



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

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5-16-4700
2014200711

October 15, 2015

Scott H. Frewing
Joseph A. Myszka
Baker & McKenzie LLP
660 Hansen Way
Palo Alto, CA 94304-1044

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

Dear Mr. Frewing:

Habib Bank AG Zurich (“HBZ AG”) 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 HBZ AG in its Letter of Intent and information provided by HBZ AG 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 HBZ AG of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute HBZ AG 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 the Swiss Office of HBZ AG during the Applicable Period (the “conduct”).² HBZ AG 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

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

² HBZ AG has branches and subsidiaries in several jurisdictions, including but not limited to Canada, Hong Kong, Kenya, Pakistan, and the United Kingdom. This Agreement only pertains to U.S. Related Accounts held at HBZ AG’s sole Swiss Office (hereinafter, “HBZ Swiss Office”). Any U.S. Related Accounts held in any HBZ AG branches or offices outside of Switzerland are expressly not covered by the terms of this Agreement.

only to the Swiss Office of HBZ AG and does not apply to any other entities or to any individuals. HBZ AG 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. HBZ AG 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, HBZ AG agrees to pay the sum of \$9,400,000 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 HBZ AG. This payment is in lieu of restitution, forfeiture, or criminal fine against HBZ AG for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from HBZ AG with respect to the conduct described in this Agreement, unless the Tax Division determines HBZ AG has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. HBZ AG 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 HBZ AG has violated any provision of this Agreement. HBZ AG 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. HBZ AG agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. HBZ AG further agrees that no portion of the penalty that HBZ AG has agreed to pay to the Department under the terms of this Agreement will serve as a basis for HBZ AG 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) HBZ AG's timely, voluntary, and thorough disclosure of its conduct, including:

- how its cross-border business for U.S. Related Accounts held by HBZ Swiss Office 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 held by HBZ Swiss Office during the Applicable Period;
- how HBZ Swiss Office 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) HBZ AG'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) HBZ AG's production of information about its U.S. Related Accounts, including:

- the total number of U.S. Related Accounts held at HBZ Swiss Office 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 by HBZ Swiss Office during the Applicable Period; and
- upon execution of the Agreement, as to each account that was closed by HBZ Swiss Office 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 HBZ AG 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) HBZ AG's retention of a qualified independent examiner who has verified the information HBZ AG disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, HBZ AG 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 HBZ AG, 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, HBZ AG 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 HBZ AG 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 HBZ AG'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 HBZ AG; 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.

HBZ AG further agrees to undertake the following:

1. HBZ AG 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, HBZ AG will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. HBZ AG 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 HBZ AG.

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

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

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

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


CAROLINE D. CIRAOLO
Acting Assistant Attorney General
Tax Division

10/29/2015
DATE



THOMAS J. SAWYER
Senior Counsel for International Tax Matters

29 October 2015
DATE


HENRY C. DARMSTADTER
Trial Attorney

October 29, 2015
DATE

AGREED AND CONSENTED TO:
HABIB BANK AG ZURICH

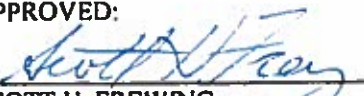
By: 
WALTER MATHIS
Deputy General Manager

October 21, 2015
DATE

By: 
PASCAL MANG
Group Head of Legal & Compliance

October 21, 2015
DATE

APPROVED:


SCOTT H. FREWING
BAKER & MCKENIZE LLP

10/24/2015
DATE

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

STATEMENT OF FACTS

BACKGROUND

1. Habib Bank AG Zurich (“HBZ AG”), a corporation organized under the laws of Switzerland, directly and through its branches and subsidiaries, operates a global financial business. As of December 31, 2013, HBZ AG had approximately 500,000 customer accounts (retail and commercial clients) worldwide, with a balance sheet of 7.8 billion Swiss francs and over 4,100 employees at 253 locations worldwide.
2. HBZ AG primarily serves South Asian commercial businesses and entrepreneurs, and their families. HBZ AG focuses on commercial banking, *i.e.*, providing services to businesses and merchants, and financing the international sale of goods through the provision of letters of credit. Due to HBZ AG’s focus on commercial banking, HBZ AG generally did not provided investment advice or traditional private banking services to individual clients.
3. This Statement of Facts pertains to the HBZ AG Swiss banking operation, which is the sole branch of HBZ AG in Switzerland (the “HBZ Swiss Office”). The HBZ Swiss Office has local management, a local banking team, and a client base with accounts held in Switzerland that is distinct from, and tracked and managed separately from the HBZ AG operations in other jurisdictions.

HISTORY OF HBZ AG

4. In 1941, Habib Bank Ltd. (“HBL”), the predecessor to HBZ AG, was founded in Bombay (now Mumbai), India. HBL was founded to serve the needs of the Indian business and merchant class. After the formation of Pakistan in 1947, HBL moved its headquarters to Karachi, Pakistan.
5. In 1967, the founders of HBL founded HBZ AG as a stand-alone entity in Switzerland.
6. In 1974, Pakistan nationalized HBL and all of its subsidiaries and overseas branches. Following the nationalization of HBL, the founders of HBZ AG rebuilt a global banking business independent of HBL.
7. HBZ AG has branches and subsidiaries in Canada, Hong Kong, Isle of Man, Kenya, Pakistan, South Africa, Switzerland, the United Arab Emirates, and the United Kingdom. The HBZ AG management structure is organized by country. For each country in which a HBZ AG branch or subsidiary is located, there is a Country Manager and a local team responsible for managing local operations. HBZ AG does not have any branches or subsidiaries located in the United States.

U.S. INCOME TAX & 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 (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.
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. “U.S. Related Accounts” means accounts which exceeded \$50,000 in value at any time during the Applicable Period,¹ and as to which indicia exist that a U.S. Person or Entity has or had a financial or beneficial interest in, ownership of, or signature authority (whether direct or indirect) or other authority over the account.
12. 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 certain U.S. clients of Swiss banks to conceal their Swiss bank accounts from U.S. authorities.
13. 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.

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 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”).

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 accounts and maintaining undeclared assets and income from the IRS. After the UBS announcement, 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"). The Category 1 banks' cases have been closely monitored by banks operating in Switzerland, including HBZ Swiss Office, since at least August of 2008.

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

14. In 2001, HBZ AG entered into a Qualified Intermediary agreement with the Internal Revenue Service ("IRS"). The Qualified Intermediary agreement was renewed in 2006. The Qualified Intermediary agreement and renewal related only to the branches in Switzerland and the United Kingdom. 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 Qualified Intermediary 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.
15. The Qualified Intermediary agreement took account of the fact that HBZ AG, 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 agreement required HBZ AG to obtain the consent of the account holder to disclose the client's identity to the IRS.
16. The HBZ Swiss Office failed to obtain proper QI documentation or to issue Forms 1099 for eight accounts beneficially owned by U.S. clients that held U.S. securities. These errors arose because the Bank failed to identify the account holders as U.S. persons and due to flaws with HBZ Swiss Office's internal procedures. HBZ Swiss Office inadequately implemented systems and procedures for QI compliance.
17. HBZ AG and the HBZ Swiss Office took steps to improve QI compliance. In 2011, HBZ AG hired a new Group Head of Legal and Compliance. The total Group Legal and Compliance head count increased from a single person with compliance and other duties to four full-time Legal and Compliance personnel. The HBZ Swiss Office also increased the size and quality of its Legal and Compliance team, from one person to three people.

THE HBZ SWISS OFFICE U.S. CROSS-BORDER BUSINESS

18. Throughout its existence, the HBZ Swiss Office's business relied substantially upon the personal relationships among the HBZ Swiss Office's clients and managers, particularly the HBZ Swiss Office Country Manager, to grow its client base. Customer relationships

grew through extended families and through interconnections within the Indian and Pakistani global community. It was common for senior managers at the HBZ Swiss Office to have longstanding relationships with senior members of an extended merchant family with family members in multiple jurisdictions.

19. As a result of those HBZ Swiss Office's longstanding relationships, the HBZ Swiss Office acquired U.S. clients. The HBZ Swiss Office obtained those U.S. clients primarily as a result of existing Indian or Pakistani clients or their children becoming U.S. persons. On occasion, existing clients referred U.S. clients to the HBZ Swiss Office.
20. From August 1, 2008 through the date of this Statement of Facts, the HBZ Swiss Office had 125 U.S. Related Accounts, comprising approximately \$118.9 million in assets under management. HBZ Swiss Office has not positioned itself as a traditional Swiss private bank. During the Applicable Period, HBZ Swiss Office did not rely on individual bankers or relationship managers to originate and service client accounts, and it did not compensate its bankers based on assets under management or revenues generated. During the Applicable Period, HBZ Swiss Office did not use or engage external asset managers for its accounts.
21. While HBZ Swiss Office did not assign a specific banker to a particular account during the Applicable Period, clients or account holders would frequently develop a relationship with a particular banker. The clients would communicate with bankers at the HBZ Swiss Office in person or via telephone or email regarding their accounts. The most common investments held at the HBZ Swiss Office were fiduciary deposits. These fiduciary deposits are similar to certificates of deposit in the United States which mature over a stated period of time and are often reinvested. The fiduciary deposits generally do not require day-to-day management. HBZ Swiss Office's account holders were generally not frequent traders in equities or other assets.
22. Prior to August 1, 2008 and thereafter, the HBZ Swiss Office was aware that its U.S. clients had a legal duty to report to the IRS, pay taxes on the basis of, all of the income, including income earned in accounts at HBZ Swiss Office
23. Prior to August 1, 2008, and thereafter, the HBZ Swiss Office failed to identify certain account holders as U.S. clients when HBZ Swiss Office management knew or should have known that the account holders were U.S. clients. In some instances the HBZ Swiss Office provided banking services to U.S. clients without obtaining proper documentation. Specifically, HBZ Swiss Office has identified eight U.S. Related Accounts that held U.S. securities during the Applicable Period for which the proper QI documentation was not obtained or the proper reporting was not made (e.g., HBZ Swiss Office failed to obtain Forms W-9 or W-8BEN, or to file Form 1099s).
24. Through its managers, employees and/or others, HBZ Swiss Office knew or should have known that certain U.S. clients that had opened and maintained accounts at the HBZ Swiss Office were not complying with their U.S. income tax and reporting obligations. The HBZ Swiss Office assisted or otherwise facilitated U.S. clients in establishing and maintaining undeclared accounts in a manner that the HBZ Swiss Office knew or should

have known was designed to conceal the U.S. clients' ownership or beneficial interest in the accounts.

25. Prior to August 1, 2008, and thereafter, due largely to the means provided by HBZ Swiss Office and its personnel, and with the knowledge that Swiss banking secrecy laws would prevent HBZ Swiss Office from disclosing their identities to the IRS, certain U.S. clients of the HBZ Swiss Office did not comply with their U.S. tax obligations, including failing to file required tax or information returns, filing false federal tax returns with the IRS, and otherwise concealing from the IRS their beneficial ownership of undeclared assets maintained at the HBZ Swiss Office.
26. In approximately 15 cases, employees of Habib American Bank, Inc. ("HAB") an unrelated bank with common ownership, introduced or referred U.S. persons to the HBZ Swiss Office. HBZ AG has identified one account opened at the HBZ Swiss Office for a U.S. person as a result of a referral from HAB. HBZ AG and HAB are owned through separate legal structures for the benefit of members of the same extended family. HAB is organized under the laws of the State of New York, and is primarily regulated by the New York State Banking Commission, the Federal Reserve of New York, and the Federal Deposit Insurance Corporation.
27. The HBZ Swiss Office failed to take or committed the following acts that contributed to the ability of certain of HBZ Swiss Office's U.S. clients not to comply with U.S. tax and information reporting requirements:
 - a. The HBZ Swiss Office failed to properly obtain QI documentation or to issue Forms 1099 for eight accounts of U.S. clients that held U.S. securities. The HBZ Swiss Office inadequately implemented systems and procedures for QI compliance.
 - b. On certain occasions, the HBZ Swiss Office opened bank accounts knowing that the beneficial owners were U.S. persons without ascertaining the beneficial owners' U.S. tax compliance.
 - c. HBZ Swiss Office offered a variety of traditional Swiss banking services that it knew could assist, and did assist, U.S. clients in concealing assets and income from the IRS. One such service was "hold mail" service. For a fee, HBZ Swiss Office would hold all mail correspondence of a client, agreeing to hold bank statements and other mail relating to accounts rather than send them to the U.S. taxpayers in the United States, thus ensuring that documents reflecting the existence of the accounts remained outside the United States, beyond the reach of U.S. tax authorities, and protected by Swiss banking secrecy laws. During the Applicable Period, 93 of the U.S. Related Accounts used HBZ Swiss Office's hold mail service.
 - d. HBZ Swiss Office also offered numbered or pseudonym accounts. For a fee, the HBZ Swiss Office would allow account holders to disguise their identity in favor of a pseudonym or number. The Bank offered its clients the option of having an

account designated “highly confidential” or “partially coded.” There were two variations of highly confidential accounts, one in which the account name was designated in code, and one in which the name and other individuals associated with the account had code names. In the first variation, a code was used to designate the account name in the electronic records system. In the second variation, a code was used to designate both the name of the account and the names of any authorities on the account, such as account holders, beneficial owners and power-of-attorney holders, in the electronic record system. For a “partially coded” account, the account name reflected in the electronic records system was a condensed version of the account holder’s actual name. Typically, the partial code was an abbreviation of the account holder’s name or the account holder’s initials. For all of these alternatives, all other account information was recorded in the electronic record system and the bank documented the true identity of the beneficial owner as required by Swiss law. By accepting and maintaining such accounts, the HBZ Swiss Office knew or should have known that it was assisting U.S. taxpayers who sought to evade their U.S. tax obligations. These services allowed U.S. clients to minimize the paper trail associated with the undeclared assets and income they held at HBZ Swiss Office.

- e. In connection with one relationship, the HBZ Swiss Office assisted with creating four Liechtenstein “Anstalts” or entities with U.S. beneficial owners. A Liechtenstein law firm structured and managed these entities. This Liechtenstein law firm served as the nominee, director, and signatory authority of these accounts. The HBZ Swiss Office knew or should have known that these entities were created with an intention of masking U.S. ownership. The HBZ Swiss Office opened accounts for these entities knowing that they were beneficially owned by U.S. persons. The HBZ Swiss Office further facilitated the transfer of the funds from these accounts to HBZ Finance Limited, Hong Kong. The HBZ Swiss Office knew or should have known the transfer was principally for the purpose of avoiding U.S. tax and reporting obligations.²
- f. In connection with closing U.S. Related Accounts, the HBZ AG Swiss Office permitted certain U.S. clients to transfer funds to accounts held at other HBZ AG branches and subsidiaries, or to other accounts at the HBZ Swiss Office, either knowing or when it should have known that such transfers were motivated by a desire to avoid U.S. tax or information reporting requirements.

² At the time of the transfers, HBZ Finance Limited was a deposit taking company. HBZ Finance Limited is now known as Habib Bank Zurich (Hong Kong) Limited, and is now a Restricted License Bank. At the time of the transfer, HBZ AG owned eight percent of the shares of HBZ Finance Limited, and now owns 51 percent of the shares of Habib Bank Zurich (Hong Kong) Limited.

**HBZ SWISS OFFICE'S COOPERATION THROUGHOUT
THE SWISS BANK PROGRAM**

28. The HBZ Swiss Office has fully cooperated with the Department of Justice in relation to the Swiss Bank Program by, among other things, providing all relevant and requested information and documents to the Department of Justice relating to its U.S. business. The Bank has also taken actions to encourage U.S. persons to disclose their accounts to the IRS.
29. The HBZ Swiss Office dedicated significant time and effort to convince certain U.S. taxpayers to participate in the IRS's Offshore Voluntary Disclosure Program ("OVDP"), including numerous follow-up discussions to ensure that these individuals followed through on the commitment to enter the OVDP.
30. In addition, the HBZ Swiss Office has provided certain account information related to U.S. taxpayers that will enable the Government to make requests under the 1996 Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income for, among other things, the identities of U.S. account holders.

Exhibit B to the Non-Prosecution Agreement with Habib Bank AG Zurich

**Circular Resolution of the Board of Directors of
Habib Bank AG Zurich, dated 21 October 2015**

The Board of Directors (the "Board") of Habib Bank AG Zurich (the "Bank") takes note of the following:

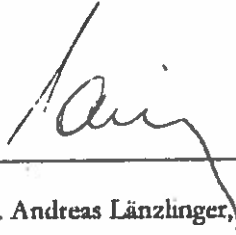
- In the Joint Statement between the United States Department of Justice ("DOJ") and the Swiss Federal Department of Finance, Swiss Banks have been encouraged by the Swiss Government and the Swiss Financial Market Authority (FINMA) to participate in the Program for Non-Prosecution Agreements or Non-Target-Letters for Swiss Banks, dated 29 August 2013 (the "US Program").
- The Board decided in December 2013 that the Bank would participate in the US Program. The Bank submitted on 23 December 2013 a Letter of Intent to the DOJ indicating its interest to participate as Category 2 Bank in the US Program.
- The DOJ proposed to the Bank to enter into a Non-Prosecution Agreement ("NPA").

On the basis of deliberations held, and pursuant to article 26.3 of the By-laws of the Bank, the Board hereby resolves that:

1. The Board of the Bank has reviewed the entire NPA attached hereto, including the Statement of Facts attached as Exhibit A to the NPA, and voted unanimously to enter into the NPA and to pay the sum of USD 9,400,000 to the DOJ in connection with said NPA.
2. Walter Mathis, Deputy General Manager and Dr. Pascal Mang, Group Head of Legal & Compliance, are hereby authorized to execute the NPA on behalf of the Bank (the "Authorized Signatories") substantially in such form as reviewed by the Board with such non-material changes as the Authorized Signatories may approve.
3. Scott Frewing, Baker & McKenzie, is hereby authorized to sign the NPA in his capacity as the Bank's US legal counsel (the "Additional Signatory").
4. The Bank hereby authorizes, empowers and directs the Authorized Signatories to take, on behalf of the Bank, any and all actions as may be necessary or appropriate, and to approve and execute the forms, terms or provisions of any agreement or other 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 the Additional Signatory which have or will be taken in connection with the NPA are hereby ratified, confirmed, approved and adopted as actions on behalf of the Bank.

In witness whereof, the members of the Board of Directors of Bank have executed this Resolution.



Dr. Andreas Länzlinger, Chairman

Urs Seiler, Vice Chairman

Dr. Marco Duss, Member

Ursula Suter, Member

Ray Barnes, Member

Dr. Stephan Thaler, Member

21 October 2015

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Dr. Andreas Lanzinger, Chairman



Urs Seiler, Vice Chairman

Dr. Marco Duss, Member

Ursula Suter, Member

Ray Barnes, Member

Dr. Stephan Thaler, Member

21 October 2015

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Urs Seiler, Vice Chairman

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21 October 2015