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ultimate disposition of property in blocked accounts that was not otherwise being released.<sup>197</sup>

Four courses of action were considered.

First, the blocking controls could be continued indefinitely. This would force owners to use certification in order to obtain the release of their property, but its disadvantages were political: owners would exert pressure in the U.S. and the extended use of war powers it would imply would be "obnoxious to Congress as well as to banks." This alternative was rejected.<sup>198</sup>

Second, property could be unconditionally unblocked, without certification. This was not a popular option either, since FFC had learned that from June 1946 to January 1947, "at least \$2 million of concealed enemy property" was "among accounts previously blocked only as Dutch, Swiss, etc."<sup>199</sup> Thus the assumption that the certification procedure was unlikely to reveal a significant amount of enemy property was deemed questionable.

Third, the U.S. government could conduct a new census of uncertified, blocked assets. The information obtained in a census would help the FFC formulate defrosting policies, and the census would be conducted with the expressed intent of turning over the results to European governments. A new census would encourage more voluntary reporting, and foreign governments would be encouraged to show leniency toward those who were now declaring previously undeclared assets. While this third option would also have afforded "some statistical

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*(Note)* HFC - from PRIVATE Swiss Banker

<sup>197</sup> "Resolution of Problem of Uncertified Accounts," memo from John S. Richards, Director, Foreign Funds Control, to A. N. Overby, Jan. 16, 1947, NACP, RG 131, FFC Subject Files, Box 457 [Dan]; see also History of FFC, Chapter 6, 39-43. An unsigned Foreign Funds Control "Summary of questions and opinions regarding the defreezing of alien capital in the U.S." contains a comparable discussion of options. RG 131, FFC Subject Files, Defrosting #1, Box 95, 29 November 1947 [310366-310374].

<sup>198</sup> History of FFC, Chapter 6, 39-40 [331760-331761].

<sup>199</sup> History of FFC, Chapter 6, 42 [331763].

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SWISS BANK CORPORATION  
GENERAL MANAGER

Basle, 16th December 1947.

*12/14/47*

Dear Mr. Richards,

Above all I wish to thank you for the courtesies you extended to me in Washington in November last and I would be happy if our exchange of views has been useful to clear up some of the aspects of the important problem of foreign funds control. Perhaps it may interest you to read the enclosed summary which I have prepared as a result of my conversations in Washington and with the Federal Reserve Bank in New York. I would like to emphasise that this summary represents my personal views only, though I have no doubt that they are fully shared by all banks and bankers in this country.

I avail myself of this opportunity to extend to you my best wishes for Merry Christmas and Happy New Year and remain with kindest personal regards,

Yours sincerely,

A.C. Nussbaumer

Encl.

Mr. John S. Richards, Ass. Director,  
Treasury Department,  
Washington.

interference with non-enemy foreign assets for purposes such as outlined in the preceding alinea 1) or by way of transfer of such assets to the Alien Property Custodian would have grave repercussions all over the world and lead to serious actions in court.

3. It is not the purpose of this note to examine the legal aspect of any such interference or compulsory measure. Above all, any such action would certainly be interpreted abroad as a breach of faith and trust and lead to a general disruption of confidence at a time when this confidence is already badly shaken and in greatest need to be restored.

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GENERAL MANAGER

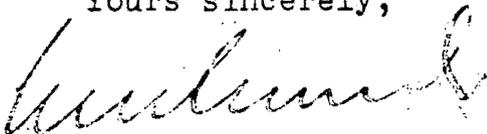
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 Treasury Department,  
Washington.

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29.11.47.

Foreign Funds Control.

Summary of questions and opinions regarding the defreezing of alien capital in U.S.A.

A. Original purpose of freezing.

- a) Protect non-enemy funds against enemy seizure or pressure for delivery.
- b) Identify enemy property and enemy interest direct or indirect.
- c) Avoid transactions benefitting the enemy direct or indirect.

B. Apparent subsequent enlargement of freezing purposes.

- a) Protection of fiscal interest of foreign governments.
- b) Cooperation with foreign governments to identify assets held in U.S.A. by their respective nationals and intention to facilitate surrender or forced repatriation of such funds to the governments concerned.
- c) Attempt to force foreign private assets to participate in financing of European relief and longterm aid program on the ground that such financing would otherwise be an exclusive charge to American tax payer.

C. Fundamental principle for defreezing of foreign assets.

1. It has always been the traditional policy and basic principle of the United States government and many other democratic and law-abiding countries that private deposits and investments either national or foreign, entrusted to them, are protected by law and can under no circumstances be the object of :
  - a) compulsory compensation with credits or loans granted to foreign governments.
  - b) seizure or compulsory surrender to foreign governments.
  - c) compulsory application in U.S.A. of the fiscal and currency laws promulgated by foreign governments and applying to nationals resident in their own country only.
  - d) limitations or restrictions in connection with internal political problems, especially having regard to the financing of the European aid program.
2. Any interference with non-enemy foreign assets for purposes such as outlined in the preceding alinea 1) or by way of transfer of such assets to the Alien Property Custodian would have grave repercussions all over the world and lead to numerous actions in court.
3. It is not the purpose of this note to examine the legal aspects of any such interference or compulsory measure. Above all such action would certainly be interpreted abroad as a breach of faith and trust and lead to a general disruption of confidence at a time when this confidence is already badly shaken and is in greatest need to be restored.

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4. The measure of success, expressed in Dollars, of any compulsory action taken by the Administration must be considered negligible.
  - a) compared with the un-estimable moral damage it would cause in all countries where private capital and private enterprise are almost the only constructive factors left for the future.
  - b) compared with the enormous sums involved in the reconstruction of Europe and for the restoration of a sound economic system and markets in all countries.
5. What would the reaction of public opinion, of industry, commerce and financial circles in the U.S.A. be, if any compulsory and discriminate action would be taken by a foreign government against American private assets and investments? Would the U.S. Administration accept any action by a foreign government directed against or prejudicing vital private American interests? Would the U.S. government approve of any action taken by a foreign government, in support of another foreign government, directed towards identifying and prejudicing American interests and investments in such other country or countries?
6. Considering the primary purpose for which foreign funds in the U.S.A. were frozen, would it not be fair to say that since hostilities have long ceased, these funds should be surrendered at the earliest possible moment to the rightful owners, provided always that no enemy interest, either directly or indirectly is vested in such funds?

7. Transfer of foreign assets to Alien Property Custodian.

Reason for transfer.

The reason for the contemplated transfer has been described as follows :

- a) The necessity to terminate foreign funds control and the certification schemes at present in force.
- b) The slow progress made by the existing certification arrangements.
- c) The exhaustion of the funds voted by Congress for the Office of Foreign Funds Control and the unlikelihood of additional credits being made available.

It has also been intimated that once foreign funds should have been transferred to the Alien Property Custodian the certification procedure would no longer be allowed to function. Furthermore, it appears that all foreign funds, whether enemy, non-enemy or neutral, including Swiss assets, would fall under the transfer.

It is clear that the Office of Foreign Funds Control has to be liquidated sooner or later. It may also be correct that the certification procedure has in some cases not given the expected quick results. But these facts could never justify to consider alien assets not certified within a restricted period as enemy property.

As regards Swiss assets proper, the certification system has in fact only become operative since March 1st, 1947, owing to the necessity to create the necessary organisation and machinery,

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to engage qualified staff and to prepare the detailed instructions as to the meaning and extent of the very complicated conditions laid down for the purpose. Since then, certification has made satisfactory and rapid progress in so far as physical owners of assets were concerned, whereas the conditions ruling for the certification of operating and non-operating companies, holding companies, finance trusts, family foundations & s.f. require extensive investigation and are a great obstacle to the early certification of assets of collective institutions of all kind. Until November 30th more than 2/3 of Swiss assets have been certified, and over 100,000 certificates have been issued by the Swiss Compensation Office, including those covering dollar securities physically deposited in Switzerland.

In accordance with the agreement signed between the United States and Swiss governments on November 26th, 1946, the Swiss government accepted the certification procedure and undertook to segregate all enemy assets. In view of this undertaking and the efforts made by the Swiss Compensation Office to accomplish their task in the shortest possible time, it is indispensable to give the Swiss agency the necessary time to accomplish their task; furthermore, certain complicated conditions for certification should be simplified. In any case, the Swiss Compensation Office which is responsible for the certification should not be penalised for executing their mandate with the greatest care and precision.

The transfer of Swiss assets to the Alien Property Custodian is therefore completely out of the question, since no part of these assets, except enemy assets which will be segregated by the Swiss government, is enemy property.

Concerning assets of other nationals, deposited in U.S.A. in the name of Swiss banks and other finance institutions, the required prior cross-certification by the respective foreign government agency is the main obstacle to the ultimate certification by the Swiss Compensation Office and this cross-certification should be abolished. In the case of French assets held through Switzerland, the cross-certification by the French Office de Change appears totally unnecessary since the Swiss Compensation Office will only certify non-enemy property and is in fact in a much better position than the French agency to establish the enemy or non-enemy status of French assets. It is almost excluded that enemy interests were concealed or cloaked under French names before the outbreak of the war, whereas the books and correspondence of the Swiss banks will show clearly the amounts and details of assets held by residents in France at the reference date fixed by the American regulations, and substantial balances or securities added thereafter must be justified as to the origin and source where they were derived from. The required cross-certification is under present conditions no inducement but the principal reason to detain French holders from having their assets certified and no change in their attitude is to be expected even if non-certified French assets should be transferred to the Alien Property Custodian. The same applies to £-assets of residents in Italy, the more so as Italian assets in Switzerland have been freed in October 1946 without any necessity for cross-certification by an Italian government agency. How could it be justified that Italian owners of dollar assets deposited through Swiss banks in U.S.A. should submit to an Italian cross-certification when their assets in Switzerland proper were not subject to such a limitation?

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Purpose of transfer.

It has been indicated that by a transfer to the Alien Property Custodian the foreign holders of assets could be forced to register with or surrender them to their respective government or, failing this, that they could be compelled to share the American tax payer's burden by having their assets used -directly or indirectly- for the financing of their countries' reconstruction requirements in foreign currency. Both these aims would not be obtained.

First of all it seems inconceivable under the original Trading with the Enemy Act that alien assets can be treated in bulk as enemy property for the sole reason that they have not been certified within a limited period, since :

- a) it is well known that enemy assets represent only an infinitesimal part of the total of foreign assets in U.S.A.
- b) all governments have already taken active measures or have formally undertaken to identify and segregate enemy interests.

Apart from the questionable legal aspect of the problem, the transfer of all foreign assets to the Alien Property Custodian would defeat its main purpose to identify them, whereas it would on the contrary block these funds still further instead of bringing them nearer the ultimate unfreezing and their voluntary employment for constructive purposes.

Practical result of transfer to Alien Property Custodian.

Whereas blocked non-enemy cash balances and securities can now be used for numerous transactions within the limits of the law, especially for investment and reinvestment, their transfer to Alien Property Custodian would result in a loss to all parties concerned, but especially to the American Tax authorities. Taxable revenue in brokerage, banking commissions, stamp, fees and income tax on collected dividends and interests no doubt amount to many million dollars a year, whereas the cost of maintaining Foreign Funds Control even for another period of a few years would hardly be worth mentioning in comparison with the great financial interests involved.

Considering all aspects of the problem, it seems clear that the transfer of the non-enemy foreign funds to the Alien Property Custodian would mean to put the clock back by a few more years, the more so as already mentioned, the certification procedure would no longer be allowed to function, each owner having to apply to the Alien Property Custodian for the release of his property. It would also retard and discourage free enterprise and represent a substantial loss of income to the Treasury, without being of the slightest use to anybody.

Above all such a measure would produce a most unwarranted shock in all international finance and business circles, which should be avoided at all costs.

In any case the transfer of the uncertified assets to the Alien Property Custodian would :

- a) kill these assets as movable, income- and tax producing and constructive capital.
- b) render impossible the functioning of the present system of institutional and private subsidies to residents in Europe, thereby creating more hardship, more distress, more difficulties

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- c) render impossible to have these funds certified as non-enemy property and surrendered to their rightful owners for new enterprise and productive investment.

SUMMARY.

The alleged expectation that the transfer of non-certified funds to Alien Property Custodian would induce foreign holders to register or surrender their securities or facilitate the identification and use of these funds for foreign financing purposes is totally fallacious. Apart from the fact that such a transfer would appear to be a) unconstitutional, b) contrary to the meaning of the original Trading with the Enemy Act and c) against all principles so far published by the Administration in regard to the protection of private capital and free enterprise, the transfer would have no useful effect whatsoever in so far as there would be no organization left to certify and defreeze these assets or induce them on a voluntary basis to contribute, at least in part, towards international reconstruction. It must also be considered that such a transfer to the Alien Property Custodian would be considered abroad as a first step towards seizure or confiscation, impression which should at all costs be avoided.

E. New census of alien assets.

As an alternative to the transfer of foreign assets to the Alien Property Custodian it has been suggested to have a new census made of all foreign assets with American banks and financial institutions. From a practical point of view the census would hardly give any useful information over and above that which has resulted from the first census, with the exception that many funds have since been certified and new free funds have been transferred to New York which in any case would not fall under the census. The purpose of such a new census appears therefore clearly to be to release the Administration of the undertaking given at the first census that the results would only be used for official internal purposes. There is not the slightest doubt that such an action would create grave repercussions abroad inasmuch as it would certainly be interpreted as a breach of trust and confidence. The census would require enormous extra staff and work and it seems fair to say that at least one year would lapse before the result of the census could be worked out for practical purposes. Furthermore, the census would only give the Administration the names of the persons domiciled abroad who entertain direct accounts and deposits of securities in U.S.A., whereas the bulk of the assets would again not be identified. In this connection it would seem strange that the census should primarily or even exclusively hit these persons who had the greatest confidence in the Administration and the banks, whereas those who had not the same confidence and preferred to deposit their capital through the intermediary of foreign banks would not be affected. Would it not be fair to say that the Administration in allowing themselves to act as fiscal agent for foreign governments and as executor in U.S.A. of currency and other laws, valid only in the countries of origin would become an accessory to the fact and commit an act at least as criticable than if it surrendered directly these assets to the foreign governments concerned? It has always been an internationally accepted principle that laws promulgated by any government have only legal effect within the territory of the country concerned and it would seem strange that the U.S. government, who has always fought

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for the strict maintenance and respect of international law should be the one to take a completely opposite attitude in respect of international private investment.

The suggestion of a new census has in part been based on the attitude taken time ago by an important allied government to cooperate with the French government in surrendering to the latter the private funds deposited in that country. Apart from the fact that it is questionable whether such an act is sufficient justification for the Administration to adopt it as well, it is a fact that the allied government in question has never made any attempt to identify or help to surrender the private French funds deposited under the name of foreign banks and that furthermore until quite recently only 15% of the direct funds held by French nationals in that country have been surrendered to the French government, which should be a clear indication of the fact that no attempt is at present being made to enforce the agreement obtained in the past.

U.S.A. and Switzerland are today the only two countries left with an entirely free currency system; both countries are creditor and lending nations and both fight against nationalisation, socialization and against any government action directed to curtail private enterprise and free capital. Would it not seem extraordinary that at this juncture when the whole world is more than ever in need of hope, confidence and encouragement and when free enterprise is in danger in so many countries, the U.S. government should allow itself to become the instrument of a policy which is diametrically opposed to its own?

#### P. Financing of European Aid Program.

It appears that the opinion is prevailing in various circles that the American tax payer can not be expected to shoulder the whole burden of this aid program and that the huge foreign private funds deposited in U.S.A. must be used before or simultaneously to relieve at least in part the American tax payer. Furthermore the American and international banks have been reproached that they are protecting tax dodging capital and have made no attempt to induce their clients to surrender their foreign currencies to their governments who are so much in need of them. This and similar reproaches are hardly justified, inasmuch as the banks could not be expected to induce their clients to make an investment in which, a priori, a loss of 50 - 70% must be expected. It is true that for instance French capital has traditionally sought diversified investments in foreign currencies but it is equally true that a large part of French capital deposited abroad would return home or contribute on a voluntary basis towards the financial needs of their country if the internal economical and political conditions justified it and if the repatriation could be made without penalty and at conditions which respond more closely to the actual intrinsic value of their currency.

No measure could ever be justified which would have the purpose of forcing foreign private capital by compulsory action to repatriate or to contribute, again by compulsory measures, to the financing which the U.S. government may decide to grant certain countries of Europe. Action taken in this sense would no doubt have farreaching consequences in the future, whereas the importance of private capital which could be made available by compulsory

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measures would not be in any proportion to the general European aid required or justify the moral and material damage which would be caused by such action. The seizure or compulsory surrender of these private funds would simply deprive the foreign countries concerned of their last private reserves and resources at present available for the future, whereas they would play no constructive part in the restoration of their country under present circumstances.

The only possible way by which the contribution of private capital is obtainable must be on a voluntary basis if the U.S. government attributes really fundamental importance to freedom of trade, exchanges and capital movement as well as to free enterprise and saving. The U.S. government has the power to subject their aid to specific economic conditions which must be fulfilled by any foreign government applying for help, if the financial assistance is to continue until full restoration of sound economic and political conditions in each country concerned has been obtained. On the other hand, it is for the foreign governments concerned to create the necessary conditions on which they can expect from their nationals and entitles them to invite them with hope of success to surrender part of their foreign currencies or to make them available for the anonymous subscription to an international loan to be issued in the course. As long as such conditions do not prevail, it would be a grave mistake to take any action which in some way or other would affect the freedom of private capital and the protection in law to which it is entitled. Restrictions to the defreezing and free surrender of foreign assets should in any case be limited to those nationals whose countries are applying for financial help to the U.S.A. under the European aid program, whereas no reason whatsoever could ever be justified to retain or block still further other foreign non-enemy assets.

### 3. Conclusions :

There is no doubt that the U.S. government has a great task to fulfil in restoring confidence in the world and that it may be almost the only one able to perform this heavy task. The protection of private enterprise and private capital should be the basis for all considerations and decisions since private enterprise and private capital will be almost the only constructive factors remaining for the reconstruction of the world as it is. Any compulsory measures should be carefully avoided, whereas it would fall on the foreign governments concerned to create such conditions internally as would justify the full confidence of their own nationals.

Consequently the transfer of foreign non-certified assets to the Alien Property Custodian or the establishment of a new census of the foreign assets deposited in U.S.A. would be a great mistake apart from giving no practical results worth speaking of. Any such measure would put the clock back for several years and retard recovery and free enterprise.

The principal step to be taken at this juncture should consist to offer every facility for the certification of all foreign assets and the segregation of enemy assets.

In this connection I venture to make the following suggestions :

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1. Swiss assets proper:

- a) Simplification of the certification procedure especially in regard to companies and other institutions,
- b) Authorisation to Swiss Compensation Office to accept for certification a non-enemy declaration of authorized Swiss banks such as has been accepted already by Great Britain and Canada.
- c) Extension of the time limit for certification to say 31st December 1943.
- d) Exemption from transfer to Alien Property Custodian of all Swiss assets registered for certification with the Swiss Compensation Office at a given date and not yet dealt with.
- e) Transfer of Swiss assets not certified until 31st December 1943 to special Swiss blocked account avoiding transfer of these non-certified assets to Alien Property Custodian.

2. Assets of Swiss nationals resident in blocked countries or countries (Spain & Portugal) for whom General License No. 95 is not yet operative.

Abolition of cross-certification by foreign government agency and authorisation to Swiss Compensation Office to accept for certification a non-enemy declaration of an authorized Swiss bank.

3. Foreign assets deposited in the name of Swiss banks in U.S.A.

- a) Abolition of cross-certification by foreign government agency.
- b) Authorisation to Swiss Compensation Office to accept non-enemy declaration by authorized Swiss banks.
- c) Complete defreezing of nationals of countries who are not applying for financial help to U.S.A. on the European aid program.

I have been asked to study a solution which would keep in mind the internal political requirements in U.S.A. in regard to the European aid program and at the same time avoid any compulsory interference with alien private investments in the U.S.A. Frankly such a solution does not exist and no compromise seems to me possible in this connection.

There can be only one acceptable solution which exists in segregating and establishing enemy interests and in surrendering without condition all the other foreign assets of whatever nationality, provided such assets have been certified as non-enemy property. Any other solution would represent a dangerous and unjustified compromise and affect:

- a) the protection in law to which private foreign assets entrusted to the care of financial institutions in the U.S.A. to which they are no doubt entitled.
- b) the principles so consistently held up in the past by the U.S.A. governments and the governments of all democratic and law-abiding countries for the protection of international confidence, private enterprise and private capital and savings.

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Nobody could disprove the fact that an overwhelming majority of the foreign investments in the U.S.A. represent non-enemy property and that enemy interest represents only an infinitesimal part of the total foreign assets entrusted to the U.S.A.

An enemy attribution to the bulk of the foreign assets, for the sole fact that a portion of these assets could not be certified within a limited period of time can therefore not be justified and a transfer of these assets to the Alien Property Custodian would constitute a violation of all accepted principles. Likewise it is expected that the U.S. government will surely not wish to appropriate non-enemy assets which certainly would be the case if the non-certified assets would be transferred to the Alien Property Custodian or be made subject to any other compulsory measure.

For the same reasons a new census of the present alien assets in U.S.A. appears unwarranted inasmuch as the aim which it is intended to reach would be in flagrant conflict with the aforementioned principles.

Any compulsory measure against foreign private investment and any cooperation with a foreign government intended to disclose or surrender to the latter such private capital would equally mean a violation of the principle to protect at all cost free enterprise and private capital and furthermore be equivalent to adopt within the territory of the United States the laws of foreign countries and enact a policy which is contrary to its own.

It must definitely be left to the foreign governments concerned to create such internal economic and political conditions as will justify the confidence of their own nationals and induce them, on a voluntary basis, either to repatriate their foreign investments or make them available for part-financing of their country's currency needs. Any other solution or policy would be directed against private enterprise and private capital and what is even more important destroy international confidence in the U.S.'s attitude towards private initiative, free enterprise and safety for private investments. Notwithstanding the financial assistance needed by various European governments, the principal requirement is that of a return of trust and confidence and in the respect of the basic principles on which alone reconstruction and international confidence can be rebuilt.

As a whole, the problem with which the U.S. Administration is faced today in regard to foreign funds is one of timing, measure and procedure. Before all, it is necessary to certify all foreign assets and to segregate these assets into non-enemy and enemy property. It is therefore most urgent that no hasty and especially no compulsory action should be taken which would in any way prejudice the final aim all democratic countries wish to reach.

I am positive that the scheme outlined above would give in due course the expected practical results and above all be in the best longterm interests of the U.S.A. and those other countries fighting for the same sound democratic principles based on free capital movement, private enterprise and international confidence.

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