



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:CDWasserman  
5-16-4689  
CMN: 2014200697

Kim Marie Boylan, Esq.  
White & Case LLP  
701 Thirteenth Street, NW  
Washington, DC 20005-3807

December 16, 2015

Re: DZ Privatbank (Schweiz) AG  
DOJ Swiss Bank Program – Category 2  
Non-Prosecution Agreement

Dear Ms. Boylan:

On December 20, 2013, DZ Privatbank (Schweiz) AG (“DZ Privatbank”) 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 DZ Privatbank in its Letter of Intent and information provided by DZ Privatbank 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 DZ Privatbank of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute DZ Privatbank 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 DZ Privatbank during the Applicable Period (the “conduct”). DZ Privatbank 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 DZ Privatbank and does not apply to any other entities or to any individuals. DZ Privatbank 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. DZ Privatbank enters into this Agreement pursuant to the authority

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

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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, DZ Privatbank agrees to pay the sum of \$7,452,000 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 DZ Privatbank. This payment is in lieu of restitution, forfeiture, or criminal fine against DZ Privatbank for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from DZ Privatbank with respect to the conduct described in this Agreement, unless the Tax Division determines DZ Privatbank has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. DZ Privatbank 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 DZ Privatbank has violated any provision of this Agreement. DZ Privatbank 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. DZ Privatbank agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. DZ Privatbank further agrees that no portion of the penalty that DZ Privatbank has agreed to pay to the Department under the terms of this Agreement will serve as a basis for DZ Privatbank 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) DZ Privatbank'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 DZ Privatbank 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) DZ Privatbank'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;

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

Under the terms of this Agreement, DZ Privatbank 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 DZ Privatbank, 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, DZ Privatbank 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

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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 DZ Privatbank 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 DZ Privatbank'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 DZ Privatbank; 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.

DZ Privatbank 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. DZ Privatbank 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. DZ Privatbank 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 DZ Privatbank.
3. DZ Privatbank 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

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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. DZ Privatbank 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, DZ Privatbank will promptly proceed to follow the procedures described above in paragraph 2.

4. DZ Privatbank 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.

DZ Privatbank's obligations under this Agreement shall continue for a period of four (4) years from the date this Agreement is fully executed. DZ Privatbank, 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) DZ Privatbank committed any U.S. federal offenses during the term of this Agreement; (b) DZ Privatbank 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) DZ Privatbank has otherwise materially violated any provision of this Agreement or the terms of the Swiss Bank Program, then (i) DZ Privatbank 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 DZ Privatbank'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 DZ Privatbank'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 DZ Privatbank shall be admissible in evidence in any criminal proceeding brought against DZ Privatbank and relied upon as evidence to support any penalty on DZ Privatbank; and (iii) DZ Privatbank 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.

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

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

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

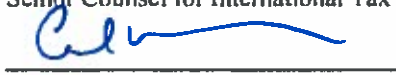
UNITED STATES DEPARTMENT OF JUSTICE  
TAX DIVISION

  
CAROLINE D. CIRAOLO  
Acting Assistant Attorney General

12/31/2015  
Date

  
THOMAS J. SAWYER  
Senior Counsel for International Tax Matters

12/31/2015  
Date

  
CARL D. WASSERMAN  
Trial Attorney

Dec. 31, 15  
Date


AGREED AND CONSENTED TO:  
DZ PRIVATBANK

By:   
DR. STEFAN SCHWAB  
Chairman of the Board

24.12.15  
Date

  
KLAUS-PETER BRAUER  
Member, Executive Board

24-12-15  
Date

APPROVED:  
  
KIM MARIE BOYLAN, ESQ.  
White & Case, LLP

December 24, 2015  
Date

Counsel for DZ Privatbank

**EXHIBIT A TO DZ PRIVATBANK (SCHWEIZ) AG  
NON-PROSECUTION AGREEMENT**

**STATEMENT OF FACTS**

**INTRODUCTION**

1. DZ PRIVATBANK (Schweiz) AG (“DZ PRIVATBANK” or the “Bank”) was founded in 1975 as BEG Bank Europäischer Genossenschaftsbanken, a public limited liability company under Swiss law. In early 2006, following several internal reorganizations and name changes, its name was changed to DZ PRIVATBANK (Schweiz) AG. The Bank’s sole office is in Zurich, Switzerland. It has no branches or U.S. operations.
2. DZ PRIVATBANK’s ultimate owners are regionally-based German cooperative banks, the customers of which are primarily individuals and small to medium-sized companies. The Bank’s primary business focus has always been to provide private banking services in Switzerland for customers of the German cooperative banks and it has always defined and marketed itself as the “Germany specialist in Switzerland.”
3. The vast majority of DZ PRIVATBANK’s customers are individuals domiciled in Germany and German nationals living abroad. Prior to 2008, the Bank had little focus outside of the German market and had no separate division, business unit, or desk that focused on any particular group of clients based on domicile or nationality.
4. As part of a reorganization, effective January 1, 2008, the Bank began operating two domicile-based divisions: Private Banking Germany, focusing primarily on clients domiciled in Germany and Switzerland and Private Banking International (“PBI”). PBI has two desks: Swiss Pro and International Markets. Swiss Pro is generally responsible for active trading clients, institutional clients, and for all external asset managed accounts regardless of the domicile or nationality of the customer. For accounts managed by external asset managers, the Bank acts solely as custodian for the accounts and has no discretion over client orders. International Markets is responsible for non-asset manager accounts everywhere in the world, including those domiciled in the United States, other than the countries for which Private Banking Germany is responsible.
5. The working language of the International Markets desk has always been English, given the diversity of countries for which it is responsible, and its private bankers (referred to as relationship managers) were initially selected because they spoke the best English. DZ PRIVATBANK has never had a division, business unit, or desk that focuses exclusively on U.S. clients and the relationship managers in PBI who were selected to work on the International Markets desk, and whose responsibilities included U.S. clients, did not possess any U.S.-specific knowledge or expertise when it was established.
6. DZ PRIVATBANK has never had a retail banking operation and has never offered retail banking services such as ATM machines, travelers’ checks, or online banking. The Bank



has never offered tax planning services to U.S. customers and has never offered advice to its clients on the use of entities or structures through which to hold account assets. DZ PRIVATBANK did not refer its customers to any external advisor to assist them which any such endeavors. DZ PRIVATBANK has never provided customers with cell phones or prepaid calling cards.

7. During the Applicable Period,<sup>1</sup> the maximum value of the Bank's total assets under management was approximately \$6.6 billion comprised of approximately 21,000 accounts.

### **U.S. INCOME TAX AND REPORTING OBLIGATIONS**

8. 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.
9. 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, formerly known as Form TD F 90-22.1 (the "FBAR"). The FBAR was due on June 30 of the following year.
10. 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.
11. Since 1935, Switzerland has maintained criminal laws, punishable by imprisonment, to 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 U.S. and certain legal request 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.

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

12. 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 (the “Department”) 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 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 I banks”). These cases have been closely monitored by banks operating in Switzerland, including DZ PRIVATBANK, since at least August of 2008.

### **DZ PRIVATBANK’S QUALIFIED INTERMEDIARY AGREEMENT**

13. DZ PRIVATBANK has operated under a Qualified Intermediary (“QI”) agreement with the IRS since 2001. The QI regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial 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. The QI Agreement took into account that DZ PRIVATBANK, like other Swiss banks, was prohibited by Swiss law from disclosing the identity of account holders.
14. Since 2001, the Bank required clients to execute a Form W-9 or a Form W-8BEN or equivalent if he or she desired to hold U.S. securities in the account. DZ PRIVATBANK neither encouraged nor discouraged U.S. persons from holding U.S. securities. Where a U.S. person executed a Form W-9 and held U.S. securities in an account, the Bank issued Forms 1099 reporting the income to the customer and the IRS. The Bank was aware that if the accounts did not trade in U.S. securities, the U.S. clients’ identities would not be disclosed to the IRS by the Bank. The Bank did not permit clients who had not executed a W-9 to purchase U.S. securities. Since the effective date of the QI agreement the Bank has always filed Forms 1042 (Annual Withholding Tax Return for U.S. Source Income of Foreign Persons) and 1042-S (Foreign Person’s U.S. Source Income Subject to Withholding) when required.
15. Historically, the Bank treated the account holder’s tax compliance as the exclusive responsibility of the client, regardless of the client’s domicile. As a matter of official policy, the Bank’s account opening forms stated that the customer is “obligated to inform the bank immediately if any U.S. tax obligation arises” with respect to its account. Nevertheless, with knowledge that the protections afforded by Swiss bank secrecy laws would prevent DZ PRIVATBANK from disclosing their identities, certain U.S. clients of the Bank filed false U.S. Individual Income Tax Returns, Forms 1040, which failed to report their respective interest in their undeclared accounts and the related income. Certain U.S. clients also failed to file FBARs.

16. Prior to the enactment of the U.S. Foreign Account Tax Compliance Act (“FATCA”), DZ PRIVATBANK did not believe that it had an obligation to collect tax forms from U.S. account holders who did not invest in or hold U.S. securities. Beginning in 2011, when the Bank began its FATCA implementation program, it required additional documentation from U.S. customers. Specifically, every new client was required to complete a form entitled Determination of U.S. Tax Status of Natural Persons or Determination of U.S. Tax Status for Legal Entities and Companies, which allows DZ PRIVATBANK to determine if the customer is a U.S. person under FATCA. If they are, DZ PRIVATBANK requires the person either confirm (via a Form W-9 and IRS waiver) or refute (via a W-8BEN or equivalent) his or her status as a U.S. person.
17. The Bank received advice from external U.S. legal advisors on how to become FATCA compliant and on developing and instituting an exit program for customers who would not comply with the Bank’s FATCA implementation program. The Bank blocked the accounts of customers who would not provide the required FATCA documentation and almost all of such accounts were terminated before the Swiss Bank Program began.

#### **OVERVIEW OF DZ PRIVATBANK’S U.S. CROSS-BORDER BUSINESS**

18. During the Applicable Period, the Bank had a total of 691 U.S. Related Accounts with aggregated assets under management of approximately \$498 million. Of the 691 U.S. related accounts, 577 were opened after February 28, 2009. Of these, 450 had assets under management of \$1 million or less and 334 had assets under management of \$500,000 or less. In 2010, the year with the highest number of open U.S. Related Accounts, there was a maximum of 444 U.S. Related Accounts, or approximately 2% of total accounts at the Bank.
19. DZ PRIVATBANK historically categorized its customers based on their place of domicile. As regulatory requirements applicable to U.S. account holders changed over time, the Bank’s definition of a U.S. customer also changed to ensure compliance with new regulatory requirements. The Bank has a limited number of protocols, directives, or procedures applicable only to U.S. customers. Most of its rules apply to all customers of the Bank, and any U.S.-specific requirements are in addition to the standard procedures, not in place of such procedures.
20. Until 2012, PBI had four relationship managers in the department, including management. Due to the department’s structure, the small number of relationship managers in that department, and the departure of various relationship managers and department heads over the Applicable Period, one long-term relationship manager has been or is currently the primary relationship manager for a large number of U.S. Related Accounts. However, all accounts at the Bank have a minimum of two relationship managers assigned because of the Bank’s “four eyes” principle that requires certain documents contain the signature of two relationship managers before any action will be taken with respect to such documents.

21. The Bank's relationship managers are compensated through a fixed income component and a bonus, which will not exceed 30 percent of fixed income. Relationship managers in PBI, including those who serve U.S. customers, are compensated in the identical manner as every other relationship manager. The Bank did not provide any additional financial incentives to its relationship managers to solicit or acquire U.S. Related Accounts.
22. Through its managers, employees and/or others, DZ PRIVATBANK knew or had reason to know that some U.S. taxpayers who had opened and maintained accounts at the Bank were not complying with their U.S. income tax and reporting obligations.
23. During much of the Applicable Period, DZ PRIVATBANK conducted a U.S. cross-border banking business that aided and assisted certain of its U.S. clients in opening and maintaining undeclared accounts in Switzerland and concealing the assets and income they held in these accounts from the U.S. government.
24. DZ PRIVATBANK offered a variety of traditional Swiss banking services that it knew could assist, and did in fact assist, U.S. clients in the concealment of assets and income from the IRS. One such service was the option of opening an account as a numbered, as opposed to named, account. The information required and maintained by the Bank about a numbered account is identical to that required and maintained for a named account. Numbered accounts, however, replace the taxpayers' name with a number on documents directly related to the account that provide account information. Only a limited number of Bank employees have access to information that would allow identification of the account holder. For purposes of bank secrecy laws, governmental inquiries, and Swiss judicial process, however, a numbered account was treated by the Bank as identical to a named account. Nevertheless, the Bank knew or should have known that numbered accounts could and did assist some of its U.S. clients in concealing their identities and assist in their efforts at tax evasion. 333 U.S. Related Accounts, including declared accounts, used the numbered-account service.
25. DZ PRIVATBANK also offered all of its customers the ability to have their mail held for them at the Bank. With respect to U.S. customers, by not sending bank statements and other mail relating to the accounts to the United States, documents reflecting the existence of the accounts remained outside the United States and generally beyond the reach of U.S. tax authorities. With respect to all clients in the United States, the Bank mandated the use of hold mail based on guidance from outside advisors that the sending of bank statements and other correspondence to the United States could be viewed as advising clients in the United States in violation of the rules of the Securities and Exchange Commission ("SEC"). In response to learning that authorities in certain countries, including the United States, believe that a hold-mail service represents an indication of non-compliance, beginning with the fiscal year 2012, the Bank sent tax reports to customers annually regardless of whether they otherwise utilized hold mail. The hold-mail service also was no longer required for U.S. customers, although some U.S. clients continued to use the hold-mail service thereafter. In addition, contrary to the Bank's rules, at least one employee of the Bank utilized personal email addresses to

conduct the business of the Bank with respect to U.S. Related Accounts during the Applicable Period.

26. The Bank also made available a post office box held in the name of a Bank employee, "Bank Employee #1," that could be used by customers, including U.S. Related Accounts during a portion of the Applicable Period, to send mail to the Bank.
27. The Bank made Maestro debit cards available to its customers regardless of the domicile or nationality of the account holder. The Maestro cards work like a debit card and are linked to funds in a specific bank account. No Maestro cards were linked to accounts held in the name of a company, as opposed to a natural person. All Maestro cards bore the name of the Bank and either the name or number of the account holder. With respect to 38 U.S. Related Accounts at the Bank during the Applicable Period, the Bank provided Maestro cards tied directly to a U.S. Related Account. Fourteen of these account holders never used the Maestro cards.
28. The Bank also made "Lombard loans" available to its clients, including U.S. clients, allowing account holders to borrow funds from the Bank secured by their account balances. Thirteen U.S. Related Accounts during the Applicable Period had a Lombard loan.
29. In or about July 2010, DZ PRIVATBANK accepted a U.S. Related Account from Credit Suisse where the customer may have been concealing the existence of the account from U.S. authorities and was likely actively attempting to conceal his account from the IRS. This customer and a former DZ PRIVATBANK relationship manager engaged in discussions related to various ways in which the customer could withdraw money from his account at the Bank, with the stated intention of not "attracting attention." It was ultimately agreed that checks would be sent monthly to, and in an amount set by, the customer. The customer failed to provide forms required by the Bank when it began its program to implement FATCA and, as a result, the account was blocked and ultimately closed for non-compliance. Nevertheless, the Bank unblocked the account several times (in contravention of the Bank's internal guidelines) through November 2012, so that the customer could continue to receive monthly checks.
30. As with all accounts, the Bank allowed U.S. Related Accounts during a portion of the Applicable Period the ability to withdraw funds in cash, subject to limitations which became much more restrictive when the Bank started its exit program in 2011.
31. Bank employees did not engage in any client solicitation or marketing activity in the U.S. Only two employees have at any time during the Applicable Period traveled to the U.S. for bank business. They did so in order to address a bank error that had been made with respect to a U.S. Related Account. Historically, all brochures and other marketing materials at the Bank were only in German. The first English language material was not available until January 2013.

32. Because it has a single office in Switzerland, DZ PRIVATBANK uses correspondent banks to complete all non-Swiss Franc transactions, including U.S. dollar transactions.

**ACQUISITION OF U.S. CLIENTS FROM CATEGORY 1 BANKS  
DURING THE APPLICABLE PERIOD**

33. In 2008, DZ PRIVATBANK decided to expand its international business operations. The Bank's international expansion plan focused on customers domiciled in various countries, including Great Britain, Hungary, Poland, Russia, Turkey, and the United States.
34. Beginning in 2009, a number of Swiss banks began to sever ties with U.S. customers in response to UBS's issues with U.S. enforcement agencies. Some banks also were withdrawing from the "affluent" segment of the private banking market, *i.e.*, customers with assets under management of below \$1 million and some banks, including Credit Suisse, increased its fees dramatically for this segment of its business. Credit Suisse also was reported to have threatened to close the accounts of U.S. account holders who were not tax compliant in the United States and who would not transfer their accounts to Credit Suisse's U.S. private banking operation.
35. In or about 2009, the Bank sought advice from an outside U.S. legal advisor on U.S. regulatory issues so that it could determine whether to continue to accept new U.S. customers and still be compliant with U.S. law in light of the issues then facing UBS. At this time, UBS was the only Swiss bank publicly facing issues with U.S. regulators and FINMA, the Swiss Financial Market Supervisory Authority, had issued statements detailing UBS's wrongdoings. As a result, the Bank decided not to accept further customers from UBS, but because UBS was the only bank identified at that time, the Bank did not believe that rejecting all potential U.S. customers was justified.
36. In May 2009, the Bank began accepting customers from Credit Suisse who had either terminated their relationship with Credit Suisse or whom Credit Suisse had terminated. The first such customer came to DZ PRIVATBANK by a chance meeting with a Bank relationship manager. That customer transferred an investment portfolio of less than \$250,000 from Credit Suisse which necessitated communication between the Bank and Credit Suisse in order to transfer the securities to the Bank. In or about June or July 2009, a Credit Suisse employee contacted DZ PRIVATBANK and, thereafter, two of the Bank's employees met with a Credit Suisse relationship manager in the Zurich branch of Credit Suisse. This Credit Suisse relationship manager explained that Credit Suisse needed to terminate a significant number of U.S. accounts and that he knew (from customer instructions it received to wire funds to the Bank) that DZ PRIVATBANK was accepting U.S. customers.
37. At this meeting, one or more of the Bank's employees provided the Credit Suisse relationship manager with several business cards. It is unknown whether or to what extent the business cards of the Bank's employees, or copies thereof, were provided by Credit Suisse relationship managers to the customers it was terminating. However, Credit Suisse

employees may have directed departing customers to the Bank by providing to those customers some of those business cards or copies thereof. Credit Suisse employees also occasionally walked its customers, generally elderly customers, to the Bank for purposes of opening a new account at the Bank. Credit Suisse's Zurich branch and DZ PRIVATBANK are located a few blocks away from each other. Additional customers came to the Bank as walk-ins.

38. The Bank opened 222 new U.S. Related Accounts with maximum aggregate assets under management of approximately \$106 million between January 1 and October 31, 2009. Prior to that period, the Bank had approximately 110 U.S. Related Accounts with Maximum Aggregate assets under management of \$133 million. As soon as the Bank became aware that business cards may have been left at Credit Suisse, in November 2009 the Bank expressly prohibited leaving business cards with other banks.
39. Bank employees corresponded and met with Credit Suisse personnel in connection with the transfer of accounts to the Bank.
  - a. In an email dated December 17, 2009, Credit Suisse Relationship Manager #1 notified a client that the account had to be closed before the end of December 2009, but indicated "DZ PRIVATBANK . . . will probably be an option for you." This email was forwarded to the Bank's general email address by Credit Suisse.
  - b. In another email dated May 6, 2010, Credit Suisse Relationship Manager #2 employee contacted an employee of DZ PRIVATBANK regarding the transfer of an account to the Bank: "I'm away during his stay. I have now ordered the gold so he can take it physically and can carry it 'over the road.' After I give him some cash, we will then close the relationship. [Credit Suisse Relationship Manager #3] has reviewed the documents and will supervise the case."
  - c. In 2009, Credit Suisse Relationship Manager #4 emailed an external asset manager about a U.S. customer. The external asset manager recommended DZ PRIVATBANK to the Credit Suisse employee. In an email dated November 12, 2009, the Credit Suisse employee advised: "I have a USA customer, domicile New York, assets USD 694,000, typical American, born in 1963, very nice. . . . He has no other bank accounts but would be glad if we could broker an account for him but he will not be in Switzerland any time soon. . . . Do you think that you could give him something by post? He would have his passport notarized, or we might be able to authenticate his passport as CS [Credit Suisse] (this approach would work for us). What do you think? The response was "Thank you, we will gladly accept the customer. As a bank, I again recommend the DZ Bank. We will be happy to send the account opening documents to the USA, but we would rather not send the asset management contract. It would be better if the customer travelled to Switzerland for that."

40. An internal DZ PRIVATBANK memorandum from late 2009 or early 2010 reported: “it should be recorded that the business with U.S. clients does indeed pose a risk for our bank. The measures taken, however, result in this risk being reduced to a reasonable level. It remains to be stated that the bank has already had banking ties with U.S. clients since at least 2007. The close and very good collaboration with all departments involved has, in my opinion, resulted in us being able to control and monitor this risk. It continues to be a niche and not a strategic growth goal!” This memorandum also reported on specific aspects of the Bank’s private banking international (PBI) division were discussed. The report noted that the U.S. clients contribute average custodian account assets of 300-500,000 Swiss francs, and that U.S. clients “continue to find their way to DZP by being referred via personal contacts of the PBI client advisers.”
41. In 2011, the Bank’s internal governance procedures identified certain customer markets as “target markets,” where the Bank actively sought to cultivate clients, and “ancillary markets,” where the Bank had over 40 customers or more than 40 million Swiss francs in assets under management. DZ PRIVATBANK considered the United States an ancillary market. Target and ancillary markets required the use of a “country manual” for guidance on doing business in those markets, as developed by the Swiss Bankers Association, Association of Foreign Banks in Switzerland, or barring that, required the Bank to obtain a legal opinion from a “well-known local law firm.”
42. Prior to the adoption of these procedures, and as a result of the inflow of customers from Credit Suisse, a preliminary, interim protocol for U.S. customers was developed by several Bank employees that, in part, incorporated the recommendations of the head relationship manager for U.S. accounts at Credit Suisse, Credit Suisse Relationship Manager #2. This was effective beginning in or about November 2009 and remained effective until February 2010, when portions of it were incorporated in a Cross-Border Handbook. Neither the interim protocol nor the February 2010 Cross-Border Handbook were approved by DZ PRIVATBANK’s compliance.
43. The February 2010 Cross-Border Handbook noted: “The bank has the following aims” listing first, “The bank wants – in the meaning of a side-business (Nebensegment) – [to] start business relations with U.S.-Customers.” The handbook continued that “U.S. clients need to be treated due to several regulatory requirements with extreme caution and reluctance.” The Cross-Border Handbook contained the following protocols:
- a. “Some Swiss banks currently terminate accounts with U.S.-customers (e.g. [a Category 1 Swiss Bank]). The respective advisors sometimes ask the advisors of PBI if US-clients are accepted. Our bank will be recommended afterwards. Therefore no active marketing is done by an advisor of PBI in the USA.”
  - b. No leavers from UBS were to be accepted.
  - c. In a section entitled “Recommendations by Other Banks,” the Handbook dictated: “In case the clients were advised to terminate their business relationship with their



former bank and are interested in a business relationship with DZP, the client will give an order to the other bank to forward his contact information to us. As a rule the client will call us to obtain a date for a meeting in Zurich." The handbook noted that if the client was "actually resident in the U.S." no discussion of investments could take place. Otherwise, "[t]he client will be guided by an employee of the other bank to DZ Bank and introduced to PBI personally."

- d. The February 2010 Handbook specifically set forth account opening procedures for exiting US clients of a specific employee of Credit Suisse and "his team at CS." In the case of an entity account with a U.S. beneficial owner, a Form A was to be completed in the case of a beneficial owner, but the account opening information would contain documents "without any signature."
  - e. In cases where the client could not open an account in person ("e.g. very high age of the client etc.") the procedures allowed for "correspondence opening" and established a detailed protocol to open such accounts. Personnel from DZ were not required to verify the identity of any Credit Suisse leavers under the new procedure, but would instead rely on a copy of a passport provided by Credit Suisse Relationship Manager #2 and his Credit Suisse team with the notation "seen original." Such correspondence openings were only to be done when recommended by a "trustworthy business partner." In the interim protocol, the "trustworthy business partner" was explicitly named as "[Credit Suisse Relationship Manager #2]."
  - f. For all correspondence account openings sent to the Bank, it was "mandatory to use: [the post office box address of Bank Employee #1]," and were not to contain any reference to the Bank on the envelope. The Bank does not believe that the correspondence account opening procedures were ultimately followed in relation to a U.S. Related Account.
  - g. The Cross-Border Handbook also declared that "[a]ny client being served a service we are not allowed to offer . . . are to be advised to switch their assets to a permissible investment. We may offer them asset management." U.S. clients were only to receive "basic services which count as account or depo[si]t services." The Handbook continued that "any tax issues are known to the clients or are assumed."
44. The February 2010 Handbook was reviewed by an outside advisor and was superseded by a Cross-Border Handbook in November 2010. The November 2010 Handbook eliminated post office box account procedures described above. The post office box held in the Bank employee's name was closed in January 2011.
45. Credit Suisse personnel also provided advice related to clients' potential participation in the IRS's offshore voluntary disclosure programs ("OVDP") to DZ PRIVATBANK personnel. For example, in or about April 2011, a DZ PRIVATBANK relationship

manager who had learned that some legal advisors were recommending a “quiet OVDP” filing sought the views of a Credit Suisse relationship manager on that topic, and was informed it was “really dangerous,” tantamount to “giv[ing] [the customer] the rope (to hang themselves),” and should never be recommended.

46. Credit Suisse has advised the Bank that it transferred 206 U.S. Related Accounts to DZ PRIVATBANK. The Bank has determined that seven of those accounts were not in fact U.S. Related Accounts. No fees were paid to Credit Suisse for such customers. Only one account transferred from Credit Suisse was opened after the U.S. government’s investigation of Credit Suisse was made public in July 2011.
47. In addition to Credit Suisse, during the Applicable Period DZ PRIVATBANK also accepted the transfer of more than two dozen U.S. Related Accounts from other Category I Swiss banks. No fees were paid to these banks for such customers. All but one of these accounts were accepted prior to the U.S. government investigations of these banks being made public. The Bank knew or should have known that some clients who transferred assets from Category I banks during the Applicable Period were undeclared to the IRS. By opening these U.S. Related Accounts, the Bank aided and abetted those U.S. clients in concealing income and assets from the IRS.
48. In or about mid-2011, the Bank began requiring new and existing U.S. Related Account holders to, *inter alia*, complete a Form W-9 and FATCA waiver, and, in 2013 required new account holders also to complete a general tax waiver, purchase a dividend or interest-bearing U.S. security in the account, and provide an affidavit affirming U.S. tax compliance and agreement to undertake certain actions, e.g., filing FBARs and properly reporting the account on U.S. tax returns.

#### **DZ PRIVATBANK’S RELATIONSHIPS WITH EXTERNAL ASSET MANAGERS**

49. Eighteen external asset managers managed at least one U.S. Related Account. Of these, nine were paid retrocessions or fees from the Bank, as described below, although the Bank did not have a special fee arrangement for U.S. Related Accounts. The fees were computed in the same manner regardless of whether the accounts were U.S. Related Accounts or not. No incentive was given for the introduction of U.S. Related Accounts.
50. Asset managed accounts generally held securities. The Bank and the external asset manager entered into a contract under which the Bank acted as the custodian of the underlying client assets and executed securities transactions initiated by or upon orders made by the external asset manager. The underlying customer also entered into an agreement with the external asset manager, to which the Bank is not a party. The underlying customer, and not the external asset manager, was listed in the Bank’s records as the customer.
51. An account that held securities was charged a quarterly fee by the Bank, regardless of whether an external asset manager was involved, based on the average value of the

securities held in the account. If no external asset manager was involved, the fee charged by the Bank was computed in one of two ways: (1) a fee based on the average value in the account plus a per-transaction fee, or (2) an all-in fee such that no per-transaction fee is imposed. Where an external asset manager was involved, a portion of the fee collected by the Bank was at times paid to the external asset manager as a "retrocession" which is equivalent to a commission. Such a retrocession fee would be computed in one of two ways: (1) the client paid the standard fee plus the per-transaction fee, or an all-in fee, and the Bank paid one-half of the fees to the external asset manager, or (2) the client paid to the Bank one-half of the normal fees (either all-in or average value/per-transaction fee) and the external asset manager's fee was entirely between the external asset manager and the customer.

52. In some instances, a finder's fee also was paid to an external asset manager. The finder's fee was paid for one or two years and was generally made only after the clients had been at the Bank for a period of time.
53. No retrocessions or finder's fees have been paid since 2013.
54. DZ PRIVATBANK did not have a comprehensive monitoring and control obligation over its external asset managers even though it understood, as explained in an internal memorandum, "the existing regulations can be circumvented by using such people." Nevertheless, "for reputation reasons" the Bank had established "certain selection and instruction obligations" and required external asset managers to "confirm to the bank in writing that they have the necessary authorizations for the country in which they operate." Despite not having such an obligation, the Bank did in fact monitor external asset managers. Even though account transactions were within the external asset manager's responsibility, DZ PRIVATBANK monitored external asset managers for abuses of their powers over accounts. Furthermore, any "particular circumstances" causing concern could result in discontinuation of DZ PRIVATBANK's relationship with the external asset manager.
55. DZ PRIVATBANK had a relationship with one external asset manager ("EAM-1") who was indicted by the U.S. Department of Justice after DZ PRIVATBANK severed its relationship with him. This relationship resulted from the Bank's hiring of two relationship managers from another Swiss bank in or about February 2010. These relationship managers brought EAM-1's business to the Bank. The relationship with EAM-1 began in February 2010 and ended in May 2011.
56. Relationship manager notes dated June 4, 2010 indicate that the Bank's legal compliance office was aware that EAM-1 and his company were rumored to be under accusations of aiding and abetting in tax evasion. As a result of this rumor, in May 2010, Bank employees met with the EAM-1, who denied the accusations. EAM-1 claimed that he had no information about proceedings against him in the United States, and that he had always complied with the laws of Switzerland. Notes of the Bank's employees regarding their meeting reflect a statement of EAM-1 that "a new employee of DZP, a former

executive officer for the American off-shore business, did certainly know perfectly well” about the EAM’s “earlier practices.” Five of EAM-1’s 15 customers were U.S. Related Accounts, which had a total combined high balance of \$28.4 Million.

57. When the above-mentioned relationship managers left the Bank in 2011, all five U.S. Related Accounts of EAM-1 were then transferred from the Bank. Two accounts were transferred to another bank in Zurich, one went to the U.S. office of a Category 1 bank, one was transferred to a Swiss Category 1 bank, and one was transferred to a bank in the Netherlands. DZ PRIVATBANK officially terminated its relationship with EAM-1’s company in May 2011, before EAM-1 was indicted in the United States.
58. DZ PRIVATBANK has also taken customers from other external asset managers. Some of these customers and/or the external asset managers are targets of U.S. criminal investigations. By accepting these customers and opening new accounts for them, DZ PRIVATBANK assisted U.S. taxpayers in continuing to commit such offenses.
59. In December 2013, DZ PRIVATBANK voluntarily submitted a letter of intent to participate in the Swiss Bank Program as a Category 2 bank.

#### **VOLUNTARY REMEDIAL MEASURES**

60. Starting in or about 2008, the Bank has increased its compliance procedures over U.S. accounts to help ensure compliance by its customers with their U.S. tax obligations and began encouraging its customers generally to participate in OVDP as early as 2009 if they were not, in fact, compliant.
61. In June of 2009, the Bank issued a directive forbidding any employee to travel to the U.S. on Bank business. The Bank knows of no violations of this directive.
62. Starting in or about June 2009, only employees specifically trained to handle U.S. customers are allowed to serve as relationship managers on U.S. Related Accounts to ensure compliance with the appropriate rules.
63. Beginning in 2011, the Bank required all customers opening an account at the Bank to execute an IRS Form W-9 or a Form W-8BEN or equivalent if he or she desired to hold U.S. securities in the account. Also beginning in 2011, the Bank also has required U.S. customers to execute an Acknowledgement of Regulatory Restrictions, stating that the Bank would not provide investment services in the U.S. or correspond with customers in the U.S., and, for those U.S. customers subject to tax withholding, the Bank requires a Withholding Statement regardless of whether U.S. securities are held in the account.
64. In or about 2011, pursuant to its implementation of a FATCA compliance program, the Bank began to require all existing potential U.S. customers to execute a form entitled Determination of U.S. Tax Status of Natural Persons or Determination of U.S. Tax Status for Legal Entities and Companies. If determined to be a customer subject to FATCA, the

Bank has required executed IRS Forms W-9, W-8BEN or equivalent, and FATCA Tax Waiver forms. For those customers subject to FATCA who would not agree to complete those forms, DZ PRIVATBANK instituted an exit program pursuant to which those customer accounts were closed and the customer relationship terminated.

65. Starting in or about March 2013, for U.S. customers domiciled in the U.S. the Bank will work with an external asset manager only if SEC-licensed or qualified for a Dodd-Frank exception.

#### **DZ PRIVATBANK'S COOPERATION THROUGHOUT THE SWISS BANK PROGRAM**

66. DZ PRIVATBANK has cooperated fully in connection with the Program and has made timely and comprehensive disclosures regarding its U.S. cross-border business. It engaged U.S. and Swiss counsel as well as forensic accountants and information technology experts separate from the team of the Independent Examiner to assist counsel.
67. The Bank engaged U.S. counsel to conduct an internal investigation of the Bank's structure, operation, and supervision of the cross-border banking business related to U.S. Related Accounts. U.S. counsel interviewed current and former key relationship managers responsible for U.S. Related Accounts, current and former supervisory relationship managers responsible for U.S. Related Accounts, current and former compliance personnel, and members of management. U.S. counsel also reviewed board minutes, client account files, including correspondence and relationship manager notes; analyzed relevant policies and directives; and conducted significant hard and electronic document gathering and review, including over two million emails. The Bank has provided over 1,400 pages of non-mitigation related documents, exclusive of documents specifically required under the terms of the Swiss Bank Program, to the Department. Relevant information gathered from the numerous interviews of current and former employees of the Bank that had involvement with U.S. Related Accounts also was provided to the Department. The names of relationship managers, management, supervisory and executive board members, legal, compliance, internal audit, and other persons (internal and external) involved with the structure, operation, and supervision of its U.S. cross-border business were provided to the Department in compliance with Swiss privacy law. The Bank also reviewed Leaver Lists from other banks to identify additional potential U.S. Related Accounts.
68. The Bank's Independent Examiner met in person twice with lawyers from the Department and has had several telephonic conferences with lawyers from the Department. He had complete access to all of the Bank's account information and computer systems thereby allowing its Independent Examiner to certify the precise number of U.S. Related Accounts for purposes of the Program. The Bank, U.S. counsel, and the Independent Examiner conducted a full analysis of U.S. persons, and performed a full review for every account where U.S. indicia existed, including reviewing all documents in the Bank's system and all customer relationship manager entries.

69. The Bank has provided a list of persons who had involvement in structuring, operating, and supervising its cross-border business and the functions performed by each person. The Bank also has provided information on the structure of its relationships with external asset managers and responded to the Department's requests as to the extent, if any, of its dealings with specific persons of interest to the Department.
70. The Bank retained a private investigator to locate persons that the Bank was unable to contact or who refused to be contacted by the Bank. U.S. counsel sent letters to such persons and U.S. counsel and/or Bank personnel spoke to many of them or their representatives to encourage them to provide the Bank with the requested waiver, proof of compliance or, if they had not been tax compliant, to enter OVDP. The Bank has continued to pursue holders of U.S. Related Accounts for which it would incur no penalty to help ensure that such accounts were or are disclosed to the United States. Specifically, the Bank sent a number of U.S. clients a letter in 2013 advising them that even if they held accounts upon which no taxes would have been due, disclosure of their accounts to the U.S. authorities may otherwise be required, and warned, "it appears likely that the identities of virtually all U.S. customers who held accounts with Swiss banks will eventually be disclosed to the authorities unless the banks can demonstrate that those clients complied with U.S. tax law. To that end, DZ PRIVATBANK (Schweiz) AG has collected evidence of its customers' compliance with the standards applicable during the banking relationship; however, in some cases, the DOJ may not consider this evidence to be sufficient proof of compliance. Accordingly, we therefore request that you send us any or all of the following documents that we believe are likely to be credited by the authorities." After listing those documents, DZ PRIVATBANK asked its clients for a waiver to allow for disclosure of the account holders' identities, and stated: "Please be advised that, under the [Swiss Bank] Program, the U.S. authorities are seeking to impose fines upon Swiss banks of up to 50% of the cumulative highest balances on the account(s) of any customer(s) that failed to comply with U.S. tax laws. The bank would be responsible for those fines in the first instance; however, we expect that any bank subject to such a fine may subsequently seek recompense from any customer(s) whose failure to provide necessary documentation caused damage to that bank." The Bank then offered to pay (and in some cases did pay) \$1000 if documents were provided by October 31, 2013. The Bank also advised that it would be willing to consider higher amounts if the costs incurred were higher than \$1000.
71. Although not appearing to meet the standard for a tax treaty request to Swiss authorities, one transaction was nevertheless disclosed to the Department of Justice so that it could make its own determination.
72. One of the Bank's former employees has objected to the disclosure of his or her name as allowed under Swiss law. One other former relationship manager with secondary responsibility for only one U.S. Related Account also has objected. The Bank is continuing to pursue its legal remedies related to the objections through the Swiss Judicial Process.

73. Of the Bank's total of 691 U.S. Related Accounts, more than half of them have been closed. Many of these accounts were closed in connection with DZ PRIVATBANK's compliance efforts described above.
74. The Bank obtained and provided the Department with client waivers for approximately 80% of the U.S. Related Accounts included in its penalty computation.

**EXHIBIT B TO NON-PROSECUTION AGREEMENT**  
**Resolution of the Board of Directors of DZ PRIVATBANK (Schweiz) AG**

At a duly held telephonic meeting held on December 21, 2015 the Board of Directors (the "Board") of DZ PRIVATBANK (Schweiz) AG (the "Company") resolved as follows:

**WHEREAS**, the Company has been engaged in discussions with the United States Department of Justice (the "DOJ") regarding certain issues arising out of, in connection with, or otherwise relating to the conduct of its U.S. cross-border business;

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

This Board hereby **RESOLVES** that:

1. The Board of the Company has reviewed the entire Agreement attached hereto, including the Statement of Facts attached as Exhibit A to the Agreement, consulted with Swiss and U.S. counsel in connection with this matter and voted unanimously to enter into the Agreement, including to pay a sum of \$7,452,000 to DOJ in connection with the Agreement;
2. Dr. Stefan Schwab, Chairman of the Board of Directors, and Klaus-Peter Bräuer, Member of the Executive Board (collectively, the "Authorized Signatories"), are hereby authorized on behalf of the Company to execute the Agreement substantially in such form as reviewed by this Board with such non-material changes as the Authorized Signatories may approve;
3. Kim Marie Boylan, White & Case, LLP, is entitled to sign the NPA in her capacity as the Company's counsel as additional signatory (the "Additional Signatory");
4. The Board hereby authorizes, empowers and directs the Authorized Signatories and Additional Signatory to take, on behalf of the Company, 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 document, as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions,
5. All of the actions of the Authorized Signatories and Additional Signatory of the Company, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Company.
6. This resolution may be executed in counterparts.

**IN WITNESS WHEREOF**, the Board of Directors of the Company has executed this Resolution on December 21, 2015.

  
\_\_\_\_\_  
Dr. Stefan Schwab  
Chairman

\_\_\_\_\_  
Karl-Heinz Moll  
Deputy Chairman

\_\_\_\_\_  
Professor Dr. Robert Waldburger  
Deputy Chairman

\_\_\_\_\_  
Richard Manger  
Member of the Board



**EXHIBIT B TO NON-PROSECUTION AGREEMENT**  
**Resolution of the Board of Directors of DZ PRIVATBANK (Schweiz) AG**

At a duly telephonic meeting held on December 21, 2015 the Board of Directors (the "Board") of DZ PRIVATBANK (Schweiz) AG (the "Company") resolved as follows:

**WHEREAS**, the Company has been engaged in discussions with the United States Department of Justice (the "DOJ") regarding certain issues arising out of, in connection with, or otherwise relating to the conduct of its U.S. cross-border business;

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

This Board hereby **RESOLVES** that:

1. The Board of the Company has reviewed the entire Agreement attached hereto, including the Statement of Facts attached as Exhibit A to the Agreement, consulted with Swiss and U.S. counsel in connection with this matter and voted unanimously to enter into the Agreement, including to pay a sum of \$7,452,000 to DOJ in connection with the Agreement;
2. Dr. Stefan Schwab, Chairman of the Board of Directors, and Klaus-Peter Bräuer, Member of the Executive Board (collectively, the "Authorized Signatories"), are hereby authorized on behalf of the Company to execute the Agreement substantially in such form as reviewed by this Board with such non-material changes as the Authorized Signatories may approve;
3. Kim Marie Boylan, White & Case, LLP, is entitled to sign the NPA in her capacity as the Company's counsel as additional signatory (the "Additional Signatory");
4. The Board hereby authorizes, empowers and directs the Authorized Signatories and Additional Signatory to take, on behalf of the Company, 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 document, as may be necessary or appropriate to carry out and effectuate the purpose and Intent of the foregoing resolutions,
5. All of the actions of the Authorized Signatories and Additional Signatory of the Company, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Company.
6. This resolution may be executed in counterparts.

**IN WITNESS WHEREOF**, the Board of Directors of the Company has executed this Resolution on December 21, 2015.

\_\_\_\_\_  
Dr. Stefan Schwab  
Chairman

  
\_\_\_\_\_  
Karl-Heinz Moll  
Deputy Chairman

\_\_\_\_\_  
Professor Dr. Robert Waldburger  
Deputy Chairman

\_\_\_\_\_  
Richard Manger  
Member of the Board

**EXHIBIT B TO NON-PROSECUTION AGREEMENT**  
**Resolution of the Board of Directors of DZ PRIVATBANK (Schweiz) AG**

At a duly telephonic meeting held on December 21, 2015 the Board of Directors (the "Board") of DZ PRIVATBANK (Schweiz) AG (the "Company") resolved as follows:

**WHEREAS**, the Company has been engaged in discussions with the United States Department of Justice (the "DOJ") regarding certain issues arising out of, in connection with, or otherwise relating to the conduct of its U.S. cross-border business;


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

This Board hereby **RESOLVES** that:

1. The Board of the Company has reviewed the entire Agreement attached hereto, including the Statement of Facts attached as Exhibit A to the Agreement, consulted with Swiss and U.S. counsel in connection with this matter and voted unanimously to enter into the Agreement, including to pay a sum of \$7,452,000 to DOJ in connection with the Agreement;
2. Dr. Stefan Schwab, Chairman of the Board of Directors, and Klaus-Peter Bräuer, Member of the Executive Board (collectively, the "Authorized Signatories"), are hereby authorized on behalf of the Company to execute the Agreement substantially in such form as reviewed by this Board with such non-material changes as the Authorized Signatories may approve;
3. Kim Marie Boylan, White & Case, LLP, is entitled to sign the NPA in her capacity as the Company's counsel as additional signatory (the "Additional Signatory");
4. The Board hereby authorizes, empowers and directs the Authorized Signatories and Additional Signatory to take, on behalf of the Company, 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 document, as may be necessary or appropriate to carry out and effectuate the purpose and Intent of the foregoing resolutions,
5. All of the actions of the Authorized Signatories and Additional Signatory of the Company, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Company.
6. This resolution may be executed in counterparts.

**IN WITNESS WHEREOF**, the Board of Directors of the Company has executed this Resolution on December 21, 2015.

\_\_\_\_\_  
Dr. Stefan Schwab  
Chairman

  
Professor Dr. Robert Waldburger  
Deputy Chairman

\_\_\_\_\_  
Karl-Heinz Moll  
Deputy Chairman

\_\_\_\_\_  
Richard Manger  
Member of the Board

**EXHIBIT B TO NON-PROSECUTION AGREEMENT**  
**Resolution of the Board of Directors of DZ PRIVATBANK (Schweiz) AG**

At a duly telephonic meeting held on December 21, 2015 the Board of Directors (the "Board") of DZ PRIVATBANK (Schweiz) AG (the "Company") resolved as follows:

**WHEREAS**, the Company has been engaged in discussions with the United States Department of Justice (the "DOJ") regarding certain issues arising out of, in connection with, or otherwise relating to the conduct of its U.S. cross-border business;

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

This Board hereby **RESOLVES** that:

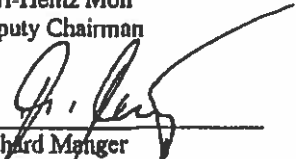
1. The Board of the Company has reviewed the entire Agreement attached hereto, including the Statement of Facts attached as Exhibit A to the Agreement, consulted with Swiss and U.S. counsel in connection with this matter and voted unanimously to enter into the Agreement, including to pay a sum of \$7,452,000 to DOJ in connection with the Agreement;
2. Dr. Stefan Schwab, Chairman of the Board of Directors, and Klaus-Peter Bräuer, Member of the Executive Board (collectively, the "Authorized Signatories"), are hereby authorized on behalf of the Company to execute the Agreement substantially in such form as reviewed by this Board with such non-material changes as the Authorized Signatories may approve;
3. Kim Marie Boylan, White & Case, LLP, is entitled to sign the NPA in her capacity as the Company's counsel as additional signatory (the "Additional Signatory");
4. The Board hereby authorizes, empowers and directs the Authorized Signatories and Additional Signatory to take, on behalf of the Company, 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 document, as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions,
5. All of the actions of the Authorized Signatories and Additional Signatory of the Company, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Company.
6. This resolution may be executed in counterparts.

IN WITNESS WHEREOF, the Board of Directors of the Company has executed this Resolution on December 21, 2015.

\_\_\_\_\_  
Dr. Stefan Schwab  
Chairman

\_\_\_\_\_  
Professor Dr. Robert Waldburger  
Deputy Chairman

\_\_\_\_\_  
Karl-Heinz Moll  
Deputy Chairman

  
\_\_\_\_\_  
Richard Manger  
Member of the Board