



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:GEVanHoey  
5-16-4657  
2014200661

June 11, 2015

Thomas C. Green  
Sidley Austin LLP  
1501 K Street NW  
Washington, DC 20005

Re: Bank Sparhafen Zurich AG  
DOJ Swiss Bank Program – Category 2  
Non-Prosecution Agreement

Dear Mr. Green:

Bank Sparhafen Zurich AG (“BSZ”) submitted a Letter of Intent on December 20, 2013, to participate in Category 2 of the Department of Justice’s Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks, as announced on August 29, 2013 (hereafter “Swiss Bank Program”). This Non-Prosecution Agreement (“Agreement”) is entered into based on the representations of BSZ in its Letter of Intent and information provided by BSZ pursuant to the terms of the Swiss Bank Program. The Swiss Bank Program is incorporated by reference herein in its entirety in this Agreement.<sup>1</sup> Any violation by BSZ of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute BSZ for any tax-related offenses under Titles 18 or 26, United States Code, or for any monetary transaction offenses under Title 31, United States Code, Sections 5314 and 5322, in connection with undeclared U.S. Related Accounts held by BSZ during the Applicable Period (the “conduct”). BSZ admits, accepts, and acknowledges responsibility for the conduct set forth in the Statement of Facts attached hereto as Exhibit A and agrees not to make any public statement contradicting the Statement of Facts. This Agreement does not provide any protection against prosecution for any offenses except as set forth above, and applies only to BSZ and does not apply to any other entities or to any individuals. BSZ expressly understands that the protections provided under this Agreement shall not apply to any acquirer or successor entity unless and until such acquirer or successor formally adopts and executes this Agreement. BSZ enters into

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<sup>1</sup> Capitalized terms shall have the meaning ascribed to them in the Swiss Bank Program.

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this Agreement pursuant to the authority granted by its Board of Directors in the form of a Board Resolution (a copy of which is attached hereto as Exhibit B).

In recognition of the conduct described in this Agreement and in accordance with the terms of the Swiss Bank Program, BSZ agrees to pay the sum of \$1,810,000 as a penalty to the Department of Justice ("the Department"). This shall be paid directly to the United States within seven (7) days of the execution of this Agreement pursuant to payment instructions provided to BSZ. This payment is in lieu of restitution, forfeiture, or criminal fine against BSZ for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from BSZ with respect to the conduct described in this Agreement, unless the Tax Division determines BSZ has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. BSZ acknowledges that this penalty payment is a final payment and no portion of the payment will be refunded or returned under any circumstance, including a determination by the Tax Division that BSZ has violated any provision of this Agreement. BSZ agrees that it shall not file any petitions for remission, restoration, or any other assertion of ownership or request for return relating to the penalty amount or the calculation thereof, or file any other action or motion, or make any request or claim whatsoever, seeking to collaterally attack the payment or calculation of the penalty. BSZ agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. BSZ further agrees that no portion of the penalty that BSZ has agreed to pay to the Department under the terms of this Agreement will serve as a basis for BSZ to claim, assert, or apply for, either directly or indirectly, any tax deduction, any tax credit, or any other offset against any U.S. federal, state, or local tax or taxable income.

The Department enters into this Agreement based, in part, on the following Swiss Bank Program factors:

(a) BSZ's timely, voluntary, and thorough disclosure of its conduct, including:

- how its cross-border business for U.S. Related Accounts was structured, operated, and supervised (including internal reporting and other communications with and among management);
- the name and function of the individuals who structured, operated, or supervised the cross-border business for U.S. Related Accounts during the Applicable Period;
- how BSZ attracted and serviced account holders; and
- an in-person presentation and documentation, properly translated, supporting the disclosure of the above information and other information that was requested by the Tax Division;

(b) BSZ's cooperation with the Tax Division, including conducting an internal investigation and making presentations to the Tax Division on the status and findings of the internal investigation;

(c) BSZ's production of information about its U.S. Related Accounts, including:

- the total number of U.S. Related Accounts and the maximum dollar value, in the aggregate, of the U.S. Related Accounts that (i) existed on August 1, 2008; (ii) were opened between August 1, 2008, and February 28, 2009; and (iii) were opened after February 28, 2009;
- the total number of accounts that were closed during the Applicable Period; and
- upon execution of the Agreement, as to each account that was closed during the Applicable Period, (i) the maximum value, in dollars, of each account, during the Applicable Period; (ii) the number of U.S. persons or entities affiliated or potentially affiliated with each account, and further noting the nature of the relationship to the account of each such U.S. person or entity or potential U.S. person or entity (e.g., a financial interest, beneficial interest, ownership, or signature authority, whether directly or indirectly, or other authority); (iii) whether it was held in the name of an individual or an entity; (iv) whether it held U.S. securities at any time during the Applicable Period; (v) the name and function of any relationship manager, client advisor, asset manager, financial advisor, trustee, fiduciary, nominee, attorney, accountant, or other individual or entity functioning in a similar capacity known by BSZ to be affiliated with said account at any time during the Applicable Period; and (vi) information concerning the transfer of funds into and out of the account during the Applicable Period, including (a) whether funds were deposited or withdrawn in cash; (b) whether funds were transferred through an intermediary (including but not limited to an asset manager, financial advisor, trustee, fiduciary, nominee, attorney, accountant, or other third party functioning in a similar capacity) and the name and function of any such intermediary; (c) identification of any financial institution and domicile of any financial institution that transferred funds into or received funds from the account; and (d) identification of any country to or from which funds were transferred; and

(d) BSZ's retention of a qualified Independent examiner who has verified the information BSZ disclosed pursuant to Part II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, BSZ shall: (a) commit no U.S. federal offenses; and (b) truthfully and completely disclose, and continue to disclose during the term of this Agreement, consistent with applicable law and regulations, all material information described in Part II.D.1 of the Swiss Bank Program that is not protected by a valid claim of privilege or work product with respect to the activities of BSZ, those of its parent company and its affiliates, and its officers, directors, employees, agents, consultants, and others, which information can be used for any purpose, except as otherwise limited in this Agreement.

Notwithstanding the term of this Agreement, BSZ shall also, subject to applicable laws or regulations: (a) cooperate fully with the Department, the Internal Revenue Service, and any other federal law enforcement agency designated by the Department regarding all matters related to the conduct described in this Agreement; (b) provide all necessary information and assist the

United States with the drafting of treaty requests seeking account information of U.S. Related Accounts, whether open or closed, and collect and maintain all records that are potentially responsive to such treaty requests in order to facilitate a prompt response; (c) assist the Department or any designated federal law enforcement agency in any investigation, prosecution, or civil proceeding arising out of or related to the conduct covered by this Agreement by providing logistical and technical support for any meeting, interview, federal grand jury proceeding, or any federal trial or other federal court proceeding; (d) use its best efforts promptly to secure the attendance and truthful statements or testimony of any officer, director, employee, agent, or consultant of BSZ at any meeting or interview or before a federal grand jury or at any federal trial or other federal court proceeding regarding matters arising out of or related to the conduct covered by this Agreement; (e) provide testimony of a competent witness as needed to enable the Department and any designated federal law enforcement agency to use the information and evidence obtained pursuant to BSZ's participation in the Swiss Bank Program; (f) provide the Department, upon request, consistent with applicable law and regulations, all information, documents, records, or other tangible evidence not protected by a valid claim of privilege or work product regarding matters arising out of or related to the conduct covered by this Agreement about which the Department or any designated federal law enforcement agency inquires, including the translation of significant documents at the expense of BSZ; and (g) provide to any state law enforcement agency such assistance as may reasonably be requested in order to establish the basis for admission into evidence of documents already in the possession of such state law enforcement agency in connection with any state civil or criminal tax proceedings brought by such state law enforcement agency against an individual arising out of or related to the conduct described in this Agreement.

BSZ further agrees to undertake the following:

1. The Tax Division has agreed to specific dollar threshold limitations for the initial production of transaction information pursuant to Part II.D.2.b.vi of the Swiss Bank Program, as set forth in subparagraph (c) on pages 2-3 of this Agreement. BSZ agrees that, to the extent it has not provided complete transaction information, it will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. BSZ agrees to close as soon as practicable, and in no event later than two years from the date of this Agreement, any and all accounts of recalcitrant account holders, as defined in Section 1471(d)(6) of the Internal Revenue Code; has implemented, or will implement, procedures to prevent its employees from assisting recalcitrant account holders to engage in acts of further concealment in connection with closing any account or transferring any funds; and will not open any U.S. Related Accounts except on conditions that ensure that the account will be declared to the United States and will be subject to disclosure by BSZ.
3. BSZ agrees to use best efforts to close as soon as practicable, and in no event later than the four-year term of this Agreement, any and all U.S. Related Accounts classified as "dormant" in accordance with applicable laws, regulations and guidelines, and will provide periodic reporting upon request of the Tax Division if unable to close any dormant accounts within that time period. BSZ will only

provide banking or securities services in connection with any such "dormant" account to the extent that such services are required pursuant to applicable laws, regulations and guidelines. If at any point contact with the account holder(s) (or other person(s) with authority over the account) is re-established, BSZ will promptly proceed to follow the procedures described above in paragraph 2.

4. BSZ agrees to retain all records relating to its U.S. cross-border business, including records relating to all U.S. Related Accounts closed during the Applicable Period, for a period of ten (10) years from the termination date of the this Agreement.

With respect to any information, testimony, documents, records or other tangible evidence provided to the Tax Division pursuant to this Agreement, the Tax Division provides notice that it may, subject to applicable law and regulations, disclose such information or materials to other domestic governmental authorities for purposes of law enforcement or regulatory action as the Tax Division, in its sole discretion, shall deem appropriate.

BSZ's obligations under this Agreement shall continue for a period of four (4) years from the date this Agreement is fully executed. BSZ, however, shall cooperate fully with the Department in any and all matters relating to the conduct described in this Agreement, until the date on which all civil or criminal examinations, investigations, or proceedings, including all appeals, are concluded, whether those examinations, investigations, or proceedings are concluded within the four-year term of this Agreement.

It is understood that if the Tax Division determines, in its sole discretion, that: (a) BSZ committed any U.S. federal offenses during the term of this Agreement; (b) BSZ or any of its representatives have given materially false, incomplete, or misleading testimony or information; (c) the misconduct extended beyond that described in the Statement of Facts or disclosed to the Tax Division pursuant to Part II.D.1 of the Swiss Bank Program; or (d) BSZ has otherwise materially violated any provision of this Agreement or the terms of the Swiss Bank Program, then (i) BSZ shall thereafter be subject to prosecution and any applicable penalty, including restitution, forfeiture, or criminal fine, for any federal offense of which the Department has knowledge, including perjury and obstruction of justice; (ii) all statements made by BSZ's representatives to the Tax Division or other designated law enforcement agents, including but not limited to the appended Statement of Facts, any testimony given by BSZ's representatives before a grand jury or other tribunal whether prior to or subsequent to the signing of this Agreement, and any leads therefrom, and any documents provided to the Department, the Internal Revenue Service, or designated law enforcement authority by BSZ shall be admissible in evidence in any criminal proceeding brought against BSZ and relied upon as evidence to support any penalty on BSZ; and (iii) BSZ shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or documents or any leads therefrom should be suppressed.

Determination of whether BSZ has breached this Agreement and whether to pursue prosecution of BSZ shall be in the Tax Division's sole discretion. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, BSZ, will be imputed to BSZ for the purpose of determining whether BSZ has

materially violated any provision of this Agreement shall be in the sole discretion of the Tax Division.


In the event that the Tax Division determines that BSZ has breached this Agreement, the Tax Division agrees to provide BSZ with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, BSZ may respond to the Tax Division in writing to explain the nature and circumstances of such breach, as well as the actions that BSZ has taken to address and remediate the situation, which explanation the Tax Division shall consider in determining whether to pursue prosecution of BSZ.

In addition, any prosecution for any offense referred to on page 1 of this Agreement that is not time-barred by the applicable statute of limitations on the date of the announcement of the Swiss Bank Program (August 29, 2013) may be commenced against BSZ, notwithstanding the expiration of the statute of limitations between such date and the commencement of such prosecution. For any such prosecutions, BSZ waives any defenses premised upon the expiration of the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay and agrees that such waiver is knowing, voluntary, and in express reliance upon the advice of BSZ's counsel.

It is understood that the terms of this Agreement do not bind any other federal, state, or local prosecuting authorities other than the Department. If requested by BSZ, the Tax Division will, however, bring the cooperation of BSZ to the attention of such other prosecuting offices or regulatory agencies.

It is further understood that this Agreement and the Statement of Facts attached hereto may be disclosed to the public by the Department and BSZ consistent with Part V.B of the Swiss Bank Program.

This Agreement supersedes all prior understandings, promises and/or conditions between the Department and BSZ. No additional promises, agreements, and conditions have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by both parties.

  
CAROLINE D. CIRAOLO  
Acting Assistant Attorney General  
Tax Division

6/19/2015  
DATE

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THOMAS J. SAWYER  
Senior Counsel for International Tax Matters

6.19.15  
DATE

  
GREGORY E. VAN HOEY  
Trial Attorney

6/19/15  
DATE

  
MICHAEL R. PAHL  
Trial Attorney

6/19/15  
DATE


AGREED AND CONSENTED TO:  
BANK SPARHAFEN ZURICH AG

By:   
DR. URS LINSI  
Chairman of the Board of Directors

15.6.2015  
DATE

By:   
RETO KYBURZ  
Chief Executive Officer

15.6.2015  
DATE

APPROVED:  
  
THOMAS C. GREEN  
Sidley Austin LLP

June 17, 2015  
DATE

**EXHIBIT A TO BANK SPARHAFEN ZURICH AG  
NON-PROSECUTION AGREEMENT**

**STATEMENT OF FACTS**

**INTRODUCTION**

1. Bank Sparhafen Zurich AG ("BSZ" or the "Bank") is a corporation organized under the laws of Switzerland. BSZ is wholly owned by a Swiss cooperative and has its sole office in the city and canton of Zurich, Switzerland. Swiss cooperatives are member-owned associations that further their members' economic interests through common action, much like credit unions do in the United States.
2. BSZ was founded in 1850 and is the oldest cooperative bank in Zurich. The Bank has historically provided financial services to individuals, businesses, and public institutions in the greater Zurich region. BSZ derives most of its business from local retail banking and lending. The Bank offers financial accounts administered by private bankers or "relationship managers," but it does not offer asset-management services traditionally associated with private banking.
3. As of December 31, 2014, BSZ had 17 employees and assets under management of approximately 554 million Swiss francs.
4. Over the years, BSZ has provided financial accounts to U.S. citizens, U.S. permanent legal residents, and U.S. resident aliens (collectively, "U.S. persons").

**U.S. INCOME TAX & REPORTING OBLIGATIONS**

5. U.S. persons have an obligation to report to the Internal Revenue Service ("IRS") all income earned from foreign financial accounts on their U.S. Individual Income Tax Returns (IRS Form 1040) and to pay the taxes due on that income. Since 1976, U.S. persons have also had an obligation to report on Schedule B of Form 1040 whether they have a financial interest in, or signature authority over, a foreign financial account by checking "Yes" or "No" in the appropriate box and identifying the country where they maintain the account.
6. Since 1970, U.S. persons with a financial interest in, or signature authority over, one or more foreign financial accounts with an aggregate value of more than \$10,000 at any time during a particular year have been required to file, with the U.S. Department of the Treasury, a Report of Foreign Bank and Financial Accounts (FinCen Form 114, formerly known as Form TD F 90-22.1), also known as an "FBAR."
7. Since 1935, Switzerland has maintained criminal laws that ensure the secrecy of client relationships at Swiss banks. While Swiss law permits the exchange of information in response to administrative requests made pursuant to a tax treaty with the United States and certain legal requests in cases of tax fraud, Swiss law otherwise prohibits the disclosure of identifying information without client authorization. Because of the secrecy guarantee that they created, these Swiss criminal provisions have historically enabled U.S. clients to conceal their Swiss bank accounts from U.S. authorities.



8. On December 20, 2013, BSZ entered the United States Department of Justice's Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Swiss Bank Program") as a Category 2 bank.

#### **THE BANK'S U.S. CROSS-BORDER BUSINESS**

9. Prior to 2008, when deciding whether to accept U.S. persons as clients, BSZ applied the same procedures that it applied to all of its prospective clients. These procedures were based on Swiss banking laws and regulations, including know-your-client ("KYC") and anti-money laundering ("AML") rules.
10. BSZ never sent representatives to the United States or advertised its financial services there. Most of the U.S. persons who became Bank clients before 2008 had personal ties to the Zurich region.
11. BSZ knew that U.S. persons had a duty under U.S. law to report their income to the IRS and to pay taxes on that income, including all income earned in accounts maintained by BSZ in Switzerland.
12. Despite this knowledge, BSZ opened, maintained, and serviced accounts for U.S. persons that it knew or had reason to know were likely not declared to the IRS or the U.S. Department of the Treasury as required by U.S. law.
13. Many accounts that BSZ opened for U.S. persons were not, in fact, timely declared on Forms 1040 or FBARs, often for multiple years.
14. From August 1, 2008, through December 31, 2014 (the "Applicable Period"), BSZ provided banking services for 91 "U.S. Related Accounts," as defined under the Swiss Bank Program. The highest collective value of these accounts during any month in the Applicable Period was approximately \$25 million.
15. As of December 2011, the Bank's total volume of business with U.S.-domiciled persons was more than three times higher than its total volume of business with persons domiciled in any other single country besides Switzerland.
16. During the Applicable Period, two relationship managers were responsible for managing most of the U.S. Related Accounts at BSZ, and one of those two reported directly to the Bank's chief executive officer. These relationship managers served as the primary contact persons for the Bank's U.S. clients or their advisors. In a few instances, other Bank personnel were also listed or co-listed as administrators of U.S. Related Accounts.
17. Until 2012, BSZ provided its U.S. clients with the option to request that the Bank retain all mail related to the clients' financial accounts in exchange for a fee. Although BSZ did not advise U.S. persons to enter into such "hold-mail agreements," BSZ understood that providing hold-mail agreements upon request could allow U.S. persons to keep evidence of their accounts outside of the United States in order to conceal assets and income from the IRS. For example, one U.S. client told his BSZ relationship manager in an e-mail that the hold-mail fee was "cheap insurance against

having my dealings with you come to the attention of the government revenue authorities.”

18. During the Applicable Period, there were 15 U.S. Related Accounts with hold-mail agreements at BSZ. Beginning in 2012, BSZ no longer offered hold-mail agreements to its clients and, beginning in September 2013, the Bank terminated all such agreements still in effect.
19. BSZ communicated with all of its clients, including U.S. persons, mainly by telephone, fax, or e-mail. Absent a hold-mail agreement, BSZ sent bank statements and other paper correspondence directly to clients or their advisors by mail.
20. BSZ provided e-banking services that allowed its clients to access their account information and request account transactions over the internet from computers located anywhere in the world. Although BSZ did not recommend e-banking to U.S. persons, such persons may have learned of the service on the Bank's website or elsewhere. During the Applicable Period, clients holding 17 U.S. Related Accounts had access to the BSZ e-banking system.
21. During the Applicable Period, BSZ offered travel cash cards to its clients, including U.S. persons. A client could instruct the Bank by telephone, mail, or e-mail to load up to 10,000 Swiss francs, U.S. dollars, or euros onto a travel cash card from his BSZ bank account. A client could then use the card for purchases or remit unused balances back to his BSZ account.
22. During the Applicable Period, the holders of six U.S. Related Accounts loaded a total of approximately \$600,000 onto their travel cash cards. Use of these cards by U.S. persons facilitated their access to or use of undeclared funds on deposit at the Bank. For example, one BSZ relationship manager sent a brochure about travel cash cards to a U.S. client who did not wish to transfer money to the United States because of “surveillance” concerns but who nevertheless wanted to withdraw funds from his BSZ account.

#### THE BANK'S SUBVERSION OF THE QI AGREEMENT

23. In January 2001, BSZ entered into a Qualified Intermediary (“QI”) Agreement with the IRS. The QI regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution regarding U.S. securities. The QI Agreement was designed to help ensure that non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons were properly paying U.S. tax – in each case, with respect to U.S. securities held in an account with the QI.
24. The QI Agreement expressly recognized that a non-U.S. financial institution (such as BSZ) may be prohibited by foreign law (such as Swiss law) from disclosing an account holder's name or other identifying information. In general, a QI subject to such foreign-law restrictions had to request that its U.S. clients either (a) grant the QI authority to disclose the client's identity or disclose himself by mandating the QI to provide an IRS Form W-9 completed by the account holder, or (b) grant the QI authority to sell all U.S. securities of the account holder (in the case of accounts

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opened before January 1, 2001) or to exclude all U.S. securities from the account (in the case of accounts opened on or after January 1, 2001), in which case the client's identity would remain undisclosed. Following the effective date of the QI Agreement, a sale of U.S. securities, if any, held by a U.S. person who chose not to provide a QI with an IRS Form W-9 was subject to tax information reporting on an anonymous basis and backup withholding.

25. As reflected in several directives to Bank employees published after 2001, the official policy of BSZ was that only U.S. persons who made certain disclosures to the Bank, including providing signed Forms W-9, could hold U.S. securities in their accounts.
26. However, BSZ failed to implement this policy. During the Applicable Period, only three U.S. Related Accounts at BSZ held U.S. securities. BSZ personnel did not obtain Forms W-9 for any of them before or while the accounts held those securities. When BSZ management learned of this situation in 2011, the Bank required the U.S. clients with accounts still holding U.S. securities to sell them.
27. BSZ relationship managers also assisted U.S. persons in executing waiver forms that directed BSZ not to acquire U.S. securities in their accounts. BSZ knew that the purpose and effect of the forms was to avoid disclosing the identities of the U.S. persons to the IRS under the QI Agreement.

#### **THE BANK'S COLLABORATION WITH AN EXTERNAL ASSET MANAGEMENT FIRM**

28. From 2002 to 2009, BSZ accepted referrals of U.S. persons as new clients from an external asset management firm (the "EAM Firm") based in Switzerland.
29. The EAM Firm recommended BSZ as the custodial bank for some of its clients, including U.S. persons, and assisted in the opening of their accounts at BSZ. In return for these referrals, for a period of time, BSZ paid 50% of its brokerage revenue from these clients to the EAM Firm as a retrocession fee.
30. Overall, 44 U.S. Related Accounts came to BSZ as a result of referrals from the EAM Firm. Nine of these accounts were opened during the Applicable Period. Three of these accounts held U.S. securities without a Form W-9. Two of these accounts were held in the names of insurance companies organized under the laws of Liechtenstein and held variable annuity products that were beneficially owned by U.S. persons.
31. BSZ ended its relationship with the EAM Firm when that firm was publicly named in connection with investments related to Bernard Madoff.

#### **THE BANK'S FLAWED RESPONSE TO THE U.S. GOVERNMENT INVESTIGATION OF UBS AG**

32. In 2008, Swiss bank UBS AG ("UBS") publicly announced that it was the target of a criminal investigation by the IRS and the U.S. Department of Justice. UBS also announced that it would be exiting its U.S. cross-border business and no longer accepting U.S. clients.

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33. On February 18, 2009, the U.S. Department of Justice and UBS filed a deferred prosecution agreement in the U.S. District Court for the Southern District of Florida in which UBS admitted that its U.S. cross-border business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared financial accounts. On the same day, the Swiss Financial Markets Supervisory Authority ("FINMA") also published a report on its investigation into the U.S. cross-border business of UBS.
34. These developments caused BSZ management to assess the Bank's U.S. cross-border business periodically throughout 2008 and 2009. BSZ management concluded at that time that the Bank would not modify or restrict its U.S. cross-border business. BSZ management believed that significant differences in the operation of the U.S. cross-border businesses at UBS and BSZ justified that decision.
35. In 2010, even after FINMA officials publicly addressed the legal risks of cross-border businesses by Swiss banks and noted that various banks had terminated their relationships with U.S. clients, BSZ management did not examine in detail the Bank's relationships with U.S. persons. At that time, the Bank deemed such an examination unnecessary given a perceived low level of risk exposure for the Bank.
36. U.S. persons opened 32 U.S. Related Accounts at BSZ after August 1, 2008. Only one of those persons provided BSZ with a Form W-9 upon opening an account. In most cases, the U.S. persons who opened accounts at BSZ after August 1, 2008, had been required to close their accounts at other Swiss banks. BSZ knew or had reason to know that most of these BSZ accounts were likely not declared to the IRS.
37. Since 2008, several Swiss banks besides UBS have publicly announced that they were or are the targets of similar criminal investigations. UBS and these other targeted Swiss banks are collectively called "Category 1 banks" in the Swiss Bank Program.
38. Of the 32 U.S. Related Accounts opened at BSZ after August 1, 2008, 22 were funded by transfers from Category 1 banks, including 17 from UBS. During that time, some U.S. persons opened accounts at BSZ on the recommendation of individuals working for the EAM Firm, UBS, or Swiss bank Wegelin & Co. ("Wegelin").
39. On February 2, 2012, the U.S. Department of Justice announced the indictment of Wegelin for conspiring with U.S. persons to hide more than \$1 billion in financial-account assets from the IRS. On January 3, 2013, Wegelin pleaded guilty to that charge in the U.S. District Court for the Southern District of New York.

#### **THE BANK'S SUBSEQUENT REMEDIAL MEASURES**

40. In early 2011, BSZ management initiated another review of the Bank's U.S. cross-border business.
41. BSZ issued two directives to all Bank employees effective as of March 1, 2011. Both sought to remedy potential problems related to foreign customers. The first directive concerned aiding and abetting tax evasion and emphasized that while the Bank was under no obligation to ensure that clients complied with their tax duties, neither could the Bank take any action to help clients hide money or evade their tax duties. Among other things, the directive banned any transaction that could

conceal the identity of a client including — with reference to the UBS case — transactions in which clients sought to use loopholes in international law.

42. The second directive dealt with cross-border financial services and, among other things, reaffirmed the Bank's prohibition on the recruitment of foreign customers and forbade Bank personnel from offering advice or financial services abroad.
43. In September 2011, the BSZ board of directors requested another analysis of the Bank's cross-border business. This request was precipitated by reports of Department of Justice investigations of other Swiss banks (particularly those without offices or subsidiaries outside of Switzerland) and indictments of Swiss bankers. BSZ management and the Bank's external compliance consultant conducted a comprehensive review. Although the consultant found the Bank's U.S. cross-border business to be low risk, he still recommended that the Bank demand a Form W-9 from all of its U.S. clients (regardless of whether their accounts held U.S. securities), inform them of the foreseeable consequences of the Foreign Account Tax Compliance Act ("FATCA"), and inform them that it was against Bank policy for them to hold undeclared assets in their accounts.
44. In January 2012, before the announcement of the Swiss Bank Program and at the request of BSZ management, the Bank's board of directors decided to discontinue the Bank's U.S. cross-border business. BSZ would not accept any more new accounts from U.S. persons and, with limited exceptions, would close all existing accounts of U.S. persons by the end of that year. BSZ informed its U.S. clients of this decision by letter in February 2012. In the letters, BSZ also requested that the departing U.S. clients provide Forms W-9 to the Bank before exiting, and many of them did so.
45. The process of closing U.S. Related Accounts was supervised by the Bank's board of directors and its management and was primarily implemented by the Bank's compliance officer and external compliance consultant.
46. BSZ management made fewer than 12 exceptions to its policy of closing existing U.S. Related Accounts, and most of those U.S. persons eventually closed their accounts in any event. Exceptions were limited to long-standing clients with accounts opened before 2008 who provided Forms W-9 and declarations of tax compliance to the Bank. No new U.S. Related Accounts have been opened at BSZ since January 2012.
47. BSZ did not prohibit its U.S. clients from closing their accounts by certain means. Although many closures of U.S. Related Accounts were uncontroversial, a number of potentially undeclared accounts exited the Bank under circumstances that likely facilitated the continued concealment of the assets from the IRS. These instances included withdrawals of cash or physical gold (in whole or substantial part), transfers to Swiss or other non-U.S. banks, and one account closed by a series of "structured" wire transfers under \$10,000 to several U.S. banks.

#### **THE BANK'S COOPERATION THROUGH THE SWISS BANK PROGRAM**

48. Throughout its participation in the Swiss Bank Program, BSZ has committed to providing full cooperation to the U.S. government and has made timely and comprehensive disclosures regarding its U.S. cross-border business. Specifically, the

Bank, with the assistance of U.S. and Swiss counsel, and in compliance with Swiss privacy laws, has:

- a. conducted an internal investigation that included, among other things, interviews of key current and former Bank personnel; review of client account files, relationship manager notes, and correspondence; analysis of relevant management policies, compliance reports, and board meeting minutes; and searches of e-mail accounts;
- b. described in detail the structure, operation, and supervision of its U.S. cross-border business, including the names of relevant individuals and entities;
- c. provided information concerning U.S. Related Accounts held at BSZ during the Applicable Period sufficient to make treaty requests to the Swiss government for the account records;
- d. sought and obtained client waivers of Swiss bank secrecy for U.S. Related Accounts; and
- e. encouraged existing and prior holders of U.S. Related Accounts to disclose their accounts to the IRS through the Offshore Voluntary Disclosure Program that began in January 2012.



**EXHIBIT B TO NON-PROSECUTION AGREEMENT**

**CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS  
OF BANK SPARHAFEN ZÜRICH AG**

We, Dr. Urs Linsi and Maryann Rohner, acting as Members of the Board of Directors and as Chairman and Vice-Chairman, respectively, of Bank Sparhafen Zürich AG (the Bank), a corporation duly organized and existing under the laws of Switzerland, do hereby certify that the following is a complete and accurate copy of a resolution adopted by the Board of Directors of the Bank at an extraordinary meeting held on June 15, 2015, at which a quorum was present and resolved as follows:

- That the Board of Directors has (i) reviewed the entire Non-Prosecution Agreement attached hereto, including the Statement of Facts attached as Exhibit A to the Non-Prosecution Agreement; (ii) consulted with Swiss and U.S. counsel in connection with this matter; and (iii) unanimously voted to enter into the Non-Prosecution Agreement, including to pay a sum of USD 1,810,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Dr. Urs Linsi, Chairman of the Bank, and Reto Kyburz, Chief Executive Officer of the Bank, both registered in the Commercial Register of the Canton of Zurich as having joint signatory authority, are hereby authorized (i) to jointly execute the Non-Prosecution Agreement on behalf of the Bank substantially in such form as reviewed by the Board of Directors with such non-material changes as each of them may approve; and (ii) to take, on behalf of the Bank, all actions as may be necessary or advisable in order to carry out the foregoing; and
- That Thomas C. Green, Sidley Austin LLP, is hereby authorized to sign the Non-Prosecution Agreement in his capacity as the Bank's U.S. counsel.

We further certify that the above resolution has not been amended or revoked in any respect and remains in full force and effect.

IN WITNESS WHEREOF, we have executed this Certification this 15<sup>th</sup> day of June 2015.



Dr. Urs Linsi  
Chairman



Maryann Rohner  
Vice-Chairman