



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:PGGalindo
5-16-4722
2014200733

Dated: December 15, 2015

Marc R. Cohen, Esquire
Jonathan A. Sambur, Esquire
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006

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

Dear Messrs. Cohen and Sambur:

PostFinance 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 PostFinance AG in its Letter of Intent and information provided by PostFinance 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 PostFinance 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 PostFinance 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 PostFinance AG during the Applicable Period (the "conduct"). PostFinance 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 only to PostFinance AG and does not apply to any other entities or to any

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

individuals. PostFinance 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. PostFinance 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, PostFinance AG agrees to pay the sum of two-million dollars (\$2,000,000) 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 PostFinance AG. This payment is in lieu of restitution, forfeiture, or criminal fine against PostFinance AG for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from PostFinance AG with respect to the conduct described in this Agreement, unless the Tax Division determines PostFinance AG has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. PostFinance 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 PostFinance AG has violated any provision of this Agreement. PostFinance 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. PostFinance AG agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. PostFinance AG further agrees that no portion of the penalty that PostFinance AG has agreed to pay to the Department under the terms of this Agreement will serve as a basis for PostFinance 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) PostFinance AG'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 PostFinance AG 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) PostFinance 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) PostFinance AG'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 external client advisor, asset manager, financial advisor, trustee, fiduciary, nominee, attorney, accountant, or other individual or entity functioning in a similar capacity known by PostFinance 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) PostFinance AG's retention of a qualified independent examiner who has verified the information PostFinance AG disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, PostFinance 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 PostFinance 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, PostFinance 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 PostFinance 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 PostFinance 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 PostFinance 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.

PostFinance AG further agrees to undertake the following:

1. PostFinance 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 page 3 of this Agreement, because the Tax Division has agreed to specific dollar threshold limitations for the initial production, PostFinance AG will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. PostFinance AG agrees, consistent with applicable laws, regulations, and guidelines, to use its best efforts to close any and all accounts of recalcitrant account holders whose balances exceed 100,000 Swiss francs, as defined in Section 1471(d)(6) of the Internal Revenue Code; and 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.

3. PostFinance AG agrees, consistent with applicable laws, regulations, and guidelines, to use its best efforts to close any and all U.S. Related Accounts whose balances exceed 100,000 Swiss francs and are classified as “dormant” in accordance with applicable laws, regulations and guidelines. PostFinance AG will only provide banking 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, PostFinance AG will promptly proceed to follow the procedures described above in paragraph 2.
4. PostFinance 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.

PostFinance AG’s obligations under this Agreement shall continue for a period of four (4) years from the date this Agreement is fully executed. PostFinance 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) PostFinance AG committed any U.S. federal offenses during the term of this Agreement; (b) PostFinance 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) PostFinance AG has otherwise materially violated any provision of this Agreement or the terms of the Swiss Bank Program, then (i) PostFinance 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 PostFinance 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 PostFinance 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 PostFinance AG shall be admissible in evidence in any criminal proceeding brought against PostFinance AG and relied upon as evidence to support any penalty on PostFinance AG; and (iii) PostFinance 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 PostFinance AG has breached this Agreement and whether to pursue prosecution of PostFinance 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, PostFinance AG, will be imputed to PostFinance AG for the purpose of determining whether PostFinance 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 PostFinance AG has breached this Agreement, the Tax Division agrees to provide PostFinance 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, PostFinance AG may respond to the Tax Division in writing to explain the nature and circumstances of such breach, as well as the actions that PostFinance AG has taken to address and remediate the situation, which explanation the Tax Division shall consider in determining whether to pursue prosecution of PostFinance 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 PostFinance AG, notwithstanding the expiration of the statute of limitations between such date and the commencement of such prosecution. For any such prosecutions, PostFinance 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 PostFinance 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 PostFinance AG, the Tax Division will, however, bring the cooperation of PostFinance 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 PostFinance 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 PostFinance 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.

//

//

//

AGREED AND ACCEPTED:
UNITED STATES DEPARTMENT OF JUSTICE, TAX DIVISION


CAROLINE D. CIRAOLO
Acting Assistant Attorney General

12/17/2015
DATE


THOMAS J. SAWYER
Senior Counsel for International Tax Matters

17 December 2015
DATE



PAUL G. GALINDO
Trial Attorney

12/17/2015
DATE

AGREED AND CONSENTED TO:
PostFinance AG


By: 
Hans-Rudolf Köp

16/Dec/15
DATE

By: 
RALF WATTER

16/Dec/2015
DATE

APPROVED:


MARC R. COHEN, Esquire
Mayer Brown LLP

12/16/15
DATE


JONATHAN A. SAMBUR, Esquire
Mayer Brown LLP

December 12, 2015
DATE

EXHIBIT A TO POSTFINANCE AG NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

Background

1. PostFinance AG (“PostFinance” or the “Bank”), headquartered in Bern, Switzerland, is a wholly owned subsidiary of Swiss Post, the Swiss state-owned enterprise responsible for Swiss postal and other essential public-infrastructure services. The Swiss parliament established PostFinance’s predecessor in 1906 to provide payment services to retail customers. PostFinance operated as a division of Swiss Post until June 26, 2013, when it became a bank under Swiss law.
2. For decades, PostFinance has provided the predominant means of payment in Switzerland. Customers pay bills and receive payments, electronically or in person, at Post Offices in Switzerland, through PostFinance accounts. PostFinance has 45 branch offices, all in Switzerland. PostFinance currently has more than 2.8 million customer relationships, approximately 115 billion Swiss francs in total customer deposits, and more than 3400 employees, approximately 330 of which have a customer-facing role. Roughly 40 percent of Swiss residents have an account with PostFinance. PostFinance processes approximately 4 million transactions per day, representing an average total daily value of more than 7 billion Swiss francs.
3. Until 2008, the names of PostFinance’s customers were publicly available. PostFinance, moreover, was not subject to Swiss bank-secrecy laws until June 26, 2013, when it received its license to operate as a bank under Swiss law. In keeping with PostFinance’s ongoing role as a provider of public payment services, PostFinance’s commercial customers continue to have access to the names of consumer customers, and PostFinance’s consumer customers may obtain the names of other PostFinance customers provided that they have such other customers’ account numbers.

U.S. Income Tax & Reporting Obligations

4. U.S. citizen and resident aliens 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 and resident aliens have had an obligation to report to the Internal Revenue Service (“IRS”) on 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.
5. 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 have been 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). During the Applicable Period,¹ an FBAR for a particular year had to be filed on or before June 30 of the following year.

6. An “undeclared account” was a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that had not been reported by the individual account owner to the U.S. government on an income-tax return or other applicable form, and an FBAR as required.
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.²
8. In or about 2008, Swiss bank UBS AG (“UBS”) publicly announced that it was the target of a criminal investigation by the Internal Revenue Service and the United States Department of Justice and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department of Justice and UBS filed a deferred prosecution agreement in the Southern District of Florida in which UBS admitted that its 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 1 banks”). These cases have been closely monitored by banks operating in Switzerland, including PostFinance, since at least August of 2008.

Overview of PostFinance’s Business with U.S. Related Accounts

9. During the Applicable Period, PostFinance maintained a total of 2731 U.S. Related Accounts having a maximum aggregate value of approximately \$290 million. Of these accounts, 1168 were open before August 1, 2008; 198 of them were opened between August 1, 2008 and February 28, 2009; and 1365 were opened after February 28, 2009. Some of these accounts were undeclared accounts.
10. Prior to and during the Applicable Period, PostFinance was required by Swiss law and government mandate to provide accounts to persons living in Switzerland regardless of

¹ 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”).

² PostFinance was not subject to these laws until June 26, 2013, when it received its banking license.

nationality, and to Swiss nationals living outside of Switzerland. Consequently, PostFinance provided accounts to U.S. taxpayers living in Switzerland, as well as to Swiss nationals living in the United States, including U.S. Related Account holders who transferred assets to PostFinance from UBS or other Category 1 banks. Altogether, the accounts of such persons represented less than one percent of the value of PostFinance's total customer deposits during the Applicable Period.

11. PostFinance, however, never utilized a strategy to market its services to U.S. taxpayers. It has never sent representatives to the United States to meet with or solicit U.S. taxpayers, or had operations in the United States. And, except as described in paragraph 24 below with respect to special compliance measures, PostFinance has never maintained any separate organizational units, desks, teams, or employees that focused specifically on recruiting or servicing clients who were citizens, residents, or taxpayers of the United States.
12. PostFinance has never offered private-banking or wealth-management services to any of its customers. Instead, PostFinance engaged in basic consumer retail-banking and payment services. The services available to persons with U.S. tax obligations are further limited based on residency: U.S. taxpayers resident in Switzerland, as well as U.S.-Swiss dual nationals resident in or outside of Switzerland, may obtain "current" accounts, which are comparable to checking accounts in the United States. Savings accounts, fixed-income retirement accounts, and credit cards, however, may be obtained only by Swiss residents. Deposits of PostFinance customers, including U.S. taxpayers, earn little interest—less than 0.5 percent.
13. During the Applicable Period, PostFinance served customers—including U.S. citizens located in Switzerland, and Swiss citizens or resident aliens located in the United States—through call centers staffed by PostFinance employees or, in some instances, through in-person assistance by unassigned customer-facing employees at PostFinance branches. Because it never offered private-banking or wealth-management services to any of its customers, PostFinance never employed "private bankers" nor maintained relationships with external asset managers, to provide any such services.
14. PostFinance has never offered numbered or code-named accounts, or hold-mail services. It has never opened or maintained segregated accounts titled in the names of insurance companies for the benefit of individual policy holders in arrangements commonly known as "insurance wrappers"; nor has it ever provided entity-creation services to any of its customers, or given any of its customers referrals to third parties for such services.
15. PostFinance has never purchased, maintained, or sold securities for any of its customers. Because of that, during the Applicable Period, PostFinance was not a Qualified Intermediary ("QI") and did not have a QI Agreement with the IRS. As a non-U.S. financial intermediary that did not execute a QI Agreement with the IRS, PostFinance was not obligated to identify customers who were U.S. persons or resident aliens, nor was it obligated to report information regarding such persons, or their accounts, to the IRS.
16. In August 2009, PostFinance amended a pre-existing Swiss-nexus requirement to limit

new accounts for residents of the United States to Swiss nationals, persons receiving Swiss pensions, or persons owning real estate in Switzerland.

17. In December 2009, PostFinance required new U.S. customers to execute a written declaration certifying that the assets being deposited with PostFinance were properly reported to the United States.
18. In January 2012, PostFinance adopted a policy that restricted its U.S. customer relationships to Swiss citizens residing in the United States, and to U.S. persons residing in Switzerland. This policy prohibited U.S. persons outside of Switzerland from holding PostFinance accounts, unless such U.S. persons were also Swiss nationals. PostFinance closed the accounts of approximately 1,500 U.S. persons pursuant to this policy.
19. In October 2011, PostFinance began preparing for FATCA implementation. Although it was not a QI, in May 2013 PostFinance began requiring all U.S. taxpayer customers to provide it with an IRS Form W-9 and a waiver permitting disclosure to the United States of information pursuant to the Agreement Between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA.
20. PostFinance was aware that citizens and resident aliens of the United States had a legal duty to report their assets and income to the IRS, and to pay taxes on the basis of all their income, including income earned from accounts that PostFinance maintained on their behalf. However, due to the mandatory account-opening requirements of Swiss law, PostFinance opened and maintained some undeclared accounts belonging to U.S. customers.
21. PostFinance's policies prohibit U.S. dollar cash withdrawals by U.S. residents. Nevertheless, in disregard of applicable policy, in February 2013, a PostFinance call-center employee changed the nationality and address of a documented U.S.-Swiss dual-national, U.S.-resident customer in PostFinance's IT systems to Swiss-national and Swiss-residence status only, thereby enabling the U.S. resident customer to withdraw \$2,000 from the customer's account, in person, at a Swiss Post Office. At the time of these events, the call-center employee did not know that the customer had disclosed the account to the United States on three years of timely-filed FBARs.
22. In a separate instance, in September 2012, a different PostFinance employee permitted two Swiss-resident, U.S.-national joint-account customers, who had provided PostFinance with a self-certification document attesting to their tax compliance in the United States, to close their account through an in-person cash withdrawal of 514,000 Swiss francs, consistent with the requirements of Swiss law.

Mitigating Factors

23. In addition to the factors described above, 18 months prior to announcement of the Swiss Bank Program, in February 2012, PostFinance began encouraging its customers with U.S. tax obligations to disclose their accounts to the IRS through an announced Offshore Voluntary Disclosure Program ("OVDP").

24. Also during 2012, PostFinance established a compliance team of more than 20 full-time employees dedicated exclusively to reviewing and approving all openings and closings of, and changes to, accounts of U.S. citizens and resident aliens before any such changes are implemented.

**PostFinance's Cooperation Throughout
the Swiss Bank Program**

25. In December 2013, PostFinance voluntarily submitted a letter of intent to participate in the Swiss Bank Program as a Category 2 bank.
26. Prior to and throughout its participation in the Swiss Bank Program, PostFinance 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, PostFinance, with the assistance of U.S. and Swiss counsel, forensic investigators, and in compliance with Swiss bank-secrecy and data-protection laws, has—
- a. conducted an internal investigation including, but not limited to: (a) inquiries with customer-facing employees, supervisors, and senior officials; (b) reviews of customer account files and correspondence; and (c) analyses of relevant management policies;
 - b. described in detail the structure of its cross-border business for U.S. Related Accounts including, but not limited to: (a) its policies relating to U.S. Related Accounts; (b) data on the balances, opening and closing dates, and other key U.S. Related Account information; and (c) the names and positions of compliance officers and senior managers; and
 - c. provided information concerning U.S. Related Accounts held at PostFinance to make requests for assistance from the Swiss competent authority for U.S. Related Account records.
27. Following PostFinance's efforts, some of its former U.S. taxpayer customers have disclosed their accounts to the IRS through OVDP and paid back taxes, penalties, and interest in connection with their initial failure to report their undeclared accounts.

EXHIBIT B TO NON-PROSECUTION AGREEMENT

RESOLUTION OF THE BOARD OF DIRECTORS OF POSTFINANCE AG

At a duly held meeting held on December 11, 2015, the Board of Directors (the "Board") of PostFinance AG (the "Bank") resolved as follows:

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

WHEREAS, in order to conclude such discussions, the Department has proposed that the Bank enter into a non-prosecution agreement with the Department in the form attached hereto (the "Agreement"); and

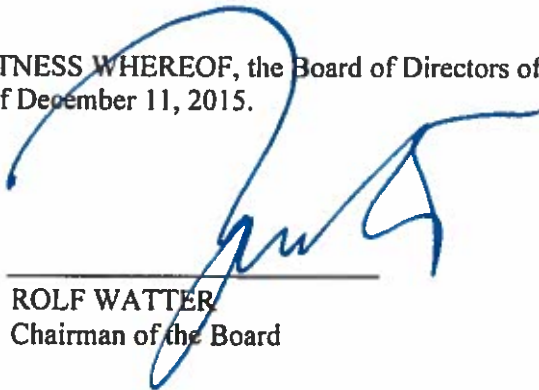
WHEREAS, the Bank's outside U.S. counsel have advised the Board of the Bank's rights, possible defenses, the terms of the Agreement, and the consequences of entering into the Agreement; and

WHEREAS, the Board has reviewed the Agreement, including the Statement of Facts and attached to the Agreement, consulted with U.S. counsel in connection with this matter, and voted to enter into the Agreement, including to pay to the Department the amount set forth in the Agreement;

The Board hereby RESOLVES that:

1. Rolf Watter, Chairman of the Board, and Hansruedi K ng, Chief Executive Officer, are hereby authorized to execute the Agreement on behalf of the Bank substantially in the form reviewed by the Board and with such non-material changes as they may approve.
2. Marc Cohen and Jon Sambur, of Mayer Brown, U.S. counsel to the Bank, are hereby authorized to execute the Agreement as additional signatories.
3. The Bank agrees to pay an amount equal to USD 2'000'000 (two million U.S. dollars) pursuant to the Agreement and to perform the obligations described in the Agreement consistent with, and subject to, Swiss law;
4. The Board hereby authorizes, empowers and directs Rolf Watter and Hansruedi K ng, or their delegates, to take, on behalf of the Bank, any and all actions as may be necessary or appropriate, and to approve and execute the forms, terms, or provisions of any agreement or other documents as may be necessary or appropriate, to carry out and effectuate the purpose and intent of the foregoing resolutions; and
5. All of the actions of Rolf Watter and Hansruedi K ng, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Bank.

IN WITNESS WHEREOF, the Board of Directors of the Bank has executed this Resolution effective as of December 11, 2015.



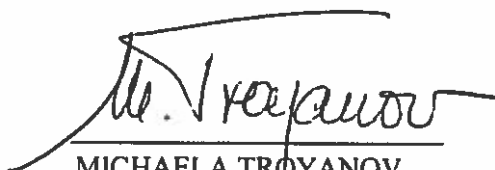
ROLF WATTER
Chairman of the Board

11 Dec 15 2015
DATE




MARCO DURRER
Vice-Chairman of the Board

11.12.15
DATE



MICHAELA TROYANOV
Member of the Board

11.12.15
DATE



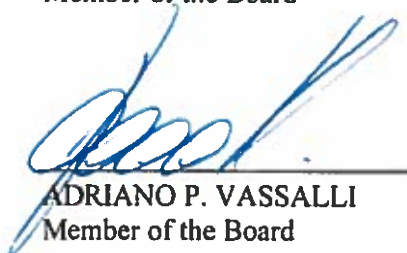
HANS LAUBER
Member of the Board

11.12.15
DATE



SUSANNE RUOFF
Member of the Board

11.12.15
DATE



ADRIANO P. VASSALLI
Member of the Board

11.12.2015
DATE