U.S. Department of Justice

Tax Division

Washington, D.C. 20530

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5-16-4726
2014200737

June 25, 2015

Scott H. Frewing, Esq.
Baker & McKenzie LLP
660 Hansen Way
Palo Alto, CA 94304-1044

Re: Privatbank Von Graffenried AG
DOJ Swiss Bank AG Program – Category 2
Non-Prosecution Agreement

Dear Mr. Frewing:

Privatbank Von Graffenried AG 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 Privatbank Von Graffenried AG in its Letter of Intent and information provided by Privatbank Von Graffenried AG 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 Privatbank Von Graffenried AG of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute Privatbank Von Graffenried AG 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 Privatbank Von Graffenried AG during the Applicable Period (the "conduct"). Privatbank Von Graffenried AG 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 Privatbank Von Graffenried AG and does not apply to any other entities or to any individuals. Privatbank Von Graffenried AG expressly understands that the protections provided under this Agreement shall not apply to any acquirer or

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

successor entity unless and until such acquirer or successor formally adopts and executes this Agreement. Privatbank Von Graffenried AG 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, Privatbank Von Graffenried AG agrees to pay the sum of $287,000 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 Privatbank Von Graffenried AG. This payment is in lieu of restitution, forfeiture, or criminal fine against Privatbank Von Graffenried AG for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Privatbank Von Graffenried AG with respect to the conduct described in this Agreement, unless the Tax Division determines Privatbank Von Graffenried AG has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Privatbank Von Graffenried AG 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 Privatbank Von Graffenried AG has violated any provision of this Agreement. Privatbank Von Graffenried AG 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. Privatbank Von Graffenried AG agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Privatbank Von Graffenried AG further agrees that no portion of the penalty that Privatbank Von Graffenried AG has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Privatbank Von Graffenried AG 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) Privatbank Von Graffenried AG'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 Privatbank Von Graffenried AG 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) Privatbank Von Graffenried AG'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) Privatbank Von Graffenried AG'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 Privatbank Von Graffenried AG 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) Privatbank Von Graffenried AG's retention of a qualified independent examiner who has verified the information Privatbank Von Graffenried AG disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Privatbank Von Graffenried AG 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 Privatbank Von Graffenried AG, 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, Privatbank Von Graffenried AG 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 Privatbank Von Graffenried AG 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 Privatbank Von Graffenried AG'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 Privatbank Von Graffenried AG; 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.

Privatbank Von Graffenried AG further agrees to undertake the following:

1. Privatbank Von Graffenried AG 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, Privatbank Von Graffenried AG will promptly provide the entirety of the transaction information upon request of the Tax Division.

2. Privatbank Von Graffenried AG 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 Privatbank Von Graffenried AG.

3. Privatbank Von Graffenried AG 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. Privatbank Von Graffenried AG 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, Privatbank Von Graffenried AG will promptly proceed to follow the procedures described above in paragraph 2.

4. Privatbank Von Graffenried AG 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.

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

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

This Agreement supersedes all prior understandings, promises and/or conditions between the Department and Privatbank Von Graffenried AG. 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.

7/2/2015

CAROLINE D. CIRAOLO
Acting Assistant Attorney General

DATE

2 July 2015

THOMAS J. SAWYER
Senior Counsel for International Tax Matters

DATE

7/2/15

KATHLEEN E. LYON
Trial Attorney
Tax Division, U.S. Department of Justice

DATE

AGREED AND CONSENTED TO:
PRIVATBANK VON GRAFFENRIED AG

By:

June 26, 2015

Stephan Herren
Chairman, Board of Directors

DATE

By:

June 26, 2015

Marcel Eggimann
Chief Executive Officer

DATE

APPROVED:

6/29/2015

Scott J. Frewing, Esq.
Counsel for Privatbank Von Graffenried

DATE

EXHIBIT A TO PRIVATBANK VON GRAFFENRIED AG NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

INTRODUCTION

1. Privatbank Von Graffenried AG ("Von Graffenried" or the "Bank") is a private bank based in Bern, Switzerland. It was founded in 1992 by a local Bernese notary. The Bank also has two small subsidiaries in Brig and Zurich. A third subsidiary in Biel merged with the Bank's main operations in March 2015. The Bank owns a 60 percent interest in each subsidiary, with the remaining 40 percent of each subsidiary owned by several employees of each subsidiary. The Bank has never had any branch offices outside Switzerland.

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"),[1] Von Graffenried had approximately 30 employees, 1300 accounts, and $2.2 billion in assets under management.

3. Throughout the Bank's history, it has maintained a focus on Swiss-based customers in general, and clients located in Bern, Switzerland, in particular. The Bank never established a U.S. presence nor held a U.S. desk. Of the Bank's 1300 accounts during the Applicable Period, only a few were non-Swiss, non-European Union accounts. Of the 1300 accounts, 58 were U.S. Related Accounts. In many instances, the account holders of the U.S. Related Accounts had only minimal contacts with the United States. However, approximately one-third of U.S. Related Accounts at the bank were held by U.S. persons living in the United States.

4. The Bank has accepted full responsibility for the conduct described below.

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

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[1] Capitalized terms not otherwise defined in this Statement of Facts have the meanings set forth in the Program for Non-Prosecution Agreement or Non-Target Letters for Swiss Banks issued on August 29, 2013 ("the Program") or in the Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA, dated February 14, 2013 (the "FATCA Agreement").

permanent residents have had an obligation to report to the Internal Revenue Service ("IRS") on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking "Yes" or "No" in the appropriate box and identifying the country where the account was maintained.

6. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than $10,000 at any time during a particular year were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114 (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. Since 1935, Switzerland has maintained criminal laws that ensure the secrecy of client relationships at Swiss banks. While Swiss law permits the exchange of information in response to administrative requests made pursuant to a tax treaty with the United States and certain legal requests in cases of tax fraud, Swiss law otherwise prohibits the disclosure of identifying information without client authorization. Because of the secrecy guarantee that they created, these Swiss criminal provisions have historically enabled U.S. clients to conceal their Swiss bank accounts from U.S. authorities.

9. In or about 2008, Swiss Bank UBS AG ("UBS") publicly announced that it was the target of a criminal investigation by the 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 Von Graffenried since at least August of 2008.

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

10. In December 2000, Von Graffenried signed 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 were properly paying U.S. tax.

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

12. The Bank assisted U.S. clients in executing forms that directed the Bank not to acquire U.S. securities in their accounts. The Bank's account-opening process required U.S. persons to state whether they wished to abstain from holding U.S. securities or whether they were willing to execute an IRS Form W-9 and accept disclosure of their identity to the IRS. The purpose of the Bank's account-opening forms was to avoid Von Graffenried having to disclose the identities of U.S. clients to the IRS under its Qualified Intermediary Agreement. Most U.S. clients at the Bank chose not to hold U.S. securities in their accounts rather than authorize disclosure of their identity to the IRS. During the Applicable Period, 14 U.S. Related Accounts held U.S. securities.

OVERVIEW OF THE U.S. CROSS-BORDER BUSINESS

13. During the Applicable Period, Von Graffenried held a total of 58 U.S. Related Accounts with a peak value of assets under management of approximately $459 million. Of that, approximately $426 million was held in five accounts associated with a dual Swiss-U.S. citizen and longtime resident of Switzerland who was a U.S. person until 2012, when the individual expatriated. The remaining 53 U.S. Related Accounts had a total peak value of approximately $33 million.

14. Ten of the Bank's relationship managers (including relationship managers assigned to subsidiary offices) serviced one or more U.S. Related Accounts during the Applicable Period. Relationship managers were responsible for accounts not managed by an external asset manager. Relationship managers reported to, and were managed by, the Chief Executive Officer of the Bank.

15. Despite understanding that U.S. taxpayers had a legal duty to report to the IRS and to pay taxes on income earned in accounts maintained in Switzerland, the Bank failed to ensure that its U.S. customers were abiding by that duty when it accepted them as customers and failed to monitor and/or investigate the compliance status of U.S. clients while their accounts were at the bank and to otherwise ensure that U.S. clients became tax compliant.

16. Further, from at least July 1998 through the Applicable Period, the Bank through certain practices assisted U.S. taxpayer-clients in evading their U.S. tax obligations, filing false federal tax returns with the IRS, and otherwise hiding from the IRS assets maintained overseas.

17. Von Graffenried offered a variety of traditional Swiss banking services that it knew could assist, and that did assist, U.S. clients in the concealment of assets and income from the IRS. One such service was hold mail. For a fee, Von Graffenried would hold all mail correspondence for a particular client at the Bank, which meant that the bank retained periodic statements and communications to its clients at Von Graffenried for client review. As a consequence, documents reflecting the existence of the accounts remained outside the United States. Of the 58 U.S. Related Accounts at the Bank, approximately 27 used hold mail services.

18. In addition, Von Graffenried offered "numbered" account services. For a fee, the Bank would replace the account holder's identity with a number on bank statements and other documentation sent to the client. However, the Bank's internal records reflected the identity of the U.S. clients associated with these accounts. Of the 58 U.S. Related Accounts at the Bank, 21 were numbered accounts. One of those accounts is currently open.

19. Despite being 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 maintained at the Bank, Von Graffenried opened and maintained undeclared accounts for U.S. taxpayers when the Bank knew or should have known that, by doing so, the Bank was helping these U.S. taxpayers violate their legal duties.

20. In late 2008 and early 2009, Von Graffenried accepted accounts from two European nationals residing in the United States who each had been forced to leave UBS and Credit Suisse, respectively. At the time it accepted the accounts, the Bank knew that UBS was the target of an investigation by the Department of Justice, but it was not yet publicly known that Credit Suisse was also under investigation. However, the Bank knew that both individuals had been forced to leave their respective banks because the banks were closing their accounts and that both individuals had U.S. tax obligations and did not want the accounts disclosed to U.S. authorities. Both accounts arrived at Von Graffenried through, and were managed by, one relationship manager at a subsidiary office of the Bank. Senior management at the Bank approved the opening of the accounts.

    a. One of the individuals, "Account Holder A," opened an account at the Bank in November 2008. Account Holder A came to the bank through a mutual friend of the account holder and the relationship manager. Account Holder A provided a declaration in which he stated that he was subject to taxation in the United States and that he did not wish to hold any U.S. securities in his account, which meant that the account would not be disclosed to the IRS. Several days later, compliance personnel at the Bank sought to obtain clarification regarding the account holder's residency status by requesting an IRS Form 8802, Application for United States Residency Certification, as proof of residence. Account Holder A replied that completing this form would be problematic for him, and that he believed the relationship manager knew why. By this time, the account was

already opened and the Bank did not insist on obtaining the documentation it had requested.

b. The second individual, "Beneficial Owner B," opened an account at the Bank in January 2009. Beneficial Owner B's account was referred to the relationship manager by the account holder's external fiduciary, who handled the account at Credit Suisse. The fiduciary told the relationship manager that Credit Suisse was attempting to exit its U.S. offshore clients to other banks if the clients would not sign an IRS Form W-9. The relationship manager agreed to take on the account. Because Bank policies at that time called for fiduciaries to fill out account opening paperwork, the relationship manager never met Beneficial Owner B. Beneficial Owner B was a long-term U.S. resident and provided a copy of his European passport to the Bank to open the account. The account was held by a Liechtenstein "stiftung" or foundation, with Beneficial Owner B as the primary beneficiary, a U.S. citizen as secondary beneficiary, and two other U.S. citizens were beneficiaries in the event of the death of the secondary beneficiary. Bank documents indicated that the stiftung should be treated as a grantor trust, with Beneficial Owner B as the grantor. Bank documents also show that the stiftung declared that Beneficial Owner B was subject to U.S. taxation and that he did not authorize the Bank to forward his name to the United States or invest in U.S. securities, which meant that the account would not be disclosed to the IRS.

c. At the time the two accounts were opened, other than the requirements set forth in the Qualified Intermediary Agreement discussed above, the Bank had no specific policy, procedure, or guidance with respect to U.S. persons. In February 2009, the Bank adopted a U.S. person policy that required new U.S. clients to show proof of tax compliance. This policy was effective insofar as the Bank relied on the policy to decline a request to open a second account from an individual forced to leave Credit Suisse. However, because the policy allowed already-existing accounts with U.S. clients to be addressed on a case-by-case basis, the Bank did not actively seek to exit either of the two accounts until mid-2012. At that time, the Bank informed Account Holder A and Beneficial Owner B that they must execute an IRS Form W-9 or close the accounts. Both individuals then inquired into methods by which they might keep the accounts concealed. The accounts were closed after the Bank declined to assist the individuals in further concealment of the accounts. At the urging of the Bank, one of the individuals has disclosed his account to the IRS.

21. Between July 1998 and July 2000, Von Graffenried accepted approximately two dozen accounts from a specific external asset manager ("External Asset Manager #1"). The Bank initially agreed to compensate External Asset Manager #1 for the business it generated for the Bank in the form of a retrocession fee, but the Bank did not pay a retrocession fee. The Bank ultimately agreed that clients from External Asset Manager #1 would pay lower transaction fees. Sixteen of the accounts brought to the Bank by External Asset Manager #1 were beneficially owned by individuals with U.S. tax and

information reporting obligations, and most of those accounts were held by U.S. citizens residing in the U.S. The 16 accounts had a total peak value of approximately $8.75 million. At the time, which pre-dated the Qualified Intermediary regime, the Bank did not have a policy in place that required U.S. clients to show tax compliance, whether they opted to hold U.S. securities or not. Consequently, the Bank accepted these accounts without obtaining Forms W-9 or assurances that the accounts were in fact tax compliant. The Bank did not open any additional accounts from External Asset Manager #1 after July 2000. In addition, with respect to these accounts and External Asset Manager #1:

a. Because the accounts were handled by an external asset manager, no relationship manager was assigned to these accounts. Account transactions were ordered by External Asset Manager #1 and implemented by the Bank's execution desk, whose employees had no contact with clients and served an exclusively administrative role.

b. Although the Bank did not typically offer its clients credit card services, the Bank guaranteed credit cards offered by other Swiss institutions relating to a few of External Asset Manager #1's U.S. accounts.

c. Von Graffenried was aware that External Asset Manager #1 seemed to be targeting U.S. clientele. In this regard, the accounts were distinct from the Bank's typical account holders, which usually had clear connections to Switzerland, and very frequently to Bern, Switzerland.

d. By early 2009, the Bank determined that some of the External Asset Manager #1's account holders likely were attempting to evade U.S. tax requirements and decided not to accept any additional similar accounts. In 2010, the Bank began to close the existing U.S. Related Accounts that originated with External Asset Manager #1. The Bank first worked through External Asset Manager #1, informing it that its U.S. clients must sign a Form W-9 or close their accounts. Some U.S. clients responded to External Asset Manager #1's request that they do so and some did not. The Bank then directly contacted the clients who had not responded to External Asset Manager #1's request to obtain the Form W-9. The Bank did not complete this process until late 2012. All U.S. Related Accounts brought to the Bank by External Asset Manager #1 were closed by the end of 2012, before the Swiss Bank Program was announced.

e. In early 2010, External Asset Manager #1 proposed to expand its U.S. business by bringing to the Bank insurance wrapper accounts, that is, life insurance policies "wrapped" around a policy owner's investment portfolio and held by the insurance company in a segregated securities account for each policy owner. Because the bank account itself is held in the name of the life insurance company while holding an individual policy owner's policy, these accounts disguise the ownership of U.S. securities by U.S. persons. Approximately one week after receiving External Asset Manager #1's proposal, the Bank rejected it.

VON GRAFFENRIED'S COOPERATION THROUGHOUT THE SWISS BANK PROGRAM

22. Von Graffenried has fully cooperated with the Department of Justice in relation to the Swiss Bank Program by, among other things, providing all relevant and requested information and documents to the Department of Justice relating to its U.S. business.

23. The Bank has also taken actions to encourage U.S. persons to disclose their accounts to the IRS. Von Graffenried dedicated significant time and effort to convince certain U.S. taxpayers to participate in the OVDP, including numerous follow-up discussions to ensure that these individuals followed through on the commitment to enter the OVDP.

24. In addition, Von Graffenried has provided certain account information related to U.S. taxpayers that will enable the Government to make requests under the 1996 Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income for, among other things, the identities of U.S. account holders.

Exhibit B to the Non-Prosecution Agreement with Privatbank Von Graffenried AG

Resolution of the Board of Directors of

Privatbank Von Graffenried AG

At a duly convened meeting held on 26 June 2015, the Board of Directors (the "Board") of Privatbank Von Graffenried AG (the "Bank") takes note of the following:

- In the Joint Statement between the United States Department of Justice ("DOJ") and the Swiss Federal Department of Finance, Swiss Banks have been encouraged by the Swiss Government and the Swiss Financial Market Authority (FINMA) to participate in the Program for Non-Prosecution Agreements or Non-Target-Letters for Swiss Banks, dated 29 August 2013 (the "US Program").

- The Board decided in December 2013 that the Bank would participate in the US Program. The Bank submitted on 23 December 2013 a Letter of Intent to the DOJ indicating its interest to participate as Category 2 Bank in the US Program.

- The DOJ proposed to the Bank to enter into a Non-Prosecution Agreement ("NPA").

The Board hereby resolves that:

1. The Board of the Bank has reviewed the entire NPA attached hereto, including the Statement of Facts attached as Exhibit A to the NPA, and voted unanimously to enter into the NPA and to pay the sum of USD 287'000 to the DOJ in connection with said NPA.

2. Dr. Stephan Herren, Chairman of the Board, and Marcel Eggimann, Chief Executive Officer, are hereby authorized to execute the NPA on behalf of the Bank (the "Authorized Signatories") substantially in such form as reviewed by the Board with such non-material changes as the Authorized Signatories may approve.

3. Scott Frewing, Baker & McKenzie, is hereby authorized to sign the NPA in his capacity as the Bank's US legal counsel (the "Additional Signatory").

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

5. All of the actions of the Authorized Signatories and the Additional Signatory which have or will be taken in connection with the NPA are hereby ratified, confirmed, approved and adopted as actions on behalf of the Bank.

In witness whereof, the Board of Directors of Bank has executed this Resolution.

Dr. Stephan Herren

Chairman of the Board of Directors

Christoph Zubler

Secretary of the Board of Directors