

Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on cooperation in the area of taxation

The Swiss Confederation

and

the United Kingdom of Great Britain and Northern Ireland,

desiring to strengthen their fiscal relations;

willing to intensify their cooperation in the area of taxation and crossborder financial services;

considering the Agreement dated 26 October 2004 between the Swiss Confederation and the European Community providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (hereinafter referred to as “Agreement on the Taxation of Savings”);

resolved to establish a level of cooperation which has with regard to taxation in respect of income and gains on relevant assets an enduring effect equivalent to the outcome that would be achieved through an agreement to exchange information on an automatic basis;

having regard to the existing close cooperation in the area of double taxation, in particular the Convention between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation with respect to Taxes on Income, signed at London on 8 December 1977, as amended by the Protocols signed at London on 5 March 1981, at Bern on 17 December 1993, at London on 26 June 2007 and at London on 7 September 2009 and the Additional Protocol signed at London on 7 September 2009 (hereinafter referred to as “Double Taxation Convention”),

have agreed as follows:

Part 1

General provisions

Art. 1 Scope and purpose

1. The objective of this Agreement is to provide for bilateral cooperation between the Contracting States to ensure the effective taxation in the United Kingdom of relevant persons. The Contracting States agree that this Agreement will achieve a level of cooperation which has with regard to taxation in respect of income and gains on relevant assets an enduring effect equivalent to the outcome that would be achieved through an agreement to exchange information about such individuals on an automatic basis.

2. In furtherance of this objective, the competent authorities of the Contracting States shall provide assistance to each other in the following main respects:

- a) the tax regularisation of relevant assets held in Switzerland by or for relevant persons;
- b) the effective taxation of the income and gains on relevant assets held in Switzerland by or for relevant persons and measures to safeguard this Agreement's purpose;
- c) under the terms set forth in this Agreement, further exchange of information by the United Kingdom to ensure the effective taxation of Swiss residents regarding assets in the United Kingdom.

Art. 2 Definitions

1. For the purposes of this Agreement, unless otherwise defined,

- a) "Contracting State" means Switzerland or the United Kingdom as the context requires;
- b) "Switzerland" means the territory of the Swiss Confederation in accordance with its national law and international law;
- c) "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;
- d) "competent authority" means:
 - in the case of Switzerland, the Federal Department of Finance or an authority designated by it;
 - in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;
- e) "Swiss paying agent" means banks under the Swiss Banking Act of 8 November 1934, securities dealers under the Swiss Stock Exchange Act of 24 March 1995 and natural and legal persons resident or established in Swit-

zerland, partnerships and permanent establishments of foreign companies, which accept, hold, invest or transfer assets of third parties or merely make payments of income or gains for third parties or secure such payments in the normal course of their business.

Notwithstanding the foregoing, for the purposes of Part 3, a person is not considered to be a Swiss paying agent solely because that person pays out dividends and interest directly to its shareholders or creditors, provided that the total amount of these payments does not exceed CHF 1 million per year;

- f) “relevant assets” means all forms of bankable assets booked or deposited with a Swiss paying agent including, but not limited to, the following:
- cash accounts and precious metals accounts;
 - bankable assets held by a Swiss paying agent acting as a fiduciary agent;
 - all forms of stocks, shares and securities;
 - options, debts and forward contracts;
 - other structured products traded by the banks such as certificates and convertibles.

The following shall not be regarded as relevant assets for the purposes of this Agreement:

- contents of safe deposit boxes;
 - real property;
 - chattels;
 - insurance contracts which are regulated by the Swiss Financial Market Supervisory Authority, with the exception of assets held by an insurance company in an account separate from the insurance company’s main accounts combined with a minimal risk protection and where the pay-out or redemption is not restricted to death, disability or illness (hereinafter referred to as “insurance wrappers”);
- g) “account or deposit” means an account or deposit holding relevant assets but the terms “account” and “deposit” when used independently shall only have this meaning if the context so requires;
- h) “relevant person” means any individual resident in the United Kingdom, who:
- as a contractual partner of a Swiss paying agent, is the account holder or deposit holder and beneficial owner of assets; or
 - is, in accordance with the conclusions of a Swiss paying agent drawn in line with the prevailing Swiss due diligence obligations and taking into consideration all the circumstances known to it, the beneficial owner of assets held by:
 - a domiciliary company (i.e. legal entities, companies, institutions, foundations, trusts, fiduciary companies and other establishments not exercising a trading or manufacturing activity or another form of commercial operations); or

- an insurance company in an insurance wrapper; or
- another individual by means of an account or a deposit with a Swiss paying agent.

A domiciliary company in the aforementioned sense is considered to be the beneficial owner in exceptional cases if proof is provided that it is itself subject to effective taxation under the general rules for direct taxation applicable under the law of its place of establishment or its place of effective management, or that it is treated as non-transparent with reference to its income under United Kingdom law.

An individual resident in the United Kingdom is not considered to be a relevant person with regard to assets of associations of persons, asset structures, trusts or foundations, if it is not possible to ascertain the beneficial ownership of such assets, e.g. due to the discretionary nature of the arrangement.

The beneficial owner of an insurance wrapper is not considered a relevant person, where the insurance company confirms to the Swiss paying agent that it will deliver the appropriate certification to the competent authority of the United Kingdom.

For the purposes of Part 3, an individual is not considered a relevant person, if he or she:

- acts as a Swiss paying agent; or
- acts on behalf of a legal entity, an investment fund or a comparable investment scheme; or
- acts on behalf of a relevant person who discloses to the Swiss paying agent his or her identity and State or jurisdiction of residence.

Where a Swiss paying agent has information suggesting that the individual who receives a payment of income or gains in accordance with Article 19 paragraphs 1 and 2 or for whom such a payment is secured is not the relevant person, that agent shall take reasonable steps to establish the identity of the relevant person. If the Swiss paying agent is unable to identify the relevant person, that agent shall treat the individual in question as the relevant person.

If a relevant person holds an interest in a collective or joint account or deposit, the entire assets are to be attributed to the relevant person, unless the Swiss paying agent can determine all the persons holding an interest in such an account or deposit. In this case, the Swiss paying agent shall allocate assets according to the number of contractual partners, unless the Swiss paying agent has been informed of, and has received appropriate documentation regarding, a different allocation. If a relevant person holds an interest in a partnership, the rules for collective or joint accounts and deposits in this subparagraph apply accordingly;

- i) “account holder” or “deposit holder” means a person who is the contractual partner of a Swiss paying agent regarding relevant assets;
- j) “non-UK domiciled individual” means:
 - (i) for the purposes of Part 2 only, a person who was not domiciled any-

where within the United Kingdom on appointed date 2 and claimed the remittance basis of taxation for the tax year ending on 5 April 2011 or for the tax year ending on 5 April 2012 and this has been verified through the certification process in accordance with Article 4;

- (ii) for the purposes of Part 3 only, a person who is not domiciled anywhere within the United Kingdom and claims the remittance basis of taxation in the United Kingdom for the relevant tax year and this has been verified through the certification process in accordance with Article 4;
- k) “United Kingdom taxpayer” means an individual who is or may be liable to tax in the United Kingdom;
- l) “tax year” means the United Kingdom tax year which lasts from 6 April in any year until 5 April of the following year;
- m) the following terms mean:
 - “appointed date 1” the 31 December 2002;
 - “appointed date 2” the 31 December 2010;
 - “appointed date 3” the last day of the month following a period of four months after the date of entry into force of this Agreement;
 - “appointed date 4” the last day of the month following a period of five months after the date of entry into force of this Agreement;
- n) “investigation” means:
 - (i) any criminal investigation conducted by the competent authority of the United Kingdom relating to those functions for which the Commissioners for Her Majesty’s Revenue and Customs are responsible as set out in the Commissioners for Revenue and Customs Act 2005 and to any money laundering offence within Part 7 of the Proceeds of Crime Act 2002 which is associated with those functions; or
 - (ii) any civil enquiry of any kind that is supported by statutory information powers and is carried out for the purpose of ascertaining whether the United Kingdom tax liabilities of the relevant person are correct and up to date; or
 - (iii) any coordinated, project-based enquiries by the competent authority of the United Kingdom into multiple identified taxpayers stemming from specific third party information;
- o) “United Kingdom disclosure facility” means any facility or campaign offered by the competent authority of the United Kingdom under which any individual liable to tax in the United Kingdom is or was able to regularise his or her United Kingdom tax position;
- p) “Swiss anticipatory tax” means “impôt anticipé” according to the Federal Act on anticipatory tax of 13 October 1965.

2. Where this Agreement refers to a specific provision in the law of one of the Contracting States, it refers to its version on the date of signature of this Agreement. The competent authorities may agree to apply a provision in its version at the time of application if this provision has been modified only in minor respects not affecting

its general character or to apply another provision, which is of substantially similar character and has been modified only in minor respects not affecting its general character. The competent authorities shall without delay inform the public of the agreement reached.

3. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting State, any meaning under the applicable tax laws of that Contracting State prevailing over a meaning given to the term under other laws of that Contracting State.

Art. 3 Identity and residence of relevant persons

1. In order to establish the identity and residence of relevant persons the Swiss paying agent shall keep a record of the name, first name, birth date, address and residence details in accordance with the prevailing Swiss due diligence obligations in place when establishing business relationships. Within this framework, individuals who have their principle private address in the United Kingdom based on the due diligence records of the Swiss paying agent are deemed resident in the United Kingdom for the purposes of this Agreement.

2. For contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after the date of entry into force of this Agreement, for individuals presenting a passport issued by the United Kingdom who declare themselves to be resident in a State or jurisdiction other than Switzerland or the United Kingdom, residence shall be established by means of a tax residence certificate issued by the competent authority of the State or jurisdiction in which the individual claims to be resident. Failing the presentation of such a certificate, the United Kingdom shall be considered the state of residence. For contractual relations entered into, or transactions carried out in the absence of contractual relations, before the date of entry into force of this Agreement, an identical procedure applies as of 1 January 2004 under the Agreement on the Taxation of Savings.

3. For the purposes of Part 2, residence shall be determined as at appointed date 2.

Art. 4 Certification process for identifying non-UK domiciled individuals for the purposes of this Agreement

1. A Swiss paying agent may only accept a relevant person as a non-UK domiciled individual when provided with a certificate produced by a lawyer, an accountant or a tax adviser who is a member of a relevant professional body confirming that the relevant person is not domiciled within the United Kingdom and has claimed the remittance basis of taxation for the tax years defined in Article 2 paragraph 1 letter j).

2. The following shall be verified by the lawyer, the accountant or the tax adviser before certifying that a relevant person is a non-UK domiciled individual for the purposes of this Agreement:

- a) The United Kingdom tax return for the relevant tax year contains a claim or statement to be not domiciled anywhere within the United Kingdom; and

- b) if appropriate, that tax return also contains a claim for the remittance basis under Part 14 Chapter A1 Income Tax Act 2007 and the tax chargeable under section 809H Income Tax Act 2007 has been paid; and
 - c) to the best of their knowledge, the domicile status of the relevant person is not formally disputed by the competent authority of the United Kingdom.
3. For the purposes of Part 2, the certificate shall be provided to the Swiss paying agent by appointed date 3.
4. For the purposes of Part 3, the relevant person shall first provide by 31 March the Swiss paying agent with a declaration of intent to claim the remittance basis of taxation for the following tax year. This declaration shall then be supported by a certificate to be provided to the Swiss paying agent by 31 March following the end of the relevant tax year.
5. The relevant person shall indicate in the declaration of intent how the Swiss paying agent shall proceed where sufficient funds are not available, whether:
- a) the relevant person intends to meet any shortfall within 8 weeks from 31 March following the end of the relevant tax year; or
 - b) the relevant person authorises the Swiss paying agent to disclose information in line with Article 22 paragraph 3.

Where the relevant person fails to opt for one of the options above, letter b) shall apply as if the relevant person has provided written authorisation to the Swiss paying agent to disclose.

Part 2

Regularising the past

Art. 5 Options available to relevant persons

1. Subject to paragraph 3 a relevant person who is not a non-UK domiciled individual and who held relevant assets with a Swiss paying agent at appointed dates 2 and 3 shall have the option either to instruct the Swiss paying agent to make a one-off payment in respect of relevant assets in accordance with Article 9 paragraph 2 or to authorise the Swiss paying agent to make a disclosure in accordance with Article 10.

2. Subject to paragraph 3 a relevant person who is a non-UK domiciled individual and who held relevant assets with a Swiss paying agent at appointed dates 2 and 3 shall have the following options in relation to relevant assets:

- a) to instruct the Swiss paying agent to make a one-off payment in accordance with Article 9 paragraph 2 (hereinafter referred to as the “capital method”); or
- b) to authorise the Swiss paying agent to make a disclosure in accordance with Article 10; or
- c) to disclose all non-UK income and gains which have been remitted to the United Kingdom and all amounts which arose from taxable sources within the United Kingdom between appointed date 1 and the date of initialing of this Agreement and on which the full amount of United Kingdom tax has not been paid (hereinafter referred to as “omitted taxable base”) to the Swiss paying agent by making a self-assessment of the omitted taxable base in the form prescribed and to instruct the Swiss paying agent to make a one-off payment in accordance with Article 9 paragraph 3 (hereinafter referred to as the “self-assessment method”); or
- d) to confirm to the Swiss paying agent that none of the options a) to c) in this paragraph is chosen (hereinafter referred to as the “opt out method”).

3. Where a relevant person fails to exercise by appointed date 3 one of the options described in paragraphs 1 and 2, then the Swiss paying agent shall levy the one-off payment in accordance with Article 9 paragraph 2.

Art. 6 Notification of the relevant person by Swiss paying agents

1. Swiss paying agents shall within two months of the date of entry into force of this Agreement give notice to the holders of accounts and deposits in respect of which a relevant person has been identified about the content of this Agreement and the resulting rights and duties of relevant persons.

2. For relevant persons establishing a business relationship with a Swiss paying agent between the date of entry into force of this Agreement and appointed date 3, such notice shall be given at the time the contract is finalised and include a reference to the specific rights and duties provided for in Article 8.

Art. 7 Rights and duties of relevant persons

1. The relevant person must inform the Swiss paying agent in writing and by appointed date 3 which option described in Article 5 paragraphs 1 and 2 he or she chooses with respect to each account or deposit in existence at appointed date 3. This notification is irrevocable. Where a notification was made before the date of entry into force of this Agreement, it shall become irrevocable if it has not been revoked as at that date.
2. The relevant person shall make sufficient funds available to the Swiss paying agent for the settlement of the one-off payment described in Article 9.
3. If the account holder or deposit holder is not the relevant person, the Swiss paying agent is entitled to act in accordance with the instructions and declarations of the account holder or deposit holder.

Art. 8 Establishment of new business relationships

1. Relevant persons establishing a business relationship with a Swiss paying agent between appointed date 2 and appointed date 3 shall provide the Swiss paying agent by appointed date 4 with a written confirmation stating whether:
 - a) these relevant assets were booked with another Swiss paying agent as of appointed date 2; and
 - b) the business relationship with that Swiss paying agent was ongoing as of appointed date 3.
2. Where the relevant assets referred to in the written confirmation provided in accordance with paragraph 1 were booked with a Swiss paying agent on appointed date 2 and the relevant person terminated the business relationship with that Swiss paying agent before appointed date 3, the new Swiss paying agent shall apply the measures in this Part. Each previous Swiss paying agent shall cooperate with the new Swiss paying agent when so requested. By appointed date 4 the relevant person shall:
 - a) notify the new Swiss paying agent in accordance with Article 7 paragraph 1; and
 - b) instruct in writing the new Swiss paying agent to request from each previous Swiss paying agent all necessary information for the application of the option chosen in accordance with Article 7 paragraph 1; and
 - c) instruct in writing each previous Swiss paying agent to transfer on request to the new Swiss paying agent all necessary information for the application of the option chosen in accordance with Article 7 paragraph 1.
3. Where the relevant assets referred to in the written confirmation provided in accordance with paragraph 1 were booked with a Swiss paying agent on appointed date 2 and there is a continuing business relationship with that Swiss paying agent at appointed date 3, the new Swiss paying agent shall not apply any further measures provided for in this Part on the relevant assets of the relevant person booked with it.
4. Where the relevant assets referred to in the written confirmation provided in accordance with paragraph 1 were not booked with a Swiss paying agent on ap-

pointed date 2, the new Swiss paying agent shall not apply any further measures provided for in this Part on the relevant assets of the relevant person booked with it.

5. If the relevant person does not comply with the duties provided for in paragraphs 1 to 4, the new Swiss paying agent shall disclose the available information in accordance with Article 10 as if the relevant person had provided written authorisation to the Swiss paying agent to disclose.

Art. 9 One-off payment and clearance of tax liabilities

1. Subject to Articles 8 and 13, a Swiss paying agent shall on appointed date 3 levy a one-off payment on the relevant assets of relevant persons.

2. Subject to paragraph 3, the one-off payment shall be calculated in accordance with Schedule I. The applicable rate is 34%.

3. Where a non-UK domiciled individual has opted for the self-assessment method, the one-off payment shall be 34% of the omitted taxable base disclosed to the Swiss paying agent.

4. At the time the one-off payment is levied, the Swiss paying agent shall issue a certificate in the form prescribed to the relevant person. The certificate shall be considered approved by the relevant person, if he or she does not object within 30 days of issue.

5. The Swiss paying agent shall at the time of approval of the certificates issued in accordance with paragraph 4 transfer the one-off payments previously levied to the competent authority of Switzerland. Such transfers shall take place monthly starting one month after appointed date 3 with the last payment 12 months after appointed date 3. Subject to Article 34, the competent authority of Switzerland shall transfer the payments to the competent authority of the United Kingdom in monthly instalments starting two months after appointed date 3 with the last instalment 13 months after appointed date 3. One-off payments which are levied at a later date in exceptional circumstances, e.g. due to legal proceedings, shall be transferred without delay by the Swiss paying agent to the competent authority of Switzerland, which shall transfer them without delay to the competent authority of the United Kingdom.

6. The one-off payments in accordance with paragraphs 2 and 3 shall be calculated, levied and transferred to the competent authority of Switzerland by the Swiss paying agent in sterling. Where sterling is not the reference currency of the account or deposit, the Swiss paying agent shall convert the amount into sterling by using the fixed exchange rate published by the SIX Telekurs AG at the corresponding date. The competent authority of Switzerland shall transfer the payments to the competent authority of the United Kingdom in sterling.

7. Subject to paragraph 12, following approval of the certificate issued under paragraph 4 the relevant person shall cease to have any liability to the United Kingdom taxes listed in paragraph 10 for the taxable periods or charges to tax referred to in paragraph 11, in relation to the relevant assets concerning which the one-off payment has been made. This clearance shall also include without limitation interest, penalties and surcharges that may be chargeable in relation to those tax liabilities. The relevant person shall also cease to have any liability to the United Kingdom

taxes listed in paragraph 10 in relation to liabilities which arise from the estate of a deceased person in respect of relevant assets concerning which the one-off payment has been made.

8. The clearance of the tax liability described in paragraph 7 shall also apply to individuals who are jointly or severally liable.

9. In the case of relevant persons who are non-UK domiciled individuals:

- a) if the capital method is applied, then the provisions of paragraph 7 apply and future payments from the amount representing those funds as at the date following the date that the capital method is applied shall not generate a further tax liability in the United Kingdom;
- b) if the self-assessment method is applied, then the provisions of paragraph 7 apply only to the income, gains and amounts disclosed in the self-assessment to the Swiss paying agent.

10. The United Kingdom taxes for which the clearance described in paragraph 7 shall apply are:

- a) income tax;
- b) capital gains tax;
- c) inheritance tax; and
- d) value added tax which the relevant person would have had to pay,

but excluding liabilities to any or all of these taxes that have been transferred to a relevant person.

11. Paragraph 7 shall apply to liabilities to the United Kingdom taxes listed in paragraph 10 concerning:

- a) taxable periods ending before the date of entry into force of this Agreement; and
- b) in the case of taxable periods commencing before the date of entry into force of this Agreement but ending on or after the date of entry into force of this Agreement, income arising and gains realised before the date of entry into force of this Agreement; and
- c) where there is no taxable period, charges to tax arising before the date of entry into force of this Agreement.

12. The amount in the account or deposit cleared in accordance with paragraph 7 as of the date of the entry into force of this Agreement is equal to C_r as defined in Schedule I. According to this:

- a) if C_{10} is smaller than C_8 , then C_r equals C_8 ;
- b) if C_{10} is equal or greater than C_8 and equal or smaller than $1.2 * C_8$, then C_r equals C_{10} ;
- c) if C_{10} is greater than $1.2 * C_8$, then C_r equals the higher of
 - $1.2 * C_8$; or
 - C_8 , plus the sum of the following:

- (i) inflows of capital between appointed date 2 and the date of entry into force of this Agreement which offset outflows between appointed dates 1 and 2; and
- (ii) increases between appointed date 2 and the date of entry into force of this Agreement in the value of relevant assets as at appointed date 2 (increases in value are income and gains as defined in Article 19 paragraph 1 and unrealised capital gains),

if the relevant person provides the Swiss paying agent with all necessary documentation to enable it to apply the calculation in subparagraphs (i) and (ii) above by appointed date 3.

However, to the extent that inflows of capital come directly or indirectly from the United Kingdom and left the United Kingdom between the date of signature and the date of entry into force of this Agreement, the part of the one-off payment paid in respect of those inflows of capital shall be treated by the competent authority of the United Kingdom as a payment on account of United Kingdom taxes or other liabilities (including without limitation interest, penalties and surcharges) of that person in respect of those inflows of capital.

13. Paragraph 7 shall not apply:

- a) where, as at appointed date 3, the tax affairs of a relevant person with relevant assets are under investigation, unless prior to this investigation being commenced, a Swiss paying agent has been instructed by the relevant person to make a one-off payment in relation to those relevant assets in accordance with this Article;
- b) where the relevant person was the subject of an investigation in the United Kingdom which has been concluded before appointed date 3; and
 - (i) in the case of a criminal investigation this led to a conviction for offences which were punishable in the United Kingdom by two years or more imprisonment; or
 - (ii) in the case of a civil investigation concluded after appointed date 1:
 - the Commissioners for Her Majesty’s Revenue and Customs determined that the prevailing guidance issued by the competent authority of the United Kingdom at the time warranted the completion of a Certificate of Full Disclosure or a Statement of Assets and Liabilities, or a civil penalty was chargeable under the Customs and Excise Management Act 1979; or
 - the investigation was carried out for the purpose of ascertaining the correct United Kingdom tax liability of the relevant person in relation to any assets or interest of the relevant person in Switzerland,

and the relevant person did not declare an interest in relevant assets in Switzerland held before or during the investigation.

Where the relevant person fully disclosed any relevant assets held at the time of the investigation this letter shall not apply to payments of withholding tax under Part 3;

- c) where, at any time before appointed date 3, the relevant person or their authorised representative has engaged with, participated in or been contacted personally by the United Kingdom competent authority in respect of any publicised United Kingdom disclosure facility, unless prior to this engagement, participation or contact, a Swiss paying agent has been instructed by the relevant person to make a one-off payment in relation to those relevant assets in accordance with this Article;
- d) where the relevant assets represent or are derived from (whether directly or indirectly) the proceeds of crime other than crime connected to non compliance with the tax legislation of the United Kingdom;
- e) where the relevant assets represent or are derived from (whether directly or indirectly) the proceeds of criminal attacks and systemic fraud against the tax and benefits regimes of the United Kingdom, including but not limited to cases where the United Kingdom authorities make payments to persons to which they are not entitled.

In any of the above circumstances any one-off payment shall be treated by the competent authority of the United Kingdom as a payment on account of United Kingdom taxes or other liabilities (including without limitation interest, penalties and surcharges) of that person in respect of the relevant assets.

14. An individual will not be entitled to credit the one-off payment against any individual assessment in respect of the taxable periods or charges to tax referred to in paragraph 11.

Art. 10 Voluntary disclosure

1. Where written authorisation by the relevant person has been given to disclose in accordance with Article 7 paragraph 1 the Swiss paying agent shall transfer the following information to the competent authority of Switzerland on a monthly basis starting one month after appointed date 3 with the last transfer six months after appointed date 3:

- a) the identity (name, first name and date of birth) and address of the relevant person;
- b) the United Kingdom tax reference number, if known;
- c) the name and address of the Swiss paying agent;
- d) the customer number of the account or deposit holder (customer, account or deposit number, IBAN-code);
- e) for the time of the account's or deposit's existence between appointed date 1 and the date of entry into force of this Agreement, the yearly account balance and statement of assets as at 31 December of each relevant year.

2. The competent authority of Switzerland shall communicate the information referred to in paragraph 1 to the competent authority of the United Kingdom on a monthly basis starting two months after appointed date 3 with the last communication of such information occurring seven months after appointed date 3. Later disclosures, e.g. due to legal proceedings, shall be communicated without delay by the

Swiss paying agent to the competent authority of Switzerland, which shall communicate them without delay to the competent authority of the United Kingdom.

3. Swiss Paying agents shall issue a certificate in the form prescribed to the relevant person.

4. The competent authority of the United Kingdom may ask the competent authority of Switzerland for clarification or further information in cases where identification of the relevant person is not possible from the information provided.

Art. 11 Opt-out for non-UK domiciled individuals

1. Where relevant persons who are non-UK domiciled individuals have chosen the opt out method, Article 9 paragraphs 7 and 9 shall not apply.

2. Swiss paying agents shall issue a certificate in the form prescribed to the relevant person.

Art. 12 Wrongful behaviour in relation to non-UK domiciled status

1. Clearance as described in Article 9 paragraphs 7 and 9 shall not be provided where a relevant person has:

- a) falsely declared that he or she is a non-UK domiciled individual; or
- b) elected for the self-assessment method to be applied when there are outstanding tax liabilities in respect of relevant assets which were not declared in the self-assessment.

2. Where paragraph 1 applies, the one-off payment shall be treated by the competent authority of the United Kingdom as a payment on account of United Kingdom taxes or other liabilities (including without limitation interest, penalties and surcharges) of that person.

Art. 13 Insufficient funds

1. Where the relevant person informs in writing the Swiss paying agent that he or she opts for the one-off payment as described in Article 9, or the one-off payment is levied by default under Article 5 paragraph 3, but insufficient funds have been made available by the relevant person to the Swiss paying agent by appointed date 3, the Swiss paying agent shall grant the relevant person in writing an extension of up to eight weeks from appointed date 3 in order to secure the one-off payment. Where Article 8 paragraph 2 applies, but insufficient funds have been made available, the Swiss paying agent shall grant an extension of up to eight weeks from the date it levied the one-off payment. The notice given by the Swiss paying agent shall include a reference to the possible consequences for the relevant person provided for in paragraph 3.

2. Where an extension is granted in accordance with paragraph 1, the Swiss paying agent shall levy the one-off payment on the day the extension ends.

3. Where the relevant person holds relevant assets with a Swiss paying agent at appointed date 3 and the one-off payment cannot be levied owing to insufficient

funds, the Swiss paying agent shall disclose the identity of the relevant person in accordance with Article 10 as if the relevant person had provided written authorisation to the Swiss paying agent to disclose.

Art. 14 Failure to identify a relevant person

1. In any case where a Swiss paying agent fails to identify a relevant person and inform that person of his or her rights and duties in accordance with Article 7 and that relevant person is subsequently identified by the Swiss Paying agent as a relevant person then, if the competent authorities of the Contracting States so agree, the relevant person may nonetheless exercise the option set out in Article 5 paragraphs 1 and 2 and the rights and duties set out in Article 7 shall apply until a date to be agreed by the competent authorities of the Contracting States.

2. Where a one-off payment is being made in accordance with Article 9, a further amount shall be added to the one-off payment representing interest at the statutory rate applicable in the United Kingdom to unpaid tax debts between appointed date 3 and the date of payment. The competent authority of the United Kingdom shall inform the competent authority of Switzerland of the statutory rate applicable as at appointed date 3 and of any changes to the rate thereafter.

Art. 15 Partially or wrongly levied one-off payment

1. Where the Swiss paying agent does not levy the one-off payment in full owing to errors in calculation or execution, the Swiss paying agent may levy the missing amount from the relevant person. A further amount representing interest shall be added in accordance with Article 14 paragraph 2. The Swiss paying agent shall remain bound towards the competent authority of Switzerland to make the one-off payment in its entirety. The same shall apply to the interest charged. Subject to Article 34, the competent authority of Switzerland shall transfer without delay the received one-off payment and interest to the competent authority of the United Kingdom.

2. Clearance under Article 9 paragraphs 7 and 9 shall not be removed in cases falling under paragraph 1, if the relevant person has taken reasonable care in checking the certificate issued by the Swiss paying agent in accordance with Article 9 paragraph 4 and the missing amount was paid upon identification of the error in calculation or execution.

3. Where the one-off payment in accordance with Article 9 has been wrongly levied by the Swiss paying agent, the competent authority of the United Kingdom shall, on receipt of appropriate evidence, refund the one-off payment including interest less the expense allowance.

Art. 16 Effect of the certificates

Where, for reasons other than the implementation of this Agreement, the competent authority of the United Kingdom becomes aware of relevant assets, the competent authority of the United Kingdom may ask the relevant person to provide evidence that these assets were subject to the one-off payment in accordance with Article 9 or

disclosed in accordance with Article 10. A valid certificate issued by the Swiss paying agent in accordance with Article 9 paragraph 4 or Article 10 paragraph 3 shall be considered sufficient evidence. Where the validity of a certificate is doubtful, the competent authority of the United Kingdom may ask the competent authority of Switzerland to verify its validity.

Art. 17 Upfront payment by Swiss paying agents

1. Swiss paying agents shall within 20 days of the date of entry into force of this Agreement form an implementation vehicle which shall manage on their behalf all rights and obligations arising under this Article and act as a pooling and clearing institution.

2. Swiss paying agents shall make an upfront payment of CHF 500 million to the competent authority of Switzerland within 25 days of the date of entry into force of this Agreement. The competent authority of Switzerland shall transfer the amount of the upfront payment to the competent authority of the United Kingdom within one month of the date of entry into force of this Agreement.

3. Once the upfront payment made to the competent authority of the United Kingdom in accordance with paragraph 2 and the payments transferred to the competent authority of the United Kingdom in accordance with Article 9 paragraph 5 reach the amount of CHF 1300 million, the competent authority of Switzerland shall offset the further payments under Article 9 paragraph 5 against the upfront payment according to paragraph 2. After complete offsetting of the upfront payment, further payments under Article 9 paragraph 5 shall be transferred to the competent authority of the United Kingdom. The above payments shall be converted on the date of offsetting by using the fixed exchange rate published by the SIX Telekurs AG.

4. The competent authority of Switzerland shall at the end of each month transfer to the implementation vehicle the payments by Swiss paying agents under Article 9 paragraph 5 offset with the upfront payment in accordance with paragraph 3.

Art. 18 Destinations of withdrawn assets

The competent authority of Switzerland shall within 12 months of appointed date 3 report to the competent authority of the United Kingdom the 10 States or jurisdictions to which relevant persons who closed their account or deposit between the date of signature of this Agreement and appointed date 3 have transferred the largest volume of relevant assets. The report shall also include the number of relevant persons concerned for each State or jurisdiction. The Contracting States shall not make public the data collected and reported based on this Article.

Part 3

Final withholding tax on income and gains on relevant assets levied by Swiss paying agents

Art. 19 Final withholding tax levied by Swiss paying agents

1. Subject to the provisions of Article 21 a final withholding tax (hereinafter referred to as “withholding tax”) shall be levied by a Swiss paying agent in respect of relevant persons on the following income and gains of such persons arising on relevant assets at the rates specified:

- a) interest income as defined in Article 25: 48%;
- b) dividend income as defined in Article 26: 40%;
- c) other income as defined in Article 27: 48%;
- d) capital gains as defined in Article 28: 27%.

2. A non-UK domiciled individual shall only be liable to the withholding tax in respect of the income and gains described in paragraph 1 where:

- a) such income and gains have a United Kingdom source; or
- b) amounts are derived from such income and gains that do not have a United Kingdom source and are remitted to the United Kingdom. For the purposes of this Agreement only, “remitted” means those amounts directly transferred to a payee in the United Kingdom, unless the relevant person declares to the Swiss paying agent that such amount is not remitted in a taxable form, or amounts which the relevant person declares to the Swiss paying agent to be a remittance.

Where transfers or payments other than under letter b) are made which are remittances or deemed remittances under United Kingdom law, paragraph 5 shall not apply.

3. Where a relevant person has made a declaration of intent in accordance with Article 4 paragraph 4, but his or her status as non-UK domiciled individual has not been certified by the date specified in that paragraph, the Swiss paying agent shall not treat such a relevant person as a non-UK domiciled individual and shall accordingly levy the tax in accordance with paragraph 1 from the beginning of the relevant tax year. Contrary to paragraph 1, the applicable tax rates are:

- a) interest income as defined in Article 25: 50%;
- b) dividend income as defined in Article 26: 42.5%;
- c) other income as defined in Article 27: 50%;
- d) capital gains as defined in Article 28: 28%.

Any withholding tax levied in accordance with paragraphs 1 and 2 shall be fully credited against the withholding tax levied in accordance with this paragraph, even in cases where the credit exceeds the amount of this withholding tax.

Where the relevant person has opted to meet any shortfall within 8 weeks from 31 March following the end of the relevant tax year, but fails to do so, the Swiss

paying agent shall disclose the identity of the relevant person in accordance with Article 22 as if the relevant person had provided written authorisation to the Swiss paying agent to disclose.

To ensure a proper implementation of this deferred withholding tax, the Swiss paying agent shall compute on an ongoing basis the withholding tax due under paragraph 1.

4. The relevant person is the party liable to the withholding tax. Income and capital gains from assets held by a Swiss paying agent acting as a fiduciary agent shall be treated in the same way as the underlying asset would be if held by the relevant person.

5. Subject to Article 23, where withholding tax is levied in accordance with this Article the relevant person shall cease to have any liability to United Kingdom taxes including interest, penalties and surcharges that are chargeable in respect of the income or gains falling within paragraph 1 or 2. Any other tax liabilities of the relevant person in the United Kingdom, including liabilities to tax in respect of income or gains, are not affected by this paragraph.

Art. 20 Amendment of tax rates

1. The competent authority of the United Kingdom shall without delay inform the competent authority of Switzerland in writing about publicly announced and adopted changes to United Kingdom law regarding the tax rates applicable to income and gains on relevant assets.

2. Where the United Kingdom highest rates of taxation on income or gains are amended after the date of signature of this Agreement, the rates of the withholding tax levied under this Part shall simultaneously and correspondingly be amended by the number of percentage points that the statutory rates have been amended, unless the competent authority of Switzerland has informed the competent authority of the United Kingdom in writing, within 30 days of receipt of any information provided under paragraph 1, that it will not adjust the applicable tax rates under this Part. The competent authority of Switzerland shall publish without delay all adjustments to the rates of the withholding tax levied under this Part and ensure that Swiss paying agents are informed of these adjustments.

Art. 21 Relationship to other taxes levied at source

1. The provisions of the Agreement on the Taxation of Savings are not affected by anything in this Agreement. Where tax is retained in accordance with the Agreement on the Taxation of Savings from any amounts of interest income that also come within the scope of this Agreement, that tax shall be credited against the withholding tax levied under this Agreement. Article 19 paragraph 5 shall apply to the whole amount of that interest income.

2. The levy of the Swiss anticipatory tax is not affected by anything in this Agreement. To the extent provided for by the Double Taxation Convention, the Swiss paying agent shall in its own name and on behalf of the relevant person file with the Swiss authorities for total or partial reimbursement. The Swiss anticipatory tax

which cannot be claimed back according to the Double Taxation Convention (residual tax) shall be credited against the withholding tax.

3. If tax is levied at source in accordance with the law of the United Kingdom on income falling within Article 19 paragraphs 1 and 2, the Swiss paying agent shall credit this tax at source against the withholding tax. This credit may not, however, exceed the amount of the withholding tax.

4. If tax is levied in a third State or jurisdiction on income falling within Article 19 paragraphs 1 and 2, the Swiss paying agent shall credit this tax against the withholding tax, to the extent that any arrangements between the United Kingdom and that third State or jurisdiction for the avoidance of double taxation exclude the reimbursement of the tax levied in that third State or jurisdiction. This credit may not, however, exceed the amount of the withholding tax.

Art. 22 Voluntary disclosure

1. Where a relevant person who is not a non-UK domiciled individual expressly authorises the Swiss paying agent to disclose to the competent authority of the United Kingdom the income arisen and capital gains realised on an account or deposit, the Swiss paying agent shall disclose such income and capital gains instead of levying the withholding tax.

2. Where a relevant person who is a non-UK domiciled individual expressly authorises the Swiss paying agent to disclose to the competent authority of the United Kingdom the income and capital gains that have a United Kingdom source and remittances to the United Kingdom from an account or deposit, the Swiss paying agent shall disclose such income, capital gains and remittances instead of levying the withholding tax.

3. A disclosure shall include the following information:

- a) the identity (name, first name and date of birth) and address of the relevant person;
- b) the United Kingdom tax reference number, if known;
- c) the name and address of the Swiss paying agent;
- d) the customer number of the account or deposit holder (customer, account or deposit number, IBAN-code);
- e) the tax year concerned;

For relevant persons except non-UK domiciled individuals:

- f) the total amount of income as defined in Article 19 paragraph 1;
- g) the total amount of capital gains and losses realised as calculated in accordance with Articles 24 and 28;

For relevant persons who are non-UK domiciled individuals:

- h) the total amount of income and capital gains as defined in Article 19 paragraph 2 letter a);
- i) the total amount of remittances as defined in Article 19 paragraph 2 letter b).

Art. 23 Treatment of withholding tax as payment on account

1. The relevant person may request, on production to the competent authority of the United Kingdom of a certificate issued in accordance with Article 30, that the withholding tax is treated by the competent authority of the United Kingdom as a payment on account of United Kingdom taxes or other liabilities (including without limitation interest, penalties and surcharges) of that person in respect of the relevant tax year to which the certificate relates. In this circumstance, Article 19 paragraph 5 shall not apply.
2. Where a payment received by a relevant person has been subject to taxes and retentions other than as provided for in this Agreement and the United Kingdom grants a tax credit for such taxes and retentions in accordance with its national law or double taxation conventions, such other taxes and retentions shall be credited before the procedure in paragraph 1 is applied.
3. Paragraphs 1 and 2 shall not apply to the extent that the taxes or retentions described in paragraph 2 have been credited based on Article 21 paragraphs 2 to 4.

Art. 24 Basis of assessment

1. The amount on which the withholding tax shall be levied is the amount before any deductions.
2. The withholding tax on interest income shall be levied as follows:
 - a) in the case of interest income within the meaning of Article 25 paragraph 1 letter a): on the gross amount of interest paid or credited;
 - b) in the case of interest income within the meaning of Article 25 paragraph 1 letter b) or d): on the amount of interest or revenue referred to in those letters;
 - c) in the case of interest income within the meaning of Article 25 paragraph 1 letter c): on the amount of interest referred to in that letter.
3. The withholding tax on dividend income shall be levied as follows:
 - a) in the case of a dividend within the meaning of Article 26 paragraph 1 letter a): on the gross amount of the dividend paid or credited or, if the dividend is never paid or credited, on the market value of the dividend in kind at the time of accrual;
 - b) in the case of a dividend within the meaning of Article 26 paragraph 1 letter b): on the amount of dividends referred to in that letter;
 - c) in the case of a dividend within the meaning of Article 26 paragraph 1 letter c): on the amount of income referred to in that letter.
4. The withholding tax on other income shall be levied as follows:
 - a) in the case of other income within the meaning of Article 27 paragraph 1 letter a): on the gross amount of the other income paid or credited;
 - b) in the case of other income within the meaning of Article 27 paragraph 1 letter b): on the amount of other income referred to in that letter;

- c) in the case of other income within the meaning of Article 27 paragraph 1 letter c): on the amount of other income referred to in that letter.
5. The withholding tax shall be levied on capital gains accruing on the disposal of relevant assets. Capital gains are computed by deducting the acquisition costs and incidental costs of acquisition and disposal from the disposal value, whereby:
- a) Acquisition costs are the actual costs of purchase in every case, apart from in the exceptional case where accurate records are no longer available.
 - b) If accurate records of the acquisition costs are not available, the acquisition costs are the market value of the asset at 31 March 1982 or, if the asset was not in existence at that date, the market value of the asset on the date of creation.
 - c) If such market value is not known, the acquisition costs are deemed to be nil.
 - d) The transfer by a relevant person of relevant assets to the account or deposit of a third person constitutes a disposal except in cases where the transfer takes place between spouses or civil partners. In such case the disposal value shall be deemed to be the market value of the assets.
6. Capital losses accruing on the disposal of relevant assets booked in Switzerland can be offset against future capital gains accruing on the disposal of relevant assets booked in Switzerland to the extent they arise on assets held by the same Swiss paying agent.
7. Capital losses accruing on the disposal of relevant assets cannot be carried back to set against earlier capital gains or transferred to an account held with another Swiss paying agent.
8. No other allowances or reliefs are available to set against any capital gains or enhance any capital losses accruing on the disposal of relevant assets.

Art. 25 Definition of interest income

1. For the purposes of this Part, “interest income” means:
- a) interest paid, or credited to an account, relating to debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits. In particular it includes income from government securities and income from bonds or debentures as well as premiums and prizes attached to such securities, bonds or debentures, but excluding interest from loans between private individuals not acting in the course of their business. Penalty charges for late payments shall not be regarded as interest income;
 - b) interest accrued or capitalised at the sale, refund or redemption of debt-claims referred to in a);
 - c) income deriving from interest payments either directly or through an entity referred to in Article 4 paragraph 2 of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (hereinafter referred to as the “Directive”) distributed or retained by:
 - (i) undertakings for collective investment domiciled in an EU Member

- State;
- (ii) entities domiciled in an EU Member State which exercise the option under Article 4 paragraph 3 of the Directive and which inform the Swiss paying agent of this fact;
- (iii) undertakings for collective investment established outside the territory of the EU and Switzerland;
- (iv) Swiss investment funds;
- d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities:
 - (i) undertakings for collective investment domiciled in an EU Member State;
 - (ii) entities domiciled in an EU Member State which exercise the option under Article 4 paragraph 3 of the Directive and which inform the Swiss paying agent of this fact;
 - (iii) undertakings for collective investment established outside the territory of the EU and Switzerland;
 - (iv) Swiss investment funds.

2. As regards paragraph 1 letters c) and d), where a Swiss paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered to be an interest payment.

Art. 26 Definition of dividend income

For the purposes of this Part, “dividend income” means:

- a) dividends paid, or credited to an account being income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt claims, participating in profits as well as income from other corporate shares which is subjected to the same taxation treatment as income from shares by the laws of the State or jurisdiction of which the company making the distribution is a resident;
- b) income from dividends either directly or through an entity referred to in Article 4 paragraph 2 of the Directive distributed or retained by:
 - (i) undertakings for collective investment domiciled in an EU Member State;
 - (ii) entities domiciled in an EU Member State which exercise the option under Article 4 paragraph 3 of the Directive and which inform the Swiss paying agent of this fact;
 - (iii) undertakings for collective investment established outside the territory of the EU and Switzerland;
 - (iv) Swiss investment funds;
- c) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities:
 - (i) undertakings for collective investment domiciled in an EU Member

- State;
- (ii) entities domiciled in an EU Member State which exercise the option under Article 4 paragraph 3 of the Directive and which inform the Swiss paying agent of this fact;
 - (iii) undertakings for collective investment established outside the territory of the EU and Switzerland;
 - (iv) Swiss investment funds.

Art. 27 Definition of other income

For the purposes of this Part, “other income” means:

- a) substitute payments for interest and dividends within the meaning of Articles 25 paragraph 1 letter a) and 26 paragraph 1 letter a) or sums treated for tax purposes as income arising from relevant assets under the taxation laws of the United Kingdom, as well as other fees and commissions including those received in connection with structured financial instruments, securities lending, repo business, swaps and comparable transactions;
- b) other income either directly or through an entity referred to in Article 4 paragraph 2 of the Directive distributed or retained by:
 - (i) undertakings for collective investment domiciled in an EU Member State;
 - (ii) entities domiciled in an EU Member State which exercise the option under Article 4 paragraph 3 of the Directive and which inform the Swiss paying agent of this fact;
 - (iii) undertakings for collective investment established outside the territory of the EU and Switzerland;
 - (iv) Swiss investment funds;
- c) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities:
 - (i) undertakings for collective investment domiciled in an EU Member State;
 - (ii) entities domiciled in an EU Member State which exercise the option under Article 4 paragraph 3 of the Directive and which inform the Swiss paying agent of this fact;
 - (iii) undertakings for collective investment established outside the territory of the EU and Switzerland;
 - (iv) Swiss investment funds.

Art. 28 Definition of capital gains

For the purposes of this Part, “capital gains” means:

- a) all gains realised on the disposal of relevant assets, except where the gain is interest income, dividend income or other income in accordance with Articles 25 to 27;

- b) capital gains realised either directly or through an entity referred to in Article 4 paragraph 2 of the Directive distributed or retained by:
 - (i) undertakings for collective investment domiciled in an EU Member State;
 - (ii) entities domiciled in an EU Member State which exercise the option under Article 4 paragraph 3 of the Directive and which inform the Swiss paying agent of this fact;
 - (iii) undertakings for collective investment established outside the territory of the EU and Switzerland;
 - (iv) Swiss investment funds;
- c) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities:
 - (i) undertakings for collective investment domiciled in an EU Member State;
 - (ii) entities domiciled in an EU Member State which exercise the option under Article 4 paragraph 3 of the Directive and which inform the Swiss paying agent of this fact;
 - (iii) undertakings for collective investment established outside the territory of the EU and Switzerland;
 - (iv) Swiss investment funds.

Art. 29 Administrative handling

1. Swiss paying agents shall levy the withholding tax on an arising basis and transfer all taxes levied not later than two months after the end of the calendar year to the competent authority of Switzerland. With the transfer, the Swiss paying agents shall declare to the competent authority of Switzerland the allocation of the taxes levied under this Part to the different categories of income and capital gains.

2. The withholding tax shall be calculated, levied and transferred to the competent authority of Switzerland by the Swiss paying agent in sterling. Where sterling is not the reference currency of the account or deposit, the Swiss paying agent shall convert the amount into sterling by using the fixed exchange rate published by the SIX Telekurs AG at the corresponding date.

3. The competent authority of Switzerland shall transfer the withholding tax levied to the competent authority of the United Kingdom in sterling in one instalment within a period of three months following the end of the calendar year.

4. With respect to voluntary disclosures in accordance with Article 22 Swiss paying agents shall transfer the information according to Article 22 paragraph 3 not later than three months after the end of the tax year to the competent authority of Switzerland. The competent authority of Switzerland shall transfer this information to the competent authority of the United Kingdom. Such communications shall be automatic and take place once a year within a period of six months following the end of the tax year.

Art. 30 Certificates issued by Swiss paying agents

1. Swiss paying agents shall issue to the relevant person a certificate in the form prescribed at the end of each tax year and when the banking relationship is ended.
2. The competent authority of the United Kingdom shall accept certificates issued by Swiss paying agents as sufficient evidence of payments of withholding tax made under this Part.

Art. 31 Transfer of relevant assets

Where a relevant person transfers relevant assets from one Swiss paying agent to the account or deposit of another, the first Swiss paying agent shall transfer the relevant data regarding these assets necessary for the second Swiss paying agent to comply with the terms of this Agreement.

Art. 32 Accompanying measures to safeguard this Agreement's purpose

1. Notwithstanding any other provisions under which the competent authority of the United Kingdom may request information from Switzerland, in order to safeguard this Agreement's purpose the competent authority of Switzerland shall on request provide information to the competent authority of the United Kingdom if the identity of a United Kingdom taxpayer and plausible grounds are provided by the competent authority of the United Kingdom. The request does not have to include the name of the Swiss paying agent.
2. For the purpose of identifying the United Kingdom taxpayer, the competent authority of the United Kingdom shall provide name, address, and, if known, date of birth, professional activity and other information identifying the United Kingdom taxpayer.
3. Plausible grounds for the request exist where the competent authority of the United Kingdom has identified on a case-by-case basis a tax risk in relation to the United Kingdom taxpayer and sees plausible, non-arbitrary grounds for checking the tax position of a United Kingdom taxpayer. These grounds shall be based on an analysis of a range of information such as previous tax returns, level of income, third party information and knowledge of the persons who were involved in completing a tax return. So called "fishing expeditions" are excluded.
4. The competent authority of the United Kingdom shall inform the United Kingdom taxpayer in advance about the intended request for information, unless the competent authority of the United Kingdom has reasonable grounds for believing that this might seriously prejudice the assessment or collection of tax.
5. The competent authority of the United Kingdom shall confirm in its request that the requirements for such a request are met and shall indicate for which time period within the ten years prior to the request the information is needed. Based on this request, the competent authority of Switzerland shall investigate the existence of accounts and deposits.
6. Institutions governed by the Swiss Banking Act of 8 November 1934 shall on request by the competent authority of Switzerland disclose to the competent authority of Switzerland the existence of accounts and deposits of United Kingdom tax-

payers to the extent required by this Article.

7. Where the United Kingdom taxpayer subject to this request has an account or deposit in Switzerland in the time period referred to in the request, the competent authority of Switzerland shall provide the name of the institution concerned and the number of existing accounts and deposits during the time period referred to in the request to the competent authority of the United Kingdom.

8. No information according to paragraph 7 shall be provided:

- a) where the United Kingdom taxpayer has no account or deposit; or
- b) in respect of accounts or deposits of the United Kingdom taxpayer where:
 - (i) there was after appointed date 2 no change in the beneficial ownership. A change of ownership due to an inheritance shall be regarded as a change of beneficial ownership for the purposes of this subparagraph; and
 - (ii) the one-off payment was levied in accordance with Article 9 paragraph 2 on all the assets in the account or deposit as at the date of entry into force of this Agreement; and
 - (iii) the income arising and capital gains realised after the date of entry into force of this Agreement were taxed in accordance with Article 19 paragraphs 1 and 2; and
 - (iv) no new money was deposited into the account or deposit after appointed date 2. For the purposes of this subparagraph, assets deposited between appointed date 2 and the date of entry into force of this Agreement which are part of the relevant assets as defined under Article 9 paragraph 12 do not qualify as new money.

9. In any case the competent authority of the United Kingdom may request administrative or judicial assistance based on the pertinent legal provisions applicable in Switzerland.

10. The competent authority of Switzerland shall inform the United Kingdom taxpayer before the information is transmitted about the intended exchange of information. The United Kingdom taxpayer may appeal against the intended exchange of information to the extent provided by Swiss law.

11. The joint commission shall following the entry into force of this Agreement determine by mutual consent the maximum number of admissible requests per calendar year under this Article. The maximum number of requests must be proportionate to the perceived risk of non-compliance by investors and in the first three years that number shall be in the low to mid hundreds and shall not exceed 500 per year. No requests for information under this Article shall be made until the joint commission has reached agreement on the maximum number of requests.

12. The maximum number of requests per calendar year shall be subject to a yearly review at the beginning of the year and, if necessary, adjusted for that year based on the requests made three years before. The first review shall take place at the beginning of 2016. Where the competent authority of the United Kingdom has in the year under review requested information in less than 20% of the maximum number of admissible requests under this Article, the maximum number of requests per calen-

dar year shall not be adjusted. Where the competent authority of the United Kingdom has in the year under review requested information in 20% or more of the maximum number of admissible requests under this Article, the following rules apply:

- a) Requests leading solely to the identification of accounts or deposits as defined in paragraph 8 letter b) shall not be taken into consideration when determining the number of successful requests and the total number of requests under letters b) and c).
- b) If more than two thirds of the total number of requests as determined in accordance with letter a) lead to the direct or indirect identification of additional United Kingdom tax liability which amounts to at least £10,000, the maximum number of requests per calendar year shall increase by 15% for the year of the review.
- c) If less than one third of the total number of requests as determined in accordance with letter a) lead to the direct or indirect identification of additional United Kingdom tax liability which amounts to at least £10,000, the maximum number of requests per calendar year shall decrease by 15% for the year of the review.

In case of indirect identification of additional United Kingdom tax liability, a link between the account or deposit identified under this Article and the additional tax liability found is required.

13. This Article shall apply to requests concerning taxable periods beginning on or after the date of entry into force of this Agreement.

Art. 33 Anti-abuse

1. The Contracting States recognise that the relevant persons remain free to book their assets in any State or jurisdiction of their choice.

2. Swiss paying agents shall not knowingly manage or encourage the use of artificial arrangements whose sole or main purpose is the avoidance of taxation of the relevant persons under the provisions of this Agreement in respect of relevant assets.

3. Notwithstanding that the relevant person is the party liable to the withholding tax in accordance with Article 19 paragraph 4, where a Swiss paying agent acts contrary to paragraph 2, the Swiss paying agent shall be liable to a payment which amounts to the withholding tax avoided. The payment shall be made to the competent authority of Switzerland, which shall transfer it to the competent authority of the United Kingdom. The Swiss paying agent may exercise a right of redress against any such relevant person who participated in such arrangements.

There are no circumstances in which the United Kingdom should retain amounts paid twice in respect of relevant assets. Where amounts have been paid twice, the competent authority of the United Kingdom shall refund the overpayment to the competent authority of Switzerland.

4. Paragraph 3 shall apply only in individual cases when clear, direct evidence is presented.

Part 4

Final provisions

Art. 34 Expense allowance

The competent authority of Switzerland shall deduct an expense allowance of 0.1% from amounts transferred to the competent authority of the United Kingdom in accordance with this Agreement.

Art. 35 Reciprocity measures of the United Kingdom

Switzerland may request reciprocity through the introduction of equivalent measures to secure the effective taxation of Swiss residents regarding assets in the United Kingdom. The measures to be introduced shall involve exchange of information on similar lines to the approach adopted by the United Kingdom in relation to other States and jurisdictions and shall be implemented by an agreement between the Contracting States.

Art. 36 Use and disclosure of information received under this Agreement

1. Subject to paragraphs 2 and 3, any information that a Contracting State receives from the other Contracting State under this Agreement shall be treated as confidential and shall, without the consent of the relevant person, only be used for the purposes of the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals or the oversight of the above in relation to taxes and tax matters. The Contracting States shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. A Contracting State may use information received for other purposes, if this information can be used for such other purposes according to the law of both Contracting States and the competent authority of the supplying Contracting State gives its consent to such other use.

3. Paragraphs 1 and 2 shall not apply to information received by the competent authority of the United Kingdom as a result of voluntary disclosure made by a relevant person under Articles 10 and 22.

Art. 37 Implementation

The Contracting States shall enact and implement all necessary measures to give effect to the terms of this Agreement.

Art. 38 Audits

1. The competent authority of Switzerland shall carry out audits to assess whether and how Swiss paying agents fulfil their obligations under this Agreement.

2. Audits in relation to Part 2 shall be carried out throughout the first three years following the entry into force of this Agreement. The audits shall cover a representa-

tive group of Swiss paying agents.

3. Swiss paying agents shall be audited regularly in relation to Part 3.

4. A report of the aggregated outcome and main findings of all audits performed within the previous calendar year in accordance with this Article shall be made available to the competent authority of the United Kingdom by the competent authority of Switzerland and may be published.

Art. 39 Consultation

1. If any disagreement arises between the competent authorities as to the interpretation or application of this Agreement, they shall consult and endeavour to resolve the issue by mutual agreement. Where no mutual agreement can be found, the competent authorities shall submit the issue to the joint commission.

2. The competent authority of the United Kingdom shall inform the competent authority of Switzerland about publicly announced and adopted amendments to its domestic tax laws regarding income and gains on relevant assets covered by this Agreement.

3. The competent authorities shall inform each other of developments which could affect the proper functioning of this Agreement. This shall also include information about any relevant agreement concluded by one of the Contracting States with a third State or jurisdiction, in particular any provisions affecting the application of Article 21.

4. The form of all certificates provided for in this Agreement shall be jointly agreed by the competent authorities.

Art. 40 Joint commission

1. The Contracting States shall establish a joint commission made up of representatives of the Contracting States.

2. In addition to the specific tasks attributed to it in other provisions of this Agreement, the joint commission at the request of either Contracting State shall:

- a) examine the proper functioning of this Agreement;
- b) assess the relevant developments;
- c) recommend amendments or a revision of this Agreement to the Contracting States.

Art. 41 Extraordinary circumstances

In the event that extraordinary upheavals on the financial markets endanger the implementation of this Agreement, the Contracting States shall consult each other and mutually agree adequate measures.

Art. 42 Schedule

Schedule I shall form an integral part of this Agreement.

Art. 43 Entry into force

1. Each of the Contracting States shall notify to the other Contracting State through diplomatic channels the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on 1 January of the calendar year following the date of receipt of the later of these notifications.

2. Part 3 shall apply to income arising and gains realised on or after the date of entry into force of this Agreement.

Art. 44 Termination

1. This Agreement shall remain in force until terminated by a Contracting State.

2. Either Contracting State may terminate this Agreement with effect from the end of a calendar year by giving notice to the other Contracting State at least two years in advance.

3. Where, exceptionally, a Contracting State is found to be deliberately undermining the effectiveness of this Agreement, the other Contracting State may give six months notice of termination having first informed the joint commission of its concerns and provided evidence in support of them.

4. Should the competent authority of Switzerland inform the competent authority of the United Kingdom that under Article 20 paragraph 2 Switzerland will not adjust the rates of the withholding tax the United Kingdom may terminate this Agreement in accordance with paragraph 3.

5. In the event that this Agreement is terminated:

- a) the claims of relevant persons in accordance with Article 23 shall remain unaffected;
- b) the competent authority of Switzerland shall calculate a final settlement of withholding tax due up to the end of the period of the applicability of this Agreement and make a final payment to the competent authority of the United Kingdom.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at, this day of, in the French and English languages, each text being equally authoritative.

For the
Swiss Confederation

For the United Kingdom of
Great Britain and Northern Ireland

Calculation method of the one-off payment according to Article 9 paragraph 2

$$T = \max \left\{ \left[tr \cdot \left[\frac{2}{3} \cdot \left(C_r - \frac{n}{8} \cdot C_b \right) + \frac{1}{3} \left(\frac{n}{10} \cdot C_r + \frac{2}{10} \cdot \left(\frac{C_9' + C_{10}'}{2} \right) \right) \right] \right] \right\}$$

$$tr_{\min} \cdot C_r$$

whereas:

$$C_9' = C_r + C_r \cdot r$$

$$C_{10}' = C_r + C_r \cdot 2 \cdot r$$

$$C_r = \begin{cases} \begin{cases} C_8 & , \text{if } C_{10} < C_8 \\ C_{10} & , \text{if } C_8 \leq C_{10} \leq 1.2 \cdot C_8 \end{cases} \\ \max \left\{ \begin{cases} 1.2 \cdot C_8 \\ C_8 + \sum_{i=9}^{10} \text{value increases} + \sum_{i=1}^8 \text{outflows} \end{cases} \right\} & , \text{if } C_{10} > 1.2 \cdot C_8 \end{cases}$$

The following rule is established to prevent that the application of the formula for the capital element leads to a negative value:

In case $C_r - \frac{n}{8} \cdot C_b < 0$, then this term is set equal to zero.

T	One-off payment
tr	Rate (34%)
C _r	Relevant capital
n	Number of years of the bank relationship before 31 December 2010, 0 ≤ n ≤ 8

C_b	Capital stock at the end of the year the account was opened. For accounts opened before 1 January 2003, the capital stock at 31 December 2002.
i	Year i , $1 \leq i \leq 10$, whereby year 1 starts on 1 January 2003
C_i	Capital stock at the end of year i
C_8	Capital stock at the end of year 8 (31 December 2010)
C_{10}	Capital stock at the end of year 10 (31 December 2012)
C_9', C_{10}'	Nominal capital at the end of year 9 (31 December 2011), resp. year 10 (31 December 2012)
r	Rate of return (3%)
τ_{\min}	Minimum rate (19%)
outflows	Inflows years 9 and 10 that compensate for outflows years 1 to 8

Agreed Minutes

The Plenipotentiaries of the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland, on the occasion of the signing of the Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on cooperation in the area of taxation, have

adopted:

- the Joint Declaration concerning the equivalence of this Agreement; and

taken note of:

- the Declaration by the United Kingdom concerning the acquisition of customer data stolen from Swiss banks;
- the Side Letter by the competent authority of the United Kingdom on criminal investigation;
- the Memorandum on the Provision of cross-border financial services in the United Kingdom by firms from Switzerland, with an associated note.

.....
For the Swiss Confederation

.....
For the United Kingdom of Great Britain and Northern Ireland

Joint Declaration concerning the equivalence of this Agreement

The Contracting Parties to the Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on cooperation in the area of taxation declare that this Agreement will achieve a level of cooperation which has with regard to taxation in respect of income and gains on relevant assets an enduring effect equivalent to the outcome that would be achieved through an agreement to exchange information on an automatic basis. This Agreement on cooperation in the area of taxation will be seen as balanced and protecting the interests of both Contracting Parties. Therefore they will perform their duties as agreed in good faith and will neither violate the provisions through an unilateral act nor work against the agreed provisions in dealings with third parties.

Declaration of the United Kingdom concerning the acquisition of customer data stolen from Swiss banks

The Government of the United Kingdom declares on the occasion of the signing of the Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on cooperation in the area of taxation that it will not actively seek to acquire customer data stolen from Swiss banks.

Side letter of the competent authority of the United Kingdom on criminal investigation

In view of the signing of the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on cooperation in the area of taxation, the competent authority of the United Kingdom (the Commissioners for Her Majesty's Revenue and Customs – hereinafter referred to as "HMRC") wishes to set out its position in relation to the criminal investigation of relevant persons for past liabilities incurred before the date of this Agreement in respect of relevant assets.

Provided that a relevant person agrees either to make a one-off payment in accordance with Article 9 of this Agreement or to make a voluntary disclosure in relation to his/her relevant assets in accordance with Article 10 of this Agreement and fully cooperates with HMRC, that person is highly unlikely to be subject to a criminal investigation by HMRC for a tax-related offence for past liabilities in respect of relevant assets from the date he or she irrevocably opted for one of the options, unless either his/her relevant assets represent the proceeds of crime (other than crime connected to a tax-related offence) or represent the proceeds of crime connected to criminal tax-related offences punishable by two years or more imprisonment.

Professional advisers, Swiss paying agents and their employees will need to comply with their legal obligations in respect of money laundering. Whilst it is never possible to provide an absolute assurance against a criminal investigation, it is highly unlikely to be in the public interest of the United Kingdom that professional advisers, Swiss paying agents and their employees will be subject to a criminal investigation by HMRC.

Any assurances relate only to investigations undertaken by HMRC. HMRC does not have sole responsibility for the criminal investigation of tax-related offences and no assurances are given in respect of any activity by other United Kingdom law enforcement agencies.

Any assurances given in this letter regarding criminal investigation apply only in relation to a criminal investigation against a relevant person in respect of relevant assets in Switzerland. No such assurances can be given regarding a criminal investigation against any person in respect of assets situated outside Switzerland.

In this letter, where the context permits, words and expressions have the same meaning given to them in this Agreement.

The Provision of cross-border financial services in the United Kingdom by firms from Switzerland

The Swiss Federal Department of Finance, on the one hand

and,

The Commissioners for Her Majesty's Revenue and Customs, on the other hand

Note that on today's date, an Agreement was signed between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on cooperation in the area of taxation.

Following the signing of this Agreement, the said Federal Department and Commissioners hereby declare that the annexed Memorandum on the Provision of cross-border financial services in the United Kingdom by firms from Switzerland will provide Swiss financial institutions appropriate guidance to offer such financial services.

Signed in duplicate in English on this

.....
For and on behalf of the Swiss Federal Department of Finance,
the competent authority under the said Agreement for the Swiss Confederation

.....
For and on behalf of the Commissioners for Her Majesty's Revenue and Customs,
the competent authority under the said Agreement for the United Kingdom of Great
Britain and Northern Ireland

Provision of cross-border financial services in the United Kingdom by firms from Switzerland

Introduction

A: Account opening and deposit-taking

B: The overseas persons' exclusion: activities which can be carried out by Swiss financial institutions without the need to be authorised

C: Approaching prospective clients and servicing existing ones: relevant exemptions in the Financial Promotion Order (FPO)

Annex General prohibitions and requirements

Introduction

1. This memorandum has been produced by HM Treasury following discussions in Berne on 10 June 2011 involving representatives from HM Treasury (HMT), the UK Financial Services Authority (FSA), the Swiss Federal Department of Finance (EFD) and the Swiss Bankers Association (SBV). It responds to issues raised by Swiss banks in respect of providing cross-border financial services to retail consumers in the United Kingdom (UK). As such it is not a comprehensive analysis of all issues which overseas firms need to take into account if they wish to contact and/or provide financial services to UK consumers. It describes the appropriate framework and guides Swiss banks and financial institutions wishing to provide cross-border financial services to the UK.

2. This memorandum contains two types of material:

a) A description of key features of the general legal position concerning the provision of cross-border financial services into the UK by firms located in Switzerland;

b) Illustrative examples of how UK legislation and rules may apply in practice for financial institutions subject to prudential regulation in Switzerland (referred to as "Swiss financial institutions"). These examples should be read in conjunction with the legislation and so should not be relied upon in isolation.

3. Many aspects of the regulation of financial services in the UK derive from EU legislation.

4. In some cases it may be possible for overseas firms to carry on certain activities in relation to consumers either with or through an authorised firm (see Sections A to C below), or by establishing an FSA authorised firm itself. The authorisation process generally takes no more than six months.

A Swiss financial institution may carry on business in the UK without needing to be authorised by the FSA if it offers certain prescribed services with or through a UK authorised firm.

5. The three sections following are set out as a guide to allow Swiss firms to identify potential business opportunities. The annex sets out the general prohibitions and restrictions that apply to all firms if they wish to contact consumers.

6. This memorandum describes the main features of the legal position concerning the provision of cross border financial services as at July 2011. No substantive changes in domestic law are currently envisaged. If there are future changes in law which materially impact on key features in this memorandum, British officials will discuss possible consequential changes to the memorandum which may be necessary.

5 August 2011

SECTION A: Account opening and deposit-taking

7. A deposit involves a payment of money together with the assumption of a liability to repay it. Accordingly a deposit is only made where the obligation to repay the deposit arises. So, for example,

- a) where a sum is sent from the UK direct to the overseas deposit-taker (for instance by cheque or bank transfer), and
- b) the latter does not become liable to repay the sum until he has received it overseas

the deposit-taking activity does not take place in the UK.

A Swiss financial institution is able to accept deposits from UK depositors where the sum is sent direct to the Swiss financial institution, for instance by cheque or bank transfer, and the deposit is not booked until it reaches Switzerland.

A Swiss financial institution may provide prospective clients with account opening documents and assist the prospective client in completing account opening documents provided in doing so it does not breach the financial promotions restriction, see Section C.

8. The acceptance of money outside the UK into a foreign account does not of itself allow regulated activities to be carried on in the UK in relation to that account without separately considering whether each activity is being conducted in compliance with the Financial Services and Markets Act 2000 ('FSMA').

A Swiss financial institution must consider whether, by providing services in connection to the deposit to persons in the UK, it is carrying on other activities regulated by the FSA.

So, even where the deposit taking activity occurs in Switzerland, other activities that the Swiss financial institution may wish to carry out in connection to that account need to be considered individually to check whether they comply with FSMA.

9. Arranging or advising on deposits is not an activity regulated under FSMA. However, the financial promotion restriction in section 21 of FSMA does apply to the communication of promotions that relate to a deposit. (See section C)

10. In relation to deposits, the Financial Services and Market Act 2000 (Financial Promotion) Order 2000 ('FPO'), which is the relevant legislation for persons that are not authorised, provides that any form of interactive ('real time') financial promotion concerning deposits is exempted from the restriction on financial promotion. In addition all non-interactive ('non-real time') promotions are exempted provided they contain certain specified information including:

- a) the name;
- b) the country of incorporation (if relevant);
- c) the principal place of business of the deposit-taker;
- d) whether it is regulated; and

e) details of any redress schemes and necessary capital information to demonstrate the solvency of the firm.

A Swiss financial institution may, consistent with its Swiss authorisation, promote its Swiss deposit-taking service to persons in the UK through:

a) Any kind of “interactive” promotion, including:

- meetings with prospective clients to introduce the Swiss financial institution’s deposit-taking activities;
- telephone calls to prospective clients to introduce the Swiss financial institutions deposit-taking activities, or to arrange meetings to discuss these activities;

b) Any other kind of promotion, including:

- contacting prospective clients via postal mail;
- contacting prospective clients via email;
- contacting prospective clients via fax;

provided that the specified information is included in the communication covering for example:

- the name;
- the country of incorporation (if relevant);
- the principal place of business of the deposit-taker;
- whether it is regulated; and
- details of any redress schemes and necessary capital information to demonstrate the solvency of the firm.

SECTION B: The overseas persons' exclusion: activities which can be carried out by Swiss financial institutions without the need to be authorised

11. There is an exclusion from the requirement to be authorised which is available for 'overseas persons' in specified circumstances. An overseas person is defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ('the Regulated Activities Order') as a person who carries on certain regulated activities but does not carry on these activities or offer to do so from a permanent place of business maintained by him in the UK.

12. The exclusion for overseas persons, set out at article 72 of the Regulated Activities Order, applies to regulated activities such as:

- a) dealing as agent or principal;
- b) making arrangements for another person to buy, sell, subscribe for or underwrite particular investments;
- c) advising on investments;
- d) operating a multilateral trading facility;
- e) agreeing to carrying certain activities including agreeing to manage investments; and
- f) certain activities in relation to home finances transactions.

13. It should be noted that, while the regulated activity of agreeing to manage investments can be excluded under the overseas persons' exclusion, the activity of managing investments itself cannot be so excluded.

So it follows that a representative of a Swiss financial institution meeting the terms of the overseas persons' exclusion, including while visiting the UK, may

- buy and sell securities as principal or agent;
- advise on investments;
- agree to manage investments outside the UK (i.e. the assets must be managed from Switzerland or elsewhere);

without needing to be authorised in the UK.

14. The exclusion should be available for the relevant regulated activities, other than those that relate to home finance transactions, in the two broad cases set out below. For some of these regulated activities the exclusion applies in each case, in others it applies in only one.

15. The first case is where the nature of the regulated activity requires the direct involvement of another person and that person is authorised or exempt (and acting within the scope of his exemption). For example, this might occur where:

- a) the person in the UK, with whom an overseas person deals, is an authorised person acting on behalf of a client; or

b) where the arrangements the overseas person makes are for transactions to be entered into by an authorised person.

A Swiss financial institution that meets the terms of the overseas persons exclusion may, without needing to be authorised, carry out certain prescribed activities where it is dealing with a UK intermediary which is authorised or exempt, rather than the client directly.

16. The second case is where a particular regulated activity is carried on as a result of what is termed a 'legitimate approach'. An approach by a person in the UK is a legitimate approach to an overseas person provided it has not been solicited by the overseas person in any way, or has been solicited in a way that does not contravene the restrictions on financial promotion in section 21. An approach by or on behalf of the overseas person is a legitimate approach where it does not contravene section 21.

17. The exemptions to the financial promotion restrictions made under section 21 will be relevant to the question of whether those restrictions have been contravened.

Where a person in the UK approaches a Swiss financial institution:

- without being solicited by that institution; or
- having being solicited, and providing that these solicitations are consistent with the requirements in the FPO;

the Swiss financial institution may, without requiring authorisation:

- enter into deals with (or on behalf of) a person in the UK;
- give advice in the UK; or
- enter into agreements in the UK to carry on certain regulated activities.

SECTION C: Approaching prospective clients and servicing existing ones: relevant exemptions in the Financial Promotion Order (FPO)

18. The financial promotions restriction is set out in the annex (paragraphs 47 to 51). This section describes the most relevant exemptions for unauthorised persons. The financial promotion regime applies in relation to 'controlled activities' and 'controlled investments' as specified in the FPO. The exemptions in the FPO that are most likely to be relevant to overseas persons are detailed below.

Subject to compliance with the FPO, financial promotions by Swiss financial institutions which are not authorised in the UK can be communicated through a number of means, such as:

- product brochures, investment research and marketing material;
- general advertising in magazines, newspapers, radio, television and websites;
- mail shots;
- telephone contact;
- written correspondence;
- personal contact; and
- sales aids.

Swiss financial institutions may only engage in financial promotions to people in the UK in certain circumstances. These circumstances differ depending upon what type of product is concerned and who the client is.

Article 10 (application to qualifying contracts of insurance)

19. Article 10 of the FPO prevents any exemption in the FPO which would otherwise apply from applying where the promotion relates to the entering into of a 'qualifying contract of insurance' (i.e. an investment-related insurance contract) unless the insurer is:

- authorised;
- exempt in relation to effecting or carrying out contracts of insurance to which the promotion relates;
- a company which has its head office in (or which has a branch or agency in) another EEA State and is entitled under the law of that State to carry on the insurance business relevant to the promotion; or
- a company authorised to carry on insurance business to which the promotion relates in a country or territory listed in Schedule 2 of the FPO (Switzerland is not listed).

Article 14 (follow up non-real time communications and solicited real time communications)

20. The main features of the article 14 exemption are as follows. Financial promotions, other than unsolicited real time financial promotions, are exempt where they follow up an earlier financial promotion. But there must also be compliance with another exemption such as that for promotions made to high net worth individuals or sophisticated investors (see below), that contains certain indications or information. This is provided the financial promotion meets the specified conditions including that it:

- a) is made by the person who made or directed the earlier financial promotion;
- b) is made to a recipient of the earlier financial promotion;
- c) relates to the same matter as the earlier financial promotion; and
- d) is made within 12 months of the earlier financial promotion.

21. This exemption does not help where the original financial promotion was made or directed under an exemption which did not require it to include any indications or information. However, it is likely that, in many cases where no indications or information are required, the exemption to which the earlier financial promotion applies would also apply to any follow up financial promotion.

22. The follow up is taken as made by the same person as long as it is made on behalf of the original person. For example, the earlier financial promotion may have been made or directed by an individual in his capacity as an officer or employee of a company or a partner or employee of a partnership. If so, the exemption will be satisfied if the follow-up financial promotion is made by another employee, director or partner of the same company or partnership.

Where a Swiss financial institution has made a previous approach in compliance with the requirements of a relevant exemption in the FPO, it may make another related approach to the same person within a year.

Article 17 (generic promotions)

23. This exemption may apply where there is a financial promotion of a class of products, for example investment trusts. Such financial promotions may be made by a person such as a trade association which is not itself carrying on a controlled activity. But there must not be any mention of any particular product or of any person who may give advice on, arrange, sell or manage such investments.

24. The financial promotion itself must not relate to a controlled investment provided by a person who is identified in it, nor must it identify any person as someone who carries on any controlled activity.

25. Other persons may be able to take advantage of the exemption. For example, a person making a generic financial promotion may identify himself regardless of whether or not he may carry on a controlled activity. There is a proviso to this; the financial promotion must not (directly or indirectly) identify the person as someone who carries on a controlled activity.

A Swiss financial institution may carry out a general promotion of a class of products in the UK and include the name of the financial institution. However, it must not (unless permitted under a different FPO exemption) name specific products in this promotion, nor suggest that the financial institution provides one of the class of products.

Article 19 (investment professionals)

26. Financial promotions made only to or directed only at certain types of person who are sophisticated enough to understand the risks involved are exempt. These include FSA authorised firms and exempt professional firms such as solicitors or accountants.

Article 28 and 28A (one-off communications)

27. Financial promotions relating to certain controlled activities, which are one off communications, are exempt. This includes non-real time and solicited real time communications. A communication is one-off where:

- the communication is made to only one recipient or a group of recipients in the expectation that they would engage in any investment activity jointly;
- the identity of the product or service to which the communication relates has been determined having regard to the particular circumstances of the recipient; and
- the communication is not part of an organised marketing campaign.

If one, but not all, of these conditions applies, that fact will be taken into account in determining whether the communication is a one-off communication. Even if none of the conditions is met the communication may nevertheless be regarded as a one-off communication, depending on the circumstances.

Unsolicited real time one off communications relating to certain controlled activities are also exempt if the following conditions apply:

- the communicator believes on reasonable grounds that the recipient understands the risk associated with the relevant investment activity; and
- the communicator believed on has reasonable grounds at the time of making the communication that the recipient would expect to be contacted in relation to the relevant investment activity.

A Swiss financial institution may telephone or send a bespoke written communication on a one off basis to any existing or potential customer relating to certain sorts of investment activity. If the communication is an unsolicited telephone call, the institution must also reasonably believe that the customer understands the risks and would expect to be contacted by them in relation to the investment. Generally “one off” means that the communication must not be part of an organised marketing campaign, and the promotion relates to a product that the financial institution believes is relevant to the customer, based on knowledge of the circumstances of the customer.

Article 30-33 (overseas communicators)

28. A number of exemptions relate to financial promotions sent into the UK by an overseas communicator who does not carry on certain controlled activities in the UK. These exemptions apply in addition to any other exemptions which may apply to any particular financial promotion by an overseas communicator.

29. Article 30 exempts any solicited real time financial promotion made by an overseas communicator from outside the UK in the course of, or for the purposes of, certain controlled activities which he carries on outside the UK. This enables an overseas communicator, for example, to respond to:

- a) an unprompted telephone enquiry made by a person in the UK; or
- b) an enquiry which follows a financial promotion made by the overseas communicator and which was approved by an authorised person.

Where a person in the UK approaches the Swiss financial institution over the telephone at his own instigation, the Swiss financial institution may, if this relates to certain controlled activities, respond to any enquiry.

Where a person in the UK approaches the Swiss financial institution over the telephone in response to a promotion in line with the rules of this chapter, the Swiss financial institution may, in relation to certain controlled activities, respond to any enquiry.

30. Article 31 exempts non-real time financial promotions made by an overseas communicator from outside the UK to previously overseas customers and subject to certain conditions. Again, to satisfy this exemption, the communicator must be based overseas and must be communicating with a person who is, or was recently, a customer of his while that person too was overseas.

A Swiss financial institution may write to any person who is or was, at any time in the previous 12 months, a person for whom that Swiss financial institution had done business at a time when the customer lived outside the UK. Having 'done business' means that the financial institution has effected a transaction or arranged for a transaction to be effected, provided custody or given advice on investments to the customer. This may be done via post, email, or fax.

For customers resident in the UK, other exemptions may be available. For example, article 33 applies for sophisticated investors – see paragraph 31(b) below

31. To make an unsolicited real time financial promotion, an overseas communicator may be able to rely on either article 32 or article 33:

- a) Article 32 provides an exemption for unsolicited real time financial promotions made by an overseas communicator to persons who were previously overseas and were a customer of his at that time. This is subject to certain conditions, including that, in broad terms, the customer would reasonably expect to be contacted about the subject matter of the financial promotion;

A Swiss financial institution may telephone any person with whom the Swiss institution had done business with at a time when they lived outside the UK, if that person could reasonably expect to be

contacted about the promotion and the person has been informed by the financial institution on an earlier occasion certain information including:

- that FSMA protections will not apply in respect of the making of unsolicited real time financial promotions or any investment activity arising from such a promotion; and
- whether any dispute resolution or compensation scheme would apply to any transaction resulting from the communication.

b) Article 33 is similar to a sophisticated investor exemption and, broadly, applies where the overseas communicator:

- i) has reasonable grounds to believe that the recipient is knowledgeable enough to understand the risks associated with the controlled activity to which the financial promotion relates;
- ii) has informed the recipient that he will not gain the protections under FSMA in respect of the activity or of the making of unsolicited real time financial promotions;
- iii) has informed the recipient whether he will lose the benefit of dispute resolution and compensation schemes.

32. The recipient must also have signified clearly that he accepts the position after having been given a proper opportunity to consider the information. There is no definition of a proper opportunity for this purpose. In the FSA's opinion it is likely to require the recipient to have a reasonable time to reflect on the matter and, if appropriate, seek other advice. What is a reasonable time will depend upon the circumstances of the recipient but it is unlikely that a time of less than 24 hours will be enough.

A Swiss financial institution may telephone (or make other real time contact with) any person if it:

- has reasonable grounds to believe that the recipient is knowledgeable enough to understand the risks associated with the controlled activity to which the financial promotion relates;
- has informed the recipient that he will not gain the protections under FSMA in respect of the activity or of the making of unsolicited real time financial promotions;
- has informed the recipient that he will lose the benefit of dispute resolution and compensation schemes; and
- has signified clearly that he accepts the position after having been given a proper opportunity (more than 24 hours) to consider the information.

Article 48 (certified high net worth individuals)

33. This exemption disapplies the restriction in section 21 from non-real time financial promotions or solicited real time financial promotions which relate to certain investments. It applies when made to a person whom the communicator has reasonable grounds to believe is a certified high net worth individual. The exemption covers various specified investments which include:

- a) shares in or debentures alternative finance investment bonds of an unlisted company; or
- b) warrants, certificates representing certain securities, options, futures or contracts for differences relating to shares in or debentures of an unlisted company; or
- c) units in collective investment schemes investing predominantly in shares in or debentures of an unlisted company.

The exemption only applies where a warning complying with article 48 is given to the person, and the communication is accompanied by information about the exemption, about the requirements to be certified as a high net worth individual and advising anyone in doubt to seek specialist advice from an authorised person.

34. There is an additional requirement that the recipient must have no contingent liability so that the maximum he may lose is the amount he invests. The term 'unlisted company' is defined in article 3 of the FPO. This exemption is expected to be of help to unlisted companies seeking venture capital.

A Swiss financial institution complying with the requirements of article 48 may make a non-real time or solicited real time communication to any certified high net worth individual in respect of certain investments:

- shares in or debentures or alternative debentures of an unlisted company; or
- warrants, certificates representing certain securities, options, futures or contracts for differences relating to shares in or debentures of an unlisted company; or
- units in collective investment schemes investing predominantly in shares in or debentures of an unlisted company,

as long as the individual has no contingent liability arising from the proposed investment.

Article 49 (high net worth companies, trusts, etc.)

35. This exemption works on a different basis to that for high net worth individuals. There is no requirement for a certificate or statement to be signed. Instead, the person making the promotion must believe on reasonable grounds that the recipients are high net worth companies, unincorporated associations or trusts or be reasonably regarded as directing the financial promotion only at such persons.

36. A high net worth company, unincorporated association or trust is a person who satisfies the conditions in article 49(2)(a) to (d) which, for the most part, involve the amount of assets held. In addition, the exemption allows a financial promotion that is made to, or directed at, persons coming under article 49(2)(a) to (d) also to be made to, or directed at, any other persons to whom it may lawfully be made (article 49(2)(e)). This would include persons such as overseas recipients (article 12 (Communications to overseas recipients)) and investment professionals (article 19 (Investment professionals)).

A Swiss financial institution may contact any company, association or trust in any manner if it has reasonable grounds to believe that the recipient is a high net worth company, association or trust.

Article 50 and 50A (sophisticated investors)

37. There are two exemptions that relate to sophisticated investors:

- a) the first (article 50 (Sophisticated investors)) applies to persons who are certified by an authorised person, and the exemption is not limited to specific descriptions of investments;
- b) the second (article 50A (Self-certified sophisticated investors)) is similar to the exemption for certified high net worth individuals and applies where the investor has self-certified himself and relates to a narrower range of specified investments.

Both exemptions require certain information to be communicated to the investor, and article 50A in addition contains a warning notice requirement. For both exemptions, the person making the communication must check that the investment falls within the scope of the certificate, and in the case of article 50A the investment must also fall within article 50A(8).

A Swiss financial institution may contact any person in any manner if the recipient is a certified sophisticated investor with an up-to-date certificate, and the communication is accompanied by an indication:

- that it is exempt from the section 21 financial promotion restriction as it is made to a certified sophisticated investor;
- of the requirements that need to be met for a person to be such an investor;
- that any investors with doubts about the investment should seek specialist advice on the investment in question;
- that the communication has not been approved by an authorised person;
- the risks involved of losing all of the property or of incurring additional liability,

provided the communication does not invite or induce the recipient to engage in investment activity with the person who signed the certified sophisticated investor certificate and provided the communication only relates to a description of investments in respect of which the investor is certified.

Article 51 (associations of high net worth/sophisticated investors)

38. This exemption allows a non-real time or solicited real time financial promotion to be made to an association with a particular membership. Membership of this association must be reasonably believed to be wholly or predominantly made up of:

- a) certified high net worth individuals; or
- b) high net worth companies; or
- c) unincorporated associations or trusts; or

d) certified, or self-certified, sophisticated investors.

39. The financial promotion must not relate to an investment under the terms of which a person can incur additional liability of more than his original investment. The person making the communication must on reasonable grounds believe that an association is predominantly made up of certified, high net worth individuals, high net worth companies or unincorporated associations or trusts, or certified or self-certified, or sophisticated investors.

A Swiss financial institution may make a non-real time or solicited real time communication to associations if it has reasonable grounds to believe that the association is constituted wholly or predominately of:

- certified high net worth individuals; or
- high net worth companies; or
- unincorporated associations or trusts; or
- certified, or self-certified, sophisticated investors; and

it relates to an investment under which no person can incur liabilities exceeding the amount of their investment.

Article 69 (promotion of securities already admitted to certain markets)

40. This exemption applies to companies whose securities are permitted to be traded or dealt on a relevant market. But such companies will need to ensure that they meet the specific requirements in article 69(3). In very general terms, a financial promotion will comply with these requirements if:

- a) the only reason it is a financial promotion is that it contains or is accompanied by an inducement about certain investments issued , or to be issued, by the company or a group member; and
- b) if it contains any reference to past prices of or yields on the company's investments, it is accompanied by a statement that past performance cannot be relied on as a guide to future performance.

A Swiss financial institution that is a body corporate may use this exemption only in relation to its own (or group member) shares, debentures or related warrants and certificates representing such shares or debentures.

Routine contact with existing clients

41. There are FSA rules on all communications by authorised firms to clients, not just promotional ones. This includes, for example, annual statements, responses to queries, complaints or general correspondence. In line with the FSA's risk-based approach to regulation, the rules that apply to non-promotional communications are high level. The main rule is that communications must be fair, clear and not misleading.

Swiss firms may make contact with UK customers provided it is permitted under FSMA and any financial promotion is permitted under the FPO. Therefore the contact made by the Swiss firm may include:

- Contact existing clients by post, email, fax or telephone to provide information concerning the client's account (statement, performance analysis etc);
- Visit existing clients and provide them with investment advice as well as information on new products and investment opportunities;
- Provide general marketing material, newsletters, brand marketing and general information.

Annex: General prohibitions and requirements

The general prohibition

42. Under FSMA bodies corporate, partnerships, individuals and unincorporated associations may be given permission by the FSA to carry on various financial activities which are subject to regulation. But no person may carry on a regulated activity in the UK, or purport to do so, unless he has FSA permission or he is exempt under FSMA ('the general prohibition').

43. The activities which are regulated by the FSA under FSMA are specified in the Regulated Activities Order: for example, accepting deposits, managing investments and dealing in investments as agent. In general terms, a regulated activity is an activity, specified in the Regulated Activities Order, carried on by way of business in relation to one or more of the investments specified in the Regulated Activities Order.

44. Under section 23 FSMA, a person commits a criminal offence if he carries on activities in breach of the general prohibition in section 19 FSMA. Although a person who commits the criminal offence is subject to a maximum of two years imprisonment and an unlimited fine, it is a defence for a person to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

45. Another consequence of a breach of the general prohibition is that certain agreements could be held by the courts to be unenforceable (see sections 26 to 29 of FSMA). This applies to agreements entered into by persons who are in breach of the general prohibition. It also applies to any agreement entered into by an authorised person if the agreement is made as a result of the activities of a person who is in breach of the general prohibition.

46. It should be noted that a person who is carrying on a regulated activity but would not otherwise be regarded as carrying it on in the UK may be deemed to be doing so in particular situations. For example, if his head office is not in the UK but the activity is carried on from an establishment maintained by him in the UK.

A Swiss financial institution must understand the general prohibition and be aware of the potential consequences of failing to comply with it.

The financial promotions restriction

47. A financial promotion is a communication in the course of business that is an invitation or an inducement to engage in investment activity. The effect of section 21 FSMA is that, in the course of business, an unauthorised person must not communicate an invitation or inducement to engage in investment activity unless either the content of the communication is approved for the purposes of section 21 by an authorised person or it is exempt.

48. Under section 25 FSMA, a person commits a criminal offence if he carries on activities in breach of the restriction in section 21. A person who commits this criminal offence is subject to a maximum of two years imprisonment and an unlimited fine. However, defences are available for example it is a defence for a person to show that he took all reasonable precautions and used all due diligence to avoid committing the offence.

49. Another consequence of a breach of section 21 is that certain agreements could be unenforceable (see section 30 (Enforceability of agreements resulting from unlawful communications)). This applies to agreements entered into by a person as a customer as a consequence of a communication made in breach of section 21.

50. An authorised person will not breach section 21 when communicating a financial promotion. However, when communicating or approving a financial promotion, an authorised person is required to comply with the financial promotion rules made by the FSA under section 145 FSMA.

51. There are extensive exemptions in the FPO; the more obviously relevant are considered further in section C. They apply to unauthorised firms.

A Swiss financial institution must be aware of the potential consequences of failing to comply with the restrictions on financial promotions in section C. These include:

- a possible criminal conviction;
- the possibility of some agreements becoming unenforceable.

Promotion of investment funds

52. Section 238 FSMA prevents authorised firms from promoting funds unless the funds are regulated collective investment schemes (i.e. authorised unit trusts, authorised open ended investment companies, or recognised schemes). There are a limited number of exemptions from this general restriction.

53. A non-UK fund, other than Undertakings for Collective Investments in Transferable Securities (UCITS), can apply to be a recognised scheme under section 272 FSMA, which will be granted if it meets all the requirements of the section. The FSA has six months in which to consider such applications. Such schemes can be promoted to the general public. This framework will be consulted on as part of the implementation of the Alternative Investment Fund Managers Directive ('AIFMD') by 2013.

54. Section 21 precludes the promotion by unauthorised persons of unregulated collective investment schemes unless the financial promotion is approved by an authorised person or is exempt. Section 238 then precludes the promotion of an unregulated collective investment scheme by authorised persons except where:

- a) there is an exemption in an order made by the Treasury under section 238(6), namely the FSMA 2000 (Promotion of CIS) (Exemptions) Order 2001; or
- b) the financial promotion is permitted under rules made by the FSA under section 238(5) to exempt the promotion, otherwise than to the general public, of schemes of certain descriptions; or
- c) the scheme is a single property scheme and its promotion is exempt under regulations made by the Treasury under section 239 (Single property schemes). To date the Treasury has not made regulations under section 239.

A Swiss financial institution which is not authorised in the UK must not promote any collective investment scheme unless a FPO exemption is available.

A Swiss financial institution which is authorised by the FSA may promote participation in regulated collective investment schemes. These include authorised unit trusts, authorised open ended investment companies, or recognised schemes. UCITS schemes may be promoted only if they have been listed as a recognised scheme by the FSA.

Swiss firms may benefit from HM Treasury's intention to exercise the option of a national private placement regime in the AIFMD.

55. In addition, section 240 (Restriction on approval of promotion) precludes an authorised person from approving a financial promotion for the purpose of section 21 if he would not be able to communicate it himself under section 238.

56. The FSA has made rules under section 238(5) which allow authorised firms to communicate or approve a financial promotion for an unregulated collective investment scheme in certain specified circumstances. These circumstances are set out in the FSA's Handbook at COBS 4.12.1R.

Prospectus requirements

57. It is unlawful under section 85 FSMA for certain types of securities to be offered to the public in the UK or to request the admission of such securities to trading on a regulated market operating in the UK. However, it is lawful if an approved prospectus has been made available to the public before the offer or request is made.

58. There are also exemptions available in relation to the offer of securities.