



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

LJW:TJS:MNW  
5-16-4743  
CMN 2014200766

May 5, 2015

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

Re: Vadian Bank AG  
DOJ Swiss Bank Program – Category 2  
Non-Prosecution Agreement

Dear Mr. Coleman:

Vadian Bank AG (“Vadian”) 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 Vadian in its Letter of Intent and information provided by Vadian 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 Vadian of the Swiss Bank Program will constitute a breach of this Agreement.

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

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

Vadian enters into this Agreement pursuant to the authority granted by its Board of Directors in the form of a Board Resolution (a copy of which is attached hereto as Exhibit B).

In recognition of the conduct described in this Agreement and in accordance with the terms of the Swiss Bank Program, Vadian agrees to pay the sum of \$4,253,000 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 Vadian. This payment is in lieu of restitution, forfeiture, or criminal fine against Vadian for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Vadian with respect to the conduct described in this Agreement, unless the Tax Division determines Vadian has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Vadian 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 Vadian has violated any provision of this Agreement. Vadian 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. Vadian agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Vadian further agrees that no portion of the penalty that Vadian has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Vadian 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) Vadian'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 Vadian 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) Vadian'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) Vadian'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 Vadian 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) Vadian's retention of a qualified independent examiner who has verified the information Vadian disclosed pursuant to II.D.2 of the Swiss Bank Program.

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

Vadian further agrees to undertake the following:

1. Vadian 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, Vadian will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. Vadian 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 Vadian.
3. Vadian 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. Vadian 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, Vadian will promptly proceed to follow the procedures described above in paragraph 2.

4. Vadian 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.

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

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

It is understood that Vadian 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, Vadian 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 Vadian, the Tax Division will, however, bring the cooperation of Vadian 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 Vadian consistent with Part V.B of the Swiss Bank Program.

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

Carli Ciralo 5/8/2015  
CAROLINE D. CIRAULO  
Acting Assistant Attorney General  
Tax Division

Tom Sawyer 8 MAY 2015  
THOMAS J. SAWYER  
Senior Counsel for International Tax Matters

Michael N. Wilcove May 6, 2015  
MICHAEL N. WILCOVE  
Trial Attorney

AGREED AND CONSENTED TO:

VADIAN BANK AG

By: [Signature]  
WALTER ERNST  
Chief Executive Officer

6 May 2015  
DATE

By: [Signature]  
CHRISTIAN DÄHLER  
Member of the Executive Board

6 May 2015  
DATE

APPROVED:

[Signature]  
TIMOTHY J. COLEMAN  
Freshfields Bruckhaus Deringer US LLP

May 6, 2015  
DATE

**EXHIBIT A TO VADIAN BANK AG  
NON-PROSECUTION AGREEMENT  
STATEMENT OF FACTS**

**I. Background**

1. Vadian Bank AG (“Vadian” or the “Bank”) is located in the town of St. Gallen, in northeast Switzerland. Founded in 1811, the Bank was for most of its history known as “Ersparnisanstalt der Stadt St. Gallen,” which loosely translates to “St. Gallen Community Savings Bank.” The Bank has one office, with 26 employees. Vadian is wholly owned by the Ortsbürgergemeinde, or “Citizen’s Community of St. Gallen,” a public law organization whose membership comprises all of the citizens of the town of St. Gallen.
2. In August 2014, St.Galler Kantonalbank agreed to acquire Vadian from the Citizen’s Community of St. Gallen. Vadian’s participation in the program is independent of St.Galler Kantonalbank’s participation. While technically Vadian will pay the penalty due under the program, the proceeds will be supplied by Vadian’s prior owner, which has agreed to indemnify St.Galler Kantonalbank for the penalty payable by Vadian under its non-prosecution agreement.
3. 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.
4. As part of a restructuring and modernization initiative in 2006, the Bank’s name was changed to “Vadian” and the new management team sought to expand the Bank’s business, transitioning from an almost exclusive focus on savings accounts, residential mortgage lending, and small business loans, to a broader range of offerings, including private banking and higher-value investment and financial planning services. Vadian’s private banking unit now services all accounts with non-Swiss accountholders or beneficial owners, as well as Swiss customers maintaining more than CHF 250,000 on account. A member of the Bank’s management board (“Banker #1”) was the head of private banking.

**II. U.S. Income Tax & 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 Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking “Yes” or “No” in the appropriate box and identifying the country where the account was maintained.
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 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.

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. In or about 2008, Swiss bank UBS AG ("UBS") publicly announced that it was the target of a criminal investigation by the Internal Revenue Service and the United States Department of Justice and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department of Justice and UBS filed a deferred prosecution agreement in the Southern District of Florida in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared assets and income from the IRS. Since UBS, several other Swiss banks have publicly announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients (UBS and the other targeted Swiss banks are collectively referred to as "Category 1 banks"). These cases have been closely monitored by banks operating in Switzerland, including Vadian, since at least August of 2008.

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

9. In 2001, Vadian entered into a Qualified Intermediary Agreement with the IRS. The Qualified Intermediary regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution with respect to U.S. securities. The Qualified Intermediary Agreement was designed to help ensure that, with respect to U.S. securities held in an account at the bank, non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons holding U.S. securities were properly paying U.S. tax.

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

11. But Vadian chose to continue 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.

12. Vadian's position was that it could actively assist U.S. accountholders that it knew or had reason to believe were engaged in tax evasion so long as (a) its accountholders 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.

13. In the latter circumstance, U.S. accountholders, with the assistance of their advisors, would create an entity, such as a Liechtenstein foundation, and pay a fee to third parties to act as directors. Those third parties, at the direction of the U.S. accountholder,

would then open a bank account at Vadian in the name of the entity or transfer a pre-existing Swiss bank account from another Swiss bank. Vadian made no effort to determine whether such an entity was valid for U.S. tax purposes.

14. In those circumstances involving a non-U.S. entity, Vadian was aware that a U.S. person was the true beneficial owner of the account. But Vadian would also obtain from the entities' directors an IRS Form W-8 BEN (or equivalent bank document) that falsely declared that the accountholder was not a U.S. taxpayer.

#### **IV. Overview of the U.S. Cross-Border Business**

15. In the Applicable Period, the Bank held a total of 74 U.S. Related Accounts with \$76.1 million in assets.

16. Banker #1 served as the primary contact for U.S. clients with undeclared accounts at Vadian. He assisted or otherwise facilitated U.S. individual taxpayers in establishing and maintaining undeclared accounts in a manner designed to conceal the U.S. taxpayers' ownership or beneficial interest in the accounts. Banker #1 was responsible for opening and managing client accounts at Vadian, at the direction of the customer or a person or entity authorized by the accountholder. Of the more than 70 U.S. related accounts opened during the Applicable Period, 52 were introduced and managed by external asset managers.

17. Vadian compensated one external asset manager for the business it generated for the Bank based on a negotiated fee structure, which took the form of a retrocession fee, and compensated other external asset managers on an agreed-upon discounted "all-in-fee" based on a percentage of assets under management.

18. Through its managers, employees and/or others, Vadian knew or believed that many U.S. taxpayers that had opened and maintained accounts at the Bank were not complying with their U.S. income tax and reporting obligations.

19. Vadian also offered a variety of traditional Swiss banking services that it knew would and did assist U.S. clients to conceal assets and income from the IRS. One such service was "hold mail" service. For a quarterly fee, Vadian would hold all mail correspondence of a bank client. Vadian also offered code name or numbered accounts. Again, for a quarterly fee, the Bank would allow the accountholder to disguise his or her identity in favor of a code name or number. By accepting and maintaining such accounts, the Bank assisted some U.S. taxpayers who wished to evade their U.S. tax obligations. These services allowed U.S. clients to minimize the paper trail associated with the undeclared assets and income they held at Vadian in Switzerland.

20. Among other things, the Bank also specifically:

- Opened and maintained potentially undeclared accounts beneficially owned by U.S. taxpayers and held in the name of structures, while knowing, or having reason to know that some of these structures were, or likely were, used by U.S. taxpayer-clients to help conceal their identities from the IRS;
- Opened and maintained accounts for U.S. taxpayer-clients transferring from other Swiss financial institutions that were closing such accounts, while, the Bank knew, or

had reason to know, that a portion of the accounts at such other institutions were or likely were undeclared;

- Accepted instructions in connection with more than three dozen U.S. Related Accounts not to invest in U.S. securities and not to disclose the names of U.S. taxpayer-clients to U.S. tax authorities, including the IRS;
- Opened and maintained numbered account for U.S. accountholders;
- Issued checks, including series of checks, in amounts of less than \$10,000 that were drawn on accounts belonging to U.S. taxpayers, who likely attempted to avoid United States currency transaction reporting requirements; and
- Held statements and other mail relating to more than 30 U.S. Related Accounts, rather than send them to the U.S. taxpayers in the United States, thus causing documents reflecting the existence of undeclared accounts to remain outside the United States.

21. Vadian was aware that U.S. taxpayers had a legal duty to report to the IRS, and pay taxes on the basis of all their income, including income earned in accounts that these U.S. taxpayers maintained at Vadian. Despite being aware of this legal duty, the Bank opened and maintained undeclared accounts for these U.S. taxpayers. Prior to 2012, Vadian did not require any confirmation or proof that the beneficial owners of its U.S. Related Accounts were in compliance with their U.S. tax obligations.

#### **V. The Expansion of the Bank's Cross-Border Business Concerning U.S. Persons**

22. Prior to Vadian's restructuring and modernization initiative, the Bank had no significant U.S. Related Accounts. In 2007, the Bank hired a marketing firm to assist with its planned growth into private banking. The Bank specifically desired to increase its cross-border business, and its anticipated market included English-speaking clients.

23. Vadian perceived value in Swiss bank secrecy, and it chose to market its services in Liechtenstein because it saw an economic expansion opportunity there. The European press had widely reported that account records of a large bank in Liechtenstein were sold to the tax authorities of a different European nation. A senior Bank executive believed that this development might cause Liechtenstein-based external asset managers to counsel their clients, who valued bank secrecy, to move their money from Liechtenstein to Switzerland, which maintained a reputation for closely guarding the secrecy of its customer's accounts. In addition, as previously described, Vadian offered numbered accounts, with the identity of accountholders with numbered accounts being available only to a very small number of Bank executives. Thus, Vadian maintained that the possibility of a data breach at Vadian would be extremely low. Vadian also wished to develop a relationship with Liechtenstein-based external asset managers who were interested in transferring accounts within Switzerland from other Swiss banks. At this time, Vadian's management was aware that U.S. authorities were pursuing Swiss banks that facilitated tax evasion for U.S. accountholders in Switzerland. But Vadian's management was not deterred by this action because the Bank had no U.S. presence, and it was willing to take on U.S. accountholders that were being forced out of other large Swiss banks.

24. Through these marketing efforts, Vadian contacted a total of 21 external asset managers and one family office in Liechtenstein in an attempt to grow the cross-border business. Thereafter, in May and June 2008, Banker #1 held initial meetings with several external asset managers and one family office, in an attempt to cultivate referrals to Vadian.

25. In November 2008, one of those external asset managers ("External Asset Manager #1") approached Vadian to arrange a meeting with a trust services provider ("Trust Services Provider #1") affiliated with External Asset Manager #1. That meeting was held by Banker #1 in December 2008 in the Bank's offices with representatives of Trust Services Provider #1. During the meeting, the trust services provider disclosed its intention to transfer to Vadian accounts with a U.S. nexus, including accounts of entities with U.S. beneficial owners that had been formed by the trust services provider, a portion of which were managed by External Asset Manager #1.

26. In the first phase of these marketing efforts, between April 2008 and February 2009, Vadian contacted a total of 21 external asset managers and one family office in Liechtenstein in an attempt to grow the cross-border business.

27. Following the introduction of Trust Services Provider #1 to Vadian, Banker #1 established contact with one of the trust services provider's client advisors. In December 2008, a representative of a local external asset manager based in the Canton of St. Gallen ("External Asset Manager #2") contacted Banker #1, after being referred to him by the aforementioned client advisor, with a view to establish business relationships.

28. Between February 18 and December 29, 2009, External Asset Manager #2 introduced more than 15 U.S. Related Accounts to Vadian. In January 2009, External Asset Manager #2 introduced to Vadian two associates from another external asset manager based in the Canton of Zurich ("External Asset Manager #3").

29. Vadian's Head of Private Banking was aware at the time that these associates had previously worked for a Category I Swiss bank. By December 2009, External Asset Manager #3 had introduced more than ten U.S. Related Accounts to Vadian, almost all from that Category I Swiss bank.

30. In sum, Vadian's 2008 marketing efforts directly led to relationships that attracted 45 U.S. Related Accounts to the bank. As of August 1, 2008, prior to the expansion of its private banking business, Vadian had only two U.S. Related Accounts, with aggregate assets of approximately \$100,000. But during the Applicable Period, the Bank opened more than 70 U.S. Related Accounts, approximately half of them held by non-U.S. entities such as foundations, trusts, and corporations. Approximately three-quarters of the U.S. Related Accounts were introduced to the Bank by external asset managers or other third party professionals.

31. Of that total, Trust Services Provider #1 and the above-mentioned three external asset managers accounted for more than 60 percent of the U.S. Related Accounts opened at Vadian after August 1, 2008. Most of the U.S. related accounts that were nominally held by non-U.S. entities were set up by Trust Services Provider #1, and nearly all of those accounts originated from a Category I Swiss bank that was forcing U.S. accountholders to leave that bank. Nine of the entity accounts set up by Trust Services Provider #1 were managed by External Asset Manager #1.

## **VI. Mitigating Factors**

32. Vadian recognizes that its conduct with respect to its U.S. cross-border business beginning in 2008, as described above, was in violation of U.S. law. The Bank has cooperated with the Department and provided information to the U.S. Government about its U.S. cross-border business.

33. Beginning in May 2010, Vadian adopted measures to avoid facilitating U.S. tax evasion, and obliged its staff to avoid a number of specific practices in light of these concerns. While the Bank did not restrict the services it would offer its clients, the Bank directed its employees to make clear to their clients that the Bank would not support tax evasion. In June 2010, the Bank directed its employees to ensure the qualifications of external asset managers who conduct business on behalf of the Bank's clients. In 2011, the Bank, while disclaiming any obligation to ensure that their clients have fulfilled their tax obligations, directed its employees to not take affirmative steps that would facilitate – or appear to be facilitate – clients' breaches of their tax obligations or clients' deliberate attempts to conceal their assets.

34. In December 2011, the Bank further strengthened its compliance policies. In 2012, the Bank implemented increasingly stringent measures to ensure that its customers were in compliance with their tax obligations. Beginning in January 2012, Vadian stopped accepting U.S. clients as new customers.

35. In February 2012, the Bank sent a letter to all accountholders with an identified U.S. nexus, requesting that they provide a signed IRS Form W-9 by June 30, 2012. The letter stated that, if the customer did not provide the requested documentation, the Bank would terminate the relationship. By the end of 2012, approximately 13 clients who had failed to provide the required documentation left Vadian.

36. Vadian made efforts to encourage accountholders to participate in the IRS's offshore voluntary disclosure programs. It hired a Swiss law firm and a U.S. accounting firm to reach out to U.S. accountholders to persuade them to come into compliance with U.S. tax law. The accounting firm offered to assist accountholders in completing the voluntary disclosure documentation. More than 20 of Vadian's U.S. Related Accounts have entered into a voluntary disclosure program. Moreover, the Bank has obtained waivers of Swiss bank secrecy for approximately 50 percent of its U.S. Related Accounts, and provided customer names and other identifying information for those accounts to the U.S. Government.

**EXHIBIT B TO NON-PROSECUTION AGREEMENT**

**CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS  
OF VADIAN BANK AG**

I, Adrian Kunz, acting corporate secretary of Vadian Bank AG (the Bank), a corporation duly organized and existing under the laws of Switzerland, do hereby certify that the following is a complete and accurate copy of a resolution adopted by the board of directors of the Bank at a meeting held on May 5, 2015, at which a quorum was present and resolved as follows:

- That the board of directors has (i) reviewed the entire Non-Prosecution Agreement attached hereto, including the Statement of Facts attached as Exhibit A to the Non-Prosecution Agreement; (ii) consulted with Swiss and U.S. counsel in connection with this matter; and (iii) unanimously voted to enter into the Non-Prosecution Agreement, including to pay a sum of USD 4,253,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Walter Ernst, the Bank's Chief Executive Officer, and Christian Dähler, member of the Bank's Executive Board, both registered in the Commercial Register of the Canton of St. Gallen as having joint signatory authority, are hereby authorized (i) to jointly execute the Non-Prosecution Agreement on behalf of the Bank substantially in such form as reviewed by the Board with such non-material changes as each of them may approve; and (ii) to take, on behalf of the Bank, all actions as may be necessary or advisable in order to carry out the foregoing; and
- That Timothy J. Coleman, Freshfields Bruckhaus Deringer US LLP, is hereby authorized to sign the Non-Prosecution Agreement in his capacity as the Bank's U.S. counsel.

I further certify that the above resolution has not been amended or revoked in any respect and remains in full force and effect.

IN WITNESS WHEREOF, I have executed this Certification this 5th day of May 2015.

  
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Adrian Kunz  
Secretary