



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:JES:TGVoracek
5-16-4668
2014200674

Julia M. Jordan, Esq.
Sullivan & Cromwell LLP
1700 New York Avenue, N.W.
Washington, D.C. 20006-5215

Re: Banque Heritage SA
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Ms. Jordan:

On December 30, 2013, Banque Heritage SA (“Heritage”) submitted a Letter of Intent 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 Heritage in its Letter of Intent and information provided by Heritage pursuant to the terms of the Swiss Bank Program. The Swiss Bank Program is incorporated by reference herein in its entirety in this Agreement.¹ Any violation by Heritage of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute Heritage 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 Heritage during the Applicable Period (the “conduct”). Heritage 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 Heritage and does not apply to any other entities or to any individuals. Heritage expressly understands that the protections provided under this Agreement shall not apply to any acquirer or

¹ Capitalized terms shall have the meaning ascribed to them in the Swiss Bank Program.

successor entity unless and until such acquirer or successor formally adopts and executes this Agreement. Heritage enters into 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, Heritage agrees to pay the sum of \$3,846,000 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 Heritage. This payment is in lieu of restitution, forfeiture, or criminal fine against Heritage for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Heritage with respect to the conduct described in this Agreement, unless the Tax Division determines Heritage has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Heritage 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 Heritage has violated any provision of this Agreement. Heritage 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. Heritage agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Heritage further agrees that no portion of the penalty that Heritage has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Heritage 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) Heritage'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 Heritage 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) Heritage'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) Heritage'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 Heritage 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) Heritage's retention of a qualified independent examiner who has verified the information Heritage disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Heritage 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 Heritage, 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, Heritage 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 Heritage 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 Heritage'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 Heritage; 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.

Heritage 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, and set forth in subparagraph (c) on page 3 of this Agreement. Heritage 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. Heritage 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 Heritage.
3. Heritage 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. Heritage 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, Heritage will promptly proceed to follow the procedures described above in paragraph 2.

4. Heritage 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.

Heritage's obligations under this Agreement shall continue for a period of four (4) years from the date this Agreement is fully executed. Heritage, 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) Heritage committed any U.S. federal offenses during the term of this Agreement; (b) Heritage 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) Heritage has otherwise materially violated any provision of this Agreement or the terms of the Swiss Bank Program, then (i) Heritage 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 Heritage'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 Heritage'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 Heritage shall be admissible in evidence in any criminal proceeding brought against Heritage and relied upon as evidence to support any penalty on Heritage; and (iii) Heritage 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 Heritage has breached this Agreement and whether to pursue prosecution of Heritage 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, Heritage, will be imputed to Heritage for the purpose of determining whether Heritage 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 Heritage has breached this Agreement, the Tax Division agrees to provide Heritage with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, Heritage may respond to the Tax Division in writing to explain the nature and circumstances of such breach, as well as the actions that Heritage has taken to address and remediate the situation, which explanation the Tax Division shall consider in determining whether to pursue prosecution of Heritage.

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 Heritage, notwithstanding the expiration of the statute of limitations between such date and the commencement of such prosecution. For any such prosecutions, Heritage 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 Heritage'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 Heritage, the Tax Division will, however, bring the cooperation of Heritage 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 Heritage consistent with Part V.B of the Swiss Bank Program.

This Agreement supersedes all prior understandings, promises and/or conditions between the Department and Heritage. 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.

UNITED STATES DEPARTMENT OF JUSTICE
TAX DIVISION


CAROLINE D. CIRAOLO
Acting Assistant Attorney General

10/29/2015
Date


THOMAS J. SAWYER
Senior Counsel for International Tax Matters

29 October 2015
Date


JOHN E. SULLIVAN
Senior Litigation Counsel

10/28/15
Date


THOMAS G. VORACEK
Trial Attorney

10/29/2015
Date

AGREED AND CONSENTED TO:
BANQUE HERITAGE SA

By: 
THIERRY ZUMSTEIN
Group Managing Director
Head of Legal and Compliance

October 28, 2015
Date

By: 
FERNANDO PICCININI
Managing Director

October 28, 2015
Date

APPROVED:

JULIA M. JORDAN, ESQ.
Counsel for Banque Heritage SA

10/28/15
Date

EXHIBIT A TO BANQUE HERITAGE SA NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

INTRODUCTION

1. Banque Heritage SA (“Banque Heritage” or the “Bank”) is a private bank headquartered in Geneva, Switzerland. It was founded in 1986 as an asset management firm and obtained its Swiss banking license in 2003. Banque Heritage has a branch in Zurich, Switzerland and a representative office in Lugano, Switzerland. Banque Heritage also has a fully licensed banking operation in Uruguay, and had an investment advisory company in Guernsey which was closed in 2014. As of December 31, 2014, Banque Heritage had approximately \$5.7 billion in assets under management and approximately 2,939 clients and 108 employees.
2. Banque Heritage principally provides private banking and asset management services through private bankers based in Switzerland. Banque Heritage primarily provides these services to individuals and entities based in Switzerland, Europe and emerging markets outside Europe. Banque Heritage also acts as custodian of assets managed by third-party investment advisers.
3. Banque Heritage has never had any U.S. desk or branch or employee dedicated to targeting or servicing the U.S. market or clients.
4. During the Applicable Period,¹ Banque Heritage’s total assets under management had a maximum value of approximately \$7.4 billion. This included 131 U.S. Related Accounts with an aggregate maximum balance of approximately \$198 million – approximately 2.6% of the Bank’s total assets under management during the Applicable Period.

U.S. INCOME TAX & REPORTING OBLIGATIONS

5. U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income. Since tax year 1976, U.S. citizens, resident aliens, and legal permanent residents have had an obligation to report to the Internal Revenue Service (“IRS”) on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking “Yes” or “No” in the appropriate box and identifying the country where the account was maintained.
6. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any time during a

¹Capitalized terms not otherwise defined in this Statement of Facts have the meanings set forth in the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks, issued on August 29, 2013 (the “Swiss Bank Program”).

particular year were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114 (the "FBAR," formerly known as Form TD F 90-22.1). The FBAR was due on June 30 of the following year.

7. An "undeclared account" was a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that had not been reported by the individual account owner to the U.S. government on an income tax return and an FBAR.
8. 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.
9. In or about 2008, Swiss bank UBS AG ("UBS") publicly announced that it was the target of a criminal investigation by the IRS and the United States Department of Justice and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department of Justice and UBS filed a deferred prosecution agreement in the Southern District of Florida in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared assets and income from the IRS. Since UBS, several other Swiss banks have publically announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients. These cases have been closely monitored by banks operating in Switzerland, including Banque Heritage, since at least August 2008.

QUALIFIED INTERMEDIARY AGREEMENT AND ITS ROLE IN NON-COMPLIANT U.S. RELATED ACCOUNTS

10. In May 2001, Banque Heritage entered into a Qualified Intermediary ("QI") Agreement with the IRS. To comply with its responsibilities as a QI, Banque Heritage required all clients to sign a declaration confirming whether the client was a U.S. national or U.S. resident. Banque Heritage also asked U.S. nationals and U.S. residents to provide an IRS Form W-9. If the U.S. taxpayer did not provide a Form W-9, then Banque Heritage prohibited the client from holding any U.S. investments, in accordance with the QI Agreement, and the client's name was not provided to the IRS.
11. Prior to May 2009, Banque Heritage's position was that it could service a U.S. client without reporting the U.S. taxpayer's interest in the account to the IRS so long as it (a) prohibited the account holder from trading in U.S. based securities or (b) was an account nominally structured in the name of a non-U.S. based entity accompanied by an IRS Form W-8BEN or a Bank Non-U.S. Status Declaration.
12. In the latter circumstance, U.S. clients, with the assistance of their advisors, would create an entity, such as a Panama corporation, or a British Virgin Islands company, and pay a

fee to third parties to act as corporate directors. Those third parties, at the direction of the U.S. client, would then open a bank account at Banque Heritage in the name of the entity or transfer a pre-existing Swiss bank account from another Swiss bank.

13. In cases involving a non-U.S. entity, Banque Heritage was aware that a U.S. client was the true beneficial owner of the account and would receive from the entity's directors an IRS Form W-8BEN (or equivalent bank document) that falsely declared that the beneficial owner was not a U.S. taxpayer. Knowing that it was probable that certain U.S. taxpayers were not complying with their U.S. income tax and reporting obligations, Banque Heritage effectively provided assistance to certain U.S. taxpayers in evading their U.S. tax obligations, and permitted three accounts to trade in U.S. securities without reporting account earnings, or transmitting any withholding taxes, to the IRS, as required by the QI Agreement.

OVERVIEW OF BUSINESS WITH U.S. RELATED ACCOUNTS

14. Through its managers, employees and/or others, Banque Heritage was aware that U.S. taxpayers had a legal duty to report to the IRS, and pay taxes on the basis of all their income, including income earned in accounts that these U.S. taxpayers maintained at Banque Heritage. Despite being aware of this legal duty, the Bank opened and maintained accounts for U.S. taxpayers without investigating whether such accounts were undeclared. The Bank knew, or had reason to know, that certain U.S. taxpayers who had opened and maintained accounts at the Bank were not complying with their U.S. income tax and reporting obligations.
15. Banque Heritage provided banking and asset management services to all clients, irrespective of the nationality or residence, primary through relationship managers. Banque Heritage also acted as a custodian with respect to some U.S. Related Accounts introduced and managed by external asset managers. During the Applicable Period, about 22 U.S. Related Accounts were managed by ten different external asset managers. Banque Heritage did not pay any specific compensation to these external asset managers for the acquisition and/or management of U.S. Related Accounts.
16. Banque Heritage offered a variety of traditional Swiss banking services that it knew could and did assist U.S. taxpayers in concealing assets and income from the IRS, including opening accounts in the names of offshore structures. During the Applicable Period, Banque Heritage had 47 U.S. Related Accounts held by entities created in Panama, British Virgin Islands, Hong Kong, Belize, or other foreign countries with U.S. beneficial owners. Ten of these accounts were opened between about August 2008 and December 2009. In certain instances with respect to these accounts, Banque Heritage took instructions directly from the beneficial owners, in violation of corporate governance provisions.
17. Another service that Banque Heritage offered was hold mail, pursuant to which the Bank would hold all mail correspondence for a particular client at the Bank. Between about August 2008 through about December 2009, Banque Heritage agreed, at the client's request, to hold statements and other mail relating to approximately 52 U.S. Related

Accounts. This action permitted documents reflecting the existence of approximately 41 U.S. Related Accounts to remain outside the United States.

18. In addition, among other things, Banque Heritage:

- a. provided three credit cards and one debit card for at least three U.S. Related Accounts, which facilitated U.S. customers' access to and use of any undeclared funds on deposit at the Bank;
- b. between about October 2009 and February 2010, in approximately six known instances, transferred the (beneficial) ownership of U.S. taxpayers' accounts to non-U.S. persons' accounts at Banque Heritage;
- c. in 2012, following the suggestion of a former senior executive, referred at least one individual—who the Bank later determined was a U.S. legal permanent resident and U.S. taxpayer—to a third party for the purpose of setting up an offshore structure;
- d. between about November 2009 and May 2010, upon recommendation of a former executive, facilitated or assisted at least two U.S. taxpayers in setting up "insurance wrapped accounts," whereby U.S. taxpayers funded insurance policies with assets held in undeclared accounts in Switzerland for which new accounts were opened at Banque Heritage in the names of the insurance companies;
- e. between about October 2008 and April 2009, established banking relationships with U.S. taxpayers who were transferring funds from other Swiss financial institutions that were closing such accounts, while, in at least seven instances (comprising at least \$10 million), Banque Heritage knew, or had reason to know, that the accounts were or may have been undeclared; and
- f. between about October 2009 and December 2009, facilitated the transfer, to the Bank's affiliate in Uruguay, of approximately \$700,000 held in at least two U.S. Related Accounts being closed at the Bank, when it knew or had reason to know that these accounts were undeclared.

MITIGATING FACTORS

19. In or around July 2008, at its own initiative, Banque Heritage began a comprehensive review of its business relationships with U.S. clients. In or around April 2009, Banque Heritage started the process of identifying U.S. clients and examining the Bank's policies with respect to such clients.
20. On May 1, 2009, Banque Heritage announced a policy and strategy going forward with respect to U.S. clients, which stated or reiterated, as applicable, among other things, that: (a) the United States was not part of Banque Heritage's private banking commercial strategy; and (b) new individual clients that were U.S. persons would be accepted only if such persons signed (1) an IRS Form W-9 and (2) a fully discretionary asset management mandate authorizing Banque Heritage to manage the account independently, at its own

discretion and without any specific instructions.

21. As part of this effort, relationship managers were asked to contact U.S. clients who had not provided an IRS Form W-9 to either (1) obtain an IRS Form W-9 from the U.S. client; or (2) terminate the U.S. client's business relationship with Banque Heritage.
22. In connection with its efforts to terminate relationships with U.S. clients or obtain Forms W-9, in or around August 2008, June 2009, and March 2010, the Bank produced reports on the progress of (1) assisting non-compliant U.S. clients in becoming compliant with U.S. tax law and (2) terminating relationships with non-compliant U.S. clients.
23. In or around July 2013, Banque Heritage decided that it would not accept new clients who were U.S. residents, but would accept U.S. related clients who are not U.S. residents and are FATCA compliant.
24. Banque Heritage has cooperated fully with the Department during its participation in the Swiss Bank Program. Banque Heritage engaged U.S. and Swiss counsel as well as forensic accounting experts to conduct an extensive internal review in order to identify and collect data and information regarding its U.S. Related Accounts and to examine its conduct in relation to such accounts. The Bank expended substantial financial and internal resources to conduct its review, which included the participation of more than half of its staff.
25. Banque Heritage then reported on the findings of its internal review to the Department, providing an in-person presentation and documentation supporting the findings of its review.
26. Banque Heritage also assisted and has agreed to continue to assist the Department in preparing treaty requests under the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (Oct. 2, 1996), and the Protocol Amending the Convention (Sept. 23, 2009), if and when it is in force and applicable, including by identifying U.S.-taxpayer accounts that may meet the standard for information exchange under these treaties.
27. In addition, Banque Heritage informed former and current U.S. account holders about, and encouraged them to enter, the IRS's offshore voluntary disclosure program. Based on Banque Heritage's efforts, many of its U.S. clients entered into the voluntary disclosure program and paid back taxes, penalties, and interest in connection with failing to report their undeclared accounts. In addition, the Bank sought bank secrecy waivers from many of its U.S. customers, whose names were then provided to the U.S. government.

**EXHIBIT B TO NON-PROSECUTION AGREEMENT
RESOLUTION OF THE BOARD OF DIRECTORS
OF BANK HERITAGE SA**

At a duly held meeting on October 28, 2015, the Board of Directors (the "Board") of Banque Heritage SA (the "Bank") resolved as follows :

WHEREAS, the Bank has been engaged in discussions with the United States Department of Justice (the "DOJ") arising out of the Bank's participation in Category 2 of the Department's Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks;

WHEREAS, in order to resolve such discussions, it is proposed that the Bank enter into a certain non-prosecution agreement with the DOJ (the "Agreement");

WHEREAS, the Bank's U.S. and Swiss counsel has advised the Board of the Bank's rights, possible defenses, the terms of the Agreement and the consequences of entering into the Agreement; and

WHEREAS, the Board has reviewed the entire Agreement, including the Statement of Facts attached to the Agreement and voted to enter into the Agreement;

The Board hereby **RESOLVES** that:

1. Thierry ZUMSTEIN, Group Managing Director, Head of Legal and Compliance, and Fernando PICCININI, Managing Director ("Authorized Bank Signatories"), with joint signature by two are hereby authorized on behalf of the Bank to execute the Agreement substantially in such form as reviewed by the Board with such non-material changes as they may approve;
2. Julia M. JORDAN of Sullivan & Cromwell LLP, U.S. counsel to the Bank, is hereby authorized to sign the Agreement as an additional signatory;
3. The Bank agrees to pay an amount equal to \$3,846,00 pursuant to the Agreement and to perform the obligations described in the Agreement consistent with, and subject to, Swiss law;
4. The Board hereby authorizes, empowers, and directs the Authorized Bank Signatories to take, on behalf of the Bank, any and all actions as may be necessary or appropriate, and to approve and execute the forms, terms, or provisions of any agreement or other documents as may be necessary or appropriate to carry out and effectuate the purpose and intent of the forgoing resolutions; and

IN WITNESS WHEREOF, the Board of Directors of the Bank has executed this Resolution effective as of October 28, 2015

François B. STALDER, Chairman of the Board

Pierre-Alain SCHMIDT, Member of the Board