U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:TLGostyla
5-16-4710
2014200721

November 4, 2015

Maria T. Galeno, Esq.
Pillsbury Winthrop Shaw Pittman LLP
1540 Broadway
New York, New York 10036-4039

Re: Maerki Baumann & Co. AG
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Ms. Galeno:

Maerki Baumann & Co. AG ("MBC") 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 MBC in its Letter of Intent and information provided by MBC 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 MBC of the Swiss Bank Program will constitute a breach of this Agreement.

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

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

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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, MBC agrees to pay the sum of $23,920,000 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 MBC. This payment is in lieu of restitution, forfeiture, or criminal fine against MBC for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from MBC with respect to the conduct described in this Agreement, unless the Tax Division determines MBC has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. MBC 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 MBC has violated any provision of this Agreement. MBC 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. MBC agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. MBC further agrees that no portion of the penalty that MBC has agreed to pay to the Department under the terms of this Agreement will serve as a basis for MBC 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) MBC'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 MBC 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) MBC'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;

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

Under the terms of this Agreement, MBC 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 MBC, 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, MBC 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

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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 MBC 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 MBC'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 MBC; 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.

MBC further agrees to undertake the following:

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

2. MBC 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 MBC.

3. MBC 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. MBC will only

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

4. MBC 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 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.

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

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

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

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

AGREED AND ACCEPTED

UNITED STATES DEPARTMENT OF JUSTICE, TAX DIVISION

CAROLINE D. CIRAOLO
Acting Assistant Attorney General

DATE

13324429.1

THOMAS J. SAWYER
Senior Counsel for International Tax Matters

17 November 2015
DATE

TRACY L. GOSTYLA
Trial Attorney

11/17/2015
DATE

MAERKI BAUMANN & CO. AG

By:

HANS G. SYZ-WITMER
Chairman, Board of Directors

15 November 2015
DATE

CAROLE SCHMIED-SYZ
Vice-Chairman, Board of Directors

15 November 2015
DATE

APPROVED:

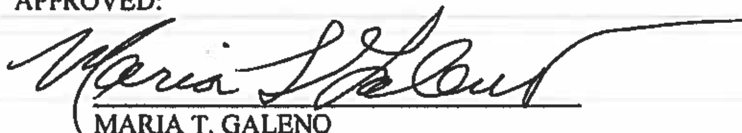

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EXHIBIT A TO MAERKI BAUMANN & CO. AG NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

INTRODUCTION

1. Maerki Baumann & Co. AG ("MBC") is a family-owned private bank organized under the laws of Switzerland. It is headquartered in Zurich, Switzerland, and has a branch office in Lugano, Switzerland. It is wholly owned by Maerki Baumann Holding AG. MBC offers private banking, investment advisory, and asset management services to its clients.

2. During the Applicable Period, as defined in the United States Department of Justice's Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (referred to as the "Swiss Bank Program"), MBC had an aggregate of approximately 11,300 accounts, totaling approximately $12.6 billion in assets under management. During the Applicable Period, MBC had an average (based on year-end figures) of approximately 3,650 accounts and approximately $6.6 billion in assets under management.

U.S. INCOME TAX & REPORTING OBLIGATIONS

3. 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 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.

4. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than $10,000 at any time during a particular year have been required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114 (the "FBAR," formerly known as Form TD F 90-22.1). The FBAR must be filed on or before June 30 of the following year.

5. 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

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account owner to the U.S. government on an income tax return or other form and an FBAR as required.

6. "U.S. Related Accounts" means accounts which exceeded $50,000 in value at any time during the Applicable Period, and as to which indicia exist that a U.S. person or entity has or had a financial or beneficial interest in, ownership of, or signature authority (whether direct or indirect) or other authority over the account.

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 accounts and maintaining undeclared assets and income from the IRS. Since the UBS investigation became public, 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 MBC, since at least August of 2008.

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

9. In December 2000, MBC 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 with respect to U.S. securities. The QI Agreement was designed to help ensure that, with respect to U.S. securities held in accounts at MBC, non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons holding U.S. securities were properly paying U.S. tax.

10. The QI Agreement took account of the fact that MBC, 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

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withholding, the QI Agreement required MBC to obtain the consent of the account holder to disclose the client's identity to the IRS. The QI Agreement required MBC to obtain IRS Forms W-9, Requests for Taxpayer Identification Number and Certification (each, a "Form W-9") and to undertake IRS Form 1099 reporting for new and existing U.S. clients engaged in U.S. securities transactions. Since December 2000, MBC prohibited any U.S. client without a Form W-9 and a bank secrecy waiver from holding U.S. securities.

11. Until approximately September 2008, MBC wrongly believed that it was not required to obtain a Form W-9 for any U.S. client that elected not to invest in U.S. securities. During this time, apart from QI requirements, MBC did not have policies specific to U.S. clients.

OVERVIEW OF THE U.S. CROSS-BORDER BUSINESS

12. MBC provided private banking, investment advisory, and asset management services to individuals and entities located inside and outside Switzerland. While MBC has focused primarily on the Swiss market, as well as German and other European clients, it has long had U.S. clients.

13. During the Applicable Period through December 31, 2014, MBC had 571 U.S. Related Accounts, comprising maximum assets under management of approximately $790 million (including assets of declared accounts). These figures include 150 accounts, with aggregate maximum assets under management of $243 million, where MBC issued Forms 1099 to the IRS through a U.S. intermediary.

14. Private bankers known as "relationship managers" served as the primary contacts for clients with accounts at MBC and were responsible for opening and managing client accounts at the Bank.

15. In the 1990s, MBC developed a relationship with a Swiss referral source that introduced clients to MBC primarily from the United States. This source, which had an investment philosophy that advocated asset preservation and global diversification, was affiliated with an insurance company that also deposited with MBC pooled assets from its insurance customers. Although MBC did not have to establish the identities of such insurance customers, it understood that most were U.S. persons.

16. At some point in the late 1990s or early 2000s, MBC also began receiving referrals of United States clients from an external asset manager based in the United States. These referrals included, in some cases, U.S. clients with undeclared accounts.

17. In addition to the above sources of U.S. clients, individual relationship managers brought U.S. clients with them when they joined MBC from other banks and acquired U.S. clients

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while at MBC, whether referred through other clients, external asset managers, or other sources.

18. Prior to 2001, approximately ten relationship managers at any given time managed at least one U.S. Related Account. Prior to 2001, approximately three external assets managers at any given time managed at least one U.S. Related Account.

19. Although MBC had long had U.S. clients, the Bank had no formal United States desk or team until 2001, when it consolidated responsibility for U.S. clients into what had been the "Swiss team" and renamed it the "Swiss/U.S. team." One relationship manager, who had a number of U.S. clients introduced by the Swiss referral source mentioned above, operated as the U.S. component of the Swiss/U.S. Team. In 2001, MBC hired an individual from another Swiss bank to assist with the U.S. clients. This individual, who became a relationship manager in 2002, maintained a significant number of U.S. clients. Some of the relationship managers who managed U.S. Related Accounts before 2001 continued to manage these accounts after the formation of the Swiss/U.S. team.

20. MBC increased its focus on its U.S. cross-border business from 2003 to 2005. In 2003, the Bank hired a relationship manager ("RM-1") from the U.S./Canada desk at a Category 1 bank. Approximately half of the accounts that RM-1 managed at MBC were U.S. clients, and RM-1 opened approximately 40 U.S. accounts due to RM-1's relationships with these clients. Due to RM-1's experience in handling U.S. clients, RM-1 served as an informal reference source for other relationship managers with questions about U.S. clients.

21. RM-1 introduced MBC to another relationship manager ("RM-2") with whom RM-1 had previously worked at a Category 1 bank and who had significant experience servicing U.S. accounts. MBC hired RM-2 in 2005 with the expectation that RM-2 would provide expertise to the U.S. side of MBC's Swiss/U.S. team and actively recruit additional U.S. clients. RM-2 managed numerous accounts for U.S. clients. MBC terminated RM-2's employment at the end of 2008. In 2011, RM-2 was charged, in a federal court in the United States, with conspiring to impede and impair the IRS in the ascertainment, computation, assessment, and collection of U.S. income taxes, in connection with RM-2's activities at a bank other than MBC.

22. By the end of 2005, in addition to the head of the Swiss/U.S. team, the U.S. component of MBC's Swiss/U.S. team consisted of three relationship managers, including RM-1 and RM-2. The client base of the three relationship managers consisted largely of U.S. clients. These relationship managers serviced U.S. accounts and worked to attract U.S. clients to MBC. Later, they were assisted by three junior members of the Swiss/U.S. team. Other relationship managers at MBC were invited to transfer their U.S. clients to this team; some elected to do so while others retained their U.S. clients.

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23. MBC knew that U.S. persons had a duty under U.S. law to report their income to the IRS, including all income earned in accounts maintained by MBC in Switzerland, and to pay taxes on that income. Notwithstanding, MBC opened, maintained, and serviced accounts for U.S. persons that it knew or had reason to know were likely not declared to the IRS or the U.S. Department of the Treasury, as required by U.S. law.

24. MBC also offered a variety of traditional Swiss banking services that it knew could assist, and did in fact assist, U.S. clients in the concealment of assets and income from the IRS. In particular:

   - With respect to 106 of the 571 U.S. Related Accounts open during the Applicable Period, MBC allowed U.S. persons to maintain accounts held in the name of non-U.S. corporations or other legal entities (collectively, "entities") that were not operating companies and were beneficially owned by these U.S. persons. While MBC did not assist clients in establishing such entities, MBC permitted U.S. persons to maintain entity accounts at MBC. On at least one occasion, a relationship manager referred a client to an individual who might assist in establishing an entity. The non-U.S. jurisdictions in which the entities were incorporated or formed included Liechtenstein, Panama, and the British Virgin Islands. On at least two occasions, relationship managers met directly with the beneficial owners of the MBC accounts held by the entities.

   - MBC provided numbered accounts for 134 U.S. Related Accounts, whereby MBC would allow the account holder to replace his or her identity with a code name or number on bank statements and other documentation sent to the client. However, MBC's internal records reflected the identity of the U.S. clients associated with these accounts, in compliance with Swiss law. Although MBC did not historically charge additional fees for numbered accounts, on January 1, 2013, MBC began to charge an annual (or quarterly) fee for numbered accounts.

   - For a fee, MBC held bank statements and other mail relating to 230 U.S. Related Accounts at MBC's offices in Switzerland rather than sending them to the U.S. taxpayers in the United States. As a result, all documents reflecting the existence of these accounts remained outside the United States. The combination of "hold mail" instructions and numbered accounts on undeclared accounts significantly reduced the ability of the IRS to learn the identities of the U.S. persons.

   - Prior to 2010, relationship managers communicated, or discussed communicating, by confidential means, with U.S. clients relating to at least ten U.S. Related Accounts. For example, in October 2006, one relationship manager advised a client that if there was a need for urgent contact, he would send the client a card stating "Greetings from [relationship manager]." In another instance, in June 2009, a client's correspondence

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to a relationship manager stated "If there are any questions, please phone me on my cell phone or email me with our usual confidentiality." In some instances, the account holders had disclosed to relationship managers that their accounts were undeclared.

- Between 2003 and 2009, RM-1 opened four offshore entity accounts with U.S. beneficial owners, over which a certain Swiss individual held power of attorney. In April 2014, that Swiss individual pleaded guilty, in a federal court in the United States, to conspiring to impede and impair the IRS in the ascertainment, computation, assessment, and collection of U.S. income taxes, although the guilty plea did not relate to this individual's activities in connection with MBC. In at least one instance, RM-1 delivered $8,000 in cash to the U.S. beneficial owner of one of these accounts at the airport in Zurich, Switzerland.

- With respect to three separate accounts, between 2004 and 2008, RM-1 assisted U.S. clients in depositing funds, which originated in the United States, into their MBC accounts, with correspondence stating that these checks were generated in connection with business transactions but without the source documentation to support the statements. On approximately a monthly basis (but sometimes more often), RM-1 received from U.S. clients checks ranging from just under $10,000 to $85,000, which were drawn on U.S. company accounts in California, for deposit into accounts beneficially owned by those U.S. clients or their designees. The correspondence accompanying the checks stated that the checks were for "materials purchased" and instructed the relationship manager to "process the purchase orders as needed," and many of the checks themselves bore the notation "see purchase order." However, there were no purchase orders attached, and the Bank was never provided with any purchase orders. Additionally, RM-1's notes state that certain checks were for under $10,000 "in order to avoid any unnecessary attention."

- In some instances, MBC issued a series of checks or wire transfers (usually on a single day), each in an amount under $10,000, as directed by clients relating to at least seven U.S. Related Accounts between 2005 and 2009. In addition, in connection with at least two U.S. Related Accounts, a relationship manager received a series of checks or cash deposits (usually on a single day) each in an amount under $10,000 between 2003 and 2005. With respect to at least two U.S. Related Accounts, relationship managers knew between 2003 and 2005 that the client was structuring the transactions to avoid currency transaction reporting requirements.

- Prior to the Applicable Period, relationship managers traveled on approximately 35 occasions to the U.S. to meet with U.S. clients for the purpose of building and maintaining relationships with these clients. On at least one such visit, a relationship manager solicited a new U.S. Related Account. On at least one other visit, a

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relationship manager received instructions on the account. MBC banned U.S. travel by MBC employees for MBC business in mid-2008.

- In 2009, MBC processed requests to transfer assets from at least three U.S. Related Accounts to a non-U.S. person or to a non-U.S. Related Account. In addition, with respect to at least one U.S. Related Account, MBC permitted assets in an account held by a known U.S. person to be transferred in 2006 to a new account held by a life insurance company, known as an "insurance wrapper."

- MBC opened at least one U.S. Related Account with a cash deposit in 2008, and on many occasions, received cash (and in a few cases, precious metals) for deposit into U.S. Related Accounts.

- MBC processed requests from U.S. taxpayers for cash or precious metal withdrawals, thus not triggering any transaction reporting requirements. On at least 13 occasions between 2006 and 2009, MBC transmitted checks drawn on U.S. Related Accounts to U.S. persons in the United States by private mail service. In addition, between 2005 and 2009, MBC issued traveler's checks to U.S. clients relating to at least three U.S. Related Accounts. Credit, debit, or travel cash cards were also associated with at least twelve U.S. Related Accounts discussed in this paragraph. Use of these cards by U.S. persons facilitated their access to or use of undeclared funds on deposit at the Bank.

- Prior to and in connection with the U.S. Exit, as defined below, MBC permitted U.S. clients to close their accounts with cash withdrawals (and, on at least one occasion, a precious metal withdrawal). In particular, during the U.S. Exit, one relationship manager suggested that a client declare money in the account in the United States. The client did not want to do so, so the relationship manager permitted a withdrawal of approximately one million Swiss francs. In addition, on at least three occasions, relationship managers delivered cash withdrawals to U.S. clients in Switzerland.

VOLUNTARY REMEDIAL MEASURES AND CLOSING OF ACCOUNTS PRIOR TO THE SWISS BANK PROGRAM

25. In late 2007, MBC management reviewed U.S. regulations governing the offering of private banking services in the United States. Thereafter, MBC adopted policies restricting activities within the United States. Relationship managers were still permitted to travel to the United States to visit existing clients, although relationship managers understood that they were not to engage in private banking activities during such trips.

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26. By mid-2008, MBC prohibited its relationship managers from traveling to the U.S. on MBC business. In addition, in or around September 2008, MBC began requiring Forms W-9 for all new U.S. clients.

27. In or around February 2009, MBC created a task force to review the scope of its business with U.S. persons. Following that review, the Executive Board recommended to the Board of Directors that MBC exit its business with all U.S. residents, whether or not tax compliant, as well as U.S. persons living outside the U.S. who would not provide MBC with a Form W-9 (the "U.S. Exit"). At a May 4, 2009 meeting, the Board of Directors accepted the Executive Board's recommendation of the U.S. Exit, and directed that implementation be commenced immediately and completed by the end of 2009.

28. MBC and its relationship managers implemented the U.S. Exit. By the end of 2009, MBC had closed 421 U.S. Related Accounts (including all but 45 of the U.S. accounts designated for exit). By the end of 2010, MBC had closed 472 U.S. Related Accounts (including all but ten U.S. accounts designated for exit). By August 29, 2013, when the Swiss Bank Program was announced, MBC had closed 497 U.S. Related Accounts, with total maximum assets under management of approximately $648 million (including assets of declared accounts). Currently, two U.S. accounts designated for exit remain open.

29. In addition, in June 2009, MBC arranged for, and required relationship managers to attend, training regarding the Offshore Voluntary Disclosure Initiative ("OVDI") the IRS had recently announced. The purpose of the training was to enable relationship managers to encourage U.S. clients to enter OVDI as they were exiting MBC if their accounts were undeclared. The training was provided by a U.S. law firm and conducted at MBC.

MBC'S COOPERATION THROUGHOUT THE SWISS BANK PROGRAM

30. Following the announcement of the Swiss Bank Program, MBC determined to participate as a Category 2 bank and commenced an initiative to identify U.S. Related Accounts using Swiss Bank Program criteria. MBC management has devoted significant attention, time, and effort to, and has fully cooperated with, the Swiss Bank Program. In addition to MBC's U.S. counsel, Swiss counsel, and independent examiner, more than 15 MBC staff members and legal and accounting professionals participated in the identification of U.S. Related Accounts using Swiss Bank Program criteria, and in the investigation into potentially culpable conduct.

31. By participating in the Swiss Bank Program, MBC has committed to cooperate with the U.S. government in its efforts to identify U.S. persons who engaged in tax evasion and/or fraud. MBC undertook significant efforts to encourage non-tax compliant U.S. person clients (both former and current) to participate in the IRS's Offshore Voluntary Disclosure programs, including retaining Swiss and U.S. outside counsel to assist MBC in these efforts, and special investigators to identify current contact details for clients who

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closed their accounts long ago (*e.g.*, in the course of the U.S. Exit). MBC's efforts included contacts and in-person meetings with former and current U.S. person clients, along with extensive follow-up to confirm that U.S. persons followed through with entry into OVDI. MBC obtained waivers for at least 220 U.S. Related Accounts permitting the Bank to disclose the account holders'/beneficial owners' names to the IRS.

32. In addition, MBC has provided full cooperation to allow the United States to be able to request and obtain from Switzerland through the 1996 Convention and the 2009 Protocol (once ratified) the bank files of non-tax compliant U.S. persons. This will result in the United States receiving files identifying U.S. persons who previously held undeclared accounts at MBC, directly or through entities.

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EXHIBIT B TO NON-PROSECUTION AGREEMENT

RESOLUTION OF THE BOARD OF DIRECTORS OF
MAERKI BAUMANN & CO. AG

With a decision taken by correspondence on November 12, 2015, the Board of Directors (the "Board") of Maerki Baumann & Co. AG, Zurich, (the "Company") resolved as follows:

- Whereas, the Board decided on November 15, 2013 that the Company will participate in the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks, dated August 29, 2013 (the "U.S. Program");

- Whereas, the Company submitted on December 23, 2013, a Letter of Intent to the U.S. Department of Justice ("DoJ") indicating its intention to participate as a Category 2 bank in the U.S. Program; and

- Whereas, the DoJ proposed to the Company a non-prosecution agreement (the "Agreement");

The Board hereby resolves that:

1. The Board of the Company has reviewed the entire Agreement attached hereto, including the Statement of Facts as attached as Exhibit A to the Agreement and voted to enter into the Agreement which provides a penalty of USD 23'920'000 to the DoJ in connection with the Agreement.

2. Mr. Hans G. Syz, Chairman of the Board and Mrs. Dr. Carole Schmied-Syz, Vice-Chairman of the Board, with joint signature by two (collectively, the "Authorized Signatories"), are hereby authorized on behalf of the Company to execute the Agreement.

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

4. All of the actions of the Authorized Signatories of the Company are hereby severally ratified, confirmed, approved and adopted as actions on behalf of the Company.

5. The Board hereby authorizes Ms. Maria T. Galeno of the U.S. law firm Pillsbury Winthrop Shaw Pittman LLP, in her capacity as U.S. counsel to the Company, to execute the Agreement on behalf of the Company in the form that the Authorized Signatories shall have approved.

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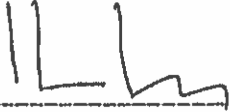
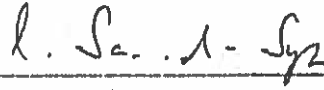
IN WITNESS THEREOF, the Board of Directors of the Company has executed this Resolution.



Hans G. Syz
Chairman of the Board



Dr. Carole Schmied-Syz
Vice-Chairman of the Board