U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:GEVanHoey
5-16-4692
2014200700

June 15, 2015

Thomas C. Green
Sidley Austin LLP
1501 K Street NW
Washington, DC 20005

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

Dear Mr. Green:

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

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

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

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, EKS agrees to pay the sum of $2,066,000 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 EKS. This payment is in lieu of restitution, forfeiture, or criminal fine against EKS for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from EKS with respect to the conduct described in this Agreement, unless the Tax Division determines EKS has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. EKS 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 EKS has violated any provision of this Agreement. EKS 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. EKS agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. EKS further agrees that no portion of the penalty that EKS has agreed to pay to the Department under the terms of this Agreement will serve as a basis for EKS 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) EKS'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 EKS 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) EKS'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) EKS'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 EKS 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) EKS's retention of a qualified independent examiner who has verified the information EKS disclosed pursuant to Part II.D.2 of the Swiss Bank Program.

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

EKS further agrees to undertake the following:

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

2. EKS 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 EKS.

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

4. EKS 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.

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

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

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

CAROLINE D. CIRAOLO
Acting Assistant Attorney General
Tax Division

6/26/2015
DATE

for THOMAS J. SAWYER
Senior Counsel for International Tax Matters

6/26/2015
DATE

GREGORY E. VAN HOEY
Trial Attorney

6/26/15
DATE

for MICHAEL R. PAHL
Trial Attorney

6/26/15
DATE

AGREED AND CONSENTED TO:
ERSPARNISKASSE SCHAFFHAUSEN AG

By: _____
HANNES GERMANN
Chairman of the Board of Directors

24th of June 2015
DATE

By: _____
DR. BEAT STÖCKLI
Chief Executive Officer

24th of June 2015
DATE

APPROVED:

6/25/2015
DATE

THOMAS C. GREEN
Sidley Austin LLP

EXHIBIT A TO ERSPARNISKASSE SCHAFFHAUSEN AG
NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

INTRODUCTION

1. Ersparniskasse Schaffhausen AG ("EKS" or the "Bank") is a corporation organized under the laws of Switzerland. EKS is wholly owned by a Swiss charitable foundation and is headquartered in the city and canton of Schaffhausen, Switzerland. Since 2009, EKS has also maintained a branch office in the village of Kleinandelfingen, Switzerland, in the canton of Zurich.

2. Founded in 1817 as the first bank in the canton of Schaffhausen, EKS historically provided financial services to low-income individuals residing or working in that region. EKS still derives most of its business from local retail banking, but it also offers limited private banking services for certain financial accounts.

3. As of December 31, 2014, EKS had 34 employees, approximately 20,000 clients, and assets under management of 787 million Swiss francs.

4. Over the years since its founding, EKS has provided financial accounts to U.S. citizens, U.S. permanent legal residents, and U.S. resident aliens (collectively, "U.S. persons").

U.S. INCOME TAX & REPORTING OBLIGATIONS

5. U.S. persons have an obligation to report to the Internal Revenue Service ("IRS") all income earned from foreign financial accounts on their U.S. Individual Income Tax Returns (IRS Form 1040) and to pay the taxes due on that income. Since 1976, U.S. persons have also had an obligation to report on Schedule B of Form 1040 whether they have a financial interest in, or signature authority over, a foreign financial account by checking "Yes" or "No" in the appropriate box and identifying the country where they maintain the account.

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

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.

June 18, 2015

8. On December 20, 2013, EKS entered the United States Department of Justice's Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Swiss Bank Program") as a Category 2 bank.

THE BANK'S U.S. CROSS-BORDER BUSINESS

9. Prior to 2009, when deciding whether to accept U.S. persons as clients, EKS applied the same procedures that it applied to all of its prospective retail and private banking clients. These procedures were based on Swiss banking laws and regulations, including know-your-client ("KYC") and anti-money laundering ("AML") rules.

10. Nevertheless, EKS knew that U.S. persons had a duty under U.S. law to report their income to the IRS and to pay taxes on that income, including all income earned in accounts maintained by EKS in Switzerland.

11. Despite this knowledge, EKS 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.

12. Many accounts that U.S. persons opened at EKS were not, in fact, timely declared on Forms 1040 or FBARs, in some cases for multiple years.

13. From August 1, 2008, through December 31, 2014 (the "Applicable Period"), EKS provided private banking services for 90 "U.S. Related Accounts," as defined under the Swiss Bank Program. The highest collective value of these accounts during any month in the Applicable Period was approximately $65 million. Thirty-seven of these accounts were opened after August 1, 2008.

14. During the Applicable Period, five private bankers or "relationship managers" were responsible for managing at least one U.S. Related Account at EKS. These individuals served as the primary contact persons for the Bank's U.S. clients or for their advisors and external asset managers. The relationship managers were also responsible for managing other, non-U.S. related accounts, and all of them reported to a single director of private banking. One of the relationship managers ("Relationship Manager #1") managed 41 of the U.S. Related Accounts at various times during the Applicable Period.

15. EKS provided all of its clients, including U.S. persons, with the option to request that the Bank retain all mail related to a client's financial accounts in exchange for a standard service fee. EKS understood that providing such "hold-mail agreements" upon request could allow U.S. persons to keep evidence of their EKS accounts outside of the United States and thus assist them in concealing assets and income from the IRS. During the Applicable Period, there were 16 U.S. Related Accounts with hold-mail agreements at EKS.

16. EKS communicated with all of its clients, including U.S. persons, mainly by telephone, fax, or e-mail. Absent a hold-mail agreement, EKS sent bank statements and other paper correspondence directly to clients or to their advisors and external asset managers by mail.

17. Until 2009, EKS permitted U.S. persons to open and maintain "numbered" accounts (including "code-name" or "pseudonym" accounts) upon request. Upon opening this type of account, a Bank employee would enter the account holder's name in a physical register rather than in the Bank's electronic records system. This action limited the number of Bank personnel who knew the client's identity. Holders of these accounts could also provide documents to the Bank using only their code names or numbers as their authorized signatures. If requested, the Bank agreed to hold any mail that would otherwise be sent to holders of numbered accounts. The Bank understood that providing such accounts upon request could allow U.S. persons to keep evidence of their accounts outside of the United States, or to keep their identities secret from U.S. authorities, and thus assist them in concealing assets and income from the IRS. During the Applicable Period, there were 22 numbered U.S. Related Accounts at EKS.

18. EKS provided "e-banking" services that allowed most of its clients to access their account information and authorize account transactions over the internet. Prior to November 2012, U.S. persons could use the e-banking system from computers located anywhere in the world to view their account information and authorize payments from their accounts. However, prior to November 2012, U.S. persons could use the system to authorize securities transactions only if they executed those transactions at computers located in Switzerland or a neighboring country. Since November 2012, EKS has no longer allowed U.S. persons to authorize securities transactions through its e-banking system. During the Applicable Period, clients holding nine U.S. Related Accounts used the EKS e-banking system.

19. During the Applicable Period, EKS provided credit cards to U.S. persons associated with nine U.S. Related Accounts at the Bank. In some cases, use of these cards by U.S. persons allowed them to use undeclared funds on deposit at the Bank.

THE BANK'S SUBVERSION OF THE QI AGREEMENT

20. In January 2001, EKS 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 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 – in each case, with respect to U.S. securities held in an account with the QI.

21. The QI Agreement expressly recognized that a non-U.S. financial institution (such as EKS) may be prohibited by foreign law (such as Swiss law) from disclosing an account holder's name or other identifying information. In general, a QI subject to such foreign-law restrictions had to request that its U.S. clients either (a) grant the QI authority to disclose the client's identity or disclose himself by mandating the QI to provide an IRS Form W-9 completed by the account holder, or (b) grant the QI authority to sell all U.S. securities of the account holder (in the case of accounts opened before January 1, 2001) or to exclude all U.S. securities from the account (in the case of accounts opened on or after January 1, 2001), in which case the client's identity would remain undisclosed. Following the effective date of the QI Agreement, a sale of U.S. securities, if any, held by a U.S. person who chose not to provide a QI

with an IRS Form W-9 was subject to tax information reporting on an anonymous basis and backup withholding.

22. Until at least July 2012, EKS erroneously believed that its forwarding of Forms W-9 signed by its U.S. clients to its investor-services agent based in the United States (the "U.S. Agent") would result in the IRS receiving the Forms W-9 from the U.S. Agent.

23. Before and during the Applicable Period, EKS issued several directives (the "QI Directives") to all Bank employees concerning the QI Agreement and Form W-9. The QI Directives instructed: "It [Form W-9] is always disclosed to the IRS. U.S. persons who do not wish their identity to be disclosed to the IRS must not complete this form."

24. In accordance with the QI Directives, until 2009, EKS relationship managers assisted U.S. persons in executing forms that directed EKS not to acquire U.S. securities in their accounts. EKS knew that the purpose and effect of the forms was to avoid disclosing the identities of the U.S. persons to the IRS under the QI Agreement.

25. EKS also accepted IRS Forms W-8BEN for eight U.S. Related Accounts held in the names of non-U.S. entities or "structures" (e.g., foreign corporations, trusts, or foundations). Because Swiss law required EKS to identify the true beneficial owners of the entities on a document called a "Form A," the Bank knew that these accounts were beneficially owned by U.S. persons. Nonetheless, EKS accepted Forms W-8BEN that it knew falsely stated that the entities were the beneficial owners of the accounts. In four of these cases, U.S. securities were held in the accounts without a Form W-9. The Bank's actions assisted U.S. persons in concealing assets and income from the IRS.

THE BANK'S COLLABORATION WITH A U.S.-BASED EXTERNAL ASSET MANAGER

26. From 2004 through 2011, EKS accepted referrals of U.S. persons as new clients from an external asset manager (the "External Asset Manager") who was not an employee, officer, or director of EKS. The External Asset Manager resided in the United States, and conducted some of his business through a corporation organized under the laws of the United States, until 2009. The Bank engaged with the External Asset Manager without verifying that the External Asset Manager was in compliance with U.S. securities laws.

27. In exchange for referring clients to EKS, the External Asset Manager received as a "retrocession" fee a percentage of the deposit fees assessed by the Bank on his clients' accounts, as well as certain other fees.

28. The External Asset Manager discussed investment strategies with his clients and then transmitted the clients' orders to EKS by telephone, fax, or e-mail. In some instances, EKS sent client mail to the External Asset Manager's U.S. address, including for nine accounts for which the U.S. clients did not provide Forms W-9.

29. Until 2009, nearly all of the U.S. Related Accounts belonging to clients of the External Asset Manager were administered at EKS by Relationship Manager #1.

30. Overall, 45 U.S. Related Accounts came to EKS as a result of referrals from the External Asset Manager. The majority of these accounts were held in the names of non-U.S. entities or structures that were beneficially owned by U.S. persons. The Bank did not assist the U.S. persons in creating those structures, but it accepted the accounts. All eight accounts with false Forms W-8BEN, as described above, were referred to EKS by the External Asset Manager.

31. During the Applicable Period, there was no travel by Bank employees or managers to the United States or elsewhere for the purpose of meeting with U.S. clients.

32. In May 2008, with the knowledge and approval of EKS management, Relationship Manager #1 traveled to the United States to visit, together with the External Asset Manager, the External Asset Manager's U.S. clients who had accounts at EKS. Relationship Manager #1 and the External Asset Manager also attended meetings with attorneys in the United States who had the potential to refer new clients to the External Asset Manager and EKS.

33. Relationship Manager #1 and the External Asset Manager visited five U.S. cities during the May 2008 trip. Topics discussed during their meetings with U.S. clients and attorneys included the "crisis" involving Swiss bank UBS AG ("UBS"), client satisfaction with EKS, the performance of client accounts at EKS, and the "asset protection" benefits of EKS.

THE BANK'S FLAWED RESPONSE TO THE U.S. GOVERNMENT INVESTIGATION OF UBS AG

34. In 2008, UBS publicly announced that it was the target of a criminal investigation by the IRS and the U.S. Department of Justice. UBS also announced that it would be exiting its U.S. cross-border business and no longer accepting U.S. clients.

35. In response to press reports concerning the UBS investigation, as well as the Swiss Bankers Association's publication on April 7, 2008, of a new version of the Swiss Banks' Code of Conduct (including standards of care to avoid aiding and abetting tax evasion), EKS began examining its U.S. cross-border business.

36. In September 2008, EKS outsourced its compliance function to an external consulting firm based in Switzerland ("Consulting Firm #1"). A principal of Consulting Firm #1 ("Compliance Consultant #1") commenced an internal investigation of the Bank's U.S. cross-border business.

37. Compliance Consultant #1 reported his initial findings to the Bank's board of directors (the "Board") during a meeting on February 11, 2009. The findings included that:

    a. The Bank had increased risks because of its relationship with the External Asset Manager, who brought U.S. clients to the Bank;

    b. The main risks included U.S. persons using trusts to conceal funds from the IRS and the difficulty of assessing, from Switzerland, the sources of the funds in U.S. client accounts;

c. In the case of any "misdoings," the Bank would have to anticipate sanctions from the Swiss financial authorities or, "in the worst case[,] interventions of the IRS;" and

d. The risk of the Bank's U.S. cross-border business "creating problems" was "rather low," but "cannot be excluded;" the risk of its hold-mail agreements was "high;" and the risk of its documentation and QI practices was "medium."

38. At the same meeting, the Board noted that Compliance Consultant #1 would continue to examine all new account openings by U.S persons and that the "U.S. issue" should be re-addressed at a future meeting. The Board stated that "[t]he goal is to balance risks and gains and then decide whether the U.S. business should be continued."

39. On February 18, 2009, the U.S. Department of Justice and UBS filed a deferred prosecution agreement in the U.S. District Court for the Southern District of Florida in which UBS admitted that its U.S. cross-border business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared financial accounts. On the same day, the Swiss Financial Markets Supervisory Authority ("FINMA") published a report on its investigation into the U.S. cross-border business of UBS.

40. On April 1, 2009, Relationship Manager #1 reported to EKS that approximately 60 million Swiss francs in assets from both U.S. and other clients were under management at the Bank through the External Asset Manager. Relationship Manager #1 also stated that "[t]his area of business is growing strongly" and that "EKS Bank observes all U.S. regulations and conditions."

41. On August 21, 2009, after conducting another investigation at the request of the Board, another principal of Consulting Firm #1 ("Compliance Consultant #2") delivered a report to the Board concerning the Bank's U.S. cross-border business. Compliance Consultant #2 concluded that "[t]he exceptional case of UBS seems to have fiscal reasons rather than regulatory ones" and that, given the differences in size, business models, and U.S.-business relevance between UBS and EKS, "[t]he risk that a U.S. authority will bring an action against EKS is therefore low."

42. In the same report, Compliance Consultant #2 concluded that a "large portion" of the files of the Bank's U.S. clients contained Forms W-9. However, Compliance Consultant #2 found that the files for 21 U.S. persons lacked a Form W-9 (including at least nine accounts that held U.S. securities) and that some files contained not only a Form A stating that a U.S. person was the beneficial owner of the account, but also a contradictory Form W-8BEN stating that a non-U.S. entity was the only beneficial owner of the account. Compliance Consultant #2 stated that, under a Swiss court ruling, that situation could make the accounts eligible for "administrative assistance" – that is, disclosure to the IRS under a U.S.-Swiss tax treaty. Compliance Consultant #2 recommended the "immediate correction" of these files by obtaining either Forms W-9 or waiver forms allowing the Bank to sell all U.S. securities in the accounts.

43. In the same report, Compliance Consultant #2 recommended that the Bank obtain an expert opinion on whether the External Asset Manager and EKS were violating U.S. laws by providing unauthorized broker-dealer or investment-advisory services in the United States. However, in September or October of 2009, EKS and the External

Asset Manager agreed to continue their relationship on the condition that the External Asset Manager move to Switzerland and establish a Swiss firm to conduct his business. Because of this development, Compliance Consultant #2 no longer recommended that the Bank obtain an expert opinion on that topic and concluded in a later report that the situation could be "considered problem-free to a large extent if the activities are performed in Switzerland."

44. On September 25, 2009, at the request of EKS, another external consulting firm based in Switzerland ("Consulting Firm #2") told the Board that the risk of U.S. government legal action against the Bank was higher than Consulting Firm #1 had concluded. Consulting Firm #2 stated that it was only "a matter of time until small banks come into contact with U.S. authorities as well, for instance, when a customer voluntarily discloses his relationship to his bank and the business practices of his bank as part of the current declaration process of the IRS."

45. EKS was thus aware of the 2009 IRS Offshore Voluntary Disclosure Program for U.S. persons, which was available from March 23, 2009, until October 15, 2009. Despite knowing of that program and knowing or having reason to know that some of its U.S. clients had likely not declared their EKS accounts to the IRS, EKS made no effort to encourage its U.S. clients to disclose their accounts through that program.

46. Consulting Firm #2 also told the Board that the annual fee revenue generated by the External Asset Manager for the Bank "cannot be classified as insignificant" and must be weighed against "the risk situation of the bank." Consulting Firm #2 further stated: "There is the latent risk that previous revenues from this U.S. strategy of [EKS] are seized or that corresponding fines are imposed on the bank. Based on the current developments in the industry, the probability of occurrence has increased in our view. In this respect, the hope remains that the issues discussed in the report by [Consulting Firm #1] can be corrected quickly and 'quietly' and that no customer discredits [EKS] or the [External Asset Manager]."

47. On October 20, 2009, the Board held a meeting at which it addressed the Bank's U.S. cross-border business. According to the meeting minutes, a member of the Board ("Board Member #1") began the discussion by stating: "Although in the past these transactions generated a nice amount of income, the Bank's security is the top priority." Compliance Consultant #2 was at the meeting and stated that he could recommend "continuing foreign customer accounts" as long as the Bank implemented the recommendations in his report. Relationship Manager #1 was also at the meeting and stated that he was "happy to continue to handle the U.S. transactions."

48. According to the meeting minutes, a Bank executive ("Bank Executive #1") stated that Swiss bank Wegelin & Co. ("Wegelin") had also reviewed its U.S. cross-border business and that he had been informed that Wegelin "is going to keep its previous U.S. customers." Bank Executive #1 also stated that "there is practically no risk if U.S. customers travel to Switzerland and a customer account is handled locally," and added that he could imagine "accepting new seriously high net worth customers from the USA at [EKS] provided the basic legal requirements are complied with and provided there is an ongoing review" by Compliance Consultant #2.

49. According to the meeting minutes, a member of the Board ("Board Member #2") asked those present why the Bank "should be interested in effecting such transactions whereas other banks with greater resources are completely giving up their cross-border activities." Bank Executive #1 responded that he "could only assume" that it was "much more difficult and costly or time consuming for larger banks to uncover customer accounts or any breaches and to get to grips with them." Bank Executive #1 further stated that a "key criterion" for EKS management was that "the Bank is not exposed to any reputational risks." He also stated that the Bank would ensure that "the FINMA conditions are fulfilled at all times" and that "[c]lose contact and the exchange of information with officers at Wegelin bank will ensure that we are completely up to date in this area."

50. At that time, EKS relationship managers did not provide traditional wealth-management services to the Bank's clients. Rather than making investment decisions for client accounts under a contractual mandate, they only placed orders for transactions upon instruction from their clients or their clients' external asset managers. From 2008 through 2011, if Bank clients were interested in traditional wealth-management services, EKS advised them to purchase investment certificates representing assets managed by Wegelin, such that Wegelin acted as the external asset manager for these customers. However, none of the Bank's U.S. clients participated in this arrangement with Wegelin.

51. On February 2, 2012, the U.S. Department of Justice announced the indictment of Wegelin for conspiring with U.S. persons to hide more than $1 billion in financial-account assets from the IRS. On January 3, 2013, Wegelin pleaded guilty to that charge in the U.S. District Court for the Southern District of New York.

52. Following a unanimous motion by the Bank's executive board, in October 2009 the board of directors voted to:

    a. continue the account relationships with clients of the External Asset Manager (including his U.S. clients) with the conditions that his business be relocated to Switzerland, the recommendations of Consulting Firm #1 be implemented as quickly as possible before December 31, 2009, and the Board and EKS management receive periodic reports "on these customer positions or the associated risks"; and

    b. "have the option of entering into new cross-border business relationships."

53. In September or October 2009, EKS also decided that it would allow U.S. persons to open new accounts, or existing U.S. clients to maintain their accounts, only if the person provided a Form W-9. At that time, the Bank still erroneously believed that the IRS received all Forms W-9 that the Bank forwarded to its U.S. Agent.

THE BANK'S INCONSISTENT SUBSEQUENT REMEDIAL MEASURES

54. In or about October 2009, EKS instructed its relationship managers and the External Asset Manager to request Forms W-9 from all U.S. clients who had not already provided them.

55. Between October 2009 and November 2013, the Bank nearly always obtained Forms W-9 from new U.S. clients during the year of account opening, regardless of whether their accounts held U.S. securities. However, by July 2012, the Bank had still not obtained Forms W-9 for 15 existing U.S. Related Accounts.

56. In March 2010, Compliance Consultant #2 reported to EKS that the External Asset Manager had been traveling from Switzerland to the U.S. for business purposes. In June 2010, EKS management instructed the External Asset Manager by letter that his clients could only enter into account relationships with the Bank by visiting the Bank's offices in Switzerland. However, it was not until 2011 that EKS management instructed the External Asset Manager that he could not visit any clients (with accounts at EKS) outside of Switzerland for any business purpose. Thereafter, EKS continued its relationship with the External Asset Manager until his death in 2012.

57. On December 23, 2010, EKS issued a formal statement of policies regarding the provision of cross-border financial services to persons domiciled outside of Switzerland. EKS reiterated that its employees and external asset managers could not recruit new customers abroad or visit existing customers abroad and that new accounts generally had to be created in Switzerland. However, foreign entities could still open accounts by correspondence.

58. On July 1, 2011, EKS issued a formal directive concerning tax matters. The directive stated that, to prevent the aiding and abetting of tax evasion, EKS employees must not do anything that promotes or facilitates client breaches of their tax obligations or declarations or that conceals the existence of assets. For example, the directive prohibited employees from delivering or collecting cash at a client's domicile or assisting in the concealment of a beneficial owner. But the directive stated that EKS was not obligated to ensure that clients met their tax obligations and declarations.

59. The 2011 IRS Offshore Voluntary Disclosure Initiative for U.S. persons was available from February 8, 2011, through September 9, 2011. EKS made no effort to encourage its U.S. clients to disclose their accounts to the IRS through that initiative.

60. In July 2012, Compliance Consultant #2 informed EKS that the Forms W-9 that the Bank forwarded to its U.S. Agent did not result in automatic reporting to the IRS except for accounts holding U.S. securities. However, Compliance Consultant #2 advised the Bank that U.S. clients would not understand that fact and would expect their accounts to be disclosed to the IRS if they signed Forms W-9. Compliance Consultant #2 advised the Bank to terminate any accounts of U.S. persons lacking a Form W-9 by the end of 2012.

61. Shortly thereafter, EKS management ordered the issuance of letters to all U.S. clients who had not otherwise been contacted and had not yet provided a Form W-9 to the Bank. The letters informed the clients that, unless they provided Forms W-9, the

Bank would close their accounts. However, the Bank knew that U.S. persons who chose to close their accounts rather than provide a Form W-9, or whose accounts the Bank closed involuntarily for failing to provide a Form W-9, would not be reported to the IRS by the U.S. Agent.

62. EKS did not advise its U.S. clients about how to close their accounts. Nor did the Bank prohibit its U.S. clients from closing their accounts by certain means. Although many closures of U.S. Related Accounts were uncontroversial, a number of potentially undeclared accounts exited the Bank, at the account holder's request, under circumstances that likely facilitated the continued concealment of the assets from the IRS. These circumstances included withdrawals of cash or cash equivalents (either in whole or substantial part), transfers to Swiss or other non-U.S. banks, and transfers to non-U.S. Related Accounts at EKS.

63. In October 2013, after the announcement of the Swiss Bank Program, EKS issued a formal statement of policies regarding its U.S. cross-border business. Regarding the closing of U.S. Related Accounts, the Bank prohibited EKS employees from aiding and abetting current or former clients in concealing assets from U.S. tax authorities. The directive also allowed employees to open new U.S. Related Accounts only if they had a personal initial conversation with the potential client, received a Form W-9, and obtained approval by the Bank's executive board. The directive also stressed that, if there were any doubts as to whether a client was meeting his U.S. tax obligations, the Bank must request additional documentation demonstrating tax compliance.

64. In November 2013, EKS updated this directive to include a heightened standard for opening new U.S. Related Accounts. The Bank clarified that employees could only open new U.S. Related Accounts upon presentation of complete tax return documentation, using IRS forms, for the assets to be deposited.

65. In March 2014, EKS registered with the IRS as a participating foreign financial institution under the Foreign Account Tax Compliance Act ("FATCA").

THE BANK'S COOPERATION THROUGH THE SWISS BANK PROGRAM

66. Throughout its participation in the Swiss Bank Program, EKS has 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, and in compliance with Swiss privacy laws, has:

    a. conducted an internal investigation that included, among other things, interviews of key current and former Bank personnel; review of client account files, relationship manager notes, and correspondence; analysis of relevant management policies, compliance reports, and board meeting minutes; and searches of e-mail accounts;

    b. described in detail the structure, operation, and supervision of its U.S. cross-border business, including the names of relevant current and former Bank personnel and external asset managers;

June 18, 2015

c. provided information concerning U.S. Related Accounts held at EKS during the Applicable Period sufficient to make treaty requests to the Swiss government for the account records;

d. sought and obtained client waivers of Swiss bank secrecy for U.S. Related Accounts; and

e. encouraged existing and prior holders of U.S. Related Accounts to disclose their accounts to the IRS through the Offshore Voluntary Disclosure Program that began in January 2012.

June 18, 2015

EXHIBIT B TO NON-PROSECUTION AGREEMENT

CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS OF ERSPARNISKASSE SCHAFFHAUSEN AG

We, Hannes Germann and Dr. Peter Müller acting as Members of the Board of Directors and as Chairman and Vice-Chairman, respectively, of Ersparniskasse Schaffhausen 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 an extraordinary meeting held on June 24, 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 the sum of USD 2,066,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and

- That Hannes Germann, Chairman, and Dr. Beat Stöckli, Chief Executive Officer, both registered in the Commercial Register of the Canton of Schaffhausen 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 of Directors with such non-material changes as each of they 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 Thomas C. Green, Sidley Austin LLP, is hereby authorized to sign the Non-Prosecution Agreement in his capacity as the Bank's U.S. counsel.

We 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, we have executed this Certification this 24th day of June 2015.

Hannes Germann
Chairman

Dr. Peter Müller
Vice-Chairman