



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:GEVanHoey
5-16-4713
2014200724

September 10, 2015

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

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

Dear Mr. Green:

Migros Bank AG submitted a Letter of Intent on December 27, 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 Migros Bank in its Letter of Intent and information provided by Migros Bank 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 Migros Bank of the Swiss Bank Program will constitute a breach of this Agreement.

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

¹ 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, Migros Bank agrees to pay the sum of \$15,037,000 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 Migros Bank. This payment is in lieu of restitution, forfeiture, or criminal fine against Migros Bank for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Migros Bank with respect to the conduct described in this Agreement, unless the Tax Division determines Migros Bank has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Migros Bank 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 Migros Bank has violated any provision of this Agreement. Migros Bank 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. Migros Bank agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Migros Bank further agrees that no portion of the penalty that Migros Bank has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Migros Bank 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) Migros Bank'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 Migros Bank 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) Migros Bank'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) Migros Bank'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 Migros Bank 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) Migros Bank's retention of a qualified independent examiner who has verified the information Migros Bank disclosed pursuant to Part II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Migros Bank 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 Migros Bank, 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, Migros Bank 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 Migros Bank 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 Migros Bank'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 Migros Bank; 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.

Migros Bank further agrees to undertake the following:

1. The Tax Division has agreed to specific dollar threshold limitations for the initial production of transaction information pursuant to Part II.D.2.b.vi of the Swiss Bank Program, as set forth in subparagraph (c) on pages 2-3 of this Agreement. Migros Bank 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. Migros Bank 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 Migros Bank.
3. Migros Bank 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. Migros Bank 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, Migros Bank will promptly proceed to follow the procedures described above in paragraph 2.

4. Migros Bank 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.

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

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

This Agreement supersedes all prior understandings, promises and/or conditions between the Department and Migros Bank. 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. CIRAULO
Acting Assistant Attorney General
Tax Division

9/25/2015
DATE



THOMAS J. SAWYER
Senior Counsel for International Tax Matters

25 sep. 2015
DATE



GREGORY E. VAN HOEY
Trial Attorney

9/25/2015
DATE



MICHAEL R. PAHL
Trial Attorney

9/25/2015
DATE

AGREED AND CONSENTED TO:
MIGROS BANK AG

By: 

HERBERT BOLLIGER
President of the Board of Directors

21/09/2015
DATE

By: 

JÖRG ZULAUF
Vice President of the Board of Directors

21. 9. 2015
DATE

APPROVED:


THOMAS C. GREEN
Sidley Austin LLP

9/21/2015
DATE

**EXHIBIT A TO MIGROS BANK AG
NON-PROSECUTION AGREEMENT**

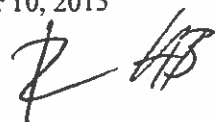
STATEMENT OF FACTS

INTRODUCTION

1. Migros Bank AG ("Migros Bank" or the "Bank") is a corporation organized under the laws of Switzerland. Migros Bank is wholly owned by the Migros Federation of Cooperatives, which also owns the largest group of Swiss retail companies, including the largest supermarket chain in Switzerland. Swiss cooperatives are member-owned associations that further their members' economic interests through common action, much like credit unions do in the United States.
2. Migros Bank was founded in 1957 and is headquartered in Zurich, Switzerland. As of December 31, 2014, the Bank had 66 offices (all in Switzerland), over 1,300 employees, and assets under management of approximately 40 billion Swiss francs.
3. As a large retail bank, Migros Bank has traditionally focused on providing financial accounts and loans to middle- and lower-class clients. But the Bank also provides "premium banking" products with better rates for clients with combined assets exceeding 250,000 Swiss francs or mortgages on Swiss real estate exceeding 750,000 Swiss francs.
4. Over the years, Migros Bank has provided financial accounts to U.S. citizens, U.S. permanent legal residents, and U.S. resident aliens (collectively, "U.S. persons").

U.S. INCOME TAX & REPORTING OBLIGATIONS

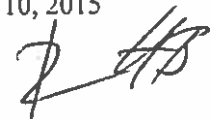
5. U.S. persons have an obligation to report to the Internal Revenue Service ("IRS") all income earned from foreign financial accounts on their U.S. Individual Income Tax Returns (IRS Form 1040) and to pay the taxes due on that income. Since 1976, U.S. persons have also had an obligation to report on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



8. On December 27, 2013, Migros Bank entered the United States Department of Justice's Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Swiss Bank Program") as a Category 2 bank.

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

9. From August 1, 2008, through December 31, 2014 (the "Applicable Period"), Migros Bank provided banking services for 898 "U.S. Related Accounts," as defined under the Swiss Bank Program, with over \$273 million in assets.
10. Migros Bank knew that U.S. persons had a duty under U.S. law to report their income to the IRS and to pay taxes on that income, including all income earned in accounts maintained by Migros Bank in Switzerland.
11. Despite this knowledge, Migros Bank opened, maintained, and serviced accounts for U.S. persons that it knew or had reason to know were likely not declared to the IRS or the U.S. Department of the Treasury as required by U.S. law.
12. Many accounts that Migros Bank opened for U.S. persons were not, in fact, timely declared on Forms 1040 or FBARs, often for multiple years.
13. Prior to 2009, when deciding whether to accept U.S. persons as clients, Migros Bank applied the same procedures that it applied to all of its prospective clients. These procedures were based on Swiss banking laws and regulations, including know-your-client ("KYC") and anti-money laundering ("AML") rules.
14. Migros Bank personnel never traveled to the United States to solicit or assist U.S. clients. Most of the U.S. persons who became Bank clients before 2009 had family or occupational ties to Switzerland.
15. Before 2009, Migros Bank assigned a relationship manager to administer the accounts of each of its premium-banking clients, including U.S. persons. Because Migros Bank was a large retail bank, each relationship manager typically had hundreds of premium-banking clients, and client inquiries were answered by any one of several relationship managers from a particular regional group or team. Retail-banking clients, including U.S. persons, did not have dedicated relationship managers.
16. Until 2012, Migros Bank provided its U.S. clients with the option to request that the Bank retain all mail related to their financial accounts in exchange for a standard service fee. Migros Bank understood that providing "hold-mail" agreements could allow U.S. persons to keep evidence of their accounts outside of the United States in order to conceal assets and income from the IRS. During the Applicable Period, there were 50 U.S. Related Accounts with hold-mail agreements at Migros Bank.
17. Until 2012, Migros Bank provided its premium-banking U.S. clients with the option to request "numbered" accounts in exchange for a standard service fee. For numbered accounts, the accountholder's name and address were not visible to most employees on the Bank's core electronic records system. Instead, that data was only visible to select Bank officials on a separate electronic system. Numbered-account agreements

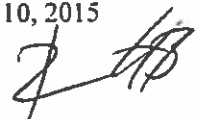


at Migros Bank also included hold-mail agreements as part of their terms. During the Applicable Period, there were 25 numbered U.S. Related Accounts at Migros Bank.

18. Until 2009, Migros Bank communicated with its U.S. clients (including U.S.-domiciled clients) by telephone, fax, and e-mail. Absent a hold-mail agreement, Migros Bank also sent bank statements and other paper correspondence to the clients.
19. Until 2009, Migros Bank provided e-banking services to its U.S. clients (including U.S.-domiciled clients) that allowed them to view account information and initiate account transactions over the internet from computers located anywhere in the world. However, the e-banking system was only available in German, French, and Italian.
20. During the Applicable Period, Migros Bank maintained correspondent accounts at three U.S. banks to facilitate certain transactions for its clients – namely, conducting wire transfers in U.S. dollars, issuing checks in U.S. dollars, and collecting checks issued in U.S. dollars. During the Applicable Period, Migros Bank executed transactions for 134 U.S. Related Accounts using these correspondent accounts.
21. During the Applicable Period, Migros Bank provided credit cards to U.S. persons associated with 209 U.S. Related Accounts at the Bank. The Bank also provided travel cash cards to U.S. persons, onto which they could load up to 10,000 Swiss francs from their accounts. Use of credit cards and travel cash cards by U.S. persons facilitated their access to and use of any undeclared funds on deposit at the Bank.

THE BANK'S SUBVERSION OF THE QI AGREEMENT

22. In January 2001, Migros Bank entered into a Qualified Intermediary ("QI") Agreement with the IRS. The QI regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution regarding U.S. securities. The QI Agreement was designed to help ensure that non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons were properly paying U.S. tax – in each case, with respect to U.S. securities held in an account with the QI.
23. The QI Agreement expressly recognized that a non-U.S. financial institution (such as Migros Bank) may be prohibited by foreign law (such as Swiss law) from disclosing an account holder's name or other identifying information. In general, a QI subject to such foreign-law restrictions had to request that its U.S. clients either (a) grant the QI authority to disclose the client's identity or disclose himself by mandating the QI to provide an IRS Form W-9 completed by the account holder, or (b) grant the QI authority to sell all U.S. securities of the account holder (in the case of accounts opened before January 1, 2001) or to exclude all U.S. securities from the account (in the case of accounts opened on or after January 1, 2001), in which case the client's identity would remain undisclosed. Following the effective date of the QI Agreement, a sale of U.S. securities, if any, held by a U.S. person who chose not to provide a QI with an IRS Form W-9 was subject to tax information reporting on an anonymous basis and backup withholding.
24. Before and during the Applicable Period, Migros Bank issued several directives to its employees concerning the QI Agreement. The October 2000 directive stated that

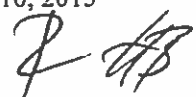


persons subject to U.S. taxes who did not want to be disclosed to the "U.S. tax authority" would not be authorized to hold or purchase U.S. securities in their accounts beginning on January 1, 2001. The directive further stated that persons subject to U.S. taxes who disclosed their identities to the U.S. tax authority via a Form W-9 could purchase and sell U.S. securities without restriction.

25. Migros Bank also created a handbook regarding the QI Agreement, which the Bank first issued to its employees in 2003. Among other things, the handbook:
 - a. recognized that "the U.S. retains the right to full taxation of its citizens," but also that a "U.S. person has the option not to disclose to U.S. tax authorities";
 - b. instructed Bank employees that "[i]f a U.S. person does not wish to disclose to U.S. tax authorities, it is sufficient if the W-9 form is not filled out for Migros Bank," and that the customer could sign a waiver to forego investing in U.S. securities; and
 - c. instructed Bank employees that clients residing in the United States "who would like to refrain from disclosure" could be "tended to" by, among other things: retaining their mail in Switzerland through hold-mail agreements; not making regular transfers of funds to the United States; and not sending payment orders from the United States.
26. From 2001 until May 2012, Migros Bank relationship managers assisted U.S. persons holding securities accounts in executing waiver forms that directed the Bank not to acquire U.S. securities in their accounts. Migros Bank knew that the purpose and effect of the forms was to avoid disclosing the identities of the U.S. persons to the IRS under the QI Agreement.

THE BANK'S COLLABORATION WITH AN EXTERNAL ASSET MANAGER

27. From 2001 until 2005, Migros Bank accepted referrals of U.S. persons as new clients from an external asset manager based in Switzerland. The external asset manager brought a total of 165 U.S. Related Accounts to the Bank during that period, and most of those accountholders were U.S. residents. The maximum value of these accounts during that period was approximately \$62 million. In return for these referrals, Migros Bank paid retrocession fees to the external asset manager that consisted of portions of various fees that his clients paid to the Bank.
28. During this period, the external asset manager visited his U.S. clients (who held accounts at Migros Bank) in the United States. The Bank was aware of these visits but did not request them. The external asset manager had full control of his clients' accounts, and the Bank's relationship managers usually interacted with him rather than with his clients.
29. In 2005, Migros Bank decided to terminate its relationship with the external asset manager. But the Bank did not end the relationship until the end of 2006 in order to provide the external relationship manager with additional time to contact his clients and possibly move their funds to other depository banks. Alternatively, his clients

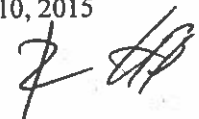


could elect to stay at Migros Bank and give the external asset manager powers of attorney to continue managing their accounts, though he would no longer receive retrocession fees from Migros Bank or have a dedicated relationship manager.

30. Nine U.S. Related Accounts brought to Migros Bank by the external asset manager remained at the Bank during the Applicable Period. The external asset manager transferred many more U.S. Related Accounts to another Swiss bank.
31. Migros Bank has not engaged in financial relationships with any other external asset managers for U.S. Related Accounts since 2006.

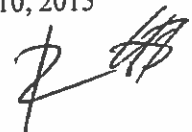
THE BANK'S FLAWED RESPONSE TO THE U.S. GOVERNMENT INVESTIGATION OF UBS AG

32. In 2008, Swiss bank UBS AG ("UBS") publicly announced that it was the target of a criminal investigation by the IRS and the U.S. Department of Justice. UBS also announced that it would be exiting its U.S. cross-border business and no longer accepting U.S. clients.
33. In December 2008, Migros Bank's executive board established a working group of Bank officials to study the situation of U.S.-domiciled clients (whom the Bank considered to be the riskiest U.S. persons from a U.S. tax-enforcement perspective), identify any related risks to the Bank, and propose measures to limit such risks.
34. On December 17, 2008, the working group presented its findings and recommendations to the executive board. Among other things, the working group reported that Migros Bank had 1,000 U.S.-domiciled clients with assets under management of approximately 100 million Swiss francs. The ten percent of those clients who were in premium banking represented about fifty percent of the assets under management. The working group also reported that many Swiss banks, including UBS and Credit Suisse AG, were discontinuing the provision of advisory services from Switzerland for U.S. clients.
35. The working group assessed the risk of U.S. tax authorities taking actions against additional Swiss banks as moderate and the risk of Migros Bank's website and e-banking services causing it to fall under U.S. bank supervision as low. They also assessed the risk of relationship managers' insufficient legal and linguistic knowledge causing erroneous advice to U.S.-domiciled clients as moderate.
36. The working group proposed three alternative solutions to manage these risks: (a) maintain the status quo of numerous, dispersed relationship managers serving U.S.-domiciled clients; (b) discontinue all business relations with U.S.-domiciled clients; or (c) assign all U.S.-domiciled clients to a specialized, centralized team of relationship managers (a "U.S. desk") capable of serving them professionally.
37. The working group considered discontinuing business with all U.S.-domiciled clients to be a "low priority" because that business generated earnings with hardly any additional expenditure and had "further potential as various banks are discontinuing the provision of advisory services." Instead, the working group considered the creation of a U.S. desk to be a top priority. The working group presented a business



case for this option that envisioned obtaining an additional 1% share of the total U.S.-domiciled clients with over 1 million Swiss francs in assets then being served by all Swiss banks. The working group estimated that there were over 2,500 UBS clients alone in that category. The business case also envisioned potentially obtaining an additional 2% share of all other U.S.-domiciled clients, "depending on the strategy." The working group estimated that this course of action would result in Migros Bank having 250 million Swiss francs under management from U.S.-domiciled clients.

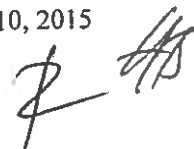
38. After receiving the working group's presentation, the Migros Bank executive board discussed the "image risk" involved in creating a U.S. desk. One Bank executive noted that Migros Bank was earning less on its "so-called core business" and should accordingly also look for "niche businesses." The executive board ultimately decided, starting in 2009, to create a U.S. desk by re-assigning all U.S.-domiciled clients (whether in premium or retail banking) to a group of premium-banking relationship managers who spoke English and had received specialized regulatory training. The head of the premium-banking department had ultimate responsibility over this team, which eventually included nine relationship managers. However, rather than being centralized in one location, these relationship managers would remain in their particular regions and still report to regional supervisors.
39. On February 18, 2009, the U.S. Department of Justice and UBS filed a deferred prosecution agreement in the U.S. District Court for the Southern District of Florida in which UBS admitted that its U.S. cross-border business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared financial accounts. On the same day, the Swiss Financial Markets Supervisory Authority ("FINMA") also published a report on its investigation into the U.S. cross-border business of UBS.
40. These developments caused Migros Bank to review its policies on communications with clients in the United States. In the meantime, in April and May 2009, the executive board was advised that instructions for relationship managers were urgently needed because U.S. persons were actively approaching the Bank to open accounts and major Swiss banks were sending their U.S. customers to Migros Bank.
41. In May 2009, Migros Bank issued a directive requiring that the head of the premium-banking department approve all new U.S.-domiciled clients, prohibiting Bank employees from sending correspondence to the United States or accepting orders received by telephone, fax, or mail from the United States, and prohibiting U.S.-domiciled clients from initiating transactions through the e-banking system. The Bank also placed these account holders in a restricted category requiring additional monitoring by the Bank's compliance department. The Bank issued this directive after its auditor had approved it as consistent with U.S. law and after the Bank's executive board had confirmed its decision to continue advising U.S. customers and accepting new U.S. accounts.
42. Since 2008, several Swiss banks besides UBS have publicly announced that they were or are the targets of similar criminal investigations. UBS and these other targeted Swiss banks are collectively called "Category 1 banks" in the Swiss Bank Program.
43. After issuing the directive, Migros Bank accepted 37 new U.S. Related Accounts in the remainder of 2009. Of these, 17 were funded by transfers from Category 1 banks.



44. During 2010, Migros Bank placed several restrictions on its U.S. clients, including prohibiting them from holding Swiss mutual funds because the funds did not generate the necessary capital-gain statements for U.S. tax purposes. The Bank also began considering its response to the Foreign Account Tax Compliance Act ("FATCA"). At an October 2010 meeting of the Bank's executive board, one executive noted that banks that were not in compliance with FATCA "would be presented as black sheep by the U.S. authorities which serious banks should not have any dealings with." But he also emphasized that "as a medium-sized Swiss bank with a business strategy aimed at a Swiss customer base, we would not in any case be in the crosshairs for the U.S. authorities." Migros Bank accepted 39 new U.S. Related Accounts in 2010.

THE BANK'S SUBSEQUENT REMEDIAL MEASURES

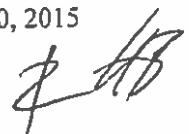
45. In March 2011, the Migros Bank executive board decided that the Bank would no longer provide English-language banking documents to its clients. In connection with this decision, one Bank executive stated that Migros Bank was "not the right bank for people who were internationally active."
46. In September 2011, the executive board learned that the U.S. government had opened formal investigations of several Swiss banks, though not Migros Bank. In November 2011, the executive board concluded that the Bank's policy regarding new U.S. customers needed to be "rethought."
47. In November 2011, the executive board decided that all new U.S. clients would be required to provide Migros Bank with a Form W-9 and that all numbered U.S. Related Accounts would be converted to normal accounts. The executive board also decided that relationship managers were to actively inform U.S. customers about FATCA and advise them to disclose their customer relationships to the IRS.
48. At a meeting of the Migros Bank executive board on January 11, 2012, the board was informed that several other Swiss banks had terminated all of their U.S. customer accounts and provided the clients with a short deadline for finding another bank. The executive board decided that Migros Bank would not follow that course of action. Instead, Migros Bank would only allow U.S. persons who resided in Switzerland to open new accounts, would require all U.S. clients to provide the Bank with a Form W-9, and would prohibit U.S. persons from maintaining hold-mail agreements.
49. At a meeting of the Migros Bank executive board on February 8, 2012, at least one Bank executive suggested that the board reconsider its decision to continue maintaining U.S. Related Accounts. But another executive observed that "closing out U.S. customer relationships does not solve the fundamental problem," as "the Department of Justice could also file a suit against us, even though we have violated neither U.S. nor Swiss law." The executive board adhered to its decisions from January 2012, which the Bank's board of directors ratified in March 2012.
50. In March 2012, in an effort to ensure that U.S. clients were declared to the IRS, the Migros Bank executive board decided that the Bank would purchase one share of stock in a large U.S. corporation to be held in an account for each of its U.S. clients. The board believed that the corporation's long history of quarterly dividends would ensure that the Bank's U.S. Related Accounts were reported regularly on Forms 1099.

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51. In April 2012, Migros Bank began sending letters to its U.S. clients asking them to sign Forms W-9 and Swiss bank-secrecy waivers and notifying them that the Bank would purchase the U.S. stock on their behalf. The Bank warned that it would block the accounts of clients who did not respond. Later that year, the Bank began closing blocked accounts or causing them to be classified as dormant under Swiss law.
52. However, the Bank knew that U.S. persons who chose to close their accounts rather than provide Forms W-9, or whose accounts the Bank closed involuntarily or caused to become dormant, would not be reported to the IRS through Forms 1099.
53. Migros Bank did not prohibit its U.S. clients from closing their accounts by certain means. Although many of the closures were uncontroversial, a number of potentially undeclared accounts exited the Bank under circumstances that likely facilitated the continued concealment of the assets from the IRS. These instances included cash withdrawals, structured check payments, and transfers to accounts held by third parties at other Swiss or non-U.S. banks.
54. In one instance, after Migros Bank sent a letter of the type described in paragraph 51 to the holders of a U.S. Related Account, the account holders did not provide Forms W-9 or bank-secrecy waivers to the Bank. Instead, in October 2012, they closed the account in part by withdrawing over \$50,000 in cash and by writing 20 checks, each in the amount of \$9,950, payable to several persons with the same family name as the account holders.
55. In another instance, after Migros Bank sent a letter of the type described in paragraph 51 to the holder of a U.S. Related Account, the account holder did not provide a Form W-9 or bank-secrecy waiver to the Bank. Instead, the account holder closed the account in August 2012. Between April and June 2012, the account holder transferred 840,000 Swiss francs from the Migros Bank account to accounts held by third parties at two other Swiss banks and \$1.25 million from the Migros Bank account to a third-party account at an Indian bank.

THE BANK'S COOPERATION THROUGH THE SWISS BANK PROGRAM

56. Throughout its participation in the Swiss Bank Program, Migros Bank has committed to providing full cooperation to the U.S. government and has made timely and comprehensive disclosures regarding its U.S. cross-border business. Specifically, the Bank, with the assistance of U.S. and Swiss counsel, and in compliance with Swiss privacy laws, has:
 - a. conducted an internal investigation that included, among other things, interviews of key current and former Bank personnel; review of client account files, relationship manager notes, and correspondence; analysis of relevant management policies, employee directives, and board meeting minutes; and searches of e-mail accounts;
 - b. described in detail the structure, operation, and supervision of its U.S. cross-border business, including the names of relevant individuals and entities;



- c. provided information concerning U.S. Related Accounts held at Migros Bank during the Applicable Period sufficient to make treaty requests to the Swiss government for the account records;
- d. sought and obtained client waivers of Swiss bank secrecy for U.S. Related Accounts; and
- e. encouraged existing and prior holders of U.S. Related Accounts to disclose their accounts to the IRS through the Offshore Voluntary Disclosure Program that began in January 2012.

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EXHIBIT B TO NON-PROSECUTION AGREEMENT


**CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS
OF MIGROS BANK AG**

We, Herbert Bolliger and Jörg Zulauf, acting as Members of the Board of Directors and as President and Vice-President, respectively, of the Board of Directors of Migros Bank AG (the Bank), a corporation duly organized and existing under the laws of Switzerland, do hereby certify that the following is a complete and accurate copy of a resolution adopted by the Board of Directors of the Bank which resolved as follows:

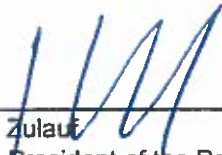
- That the Board of Directors has (i) reviewed the entire Non-Prosecution Agreement attached hereto, including the Statement of Facts attached as Exhibit A to the Non-Prosecution Agreement; (ii) consulted with Swiss and U.S. counsel in connection with this matter; and (iii) voted to enter into the Non-Prosecution Agreement, including to pay the sum of USD 15,037,000.00 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Herbert Bolliger, President of the Board, and Jörg Zulauf, Vice-President of the Board, both registered in the Commercial Register of the Canton of Zurich as having joint signatory authority, are hereby authorized (i) to jointly execute the Non-Prosecution Agreement on behalf of the Bank substantially in such form as reviewed by the Board of Directors with such non-material changes as each of them may approve; and (ii) to take, on behalf of the Bank, all actions as may be necessary or advisable in order to carry out the foregoing; and
- That Thomas C. Green, Sidley Austin LLP, is hereby authorized to sign the Non-Prosecution Agreement in his capacity as the Bank's U.S. counsel.

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

IN WITNESS WHEREOF, we have executed this Certificate this 21th day of September, 2015.



Herbert Bolliger
President of the Board



Jörg Zulauf
Vice-President of the Board