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**BROOKLYN OFFICE**

May 14, 2007

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

Dear Judge Korman:

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

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

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

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

## I. Determination of proposed presumptive values.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,

Helen B. Junz





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

Account Type	No adjustment Yet to be awarded accounts (1,400) (1)	Adjustment at 100 percent		Adjustment at 50 percent		Adjustment at 30 percent	
		Adjustment awarded and projected (2)	Total forward cost (3)-(1)+(2)	Adjustment awarded and projected (4)	Total forward cost (5)-(1)+(4)	Adjustment awarded and projected (6)	Total projected payments (7)-(1)+(6)
Savings accounts	1,020,963	752,608	1,773,571	321,707	1,342,670	201,047	1,222,010
Demand deposits	14,048,624	17,570,948	31,619,572	8,847,906	22,896,530	5,366,464	19,415,088
Custody accounts	82,033,925	255,657,366	337,691,291	127,804,547	209,838,472	77,212,175	159,246,100
Safe deposit boxes	1,306,146	5,493,835	6,799,981	2,786,529	4,082,675	1,693,029	2,999,175
Unknown accounts	18,202,407	0	18,202,407	0	18,202,407	0	18,202,407
Other accounts	44,000	910,000	954,000	61,600	105,600	37,100	81,100
Total Paid or committed through Set 116 <sup>1</sup>	116,656,065	280,384,757	397,040,822	139,822,289	256,478,354	84,509,815	201,165,880
Grand Total Paid and Projected <sup>2</sup>	442,817,487		442,817,487		442,817,487		442,817,487
	559,473,552		839,858,309		699,295,841		643,983,367

<sup>1</sup> Includes US\$ 358,292,995 paid under CRT II, US\$ 18,184,492 paid under CRT I, US\$ 65,000,000 paid or committed under the Plausible Undocumented Award (PUA) program and an estimated US\$ 1.34 million yet to be paid in amendments consequent upon past award policy decisions.

<sup>2</sup> Note: Totals may not add due to rounding.

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

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

The examination, including the current update, involved a detailed comparison of the present presumptive values as derived by ICEP's<sup>1</sup> auditors from the approximately 54,000 accounts they initially identified in their audit of Swiss banks as probably or possibly having belonged to Holocaust victims with, on the one hand, the 37,484 accounts in the database the CRT has available for matching names on claim forms (the Total Account Historical Database-Plus or "the Total AHD-plus")<sup>2</sup>, and on the other hand, the account value information drawn from the 3,735 accounts awarded through Set 116, approved by the Court on February 27, 2007.<sup>3</sup>

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

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

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

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

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

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

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

<sup>4</sup> ICEP Report, p. 20 and Annex 4, p. 7.

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

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

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

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

<sup>7</sup> ICEP Report, p. 12.

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

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

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

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

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

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

<sup>10</sup> Hydoski Memorandum, p. 2.

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

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<sup>11</sup> ICEP Report, p. 22.