



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

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2014200755

September 3, 2015

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

Re: Bank La Roche & Co AG
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Mr. Krakaur and Mr. DiBianco:

Bank La Roche & Co AG, (hereinafter La Roche) 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 La Roche in its Letter of Intent and information provided by La Roche 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 La Roche of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute La Roche 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 La Roche during the Applicable Period (the "conduct"). La Roche 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 La Roche and does not apply to any other entities or to any individuals. La Roche 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

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

Agreement. La Roche 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, La Roche agrees to pay the sum of \$9,296,000 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 La Roche. This payment is in lieu of restitution, forfeiture, or a criminal fine against La Roche for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from La Roche with respect to the conduct described in this Agreement, unless the Tax Division determines that La Roche has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. La Roche 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 La Roche has violated any provision of this Agreement. La Roche 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. La Roche agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. La Roche further agrees that no portion of the penalty that La Roche has agreed to pay to the Department under the terms of this Agreement will serve as a basis for La Roche 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) La Roche’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 La Roche 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) La Roche’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) La Roche'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 La Roche 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) La Roche's retention of a qualified independent examiner who has verified the information La Roche disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, La Roche 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 La Roche, 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, La Roche 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 La Roche 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 La Roche'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 La Roche; 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.

La Roche further agrees to undertake the following:

1. La Roche 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, La Roche will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. La Roche 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 La Roche.
3. La Roche 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. La Roche 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, La Roche will promptly proceed to follow the procedures described above in paragraph 2.

4. La Roche 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.

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

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

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

Caroline D. Ciruolo

CAROLINE D. CIRAOLO
Acting Assistant Attorney General
Tax Division

9/15/2015
DATE

Thomas J. Sawyer

THOMAS J. SAWYER
Senior Counsel for International Tax Matters

15 September 2015
DATE

Karen M. Quesnel

KAREN M. QUESNEL
Trial Attorney
Tax Division, U.S. Department of Justice

15 September 2015
DATE

LA ROCHE & CO AG

AGREED AND CONSENTED TO:

By: François Labhardt
FRANÇOIS LABHARDT
Chairman of the Board

Sept. 11. 2015
DATE

By: Christoph Gloor
CHRISTOPH GLOOR
Chief Operating Officer

Sept. 11. 2015
DATE

APPROVED:

Keith Krakaur / gsd
KEITH KRAKAUR, ESQUIRE
Skadden, Arps, Slate, Meagher & Flom LLP

Sept 11 2015
DATE

Gary DiBianco
GARY DIBIANCO, ESQUIRE
Skadden, Arps, Slate, Meagher & Flom LLP

Sept 11 2015
DATE

**EXHIBIT A TO BANK LA ROCHE & CO AG
NON-PROSECUTION AGREEMENT**

STATEMENT OF FACTS

INTRODUCTION

1. Bank La Roche & Co AG (“La Roche” or the “Bank”) is a closely-held bank that was founded in 1787. La Roche is based in Basel, Switzerland with offices in Olten and Bern.¹ The Bank does not have offices, branches or subsidiaries outside of Switzerland.² The Bank primarily provides asset management services and investment advisory services to private clients and to some institutional investors. Approximately 95% of La Roche's clients are domiciled in Switzerland and the European Union. As of December 31, 2014, La Roche had approximately 108 full-time employees.
2. During August 1, 2008, to December 31, 2014 (the “Applicable Period” as defined in the United States Department of Justice’s Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (referred to as the “Swiss Bank Program”³)), the Bank had approximately 6,500 accounts and approximately \$6.5 billion under management.
3. Until March 28, 2014, La Roche was known as La Roche 1787, Komplementäre La Roche, Labhardt, Baumann, Gloor & Co. On February 13, 2015, La Roche sold its business to Notenstein Privatbank AG. Most of the Bank’s employees and the clients of La Roche, with the exception of U.S. taxpayers and a few other clients, will be transferred to Notenstein Privatbank AG. The transaction is expected to close in October 2015. Thereafter, La Roche intends to wind down its remaining business and relinquish its banking license.

U.S. INCOME TAX & REPORTING OBLIGATIONS

4. 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 Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether they 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.

¹ The Bank has asset management subsidiaries in Olten and Bern, Switzerland, and maintains office space in Zurich, but has no employees in Zurich.

² In 2011, the Bank closed a Hong Kong asset management subsidiary that had been opened in 2008.

³ Any capitalized term not defined has the meaning assigned to it in the Swiss Bank Program.

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). The FBAR must 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 form and an FBAR as required.
7. “U.S. Related Accounts” means accounts which exceeded \$50,000 in value at any time during the Applicable Period, and as to which indicia exist that a U.S. Person or Entity has or had a financial or beneficial interest in, ownership of, or signature authority (whether direct or indirect) or other authority over the account.
8. 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.
9. 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 accounts and maintaining undeclared assets and income from the IRS. Since the UBS investigation became public, 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 I banks”). The Category I banks’ cases have been closely monitored by banks operating in Switzerland, including La Roche, since at least August of 2008.

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

10. In 2001, the Bank entered into a Qualified Intermediary (QI) Agreement with the IRS. The QI regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution regarding U.S. securities. The QI Agreement was designed to help ensure that non-U.S. persons were subject to the proper

U.S. withholding tax rates and that U.S. persons were properly paying U.S. tax — in each case, with respect to U.S. securities held in an account with the QI.

11. The QI Agreement expressly recognized that a non-U.S. financial institution (such as La Roche) may be prohibited by foreign law (such as Swiss law) from disclosing an account holder's name or other identifying information. In general, a QI subject to such foreign-law restrictions had to request that its U.S. clients either (a) grant the QI authority to disclose the client's identity or disclose himself or herself by mandating the QI to provide an IRS Form W-9 completed by the account holder, or (b) grant the QI authority to sell all U.S. securities of the account holder (in the case of accounts opened before January 1, 2001) or to exclude all U.S. securities from the account (in the case of accounts opened on or after January 1, 2001), in which case the client's identity would remain undisclosed. Following the effective date of the QI Agreement, a sale of U.S. securities, if any, held by a U.S. person who chose not to provide a QI with an IRS Form W-9 was subject to tax information reporting on an anonymous basis and backup withholding. The Bank was aware that U.S. persons who did not provide an IRS Form W-9 avoided disclosing their identities under the QI agreement.
12. Between 2006 and early 2008, in two instances, the Bank was notified by the IRS of discrepancies and errors in payments and reporting of withholding taxes. Resolution of these matters required the retention of external counsel and subjected the Bank to possible levy of assets by the IRS. In light of these administrative burdens, the Bank stopped holding U.S. securities for its U.S. clients in early 2008.

OVERVIEW OF THE U.S. CROSS-BORDER BUSINESS

13. As of August 1, 2008, La Roche maintained 184 U.S. Related Accounts, with a maximum aggregate value of approximately \$169 million. After that date, the Bank opened 17 additional U.S. Related Accounts with a maximum aggregate value of approximately \$24.5 million. Thus, during the Applicable Period La Roche maintained 201 U.S. Related Accounts with a maximum aggregate value of approximately \$193.9 million, 136 of which were U.S. clients domiciled in the United States. Thirty-six of the 136 accounts with a U.S. domiciled beneficial owner were maintained in the names of entities. The ratio between the Bank's assets under management of U.S. clients with U.S. Related Accounts and the Bank's total assets under management in value averaged approximately 3% during the Applicable Period.
14. La Roche was aware that U.S. taxpayers had a legal duty to report to the IRS and pay taxes on all of their income, including income earned in accounts that these U.S. taxpayers maintained at the Bank. Despite being aware of this legal duty, the Bank opened and maintained accounts for U.S. taxpayers, and, in certain instances, closed such accounts via cash or precious metal withdrawals, without investigating whether such accounts were undeclared.
15. La Roche has never marketed its services in or to the United States and has never had a strategy to target U.S. taxpayers. It has never had a U.S. desk and its employees never travelled to the United States to visit or solicit clients.

16. La Roche assisted some U.S. clients in opening and maintaining undeclared accounts in Switzerland and concealing the assets and income the clients held in their accounts from the IRS. The Bank used a variety of means to assist some U.S. clients in concealing the assets and income the clients held in their La Roche undeclared accounts, including by:
- opening and maintaining 51 accounts for U.S. taxpayers in the name of non-U.S. corporations, foundations, trusts, or other entities, including sham entities, thereby assisting such U.S. taxpayers in concealing their beneficial ownership of the accounts;
 - providing, for an annual fee, numbered accounts for 70 U.S. taxpayers, whereby 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. However, La Roche's internal records reflected the identity of the U.S. clients associated with these accounts, in compliance with Swiss law;
 - holding bank statements and other mail relating to 66 U.S. Related (numbered) Accounts at the Bank's offices in Switzerland rather than sending them to the U.S. taxpayers in the United States. The Bank also held bank statements and other mail relating to 20 named accounts of U.S. taxpayers domiciled in the United States. As a result, all documents reflecting the existence of these accounts remained outside the United States;
 - allowing substantial cash and precious metal withdrawals in connection with closures of 27 accounts of U.S. taxpayers;
 - maintaining records in its files in which certain U.S. taxpayers expressly instructed the Bank not to disclose their names to the IRS;
 - providing travel cash cards to five U.S. taxpayers upon their request; and
 - opening, in June 2010, an account for a U.S. taxpayer who had left UBS and who transferred \$126,000 from UBS to the La Roche account.
17. La Roche opened, serviced, and profited from accounts for U.S. clients with the knowledge that some were likely not complying with their U.S. income tax obligations. Due in part to the assistance of La Roche and its personnel, as described in part in paragraph 16, and with the knowledge that Swiss banking secrecy laws would prevent the Bank from disclosing their identities to the IRS, some U.S. clients of La Roche filed false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, which failed to report their interests in their undeclared accounts and the related income. Some of La Roche's U.S. clients also failed to file and otherwise report their undeclared accounts on FBARs.
18. Private bankers (referred to as "relationship managers") served as the primary contact for U.S. clients with accounts at La Roche. During the Applicable Period, the Bank employed approximately 30 relationship managers, including the six partners. Each active account was assigned to at least one relationship manager. Certain relationship

managers assisted some U.S. individual taxpayers in establishing and maintaining undeclared accounts in a manner designed to conceal the U.S. taxpayers' ownership or beneficial interest in their accounts.

19. The Bank also had relationships with external asset managers. The Bank acted as a custodian of assets introduced and managed by external asset managers, with whom the Bank entered into agreements. In some cases, La Roche compensated these external asset managers for business generated for the Bank by sharing a percentage of the custodial and brokerage fees. In other cases, in exchange for reduced fees on their accounts, La Roche account holders using external asset managers paid them their fees. Forty U.S. Related Accounts were managed by 11 different External Asset Managers. Of the 40 accounts, the Bank opened 33 accounts prior to the Applicable Period and seven accounts during the Applicable Period. Assets under management of these 40 U.S. Related Accounts totaled approximately \$43 million.

THE USE BY U.S. CLIENTS OF STRUCTURES, INCLUDING SHAM ENTITIES

20. In 51 instances, the Bank maintained accounts for U.S. taxpayers as beneficial owners of accounts held by non-U.S. corporations, foundations, or other entities, some of which were sham entities that concealed the beneficial ownership of the U.S. taxpayers. These entities included Liechtenstein foundations, two of which were established or administered by a Liechtenstein trust company, whose manager and director had a long-standing personal relationship with the Bank. The Liechtenstein provider was the Bank's main external provider of structuring services. The Liechtenstein provider referred clients to the Bank. And the Bank referred U.S. and non-U.S. clients to the Liechtenstein provider when clients wished to set up an entity or, in the opinion of their relationship managers, needed estate planning or similar assistance. The 51 U.S. related accounts held by entities and beneficially owned by one or more U.S. taxpayers had a value of approximately \$75.4 million. Eleven of these accounts were opened during the Applicable Period.

CLOSING OF ACCOUNTS AND CONCEALMENT OF ASSETS

21. As a result of its process to contact U.S. taxpayers to encourage them to regularize or close their accounts, with respect to 27 accounts, the Bank processed requests from U.S. taxpayers to withdraw funds in cash or precious metals within the six months prior to the closing of the accounts for a total amount of \$11.6 million.
22. With respect to one account, which was opened in 1997 and closed in September 2012, La Roche terminated the relationship with the client, a German citizen residing in the United States, because of the client's U.S. domicile. The Bank processed the client's request to withdraw the closing balance of \$1.2 million in cash and gold. With respect to another account, the Bank terminated the relationship with the client, an Austrian-U.S. dual citizen residing in the United States, because of the client's U.S. domicile. The Bank processed the client's request to withdraw the closing balance of \$300,000 in cash.

MITIGATING FACTORS

23. During the Applicable Period, the Bank opened only 17 U.S. Related Accounts, primarily for individuals domiciled outside of the United States.
24. Prior to the Swiss Bank Program and throughout the Applicable Period, the Bank undertook a series of reforms and actions in relation to U.S. clients.
25. In July 2008, following reports of the UBS investigation and after receiving legal advice from a U.S. law firm, the Bank's executive board ("the Board") decided: (i) not to accept U.S. nationals domiciled in the United States as new clients (with exceptions subject to specific approval), and (ii) to enter into new relationships with U.S. nationals domiciled outside the United States only if the relationship was approved by a member of the Board.
26. In October 2009, the Bank issued a U.S. client directive ("the 2009 Policy"), which formalized the July 2008 decision, and started to exit U.S. clients on a case-by-case basis. The 2009 Policy prohibited, among other things, the opening of new accounts for any U.S. persons and entities (structures) with any U.S. beneficial owners. In relation to pre-existing relationships with U.S. clients, the 2009 Policy stated that the Bank would determine whether to continue or dissolve the client relationship on a case-by-case basis.
27. During 2009 and 2010, the Bank decided on a general exit of U.S. clients. As part of this strategy, the Bank closed 24 accounts for which a U.S. taxpayer was the account holder or beneficial owner.
28. The Bank closed 187 U.S. Related Accounts with a total of assets under management of \$156 million since August 1, 2008.

LA ROCHE'S COOPERATION THROUGHOUT THE SWISS BANK PROGRAM

29. The Bank entered the Department of Justice's Swiss Bank Program as a Category 2 bank on December 23, 2013. Throughout its participation in the Swiss Bank Program, La Roche committed to providing full cooperation to the U.S. government and has made timely and comprehensive disclosures regarding its U.S. cross-border business. Specifically, the Bank, with the assistance of U.S. and Swiss counsel, forensic investigators, and in compliance with Swiss privacy law, has:
 - conducted an internal investigation which included but is not limited to: (a) interviews of relationship managers and other employees; (b) reviews of client account files and correspondence; (c) analysis of relevant management policies; and (d) email searches;
 - provided information concerning ten U.S. client accounts held at La Roche in Switzerland since August 2008 sufficient to make treaty requests to the Swiss competent authority for U.S. client account records;

- described in detail the structure of its U.S. cross-border business which included but is not limited to: (a) its cross-border business policies; (b) a summary of U.S. Related Accounts by assets under management; (c) a redacted summary of external asset managers and relationship managers with U.S. Related Accounts by assets under management; (d) information about U.S. Related Accounts associated with external asset managers and relationship managers; and (e) written narrative summaries of ten U.S. Related Accounts; and
 - provided a list of the names and functions of individuals who structured, operated, or supervised the cross-border business at La Roche.
30. Based on La Roche's efforts, some of its former U.S. clients entered into the IRS's voluntary disclosure program and paid back taxes, penalties, and interest in connection with their failing to report their undeclared accounts. In addition, the Bank obtained waivers of Swiss bank secrecy from some of its former U.S. clients and provided the names of these persons to the U.S. government.

EXHIBIT B TO NON-PROSECUTION AGREEMENT

**CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS
OF BANK LA ROCHE & CO AG**

I, Ines Pöschel, acting corporate secretary of Bank La Roche & Co 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 September 9, 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 9,296,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That François Labhardt, chairman of the board, and Christoph Gloor, CEO, both registered in the Commercial Register of the Canton of Basel-Stadt 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 them may approve; and (ii) to take, on behalf of the Bank, all actions as may be necessary or advisable in order to carry out the foregoing; and
- That Keith D. Krakaur and Gary DiBianco, Skadden, Arps, Slate, Meagher & Flom LLP, are hereby authorized to sign the Non-Prosecution Agreement in their 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 9th day of September 2015.



Ines Pöschel
Secretary