U.S. Department of Justice

Tax Division

Washington, D.C. 20530

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5-16-4725
CMN 2014200736

August 3, 2015

Timothy J. Coleman, Esquire
Freshfields, Bruckhaus Deringer US LLP
700 Thirteenth Street, NW
Washington, DC 20005

Re: Privatbank Reichmuth & Co.
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Mr. Coleman:

Privatbank Reichmuth & Co. ("Reichmuth") submitted a Letter of Intent on December 20, 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 Reichmuth in its Letter of Intent and information provided by Reichmuth 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 Reichmuth of the Swiss Bank Program will constitute a breach of this Agreement.

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

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

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.

In recognition of the conduct described in this Agreement and in accordance with the terms of the Swiss Bank Program, Reichmuth agrees to pay the sum of $2,592,000 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 Reichmuth. This payment is in lieu of restitution, forfeiture, or criminal fine against Reichmuth for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Reichmuth with respect to the conduct described in this Agreement, unless the Tax Division determines Reichmuth has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Reichmuth 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 Reichmuth has violated any provision of this Agreement. Reichmuth 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. Reichmuth agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Reichmuth further agrees that no portion of the penalty that Reichmuth has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Reichmuth 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) Reichmuth'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 Reichmuth attracted and serviced account holders; and
- in-person presentations and documentation, properly translated, supporting the disclosure of the above information and other information that was requested by the Tax Division;

(b) Reichmuth'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) Reichmuth'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 Reichmuth 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) Reichmuth's retention of a qualified independent examiner who has verified the information Reichmuth disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Reichmuth 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 Reichmuth, 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, Reichmuth 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 Reichmuth's 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 Reichmuth'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 Reichmuth; 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.

Reichmuth further agrees to undertake the following:

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

2. Reichmuth 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 Reichmuth.

3. Reichmuth 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.

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

4. Reichmuth 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.

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

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 Reichmuth, notwithstanding the expiration of the statute of limitations between such date and the commencement of such prosecution. For any such prosecutions, Reichmuth 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 Reichmuth's counsel.

It is understood that Reichmuth contends that it has jurisdictional arguments and defenses that it could raise to support a claim that it is not subject to prosecution for any criminal offense in the courts of the United States. By entering into this Agreement, Reichmuth does not prospectively waive these arguments or defenses and it reserves the right to assert any applicable jurisdictional argument or defense in any future prosecution or civil action by the United States.

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 Reichmuth, the Tax Division will, however, bring the cooperation of Reichmuth 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 Reichmuth consistent with Part V.B of the Swiss Bank Program.

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

8/6/2015

CAROLINE D. CIRAOLO
Acting Assistant Attorney General
Tax Division

5 August 2015

THOMAS J. SAWYER
Senior Counsel for International Tax Matters

8-10-2015

MICHAEL N. WILCOVE
Trial Attorney

AGREED AND CONSENTED TO:

PRIVATBANK REICHMUTH & CO.

By: _____ 5/8/15
CHRISTOF REICHMUTH
Chairman of the Board of Directors
DATE

By: _____ 5/8/15
JURG STAUB
Chief Executive Officer
DATE

APPROVED:

_____ 5 Aug. 2015
TIMOTHY J. COLEMAN
Freshfields Bruckhaus Deringer US LLP
DATE

EXHIBIT A TO REICHMUTH & CO NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

I. Introduction

1. Reichmuth & Co ("Reichmuth" or "the Bank") is a private bank headquartered in Lucerne, Switzerland. Reichmuth was founded as an external asset management firm in 1996 and acquired its banking license in 1998. Reichmuth has approximately 60 employees, most of whom work in its main office in Lucerne. It also has a small office in Zurich.

2. Reichmuth's principal market is high net worth individuals, families, and family-owned companies in the German-speaking part of Europe (primarily Switzerland and Germany). Approximately 80 percent of Reichmuth's customers are located in Switzerland, and most of the remaining customers are located in Germany.

3. Reichmuth has never had a presence in the United States and its relationship managers never traveled to the United States to seek or service U.S. customers. Reichmuth did not advertise its services to U.S. persons, and it did not use finders or other third parties to attract U.S. customers.

4. During the Applicable Period, Reichmuth had approximately 3,500 accounts and approximately $8 billion under management.

II. U.S. Income Tax and Reporting Obligations

5. U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income. Since tax year 1976, U.S. citizens, resident aliens, and legal permanent residents have had an obligation to report to the Internal Revenue Service ("IRS") on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether they had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking "Yes" or "No" in the appropriate box and identifying the country where the account was maintained.

6. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than $10,000 at any time during a particular year were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114, formerly known as Form TD F 90- 22.1 (the "FBAR").

7. An "undeclared account" was a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that had not been reported by the individual account owner to the U.S. government on an income tax return or other form and an FBAR as required.

8. Since 1935, Switzerland has maintained criminal laws that ensure the secrecy of client relationships at Swiss banks. While Swiss law permits the exchange of information in response to administrative requests made pursuant to a tax treaty with the United States and certain legal requests in cases of tax fraud, Swiss law otherwise prohibits the disclosure of identifying information without client authorization. Because of the secrecy guarantee that they created, these Swiss criminal provisions have historically enabled U.S. clients to conceal their Swiss bank accounts from U.S. authorities.

9. In or about 2008, Swiss bank UBS AG ("UBS") publicly announced that it was the target of a criminal investigation by the IRS and the United States Department of Justice (the "Department") and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department 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 Reichmuth, since at least August of 2008.

III. Qualified Intermediary Agreement and Its Role in Non-Compliant U.S. Related Accounts

10. In 2001, Reichmuth 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 regarding U.S. securities. The QI Agreement was designed to help ensure that, with respect to U.S. securities held in an account at the bank, non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons were properly paying U.S. tax.

11. The QI Agreement took account of the fact that Reichmuth, 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 Reichmuth to obtain the consent of the account holder to disclose the client's identity to the IRS.

12. But Reichmuth continued to service U.S. customers without disclosing their identity to the IRS and without considering the impact of U.S. criminal law on that decision.

13. Reichmuth's position was that it could assist U.S. account holders that it knew or had reason to believe were engaged in tax evasion so long as (a) its account holders were prohibited from trading in U.S. based securities, or (b) the account was nominally structured in the name of a non-U.S. based entity.

14. In the latter circumstance, U.S. account holders, with the assistance of their advisors, would create an entity, such as a Liechtenstein or Panama foundation, and pay a fee to third parties to act as directors. Those third parties, at the direction of the U.S. account holder, would then open a bank account at Reichmuth in the name of the entity or transfer a pre-existing Swiss bank account from another Swiss bank. Reichmuth made no effort to determine whether such an entity was valid for U.S. tax purposes.

15. In those circumstances involving a non-U.S. entity, Reichmuth was aware that a U.S. person was or may have been the true beneficial owner of the account.

IV. Reichmuth's U.S. Cross-Border Business

A. Overview

16. In the Applicable Period, Reichmuth maintained and serviced 103 U.S. Related Accounts with an aggregate value of approximately $281 million, including both declared and undeclared accounts.[1]

17. During the Applicable Period, Reichmuth acted as both the asset manager and the custodian bank for 55 of its 103 U.S. Related Accounts. Of the remainder, 23 U.S. Related Accounts were managed by external asset managers and 21 were self-managed by customers. In addition, Reichmuth had an advisory mandate for an additional four U.S. accounts that were booked at other banks. Each account was assigned to and serviced by an individual relationship manager, who serviced the account at the direction of the beneficial owner directly or through an external asset manager or other agent.

18. The structure by which two of the three external asset managers were generally compensated had three components:

- fees payable by the clients to the external asset managers directly, which could be an all-in fee, the standard fees applicable to all clients, or a discount arrangement on the standard fees;
- retrocessions, i.e. a fee sharing model according to which the bank shares a certain percentage of the fees paid by the client with the EAM; these were abandoned by mid-2013;
- and a finder's fee for each client introduced by the EAM.

19. The third external asset manager did not receive a retrocession or finder's fee from the Bank.

20. Three external asset managers serviced 23 of Reichmuth's U.S. Related Accounts.

21. Reichmuth was aware that U.S taxpayers had a legal duty to report to the IRS and pay taxes on all of their income, including income earned in accounts that these U.S. taxpayers maintained at Reichmuth. Reichmuth knew that it was likely that certain U.S. customers who maintained accounts at Reichmuth were not complying with their U.S. income tax and reporting obligations.

[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") 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").

B. Structured Accounts

22. During the Applicable Period, Reichmuth permitted U.S. customers to open and maintain at least 18 undeclared accounts held in the name of non-U.S. corporations, foundations, trusts, or other legal entities ("structures"). Even though Reichmuth was aware that U.S. persons were the beneficial owners of those accounts, Reichmuth obtained documents from the nominal account holders that falsely declared they were not U.S. taxpayers.

23. Of these structures, seven were domiciled in Liechtenstein, five in Panama, five in St. Vincent and the Grenadines, and one in the British Virgin Islands.

24. Of the 18 undeclared accounts held by structures, 14 were opened during the Applicable Period. Of those 14 accounts, five were opened by structures that had been incorporated less than three months before the account was opened.

C. Accounts from UBS or Other Category 1 Banks

25. During the Applicable Period, the Bank opened at least 14 undeclared U.S. related accounts that came to Reichmuth from UBS or other Category 1 bank. At least three of these accounts, including the largest, were opened based on the express condition by Reichmuth that the beneficial owners of the assets participate in the IRS's Offshore Voluntary Disclosure Initiative ("OVDI").

26. For at least five of the undeclared accounts mentioned in paragraph 25, Reichmuth's connections with the account holders were established through attorneys with whom the Bank had worked on prior projects or whom had a prior relationship with the Bank's former chairman or relationship managers.

D. Insurance –Wrapped Account

27. In connection with one structured account, which is also described in paragraph 25, Reichmuth agreed to open an "insurance wrapped" account for the U.S. beneficial owner, whereby the beneficial owner funded an insurance policy with assets held in an undeclared account at Reichmuth.

28. The insurance-wrapped account was opened in December 2010 in the name of a Liechtenstein insurance company.

29. In December 2010, shortly before the insurance-wrapped account was opened, the Bank was instructed, on behalf of the beneficial owner, to transfer all assets from another account at the Bank to an account held at a bank in Liechtenstein for the benefit of the beneficial owner. The transferor account was opened in July 2008 and was nominally held by a Panama foundation for the same U.S. beneficial owner for whom the insurance-wrapped account was opened.

30. The transferred assets were, shortly after the transfer, returned to the Bank in order to fund the insurance-wrapped account.

31. While the insurance wrapped account was held in the name of a Panamanian structure and the Bank was not named as a party to the insurance contract, the assets held in

the account were provided by the beneficial owner, held for his benefit and controlled by him.

32. The Bank was aware that the account consisted of assets supplied by the beneficial owner and retained for his benefit. By accepting this account, the Bank knowingly enabled the beneficial owner in the evasion of his U.S. tax liabilities and concealment of his assets.

E. Other Actions

33. In at least two known instances, that Bank knew that U.S. customers holding or beneficially owning accounts transferred their (beneficial) ownership in such accounts to close non-U.S. persons through gifts or otherwise, but otherwise maintained beneficial ownership and control over the assets in the new account.

34. For at least 12 undeclared U.S. Related Accounts, the Bank held statements and other mail at its offices in Switzerland, rather than sending them to its U.S. customers in the United States. As a result, documents reflecting the existence of these accounts remained outside the United States.

35. Bank opened and maintained nine undeclared numbered or code name accounts for individual U.S. customers. Doing so allowed the accountholder to replace his or her identity with a code name or number on bank statements and other documentation sent to the client.

V. Mitigating Factors

36. Beginning in 2009, Reichmuth took measures to ensure that its U.S. customers were or became tax compliant. In March 2009, Reichmuth issued a directive on U.S. customer relationships, which defined the conditions under which new accounts for U.S. persons could be opened. The directive dealt primarily with SEC regulations and was intended to ensure compliance with U.S. law. In June 2009, Reichmuth declined an opportunity to accept approximately $150 million in assets belonging to U.S. customers of a Swiss asset management company.

37. In August 2009, Reichmuth started to assess its existing U.S. customer base for information relating to tax compliance, specifically the existence of an IRS Form W-9. One week later, with a view to increasing its scrutiny of its U.S. customer accounts, Reichmuth replaced the March 2009 directive on U.S. customers with an instruction to all employees requiring that any new relationships with U.S. persons had to be reviewed and approved by the management.

38. In September 2009, shortly after the IRS had filed a request for information with the Swiss Federal Tax Administration on August 31, 2009 concerning approximately 4,450 UBS accounts based on an agreement between the U.S. and the Swiss Confederation of August 19, 2009, Reichmuth's management launched a project to notify U.S. customers on an accelerated basis about the opportunity to participate in OVDI.

39. In November 2009, Reichmuth articulated its strategy with respect to U.S. customers, stating that it would only open declared accounts. Reichmuth continued to urge existing U.S. customers with undeclared accounts to voluntarily disclose them to the IRS.

40. During 2010 and 2011, Reichmuth developed comprehensive new directives on cross-border business, including its U.S. cross-border business. In its directive of September 1, 2011, Reichmuth's management required that all U.S. customer accounts that potentially remained non-compliant with U.S. tax obligations be closed by mid-2012 at the latest.

VI. Reichmuth's Cooperation Throughout the Swiss Bank Program

41. Today, largely as a result of Reichmuth's efforts, all but six of its undeclared U.S. related accounts have now been identified to the IRS.

42. Throughout its participation in the Swiss Bank Program, Reichmuth committed to providing full cooperation to the U.S. government and has made timely and comprehensive disclosures regarding its U.S. cross-border business. Specifically, the Bank, with the assistance of U.S. and Swiss counsel, forensic investigators, and in compliance with Swiss privacy laws has:

- conducted an internal investigation which included, among other things, interviews of relationship managers and other employees, reviews of customer account files and correspondence, analysis of relevant policies and email searches;
- described the structure, operation, and supervision of its U.S. cross-border business, including the names of relevant individuals and entities;
- identified additional U.S. customer accounts that were not U.S. tax-compliant and encouraged them to declare their accounts to the IRS through OVDI; and
- sought and obtained bank secrecy waivers from 49 of its U.S. customers, whose names were then provided to the U.S. government.