U.S. Department of Justice

Tax Division

Washington, D.C. 20530

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Dated: November 06, 2015

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

Re: Banque Internationale à Luxembourg (Suisse) SA
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Messrs. Cohen and Lakatos:

Banque Internationale à Luxembourg (Suisse) SA (hereinafter "BIL") 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 BIL in its Letter of Intent and information provided by BIL 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 BIL of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute BIL 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 BIL during the Applicable Period (the "conduct"). BIL 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 BIL and does not

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

apply to any other entities or to any individuals. BIL 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. BIL 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, BIL agrees to pay the sum of nine-million seven-hundred-ten thousand dollars ($9,710,000) 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 BIL. This payment is in lieu of restitution, forfeiture, or criminal fine against BIL for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from BIL with respect to the conduct described in this Agreement, unless the Tax Division determines BIL has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. BIL 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 BIL has violated any provision of this Agreement. BIL 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. BIL agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. BIL further agrees that no portion of the penalty that BIL has agreed to pay to the Department under the terms of this Agreement will serve as a basis for BIL 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) BIL'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 BIL 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) BIL'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) BIL'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 BIL 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) BIL's retention of a qualified independent examiner who has verified the information BIL disclosed pursuant to II.D.2 of the Swiss Bank Program.

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

BIL further agrees to undertake the following:

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

2. BIL 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 BIL.

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

4. BIL 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.

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

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

This Agreement supersedes all prior understandings, promises and/or conditions between the Department and BIL. 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.

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AGREED AND ACCEPTED:
United States Department of Justice, Tax Division

CAROLINE D. CIRAOLO — DATE 11/12/2015
Acting Assistant Attorney General

THOMAS J. SAWYER — DATE 12 November 2015
Senior Counsel for International Tax Matters

PAUL G. GALINDO — DATE 11/12/2015
Trial Attorney

AGREED AND CONSENTED TO:
Banque Internationale à Luxembourg (Suisse) SA

By: _____ — DATE 9-11-15
THIERRY DE LORIOL
Chief Executive Officer

APPROVED:

MARC R. COHEN, Esquire — DATE 11-9-15
Mayer Brown LLP

ALEX C. LAKATOS, Esquire — DATE 11-09-15
Mayer Brown LLP

EXHIBIT A TO BANQUE INTERNATIONALE À LUXEMBOURG (SUISSE) NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

Background

1. Banque Internationale à Luxembourg (Suisse) SA ("BIL Switzerland" or the "Bank") is a Swiss private bank with offices in Zurich and Geneva. BIL Switzerland is wholly owned by Banque Internationale à Luxembourg, a Luxembourg bank founded in 1856.

2. BIL Switzerland currently has about 70 employees. It manages around 2000 accounts, over 90% of which are held by individuals, and has approximately $1.9 billion in assets under management.

3. From 2001 through February 2010, BIL Switzerland had a wholly-owned subsidiary, Experta AG, a Swiss company. BIL Switzerland sold Experta AG in 2010. Experta AG provided a number of services, including accounting services, legal and tax advice. Experta AG at all relevant times provided services relating to entities, including the creation and management of entities such as offshore corporations, trusts, and foundations. In four identified instances, Experta AG provided services to entities owned by U.S. taxpayers.

4. During the Applicable Period,[1] BIL Switzerland provided private banking and asset management services principally through private bankers based in Zurich, Geneva, and Lugano (the Lugano branch was closed in 2013).

5. BIL Switzerland serviced certain clients, equal to 2% of its client base, who were citizens and/or residents of the United States ("U.S. taxpayer(s)" or "U.S. client(s)") and entities owned by U.S. taxpayers.

U.S. Income Tax & Reporting Obligations

6. 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.

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

7. 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). In 2010, the Department of Treasury clarified, by regulation, the requirement that persons subject to U.S. tax were required to disclose, on an FBAR, financial interests held in foreign insurance policies with cash value. During the Applicable Period, an FBAR for a particular year was required to be filed on or before June 30 of the following year.

8. 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.

9. 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.

10. 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 BIL Switzerland, since at least August of 2008.

11. BIL Switzerland was 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 BIL Switzerland maintained on their behalf. BIL Switzerland nevertheless opened, serviced, and profited from undeclared accounts belonging to clients that it knew, or should have known, were U.S. taxpayers—including those who the Bank knew, or should have known, were likely not complying with their U.S. tax obligations.

Overview of BIL Switzerland's Cross-Border Business Concerning U.S. Related Accounts

12. BIL Switzerland 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, residents, or green-card holders of the United States during the Applicable Period.

13. BIL Switzerland never had the goal to establish a U.S. clientele. Accordingly, it never had a U.S. desk or presence, never marketed to U.S. persons, advertised in the United States, nor traveled to the United States to prospect for or service clients. Nevertheless, during the Applicable Period, BIL Switzerland opened, maintained, serviced, and profited from accounts that were held or beneficially owned by U.S. taxpayer clients.

14. BIL Switzerland maintained, during the Applicable Period, 267 U.S. Related Accounts having a maximum aggregate dollar value in excess of $182 million. Of those accounts, 234 were opened before August 1, 2008; six of them were opened between August 1, 2008, and February 28, 2009; and 27 were opened after February 28, 2009.

15. Often these clients were dual U.S. citizens (many due to a U.S. place of birth with little if any other subsequent U.S. connection), U.S. expatriates, non-U.S. persons who moved to the United States, and other persons who formed a relationship with BIL Switzerland based upon the activities of BIL Switzerland or those of its affiliates.

16. In 1996, BIL Switzerland's ultimate parent underwent a merger to form the Dexia Group, headquartered in Belgium. In connection with this merger, BIL Switzerland was renamed Dexia Privatbank (Schweiz) AG. The 2008 financial crisis caused the Dexia Group significant financial distress. As a result, many clients were concerned with whether BIL Switzerland would remain solvent, and many clients closed their accounts at BIL Switzerland. Among the clients that left the Bank were many of the U.S. persons with accounts at BIL Switzerland. In 2011, the Dexia Group dissolved, and the Bank came under new ownership, at which time it reverted to the BIL Switzerland name.

17. Private bankers known as "relationship managers" served as the primary contact for clients with accounts at BIL Switzerland, and were responsible for opening and managing client accounts at the Bank. During the Applicable Period, BIL Switzerland employed 28 different relationship managers, each of whom was responsible for managing at least one U.S. Related Account at the Bank.

18. In addition to those accounts described below in paragraph 30, BIL Switzerland also acted as a custodian to more than 30 U.S. Related Accounts that were maintained by external asset managers for U.S. taxpayers. Those 30 U.S. Related Accounts, comprising an aggregate value of approximately $83 million, were managed by ten different external asset managers, including four who were former employees of the Bank. During the Applicable Period, external asset managers generally received negotiated or flat-fee retrocessions from BIL Switzerland, and some of them also received commissions for new-client referrals. BIL Switzerland, however, did not compensate external asset

managers for U.S. Related Accounts in any way that was different from non-U.S. Related Accounts.

BIL Switzerland's Qualified Intermediary Agreement, and Its Role in Non-Compliant U.S. Related Accounts

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

20. To comply with its responsibilities as a QI, BIL Switzerland asked its U.S. clients who held U.S. securities to expressly instruct it, on forms that were 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.

21. Pursuant to BIL Switzerland's interpretation of its QI Agreement, the Bank's view was that the information-reporting provisions of its QI Agreement did not apply to (a) account holders who were not trading in U.S. based securities, or did not receive U.S.-source dividends, interest income, or proceeds from the sale of non-U.S. securities, or (b) accounts that were held by non-U.S. entities, such as non-U.S. corporations or complex trusts. As a result, BIL Switzerland did not put in place arrangements to ensure the filing of IRS Forms 1099 for a number of U.S. Related Accounts.

22. More particularly, BIL Switzerland maintained three accounts, beneficially owned by two different U.S. taxpayers, that held U.S. securities in the names of three offshore entities (two of them organized in the British Virgin Islands, and the third in the United Arab Emirates), where the U.S. taxpayer's interest in the account was not reported to the IRS even though BIL Switzerland knew, or had reason to know, that such offshore entity accounts were operated without strict adherence to corporate formalities. In effect, these offshore entities were used by the U.S. taxpayer beneficial owners as sham, conduit, or nominee entities. In this regard, BIL Switzerland relationship managers associated with these accounts, while outside the United States, (a) met with or took instructions from the U.S. taxpayer beneficial owners of these offshore entity accounts, instead of the directors or other authorized parties of the account, (b) acted on instructions from an external asset manager, who received them directly from a U.S. taxpayer, without first knowing whether corporate formalities were observed, (c) followed instructions that allowed a U.S. taxpayer to withdraw cash directly from the account, despite such withdrawals being contrary to the corporate purposes of the entity that owned the account, and (d) executed transactions that allowed a U.S. taxpayer to make several significant wire transfers to

unaffiliated Swiss banks for the U.S. taxpayer's personal use or benefit, without first knowing or inquiring whether corporate formalities were satisfied.

23. BIL Switzerland 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, BIL Switzerland 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 knew, or had reason to know, that the non-U.S. entity account holder was acting as a nominee for its U.S. beneficial owners.

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

24. During the Applicable Period, BIL Switzerland offered a variety of traditional Swiss banking services that assisted and enabled certain of its U.S. taxpayer clients to conceal their assets and income, file false federal tax returns with the IRS, and evade their U.S. tax obligations. In addition, BIL Switzerland's wholly-owned subsidiary Experta AG, during the time that it was affiliated with BIL Switzerland, provided services that assisted and enabled certain U.S. taxpayers in the concealment of their assets and income, and in the evasion of their U.S. tax obligations.

25. BIL Switzerland offered clients, including U.S. clients with undisclosed accounts, a service option to "hold mail" at the Bank. For a fee, BIL Switzerland held the account statements and other account-related correspondence of certain U.S. clients, including those residing in the U.S. or having a U.S. mailing address, 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. During the Applicable Period, BIL Switzerland provided such hold-mail services in relation to 94 U.S. Related Accounts.

26. BIL Switzerland also provided, upon client request, "numbered accounts," which limited access to information about an account, including the identity of the account holder, to only certain employees of the Bank. Although BIL Switzerland's internal records reflected the identity of the U.S. taxpayers associated with these accounts in accordance with Swiss law, this service option prevented persons without specialized access from seeing the names of BIL Switzerland's clients on account records and documents, and reduced the possibility that U.S. tax authorities would learn the identities of U.S. taxpayer clients with undeclared accounts. During the Applicable Period, BIL Switzerland provided such numbered-account services in relation to 55 U.S. Related Accounts.

27. For at least nine undeclared accounts, BIL Switzerland provided Swiss travel cash cards to U.S. clients, enabling them to access and spend funds from undeclared accounts in the United States. Some U.S. taxpayer clients, for example, used their travel cash cards regularly to withdraw amounts that reached significant totals during the Applicable Period—up to $50,000 in one instance, and up to $300,000 in two others. The relationship managers assigned to these accounts were either unaware of, or mistaken

about, their clients' U.S. tax compliance status, or understood that their clients were not tax disclosed.

28. BIL Switzerland also opened several accounts for U.S. taxpayers who were leaving other Swiss banks that were being investigated by the U.S. Department of Justice as Category 1 banks—including UBS and Credit Suisse.

29. In addition, in two instances, BIL Switzerland closed U.S. Related Accounts in ways that concealed the U.S. beneficial owners of those accounts. In both instances, upon request of the account holders, BIL Switzerland removed the names of its U.S. taxpayer clients from joint accounts, leaving only non-U.S. persons as account holders, or moved their assets into new BIL Switzerland accounts that were held in the names of non-U.S. persons, including non-U.S. relatives. BIL Switzerland thereafter treated the recipient 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 over the transferred funds.

Use of Insurance Products and Insurance-Wrapper Accounts in the Evasion of U.S. Tax Obligations

30. During the Applicable Period, BIL Switzerland maintained at least 145 accounts, comprising an aggregate value of more than $64 million, that were owned by insurance companies, and which held assets relating to insurance products that were issued to U.S. taxpayer clients of the respective insurance companies. Such accounts, known commonly as "insurance-wrappers," were titled in the names of insurance companies, but were funded with assets that were transferred to the accounts for the beneficial owners of the insurance products (the "policy holder"). The assets in these accounts, while titled in the names of insurance companies, were managed by external asset managers, for the ultimate benefit of the policy holders, through powers of investment that were given by the insurance companies to the external asset managers. Some insurance companies, at BIL Switzerland's request, provided the identities of the policy holders behind these accounts. Insurance-wrapper accounts were commonly used during the Applicable Period as a means of enabling U.S. taxpayers in concealing their assets and income from the IRS, and in evading their U.S. tax obligations.

31. Of the 145 insurance-wrapper accounts that BIL Switzerland maintained, 124 of them were opened prior to 2010—before the time when persons with U.S. tax obligations were required, by FBAR reporting, to disclose interests in foreign insurance policies (see paragraph 7, above). The remaining 21 insurance-wrapper accounts at BIL Switzerland were opened in and after 2010.

32. In four cases, the assets of insurance-wrapper accounts originated from undeclared accounts at BIL Switzerland. These undeclared accounts were closed, and their assets were transferred to newly-opened accounts at BIL Switzerland in the name of an insurance company and managed by various external asset managers. At account opening, the new accounts held the same assets that the U.S. taxpayer clients had

previously held directly at BIL Switzerland. In one instance, one of the undeclared accounts did not hold U.S. securities, but the recipient insurance-wrapper account acquired U.S. securities at a later date.

Mitigating Factors

33. Beginning in 2008, five years before the commencement of the Swiss Bank Program, BIL Switzerland voluntarily implemented a series of remedial measures to prevent it from permitting undeclared U.S. taxpayers to evade U.S. income tax. Specifically, after BIL Switzerland learned from news reports that the IRS was investigating UBS for tax fraud in connection with undeclared U.S. taxpayer accounts held at UBS in Switzerland, BIL Switzerland did the following:

- In 2008, provided additional compliance training for its relationship managers;
- In 2009, implemented policies that limited U.S. resident clients to cash-only investments (such as demand-deposit accounts), and that generally prohibited BIL Switzerland from opening new account relationships with U.S. citizens or U.S. residents; and
- In 2012, implemented a policy requiring existing U.S. resident clients to provide BIL Switzerland with an IRS Form W-9.

34. In December 2013, BIL Switzerland voluntarily submitted a letter of intent to participate in the United States Department of Justice's Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Program") as a Category 2 bank.

35. BIL Switzerland has fully cooperated with the Department of Justice in relation to the Swiss Bank Program by, among other things, undertaking an investigation of its U.S. business, and providing all relevant and requested information and documents to the Department of Justice relating to its U.S. business. BIL Switzerland has, for example—

- Conducted searches of its electronic and paper records for U.S. indicia;
- Required its relationship managers to submit declarations setting forth their knowledge concerning the U.S. taxpayer status of each account that they managed;
- Reviewed leaver lists from other banks to identify additional U.S. Related Accounts; and
- Undertaken a concerted effort to identify undocumented U.S. taxpayer beneficial owners of accounts.

36. BIL Switzerland also provided the Department of Justice with leaver list information required under Part II.D.2 of the Program—first in June 2014, and additionally in

October 2014 and March 2015—although the Program did not require production of that information until execution of a Non-Prosecution Agreement.

37. In addition, BIL Switzerland has devoted substantial time, effort, and resources to encourage undisclosed U.S. taxpayers to disclose their accounts to the IRS—including, among other things, adopting and implementing policies that (a) encourage U.S. taxpayers to participate in an announced Offshore Voluntary Disclosure Program or Initiative; and (b) that require transparent, well documented account exits. Through its efforts, many of BIL Switzerland's former U.S. clients have formally disclosed their previously-undisclosed accounts to the IRS through OVD, and paid back taxes, penalties, and interest.

EXHIBIT B TO NON-PROSECUTION AGREEMENT

CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS

OF

BANQUE INTERNATIONALE À LUXEMBOURG (SUISSE) SA

I, Bernard Mommens, Member of the Board of Directors of Banque Internationale à Luxembourg (Suisse) SA (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 unanimously adopted by the Board of Directors of the Bank on November 3, 2015 by circular resolution:

- 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 $9,710,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and

- That Thierry de Loriol, Chief Executive Officer of the Bank, is hereby authorized *(i)* to 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 he 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 both Marc R. Cohen and Alex C. Lakatos, Mayer Brown 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 4th day of November 2015.

Bernard Mommens
Member of the Board of Directors