

June 4, 1980

Hughes, William J., the Hon. (Haddock, Benjamin H.)

TOTAL NUMBER OF LETTERS: 2

SEC-REPLY-1: SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

May 5, 1980

The Honorable **William J. Hughes**

U.S. House of Representatives

Washington, D.C. 20515

Re: Benjamin H. Haddock

Our Ref. No. 80-108-CC

File No. 132-3

Dear Congressman Hughes:

Your letter of March 17, 1980, with the attachment of Mr. Benjamin H. Haddock's March 4, 1980 letter to you, has been forwarded to this office for response. Mr. Haddock, a resident of New Jersey, asks (1) what authority prohibits Swiss Credit Bank ("Bank") from providing United States citizens with investment advice, and (2) what authority prohibits the Bank from selling shares of its Action Swiss Mutual Fund ("Fund") to United States citizens?

Section 202(a)(11) of the Investment Advisors Act of 1940 [15 U.S.C. § 80b-1 et. seq.] ("Advisers Act") defines investment adviser to include, *inter alia*, anyone who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. Section 203(a) of the Advisers Act prohibits any investment adviser, unless registered with the Commission or excepted from registration, from using the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser. Thus, unless registered as an investment adviser or excepted from registering with the Commission, Section 203(a) of the Adviser Act would prevent the Bank from using the mails or any means or instrumentality of interstate commerce in connection with providing United State citizens or others with investment advice. While "banks", as defined in the Advisers Act, are excepted from the definition of "investment adviser", the exception is limited to (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, and (C) any other banking institution, or trust company doing business under the laws of the United States, a portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency and which is supervised and examined by State or Federal authority having supervision over banks.

Section 7(d) of the Investment Company Act of 1940 [15 U.S.C. § 80a-1] ("Act") provides, *inter alia*, that no foreign investment company, nor its underwriter, may use the mails or any means or instrumentality or interstate commerce to sell that foreign investment company's shares in connection with a public offering, unless the Commission issues an order allowing that foreign investment company to do so. Accordingly, Section 7(d) of the Act, in the absence of an order of the Commission, would prevent the Fund from using the mails or any means or instrumentality or interstate commerce to sell or offer to sell, in connection with a public offering, its snares to United States citizens or others.

Section 2(a)(40) of the Act defines underwriter to include, inter alia, anyone who has purchased from an investment company with a view to, or sells for an investment company in connection with, the distribution of that investment company's shares. Section 7(d) of the Act would, thus, in the absence of a Commission order, prevent the Bank from acting as the Fund's underwriter in connection with a public offering of the Fund's shares in the United States.

In addition, under Section 5(a) of the Securities Act of 1933, it is unlawful for any person to made use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to sell a security unless the security is registered under that Act or is excepted from registration or is not being offered publicly.

I hope that this letter answers Mr. Haddock's questions. Pursuant to our usual procedure, this letter will be made available for inspection within 30 days of issuance.

Sincerely,

Stanley B. Judd

Deputy Chief Counsel

cc: Mathew E. Schneider,
Director of Legislative Affairs

INQUIRY-1: Congress of the United States
House of Representatives
Washington, D.C. 20515
March 17, 1980

Mr. Matthew Schneider
Director
Legislative Affairs
Securities and Exchange Commission
500 North Capitol Street, N.W. Room
Washington, D.C. 20549

Dear Mr. Schneider:

I have taken the liberty of enclosing a copy of a letter from my constituent, Mr. Benjamin H. Haddock of Beach Haven, New Jersey.

Mr. Haddock has inquired about the regulation of Swiss mutual funds by the SEC.

I would appreciate any comments which you can make on this subject.

With kind personal regards.

Sincerely,

William J. Hughes
Member of Congress

BENJAMIN H. HADDOCK
POST OFFICE BOX ONE
Beach Haven, New Jersey 06008
609-492-1330
March 4, 1980

Congressman William J. Hughes
2920 Atlantic Avenue
Atlantic City, N.J.

Dear Mr. Hughes:

I have recently moved from Scotch Plains, Union County, and am retired on Long Beach Island. There are two matters on which I need your help.

1) I have had a small bank account abroad for some years and several months ago was interested in making an investment in a mutual fund operated by the Swiss Credit Bank. Much to my surprise I was informed that the Swiss Credit Bank was prohibited by our government from giving investment advice nor could they sell me any shares in their Action Swiss mutual fund.

Question: what is the authority that makes it possible for our government to tell a bank in another country what they can or cannot do for a U.S. citizen?

2) The second item refers to legislation - H.R. 5961 which would prohibit the transfer of funds over \$5,000 into or out of the country without "filing required reports?" to the government.

Opinion: I want to express grave concern about this house bill H.R. 5961. This bill is evidence to me that our government (and that includes members of Congress) fears that our currency will be shipped out of the country and placed in other currencies before inflation makes it worthless.

I would appreciate any information you can send me on either item, but I do want you to know how every concerned I am by these two restrictions placed on me.

Very sincerely,

Benjamin H. Haddock