

12 13  
7



**COMMODITY FUTURES TRADING COMMISSION**

2033 K Street, NW, Washington, DC 20581

(202) 254 - 7424

(202) 254 - 3534 Facsimile

DIVISION OF  
ENFORCEMENT

October 7, 1993

Robert Harris, Esquire  
Assistant Legal Adviser for  
Law Enforcement and Intelligence  
United States Department of State  
2201 C Street, N.W.  
Washington, DC 20520-6417

Re: Exchange of Diplomatic Notes Relating to the Treaty Between the United States and Switzerland on Mutual Assistance in Criminal Matters.

Dear Mr. Harris:

This is to inform you that the Commodity Futures Trading Commission ("Commission") voted today to authorize the Division of Enforcement ("Division") to inform the Department of State that the Commission agrees to the form and content of the Diplomatic Notes Between the United States of America and the Swiss Confederation attached hereto. The Commission understands that the Swiss Federal Council approved the Diplomatic Notes on September 22, 1993, and that the Department of Justice, as Central Authority under the Treaty, has informed the Department of State that it supports the exchange of the Diplomatic Notes.

Thank you for your kind assistance in finalizing these agreements. We look forward to reaping the benefits of this new opportunity for international enforcement cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Klejna", written over a horizontal line.

Dennis Klejna  
Director

cc: Margaret Cotter  
Office of International Affairs  
Department of Justice

Michael Mann  
Director  
Office of International Affairs  
Securities and Exchange Commission

09/30/93

15:18

2025140880

OIA/NDDS, U. S. DOJ

09/29/93

16:18

SWISS EMBASSY FAX (202)387-2564

NO. 223

P002-007

003

Excellency,

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

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

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

- (1) Suits in a court of the United States seeking permanent or preliminary injunctions or temporary restraining orders or enforcement proceedings before the SEC, the CFTC or an administrative law judge seeking cease-and-desist orders
- (2) Suits in a court of the United States or enforcement proceedings before the SEC, the CFTC or an administrative law judge seeking other equitable relief ancillary to the relief sought in paragraph (1) above, such as a freeze of assets or the disgorgement of profits gained (or losses avoided) as a result of violative conduct.
- (3) Suits in a court of the United States or enforcement proceedings before the SEC, the CFTC or an administrative law judge seeking the imposition of a civil penalty or fine, provided however, if evidence or information is obtained pursuant to a grant of assistance under the Treaty, such evidence or information shall not be used to secure the imposition of a civil penalty or fine to compel a person to act in a way that would be contrary to Swiss law.

09/30/83

15:18

2025140880

OIA/NDDS, U. S. DOJ

004

09/29/83

16:18

SWISS EMBASSY FAX (202)387-2564

NO. 223

F003/007

2

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

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

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

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

- (1) The issuance of court or administrative orders declaring a violation of, or commanding a person to comply in the future with, applicable laws or rules or regulations promulgated thereunder;
- (2) The imposition of a formal prohibition to engage in a vocation, trade or business which requires a license;
- (3) The revocation of a license to engage in a vocation, trade or business or the removal of a person from a particular position in a regulated entity;
- (4) The imposition of a penalty or sanction under administrative law, provided however, if evidence or information is obtained pursuant to a grant of assistance under the Treaty, such evidence or information shall not be used to secure the imposition of a penalty or sanction under administrative law to compel a person to act in a way that would be contrary to United States law; and
- (5) The judicial confiscation of objects and assets, including freezes of assets.

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

09/30/83 15:19

2025140880

OIA/NDDS, U. S. DOJ

005

09/29/93

16:19

SWISS EMBASSY FAX (202)387-2561

NO. 222

P201/007

3

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

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

For the Secretary of State:

08/30/83

15:19

2025140880

OIA/NDDS, U. S. DOJ

006

09/29/93

16:28

SWISS EMBASSY FAX (202) 397-2561

NOV 23

F005-001

(2)

Excellency,

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

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

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

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

- (1) Suits in a court of the United States seeking permanent or preliminary injunctions or temporary restraining orders or enforcement proceedings before the SEC, the CFTC or an administrative law judge seeking cease-and-desist orders.
- (2) Suits in a court of the United States or enforcement proceedings before the SEC, the CFTC or an administrative law judge seeking other equitable relief ancillary to the relief sought in paragraph (1) above, such as a freeze of assets or the disgorgement of profits gained (or losses avoided) as a result of violative conduct.
- (3) Suits in a court of the United States or enforcement proceedings before the SEC, the CFTC or an administrative law judge seeking the imposition of a civil penalty or fine, provided however, if evidence or information is obtained pursuant to a grant of

09/30/83  
09/29/93

15:20  
16:26

2025140880

OIA/NDDS, U.S. DOJ

SWISS EMBASSY FAX (202)387-2061

007

2

assistance under the Treaty, such evidence or information shall not be used to secure the imposition of a civil penalty or fine to compel a person to act in a way that would be contrary to Swiss law.

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

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

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

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

- (1) The issuance of court or administrative orders declaring a violation of, or commanding a person to comply in the future with, applicable laws or rules or regulations promulgated thereunder;
- (2) The imposition of a formal prohibition to engage in a vocation, trade or business which requires a license;
- (3) The revocation of a license to engage in a vocation, trade or business or the removal of a person from a particular position in a regulated entity;
- (4) The imposition of a penalty or sanction under administrative law, provided however, if evidence or information is obtained pursuant to a grant of assistance under the Treaty, such evidence or information shall not be used to secure the imposition of a penalty or sanction under administrative law to compel a person to act in a way that would be contrary to United States law; and
- (5) The judicial confiscation of objects and assets, including freezes of assets.

If the foregoing is acceptable to the Swiss Federal Council, I have the honor to propose that this note and Your Excellency's reply thereto shall constitute an agreement between the competent authorities pursuant to Article 1, Paragraph 3 of the Treaty, which

09/30/93  
09/29/93

15:21  
16:21

2025140880

OIA/NDDS, U. S. DOJ

008

SWISS EMBASSY FR (202)387-2501

3

shall supersede the Agreement of November 10, 1987, and which shall enter into force on the date of your Excellency's note in reply.

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

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