STATEMENT OF SENATOR CARL LEVIN (D-MICH)

ON

TAX HAVEN BANKS AND U.S. TAX COMPLIANCE:

OBTAINING THE NAMES OF U.S. CLIENTS WITH SWISS ACCOUNTS

March 4, 2009

Each year, the United States loses an estimated $100 billion from U.S. taxpayers using offshore tax schemes to dodge their U.S. tax obligations. Those offshore shenanigans cheat honest U.S. taxpayers who pay their fair share and rob the U.S. Treasury of funds needed for the operations of our government.

This Subcommittee has dedicated significant effort to combating offshore tax abuse. We've exposed some of the facilitators – the lawyers, accountants, broker-dealers, company formation agents, trust administrators, and others that help clients dodge their U.S. tax obligations. We've exposed some of the schemes, such as mass marketed tax shelters peddled as investment strategies, networks of offshore trusts and corporations with hidden assets, phony offshore stock portfolios used to offset real income, and deceptive offshore transactions used to recast taxable income as allegedly tax free payments.

Last July, we held hearings which focused on financial institutions which are located in offshore secrecy tax havens and use an array of abusive practices to help U.S. clients hide assets and income from Uncle Sam. The hearings and a staff report presented case histories showing how two tax haven banks used a long list of secrecy tricks to make it nearly impossible for U.S. tax authorities to trace funds sent offshore. Those tricks, as indicated on this chart [Chart 1], included using code names for clients to disguise their identities; directing personnel to use pay phones instead of business phones to make it harder to trace calls back to the bank; providing bankers with encrypted computers when travelling to keep client information out of the reach of tax authorities; funneling money through offshore corporations to conceal incriminating wire transfers and make audits difficult; opening accounts in the names of offshore shell companies to hide the real owners; and providing bankers with counter-surveillance training to detect and deflect inquiries from government officials.

This kind of conduct, which actively facilitates tax evasion, amounts to a declaration of war by offshore secrecy jurisdictions against honest, hardworking taxpayers. We're determined to fight back and end the abuses inflicted on us by those tax havens.

Our focus today is threefold. First, we want to understand the steps being taken by the U.S. Government to stop UBS, one of the banks we examined last July, from aiding and abetting tax evasion by U.S. persons. Specifically, we will examine the nature of our effort to obtain the names of the U.S. clients whom the bank aided and abetted in the violation of U.S. tax law. Second, we want to show how our tax treaties are inadequate in the battle against tax cheats. Third, we want to get people to focus on how hard it is going to be to put an end to the offshore secrecy racket, and offer some ideas on what should be done to stop the abuses.

First, let's examine the UBS case. UBS is headquartered in Switzerland and is one of the largest banks in the world. During our July hearing, UBS admitted publicly for the first time that an estimated 19,000 U.S. clients had opened UBS accounts in Switzerland with nearly $18 billion in assets that were not disclosed to the U.S. Internal Revenue Service (IRS).

Since then, new evidence suggests that there may be far more than 19,000 U.S. clients with hidden accounts at that Swiss bank. A 2004 UBS internal report, which was introduced in court by the United States and we've marked as Hearing Exhibit 12, analyzes the U.S. client accounts opened in Switzerland. It states:

> "The number of account relationships in WM&BB in Switzerland with US residents where the account holder has not provided a W-9 is approximately 52,000 (representing CHF 17 billion" – which means 17 billion Swiss francs" -- in assets)." [Chart 2]

"WM&BB" stands for the Wealth Management and Business Banking group at UBS in Switzerland. A "W-9" is the form that is supposed to be filed with the bank by an accountholder who is a U.S. person. The reference to "account relationships" leaves it unclear whether UBS had 19,000 U.S. clients, as UBS estimated in July, many of whom may have had multiple accounts; or whether it had 52,000 U.S. clients; or some number in between. We hope to clear up that issue today.

UBS also admitted during our July hearing that, for years, its Swiss bankers had made a practice of traveling to the United States to search out new clients and service existing clients, even though its Swiss bankers were not licensed to provide banking or securities services while in the United States.

In our July hearing, we presented an analysis of U.S. customs records showing that, from 2001 to 2008, about 20 UBS bankers made more than 300 trips to the United States. It now looks like the Subcommittee's analysis was too conservative. Listen to this 2004 UBS report:

> "In the last year, we are advised that 32 different Client Advisers from BS NAM" – that's a group within UBS which targets business in North America – "have travelled to the US on business. On average each Client Advisor visited the US for 30 days per year, seeing 4 clients per day. This means that approximately 3,800 clients are visited in the US per year by Client Advisors based in Switzerland." [Chart 3]

That UBS Swiss bankers made 3,800 client visits in a single year in the United States is a stunning revelation.

Another striking document involves UBS efforts to train UBS bankers who traveled to the United States. In the last hearing, we released an internal UBS training document used to instruct its bankers on how to detect and avoid surveillance by U.S. authorities. The new document filed in the court case, which we've marked as Hearing Exhibit 13, is a 2006 internal UBS document entitled "U.S. International Training." In a section called, "Lessons Learned," it states:

"In case of an interrogation by any authority:
--protect the banking secrecy
--no client respective communication / wait for assistance of a UBS lawyer" [Chart 4]

"Protect the banking secrecy" says it all.

These and other documents demonstrate the actions that UBS and its personnel took to help U.S. clients hide assets and income from Uncle Sam and preserve the secrecy needed to thwart U.S. tax enforcement.

UBS has acknowledged its past conduct, promised to close the offending accounts, and announced that it would no longer open Swiss accounts for U.S. clients without notifying the IRS. Those announcements by UBS, made at our July hearing, were unexpected, they were welcome, and they sent a shock wave through the offshore bank secrecy world, because they represented the first time a major bank in a tax haven jurisdiction stated publicly it would no longer help U.S. clients escape their tax obligations.

At the time UBS made these announcements, UBS was under pressure from the Justice Department. In April 2008, the Justice Department had indicted a former UBS private banker, Bradley Birkenfeld, for conspiracy to defraud the United States out of millions in taxes – specifically, $7.2 million in taxes owed by a U.S. citizen on $200 million in assets hidden with UBS' help in Switzerland and elsewhere. In June 2008, Mr. Birkenfeld pled guilty, and it was clear from the pleadings that he was cooperating with U.S. prosecutors. That guilty plea also shook up the offshore secrecy world, since it represented the first time the United States had convicted a Swiss banker for helping a U.S. client cheat on his taxes.

Later in June, the United States opened up a second front in the UBS matter by initiating what is known as a John Doe summons proceeding in federal court. In that civil proceeding, the United States asked a U.S. court for permission to serve a summons on UBS seeking the names and account information for all U.S. clients who had opened UBS accounts in Switzerland from 2002 to 2007, without notifying the IRS as required by our law, so that the IRS could evaluate their tax liability. The summons is called a John Doe summons, because it seeks information about persons for whom the United States does not have names. On July 1, the court issued an order allowing the IRS to serve the summons on UBS.

Two weeks ago, DOJ confronted UBS itself by instituting criminal action charging the bank with defrauding the IRS. UBS decided not to dispute the facts, but to acknowledge that it had violated U.S. law and had defrauded the United States and the IRS. It entered into a deferred prosecution agreement with the United States which provides that, if UBS takes certain steps, the prosecution will be dismissed.

What steps did the agreement require UBS to take? First, UBS agreed to close all of the Swiss accounts it had opened for U.S. clients without notifying the IRS, and to put an end to that line of business. Second, UBS agreed to pay a fine of $780 million. That fine requires UBS to disgorge the profits obtained from opening Swiss accounts for U.S. clients from 2001 to 2008,

some $380 million. The remaining $400 million represents some of the back taxes, with interest, that UBS should have withheld from those accounts and paid to the IRS, but didn't.

Next, UBS agreed to immediately turn over the names of a tiny subset of its U.S. clients. The President of Switzerland has said publicly that UBS provided the United States with the names of 250 to 300 such clients.

Finally, the deferred prosecution agreement addressed the John Doe summons proceeding. While the agreement explicitly acknowledged that UBS would contest in court U.S. efforts to obtain the names of all U.S. clients with Swiss accounts that were not disclosed to the IRS, the agreement also specified that, if UBS loses the case on appeal, it either has to turn over all of the requested client names to the IRS or face the possibility that the United States would resume the prosecution and use UBS' factual admissions in a criminal proceeding against the bank. A trial is now scheduled for July to determine whether UBS has to turn over the names.

The basic focus in that trial will be Swiss secrecy laws. Today, Switzerland is one of the most vocal supporters of bank secrecy in the world. The Swiss hold out bank secrecy as a national value, in the same way Americans prize freedom and democracy. The Swiss claim bank secrecy is essential to protecting individual privacy and is more important than any law in the United States requiring the payment of taxes. The Swiss explain that tax evasion is not a crime in their country; it is only a civil matter that can be remedied by the payment of back taxes and a fine. They say that only one narrow type of tax misconduct, which they call tax fraud and which requires deceptive conduct such as the filing of a false document, can justify disclosing client information from a Swiss bank.

Switzerland and the United States disagree on whether tax evasion should be a crime. That has been true for decades. But here, Swiss bankers aided and abetted violations of U.S. tax law by traveling to this country, with client code names, encrypted computers, counter-surveillance training, and all the rest of it, to enable U.S. residents to hide assets and money in Swiss accounts. The bankers then returned to Switzerland and treated their conduct as blameless since Swiss law says tax evasion is no crime. The Swiss bank before us deliberately entered U.S. territory, actively sought U.S. clients, and secretly helped those U.S. clients defraud the IRS. Bank secrecy under those conditions is not a value to be protected; it is part and parcel of a conspiracy to commit a crime under U.S. law.

UBS has specifically acknowledged wrongdoing and admitted in the court case that it "participated in a scheme to defraud the United States and its agency, the IRS." But the Swiss Government, instead of condemning UBS' misconduct, is condemning U.S. efforts to get the names of all of the bank's U.S. clients with hidden Swiss accounts. Switzerland characterizes our effort as a "unilateral measure" that is contrary to Swiss law. According to the press, the President of Switzerland insists that, in his country, "Bank secrecy remains intact."

I'm not surprised the Swiss Government is opposing UBS' compliance with the John Doe summons and has directed the bank not to provide all the names, or that it refused to show up at this hearing. They make a living off secrecy.

The Swiss Government argues that, instead of the John Doe summons, the United States ought to be using the procedures set up under the U.S.-Swiss tax treaty. But that tax treaty, like

other tax treaties and tax information exchange agreements that the United States has in place around the world, is not designed to handle inquiries for information on taxpayers whose names are unknown. As the IRS explained in a court pleading, the Swiss have consistently applied the tax treaty "to provide the [IRS] assistance only in response to specific requests that name a particular taxpayer."

When we don't have specific taxpayer names, our tax treaties have proven to be of little use. In the UBS case, for example, seven months ago at the urging of the Swiss, the United States made a request under the treaty to get information about unnamed U.S. clients with UBS accounts in Switzerland. Out of the 52,000 UBS account relationships and estimated 19,000 U.S. clients, guess how many U.S. clients the Swiss have determined can be provided us under the tax treaty?

Twelve. That's twelve U.S. clients out of a universe of tens of thousands. To make matters worse, the Swiss Government notified the twelve that they could appeal the determination, and lengthy appeals are now underway in Swiss courts. The IRS stated in a court pleading that, seven months after making its request: "the Swiss Government has not provided any records sought under the Treaty Request, and it is not clear when, if ever, it will."

So here's the bottom line about the failure of our tax treaty with Switzerland to get us needed information to go after U.S. tax cheats. UBS has accepted "responsibility for the violation of [U.S.] law." It has admitted that it referred U.S. clients who wanted to hide their assets to outside firms "with the understanding that these outside advisors would help such U.S. clients form offshore companies in order to enable such clients to evade" U.S. law. UBS also admitted that its bankers and managers took a range of other actions which "actively assist[ed] or otherwise facilitate[d]" U.S. taxpayers who were evading U.S. taxes, such as having their bankers travel to the United States to service those clients in ways that would conceal their account transactions. And, again, UBS specifically agreed in the court case that, acting through certain of its bankers and managers, it "participated in a scheme to defraud the United States and its agency, the IRS."

Despite those admitted facts, UBS refuses to turn over the vast majority of the names of the U.S. persons with whom they schemed to defraud the United States. UBS and Switzerland justify that refusal by invoking Swiss secrecy laws. They say the United States should use the tax treaty process instead, but that won't help, because the Swiss have interpreted the treaty to deny information requests about potential tax cheats whose names are unknown. And why are those names unknown? Swiss secrecy laws.

Too many countries are using our treaties as a shield to deny us tax information instead of using them as a sword to expose tax cheats as we intended. The result is a cynical charade in which tax havens like Switzerland try to have it both ways – claiming to be a cooperative partner in the international fight against tax abuse, while providing a safe haven and promising ironclad secrecy laws for tax evaders.

We can't rely on our tax treaties with secrecy tax havens to protect us from offshore tax abuse. We have to rely on our own laws instead, and we need to strengthen those laws if we want to put an end to offshore tax haven abuses against Uncle Sam and honest, taxpaying Americans.

As a first step, Congress should enact the Stop Tax Haven Abuse Act, S. 506, which I and my colleagues introduced earlier this week and which the Obama Administration endorsed yesterday through Treasury Secretary Geithner.

This bill offers powerful new tools to detect and stop offshore tax offenders, including by ending the Ugland House scam that allows phony offshore shell corporations operated from the United States to dodge U.S. taxes, permitting the establishment of legal presumptions that can be used to combat offshore secrecy, authorizing special measures against financial institutions or countries that impede U.S. tax enforcement, requiring third-party disclosures of offshore transactions, extending the deadline for assessing taxes in offshore cases from 3 to 6 years, and closing a raft of offshore tax loopholes.

There are also actions that the Obama Administration can take to clamp down on offshore tax abuses, without waiting for legislation. The Administration could, for example, establish a special enforcement unit to handle the hundreds if not thousands of prosecutions likely to result from the UBS case alone and to initiate proceedings against other tax haven banks. That enforcement unit would send the message that the UBS tax scofflaws are not going to get off scot free, and no tax haven bank account is free from risk.

The Administration could also become an active participant in ongoing international efforts to penalize offshore jurisdictions that facilitate tax evasion. Efforts by the G20 group of nations to coordinate action against offshore tax havens are gaining steam in anticipation of the G20 meeting in April, but the United States has so far been largely silent. It is time for the United States to become a leader, not a follower, in international efforts to develop a list of uncooperative tax havens and to develop a toolbox of penalties to be imposed on those who impede tax enforcement.

Another step the Administration could take is to continue the efforts of the Bush Administration to strengthen the Qualified Intermediary Program that determines what information foreign banks give to the IRS. Right now, QI Agreements between the IRS and foreign banks require the foreign banks to report to the IRS only those foreign accounts containing U.S. securities. At a minimum, QI Agreements should require foreign banks to report all foreign accounts with U.S. accountholders, whether those accounts contain securities, cash, or other assets. In addition, QI Agreements should make it clear that foreign banks have to disclose to the IRS accounts held by a foreign entity, such as an offshore corporation, that is beneficially owned by a U.S. person.

A longer range project is for the United States to strengthen its tax treaties and tax information exchange agreements. New provisions are needed to ensure that information can be obtained for unnamed U.S. taxpayers associated with entities suspected of tax misconduct, and to eliminate the tax fraud distinction which has become a barrier to effective tax information exchange.

Finally, the Administration may want to consider finalizing a regulation proposed by the Clinton Administration years ago. That regulation would allow the United States to engage in automatic information exchanges of account information with countries on a reciprocal basis for tax enforcement purposes. Right now, the only automatic tax information exchanges we engage

in are with Canada. A lot more countries may be willing to participate. The resulting account data could produce new information identifying U.S. tax dodgers.

Offshore tax abuses are burning a $100 billion hole in the U.S. budget. While the Justice Department and the IRS are to be commended for their creative and tenacious efforts in the UBS case, no one should think for a moment that the offshore tax battle is over, even if the IRS wins its lawsuit. Despite UBS' being caught red-handed and admitting wrongdoing, the Swiss Government is fighting the John Doe summons and defending Swiss secrecy. The president of the Swiss Bankers Association, Konrad Hummler, told the press that, "The large majority of foreign investors with money placed in Switzerland evade taxes," but showed no regret that Swiss financial institutions are facilitating that tax evasion – quite the contrary since tax evasion is not a crime in Switzerland. And Switzerland is just one of 50 tax havens battling to keep offshore secrecy laws in place.

The rest of the world is getting fed up with offshore tax havens that turn a blind eye to tax evasion and allow their financial institutions, lawyers, accountants and others to profit from tax dodging. Countries victimized by offshore tax abuses are losing billions of dollars per year. We can't afford to ignore those offshore tax losses any longer. It is long overdue that we act to end the offshore tax dodging drain on our treasury.

I would like to turn now to my Acting Ranking Member Senator Coburn for his opening statement. This is the first Subcommittee hearing in which he is participating in his new role, and I welcome him and look forward to working with him in the Subcommittee's ongoing efforts to combat offshore tax abuse.

# # #

CHART 1

Tax Haven Bank Secrecy Tricks

- Code Names for Clients
- Pay Phones, not Business Phones
- Foreign Area Codes
- Undeclared Accounts
- Encrypted Computers
- Transfer Companies to Cover Tracks
- Foreign Shell Companies
- Fake Charitable Trusts
- Straw Man Settlors
- Captive Trustees
- Anonymous Wire Transfers
- Disguised Business Trips
- Counter-Surveillance Training
- Foreign Credit Cards
- Hold Mail
- Shred Files

Prepared by the U.S. Senate Permanent Subcommittee on Investigations, July 2008.

Permanent Subcommittee on Investigations
EXHIBIT #1a

"The number of account relationships in WM&BB in Switzerland with US residents where the account holder has not provided a W-9 is approximately 52,000 (representing CHF 17 billion in assets)."

- UBS Wealth Management & Business Banking internal report: "Review of US Resident Non-W9 Business, Legal and Compliance," page 3, Dec. 10, 2004.

Prepared by U.S. Senate Permanent Subcommittee on Investigations, March 2009

Permanent Subcommittee on Investigations
EXHIBIT #1c

CHART 2

Excerpt from Exhibit #12

"In the last year, we are advised that 32 different Client Advisors from BS NAM have travelled to the US on business. On average, each Client Advisor visited the US for 30 days per year, seeing 4 clients per day. This means that approximately 3,800 clients are visited in the US per year by WM&BB Client Advisors based in Switzerland."

- UBS Wealth Management & Business Banking internal report: "Review of US Resident Non-W9 Business, Legal and Compliance," page 9, Dec. 10, 2004.

Prepared by U.S. Senate Permanent Subcommittee on Investigations, March 2009

Permanent Subcommittee on Investigations
EXHIBIT #1b

CHART 3
Excerpt from Exhibit #12

"In case of an interrogation by any authority:

- **protect the banking secrecy**
- **no client respective communication/wait for assistance of a UBS lawyer"**

- UBS document: "US International Training," in section subtitled, "Lessons Learned," page 5, Sept. 26, 2006.

Permanent Subcommittee on Investigations
EXHIBIT #1d

Prepared by U.S. Senate Permanent Subcommittee on Investigations, March 2009

CHART 4

Excerpt from Exhibit #13