



U.S. Department of Justice

Tax Division

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CDC:TJS:TJS:KMSullivan
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December 4, 2015

VIA EMAIL

Jonathan Poling
Akin Gump LLP
1333 New Hampshire Avenue NW
Washington, DC 20036

George Clarke
Baker & McKenzie LLP
815 Connecticut Avenue NW
Washington, DC 20006

Re: Bordier & CIE
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Mr. Poling and Mr. Clarke:

Bordier & CIE (“Bordier”) submitted a Letter of Intent on December 23, 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 Bordier in its Letter of Intent and information provided by Bordier 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 Bordier of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute Bordier 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 Bordier during the Applicable Period

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

(the "conduct"). Bordier 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 Bordier and does not apply to any other entities or to any individuals. Bordier 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. Bordier 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, Bordier agrees to pay the sum of \$7,827,000.00 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 Bordier. This payment is in lieu of restitution, forfeiture, or criminal fine against Bordier for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Bordier with respect to the conduct described in this Agreement, unless the Tax Division determines Bordier has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Bordier 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 Bordier has violated any provision of this Agreement. Bordier 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. Bordier agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Bordier further agrees that no portion of the penalty that Bordier has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Bordier 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) Bordier'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 Bordier 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;

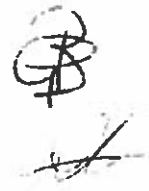
(b) Bordier's cooperation with the Tax Division, including conducting an internal investigation and making presentations to the Tax Division on the status and findings of the internal investigation;

(c) Bordier'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 (c.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 Bordier 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) Bordier's retention of a qualified independent examiner who has verified the information Bordier disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Bordier 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

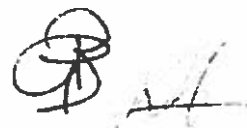


product with respect to the activities of Bordier, those of its parent company and its affiliates, and its officers, directors, employees, agents, consultants, and others, which information can be used for any purpose, except as otherwise limited in this Agreement.

Notwithstanding the terms of this Agreement, Bordier 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 Bordier 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 Bordier'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 Bordier; 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.

Bordier further agrees to undertake the following:

1. Bordier agrees, to the extent it has not provided complete transaction information pursuant to Part II.D.2.b.vi of the Swiss Bank Program, and set forth in subparagraph (c) on pages 2-3 of this Agreement, because the Tax Division has agreed to specific dollar threshold limitations for the initial production, Bordier will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. Bordier 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

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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 Bordier.

3. Bordier 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. Bordier 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, Bordier will promptly proceed to follow the procedures described above in paragraph 2.
4. Bordier 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.

Bordier's obligations under this Agreement shall continue for a period of four (4) years from the date this Agreement is fully executed. Bordier, 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) Bordier committed any U.S. federal offenses during the term of this Agreement; (b) Bordier 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) Bordier has otherwise materially violated any provision of this Agreement or the terms of the Swiss Bank Program, then (i) Bordier 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 Bordier'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 Bordier'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 Bordier shall be

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admissible in evidence in any criminal proceeding brought against Bordier and relied upon as evidence to support any penalty on Bordier; and (iii) Bordier 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 Bordier has breached this Agreement and whether to pursue prosecution of Bordier 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, Bordier, will be imputed to Bordier for the purpose of determining whether Bordier 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 Bordier has breached this Agreement, the Tax Division agrees to provide Bordier with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, Bordier may respond to the Tax Division in writing to explain the nature and circumstances of such breach, as well as the actions that Bordier has taken to address and remediate the situation, which explanation the Tax Division shall consider in determining whether to pursue prosecution of Bordier.

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

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

[Signatures to Follow on Next Page]



Caroline D. Ciruolo
CAROLINE D. CIRAULO
Acting Assistant Attorney General
Tax Division

12/17/2015
DATE

Thomas J. Sawyer
THOMAS J. SAWYER
Senior Counsel for International Tax Matters

17 December 2015
DATE

Kaycee M. Sullivan
KAYCEE M. SULLIVAN
Trial Attorney

17 December 2015
DATE

AGREED AND CONSENTED TO FOR BORDIER:

Gaetan Bordier
By: GAETAN BORDIER
Partner

17 December 2015
DATE

Leila Ali Khan
By: LEILA ALIKHAN
Legal and Tax Counsel

17 December 2015
DATE

APPROVED:

Jonathan C. Poling
JONATHAN POLING
Akin Gump LLP

14 Dec. 2015
DATE

George C. Clarke / SCP
GEORGE CLARKE
Baker & McKenzie LLP

14 Dec. 2015
DATE

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**EXHIBIT A TO BORDIER & CIE SWITZERLAND
NON-PROSECUTION AGREEMENT**

STATEMENT OF FACTS

BACKGROUND

1. Bordier & Cie Switzerland (“Bordier” or the “Bank”) was founded in 1844 in Geneva, Switzerland. Five generations of the Bordier family have run the Bank over the subsequent 170 years. Bordier is an independent Bank owned in partnership form with no outside shareholders. Bordier held approximately 8 billion Swiss francs in total assets under management as of June 2014.
2. The Bank provides private banking services focused on wealth management. It does not offer commercial or investment banking services. The Bank provides its services to a predominately European clientele, but its client base includes non-Europeans such as, United States citizens and residents, among others.
3. The Bank’s headquarters in Geneva houses all account files for Switzerland in its Central Files, the Bank management, the Legal and Compliance departments, and all back-office support. 116 of the Bank’s 136 employees work in Geneva. Structurally, the Bank is led by its “Comité de Direction,” which is composed of the partners, the chief financial/administrative officer, the General Counsel, the communications director, and two senior wealth managers.
4. The Bank has three additional Swiss offices, in Zurich, Bern, and Nyon. These satellite Swiss offices contain small teams of relationship managers but do not house account files. New account opening documents and other relevant paper documents are sent by internal mail to Geneva for storage in Central Files. Outside of Switzerland, Bordier has two asset management companies — one in London and one in Paris — that provide local personal service, but also do not house account files. Bordier also has a representation office in Uruguay. Additionally, the Bank is affiliated with two independent entities with local banking licenses: Bordier Bank (TCI) Ltd, established in 1986 under the laws of the Turks & Caicos, and Bordier & Cie (Singapore) Ltd., established in 2011 under the laws of Singapore. These affiliated banks maintain their own account files, which are located in those locations. Both banks are owned by Bordier Holdings SA, incorporated in Switzerland, which in turn is owned by the Bank.
5. Bordier maintained approximately 292 U.S. Related Accounts that were open at any point during the relevant time period of 2008 to present, for a total of \$440.8 million in assets under management for the U.S. Related Accounts.¹

¹ Capitalized 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

U.S. INCOME TAX & REPORTING OBLIGATIONS

6. 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.
7. 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 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 must be filed on or before June 30 of the following year.
8. 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 or other form and an FBAR as required.
9. 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.
10. In or about 2008, Swiss Bank UBS AG (“UBS”) publicly announced that it was the target of a criminal investigation by the Internal Revenue Service 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

(...continued)

on August 29, 2013 (the “Swiss Bank Program”) or in the Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA, dated February 14, 2013 (the “FATCA Agreement”).

cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening accounts and maintaining undeclared assets and income from the IRS. Since UBS, several other Swiss banks have publicly 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 (UBS and the other targeted Swiss Banks are collectively referred to as "Category 1 banks"). These cases have been closely monitored by banks operating in Switzerland, including Bordier, since at least August of 2008.

BORDIER'S QUALIFIED INTERMEDIARY AGREEMENT

11. In 2001, Bordier signed a Qualified Intermediary ("QI") Agreement with the IRS. The Qualified Intermediary regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution with respect to U.S. securities. The QI Agreement was designed to help ensure that, with respect to U.S. securities held in an account at the Bank, 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.
12. The QI Agreement took account of the fact that Bordier, like other Swiss Banks, was prohibited by Swiss law from disclosing the identity of an account holder. In general, if an account holder wanted to trade in U.S. securities and avoid mandatory U.S. tax withholding, the QI Agreement required Bordier to obtain the consent of the account holder to disclose the client's identity to the IRS. The QI Agreement required Bordier to obtain IRS Form W-9 and to undertake IRS Form 1099 reporting for new and existing U.S. clients engaged in U.S. securities transactions.

OVERVIEW OF U.S. CROSS BORDER BUSINESS

13. Bordier's private banking business focuses on the European market, where over three-quarters of its assets originate. Bordier clients, in general, come to the Bank through word-of-mouth or referrals, including for U.S. Related Accounts.
14. Bordier did not directly seek clients located in the United States. The Bank never targeted the United States as a market segment, never went to the United States to solicit clients, never had operations in the United States, and never operated a U.S. desk. Travel reimbursements for Bordier employees during the relevant time period only contain travel to the United States as a pass-through to other countries or to attend administrative conferences. Additionally, a Bordier relationship manager made one trip to Florida to review asset protection trusts accounts which are U.S.-tax compliant.
15. For all of its accounts held by U.S. Residents, Bordier acts only as a custodial bank and does not manage the assets. Asset management for U.S. Resident clients is exclusively performed by unrelated U.S.-registered investor advisors. Bordier's relationship managers respond to customer requests for service by phone, in person at a Bank office, or through mail/email.

16. The Bank provided “hold-mail” services and numbered accounts to holders of U.S. Related Accounts, some of which were not compliant with U.S. tax and information reporting requirements. Specifically, 149 of the 292 U.S. Related Accounts used the Bank’s hold-mail service and 100 U.S. Related Accounts used the Bank’s numbered account services. Seventy-two of these accounts used both hold-mail and numbered account services. These services allowed U.S. clients to ensure that their names were not visible on bank statements and thus enabled them to conceal the undeclared assets and income held at Bordier from United States tax authorities.

17. Bordier was aware that some of its U.S. clients were using their accounts at Bordier to evade U.S. taxes and reporting requirements. In a limited number of instances, Bordier actively facilitated the evasion of U.S. taxes and reporting requirements for some of its U.S. account holders. Evidence of Bordier’s knowledge of the U.S. taxpayer-clients’ intention to maintain undeclared assets is illustrated as follows:
 - a. In certain account files, the Bank had notes stating, “Declared: No.”
 - b. In other instances, the U.S. taxpayer-client informed the Bank that he or she did not plan to declare his or her account in the United States.
 - c. For one account, a U.S. taxpayer-client refused to provide a copy of his passport, despite repeated Bank requests, and signed bank forms with a “fake” signature to avoid potential recognition in 1998. The account holder eventually told the Bank that he did not want to declare the account in the United States because he was a lawyer and would be disbarred.
 - d. In 2000, one U.S. taxpayer-client informed the Bank, “I am glad to know that there are no U.S. securities subject to U.S. withholding tax. I do not intend to declare this account to the U.S. authorities.”

18. The Bank was also aware of U.S. taxpayer-clients’ efforts to circumvent U.S. taxes and reporting requirements. In one account where the ultimate beneficial owner was a U.S. person, the Bank noted in the files, “Client will introduce a South African friend domiciled in Monaco who will invest in USA and transfer funds to the client.”

19. Bordier’s conduct extended beyond knowing or suspecting that certain U.S. taxpayer-clients were maintaining undeclared assets at Bordier in order to evade their U.S. taxes and reporting obligations. At times, in furtherance of a scheme to help U.S. taxpayer-clients hide assets from the IRS and evade taxes, Bordier actively facilitated the evasion of U.S. taxes and reporting obligations for some of its U.S. taxpayer-clients. The Bank has uncovered evidence indicating that a small number of accounts involved such active facilitation. The Bank’s actions included the following:
 - a. The Bank made repeated transfers of undeclared assets under US\$10,000 to the Montreal bank account of a U.S. taxpayer-client in Canada in order to help the

client avoid U.S. tax and reporting obligations and keep the undeclared assets hidden. For one such transfer, the U.S. taxpayer-client requested his “usual order of chocolate” from the Bank in order to institute these transfers. The Bank was aware that the U.S. taxpayer-client withdrew the amounts in cash: “Telephone [call from U.S. taxpayer-client]. Please transfer US\$8,000 to Montreal as usual. He will pick up the cash. . . .”

- b. In 2002, according to file notes made by the former relationship manager, the Bank transmitted undeclared assets to a U.S. taxpayer-client in a hidden manner (“sous forme caché” in French).
 - c. A U.S. taxpayer-client refused to sign the Bank’s Declaration of Non-U.S. Status form, which would have indicated that she was a U.S. Person, despite it being required as part of the Bank’s account opening procedures. When the U.S. taxpayer-client asked the Bank about the impact of the UBS investigation, the Bank told the U.S. taxpayer-client that she “cannot call, that her capital is protected and that she multiplies her risks by calling the bank often. She should only call once a year when she is in Europe.”
20. Bordier was aware that U.S. taxpayers had a legal duty to report to the IRS and pay taxes on worldwide income, including income earned in accounts that these U.S. taxpayers held at Bordier. Despite being aware of this legal duty, Bordier intentionally assisted U.S. taxpayer-clients in opening accounts for and maintaining undeclared assets with the knowledge that, by doing so, Bordier was helping those U.S. taxpayers violate their legal duties.
21. The conduct of Bordier allowed it to increase the undeclared U.S. taxpayer assets that it managed, thereby increasing the fees it generated.

VOLUNTARY REMEDIAL MEASURES REGARDING U.S. TAX COMPLIANCE

22. In or about spring 2008, Bordier learned that the IRS was investigating UBS AG (“UBS”) for tax-related criminal offenses related to UBS assisting its U.S. taxpayer-clients in holding undeclared accounts at UBS in Switzerland. As a result, Bordier examined its handling of potentially U.S.-related accounts. By or about summer 2008, Bordier had recognized the risks inherent in its U.S. client base and reevaluated its U.S. client policies.
23. As a consequence, in the last quarter of 2008 Bordier implemented an “Exit Program” for U.S. taxpayer-clients who did not provide or did not have on file a properly signed Form W-9, which the Bank viewed as the necessary U.S. tax compliance information required by the Bank’s QI Agreement with the IRS. Bordier implemented this program by either obtaining a properly signed Form W-9 from each U.S. taxpayer-client or closing the account. The Exit Program had an initial completion date in 2010, but by April 2010, the

process was projected to extend into 2012. As a result of the Bank's efforts to collect Forms W-9 as demonstrations of U.S. tax compliance, many U.S. taxpayer-clients decided to leave the Bank rather than declare themselves to the U.S. authorities.

24. In 2008, because SEC requirements mandated that Bordier, which was not a registered broker-dealer, not provide U.S. clients with securities advice, the Bank decided not to accept funds from new U.S. clients that were not managed by third-party asset managers.
25. Because of its heightened awareness of U.S. tax compliance risks, Bordier assessed and avoided taking on additional U.S. risks. For example, in the summer of 2009, the Bank noted that life insurance products were being used by some intermediaries to avoid disclosing the ultimate beneficial owner. Bordier rejected this approach and stated that it was essential that the Bank request that life insurance companies confirm that the beneficial owner of each account held through them was not a U.S. person. The Bank communicated to the insurance companies that, for each account held in the name of an insurance policy, where the beneficial owner was also a direct client of the Bank, the Bank was obliged to determine the identity of the beneficial owner, and where the beneficial owner was never a client of the Bank, the insurance company had to confirm to the Bank that it had duly identified the beneficial owner as a non-U.S. person.
26. As it followed through with its Exit Program to demand Forms W-9 from U.S. taxpayer-clients, Bordier further assessed its U.S. tax and reporting compliance requirements. For example, also in or about summer 2009, the Bank discussed the possibility that someone with certain categories of U.S. visas could meet the IRS's substantial presence test and thus would be a U.S. resident for tax purposes. The Bank alerted its relationship managers to this potential compliance exposure item.
27. Shortly prior to the announcement of the Swiss Bank Program in August 2013, Bordier was in the process of expanding its U.S. tax and reporting due diligence requirements. In or about June 2013, the Bank instructed relationship managers that they must determine whether U.S. taxpayer-clients who were not investing in U.S. securities were declared to the U.S. Government, even where the clients had signed Forms W-9 and even where, in the Bank's view, the QI framework did not require such a determination. Such clients would have to provide an FBAR or certification of compliance from an accountant, and, if they did not provide one, the Bank would act to close their accounts.
28. After the Swiss Bank Program was announced, Bordier moved to collect necessary tax documentation from its clients, regardless of any pre-existing agreements with these clients not to initiate contact. In the beginning of October 2013, Bordier transmitted a letter to all identified past and present holders of U.S. Related Accounts to notify them of Bordier's intent to gather such documentation — even where it contradicted the strict "hold mail" provisions otherwise in place. In these letters Bordier requested demonstrations of U.S. tax and FBAR compliance and encouraged any non-compliant U.S. clients to join the Offshore Voluntary Disclosure Program. From that time forward, personnel in Bordier's Legal Department and relevant relationship managers have been

regularly contacting apparent past and present U.S. person account holders, beneficial owners, and authorized signatories to request documentation and encourage U.S. tax and FBAR compliance. The Bank sent a follow up letter in February 2014 to the account holders, beneficial owners, or signatories who had not answered the Bank's previous requests.

29. Additionally, as part of its efforts to comply with the requirements of the Program, the Bank has retained outside experts to assist it in drafting and implementing a U.S. tax compliance program. This compliance program was implemented contemporaneously with the rollout of the Foreign Account Tax Compliance Act.
30. Bordier officially entered the Swiss Bank Program on December 23, 2013, and has fully cooperated with the Department of Justice since that time, including taking actions to encourage persons to disclose their accounts to the IRS and providing relevant and requested information and documents to the Department of Justice to the extent permitted by Swiss bank secrecy laws.

EXHIBIT B TO NON-PROSECUTION AGREEMENT

CERTIFICATE OF RESOLUTION OF THE BOARD OF DIRECTORS OF BORDIER & CIE
SWITZERLAND

I, Gaétan BORDIER, Partner of Bordier & Cie Switzerland (the **Bank**), a limited partnership duly organized and existing under the laws of Switzerland, do hereby certify that the following is a complete and accurate copy of a resolution considered and adopted by the board of directors of the Bank on December 11th, 2015:

- That the Bank's Executive Board Committee 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 7,827,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Gaétan BORDIER, one of the Bank's Partner, registered in the Commercial Register of the Canton of Geneva as having individual signatory authority, is hereby authorized (i) to execute the Non-Prosecution Agreement on behalf of the Bank substantially in such form as reviewed by the Board 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 Jonathan C. Poling, Akin Gump Strauss Hauer & Feld LLP and George M. Clarke III, Baker & McKenzie LLP, are hereby authorized to sign the Non-Prosecution Agreement in their capacity as the Bank's U.S. counsel.

I 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, I have executed this Certification this 11th day of December 2015.



Gaétan BORDIER

Partner