



**U.S. Department of Justice**

**Tax Division**

*Washington, D.C. 20530*

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CDC:TJS:JES: MWKotila  
5-16-4698  
2014200708

Richard M. Strassberg, Esq.  
Goodwin Procter LLP  
620 Eighth Avenue  
New York, New York 10018

Re: Gonet & Cie  
DOJ Swiss Bank Program – Category 2  
Non-Prosecution Agreement

Dear Mr. Strassberg:

On December 26, 2013, Gonet & Cie (“Gonet”) submitted a Letter of Intent 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 Gonet in its Letter of Intent and information provided by Gonet pursuant to the terms of the Swiss Bank Program. The Swiss Bank Program is incorporated by reference herein in its entirety in this Agreement.<sup>1</sup> Any violation by Gonet of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute Gonet 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 Gonet during the Applicable Period (the “conduct”). Gonet 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 Gonet and does not apply to any other entities or to any individuals. Gonet expressly understands that the

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<sup>1</sup> Capitalized terms shall have the meaning ascribed to them in the Swiss Bank Program.

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.

In recognition of the conduct described in this Agreement and in accordance with the terms of the Swiss Bank Program, Gonet agrees to pay the sum of \$11,454,000 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 Gonet. This payment is in lieu of restitution, forfeiture, or criminal fine against Gonet for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Gonet with respect to the conduct described in this Agreement, unless the Tax Division determines Gonet has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Gonet 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 Gonet has violated any provision of this Agreement. Gonet 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. Gonet agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Gonet further agrees that no portion of the penalty that Gonet has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Gonet 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) Gonet'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 Gonet 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) Gonet'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) Gonet'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 Gonet 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) Gonet's retention of a qualified independent examiner who has verified the information Gonet disclosed pursuant to II.D.2 of the Swiss Bank Program.

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

Gonet further agrees to undertake the following:

1. The Tax Division has agreed to specific dollar threshold limitations for the initial production of transaction information pursuant to Part II.D.2.b.vi of the Swiss Bank Program, and set forth in subparagraph (c) on page 3 of this Agreement. Gonet agrees that, to the extent it has not provided complete transaction information, it will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. Gonet 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 Gonet.
3. Gonet 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. Gonet 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, Gonet will promptly proceed to follow the procedures described above in paragraph 2.

4. Gonet 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.

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

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

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

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

UNITED STATES DEPARTMENT OF JUSTICE  
TAX DIVISION

  
CAROLINE D. CIRAULO  
Acting Assistant Attorney General

12/23/2015  
Date

  
THOMAS J. SAWYER  
Senior Counsel for International Tax Matters

23 December 2015  
Date

  
JOHN E. SULLIVAN  
Senior Litigation Counsel

12/23/15  
Date

  
MARK W. KOTILA  
Trial Attorney

12/23/15  
Date

AGREED AND CONSENTED TO:  
GONET & CIE

By:   
NICOLAS GONET  
General Partner

December 16, 2015  
Date

By:   
SERGE ROBIN  
General Partner

December 16, 2015  
Date

APPROVED:  
  
RICHARD M. STRASSBERG, ESQ.  
Counsel for Gonet & Cie

December 18, 2015  
Date

**EXHIBIT A TO THE NON-PROSECUTION AGREEMENT WITH  
GONET & CIE**

**STATEMENT OF FACTS**

**INTRODUCTION**

1. Gonet & Cie (“Gonet” or the “Bank”) is a family-owned private bank headquartered in Geneva, Switzerland. The Bank, with origins dating back to 1845, provides wealth management services to its base of solely private clients.
2. In addition to its headquarters in Geneva, the Bank operates a branch office in Lausanne, Switzerland, opened in 2011, and a representative office in Abu Dhabi, United Arab Emirates, opened in 2014. In 1982, Gonet opened a subsidiary in Nassau, Bahamas, which offers traditional private banking services. In 2008, Gonet acquired a minority interest in an entity in Monaco, and three years later established a subsidiary in Singapore. In 2014, Gonet sold the entities in Monaco and Singapore.
3. Gonet has never had any individuals, business units, or desks dedicated to, or partially dedicated to, the attraction or servicing of United States clients. The Bank has never maintained an office in the United States, has not sought out business introducers or consultants in order to acquire United States accounts, and has never identified the United States as a focus or target market.
4. Historically and presently, the vast majority of Gonet’s clients have hailed from Western Europe, particularly from French-speaking Switzerland. At the start of the Applicable Period,<sup>1</sup> only about two percent of Gonet’s total accounts were U.S. Related Accounts.
5. During the Applicable Period, Gonet held 150 U.S. Related Accounts with an aggregate maximum balance of approximately \$254.5 million. Of the 150 U.S. Related Accounts, 12 accounts had no U.S. beneficial owner, and another 26 were either sub-accounts or secondary accounts to the remaining 112 U.S. Related Accounts.

**U.S. INCOME TAX & REPORTING OBLIGATIONS**

6. United States 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, United States 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 signatory authority for, 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.

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<sup>1</sup> 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, United States citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signatory authority for, 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 was due on June 30 of the following year.
8. An "undeclared account" was a financial account owned by an individual subject to United States tax, maintained in a foreign country, and that had not been reported by the individual account owner to the United States government on an income tax return, FBAR, or otherwise.
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 been misused by some United States clients to conceal their Swiss bank accounts from United States authorities.
10. In or about 2008, Swiss bank UBS publicly announced that it was the target of a criminal investigation by the IRS and the United States Department of Justice ("Department") and that it would be exiting and no longer accepting certain United States clients. On February 18, 2009, the Department and UBS filed a deferred prosecution agreement in the United States District Court for the Southern District of Florida, in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist United States 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 United States clients. These cases have been closely monitored by banks operating in Switzerland, including Gonet, since at least August of 2008.

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

11. In 2001, Gonet 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 non-United States financial institutions regarding United States securities. The QI Agreement was designed to ensure that, with respect to United States securities held in an account at the Bank, non-United States persons were subject to proper United States withholding tax rates and that United States persons properly paid United States tax.
12. The QI Agreement accepted that Swiss banks were prohibited by Swiss law from disclosing the identities of account holders. If an account holder wished to trade in United States securities without being subjected to mandatory United States tax

withholding, the account holder's bank was required to obtain the consent of the account holder to disclose his or her identity to the IRS.

13. However, after signing its QI Agreement, Gonet continued to service certain United States customers without disclosing their identity to the IRS and without regard for the impact of United States criminal law on that decision.
14. In the years following the signing of its QI Agreement, Gonet's position was that it could service United States clients that it knew or had reason to believe were non-compliant with their United States tax obligations as long as: (a) the account did not trade or hold United States securities; or (b) the account was held by a non-United States entity.
15. In the latter circumstances, United States clients, with the assistance of their external advisors, would create an entity, such as a Liechtenstein foundation, Panamanian corporation, or British Virgin Islands corporation, and pay a fee to third parties to act as corporate directors. Those third parties, at the direction of the United States client, would then open a bank account at Gonet in the name of the entity or transfer funds from a pre-existing account from another bank. On one or more occasion, Gonet employees provided prospective United States clients with referrals to external advisors who could assist with the creation and management of such an entity. In addition, in some instances, Gonet made insufficient efforts to determine whether such an entity was valid for United States tax purposes.
16. In certain cases involving a non-United States entity, Gonet was aware that a United States client was the true beneficial owner of the account. Despite this, Gonet would sometimes obtain from the entity's directors an IRS Form W-8BEN (or equivalent bank document) that falsely declared that the beneficial owner was not a United States taxpayer. In some of these cases, Gonet permitted the accounts to trade in United States securities without reporting account earnings or transmitting withholding taxes to the IRS, as required by the QI Agreement. Gonet also failed to implement written policies during this time that prohibited the use of offshore structures to evade the requirements of the QI Agreement.

#### **OVERVIEW OF BUSINESS WITH U.S. RELATED ACCOUNTS**

17. During the Applicable Period, 13 relationship managers managed at least one U.S. Related Account at Gonet, although only four relationship managers had more than ten U.S. Related Accounts during that time. The relationship managers served as the primary contact persons for the Bank's United States clients or their advisors.
18. Near the beginning of the Applicable Period, in recognition of the increasing risks that small banks faced in a consolidating market, Gonet implemented a growth strategy premised upon the hiring of established relationship managers from other banks. The Bank's resulting growth came largely in the form of clients from Europe, Central America, and South America.
19. Although none of the relationship managers hired by the Bank during its period of growth held the United States as a target market, along with the overall growth of the Bank came

an increase in the number of U.S. Related Accounts at Gonet. In spite of this overall growth, however, U.S. Related Accounts continued to constitute only approximately two percent of total Gonet accounts through August 29, 2013, when the Swiss Bank Program was announced.

20. Gonet was aware that United States taxpayers had a legal duty to report to the IRS—and pay taxes on—all their worldwide income, including income earned from accounts maintained in Switzerland. Despite being aware of this legal duty, Gonet failed to ensure that its United States clients were abiding by that duty when it accepted them as customers and failed to investigate in situations in which the Bank had evidence indicating that its customers were using their accounts to evade their United States tax obligations.
21. As a result of these failures, from at least August 2008 through August 2013, Gonet enabled some United States taxpayers to evade their United States tax and filing obligations, resulting in the filing of false income tax returns with the IRS and allowing United States taxpayers to hide offshore assets from the IRS.
22. In particular, Gonet opened 16 accounts for United States taxpayers who had left other Swiss banks that were known targets of investigations by the Department, including UBS and Credit Suisse. Most of these accounts came to the Bank via referral, either from an existing customer or from business introducers who received a commission based upon the value of the assets they brought to the Bank.
23. With respect to the majority of these 16 accounts, Gonet knew or should have known that the beneficial owners were attempting to evade United States taxes and foreign account reporting requirements, but failed to ascertain whether they were in fact tax compliant, and did not do enough to encourage them to be tax compliant.
24. Gonet opened and maintained 38 U.S. Related Accounts (inclusive of sub-accounts and secondary accounts) held by non-U.S. entities with the knowledge that one or more U.S. persons was the true beneficial owner of the assets maintained in the accounts. These accounts were most commonly held by Panama corporations, British Virgin Islands corporations, and Liechtenstein foundations. Two of the accounts held by non-U.S. entities were so-called “insurance wrapper” accounts, whereby United States beneficial owners funded insurance policies with assets held in an undeclared account at Gonet.
25. Gonet also offered a variety of services, and permitted some practices, that it knew could and did assist United States taxpayers in concealing assets and income from the IRS. For example, Gonet:
  - a. accepted Forms W-8BEN wherein clients falsely stated, under the penalties of perjury, that certain offshore entities beneficially owned the assets in the accounts;
  - b. serviced some accounts held in the name of offshore entities without strict adherence to corporate formalities, and, with respect to some entity accounts, such

structures were operated by the United States beneficial owners, in violation of corporate governance provisions;

- c. offered clients the use of hold mail, whereby the Bank would hold all mail correspondence for a particular client at the Bank's premises;
- d. provided electronic banking that allowed clients, including those from the United States, to access their account information in order to monitor balances, but not to process transactions of any type;
- e. offered clients the use of coded and numbered accounts, in an effort to reduce the use of account holders' and/or beneficial owners' names, including in internal Bank communications;
- f. opened accounts for United States taxpayers without Forms W-9, despite knowing that the account holder was a United States person;
- g. followed instructions that U.S. Related Accounts not hold United States securities, which otherwise would require disclosure to the IRS;
- h. provided credit and debit cards to United States clients, the bills for which were sent to the Bank and paid with funds from the accounts; and
- i. processed large cash withdrawals for more than one dozen U.S. Related Accounts at or around the time the accounts were closed, even though Gonet knew, or had reason to know, that the accounts contained undeclared assets. For example, the Bank provided \$214,000 in U.S. currency to a United States client in connection with the closing of his account.

26. Despite implementing more restrictive policies regarding the acceptance and maintenance of United States accounts in March 2010, Gonet did not always follow those policies. In addition, Gonet did not require the closure of accounts not in compliance with the March 2010 policies. As a result, the Bank further assisted some United States taxpayers in underreporting their income to the IRS for up to four additional years.

#### **MITIGATING FACTORS**

- 27. Consistent with Gonet's limited involvement with United States clients, the Bank did not have a specific policy regarding United States accounts until March 4, 2010. Beginning at that time, the Bank took measures to better ensure that its United States clients were or would become tax compliant.
- 28. The Bank's March 4, 2010 policy guided Bank personnel's interactions with United States account holders, beneficial owners, and proxies, respectively. Simultaneously with the introduction of the March 4, 2010 policy, Gonet created forms for United States persons affiliated with accounts, in order to educate the account holders on the Bank's policies for interacting with United States clients and to confirm their willingness to comply with those policies.

29. United States account holders and beneficial owners were obligated to certify and agree that:
- a. Gonet, its employees, and its agents did not promote the use of an offshore entity to hold the account on behalf of the United States person;
  - b. Gonet, its employees, and its agents did not provide any advice to the United States person regarding their United States tax obligations arising from the account;
  - c. the United States person had complied with, and would continue to comply with, all of his or her United States tax and reporting obligations, if any, arising from the relationship with Gonet;
  - d. the United States person authorized Gonet to disclose any and all information regarding his or her relationship with Gonet to administrative, tax, or judicial authorities in Switzerland or the United States, as required by applicable law or regulations.
30. United States proxies, including holders of a power of attorney, were obligated to certify and agree that:
- a. the United States person was not the beneficial owner of the assets held in the account; and
  - b. the United States person had complied with, and would continue to comply with, all of his or her United States tax and reporting obligations, if any, arising from the relationship with Gonet.
31. Although most United States persons affiliated with accounts opened after March 2010 signed these forms, some did not. In a small number of other cases, United States persons affiliated with an account modified the forms, including in manners indicative of an intent not to declare their accounts to United States authorities.
32. On January 1, 2011, Gonet supplemented its account opening form to include questions about whether the account holder was a United States citizen, resident, or taxpayer for any other reason, which were intended to improve the Bank's identification of United States persons affiliated with accounts.
33. On April 19, 2012, Gonet sent a letter its clients emphasizing that, in light of the changing political climate both domestically within Switzerland and internationally, clients should seriously consider the regularization of their account(s), if not already declared. Gonet was unable to send this letter to the holders of its dormant accounts. For accounts managed by external asset managers, Gonet sent a letter to the external asset managers requesting that they notify their clients of the contents of the letter.
34. On December 1, 2012, Gonet adapted its Know Your Customer form to FATCA's requirements by adding six additional questions intended to assist in identifying potential

United States taxpayers, who would then be obligated to comply with Gonet's more restrictive policies for United States accounts.

35. On July 1, 2014, Gonet implemented a new policy governing its dealings with accounts affiliated with United States persons and entities with substantial United States ownership and/or beneficial interests. In sum and substance, the policy:
- a. prohibited the opening of new accounts for United States persons or entities with substantial United States ownership or beneficial interests, regardless of the potential new client's ability to prove their compliance with United States tax and reporting requirements;
  - b. required existing accounts held by United States persons or entities with substantial United States ownership or beneficial interests to be closed unless the clients:
    - i. provided extensive proof of compliance with United States tax and reporting obligations; and
    - ii. provided a waiver permitting Gonet to transmit information about the account to United States law enforcement agencies.
36. In August 2013, after the Swiss Bank Program was announced, Gonet immediately dedicated a team to ensuring the Bank's full cooperation with the Department and full compliance with the terms of the Swiss Bank Program. In particular, the Bank, in compliance with Swiss law and in conjunction with Swiss and United States counsel:
- a. engaged Swiss and United States counsel, foreign tax experts, and an international accounting firm to identify and collect information regarding its U.S. Related Accounts and to review its conduct in relation to such accounts;
  - b. conducted an internal review that included, but was not limited to: (1) interviews of relationship managers responsible for nearly all of the Bank's U.S. Related Accounts, other Bank employees with specialized knowledge of the Bank's U.S. Related Accounts, and members of management; (2) reviews of client account files and correspondence; (3) correspondence with clients; and (4) analysis of relevant management policies.
  - c. within two months of the announcement of the Swiss Bank Program, dedicated considerable resources to contacting its U.S. Related Accounts and encouraging them to enter into the IRS Offshore Voluntary Disclosure Program ("OVDP"), where such accounts were not already declared; and
  - d. reported on the findings of its internal review to the Department, providing an in-person presentation on the structure of the Bank's business with U.S. persons.
37. Gonet has undertaken considerable efforts to comply with its obligations under the Swiss Bank Program, including participating in costly and ongoing litigation in Switzerland

relating to its obligation under the Swiss Bank Program to identify third parties affiliated with U.S. Related Accounts.

38. Gonet further assisted the Department by providing aggregate and account-level information regarding accounts held by U.S. taxpayers who may not have been fully compliant with United States laws.
39. Gonet assisted and has agreed to continue to assist the Department in preparing treaty requests under the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income (Oct. 2, 1996), and the Protocol Amending the Convention (Sept. 23, 2009), if and when it is in force and applicable, including by identifying United States taxpayers' accounts that meet the standard for information exchange under these treaties.
40. Gonet obtained waivers for 64 of its 138 U.S. Related Accounts with United States beneficial owners, and the Bank has provided these clients' names and account information directly to the United States government.
41. Based on Gonet's efforts, many of its current or former United States clients have entered into the IRS Offshore Voluntary Disclosure Program and paid back taxes, penalties, and interest in connection with failing to report their undeclared accounts.