U.S. Department of Justice

Tax Division

Washington, D.C. 20530

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July 22, 2015

Keith Krakaur, Esquire
Gary DiBianco, Esquire
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036-6522

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

Dear Mr. DiBianco:

SB Saanen Bank AG submitted a Letter of Intent on December 23, 2013, to participate in Category 2 of the Department of Justice's Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks, as announced on August 29, 2013 (hereafter "Swiss Bank Program"). This Non-Prosecution Agreement ("Agreement") is entered into based on the representations of SB Saanen Bank AG in its Letter of Intent and information provided by SB Saanen 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 SB Saanen Bank 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 SB Saanen Bank 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 SB Saanen Bank AG during the Applicable Period (the "conduct"). SB Saanen Bank 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 SB Saanen Bank AG and does not apply to any other entities or to any individuals. SB Saanen Bank 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

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

successor formally adopts and executes this Agreement. SB Saanen Bank 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, SB Saanen Bank AG agrees to pay the sum of $1,365,000 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 SB Saanen Bank AG. This payment is in lieu of restitution, forfeiture, or criminal fine against SB Saanen Bank AG for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from SB Saanen Bank AG with respect to the conduct described in this Agreement, unless the Tax Division determines SB Saanen Bank AG has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. SB Saanen Bank 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 SB Saanen Bank AG has violated any provision of this Agreement. SB Saanen Bank 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. SB Saanen Bank AG agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. SB Saanen Bank AG further agrees that no portion of the penalty that SB Saanen Bank AG has agreed to pay to the Department under the terms of this Agreement will serve as a basis for SB Saanen Bank 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) SB Saanen Bank 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 SB Saanen Bank 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) SB Saanen Bank 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) SB Saanen Bank 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 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 SB Saanen Bank 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) SB Saanen Bank AG's retention of a qualified independent examiner who has verified the information SB Saanen Bank AG disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, SB Saanen Bank 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 SB Saanen Bank 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, SB Saanen Bank 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 SB Saanen Bank 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 SB Saanen Bank 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 SB Saanen Bank 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.

SB Saanen Bank AG further agrees to undertake the following:

1. SB Saanen Bank AG agrees, to the extent it has not provided complete transaction information pursuant to Part II.D.2.b.vi of the Swiss Bank Program, and set forth in subparagraph (c) on pages 2-3 of this Agreement, because the Tax Division has agreed to specific dollar threshold limitations for the initial production, SB Saanen Bank AG will promptly provide the entirety of the transaction information upon request of the Tax Division.

2. SB Saanen Bank AG agrees to close as soon as practicable, and in no event later than two years from the date of this Agreement, any and all accounts of recalcitrant account holders, as defined in Section 1471(d)(6) of the Internal Revenue Code; has implemented, or will implement, procedures to prevent its employees from assisting recalcitrant account holders to engage in acts of further concealment in connection with closing any account or transferring any funds;

and will not open any U.S. Related Accounts except on conditions that ensure that the account will be declared to the United States and will be subject to disclosure by SB Saanen Bank AG.

3. SB Saanen Bank AG agrees to use best efforts to close as soon as practicable, and in no event later than the four-year term of this Agreement, any and all U.S. Related Accounts classified as "dormant" in accordance with applicable laws, regulations and guidelines, and will provide periodic reporting upon request of the Tax Division if unable to close any dormant accounts within that time period. SB Saanen Bank AG will only provide banking or securities services in connection with any such "dormant" account to the extent that such services are required pursuant to applicable laws, regulations and guidelines. If at any point contact with the account holder(s) (or other person(s) with authority over the account) is re-established, SB Saanen Bank AG will promptly proceed to follow the procedures described above in paragraph 2.

4. SB Saanen Bank 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.

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

UNITED STATES DEPARTMENT OF JUSTICE
TAX DIVISION

Caroli Ciraolo — 7/23/2015

CAROLINE D. CIRAOLO — DATE
Acting Assistant Attorney General

7/23/2015

THOMAS J SAWYER — DATE
Senior Counsel for International Tax Matters

AGREED AND CONSENTED TO:
SB SAANEN BANK AG

By: — 23.07.2015

JUERG VON ALLMEN — DATE
Chief Executive Officer

By: — 23.07.2015

PETER KUEBLI — DATE
Chairman of the Board

APPROVED:

July 23, 2015

KEITH KRAKAUR — DATE
Skadden, Arps, Slate, Meagher & Flom LLP

July 23, 2015

GARY DIBIANCO — DATE
Skadden, Arps, Slate, Meagher & Flom LLP

EXHIBIT A TO SB SAANEN BANK AG NON-PROSECUTION AGREEMENT

Statement of Facts

I. Background

1. SB Saanen Bank AG ("SB Saanen" or the "Bank") is a small regional bank with 35 full-time employees headquartered in Saanen, Switzerland, approximately 120 miles from Zurich and 100 miles from Geneva. The Bank was founded in 1874 and has branches in the neighboring villages of Gstaad, Gsteig, and Lauenen, and a retail office in Schönried. At the end of 2014, the Bank had total client assets of approximately $1.085 billion (946 million Swiss francs). Nearly 90 percent of SB Saanen's shares are owned by approximately 1,500 persons domiciled in or close to the Saanen region.

2. As a regional bank, SB Saanen focuses on providing retail banking services to local residents, mortgages for properties in the region, and commercial loans to regional business, farming, and agricultural enterprises. SB Saanen offers private banking services. Four bank employees provide the core of the SB Saanen's private banking services. SB Saanen provides banking services not only to local residents, but to individuals who visit or have vacation residences located in the region.

II. U.S. Income Tax & Reporting Obligations

3. 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 had an obligation to report to the Internal Revenue Service ("IRS") on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking "Yes" or "No" in the appropriate box and identifying the country where the account was maintained.

4. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than $10,000 at any time during a particular year were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114, formerly known as Form TD F 90-22.1 (the "FBAR"). The FBAR for the applicable year was due by June 30 of the following year.

5. 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 form and an FBAR as required.

6. 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.

7. 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"). The Category 1 banks' cases have been closely monitored by banks operating in Switzerland, including SB Saanen, since at least August 2008.

III. Qualified Intermediary Agreement and Its Role in Non-Compliant U.S. Related Accounts

8. In 2001, SB Saanen entered into a Qualified Intermediary Agreement with the IRS. The Qualified Intermediary regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution with respect to U.S. securities. The Qualified Intermediary Agreement was designed to help ensure that, with respect to U.S. securities held in an account at the Bank, non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons holding U.S. securities were properly paying U.S. tax.

9. The Qualified Intermediary Agreement took account of the fact that SB Saanen, like other Swiss banks, was prohibited by Swiss law from disclosing the identity of an account holder. In general, if an account holder wanted to trade in U.S. securities and avoid mandatory U.S. tax withholding, the agreement required SB Saanen to obtain the consent of the account holder to disclose the client's identity to the IRS.

10. Prior to August 1, 2008 and thereafter, SB Saanen accepted accounts from U.S. taxpayers, some of whom have undeclared accounts and wished to take advantage of Swiss bank secrecy laws.

11. Like many other Swiss banks, and consistent with a form originally developed by the Swiss Bankers Association, SB Saanen required its U.S. customers, at account opening, to sign a "Declaration for U.S. Taxpayers" whereby the U.S. person was given the choice whether or not to use the SB Saanen account to make investments in U.S. securities. One of SB Saanen's forms gave U.S. clients the option to either block or permit investments in U.S. securities. The form advised, in bold letters, that if the U.S. clients selected the option of investing in U.S. securities, "**This will lead to the disclosure of our identity to the U.S. tax authorities. I am aware of and consent to this.**"

12. SB Saanen wrongly believed that it could accept and service U.S. account holders who it knew or had reason to believe were engaged in tax evasion so long as (a) account holders

refrained from trading in U.S. based securities, or (b) held accounts nominally structured in the name of a non-U.S. based legal entity.

13. SB Saanen published and occasionally updated a Directive for bank employees to implement the Qualified Intermediary Agreement. That Directive gave guidance for Bank employees to follow so that it could service its U.S. clients who did not provide the Bank with an IRS Form W-9. That Directive states, "U.S. persons who do not want to inform the U.S. tax authorities about their identity may not invest in U.S. securities; their accounts must be blocked for such transactions."

14. In addition, an SB Saanen procedural manual dated November 2009 related to the Directive warned its employees to minimize U.S-related contacts with undeclared U.S. clients. The manual required relationship managers to obtain an IRS Form W-9 for new U.S. clients and stated that, with respect to existing U.S. clients, that "clients who do not want disclosure to the IRS (American tax authority) **may not be contacted at all in the U.S.A. and/or other countries! Contact is only permissible within [Switzerland].**"

15. SB Saanen knew that the Qualified Intermediary Agreement did not prevent its U.S. customers from using SB Saanen accounts to hide assets from the IRS. In training materials used by the Bank in 2008, the materials described as a "drawback" of the Qualified Intermediary regime not that undeclared customers could not be serviced, but that "U.S. persons holding U.S. securities must generally be declared to the IRS (U.S. tax authority)." Likewise, in the Bank's 2009 training materials relating to its Qualified Intermediary Agreement, it explained to its employees that "U.S. persons who do not want to report to the IRS and therefore do not sign a W-9 may not hold U.S. securities."

16. SB Saanen monitored the events related to the disclosure, to U.S. tax authorities, of UBS accounts nominally owned by U.S. persons but held in the name of sham structures, and in 2009 bank documents noted that "the [Swiss Federal Tax Authority] recently decided that such constellations may, under certain circumstances, be qualified as tax fraud if Form A,[1] contrary to the [Form W-8 BEN], states a different beneficial owner." The Bank further noted that "Structures domiciled in offshore destinations should, as a rule, waive the holding of US securities because the qualification of the structure according to the requirements of US tax law is complex."

17. With the knowledge that Swiss banking secrecy laws would prevent SB Saanen from disclosing their identities to the IRS absent any client or statutory authorization, certain U.S. clients of SB Saanen filed false U.S. Individual Income Tax Returns, Forms 1040, which failed to report their respective interest in their undeclared accounts and the related income. Certain U.S. clients also failed to file and otherwise report their undeclared accounts on FBARs.

IV. Overview of the U.S. Cross Border Business

18. As of August 1, 2008, SB Saanen maintained 48 U.S. Related Accounts, with a maximum aggregate value of approximately $29 million. After that date, the Bank opened 62 additional U.S. Related Accounts with a maximum aggregate value of approximately

[1] Form A is commonly used in Swiss banking to identify the true beneficial owner of an account.

$33 million. Thus, during the Applicable Period SB Saanen maintained 110 U.S. Related Accounts with a maximum aggregate value of approximately $62 million.

19. In the wake of UBS, in November 2008, SB Saanen's executive board discussed the issue of U.S. clients and the widespread recognition in the Swiss banking industry that "U.S. clients [were] being rejected by the major banks." The executive board was told that SB Saanen was "receiving various inquiries whether we still accept new U.S. clients," and they discussed that they needed to be "aware that the U.S. business also involves considerable risks." The executive board concluded that, "as a rule, we want to continue to manage U.S. clients and open new relationships, however, on the condition that these clients have a link to our region and / or our relationship manager."

20. One member of the executive board later explained that it could be "tempting" for SB Saanen to seek the additional income that would come with U.S. clients. The executive noted that "it is strange that such clients should end up with Saanen Bank" and that "probably, many other banks also refuse to establish relationships with such clients, so that there are not all too many alternatives for the clients." That Bank executive concluded that expanding the type of U.S. clients that the Bank would accept beyond that which it was already accepting was "not worth the while" and did not comport with the Bank's business model.

21. In December 2008, SB Saanen's board of directors decided that it should continue to manage U.S. clients and that it would also continue to open new accounts for U.S. clients on the condition that they had a "link to our region or one of our relationship managers." As a result, the Bank opened accounts for approximately ten U.S. taxpayers who transferred accounts from other Swiss institutions that were closing such accounts. The Bank knew, or had reason to know, that two of those accounts were undeclared. Given that the Bank's board believed that the regulatory requirements for managing U.S. clients "was stringent," it decided that it would "minimize risks" by pooling U.S. clients into the private banking division and assigning them to one of three private banking relationship managers. Put another way, even though it was aware that servicing U.S. taxpayers came with an increased risk, SB Saanen continued to service U.S. taxpayers even though it had reason to believe that some of them were evading U.S. taxes.

22. During the Applicable Period, SB Saanen maintained three U.S. Related Accounts for individual U.S. taxpayers who opened the account in the name of a non-U.S. entity, such as offshore corporations or trusts. Those three U.S. Related Accounts comprised an aggregate value of approximately $5 million. SB Saanen was not involved in creating these entities, but it was aware that some U.S. clients created and used such non-U.S. entities to hold Swiss bank accounts to avoid their disclosure to, or otherwise be concealed from, U.S. tax authorities.

23. SB Saanen implemented a policy in 2009 with respect to foreign travel by its relationship managers. Pursuant to that policy, travel was permitted to the United States to meet with U.S. clients, so long as it was approved in advance by the Bank's chief executive officer. But such travel came with restrictions. For example, under the policy, SB Saanen declared that "No files may be taken abroad," relationship managers must "complete a training course," relationship managers "may not actively acquire" new customers, there was to be "no signing of business documents" or "accepting of orders" or providing "investment advice," and bank employees were prohibited from "handing over cash, securities, or objects."

24. SB Saanen's Head of Private Banking, who is no longer employed by the Bank, traveled to the United States in 2010 and 2011 to entertain U.S. clients at the U.S. Open tennis championship in Flushing Meadows, New York. The Bank reimbursed the relationship manager for expenses, including taking clients to U.S. Open matches, meals with clients at the Mandarin Oriental Hotel, the Carlyle Hotel, and other restaurants in Times Square or along the waterfront.

V. Accounts in Focus

25. SB Saanen offered a variety of traditional Swiss banking services which could and did assist U.S. clients in concealing assets and income from the IRS. One such service was numbered or pseudonym accounts. For an annual 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 the client. In addition, for an annual fee, SB Saanen would hold all mail correspondence for a particular client at the Bank. These services helped U.S. clients to eliminate the presence of documents associating the U.S. taxpayer's name with the undeclared assets and income they held at SB Saanen in Switzerland.

26. Among the undeclared U.S.-Related Accounts maintained at SB Saanen during the Applicable Period include:

- More than 20 accounts where, on the account opening form described above in paragraph 11, the U.S. taxpayer selected the option of not completing a W-9 or having his name disclosed to the IRS, and in approximately half of those cases the U.S. taxpayer lived in the United States and paid SB Saanen a fee for its "hold mail" service.

- Nearly ten numbered or "pseudonym" accounts.

- One account opened after August 1, 2008, in the name of a Panama corporation with a U.S. beneficial owner.

- Several accounts where the Bank processed large cash withdrawals to permit U.S. taxpayer-clients to close their accounts, and in two instances, the Head of Private Banking was aware of gold withdrawals in connection with U.S. taxpayer-clients closing their undeclared accounts.

- One instance in 2011 where the Bank assisted a U.S. taxpayer-client in the transfer of securities from his undeclared account to that of a Jersey company with a non-U.S. person as its beneficial owner. The Bank allowed the transfer of funds even though the Jersey corporation had not completed all required bank documents. In January and March 2012, the U.S. account holder closed his account and transferred an additional $4.3 million dollars to an account at SB Saanen held in the name of his wife, who was not a U.S. citizen.

- One instance in November 2012 where an SB Saanen relationship manager assisted a U.S. account holder in the transfer of more than $1 million to an account held solely by his wife, a U.K. citizen. The transfer was made after SB Saanen asked him to complete a Form W-9. SB Saanen transferred the funds even though the

Bank felt, at the time, it was "highly improbable under U.S. law that the [wife] is not a U.S. person."

- In another instance in 2012, the Bank, on the instructions of a U.S. taxpayer-client, transferred assets from his account to an account of his non-U.S. brother.

27. The Bank 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 the Bank. And in instances where the Bank permitted accounts to be closed with large cash withdrawals, with precious metals, or with transfers of funds to accounts held by non-U.S. persons, the Bank had reason to believe that the account holder was taking such action to avoid detection by U.S. tax authorities.

IV. Mitigating Factors

28. The Bank entered the Department of Justice Swiss Bank Program and has cooperated with the Department and provided information to the U.S. Government about its U.S. cross-border business. Throughout its participation in the Swiss Bank Program, the Bank fully cooperated with the Department of Justice and has made comprehensive disclosures regarding its U.S. cross-border business.

29. Throughout the Applicable Period, the Bank undertook a series of reforms and actions in relation to U.S. clients.

- In 2008, following reports on the UBS investigation, the Bank's management confirmed its prior practice to accept new U.S. persons only if they had a connection to the Saanen region or to a relationship manager, and it declined to accept accounts transferred from Category 1 banks not meeting that requirement.

- The Bank's executive board in 2009 discussed that it must "process and clean up the subject area of US clients." The Bank's management issued two directives in 2009, one formalizing its procedures relating to the Bank's Qualified Intermediary Agreement, and the other concerning cross-border financial services. The 2009 cross-border Directive emphasized that business relationships could only be initiated in Switzerland and with the prospective account holder physically present in the country. The 2009 Directive, and a separately adopted Travel Directive, stated that relationship managers must refrain from engaging in any active acquisition of customers, including marketing or business activities with current or future clients if traveling abroad.

- By 2010, the Bank's management decided that the Bank should proactively monitor the tax-compliance of new clients. It resolved no longer to accept new U.S. clients who were unwilling to declare their accounts and therefore required all new U.S. clients to provide a Form W-9.

- In December 2011, the Bank's management further adopted a Code of Conduct in Tax Matters for Clients Domiciled Abroad (the "2011 Code of Conduct"). The 2011 Code of Conduct memorialized the Bank's prior practice not to provide tax advice or advice on arrangements for foreign tax planning.

- In February 2012, the Bank's management decided to extend the policy it had adopted in 2010 for new accounts to the existing accounts of U.S. clients. The Bank asked all existing U.S. clients to submit to the Bank a Form W-9. Accounts of clients who failed to provide the form were closed. Notwithstanding this policy, the Bank still had seven U.S. clients without Forms W-9 in late 2012.

- The Bank recognized that requiring U.S. clients to submit Forms W-9 did not ensure tax compliance. As one member of the Bank's executive board put it, a Form W-9 was "basically useless without a corresponding securities account" because the "large majority of our US clients do not have a securities account with us, which means that we do ultimately not have any guarantee whether the clients disclose" their offshore assets and income to U.S. tax authorities. Pursuant to a U.S. Clients Directive adopted by the executive board in 2012, in addition to a Form W-9, the Bank required that by June 2012 all new U.S. clients hold at least one U.S. security in their accounts and file a Form W-9 (or W-8 BEN or W-8IMY as appropriate) to ensure income reporting by the Bank to the IRS. The Directive stated that all existing U.S. clients needed to fulfill these criteria by the end of 2013.

- In 2013, as a further tax-compliance measure, the Bank's management prohibited the moving of assets to offshore financial centers, the withdrawal of large cash amounts, the transfer of accounts held in the name of non-U.S. corporations, foundations, trusts, or other legal entities, the transfer of accounts to third parties and the purchase of precious metals (unless such purchase served to diversify the portfolio).

30. SB Saanen made efforts to encourage account holders to participate in the IRS's offshore voluntary disclosure programs. It hired a Swiss law firm and a U.S. accounting firm to reach out to U.S. account holders to persuade them to come into compliance with U.S. tax law. The accounting firm offered to assist account holders in completing the voluntary disclosure documentation. Moreover, the Bank has provided to the Department of Justice customer names and other identifying information for more than 80 of its U.S. Related Accounts after obtaining permission of the account holders to do so.

EXHIBIT B TO NON-PROSECUTION AGREEMENT

CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS OF SB SAANEN BANK AG

I, Juerg von Allmen, acting corporate secretary of SB Saanen 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 at a meeting held on July 14, 2015, at which a quorum was present and 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) unanimously voted to enter into the Non-Prosecution Agreement, including to pay a sum of USD 1,365,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and

— That Juerg von Allmen, Chief Executive Officer, and Peter Kuebli, Chairman of the Board, both registered in the Commercial Register of the Canton of Bern 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 with such non-material changes as each of they 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 Skadden, Arps, Slate, Meagher & Flom LLP, is hereby authorized to sign the Non-Prosecution Agreement in his capacity as the Bank's U.S. counsel.

I 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, I have executed this Certification this 23rd day of July 2015.

Juerg von Allmen
Secretary