirror the average values drawn from the 6,320 known value observations in the AHD (Categories 1, 2, 3 and 5). The two account types for which actual experience shows significantly higher average values than do the AHD data are custody accounts and accounts of unknown type. (See Table 1.) The reasons for these discrepancies are considered below in the Background and Analysis Section.

On the basis of the comparative findings shown in Table 1, I recommend that present presumptive values be adjusted as shown in Table 2:

Table 2. Present and Proposed Presumptive Values and Estimated Cost of Adjustment of Awarded Accounts (1945 and current values in SF and US\$)

Account Type	Present Presumptive Value (ICFP)	Proposed Presumptive Value	Present Presumptive Value (ICFP)	Proposed Presumptive Value	Est. Cost of Adjustment of Awarded Accounts (through Set 94)	
	1945 values in SF		Current values (1945 value x 1.25) in SF		in SF	in US\$ (US\$ 1 = SF 1.30)
Savings Accounts	830	1,100	10,375	13,750	555,969	427,669
Demand Deposits	2,140	3,200	26,750	40,000	13,735,991	10,566,147
Custody Accounts	13,000	30,500	162,500	381,250	201,762,073	155,201,594
Safe Deposit Boxes	1,240	9,150	15,500	114,375	15,719,748	12,092,114
Unknown Account	3,950	3,950	49,375	49,375	0	0
Other Accounts	2,200	9,500	27,500	118,750	1,277,500	982,692
Total	5,858	13,154	73,221	184,812	233,051,281	179,270,216

The cost of these proposed adjustments, at US\$ 179,270,216, would raise the total amount the Court has so far awarded under CRT I and CRT II to US\$ 478,592,353. Based on the most recent projections, award amounts yet to come from the remaining stock of accounts identified in CPS are estimated at US\$ 258,611,988¹⁴, including US\$ 106,017,727 for the net cost of adopting the proposed presumptive values. This would put the total cost of adopting the proposed presumptive values at US\$ 285,287,143 and the grand total amount of awards for already awarded and yet to be awarded accounts at US\$ 737,204,341.

¹⁴ Based upon payment of 60 percent of remaining stock of accounts identified in CPS.

II. Background and Analysis underlying the Recommendation

A. Background

1. Derivation of Article 29 Presumptive Values

The Plan for Allocation and Distribution, approved by the Court and affirmed by the Second Circuit, called for the application of presumptions to assist in the adjudication of certain claims:

"Finally, the Rules also should provide for the adjudication of well-supported claims of Nazi victims when an account has been closed but it is unknown who actually received the benefit of the account. In this situation, or in a similar situation when the amounts in accounts are unknown, it is appropriate to rely on presumptions to assist in the adjudication of such claims. For example, it is appropriate to make an award to a claimant of a closed account if the account holder perished in a concentration camp. If the amount in the account is unknown, it is also appropriate to make an award based on the average value of the type of account. As with all other aspects of the claims process, the Court will have the discretion to adjust such awards to assure fairness among all claimants."¹⁵

On 19 January 2001, Special Masters Volcker and Bradfield held a hearing to provide interested observers with the opportunity to comment upon the then-proposed CRT Rules, including the Rule proposed for the valuation of accounts of unknown value. On 5 February 2001, upon the request of Special Masters Volcker and Bradfield, the Court adopted the CRT Rules. Article 29 of the Rules Governing the Claims Resolution Process, as amended, sets forth value presumptions for those accounts for which no known values are available as follows:

"For an Account for which an Award is made under Article 22, but the amount in the Account is unavailable from bank records or the amount in the Account (1945 value) is less than the amount set forth below, the amount in the Account (1945 value) is to be determined from the following schedule, in absence of plausible evidence to the contrary:

Custody Account	SFr. 13,000
Demand Deposit Account	SFr. 2,140
Savings/Passbook Account	SFr. 830
Safe Deposit Box	SFr. 1,240

¹⁵ *In re Holocaust Victim Assets Litig.*, Plan of Allocation and Distribution, September 11, 2000, p. 110. See Order Approving Plan of Allocation and Distribution, November 20, 2000. See also 2001 WL 868507 (2nd Cir. (N.Y.)) (July 26, 2001), affirming the District Court's approval of the Plan of Allocation.

Other Types of Accounts	SFr. 2,200
Unknown Account Type	SFr. 3,950."

This schedule of presumptive values is identical to that developed by the ICEP auditors from the database of Swiss bank accounts, which they considered to have probably or possibly belonged to victims of Nazi persecution.¹⁶ The ICEP audit, which included 254 of the Swiss banks that existed in 1945, identified 53,886 accounts with such a probable or possible relationship. The auditors, using a set of agreed criteria¹⁷, subdivided these accounts into four categories ("Review Categories") ranked by degree of probability of their owners having been victims of Nazi persecution.^{18,19} In preparing the accounts for analysis, the auditors also recorded book values when available. They found that of the 10,471 accounts in Review Categories 1 and 2, i.e. the categories with the highest probability of the accounts having belonged to Nazi persecutees, 77 percent had a known value; and in Review Category 4, numbering 12,723 accounts, 98 percent of the accounts had known values. However, for Review Category 3, which with 30,692 accounts was most important, the share of accounts with known values was only 11 percent.²⁰ Overall, the auditors reported known values for 23,904 (44 percent) of the 53, 886 accounts in the ICEP database.

As such, the ICEP database of known value accounts constituted the best available source for the purpose of estimating proxies that the claims resolution process could apply to award accounts of unknown value. In the summer of 1999, Special Master Michael Bradfield, then Counsel to ICEP, had requested one of the auditing firms participating in the audit, PW to undertake the calculation of average known values for Categories 1 through 4 in order to derive an estimate of the potential total value of all accounts that had been identified as relevant to ICEP's mandate.²¹ In considering the best way forward, PW after completion of their statistical analysis recommended, and Special Master Michael Bradfield concurred, that the value proxies, or presumptive values, should be derived from the data for Review Categories 1 and 2 only. The reasoning was first, that these Categories contained a relatively high percentage of known value accounts, and second, that they had the highest probability of relating to Nazi persecutees. Review Category 4, which had the lowest probability of such a relationship, was left out of consideration also because it contained a majority of low value suspended and small savings type accounts. More troublesome, because of its size, was the setting aside of Review Category 3. However, the ICEP Report concurred that the low share of known value accounts in

¹⁶ What follows is largely drawn from *Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks*. Independent Committee of Eminent Persons, December 1999 (the ICEP Report), Annex 4, Identification of Accounts Probably or Possibly Related to Victims of Nazi Persecution, p. 57 - 80 and especially pp. 71 - 72 and Table 20, p. 75.

¹⁷ Names matched to Holocaust victim lists and/or residence in Axis or Axis-dominated country; account open during relevant period; manner of closure; inactivity after 1945.

¹⁸ Appendix I, attached hereto, provides further details about the four categories.

¹⁹ The ICEP Report, p. 65

²⁰ ICEP Report, Table 20, p. 75. These numbers differ somewhat from those cited in the Hydoski Memorandum. The present analysis is based on the latter as they provide greater detail on a consistent basis.

²¹ Hydoski Memorandum, p. 1. See also footnote 7, p. 3.

this Category was "clearly insufficient to make a meaningful estimate of the value of that whole Category of accounts."²² And this difficulty was compounded by the fact that the auditors had reported that the known values clustered in custody accounts with "high average values that they considered not to be representative of valuations of similar types of accounts in other categories."²³ Thus, there was tacit support for the view that proxy values best be drawn from the known value accounts in Categories 1 and 2.

Because there was no consistency in the dating of the account values found in the banks' records - indeed value dates were spread over a large time span - the auditors sought to bring them back to a common date such as could be taken to represent the beginning of dormancy. The date chosen, at the recommendation of ICEP's Panel on Interest, Fees and other Charges, was 1945. Values that were recorded after 1945 were discounted back to that date by deducting accrued interest and adding back fees and charges.²⁴ Averages of the so adjusted 1945 values were then derived for each type of account to yield the basis for the presumptive values used in the award process. Finally, the 1945 average base values were brought to present value by a factor calculated to account for compound interest. At this time this factor is 12.5.

2. The Scrubbing Process

As noted above, the Volcker Committee made it known in February 2000 that a review of the approximately 54,000 accounts identified in the ICEP audit as probably or possibly related to victims of Nazi persecutions, had shown that perhaps 4,000 - 9,000 accounts might involve duplications and technically unwarranted inclusions, reducing the total number of accounts to between 45,000 and 50,000. In the subsequent "scrubbing" process, in which such accounts were to be eliminated, the banks presented the auditors with additional documents in support of their elimination requests, so that in the end 17,826 accounts were eliminated - almost twice the number the Volcker Committee, following its review, had announced as a maximum. As a result, the database that would be handed to the CRT for the claims matching process had been reduced by one third to 36,131 accounts.

During the scrubbing process there appears to have been also a reassignment of accounts from known to unknown values of some size as well as some reshuffling among types of account. Consequently, the pre- and post scrubbing databases are not strictly comparable, even if later changes made by the CRT, such as the augmentation of the number of accounts from other sources, reclassification of accounts, etc. can be accounted for.²⁵ Nevertheless, it is clear that the scrubbing exercise resulted in a

²² *Idem*, p. 72.

²³ *Idem*, p. 75.

²⁴ As noted above, it was found later, in the course of the claims resolution process, that there was sufficient doubt about whether interest actually had been routinely credited to normally interest-earning accounts for the Court to issue an Order whereby interest would be deducted only if there was clear evidence in the bank records that interest accruals had actually been credited to the account in question.

²⁵ The CRT identified accounts from sources not included in the ICEP audit, such as archival documents relating to assets held by Nazi persecutees, claimants' submissions, and so-called "sub-accounts." Sub-accounts are accounts that are evidenced, but not independently reported, in records of other accounts reported by the auditors. For example, the auditors may have reported an account owner holding one custody account, but upon review, the CRT finds that the bank records indicate that the account owner owned a demand deposit account as well. The demand deposit account is entered into

database that differed significantly in structure from the initial ICEP data. Thus, the share of known value accounts in the AHD, at 29.7 percent, is only two-thirds of that reported for ICEP, and the share of all Category 3 accounts, though they remain the most important group, is reduced from over one half to two-fifths. (See Table 3.)

Table 3. Comparison Number and Share known and unknown Value Accounts, ICEP, AHD and Awarded Accounts through Set 94 (in units and percent)

Category	ICEP			AHD			Awarded Accounts		
	Number	Percent of		Number	Percent of		Number	Percent of	
		Total Number	Known Values		Total Number	Known Values		Total Number	Known Values
1	3,183	5.9	9.2	3,102	8.3	10.9	611	18.9	43.7
2	7,258	13.5	23.9	6,362	17	36.8	312	9.6	22.6
3	30,792	57.1	13.8	15,290	40.9	8.4	2,029	62.7	16.9
4	12,724	23.6	53	12,269	32.8	43	87	2.7	7.8
5	-	-	-	350	0.9	0.9	198	6.1	9.1
1,2	10,441	19.4	33.2	9,464	25.3	47.7	923	28.5	66.3
1,2,3,and5	41,233	76.4	47	25,104	67.2	57	3,150	97.3	92.2
Total	53,957	100	100	37,373	100	100	3,237	100	100

Categories	ICEP			AHD			Awarded Accounts		
	Number of Known Values	Percent of All Accounts in Category		Number of Known Values	Percent of All Accounts in Category		Number of Known Values	Percent of All Accounts in Category	
		Known Values	Unknown Values		Known Values	Unknown Values		Known Values	Unknown Values
1	2,168	68.1	31.9	1,211	39.0	61.0	427	69.9	30.1
2	5,629	77.6	3	4,075	64.1	35.9	221	70.8	29.2
3	3,252	10.6	89.4	934	6.1	93.9	185	8.1	91.9
4	1,2460	97.9	2.1	4,761	38.8	61.2	76	87.4	12.6
5	-	-	-	102	29.1	70.9	89	44.9	55.1
1,2	7,797	74.7	25.3	5,286	55.9	44.1	648	70.2	29.8
1,2,3,and5	11,049	26.8	73.2	6,322	25.2	74.8	902	28.6	71.4
Total	23,509	43.6	56.4	11,083	28.7	71.3	978	30.2	69.8

Note: The AHD database includes in addition to the original 36,131 accounts, 1,242 Category 5 and sub-accounts. Category 5 includes 7 already awarded Category 6 accounts. Accounts identified in Categories 6 and over further add to the 37,373 total referred to here; they are included in the projections.

the AHD as a "sub-account." The custody account is known as the "parent account." A sub-account takes on the category of the parent account. In contrast, accounts added without any "parent account" are entered, depending upon their source, in categories numbered 5 or over. These are lumped together in the present analysis simply as "Categories 5 and over."

B. Analysis

1. Basis for proxy value determination

As noted above, the conclusion that the ICEP average values for Categories 1 plus 2 do not adequately reflect the information contained in the AHD, against which the CRT matches claims and from which awards are made. The disparities found between the two databases, which also are more than confirmed by award experience thus far, largely stem from the combined effects of the scrubbing exercise, the fact that the auditors did not always report balance values found in the bank records or made available from non-bank sources,²⁶ their tendency to classify accounts as of unknown type, when bank records would have allowed a clear assignment and last but not least the exclusion of Category 3 balance values from the determination of proxy values.

The elimination of almost 18,000 accounts from the ICEP database, as shown in Table 3, materially affected the number of accounts with known values in the AHD. However, largely because the scrubbing process not only involved the dropping, but also the reassignment of accounts, it is not feasible at this point to quantify the effect of these exclusions on AHD known account balances. Suffice it to say that average values found for known balances in Categories 1 and 2 in the AHD exceed the ICEP values for four out of the six account types (albeit in the case of savings accounts by only a very small margin). And the weighted average value for all accounts, at SF 3,320 was above the ICEP average of SF 3,085 even though the average values for unknown accounts and demand deposits, which together constitute about three-quarters of the accounts in these two categories, fell below their ICEP averages.

It is clear, however, that the exclusion of Category 3 accounts from the determination of proxy values has had the effect of lowering these values and, as the current review shows, lowering them unwarrantedly so. To recap, the reasons for this exclusion were that the auditors considered the share of known value observations in Category 3 (11 percent) too low to be statistically reliable and that this reliability was further compromised by the fact that those balances for which values were found tended to cluster in relatively few high value custody accounts. The combination of the relatively high Category 3 account values and the relatively low share of known values led the auditors to believe that they "were missing substantial numbers of low average value accounts in category 3."²⁷ However, the comparative review of known values in the ICEP database, the AHD and the accounts awarded thus far (through Set 94) shows that the inverse may be true as well, namely that the auditors were missing a significant number of high value accounts in Categories 1, 2 and 4.

Of the 978 known value accounts awarded through the beginning of March 2006, 889 were included in the AHD as originally handed over by the auditors.²⁸ Of these, more than one half – 461 or 52 percent – were reported in the original AHD as

²⁶ For example, the auditors included accounts found in ICEP initiated archival research, for instance in the 1938 Census records, in their work but did not record any associated balance values.

²⁷ Hydoski Memorandum, p. 2.

²⁸ 89 accounts were identified by the CRT from sources other than the ICEP audit records; of these 82 were in Category 5 and 7 in Category 6 as shown in Table 6.

having no known balance.²⁹ The values for these accounts were determined by the CRT in the course of its award review. In many cases the value information was actually available in the bank files, in others it involved obtaining price quotations for listed assets and in others, as noted above, value information came from outside sources. Remarkably, the values thus obtained tended to average well above the corresponding ICEP proxy values by significant margins. (See Table 6) This was especially so for accounts in Category 2 and for custody accounts across the board. Thus, the average of the balance values found additionally for Categories 1 and 2 is SF 8,029, more than two and a half times the SF 3,085 average proxy value reported by the auditors for these two categories. And the average value of custody accounts found for Categories 1 and 2, at SF 46,120, is 3.5 times their ICEP proxy value. These differences point to the auditors having missed a considerable number of relatively high balance values in the two Categories on which they based their determination of proxy values.

All this goes some way toward explaining why average known values in the current AHD outstrip ICEP proxy values for all types of accounts, with the one exception of accounts the type of which is unknown. (Some of the reasons for the latter are discussed below.) However, these differences primarily show that one of the two main reasons cited by the ICEP auditors for excluding Category 3 from their proxy value calculations, namely that the high average values they found for known account balances in Category 3 were not representative of those found in Categories 1 and 2, holds neither for the AHD nor for the awarded accounts database. Indeed, when values in Categories 5 and over (accounts which were found in sources outside the bank documentation) are compared with overall AHD values, Category 3 custody account values appear well within the established range.

What then about the second reason for exclusion, namely that known balances in Category 3 were largely concentrated in a few high value custody accounts? As shown in Table 3, the spread of the number of known value accounts across the six account types in Category 3 is no more skewed towards a particular account type than is that in the other categories. And more telling, the average value of custody accounts in Category 3 is only 2.4 times that of all known balances in this Category, while the comparable multiples are 4.6 and 8.7 for Categories 1 and 2 respectively. (See Table 4.) It would thus appear that the account and value structure of Category 3 accounts is no more biased than that of Categories 1 and 2.

²⁹ The number of known value accounts excludes negative and zero balance accounts as well as known value accounts for which no balance date could be established. The total number thus excluded is nine.

Table 4. AHD known Value Accounts by Review Category, Type of Account and by Groups of Categories
 (incl. Sub-Accounts and Awarded Accounts through Set 94)
 (in units and SF, 1945 values)

Account Type	Category 1		Category 2		Category 3		Category 4		Category 5		All Accounts	
	Number of Accounts	Average Value in SF	Number of Accounts	Average Value in SF	Number of Accounts	Average Value in SF	Number of Accounts	Average Value in SF	Number of Accounts	Average Value in SF	Number of Accounts	Average Value in SF
Savings Accounts	210	1,335	630	701	32	7,295	2,443	1,026	1	1,000	3,316	1,045
Demand Deposits	574	3,217	1,900	1,311	221	19,132	955	441	38	7,779	3,686	2,514
Custody Accounts	160	28,265	268	21,338	153	38,852	18	13,898	37	70,257	636	29,929
Safe Deposit Boxes	4	15,717	12	4,045	20	7,131	2	0	5	23,997	43	8,728
Unknown Accounts	258	2,907	1,259	1,071	466	8,329	1,343	350	22	25,287	3,348	2,093
Other Accounts	5	7,237	6	539	42	11,379	0	0	1	21,000	54	9,969
Total	2,111	6,192	4,075	2,466	934	45,961	4,761	767	92	35,077	11,083	3,381

	Categories 1 and 2		Categories 1, 2, 3 and 4		ICDP Categories 1 and 2	
	Number of Accounts	Average Value in SF	Number of Accounts	Average Value in SF	Number of Accounts	Average Value in SF
Savings Accounts	840	860	873	1,096	1,800	830
Demand Deposits	2,474	1,753	2,731	3,239	2,461	2,140
Custody Accounts	428	23,927	618	30,396	397	13,000
Safe Deposit Boxes	16	6,963	41	9,122	42	1,240
Unknown Accounts	1,517	1,383	2,005	3,260	3,009	3,950
Other Accounts	11	3,584	54	9,969	88	2,200
Total	5,286	3,320	6,322	15,700	7,797	3,885

The considerations set out above argue forcefully for the inclusion of Category 3 known balance values in any determination of proxy account values. This is the more so as Category 3 accounts constitute two-thirds of all accounts awarded thus far. Furthermore, although not all Category 3 Account Owners' names were included in the list published in 2001, 13.3 percent of all AHD accounts in that Category have been awarded through early March 2006. This is not much short of the 19.7 percent of Category 1 account awards, while Category 2 awards are only 4.9 percent of their AHD total, even though all Account Owners' names in these two Categories were published. Finally, the Volcker Committee considered that the stronger the likelihood that account owners were victims of Nazi persecution, the more reliable associated valuation estimates and noted that

"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."³⁰

However, the award experience shows that Category 3 accounts have as high a likelihood of being awarded as accounts in Categories 1 and 2. In fact, the award data seems to put the Volcker Committee's consideration to the test with 13 percent of Category 3 accounts in the AHD already awarded against barely 5 percent for Category 2, which had a 77 percent known value ratio in the ICEP database.³¹

Conversely, the exclusion of Category 4 from the presumptive value calculations remains warranted. The Volcker Committee held that accounts in this Category, consisting largely of small savings accounts, were least likely to have belonged to Nazi persecutees. The AHD includes 12,269 Category 4 accounts of which less than 1 percent (87 or 0.7 percent) have been awarded to date. Though much of this poor showing can be related to the fact that none of the Category 4 Account Owners' names have been published, some must reasonably be attributed to the looser connection these accounts are likely to have to victim ownership. This conclusion is further supported by the average values found for the 25 savings accounts with known balances which were awarded in Category 4. These, at a 1945 average value of SF 1,464 were even marginally higher than the average of all known value savings accounts awarded thus far. This implies that of Category 4 known value savings accounts only those with reasonably significant balances have been claimed successfully to date. This, in turn, would support the conclusion that the majority of the very small savings accounts may only have had a loose relationship to victims of Nazi persecution.

³⁰ ICEP Report, Annex A, p. 72, para. 40.

³¹ It might be noted, however, that the known value account ratio for Categories 1 and 2 is 51 percent as compared with 75 percent in the ICEP database as reported in the Hydoski Memorandum.

2. Presumptive value amounts

The fact that the CRT would find a significant amount of information in addition to that reported by the ICEP auditors was heralded by the auditors themselves. PW noted in a Memorandum to Files, dated October 10, 2000, that during the scrubbing process "...the Bank presented to PwC accounts that it felt should be removed from Categories 1-4 based on documents found in ELA [the Bank's Electronic Image Archive]. Conversely, The Bank did not provide PwC with copies of the documents found in ELA for accounts that it did not present to PwC during the "scrubbing" process."³² PW went on to note that the bank provided the additional documentation only if the documents contained supporting evidence for the elimination of the account in question. PW subsequently sought to ascertain the importance of the additional documentation that had been found in the bank's ELA, but not passed on to the auditors. On basis of a test search, PW concluded that the "...Bank folders contained additional documents for over 50% of the accounts in Categories 1-4. These documents included, inter alia ...deposit amounts." Based on these test results, PW recommended that the CRT II should request access from the bank to any additional documentation in the corresponding bank files. Indeed, the CRT, in the course of its claim reviews, has requested such additional documentation. However, the bulk of the additional value information surfaced by the CRT was located in the readily available bank files. As discussed earlier, this is not surprising as the focus of the audit was on the discovery of the relevant accounts, and the recording of balance values and type of account information, though important, was not the primary objective, especially given the prevailing time and expenditure constraints.

As shown in Table 5, the additional balance value information found by the CRT helps explain the higher average values for known balances in the current AHD as compared with the ICEP proxy values. Furthermore, known values for awarded accounts that stem from sources outside the Swiss bank audit were, on average, yet higher: for the 81 accounts awarded in Category 5, known values were almost seven times their presumptive value. (See Table 6.) Average known values in the current AHD, accordingly, were higher than the associated presumptive value for every type of account, excepting the unknown accounts. This was true for the sum of all Categories 1 through 5. The continued exclusion of Category 4 from the proxy value determination, as proposed above, results in a measurable increase in the average values of demand deposits and unknown accounts, but has a marginal effect only on those for the other account types. The average value for unknown accounts, however, remains at SF 3,260, about one-fifth below its proxy value of SF 3,950.

³² PwC Analyst Team, Memorandum to Account Folder Files, Subject: Additional Documentation Potentially Located in the Bank's Corresponding Account File Folders, 10 October 2000.

Table 5. Number and Value Awarded Accounts with known Values not in Original AHD by Review Category and Type of Account (in units and SF, 1945 values)

Type of Account	Category 1		Category 2		Categories Plus 2		Category 3		Category 4		Total	
	Number	Avg Value in SF	Number	Avg Value in SF	Number	Avg Value in SF	Number	Avg Value in SF	Number	Avg Value in SF	Number	Avg Value in SF
Savings Accounts	36	700	2	704	38	701	4	8,243	7	1,563	49	1,440
Demand Deposits	51	2,291	22	3,577	73	2,679	42	4,799	1	365	116	3,427
Custody Accounts	24	26,561	18	70,191	42	45,280	45	46,051	0	0	87	45,669
Safe Deposit Boxes	1	2,720	1	7,320	2	5,020	0	0	0	0	2	5,020
Unknown Account	122	918	19	7,020	141	1,740	25	22,046	40	736	206	4,010
Other Accounts	0	0	0	0	0	0	1	10,000	0	0	1	10,000
Total	234	3,822	62	23,940	286	8,036	117	24,513	48	249	461	11,669

Table 6. Number and Average Value of Awarded Known Value Accounts
(through Set 94) compared with Presumptive Value by
A. Type of Account and B. Review Category
(in percent, ratios and SF, 1945 values)

A. By Type of Account

Type of Account	Number	Percent of Total	Average Value In SF	Presumptive Value In SF	Ratio Avg. Known Value to Presumptive Value
Savings Accounts	101	10.4	1,129	830	1.36
Demand Deposits	348	35.9	3,103	2,140	1.45
Custody Accounts	164	16.9	44,310	13,000	3.41
Safe Deposit Boxes	9	0.9	9,174	1,240	7.40
Unknown Accounts	344	35.5	5,239	3,950	1.33
Other Accounts	3	0.3	8,130	2,200	3.70
Total	969	100.0	16,586	5,801	2.86

B. By Review Category

Review Category	Number	Percent of Total	Average Value In SF	Presumptive Value In SF	Ratio Avg. Known Value to Presumptive Value
1	425	44.0	5,572	4,371	1.27
2	219	22.6	7,551	4,936	1.53
3	160	16.5	19,773	6,371	3.10
4	76	7.8	886	3,439	0.26
5	81	8.4	38,285	5,623	6.81
6	7	0.7	1,512	7,535	0.20
Total	969	100.0	16,343	5,801	2.82

Note: Excludes 6 zero or negative value accounts and 7 outliers; total average ratios are weighted by number of accounts paid at presumptive value.

Part of the lower AHD values for the unknown type of accounts can be attributed to errors and omissions by the auditors in assigning accounts to the various account types. In the course of its claim review, the CRT to date has reassigned 176 out of 978 known value accounts (18 percent), the bulk of which, not surprisingly, involved unknown accounts. Thus, 119 unknown accounts were found actually to have known account type designations and 20 accounts were moved from known designations to the unknown account type. Interestingly, the accounts moved from the unknown type classification were on average high value accounts, whereas those moved into that classification were on average low value accounts: the 119 accounts moved out had an average value of SF 14,698, 3.7 times the present presumptive value for unknown type of accounts, while the average value for those moved into the classification was SF 1,755, well under half (44 percent) their presumptive value. The effect of this reallocation, however, is on average being offset by the CRT's record of ascertaining a significant number of missing balance values. The CRT found additional value information for 206 of the 733 unknown type of accounts awarded thus far. The average value of these accounts, at SF 4,010, exceeded the SF 3,950 presumptive value for this account type, albeit by not very much. But the total award experience to date shows the average known value of unknown type of accounts to

exceed their presumptive value by a more significant margin (one-third). If this trend persists, AHD average values for unknown accounts are likely to catch up with the present presumptive value within a relatively short period of time. Therefore, it would be prudent to leave the latter unchanged until more experience is gathered.

For savings accounts, demand deposits and safe deposit boxes the average values derived from the award experience to date are very close to those drawn from Categories 1, 2, 3 and 5 and over in the current AHD. Therefore, I propose that presumptive values for these account types be adjusted to the nearest SF 100 between these two averages. Although the number of safe deposits with known values is small in both the AHD and in the award experience, the fact that the two data sets yield virtually identical average values helps validate the proposed increase in that presumptive value.

For custody accounts, both the AHD average value and that of the awarded accounts are considerably higher than their present presumptive value. However, the average value that emerges from accounts already awarded outstrips the AHD number significantly. Furthermore, the additional value information surfaced by the CRT for this type of account seems to confirm the evidence found in the already awarded accounts. Yet, there are cogent reasons for my proposal to round the adjustment of the present presumptive value only to the nearest SF 500 of the average AHD value. The main reason for prudence is that tests of value information in archival records for an important part of the list of Account Owner names published in early 2005 show that securities held in these accounts appear to average lower in value than current award experience shows. Thus, prospective award experience may likely narrow, if not close the apparent gap. For "other" accounts, the case appears to be reversed: AHD average values are higher by some margin than those found in the award experience. But the number of accounts is quite small: only 3 of 17 "other" accounts awarded had known values, and the AHD total of known value accounts is 54. (That for ICEP at 88 was small as well.) So no great reliance can be put on either number. Therefore, I propose that the presumptive value for "other" accounts be increased to the nearest SF 500 of the AHD average value.

Statistically, the proposed new array of presumptive values is well based. The total number of known value accounts in Categories 1, 2, 3, and 5 and over in the current AHD, at 6,322, approaches the 7,797 from which the auditors derived present presumptive values. But when looked at by type of account, the number of observations on which the AHD-based proxy values rest actually generates greater confidence than that on which the ICEP auditors based their values. This is so because the 1,475 account difference between the ICEP database and the AHD is concentrated in two account types: the ICEP database includes 1,800, known value savings accounts, whereas the AHD has some 900 less for a still reasonably large sample, and, as noted above, ICEP has a very large number of unknown type of accounts (3,009), whereas the AHD has 2,005. By contrast the AHD includes a significantly larger number of known value observations than does ICEP in the demand deposit and custody account classifications. This is especially significant with respect to custody accounts because the ICEP number of observations, at 397, was relatively low for the importance of this group of accounts, so that the increase to 618 in the AHD does much to improve the confidence that can be put in the statistical result. (See Table 1.)

The proposed presumptive values by account type thus are:

Account Type	Present Presumptive Value (CERP)	1945 values in SF	Proposed Presumptive Value	
	1945 values in SF		Current Value in SF	Current Value in US\$ US\$ 1 = SF 1.30
Savings Accounts	830	1,100	13,750	10,577
Demand Deposits	2,140	3,200	40,000	30,769
Custody Accounts	13,000	30,500	381,250	293,269
Safe Deposit Boxes	1,240	9,150	114,375	87,981
Unknown Account	3,950	3,950	49,375	37,981
Other Accounts	2,200	9,500	118,750	91,346
Total	5,858	11,150	164,812	126,773

The cost of adjusting already awarded accounts to the proposed values would come to SF 233,051,281 which at the current exchange rate of US\$ 1 = SF 1.30, translates to US\$ 179,270,216. This adjustment would raise the amount awarded under CRT II to date (through Set 94³³) from the current total of US\$ 287,622,136.59 to US\$ 466,892,353. The total including awards under CRT I would be US\$ 478,592,353.

These cost estimates assume that, as in the past, the presumptive values not only represent proxies for the values of unknown account balances, but also constitute the minima to which known balances that fall below their associated presumptive value are to be raised, unless there are specific reasons for not doing so. For accounts already awarded, this means that the awards for 83 of the 313 accounts that were paid at known values, and that now fall short of the proposed presumptive values for their type of account, would need to be moved to presumptive value. The cost for doing this, included in the above totals, is US\$ 2,400,817. The inclusion of these 83 accounts in the number of accounts paid at presumptive value raises the share of the latter to 92.9 percent of all accounts.

According to the most recent projections, 1,910 accounts could reasonably be expected yet to be awarded from the remaining stock of accounts identified in CPS (at the 60 percent level). Of these, using the adjusted past shares of 92.9 and 7.1 percent respectively, 1,774 accounts would be awarded at presumptive and 136 accounts at known values. Accordingly, and on basis of the pattern of already awarded accounts by account type, the award amount for the projected 1,910 accounts is estimated at SF 336,195,584 or US\$ 258,611,988 and the net cost of adopting the proposed presumptive values would come to SF 137,823,045 or US\$ 106,017,727.³⁴

The cost of adjusting presumptive values as proposed for both awards made to date and those estimated as yet to come from CPS thus would total US\$ 285,287,143. The grand total for already awarded and yet to be awarded accounts under CRT I and CRT II would then amount to US\$ 737,204,341.

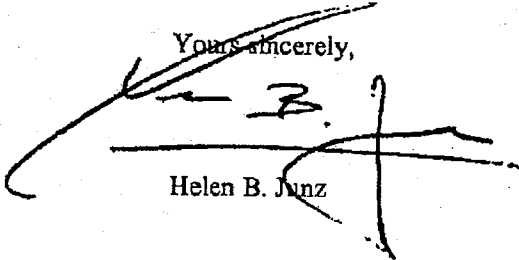
³³ Including Set 75.

³⁴ The cost of raising presumptive values to the proposed levels is partly offset by the associated reduction in the number of accounts paid at known values.

The above amounts do not include awards yet to come from the ongoing matching of selected claims against the total accounts databases ("TAD") containing relevant period accounts at the three large Settlement banks, UBS, SBC and Credit Suisse (now two following the merger of UBS and SBC).

Please let me know if there are any questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Helen B. Junz', is written over a horizontal line. The signature is stylized and somewhat cursive.

Helen B. Junz

Appendix I

Review Categories and Their Characteristics³⁵ <i>(Number of Accounts by Category in the Current AHD: Total 37,373)</i>
<p>Category 1 (3,102 accounts)</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 (6,362 accounts)</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 (15,290 accounts)</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 (12,269 accounts)</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
<p>Category 5 (350 accounts)</p> <ul style="list-style-type: none"> • Created during the claims resolution process based on information contained in documents from non-AHD sources

* Note: this number does not yet include additional accounts identified and published in January 2005, e.g. certain accounts included in the 1962 Swiss Federal Survey, accounts identified in German archival sources, and accounts included in the Polish and Hungarian lists of accounts.

³⁵ For categories 1 through 4, ICEP Report, Annex 4, p. 66.

Appendix II

Account Types and Their Definition (Number of Accounts by Type in the Current ABE Total 37,373*)	
Account Type	Definition ³⁶
Savings/Passbook Account (4,422)	An account held to provide interest return on sums held. Often holding relatively fixed sums, with few movements in balance, access to balances on savings accounts may be restricted or time-delimited. Customers have passbooks to be presented upon deposit or withdrawal of funds.
Demand Deposit Account (9,221)	An account providing instant access to funds. Often a checking account with a fluctuating balance held for liquidity, not investment, and typically providing minimal or no interest on balances held.
Custody Account (5,683)	An account held by a custodian for an institution or an individual. The bank holds the customer's property in safekeeping, as provided by a written agreement, and collects dividends and bond interest. The bank may also manage the account under a mandate or accept client instructions in relation thereto. Note that the value of a custody account is not reflected in the balance sheet of the bank; for this reason a custody account is considered an "off-balance-sheet" account. This definition excludes safe deposit boxes
Safe Deposit Box (1,074)	A box rented by the customer for a fee. Generally, the bank and customer each have one key, both of which are necessary to open the safe. Unlike with custody accounts, the bank has no knowledge of the contents of the account
Unknown Type of Account (16,223)	Account for which no information is available regarding the account type
Other Account (750)	Account the type of which does not correspond to any of the types outlined above

* Note: this number does not yet include additional accounts identified and published in January 2005, e.g. certain accounts included in the 1962 Swiss Federal Survey, accounts identified in German archival sources, and accounts included in the Polish and Hungarian lists of accounts.

³⁶ ICEP Report, Annex 5, pp. 97 - 99; Appendix V, "Glossary," pp. A-213 - A-215.

EXHIBIT B

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

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.

★ OCT 11 2007 ★

BROOKLYN OFFICE

May 14, 2007

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:

A little over a year ago, on March 21, 2006, I wrote to propose that the set of presumptive values the CRT uses to establish award amounts for those accounts for which no balance information is known ("unknown value accounts") be amended. This proposal stemmed from the fact that average known account balances drawn from the data base currently available to the CRT diverge significantly from those the ICEP auditors established to serve as proxies for known values in awarding unknown value accounts. I accordingly proposed that the presently used set of presumptive values be revised to make it conform better to the average known values both of the accounts in the data base available to the CRT for matching claims (the "Total AHD-plus") and those in the already awarded accounts.¹ At that time I provided a detailed review of how the ICEP auditors derived the present presumptive values and the reasoning why the universe of known-value accounts now available to the CRT provides a more firmly grounded basis for payment of unknown value accounts. I attach part of that explanatory section of my Memorandum as Appendix I for your convenience.

With the further experience gained over the year since I wrote, I have become yet more firmly convinced that the presumptive values established by the ICEP auditors, even taking into account some of the questions raised by outside observers, indeed, are not fully representative of the CRT data, and that, therefore, a considered revision is appropriate.

Such a revision is the more appropriate at this time as the CRT recently has, to all intents and purposes, completed its review of all matches of claims to accounts in its data base. Thus it is now possible to provide rather more reliable estimates of Settlement Fund payments for yet to be awarded accounts than hitherto. As usual, it must be kept in mind however that such projections are best estimates only, which, of their nature, remain subject to error.

¹ Please note that all awarded accounts are an integral part of the Total AHD-plus, however as an account is awarded details about the account in question, such as value or type of account are corrected in the Total AHD-plus as appropriate.

I. Determination of proposed presumptive values.

As to the basic reasoning underlying my proposal, you will recall that the ICEP auditors confined their presumptive value data base to Review Categories 1 and 2 and excluded Categories 3 and 4.² Category 4 was excluded because it consisted largely of small savings accounts, and among the four Categories, was the one with the least likely association with victim accounts. Category 3 was excluded because the auditors believed the value information it contained to be statistically unreliable. I agreed with the auditors' reasoning with respect to Category 4, but found the reasoning regarding the exclusion of Category 3, especially as it related to the Total AHD-plus and to its sub-set of Awarded accounts data, not appropriate. (Please see Appendix I for a summary of the background). I thus recommended that the set of presumptive values the CRT uses to award accounts for which balances are unknown be based on the average known values of all accounts in the Total AHD-plus, except Category 4 (hereinafter "AHD-plus").

This definition thus includes the known values of accounts added from sources other than the ICEP investigation, which are contained in the sub-accounts added by the CRT to the original AHD and in the newly created Categories 5 and over ("Category 5plus").³ I considered that proxy values for accounts for which balances are unknown (presumptive values) so derived would be more representative of the universe of awardable accounts than those the ICEP auditors calculated in 1999 reasonably could have been. I also noted that maintaining the exclusion of Category 4 helped ensure that the proxies continued to reflect as closely as possible accounts that ICEP deemed most likely to have belonged to victims of Nazi persecution. This conclusion is also borne out by the actual award experience as awards of Category 4 accounts so far have constituted less than 3 percent of the total 3,735 accounts awarded through Set 116 (approved by the Court on February 27, 2007).⁴

As to the statistical base and soundness of the proposed revisions, it will be recalled that the basic differences between the auditors' data base used to determine presumptive values and that underlying the proposed revisions are two-fold:

1) the auditors worked with the full ICEP data base of 53,957 accounts, from which they culled Categories 1 and 2, consisting of 10,441 accounts for the purpose. These included 7,797 known-value accounts;

² The auditors had divided their data base into four so-called Review Categories largely on basis of the degree of likelihood that the accounts they contained had been owned by victims of the Holocaust.

³ The Total AHD-plus database includes in addition to the original 36,131 accounts in Review Categories 1-4 provided by the ICEP auditors and known as the AHD, 1,350 accounts consisting of accounts identified by the CRT either as AHD sub-accounts or as accounts in the newly created Categories 5 and over (Category 5plus) for a current total of 37,481. This total continues to grow as the CRT is able to identify accounts through additional sources, as for example the voluntary assistance provided by the litigating banks and is diminished as the CRT deletes accounts that the auditors included erroneously. Thus, the net addition to the Total AHD-plus was 111 accounts since I wrote to you last year.

⁴ For purposes of determining average values and the associated analysis, one account of extremely high value, awarded in Sets 75 and 110, is excluded as it would have skewed the results. The number of awarded accounts underlying the analysis thus is 3,734. However, the account is included in the total payments data.

the CRT works with the 37,481 accounts in the Total AHD-plus, of which Categories 1,2,3 and 5plus, consisting of 25,209 accounts, are used for the present purpose. These include 6,654 known-value accounts.

The CRT thus works with a broader data base, but with somewhat fewer known-value observations.

2) The CRT works with a higher quality data base than was available to the auditors, especially with respect to the reliability of account value and type of account data, both crucial for determining proxy value amounts. The reasons for this conclusion were set out in detail in my previous Memorandum (see pp.11 ff) and summarized in Appendix I.

I further noted last year that statistically, the proposed new array of presumptive values is well based and that, in fact, the number of observations from which the AHD-plus proxy values are derived generates greater confidence than that on which the ICEP auditors' values rest. With the number of accounts added since, this conclusion has gained in strength. As noted above, the AHD-plus currently contains 25,209 accounts of which 6,654 (26.4 percent) have a known value. This number equals 85 percent of the 7,797 known-value accounts used by the ICEP auditors for the proxy value calculations that underlie the current presumptive values. At that level, the proposed revisions are soundly based. (See Table 1).

**Table 1. Number of accounts underlying current presumptive values and proposed revision
ICEP auditors, Total AHD-plus and AHD-plus
(Units and ratios)**

Number known-value accounts						
Account Type	Current presumptive value base ICEP auditors accounts in Categories 1 and 2 (1)	Awarded known-value accounts through Set 116 (2)	Total AHD-plus Categories 1-5plus (3)	Revised presumptive value base AHD-plus = Categories, 1,2,3, and 5plus (4)	Ratio number accounts Total AHD-plus to ICEP Cat. 1 and 2 (5)=(3)/(1) AHD-plus to ICEP Cat. 1 and 2 (6)=(3)/(4)	
Savings Accounts	1,800	124	3,339	896	1.86	0.50
Demand Deposits	2,461	427	3,749	2,793	1.52	1.13
Custody Accounts	397	205	670	652	1.69	1.64
Safe Deposit Boxes	42	10	45	43	1.07	1.02
Unknown Account	3,009	399	3,626	2,234	1.21	0.74
Other Accounts	88	1	36	36	0.41	0.41
Total	7,797	1,166	11,465	6,654	1.47	0.85

Note: Awarded known-value accounts exclude 8 negative or zero value accounts and 7 outliers.

Though there are three types of accounts for which the number of observations in the auditors' presumptive value data base outstrips those in the AHD-plus, these concern two groups, Savings accounts and Unknown type of accounts, for which the number of

observations in either data base (ICEP and AHD-plus) is adequately large to support the results. Furthermore, no change in presumptive value is proposed for the Unknown type of accounts. The number of observations in the third group, Other type of accounts, at 88 for ICEP and 36 for the AHD-plus is so small that no great reliance can be put on either number. However, the total number of Other type of accounts in the AHD-plus, at 241, also is very small, so that the proxies derived from the known-value accounts provide reasonable guidance. In contrast, the AHD-plus significantly outnumbers the known value accounts in the ICEP data base in both the Demand deposits and Custody accounts groups. This is the more important as two thirds of all accounts thus far awarded fall into these two groups.

**Table 2. Average 1945 value of known-value accounts underlying current presumptive values and proposed revision
ICEP auditors Categories 1 and 2, Awarded accounts through Set 116,
Total AHD-plus and AHD-plus, excl. Category 4
(1945 average values in SF and ratios)**

Average 1945 values in SF						
Account Type	Current presumptive value	Awarded known value accounts through Set 116	Total AHD-plus Categories 1-5plus	Revised presumptive value base AHD-plus Categories, 1,2,3, and 5plus	Ratio average value known-value accounts	
	ICEP auditors accounts in Categories 1 and 2 (1)	(2)	(3)	(4)	Awarded accounts to ICEP Cat. 1 and 2 (5)=(2)/(1)	AHD-plus to ICEP Cat. 1 and 2 (6)=(3)/(1)
Savings Accounts	830	1,142	1,043	1,088	1.38	1.26
Demand Deposits	2,140	3,146	2,527	3,241	1.47	1.51
Custody Accounts	13,000	43,212	29,499	29,930	3.32	2.30
Safe Deposit Boxes	1,240	10,003	9,948	10,379	8.07	8.37
Unknown Account	3,950	4,838	2,285	3,483	1.22	0.88
Other Accounts	2,200	1,767	3,957	3,957	0.80	1.80

Note: Awarded known-value accounts exclude 8 negative or zero value accounts and 7 outliers.

The average values derived from the current AHD-plus confirm in full measure the conclusions I reached last year regarding the revision of the current set of presumptive values. The AHD-plus averages continue to exceed current presumptive values for all five types of account for which I proposed revisions and the associated ratios have remained stable. (See Table 2). Furthermore, for four of the six account types the average known values calculated from the AHD-plus have remained close to the average values drawn from actual award experience (through Set 116). The two exceptions noted last year, namely Custody accounts and Unknown type of accounts have remained so with award

experience continuing to register notably higher average values than the AHD-plus, though differences for the Unknown type of account have narrowed substantially.⁵

According to the findings set out above and in my earlier Memorandum, I propose that the present set of presumptive values be amended on basis of the values shown in Table 3. The table shows the proposed presumptive values at 100 percent of adjustment and provides an additional range of options at 50 and 30 percent, respectively.

**Table 3, Present and proposed presumptive values,
1945 and current values
(in SF and ratios)**

Account Type	1945 values in SF			Current values (1945 value x 12.5) in SF			Ratios		
	Present presumptive value (ICEP)	Proposed presumptive value Adjustment at			Present presumptive value (ICEP)	Proposed presumptive value Adjustment at			Proposed /present presumptive value At 100%
		100 %	50%	30%		100%	50%	30%	
Savings Accounts	830	1,100	960	910	10,375	13,750	12,000	11,375	1.33
Demand Deposits	2,140	3,200	2,670	2,460	26,750	40,000	33,375	30,750	1.49
Custody Accounts	13,000	30,500	21,750	18,250	162,500	381,250	271,875	228,125	2.35
Safe Deposit Boxes	1,240	3,500	2,370	1,920	15,500	43,750	29,625	24,000	2.82
Unknown Accounts	3,950	3,950	3,950	3,950	49,375	49,375	49,375	49,375	1.00
Other Accounts	2,200	3,950	3,080	2,730	27,500	49,375	38,500	34,125	1.80

The set of proposed presumptive values put forward here differs from that discussed last year in two respects:

First, with respect to the Other type of accounts group, in the continuing review of the account data it was found that about one-third of the accounts in that group could properly be assigned to a specific type of account, in particular demand deposits and savings accounts. This not only reduced the number of accounts in the Other accounts group appreciably, but also reduced its average known value. I, accordingly propose that the 1945 presumptive value for this group be raised to SF 3,950, equal to its rounded average account value. As noted above, such a change is justified even though the number of known-value accounts on which it rests is small, as it still represents 15 percent of the 241 Other type of accounts in the AHD-plus.

⁵ The reasons for these two exceptions and for the expectation that the differences in the case of Unknown accounts would narrow were set out in the previous Memorandum.

Second, it will be noted that the average value derived for safe deposit boxes from the AHD-plus is over eight times their current presumptive value. However, that finding is based on a statistically unreliably small number of observations. In this case, the 43 known-value accounts constitute only 4 percent of the total 1,017 safe deposit account boxes in the AHD-plus. Still, there are valid reasons for raising the presumptive value for safe deposits, albeit not to the extent suggested by the current set of average values. Though the number of known value accounts in the ICEP data base appears statistically more reliable because the 42 known value accounts it includes constitute 16 percent of all safe deposits in ICEP Categories 1 and 2, the exclusion of Category 3 accounts, which on average register significantly higher account balances than do Categories 1 and 2, points to the current presumptive value for safe deposit boxes being too low. Accordingly, I recommend that the presumptive value for this type of accounts be raised to the average 2.8 ratio found for the known values of all awarded accounts as compared with their ICEP proxy values.

II. Cost of adoption of proposed presumptive values and total estimated Settlement Fund payments.

Adoption of the proposed revisions to the current set of presumptive values requires adjustment of the already awarded accounts as appropriate as well as adjustment of yet to be awarded accounts. The cost estimates assume that, as in the past, the presumptive values not only represent proxies for the values of unknown account balances, but also constitute the minima to which known balances that fall below their associated presumptive value are to be raised, unless there are specific reasons for not doing so. For accounts already awarded, this means that some of the 372 accounts that to date were paid at known values, and that after adjustment would fall short of the proposed presumptive values for their type of account, would need to be moved to presumptive value. The number that would be so shifted obviously depends on the adjustment percentage chosen: at 100 percent, 90 accounts would be shifted to payment at the new presumptive values; at 50 percent, 54 accounts would be shifted; and at 30 percent 23 accounts. The inclusion of these shifted accounts in the number of accounts paid at presumptive value raises the share of the latter from 90.0 percent to 92.4, 91.5 and 90.6 percent of all accounts at 100 percent, 50 percent and 30 percent respectively. This in turn will affect the cost of the yet to be awarded accounts as both the share of projected accounts to be paid at presumptive value and the average value of the remaining accounts to be paid at known values are based on past experience.

With respect to the forward projections, the CRT, as noted above, has now to all intents and purposes completed its review of matches of claims to accounts in its data base. This review, which sought to exclude matches to inadmissible claims, to accounts properly closed, or that the auditors had included in the AHD in error, reduced the still remaining 2,731 not fully treated accounts with at least one positive match by 36 percent to 1,748. Because this review clearly could not surface all possible exclusions, but also because a number of matches still await additional information, for example such as is provided by the banks through voluntary assistance, which could bring about an addition to awardable accounts, it seems prudent to build a margin of error into the projections. The projection is therefore based on the 80 percent level of the potential 1,748 awardable accounts, bringing the estimated number of accounts yet to be awarded to a rounded 1,400.

The current projection of 1,400 accounts yet to be awarded also seems reasonable in relation to earlier projections. When I wrote to the Court in March 2006, we projected a total of 1910 accounts that could reasonably be expected still to be awarded. This projection was based on the 60 percent level of estimates of the number of claimed accounts with at least one positive match and of the projected share of un-reviewed matches that would yield a positive match. Between that time and end-February 2007, when Set 116 was approved by the Court, a total of 497 accounts were awarded. Deducting these from the 1910 accounts in the 2006 projection would leave an estimated 1,413 accounts yet to be awarded, a number largely consistent with the rather more firmly based current projection of 1,400 accounts.

On basis of the above, the cost of adopting the proposed presumptive values at the 100 percent level would amount to US\$ 280.4 million for adjustment of already awarded and yet to be awarded accounts combined. The cost of adopting an adjustment level of 50 percent or 30 percent would amount to US\$ 139.8 million or US\$ 84.5 million respectively. (See Table 4, page 8).

Without any adjustment of presumptive values, forward payments from the Settlement Fund would be for the projected 1,400 accounts yet to be awarded only. These payments are projected on basis of the structure of account types, the split between accounts paid at presumptive and at known value and the average known value paid by account type established by the body of the already awarded accounts. They are accordingly estimated to amount to US\$ 116.7 million. Together with payments made through Set 116 and amounts already committed, this yields an estimated grand total of past and future payments of US\$ 559.5 million. (See Table 5, page 9.)

Adoption of the proposed presumptive values at 100 percent would put the estimate of future payments, including adjustment of accounts yet to be awarded, at US\$ 397.0 million and the grand total of past and future payments at US\$ 839.9 million.

At 50 percent adjustment of presumptive values, the total of future payments would amount to US\$ 256.5 million and the grand total of past, already committed and future payments would be US\$ 699.3.

At 30 percent adjustment of presumptive values, these payments would amount to US\$ 201.2 million and US\$ 644.0 million respectively.

I will be happy to respond to any questions or comments.

Sincerely yours,

Helen B. Junz

Table 4. Estimated cost of adoption of proposed presumptive values in US dollars
(In US dollars, US\$ 1=Sf 1.25)

Account Type	Adjustment at 100 percent		Adjustment at 50 percent		Adjustment at 30 percent		
	Awarded accounts (through Set 116)	Yet to be awarded accounts (1,400)	Awarded accounts (through Set 116)	Yet to be awarded accounts (1,400)	Awarded accounts (through Set 116)	Yet to be awarded accounts (1,400)	Total
Savings Accounts	539,275	213,333	247,935	73,772	149,241	51,806	201,047
Demand Deposits	12,735,388	4,835,590	6,343,764	2,504,142	3,823,742	1,542,722	5,386,464
Custody Accounts	183,293,398	72,363,968	90,662,487	37,142,060	54,118,357	23,093,818	77,212,175
Safe Deposit Boxes	3,994,023	1,489,812	1,986,123	800,406	1,189,823	503,406	1,693,029
Unknown Account		0	0	0	0	0	0
Other Accounts	875,000	35,000	44,000	17,600	26,500	10,600	37,100
Total	201,437,054	78,947,703	99,284,309	40,537,980	59,307,463	25,202,352	84,589,815

Note: Totals may not add due to rounding.

Table 5: Projected payments for yet to be awarded accounts, cost of adoption of proposed presumptive values and estimated total Settlement Fund payments (In US dollars, US\$ 1=SF 1.25)

Account Type	No adjustment Yet to be awarded accounts (1,400) (1)	Adjustment at 100 percent		Adjustment at 50 percent		Adjustment at 30 percent	
		Adjustment awarded and projected (2)	Total forward cost (3)-(1)-(2)	Adjustment awarded and projected (4)	Total forward cost (5)-(1)-(4)	Adjustment awarded and projected (6)	Total projected payments (7)-(1)-(6)
Savings accounts	1,020,983	752,608	1,773,571	321,707	1,342,670	201,047	1,222,010
Demand deposits	14,048,624	17,570,948	31,619,572	8,847,906	22,896,530	5,368,464	19,415,088
Custody accounts	82,033,925	255,657,366	337,691,291	127,804,547	209,838,472	77,212,175	159,248,100
Safe deposit boxes	1,306,146	5,493,835	6,799,981	2,786,529	4,092,875	1,693,029	2,999,175
Unknown accounts	18,202,407	0	18,202,407	0	18,202,407	0	18,202,407
Other accounts	44,000	910,000	954,000	61,600	105,600	37,100	81,100
Total	116,656,065	280,384,757	397,040,822	139,822,289	256,478,354	84,509,815	201,165,880
Paid or committed through Set 116 ¹	442,817,487		442,817,487		442,817,487		442,817,487
Grand Total Paid and Projected	559,473,552		839,858,309		699,295,841		643,983,367

¹ Includes US\$ 338,292,995 paid under CRT II, US\$ 18,184,492 paid under CRT I, US\$ 65,000,000 paid or committed under the Plausible Undocumented Award (PUA) program and an estimated US\$ 1.34 million yet to be paid in amendments consequent upon past award policy decisions.

Note: Totals may not add due to rounding.

Appendix I.
Summary of Background and Analysis relating to the Recommendation to revise the present Set of Presumptive Values.

Please find below a brief summary of the examination of the question of the appropriateness or otherwise of a revision of the currently used set of presumptive values. The full analysis can be found in my Memorandum to the Court on this subject dated 21 March 2006.

The examination, including the current update, involved a detailed comparison of the present presumptive values as derived by ICEP's¹ auditors from the approximately 54,000 accounts they initially identified in their audit of Swiss banks as probably or possibly having belonged to Holocaust victims with, on the one hand, the 37,484 accounts in the database the CRT has available for matching names on claim forms (the Total Account Historical Database-Plus or "the Total AHD-plus")², and on the other hand, the account value information drawn from the 3,735 accounts awarded through Set 116, approved by the Court on February 27, 2007.³

The conclusion drawn from these comparisons is that the ICEP presumptive values, indeed, are not fully representative of the CRT data. In the main, discrepancies have arisen because of:

- 1) differences in coverage;
- 2) differences in focus; and
- 3) differences in valuation procedures.

I will touch here briefly upon each of the three explanatory factors:

Re 1) With respect to coverage, two sets of exclusions are of relevance. First, with respect to the presumptive value calculations, only part of the known balance information was utilized. As noted above, the ICEP auditors found approximately 54,000 accounts to be relevant to ICEP's mandate. They subdivided these accounts into four Categories, ranked on the basis of various characteristics by degree of probability of their owners having been victims of Nazi persecution.⁴ In the summer of 1999, as ICEP's work drew to its conclusion,

¹ The Independent Committee of Eminent Persons known as "ICEP" or, after its Chairman, as the "Volcker Committee" was established on May 2, 1996 to investigate "the fate of funds entrusted to Swiss banks by victims of Nazi persecution." Independent Committee of Eminent Persons, *Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks*, Staempfli Publishers Ltd. (Berne), December 6, 1999 ("ICEP Report"), p. 2, para. 4.

² The AHD consists of the 36,131 accounts to which the auditors had reduced the initial ICEP database, augmented to 37,484 by account information from other sources. The reduction was the result of the implementation of the Volcker Committee's review of the initial database and the additional representations made by the banks in its course.

³ The analysis, unless otherwise noted, is based on 3,734 accounts awarded under CRT II through Set 116 as one account, awarded in Sets 75 and 110 is so large that it would severely skew the results. Please note that all awarded accounts are an integral part of the Total AHD-plus, however as an account is awarded details about the account in question, such as value or type of account are corrected in the Total AHD-plus as appropriate.

⁴ ICEP Report, p. 20 and Annex 4, p. 7.

Special Master Michael Bradfield (then Counsel to ICEP) asked Price Waterhouse Coopers ("PW"), one of the five auditing firms conducting the Swiss bank audit, to estimate the total value of accounts in Categories 1-4 on the basis of certain assumptions.⁵ This involved, *inter alia*, the derivation of proxy values for accounts without known balances. PW, after analyzing the data, suggested, and Special Master Bradfield agreed, that "...it made more sense to use the category 1-2 analysis when estimating the value of aggregate accounts because the underlying data seemed more reliable."⁶ Accordingly, Categories 3 and 4 were excluded from the proxy derivation. The proxy values thus derived by PW became the presumptive values presently used in CRT award decisions. However, in our examination of the value information in the Total AHD-plus and in the actual award experience, the reasons for excluding Category 3 from the average value calculations no longer appeared warranted.

The second notable difference lies in the exclusion of almost 18,000 accounts from the initial ICEP database, in part at the request of the banks. Although the Volcker Committee found that the "filtering down [of] the 4.1 million accounts in the database to 53,886 accounts was in many respects cautious,"⁷ they also considered that these accounts included some duplications and other technically-based unwarranted inclusions. Eliminating these would result in a reduction of the total number of relevant accounts to between 45,000 and 50,000. However, in the run-up to the publication of the 2001 list of names of Account Owners, the banks made further representations for additional exclusions, resulting in the elimination of more than twice the number of accounts ICEP had thought reasonable. This elimination procedure became known as the "scrubbing process."⁸ As a result of this

⁵ These assumptions included: "(1) that valid claims would be presented for all accounts, and hence all accounts would be paid out; (2) the adjusted balance of accounts (the balance as of 1945) would be multiplied times ten to approximate the investment value of the accounts as of 1999; and (3) a proxy value would be used for the adjusted value of accounts without known balances." Memorandum from Frank Hydoski, Price Waterhouse Coopers to Michael Bradfield, dated July 18, 2002, henceforth "Hydoski Memorandum," p. 1.

⁶ *Idem*, p. 2. This conclusion is also alluded to in the discussion in the ICEP Report of the difficulties inherent in estimating the total value of the accounts in the ICEP database. See ICEP Report, p. 72, para. 39-42 and footnote 23.

⁷ ICEP Report, p. 12.

⁸ Referred to as such in a PW Memorandum to Files, dated October 10, 2000, see pp. 9 ff and p. 15. Further, the Court referred to the scrubbing process in its July 26, 2000 "fairness" opinion, but the results of scrubbing at that time (July 2000) differed considerably from the eventual number that was reached: "On February 23, 2000, the Volcker Committee announced that a review of the approximately 54,000 accounts identified as 'probably' or 'possibly' related to victims of Nazi persecution resulted in the elimination of certain accounts because they were duplicates or because of other technical factors, reducing the total number of such accounts to between 45,000 and 50,000 [citation omitted]." *In re Holocaust Victim Assets Lit.*, 105 F.Supp.2d at 151. In its February 2004 opinion addressing the banks' behavior, the Court provided a more critical analysis of the final results of the "scrubbing" process: "[T]he conservative estimate of 54,000 relevant accounts was met with surprise and disfavor by the SBA and the Swiss Federal Banking Commission ('SFBC'). The SBA and SFBC thus turned to the same auditors the Volcker Committee had employed and asked them to further 'scrub' the accounts the auditors had identified. The banks came forward with additional information from bank records and asked the auditors to once again eliminate from the list accounts that were opened after 1945, accounts that had closing dates before the dates of occupation, accounts with any activity after 1945, and duplicate accounts from the list of probable and possible accounts. See CRT-II Rules, at 2. After completing two rounds of this 'scrubbing,' the auditors decided that of the 54,000 accounts previously identified, there were only 21,000 accounts that 'probably' belonged to Nazi victims, and 15,000 accounts that 'possibly' belonged to Nazi victims. The

scrubbing process the structure of the AHD as concerns both types of account and accounts with known balances differs inherently from that of the ICEP database. Accordingly, differences in average values by type of account could be expected as well.

Re 2) With regard to the focus of the ICEP investigation and that of the CRT's award decision process, the differences are obvious, though their effect on the presumptive value determination has become discernible only over time. The basic difference is that ICEP's priority lay in determining which of the 6.8 million accounts that existed during the relevant period had probably or possibly belonged to victims of Nazi persecution. Registering book values and even account types, while important, was of lesser import especially under the given time and cost constraints. For the CRT, the determination of the value of account balances and of the type of account, of course together with the identification by the Claimant of his/her relationship to the Account Owner, is of prime importance. Thus it is not surprising that the CRT in the course of its work has found value information for many accounts for which the ICEP audit did not furnish any such data and that it has ascertained the type of account in many instances in which the ICEP audit recorded an unknown type of account.⁹

While the combination of the relatively high account values and the relatively low share of known values in Category 3 led the auditors to believe that they "were missing substantial numbers of low average value accounts in category 3,"¹⁰ the comparative review of known values in the ICEP database, the Total AHD-plus and the accounts awarded thus far shows that the inverse may be true as well, namely that the auditors were missing a significant number of high value accounts in Categories 1, 2 and 4. The analysis showed that more than one half of the accounts awarded under CRT II that were reported in the original AHD as having no known balance were found by the CRT in the course of its award determination to have values after all. In many cases this value information was actually available in the bank files, in others it involved obtaining price quotations for listed assets and in yet others value information came from outside sources. Remarkably, the values thus obtained tended to average above the corresponding ICEP proxy values by significant margins. This was especially so for accounts in Category 2 and for custody accounts across the board, including Categories 1 and 2. These differences point to the auditors having missed a considerable number of relatively high balance values in the two Categories on which they based their determination of proxy values. This, in turn also did much to moot the auditors' objection to the inclusion of Category 3 in the proxy value determination, which rested on their feeling that high value custody accounts were clustered in that Category.

auditors arrived at this conclusion even though they were theoretically searching for the same excluding characteristics as they had sought when employed by the Volcker Committee." *In re Holocaust Victim Assets Lit.*, 302 F.Supp.2d 59, 80 (E.D.N.Y. 2004).

⁹ Though this result, as noted, was to be expected, the extent appears surprisingly large. However, part of the difference may lie in the way in which the auditors handed the AHD on to the CRT: it may be that some information fields turned out unreadable so that the actual number of unknown value and unknown type of account instances may not have been quite as large as the usable data imply. Still, the additional information found by the CRT appears to go a considerable way toward explaining the disparities between the ICEP proxy values and the average values in the Total AHD-plus and the actual award data.

¹⁰ Hydoski Memorandum, p. 2.

Re 3) Finally, changes in valuation procedures have had the effect of increasing average base (1945) values of certain known balances. For example, the Volcker Committee recommended that "...the earliest known account values should be identified and adjusted to 1945 values by adding back estimated bank charges and deducting estimated earned interest, if any."¹¹ PW in its value estimation, being unable to ascertain whether interest had been credited or not, deducted interest from all normally interest-earning accounts. The Court, in contrast, determined that interest not be deducted absent evidence that it had in fact been credited. This obviously had the effect of raising average 1945 known values of savings and custody accounts in the Total AHD-plus above the proxy values PW calculated for these types of account.

¹¹ ICEP Report, p. 22.

EXHIBIT C

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

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July 15, 2007

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:

Please find below an update of my Memorandum, dated May 14, 2007, on the revision of the presumptive values the CRT currently uses in the award decision process. As you know, during the past two months the CRT has refined its review of the remaining positive matches and has made substantive changes to the projections available at the time of my writing. I, consequently, reviewed my calculations of the cost of the amendments to the presumptive values I proposed in the May Memorandum and, in that process, also took account of the award decisions presented to the Court since.

The database on which the current estimates rest has grown to a total of awarded accounts of 3,870, of which 1,247 have a known value; at the same time the AHD-plus, on which the proposed revision of the current presumptive values is based, has grown to 6,702 known value accounts and has been revised, where appropriate, to reflect the latest additions to the actual award data.¹ These changes have affected the results reported in my May Memorandum not at all or only marginally, with both the structure of the awarded accounts and their average known values remaining stable, as they have been throughout the period of observation, i.e. from May 2004 to date. I thus can confidently repeat the conclusion I drew in my previous Memorandum namely that:

“With the further experience gained over the year since I wrote, I have become yet more firmly convinced that the presumptive values established by the ICEP auditors, even taking into account some of the questions raised by outside observers, indeed, are not fully representative of the CRT data, and that, therefore, a considered revision is appropriate.”

¹ Since my May Memorandum, which was based on awarded account data through Set 116 (approved by the Court on 27 February, 2007) additions through Set 135 (which is on its way to the Court) numbered 165 accounts, of which 65 accounts had a known value. Of these 65 known-value accounts, 22 accounts which had not been included in the original AHD were added to the AHD-plus, and 31 accounts included in the original AHD as having an unknown value were determined to have a known value.

Accordingly, I can also confirm my recommendation that the current presumptive values be amended as proposed in May and, for your convenience, reproduce below the table from that Memorandum, which showed present presumptive values, proposed presumptive values at 100 percent of adjustment and an additional range of options at 50 and 30 percent, respectively. (See Table 1).

**Table 1. Present and proposed presumptive values,
1945 and current values
(in SF and ratios)**

Account Type	1945 values in SF				Current values (1950) in SF				Ratios Proposed / Present presump- tive value At 100%
	Present presump- tive value (ICEP)	Proposed presumptive value 100% adjust- ment	Proposed presumptive value 50% adjust- ment	Proposed presumptive value 30% adjust- ment	Present presump- tive value (ICEP)	Proposed presumptive value 100% adjust- ment	Proposed presumptive value 50% adjust- ment	Proposed presumptive value 30% adjust- ment	
		100 %	50%	30%		100%	50%	30%	
Savings Accounts	830	1,100	960	910	10,375	13,750	12,000	11,375	1.33
Demand Deposits	2,140	3,200	2,670	2,460	26,750	40,000	33,375	30,750	1.49
Custody Accounts	13,000	30,500	21,750	18,250	162,500	381,250	271,875	228,125	2.35
Safe Deposit Boxes	1,240	3,500	2,370	1,920	15,500	43,750	29,625	24,000	2.82
Unknown Accounts	3,950	3,950	3,950	3,950	49,375	49,375	49,375	49,375	1.00
Other Accounts	2,200	3,950	3,080	2,730	27,500	49,375	38,500	34,125	1.80

These options are shown in part because varying the percentage of adjustment does not produce an equivalent change in the dollar costs. As noted in my May Memorandum, the cost estimates assume that, as in the past, the presumptive values not only represent proxies for the values of unknown account balances, but also constitute the minima to which known balances that fall below their associated presumptive value are to be raised, unless there are specific reasons for not doing so. For accounts already awarded, this means that some of the 390 accounts that through Set 135 were payable at known values, and that after adjustment would fall short of the proposed presumptive values for their type of account, would need to be moved to presumptive value. The number that would be so shifted obviously depends on the adjustment percentage chosen: at 100 percent, 97 accounts would be shifted to payment at the new presumptive values; at 50 percent, 60 accounts would be shifted; and at 30 percent 25 accounts. The inclusion of these shifted accounts in the number of accounts paid at presumptive value raises the share of the latter from 89.9 percent to 92.4, 91.5 and 90.6 percent of all accounts at 100 percent, 50 percent and 30 percent respectively. This in turn will affect the cost of the yet to be awarded accounts as both the share of projected accounts to be paid at presumptive value and the average value of the remaining accounts to be paid at known values are based on past experience.

With respect to accounts yet to be awarded, the previous estimates of the amounts involved at no adjustment and of the cost of adjustment were based on the then projected number of 1,400 accounts. The CRT's further refinement of the projection base has brought this number down to a maximum of 1,092 accounts.²

On basis of the above, the cost of adopting the proposed presumptive values at the 100 percent level would amount to US\$ 260.6 million for adjustment of already awarded and yet to be awarded accounts combined. The cost of adopting an adjustment level of 50 percent or 30 percent would amount to US\$ 131.0 million or US\$ 78.2 million respectively. (See Table 2, page 5).

Without any adjustment of presumptive values, forward payments from the Settlement Fund would be for the projected 1,092 accounts yet to be awarded only. These payments are projected on basis of the structure of account types, the split between accounts paid at presumptive and at known value and the average known value paid by account type established by the body of the already awarded accounts.³ They are accordingly estimated to amount to US\$ 90.7 million. Together with payments made through Set 135 and amounts already committed, this yields an estimated grand total of past and future payments of US\$ 544.4 million. (See Table 3, page 6).

Adoption of the proposed presumptive values at 100 percent would put the estimate of future payments, including adjustment of accounts yet to be awarded, at US\$ 351.3 million and the grand total of past and future payments at US\$ 805.1 million.

² The projection of 1,092 accounts yet to be awarded excludes Multiple Plausible Matches ("MPMs") with 6 or more unrelated claims. The possible effect of this exclusion on total amounts is discussed briefly on p. 4.

³ It should be noted that the CRT's projection of 1,092 accounts yet to be awarded also provided a break by type of account and by number and average value of known value accounts. However, the known value account information in that projection is considered notional in as much as definite known values are only determined during the award review process and, more generally, as value information is not required when adding an account to the AHD-plus. Indeed, the split between number of known value and unknown value accounts as well as the average values found for the projected accounts departed significantly from the established stable relationships established for the 3,870 accounts awarded thus far. Accordingly, drawing on the historic experience for the split between known and unknown value accounts and for the average known values by type of account is well justified. Though the division of accounts yet to be awarded by type of account in the projection is more reliable, the resulting structure of accounts differs so markedly from historic experience that prudence dictated use of the historic structure as well. This was further justified by the fact that in the past award process many accounts were reclassified as to type. This was particularly true for accounts initially classified as "unknown type of account" and it is this category that looms extra-ordinarily large in the projections. While this cannot explain the full extent of difference in structure, it may go some way until the CRT's further consideration brings greater clarity. May it suffice here to note that using the projection structure produces results that are US\$ 23 million below the results presented here at no adjustment of presumptive values, and US\$ 43 million lower at the 100% level of adjustment. This difference stems in the main from the fact that the projection foresees a much lower proportion of custody accounts (18 percent of the total as compared with 31 percent historically, partly offset by the much higher percentage of unknown type of accounts (46 percent vs 23 percent). These differences impact the "no adjustment" totals because the average value of a custody account is significantly higher than that of an unknown type of account and further impact the adjustment cost because a substantial increase of the presumptive value is proposed for custody accounts, whereas that for unknown type of accounts is left unchanged.

At 50 percent adjustment of presumptive values, the total of future payments would amount to US\$ 221.6 million and the grand total of past, already committed and future payments would be US\$ 675.4.

At 30 percent adjustment of presumptive values, these payments would amount to US\$ 168.8 million and US\$ 622.6 million respectively.

As noted above, the forward estimates exclude accounts to which 6 or more equally plausible claims have been made by unconnected claimants. The number of such claims per account rises exponentially the less is known about the account owner and the more usual his/her name. If it is assumed that in cases of a large number of distinct claims to the same account no claim would be paid at less than the implicit minimum of US\$ 5,000 now paid on Plausible Undocumented claims, an approx. further US\$ 6 million would be added to the amount to be paid on accounts yet to be awarded.⁴ However, this estimate must be taken as a ballpark number as the actual award process may produce results that differ significantly from this short-hand calculation.

⁴ Most recent CRT estimates put the number of such claims at 1,220.

Table 2. Estimated cost of adoption of proposed presumptive values in US dollars
(In US dollars, US\$ 1=SF 1.25)

Account type	Adjustment at 100 percent		Adjustment at 50 percent		Adjustment at 30 percent				
	Awarded accounts (through Set 135)	Yet to be awarded accounts (1,092)	Total	Awarded accounts (through Set 135)	Yet to be awarded accounts (1,092)	Total	Awarded accounts (through Set 135)	Yet to be awarded accounts (1,092)	Total
Savings Accounts	567,661	62,080	629,741	258,298	82,074	340,372	154,509	45,642	200,151
Demand Deposits	13,053,358	3,519,689	16,573,047	6,502,764	2,044,470	8,547,234	3,919,742	1,188,154	5,107,896
Custody Accounts	188,018,398	49,950,097	237,968,495	93,024,987	26,345,477	119,370,464	55,535,857	15,690,386	71,226,243
Safe Deposit Boxes	4,152,223	1,194,247	5,346,470	2,065,223	606,647	2,671,870	1,237,223	372,647	1,609,870
Unknown Account	0	0	0	0	0	0	0	0	0
Other Accounts	87,500	35,000	122,500	44,000	17,600	61,600	26,500	10,600	37,100
Total	205,879,140	54,761,112	260,640,252	101,895,273	29,086,267	130,981,540	60,873,831	17,307,429	78,181,260

Note: Totals may not add due to rounding.

Table 3: Projected payments for yet to be awarded accounts, cost of adoption of proposed presumptive values and estimated total Settlement Fund payments
(In US dollars, US\$ 1=SF 1.25)

Account Type	No. adjustment Yet to be awarded accounts (1)(92)	Adjustment at 100 percent		Adjustment at 50 percent		Adjustment at 30 percent	
		Adjustment awarded and projected (2)	Total forward cost (3)(91)(2)	Adjustment awarded and projected (4)	Total forward cost (5)(6)(1)(1)	Adjustment awarded and projected (6)	Total projected payments (7)(8)(10)
Savings accounts	805,908	629,741	1,435,649	340,372	1,146,280	200,151	1,006,059
Demand deposits	10,815,882	16,573,047	27,388,929	8,547,234	19,363,116	5,107,896	15,923,778
Custody accounts	63,737,563	237,968,495	301,706,088	119,370,464	183,108,027	71,226,243	134,963,806
Safe deposit boxes	1,032,517	5,346,470	6,378,987	2,671,870	3,704,387	1,609,870	2,642,387
Unknown accounts	1,4216,674	0	14,216,674	0	14,216,674	0	14,216,674
Other accounts	44,000	122,500	166,500	61,600	105,600	37,100	81,100
Total	90,652,544	260,640,252	351,292,736	130,991,240	221,644,084	78,181,260	198,833,804
Paid or committed through Set 135¹	453,763,281		453,763,281		453,763,281		453,763,281
Grand Total Paid and Projected	544,415,825		805,056,077		675,407,365		622,597,085

¹ Includes US\$ 369,238,789 paid under CRT II, US\$ 18,184,492 paid under CRT I, US\$ 65,000,000 paid or committed under the Plausible Undocumented Award (PUA) program and an estimated US\$ 1.34 million yet to be paid in amendments consequent upon past award policy decisions.
Note: Totals may not add due to rounding.

EXHIBIT D

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

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October 10, 2008

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

96 CV 4849

Dear Judge Korman:

On May 14, 2007, I wrote to update my proposal of March 21, 2006 to amend the set of presumptive values the CRT uses to establish award amounts for those accounts for which no balance information is known ("unknown value accounts").¹ I noted, as I had in earlier communications, that my proposal stemmed from the fact that average known-value account balances drawn from the database currently available to the CRT diverge significantly from those the ICEP auditors had established at the beginning of the process to serve as proxies for known values in awarding accounts for which no value information is available. It might have seemed appropriate to update last year's findings in the light of the additional award experience gained since, even though constant monitoring since 2004 shows results to have been remarkably stable. And, indeed, addition of the data that have become available over the past sixteen months only confirms the recommendations I made last year. Thus, a simple update at this time might have been dispensed with.

However, late last year it became apparent that one of the two Settlement Defendants, *Credit Suisse*, would, at this late stage in the claims resolution process, provide a significant amount of specific additional account information that had neither been recorded by the ICEP auditors nor had previously been disclosed in the course of so-called "voluntary assistance." Such voluntary assistance is an integral part of the banks' pledge to cooperate with the implementation of the Settlement Agreement and the Court has noted that "This is a pledge that reflects their legal obligation. It is one to which I intend to hold them".² A definition of what may be understood by voluntary assistance is contained in the Memorandum to the File dated August 9, 2000, paragraph B.3.³ Though referring explicitly to accounts that may not have been included in the Account History Database of 36,131 accounts (hereinafter referred to as the

¹ See my letters on this subject dated May 14, 2007 and March 21, 2006. The latter sets out in detail the background and rationale for my proposal and the former is an update to include additional award experience through Set 116.

² See *In re Holocaust Victim Assets Litig.*, 105 F.Supp.2d 139 (E.D.N.Y. 2000), citing the Memorandum to the File, dated August 9, 2000, Exhibit I to Plan of Allocation.

³ *Id.*

“AHD”) handed over to the CRT by the auditors,⁴ the text sets out clearly the banks’ duties under this process of cooperation:

“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 defendant banks will not be obligated to search beyond the 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 that further assistance would provide probative information...[emphasis added]”

This manner of cooperation is further embedded in Art. 6 of the Rules Governing the Claims Resolution Process (as amended), which states that

“[w]hen necessary to obtain information to resolve claims to Accounts that is unavailable to the CRT under Articles 1-5, the CRT may seek the voluntary assistance of banks that may have information in their files to such an Account.”

The CRT accordingly has sought voluntary assistance relating to hundreds of claimed accounts and has received regular input from one of the defendant banks for several years. But until 2007 little had been achieved in several years of ongoing discussion between the CRT and *Credit Suisse* about the need for voluntary assistance for a large and growing number of cases. In 2007, however, after the CRT had submitted an updated list of accounts for which it had requested additional information, discussions became more promising. And in the closing months of the year it emerged that a significant amount of new asset information might be available for custody accounts. At the same time, a pilot list of 20 accounts, consisting of a mixture of all types of accounts, the ownership of which covered a broad geographical spread, produced relatively little additional information for non-custody accounts. The CRT then submitted a priority list of 29 yet to be awarded Custody accounts and received a response to all 29 accounts. This additional information proved to contain not only information about the identity of the account owners, but also detailed documentation on the portfolios held in these accounts as well as their disposition history. The significance of this documentation for the account award process is self-evident. In view of the importance of the additional information found in this sample, and the emphasis the Court has placed on restoring to account owners or their heirs the proper value of the assets they had been deprived of, it was deemed only appropriate that the CRT would, even at this late stage in the process, revisit claims that had been considered closed following the award of the accounts in question.

The CRT thus pressed for the delivery of additional information for an eventual list of 358 Custody accounts which consisted overwhelmingly of already awarded accounts, most of which, in the absence of any information on their content, had been awarded at presumptive value. *Credit Suisse* eventually provided documentation containing new information for 294 Custody accounts, 293 of which related to the requested 358, including 16 new sub-accounts and

⁴ The CRT works with an expanded database, which consists of the original 36,131 accounts in Review Categories 1-4 provided by the ICEP auditors and known as the AHD, augmented by accounts identified by the CRT either as AHD sub-accounts or as accounts in the newly created Categories 5 and over (Category 5plus), known as the Total AHD-plus, for a current total of 38,624 accounts. This total continues to grow as the CRT is able to identify accounts through additional sources, as for example through the voluntary assistance provided by the defendant banks, and is diminished as the CRT deletes accounts that the auditors included erroneously.

one was a new account.⁵ Part of this information was received in February 2008, while the bulk of it came in April. Of these 294 Custody accounts, 239 are included in the present analysis; the remaining 55 accounts were excluded for reasons such as that the new information had already been received from other sources; they contained savings passbooks without any value information; the content of the account had been rolled over into another account belonging to the Account owner in question; their disposition dates fell outside the relevant period; the value of their content could not be established within the current period of review; they were duplicates or pending, or more positively because they had entered the award assessment stream directly. The wealth of new information about the assets contained in these accounts and their disposition has two profound implications:

- First, the fact that 239 Custody accounts which generally had, or would have been, classified as of unknown value, can now be valued, allows the claims resolution process to restore to the Account owners or their heirs the actual - rather than a proxy - value of their known deposited assets.⁶ This meant, however, that first the appropriate value of a host of securities, coins and precious metal had to be determined; the newly available disposition information had to be analyzed and then the award amounts of all already awarded accounts among the 239 had to be re-evaluated in the light of the new documentation. Virtually all the already awarded accounts among these 239 were paid at unknown value, *i.e.*, at the 1945 presumptive value of Swiss francs 13,000 (hereinafter referred to as "SF"). In those cases in which the new information leads to account valuations that exceed the amounts awarded, the Court's approval is being sought for amendments to award Account owners or their heirs the difference between the higher account values derived from the actual content of the awarded account and the presumptive value already paid. Indeed, through the date of writing, October 10, 2008, such approval has been sought and obtained for over 90 percent of the affected cases.
- Second, the fact that 239 Custody accounts have been added to the stock of known-value accounts in the Total AHD-plus (see footnotes 4 and six) obviously affects the average value of these accounts and, consequently impacts the calculation of any revision of the presumptive value for Custody accounts. Given the large relative importance of Custody accounts in the award process - under CRT II, of a total of 4,229 accounts awarded through batch 172 (approved by the Court on September 25, 2008), 1,263 or 30 percent were Custody accounts, and, more telling, just under 70 percent of the total award amount of US\$ 424.7 million⁷ through that date relates to Custody accounts - any change in the

⁵ *Credit Suisse's* response in fact covered all the 358 accounts requested, but records for 79 accounts did not contain additional documentation and information on 2 accounts is pending. Thus new information was received for 277 requested accounts. As the additional documentation revealed the existence of 16 new sub-accounts and one account that in fact had not been requested, the total number of accounts with additional information is 294. As noted above, the bulk of the new information was received by April 2008 with some, however, continuing to come in through September. Furthermore, the CRT continued to request voluntary assistance in the normal course of the award determination process, including requests relating to 93 non-Custody accounts. Only 25 of the responses to these latter requests contained additional information, while 68 yielded nothing new.

⁶ The net addition to the CRT's data bases is somewhat less as for a number of cases the relevant portfolio information had been already been obtained from non-Bank sources and the new information only validated these records. So far 12 such cases were found.

⁷ This share of Custody accounts in the total award amount is based on the type of account totals in Swiss francs as only award totals are currently tracked in US dollars. With the swings in the exchange rate for the dollar and

proposed presumptive value for this type of account could materially alter the previously estimated cost of adjustment of the current set of presumptive values. Furthermore, the addition of 239 known-value Custody accounts to the estimation base for the revision of the current presumptive values raises the number of such accounts to 892, well over twice the number on which the ICEP auditors calculated the present presumptive values.⁸ Thus, as detailed below, their inclusion further strengthens the already sound statistical base for the revision of the currently used presumptive values.

To put the significance of the receipt of the new information in better context, it should be considered that it was delivered in the form of over 2,000 copies of individual deposit documents, which had to be organized and transcribed to make them usable. These documents in turn were found to contain over 2,000 entries for individual securities, coins and precious metals; the 239 accounts under consideration here contained 2,002 entries, but 393 of these were eventually removed for essentially the same set of substantive reasons as the 55 accounts referred to above, leaving a total of 1,609 entries. To ascertain the amendment and award values of these accounts and to estimate potential total payments from the Settlement Fund associated with this new portfolio and asset disposition information, these 1,609 remaining assets had to be valued. This means that market values had to be found for these assets and the quality of the securities among them determined (whether they were in default or not) as of the disposition date of the asset, if known; then these valuations as well as the disposition information had to be analyzed and merged into the award process databases. A truly daunting endeavour, especially as it had to be accomplished within a short time without loss of accuracy.⁹

In what follows I set out:

- a) latest estimates of the cost of bringing already awarded Custody accounts in line with the valuation of their content consequent upon the newly received documentation;
- b) a recap of the rationale for the revision of the current set of presumptive values, including the impact of the new account information;
- c) final proposals for the revision of the current set of presumptive values. In as much as the receipt of the new data required a comprehensive update of the database and the calculations underlying the proposed presumptive values, it appeared appropriate to make any final adjustments at this time as well. The proven stability of the average values derived over time from the growing database together with the fact that, as the claims resolution program is scheduled to come to a close at the end of the year, remaining additions to the database will be small relative to the size of the accumulated stock of observations, a final calibration of the proposed presumptive values is warranted at this time; and
- d) the cost of adjustment of the current presumptive values to the proposed set for both already awarded accounts and projected yet to be awarded accounts.

changes in the multiplier to translate 1945 values into current values over time, the exact US dollar amount by type of account is currently not available.

⁸ As discussed below, the total of 892 custody accounts in the proposed AHD-plus presumptive value base excludes five outliers, all at the high end of the range, whereas the ICEP database includes all available values.

⁹ While thanks are due to the entire staff, it would be remiss not to acknowledge especially the yeoman's job performed by and commitment to the project of Josh Bridgwater, Teresa Clark, John Kleeberg, Sally Lerman, Lev Libeskind, Jean-Marie Mettraux and Henrieta Parmar.

a) Cost of adjusting already awarded accounts in the light of the new *Credit Suisse* information

As noted above, the bulk of the new information relates to already awarded accounts as 212 out of the 239 accounts, or 89 percent, had already been awarded. These 212 accounts contain 1,398 securities, coins or precious metals. Of these, 84 accounts with a total 1945 value of SF 4.4 million proved to have known values in excess of the values at which they had been awarded. Deducting the previous award amounts left SF 3.2 million at 1945 values, which translates to SF 39.8 million at current value. Through October 10, 2008, the Court already approved amendment awards amounting to SF 35.78 million, equivalent to US\$ 34.12 million. Thus, with amendments worth an estimated SF 3.72 million, equivalent to US\$ 3.38 million¹⁰, yet to be treated, the total amendment need for already awarded accounts consequent upon the new account information is estimated at US\$ 37.5 million. Together with the awardable value of new accounts found in the additional Bank information, the total award amounts consequent upon this information are estimated at SF 40.98 million, equivalent to US\$ 38.6 million.

b) Recap of the rationale for the revision of the current set of presumptive values, including the impact of the new account information

As the Court is aware, I began monitoring the relationship between the presumptive values that were established at the beginning of the claims resolution process and the average known account values drawn from the award experience, in the spring of 2004. By early 2006, I came to the conclusion that the cumulative evidence was telling us that "the disparity between the proxy values for unknown account balances (presumptive values) employed in the award process and the average known values found for actual awarded accounts is not just an anomaly, but points to an underlying discrepancy."¹¹ Thus a more comprehensive examination of the issue was undertaken, the results of which showed that the ICEP presumptive values, for readily understandable reasons, were not fully representative of the CRT data. The background and rationale for this divergence was discussed in detail in my letter of March 21, 2006 and further amplified in my update of May 14, 2007. The main points are summarized below.

The discrepancies between the ICEP presumptive values and the CRT data were found to stem largely from:

- 1) differences in coverage;
- 2) differences in focus; and
- 3) differences in valuation procedures

I will touch here briefly upon each of the three explanatory factors:

Re 1) With respect to coverage, two sets of exclusions are of relevance. First, with respect to the presumptive value calculations, ICEP used only part of the known balance information. The ICEP audit had found 53,886 accounts to be relevant to ICEP's mandate¹². The auditors subdivided these accounts into four Categories, ranked on the basis of various characteristics by degree of probability of their owners having been victims of Nazi persecution.¹³ In the summer

¹⁰ Converted at US\$ 1=SF 1.10, results may not track due to rounding.

¹¹ See my letter to the Court of March 21, 2006, p.2.

¹² ICEP Report, Table C, p.10. Note that in a later report this number is given as 53,957, see "Memorandum from Frank Hydoski, Price Waterhouse Coopers to Michael Bradfield" (hereafter "Hydoski Memorandum"), dated July 18, 2002, p.8.

¹³ ICEP Report, p. 20 and Annex 4, p. 7.

of 1999, as ICEP's work drew to its conclusion, Special Master Michael Bradfield (then Counsel to ICEP) asked Price Waterhouse Coopers ("PW"), one of the five auditing firms conducting the Swiss bank audit, to estimate the total value of accounts in Categories 1-4 on the basis of certain assumptions.¹⁴ This involved, *inter alia*, the derivation of proxy values for accounts without known balances. PW, after analyzing the data, suggested, and Special Master Bradfield agreed, that "...it made more sense to use the category 1-2 analysis when estimating the value of aggregate accounts because the underlying data seemed more reliable."¹⁵ Accordingly, Categories 3 and 4 were excluded from the proxy derivation. The proxy values thus derived by PW became the presumptive values presently used in CRT award decisions. However, in our examination of the value information in the Total AHD-plus and in the actual award experience, it became clear that the reasons for exclusion of Category 3 from the average value calculations did not apply to the current data set and that exclusion of this important Category was no longer warranted.

The second notable difference lies in the exclusion of almost 18,000 accounts from the initial ICEP database, in part at the request of the banks. Although the Volcker Committee found that the "filtering down [of] the 4.1 million accounts in the database to 53,886 accounts was in many respects cautious,"¹⁶ they also considered that these accounts included some duplications and other technically-based unwarranted inclusions. Eliminating these would result in a reduction of the total number of relevant accounts to between 45,000 and 50,000. However, in the run-up to the publication of the 2001 list of names of Account Owners, the banks made further representations for additional exclusions, resulting in the elimination of more than twice the number of accounts ICEP had thought reasonable. This elimination procedure became known as the "scrubbing process."¹⁷ As a result of this scrubbing process the structure of the AHD as concerns both types of account and accounts with known balances differs inherently from that of

¹⁴ These assumptions included: "(1) that valid claims would be presented for all accounts, and hence all accounts would be paid out; (2) the adjusted balance of accounts (the balance as of 1945) would be multiplied times ten to approximate the investment value of the accounts as of 1999; and (3) a proxy value would be used for the adjusted value of accounts without known balances." Hydoski Memorandum, p. 1.

¹⁵ *Idem*, p. 2. This conclusion is also alluded to in the discussion in the ICEP Report of the difficulties inherent in estimating the total value of the accounts in the ICEP database. See ICEP Report, p. 72, para. 39 - 42 and footnote 23.

¹⁶ ICEP Report, p. 12.

¹⁷ Referred to as such in a PW Memorandum to Files, dated October 10, 2000, see pp. 9 ff and p. 15. Further, the Court referred to the scrubbing process in its July 26, 2000 "fairness" opinion, but the results of scrubbing at that time (July 2000) differed considerably from the eventual number that was reached: "On February 23, 2000, the Volcker Committee announced that a review of the approximately 54,000 accounts identified as 'probably' or 'possibly' related to victims of Nazi persecution resulted in the elimination of certain accounts because they were duplicates or because of other technical factors, reducing the total number of such accounts to between 45,000 and 50,000 [citation omitted]." *In re Holocaust Victim Assets Lit.*, 105 F.Supp.2d at 151. In its February 2004 opinion addressing the banks' behavior, the Court provided a more critical analysis of the final results of the "scrubbing" process: "[T]he conservative estimate of 54,000 relevant accounts was met with surprise and disfavor by the SBA and the Swiss Federal Banking Commission ('SFBC'). The SBA and SFBC thus turned to the same auditors the Volcker Committee had employed and asked them to further 'scrub' the accounts the auditors had identified. The banks came forward with additional information from bank records and asked the auditors to once again eliminate from the list accounts that were opened after 1945, accounts that had closing dates before the dates of occupation, accounts with any activity after 1945, and duplicate accounts from the list of probable and possible accounts. See CRT-II Rules, at 2. After completing two rounds of this 'scrubbing,' the auditors decided that of the 54,000 accounts previously identified, there were only 21,000 accounts that 'probably' belonged to Nazi victims, and 15,000 accounts that 'possibly' belonged to Nazi victims. The auditors arrived at this conclusion even though they were theoretically searching for the same excluding characteristics as they had sought when employed by the Volcker Committee." *In re Holocaust Victim Assets Lit.*, 302 F.Supp.2d 59, 80 (E.D.N.Y. 2004).

the ICEP database. Accordingly, differences in average values by type of account could be expected as well.

Re 2) With regard to the focus of the ICEP investigation and that of the CRT's award decision process, the differences are obvious, though their effect on the presumptive value determination has become discernible only over time. The basic difference is that ICEP's priority lay in determining which of the 6.8 million accounts that existed during the relevant period had probably or possibly belonged to victims of Nazi persecution. Registering book values and even account types, while important, was of lesser import especially under the given time and cost constraints. For the CRT, the determination of the value of account balances and of the type of account, of course together with the identification by the Claimant of his/her relationship to the Account Owner is of prime importance. Thus it is not surprising that the CRT in the course of its work has found value information for many accounts for which the ICEP audit did not furnish any such data and that it has ascertained the type of account in many instances in which the ICEP audit recorded an unknown type of account.¹⁸

While the combination of the relatively high account values and the relatively low share of known values in Category 3 led the auditors to believe that they "were missing substantial numbers of low average value accounts in category 3,"¹⁹ the comparative review of known values in the ICEP database, the Total AHD-plus and the accounts awarded thus far shows that the inverse is true as well, namely that the auditors were missing a significant number of high value accounts in Categories 1, 2 and 4. The analysis showed that more than one half of the accounts awarded under CRT II that were reported in the original AHD as having no known balance were found by the CRT in the course of its award determination to have values after all. In many cases this value information was actually available in the bank files, in others it involved obtaining price quotations for listed assets and in yet others value information came from outside sources. The values thus obtained notably tended to average above the corresponding ICEP proxy values by significant margins. This was especially so for accounts in Category 2 and for custody accounts across the board, including those in Categories 1 and 2. These differences point to the auditors having missed a considerable number of relatively high balance values in the two Categories on which they based their determination of proxy values. This, in turn also did much to moot the auditors' objection to the inclusion of Category 3 in the proxy value determination, which rested on their opinion that high value custody accounts were clustered in that Category.

Furthermore, with the additions to, corrections of and improvements in the valuation of the contents of accounts in the AHD-plus, it became clear that the values found for accounts in Category 3 fit well into the overall range of account values. Although the addition of account information from sources outside the audit did much to help anchor Category 3 values within the overall range, the data also show that the purportedly lesser discontinuities in the values of accounts in Categories 1 and 2, which were a main reason in the auditors' decision to exclude Category 3 from their proxy calculations, no longer hold. In particular, the auditors' finding that "the known balances in category 3 were much larger than the known balances in categories 1 [and] 2...." and that "...the relatively few values in category 3 were skewing the data..."²⁰ is no

¹⁸ Though this result, as noted, was to be expected, the extent appears surprisingly large. However, part of the difference may lie in the way in which the auditors handed the AHD on to the CRT: it may be that some information fields turned out unreadable so that the actual number of unknown value and unknown type of account instances may not have been quite as large as the usable data imply. Still, the additional information found by the CRT appears to go a considerable way toward explaining the disparities between the ICEP proxy values and the average values in the Total AHD-plus and the actual award data.

¹⁹ Hydoski Memorandum, p. 2.

²⁰ Hydoski Memorandum, p. 2.

longer supported by the CRT's data set. First, it has emerged that the value data in the AHD-plus is highly skewed and that this is so for the overall data as well as for the subsets by type of account. The profile of the data is one of a so-called lognormal distribution in which the bulk of the data clusters narrowly to one side of the mean (straight average) and the rest of the data is spread out in a tail to the right or left of the mean. In this case, the data is skewed to the right, i.e. to the higher values and the degree of spread is measured by the so-called skewness coefficient (also see footnote 27 below relating to the determination of "outliers").

As can be seen from Table 1 below, for each of the four most important types of account the values in Categories 1 plus 2 are more highly skewed (as measured by the skewness coefficient) than they are for those in Category 3. This is not only so for the range of values within these categories, but also across all categories. For example, when demand deposits are examined, it is found that the three observations with greatest single impact on the statistical properties of the value data are in Categories 1 plus 2. Perhaps most telling, for custody accounts the skewness coefficient for Category 3 account values is smaller than that for Categories 1 plus 2, while at the same time that the average values and the number of observations are relatively close, clearly demonstrating that the values for custody accounts in Categories 1 plus 2, if anything, are more highly skewed than those in Category 3.

**Table 1. Value Data in AHD-plus, selected statistical properties
Categories 1&2 and Category 3 compared**

Account type	Demand deposit		Savings account		Custody account		Unknown Type	
	Cat. 1 plus 2	Cat.3	Cat. 1 plus 2	Cat.3	Cat. 1 plus 2	Cat.3	Cat. 1 plus 2	Cat.3
Number of accounts	2,460	241	865	39	453	359	1,684	492
Average value In 1945 SF	1,756	17,791	829	5,568	33,958	34,766	1,360	8,181
Skewness coefficient	16.38	5.50	5.17	2.56	6.71	5.10	10.77	6.71

Re 3) Finally, changes in valuation procedures have had the effect of increasing average base (1945) values of certain known balances. For example, the Volcker Committee recommended that "...the earliest known account values should be identified and adjusted to 1945 values by adding back estimated bank charges and deducting estimated earned interest, if any."²¹ PW in its value estimation, being unable to ascertain whether interest had been credited or not, deducted interest from all normally interest-earning accounts. The Court, in contrast, determined that interest not be deducted absent evidence that it had in fact been credited. This obviously had the effect of raising average 1945 known values of savings and custody accounts in the Total AHD-plus above the proxy values PW calculated for these types of account. Further, more generally, the CRT in determining award amounts has endeavored to ascertain the market value of account assets as close to their final disposition date as possible, whereas the ICEP audit recorded available book values, which frequently were as of the deposit date and more often than not reflected nominal rather than market values. Obviously, these differences in approach result in significant differences in account valuation, but whether they work to add or subtract from the average values recorded in the ICEP audit depends on each case.

²¹ ICEP Report, p. 22.

I noted last year that statistically, the proposed new array of presumptive values is well based and that, in fact, the number of observations from which these proxy values are derived generates greater confidence than that on which the ICEP auditors' values rest.²² With the number of known-value accounts augmented by the 239 accounts for which value information could be obtained on basis of the portfolio content included in the documentation recently provided by *Credit Suisse*, plus the additions made in the normal course of events, this conclusion has further gained in strength.

Table 2. Number of known-value accounts underlying current presumptive values and the proposed revision: ICEP auditors Categories 1 and 2, and AHD-plus (Categories 1, 2, 3, and 5plus) (Units and ratios)

Account Type	Current presumptive value base	Proposed presumptive value base	
	Number of known-value accounts	Ratio	
	ICEP auditors accounts in Categories 1 and 2 (1)	AHD-plus = Categories 1,2,3,and 5plus (3)	AHD-plus to ICEP Categories 1 and 2 (4)=(3)/(1)
Savings Accounts	1,800	912	0.51
Demand Deposits	2,461	2,821	1.15
Custody Accounts	397	892	2.25
Safe Deposit Boxes	42	38	0.90
Unknown Account	3,009	2,245	0.75
Other Accounts	88	37	0.42
Total	7,797	6,945	0.89

Note: AHD-plus excludes 14 outliers and all negative and zero accounts

The total dataset, that is both known and unknown value accounts, which is relevant for the presumptive value base, consisting of Categories 1, 2, 3 and 5plus in the Total AHD-plus (i.e. the Total AHD-plus excluding Category 4, hereinafter referred to as "AHD-plus"), currently contains 26,362 accounts. Of these, after inclusion of the new data 6,945 (26.3 percent) now have a known value. This number equals 89 percent of the 7,797 known-value accounts used by the ICEP auditors for their proxy value calculations. (See Table 2 above.)

I explained in my previous letters why the quality of the account information on which the proposed presumptive values are based is necessarily better than that available to the auditors at the beginning of the claims resolution process. I further noted that of the four types of accounts for which the AHD-plus records fewer known-value observations than the ICEP auditor's database, for two - Savings accounts and the Unknown type of account - the number of observations in either database is adequately large to support the results. Also, with respect to Savings accounts, these, with a share of less than 7 percent of all accounts awarded through Set 172 proved to be of much lesser relative importance in the award process than the ICEP database might have suggested. Furthermore three-fifths of awarded Savings accounts had a known value, so that relatively little reliance had to be placed on the use of the proxy value. The number of

²² It will be recalled that the auditors based their calculations on the known-value accounts included in Review Categories 1 and 2 of the full ICEP database of 53,957 accounts. Categories 1 and 2 consisted of 10,441 accounts, of which 7,797 had known values. The proposed set of presumptive values is based on the known value accounts in the CRT's Total AHD-plus excluding only Review Category 4, for reasons set out in my previous letters. This database is known as the AHD-plus and includes Categories 1, 2, 3 and 5plus.

observations in the remaining two groups, Safe deposits and Other type of accounts, is so relatively small, at 42 for ICEP and 38 for the AHD-plus for the former and 88 for ICEP and 37 for the AHD-plus for the latter, that no great reliance can be put on either source. Still, the number of accounts with unknown values for these two types of account is relatively small as well. This is particularly so for the Other type of accounts, with a total number of only 241 in the AHD-plus, so that proxies drawn from the 37 known-value accounts provide quite reasonable guidance. Furthermore, both Safe deposits, at 5 percent of the total, and especially Other accounts, at less than 0.5 percent, so far have played a very small role in the overall award process.

As noted above, aside from the effect of the addition of the 239 Custody accounts to the known-value accounts database, changes over the past year in the number of accounts on which the proposed presumptive values rest relative to those utilized by the ICEP auditors have been trivial.²³ Even so, the growth of the database over the past year would have fractionally strengthened the already sound statistical basis of the proposed revisions. As noted above, the addition of the 239 Custody accounts raised the number of known-value Custody accounts in the AHD-plus to 892 after exclusion of outliers. This is well over twice the number on which their current presumptive value is based and of obvious importance given the high proportion of Custody accounts in the award process. It is of yet greater importance as Custody accounts, because of their high average value as compared with those of other types of accounts, play an overwhelming role in the total amounts awarded.

The addition of these 239 accounts also confirms overwhelmingly the reasoning on which the expansion of the proposed presumptive value base to include Category 3 accounts rests. As recalled above, the ICEP auditors excluded Category 3 accounts because they felt that the combination of the relatively low share of known-value accounts and the relatively high value of these accounts indicated that they "were missing substantial numbers of low average value accounts in category 3."²⁴ The evidence drawn from the award experience under CRT II showed that the inverse might be true and that the auditors were in fact missing a significant number of high value accounts in Categories 1 and 2 and that a considerable number of known-value accounts in all categories, including prominently Category 3, had erroneously been recorded as having unknown values. This evidence is strengthened further by the newly added Custody account information.

Of the 239 accounts 205, or 86 percent, were Category 3 accounts.²⁵ Their average 1945 value, after exclusion of 2 zero values and 2 outliers, was SF 42,664. By contrast, the average value of the 32 Category 1 and 2 accounts, after exclusion of three outliers, at SF 67,687, was almost 60 percent higher than the Category 3 average account value.

²³ The only notable change is that in the course of the award process it was found that one high-value Safe Deposit account should have properly been classified as a Custody account. This reclassification, however, is not of material significance to either the statistical soundness of the proposed change in the presumptive value for Safe Deposit accounts nor, indeed, in the proposed amount.

²⁴ Hydoski Memorandum, p. 2.

²⁵ This compares with a share of Category 3 accounts in the total number of accounts awarded through October 10, 2008 of almost three-fifths.

Table 3. Average 1945 value of known-value accounts underlying current presumptive values and proposed revision: ICEP auditors Categories 1 and 2, Awarded known-value accounts through Set 172 and AHD-plus (Categories 1, 2, 3, and 5plus) (1945 average values in SF and ratios)

Account Type	Current presumptive values	Revised presumptive value base					
		Average 1945 value in SF				Ratio	
		ICEP auditors	Awarded known-value accounts through Set 172	AHD-plus	Awarded accounts to ICEP Cat. 1 and 2	AHD-plus to ICEP Cat. 1 and 2	
Accounts in Categories 1 and 2 (1)	All (2)	Categories 1, 2, 3, and 5plus (3)	Categories 1, 2, 3, and 5plus (4)	All Categories (5)=(2)/(1)	Categories 1, 2, 3, and 5plus (6)=(3)/(1)	Categories 1, 2, 3, and 5plus (7)=(4)/(1)	
Savings Accounts	830	1,011	899	892	1.22	1.08	1.07
Demand Deposits	2,140	2,929	3,017	2,477	1.37	1.41	1.16
Custody Accounts	13,000	42,054	42,083	31,000	3.23	3.24	2.38
Safe Deposits	1,240	11,291	11,291	5,306	9.11	9.11	4.28
Unknown Account	3,950	4,163	4,804	2,961	1.05	1.22	0.75
Other Accounts	2,200	3,505	3,505	3,908	1.59	1.59	1.78

Note: For purposes of calculating average account values, Awarded known-value accounts exclude 13 negative or zero value accounts and 7 outliers; AHD-plus accounts exclude 14 outliers in addition to all negative and zero value accounts.

The increase by about one-third in the number of known-value Custody accounts, as set out above, would raise the awardable amounts for this type of account significantly. Furthermore, the valuation of the portfolios contained in the 239 accounts shows them to be largely in line with the values found for the known-value Custody accounts awarded thus far. Given the appreciable difference between the average awarded value and the AHD-plus average for Custody accounts, incorporating the newly valued accounts into the AHD-plus narrowed that gap, but not sufficiently to close it. (See Table 3.) On basis of the expanded database for Custody accounts, I propose that the presumptive value for Custody accounts be revised to a 1945 value of SF 31,000, which equals the average value of this type of account in the AHD-plus rounded to the nearest SF 50.²⁶

In conclusion, it should be noted that inclusion of the new information provides incontrovertible evidence that the revision of the current set of presumptive values, specifically to

²⁶ It should be noted that this is a conservative number in as much as the gap between the average value of awarded custody accounts and that derived from the AHD-plus is likely to widen again as amendments consequent upon the *Credit Suisse* documentation are awarded. To the extent that the new information documents 1945 portfolio values below SF 13,000, thus not requiring any amendments, these values have been incorporated into the awarded accounts database. Thus, as it is only the higher valued portfolios that yet need to be incorporated as they are awarded, average values will tend to increase.

include Category 3 accounts, and generally to move the present set of presumptive values closer to the average values emerging from the award experience the CRT has gained over the past years, is soundly based.

c) **Proposals for the revision of the current set of presumptive values**

As explained above, I consider that with the CRT's award processing nearing its conclusion, the impact of any further changes in the AHD-plus on either the number or the average values of known-value accounts by type of account on which my recommendation is based will be relatively small. The stability of these values has been proven conclusively over the past several years of monitoring. On basis of the CRT's latest assessment of the number of accounts that may yet be awarded available to me only an estimated 337 accounts are yet to be awarded. Thus, a final calibration of the proposed set of presumptive values appears warranted at this time.

The basis on which these final considerations rest differs in two respects from the previous more diagnostic analyses. First, as explained above, the underlying dataset was significantly expanded by the addition of the data provided by *Credit Suisse* data. Second, whereas in the previous memoranda the averages for already awarded accounts from the outset excluded so-called outliers, i.e. extreme values, the averages derived from the AHD-plus data included all observations. This difference did not stem from an oversight. Rather at the time, in as much as the ICEP auditors had chosen to adopt the straight average (mean) of the known value accounts for their proxy values, I opted not to depart from their choice of statistical treatment. This also was justified because the continuous addition of accounts to the AHD-plus, together with the correction of auditor errors and proper valuation of the content of known-value accounts, tended to augment especially the higher value ranges of the database. Consequently, with these fill-ins, values that had appeared to be outliers at an earlier stage often turned out to fall well within the later data ranges. However, now that the database is fairly set, exclusion of extreme values from the calculation of account averages on which the proposed revision of the set of presumptive values rests, would produce a more soundly based result. Accordingly, the AHD-plus averages for the various account types are derived after exclusion of a total of 14 outliers (see Table 3, column 4).²⁷

As noted above, the incorporation into the AHD-plus of the now known values for the additional 239 Custody accounts, has narrowed the gap between the average value of Custody accounts derived from the set of already awarded accounts and that based on the AHD-plus somewhat. By contrast, the average value of Safe Deposit Boxes was reduced as the new data showed one high-value Safe deposit actually to be a custody account. Though the number of known-value observations for Safe Deposits is too small to be statistically reliable, the data makes it clear that an increase in the presumptive value for this type of account is warranted.

²⁷ Outliers, by definition, are values that have an above proportionate impact on the properties of a data series. Their identification is not too complicated when dealing with a symmetrical distribution of values around the mean. However, it is rather more troublesome when dealing with highly skewed distributions as is the case here. In such a distribution the greater part of the data is concentrated on one side of the mean and the remaining data are spread out in a tail at the other side. The above outliers were identified on the basis of their impact on the coefficient of skewness and the standard deviation from the mean. Applying these tests, it turned out that all outliers were at the high end of the range. Removal of observations at the lower end in fact would have worsened the results or at best would have left them virtually unchanged, thus ruling them out as outliers. This is not an unexpected result as in this case the data distributions were skewed to the right, meaning that the mass of data was concentrated in the lower value ranges with little or no discontinuities.

With the exclusion of outliers, I propose that the presumptive value for Safe deposits be based, as for all but one of the other types of account, on the average account value derived from the AHD-plus. Excepting Safe deposits and Custody accounts, none of the underlying factors for my specific recommendations regarding the revision of the current set of presumptive values has changed.

Therefore, I recommend:

- a) that current presumptive values for Savings Accounts, Demand Deposits, Custody Accounts, Safe Deposits and Other Type of Accounts be revised to equal the respective 1945 values derived from the known account values in the AHD-plus rounded to the nearest SF 50; and
- b) that the presumptive value for the Unknown Type of Accounts remain at its present level. Even though the average value drawn from the AHD-plus for these accounts is below their current presumptive value, the average awarded account value has been consistently higher. Accordingly, holding them at their current presumptive value is justified, even if a change, given the number of such accounts already awarded, were practically possible.

Accordingly, I propose that the present set of presumptive values be amended as shown in Table 4a.

**Table 4a. Present and proposed presumptive values
1945 and current values
(SF and ratios)**

Account Type	Present presumptive value (ICEP)	Proposed presumptive value	Present presumptive value (ICEP)	Proposed presumptive value	Proposed relative to present presumptive value
	1945 values in SF		Current values (1945 value x 12.5) in SF		Ratio
Savings Accounts	830	900	10,375	11,250	1.08
Demand Deposits	2,140	2,500	26,750	31,250	1.17
Custody Accounts	13,000	31,000	162,500	387,500	2.38
Safe Deposit Boxes	1,240	5,300	15,500	66,250	4.27
Unknown Accounts	3,950	3,950	49,375	49,375	1.00
Other Accounts	2,200	3,900	27,500	48,750	1.77

**Table 4b. Present and proposed presumptive values
current values in US Dollars
(US\$ 1=SF 1.10)**

Account Type	Present presumptive value (ICEP)	Proposed presumptive value
	Current values in US dollars at US\$ 1=SF 1.10	
Savings Accounts	9,432	10,227
Demand Deposits	24,318	28,409
Custody Accounts	147,727	352,273
Safe Deposit Boxes	14,091	60,227
Unknown Accounts	44,886	44,886
Other Accounts	25,000	44,318

b) Cost of adoption of proposed presumptive values and total estimated Settlement Fund payments

As explained in my previous letter, adopting the proposed revisions to the current set of presumptive values requires adjustment of the already awarded accounts as appropriate as well as adjustment of yet to be awarded accounts. The cost estimates assume that, as in the past, the presumptive values not only represent proxies for the values of unknown account balances, but also constitute the minima to which known balances that fall below their associated presumptive value are to be raised, unless there are specific reasons for not doing so.

With respect to the forward projections, the CRT is now nearing the conclusion of the award determination process. Accordingly, the projection of 337 accounts yet to be awarded has become commensurately more firmly based, even though it still remains only an estimate. This number is significantly lower than the 1,400 projected last year even after taking account of the fact that a further 494 accounts have been awarded since through Set 172. This reduction in the overall total of awardable accounts may in large part be related to the fact that, as the end of the award work neared, the remaining matches of claimed Account Owners to actual Account Owners in the banks' documents would necessarily be of a lesser quality than earlier and the awardability rate would accordingly have been diminished.

On basis of the above, as shown in Table 5 below, the cost of adopting the proposed presumptive values would amount to US\$ 264.5 million for the adjustment of already awarded and yet to be awarded accounts combined. This estimate includes the effect of the awards and award amendments made so far consequent upon the new Custody account data provided by *Credit Suisse* as further discussed below.

Without any adjustment of presumptive values, forward payments from the Settlement Fund would be for the projected 337 accounts that are yet to be awarded only. As the CRT at this stage of its work could take a clearer view of the structure of the potentially still awardable matched accounts, the CRT was able to provide a breakdown of its mid-year projection by type of account as well. Thus, it was no longer necessary to project the structure of yet to be awarded accounts entirely on the basis of past experience. The estimated award amount for these 337 accounts, at present presumptive values, is US\$ 36.2 million.

This projected amount, together with payments made through Set 172, which was approved by the Court on September 25, 2008, and amounts already committed, including the estimated remaining amendment cost of already awarded accounts resulting from the new information provided by *Credit Suisse*, yields an estimated grand total of past and future payments at present presumptive values of US\$ 548.1 million. It should be noted that this estimate does not include potential payments in excess of average award amounts relating to a couple of dozen complicated cases yet to be resolved.

As noted above, bringing already awarded *Credit Suisse* accounts in line with the new documentation is estimated to involve 85 of the 177 affected accounts and, at current presumptive values, is estimated to cost US\$ 39.1 million. With adoption of the revised presumptive values this cost is in part offset by a reduction in the overall number of accounts for which award amounts need to be brought up to the new presumptive values. Specifically, without the adjustment of these 85 accounts to their actual known values, 177 accounts already paid at presumptive value would have to be raised from a 1945 presumptive value of SF 13,000 to SF 31,000 each. However, amendment of the *Credit Suisse* Custody accounts to accord with their known values is estimated to raise the award amounts of 42 of these accounts above the proposed

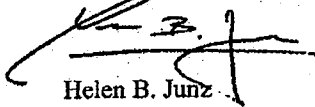
level presumptive value level of SF 31,000 and those of a further 47 accounts above the current level of SF 13,000. Accordingly, 42 accounts would not require any further adjustment to bring them to the proposed SF 31,000 level and 47 accounts would require only partial adjustment. The combined effect is that with the prior amendment of the *Credit Suisse* accounts affected by the new documentation, the total cost of adjusting the 1,263 already awarded Custody accounts (through Set 172) as appropriate to the proposed new presumptive value will be reduced by an estimated US\$ 13.5 million in current values.

As shown in Table 5 on the next page, adoption of the proposed presumptive values, at a cost of US\$ 264.5 million would put the estimate of future payments, including adjustment of accounts yet to be awarded, and the estimated remaining amendment costs relating to the *Credit Suisse* documentation at US\$ 308.8 million. This amount includes the offset to these amendment costs, as discussed above. The overall cost of adopting the new set of presumptive values is thus estimated to amount to US\$ 269.4 million and the grand total of past and future payments to US\$ 812.7 million.

The US dollar amounts given above are based on an exchange rate of US\$ 1=SF 1.10, this being the average over the past month. However, given the large swings in the exchange rate of the US dollar vis-à-vis the Swiss franc over the past year, and the important effect of a change of even a few basis points on the total amounts, Note 2 to Table 5 provides the overall total at exchange rates of US\$ 1=SF 1.05 and US\$ 1=SF 1.15 as well.

I will be pleased to respond to any questions or comments.

Sincerely yours,



Helen B. Junz

**Table 5: Projected payments for yet to be awarded accounts,
cost of adoption of proposed presumptive values and
estimated total Settlement Fund payments**
(In US dollars, US\$ 1=SF 1.10)

Account Type	Yet to be awarded accounts (337) (1)	Adjustment to proposed presumptive values awarded and projected accounts (2)	Total forward payments (3)=(1)+(2)
Savings accounts	319,365	189,140	508,505
Demand deposits	3,232,647	6,060,113	9,292,760
Custody accounts	26,277,066	249,581,759	275,858,827
Safe deposit boxes	291,277	9,374,587	9,665,864
Unknown accounts	5,884,901	0	5,884,901
Other accounts	145,761	178,786	324,547
Total	36,151,019	265,384,385	301,535,404
Paid through Set 172¹	503,823,602		503,823,602
Estimate of yet to be awarded amendment amounts and presumptive value adjustment offsets relating to new <i>Credit Suisse</i> data ²	8,153,476	-859,931	7,293,545
Grand Total Paid, Projected and Estimated consequence of <i>Credit Suisse</i> information	548,128,097	264,524,454	812,652,551

¹ Includes US\$ 424,720,900.93 paid under CRT II, US\$ 18,184,492.00 paid under CRT I, and US\$ 60,918,208.92 paid under the Plausible Undocumented Award (PUA) program. These total US\$ 503,823,601.85. As noted in the text, this total does not include any payments in excess of average award amounts relating on a couple of dozen complicated cases yet to be resolved.

² Estimate of the effects of adjusting already awarded accounts to bring them in line with the account values based on the additional account information relating to portfolio content made available by *Credit Suisse* over the past nine months. So far, through Batch 172, amendments amounting to US\$ 30,931,900.32 have been awarded. And a further US\$ 3,188,973 was approved on October 2, 2008. This leaves a conservatively estimated US\$ 4.8 million yet to be awarded for a total adjustment of at least US\$ 39.0 million. However, as all other data are shown through Set 172 only, the amendment amount shown in column 1 excludes the October 2 amendment awards. The shift of the majority of the accounts affected by the additional *Credit Suisse* information from unknown to known account values means that part of the consequent amendment cost will be offset by a commensurately lesser cost of adopting higher presumptive values. An estimate of this partial offset, amounting to US\$ 13.5 million is included in the overall cost of US\$ 269.4 million with only the still remaining offset of US\$ 859,931 shown explicitly in column 2.

Note 1: Totals may not add due to rounding.

Note 2: At an exchange rate of US\$ 1=SF 1.05, total estimated forward payments would be increased by US\$ 8,983,227 for an estimated grand total of paid and projected payments of US\$ 831,301,558; at US\$ 1=SF 1.15, the grand total would be reduced to US\$ 799,542,317.

EXHIBIT E

DA

FRANK HYDOSKI
TWO WORLD FINANCIAL CENTER
NEW YORK, NEW YORK 10281-1414
TELEPHONE (212) 436-4354
FACSIMILE (212) 653-7548

December 1, 2008

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

96 CU 4849

IN CLERK'S OFFICE
U.S. DISTRICT COURT
E.D.N.Y.

★ DEC 11, 2008 ★

Dear Judge Korman:

BROOKLYN OFFICE

I am responding to your request, conveyed to me through Special Master Michael Bradfield, to review on behalf of the Court whether it makes sense, from a methodological point of view, to adjust presumptive values for accounts in the claims resolution process associated with the Swiss bank settlement, in light of new account balance information provided by banks, claimants, and other sources, and judged by the Claims Resolution Tribunal ("CRT") to be reliable. In short, it seems to me that it would be a sound undertaking to: (1) add new information to the data used originally to calculate the average balances; (2) recalculate the average balance amounts; and (3) adjust presumptive values, if there are material changes.

You may recall that in 1999, at Mr. Bradfield's request, the PriceWaterhouse team, of which I was the leader, combined the Category 1 through 4 accounts found by all of the Independent Committee of Eminent Persons ("ICEP") accounting firm teams (Arthur Andersen, Coopers & Lybrand, Deloitte, KPMG, and Price Waterhouse) and developed a number of statistics regarding them. The purpose of that exercise was to estimate the total value of accounts.

To create the estimate, we had to establish proxy values for the large number of accounts for which, at that time, no known balance information had been found. The logic for developing proxy values rather than simply using the null amounts in the calculations was (1) that null values were likely the result of lack of information due to the passage of time or actions by the banks and not actions by account holders; (2) that in the claims process additional information about account balances would be found; and (3) that ultimately the rules of the claims proceeding would make awards based on presumptive values.

In developing the proxy values, we noticed discrepancies between average amounts of accounts in the various Categories. In particular, the average amounts in Category 3 were a good deal higher than for the same types of accounts in Categories 1 and 2. We were cautious about the Category 3 results because of the relative paucity of balance information. We hypothesized that the higher averages were the result of a large number of missing small balances, and, based on this hypothesis, suggested to Mr. Bradfield that we rely on Categories 1 and 2 to estimate proxy balances. Sometime after they were calculated, the proxy values were incorporated under the authority of your court into Article 29 of the Rules Governing the Claims Process as presumptive values.

FRANK HYDOSKI
TWO WORLD FINANCIAL CENTER
NEW YORK, NEW YORK 10281-1414
TELEPHONE (212) 436-4354
FACSIMILE (212) 653-7548

My understanding is that a proposal has been made to the court recommending the recalculation of the presumptive values in Helen B. Junz's letter to you of March 21, 2006 and in updates of May 14, 2007 and October 10, 2008. Viewed historically the CRT's data about accounts derive from aggregations of, on the one hand, data provided to the CRT by the accounting firms engaged by the ICEP for the purpose of investigating Swiss banks for accounts that may have been owned by Victims of the Holocaust, and, on the other hand, data accumulated by the CRT in the course of its work in adjudicating claims for accounts. Dr. Junz's suggestions boil down to the idea that sufficient additional information has been gathered to warrant recalculation of the presumptive values. I find this idea persuasive. It is clear from the data provided in Dr. Junz's original letter and the two updates that the CRT has in fact gathered considerable additional information of a kind and quality that should be taken into account in these statistical calculations. I would add that such data would have been used in the 1999 calculations had it been available.

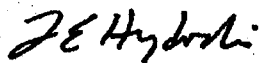
The only caution I can imagine regarding recalculating presumptive values in light of the new information would relate to whether the information collected were of a different kind than that relied on by the ICEP accounting firm teams, if for example it were based purely on hearsay. My understanding is that this is not the case. Rather the information was collected from cooperating banks, from banking documents or documents evidencing banking information provided by claimants, and from public record sources deemed reliable by the CRT. In fact, the ICEP accounting firms also collected and based their conclusions on these three types of information: banking records found throughout the banks, claimant information collected largely from bank legal office files, and public record information from national archives and other sources we regarded as unbiased.

Please note that this letter only addresses the question of whether recalculating presumptive values is methodologically sound. It does not address the specific recommendations Dr. Junz makes in her letters to you. I have not been asked to comment or take a view on these specific matters, nor do I have sufficient information to test conclusions or check calculations.

Finally, I note that the views in this letter are wholly mine and not those of Deloitte Financial Advisory Services LLP, nor of any other Deloitte & Touche entity or Deloitte Touche Tohmatsu member firm.

I am happy to respond to questions or comments.

Sincerely yours,



Frank Hydoski
Deloitte FAS LLP