U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:KELyon
5-16-4724
2014200735

November 9, 2015

Scott H. Frewing
Baker & McKenzie LLP
660 Hansen Way
Palo Alto, CA 94304

Re: Privatbank IHAG Zürich AG
DOJ Swiss Bank AG Program – Category 2
Non-Prosecution Agreement

Dear Mr. Frewing:

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

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

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

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, IHAG agrees to pay the sum of $7,453,000 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 IHAG. This payment is in lieu of restitution, forfeiture, or criminal fine against IHAG for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from IHAG with respect to the conduct described in this Agreement, unless the Tax Division determines IHAG has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. IHAG 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 IHAG has violated any provision of this Agreement. IHAG 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. IHAG agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. IHAG further agrees that no portion of the penalty that IHAG has agreed to pay to the Department under the terms of this Agreement will serve as a basis for IHAG 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) IHAG'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 IHAG 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) IHAG'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) IHAG'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 IHAG 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) IHAG's retention of a qualified independent examiner who has verified the information IHAG disclosed pursuant to II.D.2 of the Swiss Bank Program.

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

IHAG further agrees to undertake the following:

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

2. IHAG 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 IHAG.

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

4. IHAG 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.

IHAG's obligations under this Agreement shall continue for a period of four (4) years from the date this Agreement is fully executed. IHAG, 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) IHAG committed any U.S. federal offenses during the term of this Agreement; (b) IHAG 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) IHAG has otherwise materially violated any provision of this Agreement or the terms of the Swiss Bank Program, then (i) IHAG 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 IHAG'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 IHAG'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 IHAG shall be admissible in evidence in any criminal proceeding brought against IHAG and relied upon as evidence to support any penalty on IHAG; and (iii) IHAG 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 IHAG has breached this Agreement and whether to pursue prosecution of IHAG 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, IHAG, will be imputed to IHAG for the purpose of determining whether

IHAG 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 IHAG has breached this Agreement, the Tax Division agrees to provide IHAG with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, IHAG may respond to the Tax Division in writing to explain the nature and circumstances of such breach, as well as the actions that IHAG has taken to address and remediate the situation, which explanation the Tax Division shall consider in determining whether to pursue prosecution of IHAG.

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

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

CAROLINE D. CIRAOLO
Acting Assistant Attorney General

11/24/2015
DATE

THOMAS J. SAWYER
Senior Counsel for International Tax Matters

24 November 2015
DATE

KATHLEEN E. LYON
Trial Attorney
Tax Division, U.S. Department of Justice

24 November 2015
DATE

AGREED AND CONSENTED TO:
PRIVATBANK IHAG ZÜRICH AG

By: _____
NAME Heinrich Rutsch
Title Member of the Board

19 Nov 2015
DATE

By: _____
NAME Roland Kempf
Title Member of the EKB

19. Nov 2015
DATE

APPROVED:

Scott H. Frewing
Counsel for Privatbank IHAG Zürich AG

23 Nov 2015
DATE

EXHIBIT A TO PRIVATBANK IHAG ZÜRICH AG
NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

INTRODUCTION

1. Privatbank IHAG Zürich AG ("IHAG" or the "Bank") is a private bank based in Zurich, Switzerland. It was established in 1949. The Bank was initially created to manage the financial affairs of its founder and to secure and add to his growing personal assets.

2. Today, the Bank offers private banking, trading, and lending services. IHAG is part of a privately-owned and diversified group of companies of which the top holding company is IHAG Holding AG ("IHAG Holding"). The Bank formerly maintained a branch office in Lugano, Switzerland, which closed in 2009. Currently, it operates only out of Zurich.

3. As of December 31, 2013, the Bank had approximately 3,000 active portfolios and 3.3 billion Swiss francs in assets under management.

U.S. INCOME TAX & REPORTING OBLIGATIONS

4. U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income. Since tax year 1976, U.S. citizens, resident aliens, and legal permanent residents have had an obligation to report to the Internal Revenue Service ("IRS") on 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.

5. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than $10,000 at any time during a particular year 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.

6. An "undeclared account" is a financial account owned or beneficially 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 or beneficial owner to the U.S. government on an income tax return or other form and an FBAR as required.

7. 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.

8. 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 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 IHAG, since at least August of 2008.

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

9. In 2002, IHAG signed a Qualified Intermediary Agreement with the IRS. The Qualified Intermediary regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution with respect to U.S. securities. The Qualified Intermediary Agreement was designed to help ensure that, with respect to U.S. securities held in an account at the Bank, non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons were properly paying U.S. tax.

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

11. With respect to the QI Agreement and related regulations, the Bank assisted U.S. clients in executing forms that directed the Bank to dispose of or not to acquire U.S. securities in their accounts. For example, in anticipation of IRS regulations requiring U.S. persons holding U.S. securities in foreign bank accounts to execute an IRS Form W-9, which were to take effect on January 1, 2001, Bank management directed employees to urge U.S. clients who did not wish to sign a Form W-9 to sell their U.S. securities before the

new regulations became effective. At that time, the Bank used a Declaration of U.S. Persons form that allowed U.S. persons to decline to sign a Form W-9, to decline to authorize disclosure of their names to the IRS, and to instruct the bank to sell all U.S. assets in the U.S. person's account or accounts before January 1, 2001. After the Bank signed its Qualified Intermediary Agreement in 2002 and until approximately 2009, the Bank continued to use account opening forms that allowed U.S. persons to execute an IRS Form W-9 and accept disclosure of their identity to the IRS or to abstain from holding U.S. securities, thereby avoiding disclosure of their identity to the IRS. One purpose of the Bank's account-opening forms was to avoid having to disclose the identities of U.S. clients to the IRS under its Qualified Intermediary Agreement. Most U.S. clients at the Bank chose not to hold U.S. securities in their accounts rather than authorize disclosure of their identity to the IRS. During the Applicable Period, at least 20 U.S. Related Accounts held U.S. securities.

OVERVIEW OF THE U.S. CROSS-BORDER BUSINESS

12. During the Applicable Period,[1] IHAG held a total of 182 U.S. Related Accounts with a high value of approximately $791 million. Of the Bank's 182 U.S. Related Accounts, approximately 42 accounts with U.S. person beneficial owners were opened during the Applicable Period, and almost all of those U.S. persons resided in the United States. Approximately 125 U.S. Related Accounts are now closed.

13. During the Applicable Period, IHAG had approximately 93 employees, 20 of whom were relationship managers with responsibility for client relationship management. Approximately 15 of the Bank's relationship managers serviced one or more U.S. Related Accounts during the Applicable Period. Relationship managers reported to, and were managed by, the Head of Private Banking or an Executive Board Member. Relationship managers were not assigned to teams based on geography and no relationship manager was ever designated to have responsibility for U.S.-related accounts. Relationship managers are compensated, in part, through a "performance-based and success-based" bonus system from a pool of funds based on the Bank's net income for each fiscal year.

14. Throughout the Bank's history it has maintained a focus on Switzerland-based customers. The Bank never established a U.S. presence nor operated a U.S. desk. During the Applicable Period, the Bank never maintained any entities, branches, representative

[1] Capitalized terms not otherwise defined in this Statement of Facts have the meanings set forth in the Program for Non-Prosecution Agreement or Non-Target Letters for Swiss Banks issued on August 29, 2013 ("the Program") or in the Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA, dated February 14, 2013 (the "FATCA Agreement").

offices or employees abroad. The Bank did not allow business travel to the United States.

15. Notwithstanding its lack of focus on U.S. clients, the Bank has opened and maintained accounts for U.S. persons. In many instances, the U.S. persons associated with the U.S. Related Accounts had only minimal contacts with the United States, as they were often German or Swiss citizens with dual U.S. nationality and/or U.S. domicile. However, approximately half of the Bank's 182 U.S. Related Accounts at the Bank had a U.S. citizen and resident as the beneficial owner of assets in the account.

16. In general, IHAG's clients come to the Bank through word-of-mouth or referrals. The majority of U.S. clients came to the Bank via referrals to IHAG from third parties, including German or Swiss client introducers, referrals from existing clients, or because the client followed a specific relationship manager from another bank. Four introducers brought 11 U.S. Related Accounts to the Bank. Introducers were compensated in the form of a finder's fee of .25 percent of the deposited assets, based on net new profits deposited with the Bank within two years.

17. The Bank also maintained U.S. Related Accounts brought to the Bank by at least 11 external asset managers, who either left the investment counseling to the Bank or, depending on their license, handled the investment advice themselves. External Asset Managers were compensated through fees. In addition to the 11 external asset managers who brought U.S. Related Accounts to the Bank, one U.S.-based external asset manager managed assets for non-U.S. clients, and another U.S.-based external asset manager manages assets for the Bank's parent company, IHAG Holding.

18. Despite understanding that U.S. taxpayers had a legal duty to report to the IRS and pay taxes on the basis of all their income, including income earned in accounts maintained at the bank, the Bank intentionally opened and maintained accounts that were undeclared with the knowledge that, by doing so, the Bank was helping these U.S. taxpayers violate their legal duties.

19. IHAG offered a variety of traditional Swiss banking services that it knew could assist, and that did assist, U.S. taxpayers in concealing assets and income from the IRS. One of these services was hold mail. IHAG would hold all mail correspondence for a particular client in the Bank, which meant that the Bank retained periodic statements and communications to its client at the Bank for client review. As a consequence, documents reflecting the existence of the accounts remained outside the United States. The Bank understood that providing "hold-mail" agreements could allow U.S. persons to keep evidence of their accounts outside of the United States in order to conceal assets and income from the IRS.

20. In a small number of instances, the Bank also assisted clients in establishing foundations used to hold their assets at the Bank. The U.S. person beneficial owners of the foundation accounts were properly identified as beneficial owners of the foundations on Forms A pursuant to Swiss know-your-customer ("KYC") rules. However, the foundations were identified as the beneficial owner on IRS Forms W-8BEN, thereby masking the true beneficial ownership of the accounts by U.S. persons.

21. IHAG also assisted certain U.S. persons in concealing their accounts by allowing the accounts to be opened in the name of pseudonyms and, in at least one instance, allowing the U.S. person to use code names when communicating with the Bank. Examples of this conduct include, but are not limited to, the following:

    a. Three U.S. Related Accounts involving different U.S. persons were opened under pseudonyms in 2002, 2007, and 2008, respectively. In connection with the opening of each account, bank forms identified the U.S. person as the beneficial owner and the account file contained a U.S. passport. In late 2009, the Bank approached all three U.S. persons regarding their U.S. citizenship and requested that they each sign an IRS Form W-9, which would allow the Bank to disclose the U.S. persons' identities to U.S. authorities. The U.S. persons declined to execute the form and closed their accounts shortly thereafter.

    b. Another account was opened by a U.S. person under a pseudonym in late 2009 and traded in U.S. securities. The U.S. person disclosed the account through the IRS Offshore Voluntary Disclosure Program in 2014.

    c. An account held in the name of a Panama company was opened in 2006. In connection with the opening of the account, bank documents identified a U.S. person as the beneficial owner of the assets. However, an IRS Form W-8BEN signed by two Swiss citizens and a citizen of Liechtenstein falsely declared that the Panama company was the beneficial owner. The U.S. person instructed the Bank not to communicate with him by phone and insisted on using code names when communicating with the Bank. In addition, one of the Swiss signatories on the account instructed the Bank to keep the Form A separate from all other documents associated with the account and to grant access to the Form A only for purposes of the Bank's duty under anti-money laundering regulations. This account was closed in 2009 as part of the Bank's efforts to exit U.S. accounts. At closing, funds from the account were transferred to a Category 1 bank.

22. Although the Bank adopted a "strict policy" against accepting accounts from U.S. clients leaving UBS and Credit Suisse, 15 U.S. Related Accounts at the Bank came from those banks. Most of those accounts came to the Bank after the Department of Justice's investigation into UBS became public and several of the accounts were undeclared when they arrived at the Bank. One relationship manager previously employed at Clariden

Leu, a subsidiary of Credit Suisse, brought at least two high-value undisclosed U.S. Related Accounts from Clariden Leu to IHAG. Those accounts were later voluntarily disclosed to the IRS upon the Bank's urging.

IHAG'S COMMISSION OF TAX FRAUD WITH RESPECT TO A FEW RECALCITRANT CLIENTS

23. In 2009, approximately concurrent with the announcement of the UBS Deferred Prosecution Agreement, the Bank began to undertake efforts to induce U.S. clients to become compliant, as described in paragraphs 27 through 30 below. However, certain of those U.S. clients refused to become compliant and the Bank did not exit all of those recalcitrant U.S. clients. Instead, in a few instances, IHAG assisted certain recalcitrant U.S. persons in further concealing undisclosed accounts by moving the funds to another jurisdiction and returning the funds to the Bank in a different name in order to conceal the U.S. persons' ownership of the assets and enable the recalcitrant account holders to continue to maintain undeclared accounts at IHAG. With respect to two of those accounts:

a. Two U.S. Related Accounts at the Bank were held in the name of foundations, specifically, a family of U.S. persons held assets at the Bank in the name of a Liechtenstein foundation and another unrelated U.S. person held funds in the name of a Panama foundation. These foundation structures were designed to conceal the true beneficial ownership of the assets by the U.S. persons and, in the case of the Panama foundation, the Bank assisted the U.S. person in creating the foundation. The value of the assets in the two accounts together totaled approximately $63 million.

b. To assist these U.S. clients in further concealing their assets and evading U.S. taxes, in order to maintain these recalcitrant individuals as clients of the Bank, Bank personnel, with the assistance of an unaffiliated fiduciary services firm in Zurich and with the knowledge and approval of Bank management, moved assets from the two foundation accounts to banks outside Switzerland and then returned the funds to the Bank under the name of a different entity so that the accounts would bear no trace of the U.S. persons' beneficial interest in the assets held in the accounts.

c. In support of this scheme, Bank personnel also worked with two entities in which IHAG Holding, the parent company of the Bank, owned an interest: an entity in Hong Kong in which IHAG Holding owned a minority interest ("Firm A"), and an entity in Singapore ("Firm B"), which was wholly owned by IHAG Holding. For each of the foundation accounts, the funds were transferred to a nominee account at an unaffiliated bank in Hong Kong in the name of a different nominee entity. The nominee entity had been formed by Firm A. Subsequently, the funds

were transferred again to a second account at the same bank in Hong Kong. Upon the funds moving to the second account, Firm B acquired an asset management mandate over the funds, whereby Firm B exercised control over investment decisions with respect to the accounts. The funds were then transferred back to the Bank into new accounts held in the name of Firm B, even though the funds belonged to the U.S. clients.

d. This multi-step scheme used by the Bank, with the assistance of third parties, enabled the assets to be stripped of any indicia of U.S. ownership. In effectuating this scheme, the Bank took advantage of Swiss law, which allowed the Bank in these circumstances to treat the accounts as if KYC review of the accounts had occurred in Firm B's home jurisdiction, Singapore. Accordingly, the Bank did not apply Swiss KYC requirements when the accounts returned to the Bank under the name of Firm B. The Bank's files for the accounts in the name of Firm B deliberately did not contain any documentation of the U.S. persons' interest in the assets in the accounts.

e. In 2014, at the Bank's urging, the U.S. persons associated with these accounts disclosed the foundation and Firm B accounts through the IRS's Voluntary Disclosure Program.

24. With respect to the actions described in paragraph 23, the Bank knowingly and willfully committed tax fraud with respect to those accounts.

25. During the same time frame in which the Bank was engaged in the above-described fraud scheme, funds from another foundation account at the Bank, belonging to U.S. beneficial owners unrelated to the U.S. persons discussed above, were transferred directly from the beneficial owners' foundation account to the account at the Bank in the name of Firm B, with the assistance of Firm B. Although these funds were not transferred through Hong Kong, the transfer of the assets into an account in Firm B's name further concealed the U.S. beneficial ownership of the funds.

IHAG'S EFFORTS TO IMPROVE CROSS-BORDER TAX COMPLIANCE

26. Prior to 2009, IHAG did not have specific policies regarding the on-boarding of U.S. clients other than meeting the Qualified Intermediary requirements, and decisions to accept or refuse U.S. clients were made on the same basis as other new private banking clients. The Bank's procedures at this time focused on Swiss KYC and anti-money laundering rules.

27. In 2009, IHAG modified its practices and procedures for accepting and maintaining U.S. clients, and began a process to exit all non-tax compliant U.S.-related accounts, although

as described above this exit process was flawed. This exit process did not include accounts that were U.S.-related based solely on a U.S. person's holding a power of attorney on the account. In August 2009, the Executive Board directed that new accounts with a U.S. beneficial owner would require an executed IRS Form W-9 at account opening and that any existing accounts with a U.S. beneficial owner refusing to provide a Form W-9 would be required to leave the Bank by December 31, 2009. The Bank's Compliance department identified 70 U.S. clients to contact under the new policy. By December 31, 2009, the Bank had closed 45 U.S. Related Accounts with a combined high value of $114 million. In some cases, the Bank unilaterally closed an account without the client's consent. However, IHAG continued for a period of time to maintain and to open U.S. Related Accounts, largely in conformity with the policy requiring a signed Form W-9 at account opening.

28. Also in August 2009, the Executive Board directed that U.S. client assets would be held at the Bank only if the client entered into an asset management mandate with the Bank. Pursuant to this directive, the Bank declined a number of requests from external asset managers to open accounts for U.S. persons following the publicity surrounding the Department of Justice's investigation of UBS in 2008 and 2009.

29. In September 2009, as part of the Bank's continuing efforts to comply with the changing U.S. regulatory environment, the Compliance Department provided relationship managers and others at the Bank with current information on the IRS Offshore Voluntary Disclosure Program ("OVDP") and encouraged Bank staff to notify non-compliant U.S. clients about the program.

30. The Bank thereafter adopted an evolving set of restrictive policies on its U.S. clients. On November 1, 2010, the Bank formally adopted a new U.S. person policy with the following requirements:

    a. that U.S. clients sign a Form W-9 at account opening;

    b. that the Bank would not provide any investment advice to any client in the United States or accept any instructions from the United States;

    c. that no employee was permitted to contact any client in the United States on their own initiative; and

    d. that only U.S. persons with assets of over 5 million Swiss francs would be accepted.

    However, the combination of the Bank's policy prohibiting communications with all clients while they were present on U.S. soil and its policy requiring clients to visit the Bank to received banking services created a substantial incentive for U.S. clients to visit Switzerland.

Twelve U.S. Related Accounts were opened after November 1, 2010, in addition to the accounts of U.S. persons whom the Bank assisted in concealing assets by moving funds to an account in the name of Firm B, as discussed in paragraphs 23 and 24 above. Eight of the twelve accounts appear to have followed the Bank's policy. For one of the accounts that deviated from the new policy, the Bank required the U.S. person to disclose the account through OVDP as a condition of accepting the account. The other three accounts were not subject to the new policy because for two of the accounts the U.S. person held only power of attorney authority with respect to the account and the third account was a non-grantor trust.

31. On January 1, 2012, the Bank implemented a comprehensive Cross Border Banking Policy, which emphasized the following factors:

a. that the Bank's services would be directed in particular towards the Swiss market;

b. that the Bank would no longer accept custody of assets belonging to persons in foreign countries, including the United States, unless the Bank acted as manager of the assets, effectively excluding the involvement of third-party asset managers with new accounts;

c. that active solicitation of new customers would be permissible only for customers with a domicile in Switzerland;

d. that any contact in the United States was strictly banned; and

e. that U.S.-related accounts would not be opened without the prior signature from the Compliance department and management of the Bank.

IHAG'S COOPERATION THROUGHOUT THE SWISS BANK PROGRAM

32. IHAG 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 IHAG's U.S. business.

33. The Bank undertook a thorough internal investigation designed to identify all U.S. related portfolios. The Bank first conducted an electronic search to identify all U.S.-related portfolios. A team of outside lawyers then (1) confirmed whether the portfolios were U.S.-related based on the FATCA agreement criteria and definition under the Program; (2) extracted and summarized additional information relevant to the Program's information requests; and (3) assessed each account's U.S. tax and reporting compliance status. The investigation identified 182 U.S. related accounts. This investigation also included a review of e-mails and interviews with 15 Bank employees.

34. At the direction of the Bank's parent company, IHAG Holding, the Bank's outside counsel also conducted an investigation of Firm B. This investigation included a review of all of its paper client files, a search of relevant emails and interviews with key personnel. To the extent permitted under Swiss and Singapore law, the Bank disclosed all of its findings to both U.S. and Swiss authorities in a timely manner. It disclosed the Singapore accounts and its role in structuring those accounts to both U.S. and Swiss authorities.

35. The Bank has also taken actions to encourage U.S. persons to disclose their accounts to U.S. authorities. As a result of the Bank's efforts, at least 37 U.S. beneficial owners of U.S. Related Accounts disclosed their accounts through the approved IRS disclosure programs and at least 19 U.S. beneficial owners of U.S. Related Accounts signed Swiss bank secrecy waivers authorizing the disclosure of their account information to the IRS.

36. IHAG has provided certain account information related to U.S. taxpayers, which will enable the Government to make requests under the 1996 Convention between the U.S. 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 the Non-Prosecution Agreement with Privatbank Ihag Zurich AG

Resolution of the Board of Directors of

Privatbank Ihag Zurich AG

At a duly convened meeting held on 19 November 2015, on which the following members of the Board of Directors were present:

Mr. Gratian Anda, Chairman, and

Mr. Heinrich Rotach, Member of the Board of Directors,

the Board of Directors (the "Board") of Privatbank Ihag Zurich AG (the "Bank") takes note of the following:

- In the Joint Statement between the United States Department of Justice ("DOJ") and the Swiss Federal Department of Finance, Swiss Banks have been encouraged by the Swiss Government and the Swiss Financial Market Authority (FINMA) to participate in the Program for Non-Prosecution Agreements or Non-Target-Letters for Swiss Banks, dated 29 August 2013 (the "US Program").

- The Board decided in December 2013 that the Bank would participate in the US Program. The Bank submitted on 23 December 2013 a Letter of Intent to the DOJ indicating its interest to participate as Category 2 Bank in the US Program.

- The DOJ proposed to the Bank to enter into a Non-Prosecution Agreement ("NPA").

The Board hereby resolves that:

1. The Board of the Bank has reviewed the entire NPA attached hereto, including the Statement of Facts attached as Exhibit A to the NPA, and voted unanimously to enter into the NPA and to pay the sum of USD 7,453,000 to the DOJ in connection with said NPA.

2. Heinrich Rotach and Roland Kempf (with the right of substitution) are hereby authorized to execute the NPA on behalf of the Bank (the "Authorized Signatories") substantially in such form as reviewed by the Board with such non-material changes as the Authorized Signatories may approve.

3. Scott Frewing, Baker & McKenzie, is hereby authorized to sign the NPA in his capacity as the Bank's US legal counsel (the "Additional Signatory").

4. The Bank hereby authorizes, empowers and directs the Authorized Signatories to take, on behalf of the Bank, any and all actions as may be necessary or appropriate, and to approve and execute the forms, terms or provisions of any agreement or other document, as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions.

5. All of the actions of the Authorized Signatories and the Additional Signatory which have or will be taken in connection with the NPA are hereby ratified, confirmed, approved and adopted as actions on behalf of the Bank.

In witness whereof, the Board of Directors of Bank has executed this Resolution.

Gratian Anda

Heinrich Rotach