



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

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2014200684

Dated: October 09, 2015

Marc R. Cohen, Esquire
Alex C. Lakatos, Esquire
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006

Re: BBVA (Suiza) SA
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Messrs. Cohen and Lakatos:

BBVA (Suiza) SA submitted a Letter of Intent on December 30, 2013, to participate in Category 2 of the Department of Justice's Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks, as announced on August 29, 2013 (hereafter "Swiss Bank Program"). This Non-Prosecution Agreement ("Agreement") is entered into based on the representations of BBVA (Suiza) SA in its Letter of Intent and information provided by BBVA (Suiza) SA 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 BBVA (Suiza) SA of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute BBVA (Suiza) SA 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 BBVA (Suiza) SA during the Applicable Period (the "conduct"). BBVA (Suiza) SA 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,

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

and applies only to BBVA (Suiza) SA and does not apply to any other entities or to any individuals. BBVA (Suiza) SA 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. BBVA (Suiza) SA 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, BBVA (Suiza) SA agrees to pay the sum of ten-million three-hundred-ninety thousand dollars (\$10,390,000) 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 BBVA (Suiza) SA. This payment is in lieu of restitution, forfeiture, or criminal fine against BBVA (Suiza) SA for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from BBVA (Suiza) SA with respect to the conduct described in this Agreement, unless the Tax Division determines BBVA (Suiza) SA has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. BBVA (Suiza) SA 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 BBVA (Suiza) SA has violated any provision of this Agreement. BBVA (Suiza) SA 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. BBVA (Suiza) SA agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. BBVA (Suiza) SA further agrees that no portion of the penalty that BBVA (Suiza) SA has agreed to pay to the Department under the terms of this Agreement will serve as a basis for BBVA (Suiza) SA 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) BBVA (Suiza) SA'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 BBVA (Suiza) SA 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) BBVA (Suiza) SA'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) BBVA (Suiza) SA'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 BBVA (Suiza) SA 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) BBVA (Suiza) SA'S retention of a qualified independent examiner who has verified the information BBVA (Suiza) SA disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, BBVA (Suiza) SA 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 BBVA (Suiza) SA, 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, BBVA (Suiza) SA 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 BBVA (Suiza) SA 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 BBVA (Suiza) SA'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 BBVA (Suiza) SA; 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.

BBVA (Suiza) SA further agrees to undertake the following:

1. BBVA (Suiza) SA 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, BBVA (Suiza) SA will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. BBVA (Suiza) SA 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 BBVA (Suiza) SA.

3. BBVA (Suiza) SA 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. BBVA (Suiza) SA 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, BBVA (Suiza) SA will promptly proceed to follow the procedures described above in paragraph 2.
4. BBVA (Suiza) SA 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.

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


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

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

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



CAROLINE D. CIRAOLO
Acting Assistant Attorney General

10/16/2015
DATE



THOMAS J. SAWYER
Senior Counsel for International Tax Matters

16 October 2015
DATE



PAUL G. GALINDO
Trial Attorney

10/16/2015
DATE

AGREED AND CONSENTED TO:
BBVA (SUIZA) SA

By: 


PETER ALTORFER
Chairman of the Board

09/10/15
DATE

By: 

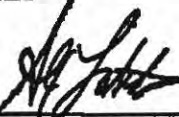
ALFONSO GOMEZ
Chief Executive Officer

09/10/15
DATE

APPROVED:


MARC R. COHEN, ESQUIRE
Mayer Brown LLP

October 9, 2015
DATE



ALEX C. LAKATOS, ESQUIRE
Mayer Brown LLP

10/09/15
DATE

EXHIBIT A TO BBVA SUIZA S.A. NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

Background

1. **BBVA Suiza S.A. (“BBVA Suiza” or the “Bank”) is a Swiss private bank with one office in Zurich. BBVA Suiza is wholly owned by Banco Bilbao Vizcaya Argentaria S.A. and is part of the BBVA Group. BBVA—the flagship of the BBVA Group—is a major global financial institution based in Spain. In 1984, a predecessor of BBVA entered the Swiss market by purchasing a Swiss bank that later became BBVA Suiza.**
2. **BBVA Suiza has 125 employees, including 35 relationship managers. It manages around 3,500 accounts, over 85% of which are held by individuals, and has approximately \$5 billion in assets under management. It is the smallest banking affiliate within the BBVA Group.**
3. **At all relevant times, BBVA Suiza provided private banking and asset management services through private bankers based in Zurich. BBVA Suiza’s marketing focus was and remains on customers coming from countries where the BBVA Group has a strong brand.**
4. **BBVA Suiza nevertheless provided banking services to certain customers, equal to about 1.7% of its customer base, who were citizens, or residents of the United States (“U.S. taxpayer(s),” “U.S. client(s),” or “U.S. person(s)”) and entities owned by U.S. taxpayers (excluding tax transparent entities owned by non-U.S. taxpayers). Of these U.S. taxpayer customers, about 70% were not resident in the United States. The U.S. taxpayer customers were typically dual U.S. citizens, U.S. expatriates, non-U.S. persons who moved to the United States, and other persons who formed a relationship with BBVA Suiza based upon a preexisting relationship with BBVA Group affiliates.**

U.S. Income Tax & Reporting Obligations

5. **U.S. citizens and resident aliens have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income. Since tax year 1976, U.S. citizens and resident aliens have had an obligation to report to the Internal Revenue Service (“IRS”) on Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking “Yes” or “No” in the appropriate box and identifying the country where the account was maintained.**
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 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). An FBAR for a particular year 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 applicable 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 Internal Revenue Service and the United States Department of Justice and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department of Justice and UBS filed a deferred prosecution agreement in the Southern District of Florida in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared assets and income from the IRS. Since UBS, several other Swiss banks have publicly announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients (UBS and the other targeted Swiss banks are collectively referred to as "Category 1 banks"). These cases have been closely monitored by banks operating in Switzerland, including BBVA Suiza, since at least August of 2008.
10. BBVA Suiza was, at all relevant times, aware that U.S. taxpayers had a legal duty to report their assets and income to the IRS, and to pay taxes on the basis of all their income, including income earned from accounts that BBVA Suiza maintained on their behalf. Despite being aware of this legal duty, BBVA Suiza maintained undeclared accounts for clients that it knew, or should have known, were U.S. taxpayers.

**BBVA Suiza's Qualified Intermediary Agreement, and
Its Role in Non-Compliant U.S. Related Accounts**

11. Effective 2001, BBVA Suiza 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 relating to U.S. securities. The QI Agreement was designed to help ensure that, with respect to U.S. securities held in an account at BBVA Suiza, non-U.S. persons would be subject to the proper U.S. tax rates on withholding, and that U.S. persons were properly paying U.S. tax. The QI Agreement took into account that BBVA Suiza, like other Swiss banks, was prohibited by Swiss law from disclosing the identity of account holders.

12. To comply with its responsibilities as a QI, the Bank asked its U.S. clients who held U.S. securities to expressly instruct it, on standard QI forms that were widely used globally prior to the Applicable Period, (a) to provide an IRS Form W-9 completed by the account holder and report their account to the IRS, or (b) not to disclose their names to the IRS, authorize the bank to sell all U.S. securities (for accounts opened before January 1, 2001), and prohibit the purchase of any U.S. securities.
13. Pursuant to BBVA's interpretation of the terms of the QI Agreement, the Bank's view was that the QI Agreement did not apply to (a) account holders who were not trading in U.S. based securities, and (b) accounts that were held in the name of a non-U.S. based entity. As a result, the Bank did not put in place arrangements to ensure the filing of IRS Forms 1099 for a number of U.S. Related Accounts.
14. More particularly, BBVA Suiza permitted four groups of U.S. taxpayers to maintain six accounts, which held U.S. securities in the name of six offshore structures (Panama corporations and British Virgin Islands companies), where the U.S. taxpayer's interest in the account was not reported to the IRS even though the Bank knew, or had reason to know, that such offshore-structure accounts were operated without strict adherence to corporate formalities and, in effect, were operated by the U.S. taxpayer beneficial owners as sham, conduit, or nominee entities. In this regard, BBVA Suiza relationship managers associated with these six accounts (a) met with or took instructions from the U.S. taxpayer beneficial owners of these offshore-structure accounts, instead of the directors or other authorized parties of the account, (b) acted on instructions to transfer funds to a U.S. beneficial owner, including to accounts located within the United States, or to a third-party designated by the U.S. beneficial owner, and/or (c) effected transfers from certain of the offshore-structure accounts to pay for personal expenses incurred in connection with the use of credit cards issued in favor of the U.S. beneficial owners of the structures.
15. BBVA Suiza accepted certifications from the directors of these entities that falsely declared that the entity was the beneficial owner of the assets deposited in the accounts. In these instances, BBVA Suiza was in violation of the terms of its QI Agreement by failing to obtain IRS Forms W-9 from the U.S. beneficial owners of accounts that held U.S. securities, undertake IRS Form 1099 reporting, or impose backup tax withholding when it had knew, or had reason to know, that an offshore structure was acting as a nominee for its U.S. beneficial owners.

**Overview of BBVA Suiza's Cross-Border Business
Concerning U.S. Related Accounts**

16. BBVA Suiza has, among its clients, individuals and entities resident in Switzerland along with individuals and entities resident outside of Switzerland, including some clients who

were or became citizens or residents of the United States during the Applicable Period.¹

17. BBVA Suiza maintained, during the Applicable Period, 138 U.S. Related Accounts having a maximum aggregate dollar value in excess of \$157 million. Of these accounts, 116 were open before August 1, 2008; four of them were opened between August 1, 2008, and February 28, 2009; and 18 were opened after February 28, 2009. More than 90 of these were undeclared accounts.
18. BBVA Suiza was aware that U.S. taxpayers had a legal duty to report and remit taxes to the IRS on the basis of their income—including income earned through accounts held at the Bank. Nonetheless, BBVA Suiza maintained undeclared accounts for known U.S. taxpayers—opening, servicing, and profiting from their accounts when it knew, or should have known, that some of its U.S. clients were likely not complying with their U.S. tax obligations.
19. BBVA Suiza deployed its services through private bankers known as “relationship managers.” Relationship managers served as the primary contact for U.S. clients with undeclared accounts at BBVA Suiza, and were responsible for opening and managing client accounts at the Bank.
20. During the Applicable Period, BBVA Suiza employed close to 70 different relationship managers, each of whom was responsible for managing at least one U.S. Related Account at the Bank. These U.S. Related Accounts were opened with BBVA Suiza through a variety of means, including preexisting relationships with BBVA Group affiliates, as well as through promotional and other business activities undertaken by personnel of BBVA Group affiliates while in the United States.
21. With respect to five U.S. Related Accounts, BBVA Suiza acted as a custodian of those bank accounts, which were maintained by external asset managers for U.S. taxpayers. Those five U.S. Related Accounts, comprising an aggregate of approximately \$13 million, were managed by five different external asset managers, including one who was a former employee of the Bank. Three of these external asset managers received negotiated or flat fee retrocessions from BBVA Suiza, and one of those was also compensated for client referrals. None of these external asset managers, however, were specifically incentivized for introducing U.S. Related Accounts to the Bank.
22. Due in part to its historical marketing focus on Spanish-speaking clients, apart from its written policies applicable to all clients, BBVA Suiza did not have specific, written policies regarding the opening, maintenance, and closure of accounts specific to U.S. clients prior to April 2010. BBVA Suiza did not structure, operate, or supervise its U.S. Related Accounts in any way that was different or separate from its non-U.S. Related Accounts. BBVA Suiza’s board of directors, executive management, and heads of

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

various business units structured, operated, and supervised the Bank's client-facing business generally.

23. Prior to April 2010, moreover, BBVA Suiza did not have specific, written procedures for ascertaining or monitoring its U.S. clients' compliance with their U.S. tax obligations, and did not require beneficial owners of U.S. Related Accounts to confirm or prove that they had reported their accounts to the IRS in accordance with U.S. tax law, or otherwise were in compliance with U.S. tax law.
24. In April 2010, BBVA Suiza adopted a "W-9 or Exit" policy that required all U.S. clients to provide evidence that their accounts were disclosed to the IRS (which in the Bank's view included IRS Forms W-9). U.S. clients that did not provide the required evidence would have their account relationships terminated by the Bank.
25. In December 2013, BBVA Suiza voluntarily submitted a letter of intent to participate in the Swiss Bank Program as a Category 2 bank.

Use of Traditional Swiss-Banking Services in the Evasion of U.S. Tax Obligations

26. During the Applicable Period, BBVA Suiza offered a variety of traditional Swiss banking services that assisted and enabled certain of its U.S. taxpayer clients to conceal their account assets and income, file false federal tax returns with the IRS, and evade their U.S. tax obligations. BBVA Suiza assisted and enabled these U.S. taxpayers in the evasion of their U.S. tax obligations by, among other things, opening and maintaining undeclared accounts for U.S. taxpayers.
27. For example, BBVA Suiza offered U.S. clients with undisclosed accounts a service option to "hold mail" at the Bank. For a fee, BBVA Suiza would hold the account statements and other account-related correspondence of its U.S. clients at its offices in Switzerland, instead of sending the documents to its clients in the United States, thereby causing documents reflecting the existence of undeclared accounts to remain outside the United States. BBVA Suiza did so, without regard to whether such U.S. clients were compliant with their U.S. tax obligations.
28. Until BBVA Suiza adopted its "W-9 or Exit" policy in April 2010, the Bank did not maintain a Form W-9 on file for the hold-mail accounts of U.S. clients, nor did it report its U.S. clients to the IRS if the accounts of its U.S. clients did not hold U.S. securities. BBVA Suiza did so without knowing or investigating whether these U.S. clients had disclosed their accounts to the IRS in accordance with U.S. tax law.
29. BBVA Suiza also offered its clients Swiss travel-cash cards. In one instance, BBVA Suiza provided a U.S. client with a Swiss travel-cash card that enabled the client to access and spend funds from undeclared accounts in the United States.
30. In two instances, BBVA Suiza opened accounts for dual-citizen U.S. taxpayers who were leaving other Swiss banks that were being investigated by the U.S. Department of Justice,

including UBS and Credit Suisse, and who had hidden their U.S.-person status at the time that BBVA Suiza was opening their accounts.

Transfers and Concealment of Assets

31. In addition, BBVA Suiza transferred the assets of U.S. Related Accounts belonging to certain of its U.S. taxpayer clients in ways that concealed the U.S. relatedness of those accounts, such as through cash or check withdrawals, wire transfers, and sham transfers to non-U.S. relatives or their nominal account holders.
32. In three instances, while undertaking a flawed implementation of its W-9 or Exit policy, BBVA Suiza removed some of its U.S. taxpayer clients' names as joint-account holders, leaving only non-U.S. persons as account holders, or moved their assets into new accounts that were held in the names of non-U.S. persons, including non-U.S. relatives. BBVA Suiza thereafter treated such accounts as non-U.S. Related Accounts, despite (a) some relationship managers continuing to take and execute instructions given directly from the U.S. taxpayers formerly associated with the accounts, or (b) the U.S. taxpayer clients retaining effective beneficial ownership of the accounts.
33. In several other instances, BBVA Suiza followed instructions from U.S. beneficial owners, or their external asset managers, to transfer undeclared assets from U.S. Related Accounts to locations throughout the world without knowing or first confirming whether the U.S. beneficial owners were compliant with their U.S. tax obligations.

Mitigating Factors

34. In response to the UBS deferred prosecution agreement, BBVA Suiza implemented its W-9 or Exit Policy in early 2010, more than three years before the commencement of the Swiss Bank Program. BBVA Suiza's objective in implementing this policy was to ensure that the Bank would not provide banking services to undeclared U.S. taxpayers. Although, as noted above, the policy did not meet that objective in all respects (see, for example, ¶ 31 above), following implementation of the W-9 or Exit Policy, a total of 64 accounts exited, comprising assets under management of \$62 million.
35. More recently, as part of implementing the Framework on the Legal and Reputational Risks requested by FINMA, BBVA Suiza has taken additional steps such as documenting written protocols for the provision of services in different jurisdictions, codifying its existing Travel Policy that precludes travel to the United States, and, prior to FATCA's effective date but in anticipation of FATCA, implementing a new account opening form for U.S. persons that requires such persons to waive Swiss bank secrecy protections.
36. BBVA Suiza has fully complied with the Swiss Bank Program. BBVA Suiza required its relationship managers to submit a declaration setting forth their knowledge concerning the U.S. taxpayer status of each account they managed; reviewed Leavers Lists from other banks to identify additional U.S. taxpayer accounts; conducted paper records searches that considered not just the materials missing in BBVA Suiza's electronic files, but any U.S. indicia in BBVA Suiza's paper files; and made a concerted effort to identify undocumented U.S. taxpayer beneficial owners of accounts.

37. **BBVA Suiza has provided the Department of Justice with assistance in pursuing undeclared U.S. taxpayers. BBVA Suiza provided the Department of Justice with information under Section II.D.2 of the Swiss Bank Program that included exact dates, exact amounts of money transferred, and original currencies, even though the Swiss Bank Program permitted aggregation on a monthly basis. The Bank also provided II.D.2 information without regard for the minimum threshold set forth in Section II.D.2.**
38. **BBVA Suiza has solicited bank-secrecy waivers from its U.S. clients, and provided the Department of Justice with information on its customers.**
39. **BBVA Suiza has also undertaken efforts to encourage undisclosed U.S. taxpayers to participate in IRS Offshore Voluntary Disclosure Programs ("OVDP"), including taxpayers whose accounts were closed years before the announcement of the Swiss Bank Program. These efforts included, among other things, implementing a procedure of blocking accounts of non-disclosed U.S. customers so that such customers must prove tax compliance or agree to enter into OVDP before the Bank will permit the withdrawal of funds; referring its customers who are considering OVDP to U.S. counsel who are fluent in Spanish, the primary language of BBVA Suiza's account holders; instructing the Bank's U.S. lawyers to talk directly with clients and/or clients' attorneys to encourage OVDP participation; and in some instances instructing its relationship managers to travel to non-U.S. jurisdictions to locate and meet personally with the clients of undeclared accounts to encourage them to participate in OVDP. Based on BBVA Suiza's efforts, many of its former U.S. clients entered into OVDP and paid back taxes, penalties, and interest in connection with their failure to report undeclared accounts.**

EXHIBIT B TO NON-PROSECUTION AGREEMENT

CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS OF BBVA (SUIZA) SA

We, Peter Altorfer, Chairman of the Board of Directors of BBVA (Suiza) SA, a corporation duly organized and existing under the laws of Switzerland, and Martin Menzi, acting Secretary of the Board of Directors of BBVA (Suiza) SA, 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:

- The Board of the Directors of BBVA (Suiza) SA 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) had the opportunity to consult 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 10,390,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Peter Altorfer, the Bank's Chairman of the Board of Directors, and Alfonso Gomez, the Bank's Chief Executive Officer, both registered in the Commercial Register of the Canton of Zurich as having joint signature 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 both, Marc R. Cohen and Alex Lakatos, Mayer Brown LLP, are hereby authorized to sign the NPA in their capacity as the Bank's U.S. counsels.

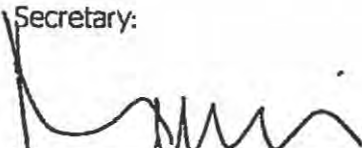
We further certify that the above resolution has not been amended or revoked in any respect and remains in fully force and effect.

IN WITNESS WHEREOF, we have executed this Certification this 9th day of October 2015.

Chairman of the Board:


Peter Altorfer

Secretary:


Mr. Martin Menzi