



U.S. Department of Justice

Tax Division

Washington, D.C.

Please reply to: P.O. Box 683
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CDC:TJS:CMDuffy
DJ 5-16-4679
CMN 2014200687

September 18, 2015

Via Email

Doug Tween, Esquire
Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018

Re: BHF-Bank (Schweiz) AG

Dear Mr. Tween:

BHF-Bank (Schweiz) AG ("BHF") 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 BHF in its Letter of Intent and information provided by BHF 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 BHF of the Swiss Bank Program will constitute a breach of this Agreement.

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

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

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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, BHF agrees to pay the sum of \$1,768,000 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 BHF. This payment is in lieu of restitution, forfeiture, or criminal fine against BHF for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from BHF with respect to the conduct described in this Agreement, unless the Tax Division determines BHF has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. BHF 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 BHF has violated any provision of this Agreement. BHF 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. BHF agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. BHF further agrees that no portion of the penalty that BHF has agreed to pay to the Department under the terms of this Agreement will serve as a basis for BHF 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) BHF'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 BHF 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) BHF'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) BHF'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 BHF 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) BHF's retention of a qualified independent examiner who has verified the information BHF disclosed pursuant to II.D.2 of the Swiss Bank Program.

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

BHF further agrees to undertake the following:

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

4. BHF 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.

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

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

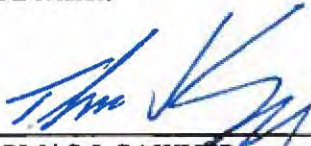
This Agreement supersedes all prior understandings, promises and/or conditions between the Department and BHF. No additional promises, agreements, and conditions have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by both parties.

[Signatures to Follow on Next Page]



CAROLINE D. CIRAOLO
Acting Assistant Attorney General
Tax Division

October 1, 2015
DATE



THOMAS J. SAWYER
Senior Counsel for International Tax Matters

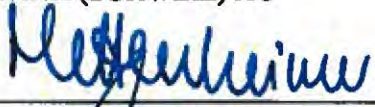
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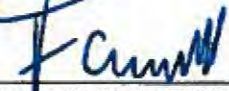
CHARLES M. DUFFY
Trial Attorney

October 1, 2015
DATE

AGREED AND CONSENTED TO:
BHF-BANK (SCHWEIZ) AG

By: 
ALEXANDER METTENHEIMER
Chairman of the Board of Directors

24/09/15
DATE

By: 
HANS-PETER FORNOFF
Member of the Management

24/09/15
DATE

APPROVED:


DOUGLAS M. TWEEN
Baker & McKenzie LLP

28 September 2015
DATE

EXHIBIT A TO BHF NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

INTRODUCTION

1. BHF-BANK (Schweiz) AG ("BHF" or the "Bank") was established in 1974 as a wholly-owned Swiss subsidiary of BHF-BANK Aktiengesellschaft ("BHF-BANK AG"), a private bank located in Germany. Deutsche Bank AG purchased BHF-BANK AG in 2010. In 2014, BHF-BANK AG was sold to a consortium of investors. BHF is headquartered in Zurich and has a branch in Geneva. The name of the group is now BHF Kleinwort Benson Group.
2. BHF's services include investment consulting and administration, asset management, asset structure consulting, fund investments, and financial planning. The Bank's field of responsibilities includes financial investment consulting and management in the corporate sector and the underwriting of business in the Swiss capital market. The Bank also offers family office services, providing a broad spectrum of services for very large family fortunes related to the structuring of the wealth, the selection of investment managers, and the consolidation and monitoring of the private wealth.
3. In addition to providing services to citizens and businesses based in Switzerland, the Bank also provided such services to individuals and entities outside of Switzerland. The Bank's focus was predominantly in the European Union, but it also provided services to citizens and residents of the United States.
4. In August 2013, the Department of Justice announced the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (referred to as the "Swiss Bank Program"). In 2013, the approximate value of accounts under management at BHF was 1.5 billion Swiss francs and since 2008, the Bank's U.S. clients have never exceeded 2.9% of the Bank's assets under management.

U.S. INCOME TAX & REPORTING OBLIGATIONS

5. 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 was maintained.
6. 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 were 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.

7. 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.
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 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 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 UBS, several other Swiss Banks have publicly announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients (UBS and the other targeted Swiss Banks are collectively referred to as "Category 1 banks"). These cases have been closely monitored by banks operating in Switzerland, including BHF, since at least August of 2008.

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

10. In the fourth quarter of 2000, BHF signed a Qualified Intermediary ("QI") 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 QI 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 were properly paying U.S. tax.
11. The QI Agreement took account of the fact that BHF, 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 QI Agreement required BHF to obtain the consent of the account holder

to disclose the client's identity to the IRS. The QI Agreement required BHF to obtain an IRS Form W-9 and to undertake IRS Form 1099 reporting for new and existing U.S. clients engaged in U.S. securities transactions.

12. In 2001, after its acceptance into the QI Program, BHF implemented a policy that every client had to sign either a Form W-9 or a Declaration of Non-U.S. Person Status, which required the customer to declare whether he or she was a U.S. person for tax purposes.
13. The Bank's electronic system, which managed all of the Bank's transactions, tracked whether a signed Form W-9 was provided by the clients. For "undocumented" clients -- those clients without a signed Form W-9 in the electronic system -- the account management system was supposed to block all transactions in U.S. securities. However, some clients signed a Form W-9, but directed their relationship manager to block U.S. securities from their portfolio. Because the Bank allowed this practice, U.S. clients who did not want to have their identities disclosed to the IRS could avoid detection by declining U.S. securities.
14. The Bank's QI Agreement policy was not followed in several instances. For example, out of approximately 20 accounts that the Bank was aware of in the mid-2000s as being held by U.S. persons, approximately 15 clients signed a Form W-9, and approximately five clients refused to sign a Form W-9. The Bank nevertheless continued to service these clients' accounts and kept them open.
15. BHF also observed several instances recorded in its electronic system where BHF clients who were U.S. account holders signed the Declaration of Non-U.S. Person Status declaring that they were U.S. citizens without any consequences.
16. BHF also did not implement practices to address payment of withholding tax related to U.S. securities held in some clients' accounts. On at least two occasions, the Bank encountered an issue it was unprepared for regarding the QI Program. In both instances, a publicly-traded non-U.S. company was acquired by a U.S. publicly-traded company. The relevant shares were automatically converted to U.S. shares, but the Bank's electronic system did not block the transactions. As a result, this created a reporting obligation for the Bank, which would have identified U.S. clients it understood to be undeclared. Instead, consistent with its QI program, BHF charged the clients the withholding tax and the Bank transferred the payment to the United States. The Bank's payment of the withholding tax directly to the U.S. prevented the disclosure of the two U.S. clients' identities.
17. BHF chose to continue to service U.S. customers without disclosing their identities to the IRS or taking steps to ensure that clients were compliant with U.S. tax laws and without considering the impact of U.S. criminal law on that decision.

BHF'S POLICIES WITH RESPECT TO U.S. PERSONS

18. Other than the QI Agreement, BHF did not have a policy with respect to U.S. persons

prior to 2009. In early 2009, after the appointment of a new Management Board, BHF made various policy changes designed to increase transparency and eliminate non-tax compliant accounts, including accounts held by U.S. clients.

19. BHF made a number of similar policy and other changes in 2010 and thereafter. BHF's Management Board reinforced its policy of requiring account holders and beneficial owners to completely fill out the Declaration of Non-U.S. Person Status. The Bank's Legal and Compliance Departments updated the Bank's Cross Border Manual for the United States and prohibited various types of contacts with and services for U.S. clients on U.S. soil, including a ban on soliciting new clients in the United States, marketing to clients in the United States, and accepting or transporting assets into/from the United States. Further, the Bank prohibited the opening of accounts where the beneficial owner was a U.S. person and the account holder was a non-U.S. person, and accounts where the beneficial owner was a U.S. person and the account holder was a different U.S. person. The Bank also prohibited the on-boarding of accounts where the beneficial owner was a U.S. person and the account holder was a trust, foundation, or other special purpose vehicle.
20. Many clients and relationship managers left the Bank due to its implementation of these policy changes designed to increase transparency. Some relationship managers also left the Bank because they would not comply with the new policies and these relationship managers took most, if not all, of their respective portfolios with them, including U.S. clients, to their new employers. Despite declining assets under management, the Bank maintained its increasingly restrictive policies and its efforts to increase transparency, including eliminating U.S. clients.

OVERVIEW OF U.S. CROSS BORDER BUSINESS

21. Since it began its operations, the Bank was aware that its U.S. clients had a legal duty to report to the IRS, pay taxes on the basis of, all of the income, including income earned in accounts at the Bank.
22. Despite understanding that U.S. taxpayers had a legal duty to report to the IRS and to pay taxes on income earned in accounts maintained in Switzerland and being aware that U.S. taxpayers were depositing funds into Swiss banks because of the secret nature of Swiss banking secrecy laws, the Bank opened and maintained undeclared accounts for U.S. taxpayers.
23. During the Applicable Period,¹ BHF held a total of 125 U.S. Related Accounts, comprising total assets under management of approximately \$202,964,006. Eighty-eight of the accounts had been closed as of April 30, 2014.
24. BHF did not have a U.S. focus, did not have any marketing materials specific to U.S. clients and did not send marketing materials to the United States. BHF also did not have

¹ Capitalized terms not otherwise defined in this Statement of Facts have the meanings set forth in the Program for Non-Prosecution or Non-Target Letters for Swiss Banks, issued on August 29, 2013 (the "Swiss Bank Program").

a policy of dispatching relationship managers to the United States to solicit new U.S. clients; although, on at least one occasion, BHF relationship managers visited the United States to maintain continuity with respect to U.S. Related Accounts where another relationship manager was retiring.

25. Approximately a dozen relationship managers were responsible for managing one or more of the 125 U.S. Related Accounts at the Bank. The responsibilities of relationship managers were the same with respect to U.S. Related Accounts and other accounts with respect to opening the accounts and maintaining the client relationship. The Bank also never had a U.S. desk nor any organizational structure set up to handle U.S. clients. Nonetheless, U.S. Related Accounts, including offshore structured accounts, came into the Bank through its relationship managers, through external asset managers or otherwise.
26. For example, one account in the name of an offshore entity was referred to a BHF manager from a U.S.-based structuring lawyer prior to 2008, and transferred to BHF from another Swiss bank. The file contained a Form W-8BEN and certification of non-U.S. persons for the offshore corporate account holder. The Bank's management approved opening of the account even though the account also held U.S. securities. There was no Form W-9 completed or provided to the Bank for the U.S. person beneficial owner. The Bank did not confirm that the U.S. person beneficial owner was compliant with U.S. tax obligations.
27. BHF offered a variety of traditional Swiss banking services that it knew could assist, and did assist, U.S. clients in the concealment of assets and income from the IRS. One such service was "hold mail." Through that service, BHF would hold all mail correspondence of a particular client at the Bank for client review. As a consequence, documents reflecting the existence of the accounts remained outside the United States, allowing U.S. clients to minimize the paper trail associated with the undeclared assets and income they held at BHF in Switzerland. The Bank's hold mail services advanced the concealment efforts of its U.S. clients.
28. In several instances BHF issued debit cards linked to the undeclared accounts. The cards enabled U.S. account holders to access the undeclared assets without having to visit the Bank.
29. There were certain accounts in which U.S. citizens had an interest and the Bank failed to properly follow its own procedures and rules regarding the completion of internal bank documents and other documents by such U.S. citizens. These and other failures by the Bank advanced the concealment efforts of its U.S. clients.

**WHOLLY-OWNED SUBSIDIARY OF THE BANK ARRANGED
FOR FORMATION OF OFFSHORE STRUCTURES FOR BHF CLIENTS**

30. In 1982, a trust company was formed as a wholly-owned subsidiary of BHF. The name of the subsidiary was Plinius Management Limited, Zurich

("Plinius"). Plinius was created to provide special services for wealthy clients, which included advice regarding trusts, foundations, fiduciary agreements, and holding companies in order to protect assets and minimize tax liability. Plinius had no employees, and BHF provided it with staff and infrastructure.

31. In addition to other counseling services, Plinius assisted with referrals to establish various types of structures, including Liechtenstein Anstalten and Stiftungen, and British Virgin Islands and Panamanian entities. Plinius did not create the structures; instead it would contact an external trust company or law firm in Liechtenstein to set up the entity within the agreed-upon jurisdiction. While Plinius's relationship managers did not have access to the Forms A held by BHF that identified the beneficial owners, in some cases they were aware of the ultimate beneficial owner(s) of the accounts. Four subsidiary-related structured accounts were established for U.S. persons, which improperly sheltered U.S. taxpayer-clients and hid their assets from the IRS.
32. On December 8, 2011, the Board of Directors decided to sell Plinius in order to move away from the servicing of structured accounts. Plinius was sold on January 31, 2012 to a Liechtenstein company; the sale and purchase agreement required the new owner to liquidate Plinius immediately. As a consequence, it was put into liquidation on May 28, 2013, and thereafter no longer serviced any clients. Plinius was liquidated and cancelled from the commercial register of the Canton of Zurich on October 2, 2014.

BHF'S COOPERATION THROUGHOUT THE SWISS BANK PROGRAM

33. BHF has fully cooperated with the Department of Justice in relation to the Swiss Bank Program, by among other things, providing all relevant and requested information and documents to the Department of Justice relating to its U.S. businesses, subject to Swiss bank secrecy laws. BHF engaged U.S. and Swiss counsel, as well as forensic accounting experts to conduct an internal investigation and review of the Bank's files to identify U.S. Related Accounts. BHF described the structure of its business, in particular its cross-border business and policies concerning U.S. account holders during the Applicable Period. BHF also provided the names of certain employees and asset managers to the Department of Justice in compliance with Swiss privacy law.
34. The Bank encouraged existing and prior account holders and beneficial owners of U.S. Related Accounts to provide evidence of tax compliance or of participation in any of the IRS's Offshore Voluntary Disclosure Programs or Initiatives or to disclose their accounts to the IRS through such a program. The Bank sought waivers of Swiss bank secrecy from all account holders and obtained waivers for more than 50% of its accounts. BHF has also provided certain account information related to U.S. taxpayers that will enable the Government to make requests under the 1996 Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with respect to Taxes on Income for, among other things, the identities of U.S. account holders.

EXHIBIT B TO NON-PROSECUTION AGREEMENT

**CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS
OF BHF-BANK (SCHWEIZ) AG**

We, Alexander Mettenheimer, Chairman of the Board of Directors of BHF-Bank (Schweiz) AG ("BHF" or the "Bank"), a corporation duly organized and existing under the laws of Switzerland, and Julia Szemerédy, acting Secretary of the Board of Directors of BHF, do hereby certify that the following is a complete and accurate copy of a resolution considered and adopted by the Board of Directors of the Bank:

- That the Board of Directors of BHF 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 1,768,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Alexander Mettenheimer, the Bank's Chairman of the Board of Directors, and Hans-Peter Fornoff, Member of the Executive Board, both registered in the Commercial Register of the Canton of Zurich as having joint signatory authority, are hereby authorized (i) to jointly execute the Non-Prosecution Agreement on behalf of the Bank substantially in such form as reviewed by the Board of Directors with such non-material changes as they may approve; and (ii) to take, on behalf of the Bank, all actions that may be necessary or advisable in order to carry out the foregoing; and
- That Douglas M. Tween, Baker & McKenzie LLP, is hereby authorized to sign the Non-Prosecution Agreement in his capacity as the Bank's U.S. counsel.

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

IN WITNESS WHEREOF, we have executed this Certification this 24th day of September 2015.



Alexander Mettenheimer
Chairman



Dr. Julia Szemerédy
Secretary