U.S. Department of Justice

Tax Division

CDC:LJW:TJS:DBOliphant
DJ 5-16-4712
CMN 2014200723

July 14, 2015

Henry Klehm III
Jones Day
222 East 41st Street
New York, NY 10017

Ralph F. McDonald III
Jones Day
1420 Peachtree Street NE
Suite 800
Atlanta, GA 30309

Raymond J. Wiacek
Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001

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

Dear Mr. Klehm, Mr. McDonald, and Mr. Wiacek:

Mercantil Bank (Schweiz) AG ("MBS") submitted a Letter of Intent on December 30, 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 MBS in its Letter of Intent and information provided by MBS 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 MBS of the Swiss Bank Program will constitute a breach of this Agreement.

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

On the understandings specified below, the Department of Justice will not prosecute MBS 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 MBS during the Applicable Period (the "conduct"). MBS 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 MBS and does not apply to any other entities or to any individuals. MBS 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. MBS 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, MBS agrees to pay the sum of $1,172,000 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 MBS. This payment is in lieu of restitution, forfeiture, or criminal fine against MBS for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from MBS with respect to the conduct described in this Agreement, unless the Tax Division determines MBS has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. MBS 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 MBS has violated any provision of this Agreement. MBS 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. MBS agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. MBS further agrees that no portion of the penalty that MBS has agreed to pay to the Department under the terms of this Agreement will serve as a basis for MBS 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) MBS'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 MBS 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) MBS'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) MBS'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 MBS 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) MBS's retention of a qualified independent examiner who has verified the information MBS disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, MBS 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 MBS, 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, MBS 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 MBS 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 MBS'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 MBS; 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.

MBS further agrees to undertake the following:

1. MBS 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, MBS will promptly provide the entirety of the transaction information upon request of the Tax Division.

2. MBS 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 MBS.

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

4. MBS 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.

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

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

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

This Agreement supersedes all prior understandings, promises and/or conditions between the Department and MBS. 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 — DATE 7/16/2015
Acting Assistant Attorney General

THOMAS J. SAWYER — DATE 16 July 2015
Senior Counsel for International Tax Matters

DARA B. OLIPHANT — DATE 7/16/2015
Trial Attorney

MERCANTIL BANK (SCHWEIZ) AG

By: JOAQUIN EISCHER — DATE July 14, 2015
General Manager

APPROVED:

HENRY KLEHM III — DATE July 14, 2015
Jones Day

EXHIBIT A TO MERCANTIL BANK (SCHWEIZ) AG'S NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

INTRODUCTION AND BACKGROUND

1. Mercantil Bank (Schweiz) AG ("MBS" or the "Bank") is based in Zurich, Switzerland. MBS initiated operations in 1988 as a bank-like finance company limited to ten depositors, designed to finance international trade between Europe and Latin America. In February 2000, it was licensed by the Swiss Federal Banking Commission to operate as a commercial bank, which is regulated primarily by the Swiss Financial Market Supervisory Authority ("FINMA"). As of March 31, 2014, MBS had approximately $590.4 million in assets under management.

2. Mercantil Servicios Financieros, C.A. ("MSF"), a financial holding company headquartered in Caracas, Venezuela, owns MBS. MSF has its roots in Banco Neerlando Venezolano, which began operations in 1925. Its shares are listed on the Caracas Stock Exchange, and its primary regulator is the Venezuelan National Securities Superintendence. MSF has a number of subsidiaries, and as of March 31, 2014, had total consolidated assets of approximately $41.5 billion.

3. MSF owns, through several bank holding companies, a U.S. Bank, Mercantil Commercebank, N.A. (Commercebank). Commercebank was acquired primarily to serve the business and personal interests of Venezuelans and other Latin Americans in the United States, as described above. Commercebank's deposits are FDIC insured, and it operates 15 branches in Florida and three branches in Texas. Commercebank is primarily regulated by the U.S. Comptroller of the Currency, and as of March 31, 2014, had total consolidated assets of approximately $6.9 billion.

4. MBS's business is designed to serve the European business and personal interests of Venezuelan individuals and corporations. MBS is engaged in private banking and corporate banking. Private banking, MBS's main strategic focus, offers wealth management services to individuals and private investment companies. Corporate banking only provides services to active, operating companies.

5. Many Venezuelans and their businesses desire to hold funds in stable and internationally accepted currencies, both to facilitate international business and to protect against loss of value. Moreover, because of conditions in Venezuela, many Venezuelans maintain post office addresses and cell phones based in the United States, and give relatives and friends in the United States powers of attorney over their accounts.

6. MBS clients were largely developed by referrals from MSF bankers in Venezuela; however, other clients were obtained through referral by existing customers or personal relationships with MBS employees.

7. MBS's Private Banking services are marketed exclusively to customers of MSF's Venezuelan bank subsidiary. MBS did not market services to U.S. taxpayers or solicit business in the United States. Its sister company, Commercebank, solicited clients and provided banking, securities, and wealth management services in the United States.

U.S. INCOME TAX AND REPORTING OBLIGATIONS

8. U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income. Since tax year 1976, U.S. citizens, resident aliens, and legal permanent residents have had an obligation to report to the Internal Revenue Service ("IRS") on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking "Yes" or "No" in the appropriate box and identifying the country where the account is maintained. Moreover, 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 are required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114, formerly known as Form TD F 90-22.1 (the "FBAR").

9. An "undeclared account" is 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.

10. 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.

11. In 2008, Swiss bank UBS AG publicly announced that it was the target of a criminal investigation by the IRS 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 New York 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 accounts that helped conceal assets and income from the IRS. Since UBS, several other Swiss banks have publically announced that they were or are the targets of similar criminal tax investigations and that they would likewise be exiting and not accepting certain U.S. clients. These cases have been closely monitored by banks operating in Switzerland, including MBS, since at least August of 2008.

OVERVIEW OF MBS'S U.S. CROSS-BORDER BUSINESS

12. During the Applicable Period,[1] MBS provided private banking and asset management services to U.S. taxpayers through private bankers based in Switzerland. Given that U.S. Related Accounts were not especially grouped or assigned within MBS, over time, approximately 15 bank employees called Relationship Managers, Private Banking Executives, and Personal Banking Officers serviced these customers. MBS held a total of 116 U.S. Related Accounts with a maximum aggregate value totaling over $59.8 million. The 116 U.S. Related Accounts comprised approximately 0.2% of MBS's business. Thirty-one of the U.S. Related Accounts were opened after August 1, 2008.

13. Of the 116 U.S. Related Accounts, 37 were considered U.S. related by virtue of a power of attorney held by a U.S. person. Those 37 accounts showed no evidence that the holder of the power of attorney had any beneficial interest in the account.

14. MBS never sought or solicited U.S. taxpayer-clients, nor did it seek to operate a U.S. business. In many cases, MBS account holders moved to the United States from Venezuela after becoming clients of MBS and later became U.S. taxpayers. Nonetheless, MBS opened, serviced, and profited from accounts for U.S. clients and knew or should have known that many of its U.S. clients were likely not complying with their tax obligations.

15. MBS was aware that U.S. taxpayers had a legal duty to report to the IRS, and pay taxes on the basis of, all of their income, including income earned in accounts that these U.S. taxpayers maintained at MBS.

16. MBS's cross-border banking business aided and assisted U.S. clients in opening and maintaining undeclared accounts in Switzerland and concealing the assets and income they held in these accounts. Until 2010, MBS maintained a U.S. toll-free telephone number to service its customers. During the Applicable Period, MBS employees took four business trips to the United States for meetings with MSF and Commercebank; in 2009, an MBS employee attending one of these meetings in Miami met with a bank customer.

17. MBS used a variety of means that could and did assist U.S. clients in concealing their accounts. One such service was hold mail. For a fee, MBS would hold all mail correspondence for a particular client at the bank. During the Applicable Period, two U.S. Related Accounts had hold mail instructions. MBS also offered code name or numbered account services. For a fee, the bank would allow the account holder to replace his or her identity with a code name or number on bank statements and other documentation sent to

[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").

the client. During the Applicable Period, ten of MBS's U.S. Related Accounts were numbered accounts.

18. MBS also provided its clients with the ability to access their accounts from anywhere in the world using e-banking services. All but three of the Bank's 116 U.S. Related Accounts used e-banking services during the Applicable Period.

19. As a consequence, MBS thus ensured that documents reflecting the existence of the accounts could remain outside the United States, beyond the reach of U.S. tax authorities, and protected by Swiss banking secrecy laws.

20. MBS also assisted clients in opening and maintaining accounts in the names of sham entities. MBS provided accounts for what they referred to as "Personal Investment Companies" through its private banking unit. These companies were distinguished from the accounts handled by the Bank's corporate unit, because they were operating companies with active, ongoing business. In the absence of active, ongoing business, it was the Bank's practice to ignore the form of the structures, and to treat the beneficial owners of the entity as the account holders in substance. MBS did not help the beneficial owners form the business entities, but did provide services to the accounts knowing that they could be used for evasion or avoidance of tax obligations. During the Applicable Period, MBS provided banking services to six Personal Investment Companies.

21. Due in part to the means provided by MBS and its personnel, and with the knowledge that Swiss banking secrecy laws would prevent MBS from disclosing their identities to the IRS, many of the U.S. clients of MBS filed false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, which failed to report their respective interests in their undeclared accounts and the related income. Moreover, many of the U.S. clients of MBS also failed to file and otherwise report their undeclared accounts on FBARs.

22. At various times from 1991 until 2010, MBS maintained undeclared accounts for three executives of MSF and its U.S. bank subsidiaries. These three executives were resident in and citizens of the United States (and elsewhere). Two of the accounts were opened by Panamanian holding companies; at least two of these accounts were numbered accounts.

QUALIFIED INTERMEDIARY AGREEMENT AND ITS ROLE IN NON-DISCLOSED U.S. RELATED ACCOUNTS

23. MBS has been a Qualified Intermediary (QI) since 2003. 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.

24. The QI Agreement expressly recognized that a non-U.S. financial institution such as MBS 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 must 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). 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.

25. To maintain its QI status, MBS prohibited U.S. account holders from owning U.S. securities. It required a QI form at the opening of each account, and that form was to be renewed every third year. The form required account holders to disclose their nationality and residence.

26. As described above, MBS allowed its QI agreement to be subverted. On one occasion described in paragraph 22 above, in March 2008, MBS opened an account for a bank executive with U.S. citizenship in the name of a Panamanian holding company. In that instance, MBS accepted and included in account records forms provided by the director of the Panamanian company that falsely represented the ownership of the account for U.S. federal income tax purposes.

VOLUNTARY REMEDIAL MEASURES

27. In the wake of UBS, beginning in 2008, MBS began a comprehensive review of its policies and procedures.

28. In early 2009, MBS attended a presentation organized by the Association of Foreign Banks in Switzerland called "Do's and Don'ts with US Customers."

29. MBS later determined that it did not want the administrative burden of maintaining U.S. related accounts. Accordingly, in 2009, MBS began implementing a policy requiring that all private banking accounts of individual U.S. taxpayers be closed. As the customers' U.S. status became known, MBS took steps to close the accounts.

30. By early 2010, all MBS employees were instructed not to open accounts for U.S. persons, call U.S. account holders, or invest for U.S. related taxpayers. Moreover, one MBS relationship manager was tasked to contact all known U.S. account holders by phone and close their accounts.

31. In 2010, MBS's board of directors adopts a formal policy to close known U.S. accounts and to not open accounts for U.S. taxpayers. It further required that current clients update MBS when they move to the United States, and it endeavored to close such accounts when it learned that the clients had become U.S. taxpayers.

32. As a result of MBS's new policies, beginning in August, 2008, MBS has been able to close 95 of its U.S. Related Accounts. Of the 21 accounts that remain open, 13 are only deemed U.S. Related because of a power of attorney, as explained in Paragraph 13 above. Of the eight open U.S. Related Accounts, only two have not timely filed income tax returns or FBARs reporting their MBS accounts.

COOPERATION AND PARTICIPATION IN THE SWISS BANK PROGRAM

33. On December 31, 2013, MBS entered the Swiss Bank Program as a Category 2 bank. In order to comply with the Swiss Bank Program requirements, MBS conducted an account review in which all MBS accounts were searched. MBS also caused its counsel to perform an extensive conduct review including interviews of relevant current and former employees, and their communications. MBS fully complied with the requirements of the Program.

34. Throughout its participation in the Program, MBS 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. More specifically, MBS has:

a. conducted an internal investigation, which included but is not limited to: (1) interviews of key relationship managers and members of management; (2) reviews of client account files and correspondence; (3) analysis of relevant management policies; and (4) email searches;

b. described in great detail the structure of its banking business, including, but not limited to: (1) the bank's management and supervisory structure; and (2) the names of management and legal and compliance officials, in compliance with Swiss privacy law;

c. provided detailed and specific information related to the structuring, operation, and supervision of its U.S. cross-border business, including, but not limited to: (1) the misconduct committed by the bank; (2) the policies that contributed to the Bank's misconduct; and (3) the names of the relationship managers overseeing the bank's U.S. related business, in compliance with Swiss privacy law; and

d. brought key bank managers from Switzerland to the United States to meet with the Department of Justice to provide detailed information about the Bank's conduct and related matters.

EXHIBIT B TO THE NON-PROSECUTION AGREEMENT

WITH MERCANTIL BANK (SCHWEIZ) AG

RESOLUTION OF THE BOARD OF DIRECTORS

At a duly convened extraordinary meeting held on 14 July 2015, the Board of Directors (the "Board) of Mercantil Bank (Schweiz) AG (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 both 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 30 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 (the "NPA").

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 Agreement and voted to enter into the NPA, including to pay a sum of USD 1,172,000.00 to the DOJ in connection with the NPA;

2. Joaquin Fischer, General Manager of the Bank is hereby authorized to execute the NPA on behalf of the Bank (the "Authorized Signatory") substantially in such form as reviewed by this Board with such non-material changes as the Authorized Signatory may approve;

3. Henry Klehm III, Jones Day is entitled to sign the NPA in his capacity as the Bank's US legal counsel (the "Additional Signatory");

4. The Board hereby authorizes, empowers and directs the Authorized Signatory 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; and

5. All of the actions of the Authorized Signatory 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 Board of Directors of the Bank has executed this Resolution.

Peter Huwyler
Chairman of the
Board of Directors

Dr. Kurt Sieger
Vice-Chairman of the
Board of Directors
Secretary of the Meeting