



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:JES:TGVoracek  
5-16-4659  
2014200664

Timothy J. Coleman, Esq.  
Freshfields Bruckhaus Deringer US LLP  
700 13<sup>th</sup> Street, N.W.  
Washington, D.C. 20005

Re: bank zweiplus ag  
DOJ Swiss Bank Program – Category 2  
Non-Prosecution Agreement

Dear Mr. Coleman:

On December 23, 2013, bank zweiplus ag (“Zweiplus”) submitted a Letter of Intent 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 Zweiplus in its Letter of Intent and information provided by Zweiplus pursuant to the terms of the Swiss Bank Program. The Swiss Bank Program is incorporated by reference herein in its entirety in this Agreement.<sup>1</sup> Any violation by Zweiplus of the Swiss Bank Program will constitute a breach of this Agreement.

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

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

understands that the protections provided under this Agreement shall not apply to any acquirer or successor entity unless and until such acquirer or successor formally adopts and executes this Agreement. Zweiplus 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, Zweiplus agrees to pay the sum of \$1,089,000 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 Zweiplus. This payment is in lieu of restitution, forfeiture, or criminal fine against Zweiplus for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Zweiplus with respect to the conduct described in this Agreement, unless the Tax Division determines Zweiplus has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Zweiplus 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 Zweiplus has violated any provision of this Agreement. Zweiplus 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. Zweiplus agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Zweiplus further agrees that no portion of the penalty that Zweiplus has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Zweiplus 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) Zweiplus' 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 Zweiplus 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) Zweiplus' 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) Zweiplus' 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 Zweiplus 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) Zweiplus' retention of a qualified independent examiner who has verified the information Zweiplus disclosed pursuant to II.D.2 of the Swiss Bank Program.

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

Zweiplus 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, and set forth in subparagraph (c) on page 3 of this Agreement. Zweiplus 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. Zweiplus 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 Zweiplus.

3. **Zweiplus 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. Zweiplus 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, Zweiplus will promptly proceed to follow the procedures described above in paragraph 2.**
4. **Zweiplus 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.**

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

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

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

UNITED STATES DEPARTMENT OF JUSTICE  
TAX DIVISION

  
CAROLINE D. CIRAOLO  
Acting Assistant Attorney General

8/20/2015  
Date

  
THOMAS J. SAWYER  
Senior Counsel for International Tax Matters

20 August 2015  
Date

FOR   
JOHN E. SULLIVAN  
Senior Litigation Counsel

8/20/2015  
Date

  
THOMAS G. VORACEK  
Trial Attorney

8/20/2015  
Date

AGREED AND CONSENTED TO:  
BANK ZWEIPLUS AG

By:   
FABIAN ZEIER  
COO, Head of Banking Services  
Member of the Executive Committee

8/19/2015  
Date

By:   
PASCAL AGUSTONI  
Head of Legal, Compliance & OP Risk

8/19/2015  
Date

APPROVED:  
  
TIMOTHY J. COLEMAN, ESQ.  
Counsel for bank zweiplus ag

8/19/2015  
Date

**EXHIBIT A TO THE NON-PROSECUTION AGREEMENT WITH  
BANK ZWEIPLUS AG**

**STATEMENT OF FACTS**

**INTRODUCTION**

1. On July 1, 2008, bank zweiplus ag (“Zweiplus” or the “Bank”) was founded as a retail bank joint venture between Bank Sarasin & Cie AG and AIG Private Bank AG.
2. The Bank’s only office is in Zurich, Switzerland. Offices in Geneva and Basel were closed in 2008 and 2012, respectively. The Bank has never had offices, branches, or subsidiaries outside of Switzerland.
3. The Bank provides two specialized banking services. One, the Bank acts as an outsourced service provider for the retail customers of various financial institutions. Two, the Bank offers online banking and financial information services, such as checking, savings, and trading services, to retail customers.
4. The Bank’s primary markets are retail customers in Switzerland and Germany. The Bank has never utilized a strategy to market its services to U.S. persons and therefore has never had a separate structure or organization for U.S. clients.
5. During the Applicable Period, Zweiplus’s total assets under management had a maximum value of approximately \$6.4 billion, including 44 U.S.-related accounts, as defined under the Swiss Bank Program, with an aggregate maximum balance of approximately \$12.1 million. This figure represented approximately 0.2% of the aggregate maximum balance of the Bank’s total assets under management during the Applicable Period.

**U.S. INCOME TAX & REPORTING OBLIGATIONS**

6. U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income. Since tax year 1976, U.S. citizens, resident aliens, and legal permanent residents have had an obligation to report to the Internal Revenue Service (“IRS”) on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether 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.

7. 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 was due on June 30 of the following year.
8. 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 and an FBAR.
9. 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.
10. In or about 2008, Swiss bank UBS AG ("UBS") publicly announced that it was the target of a criminal investigation by the IRS and the United States Department of Justice and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department of Justice and UBS filed a deferred prosecution agreement in the Southern District of Florida in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared assets and income from the IRS. Since UBS, several other Swiss banks have publically 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. These cases have been closely monitored by banks operating in Switzerland, including Zweiplus, since at least August of 2008.

#### **OVERVIEW OF BUSINESS WITH U.S. RELATED ACCOUNTS**

11. Zweiplus has never had a strategy to target U.S. persons or market its services in the United States or to U.S. persons. The Bank has never had a U.S. desk.
12. Since Zweiplus opened in July of 2008, its formal policy has been to reject all clients who qualified as taxable under U.S. law. When Zweiplus acquired retail clients from Bank Sarasin and AIG Privatbank, the three banks agreed that no U.S. clients would be transferred to Zweiplus. When the Bank later discovered clients who were in fact subject to U.S. taxation, the Bank sought to terminate the relationships with those clients.
13. Zweiplus has never had a separate structure or organization for U.S. clients. As a result, the Bank's U.S. client population was spread among 29 relationship managers during the Applicable Period. One relationship manager serviced seven U.S.-related accounts, another two relationship managers each serviced six U.S.-related accounts,

and another three relationship managers each serviced five U.S.-related accounts. The other 23 relationship managers each serviced four or fewer U.S.-related accounts. The Bank's relationship managers never travelled to the United States to solicit clients or to provide clients with investment advice. The Bank has no knowledge that relationship managers ever met existing or prospective clients in the United States. There have never been any incentive structures to reward relationship managers for the acquisition or maintenance of U.S. clients.

14. During the Applicable Period, the Bank worked with approximately 35 external asset managers and another 115 independent financial advisors. The external asset managers and independent financial advisors were based in Switzerland and Germany. Zweiplus did not permit the external asset managers or independent financial advisors to solicit any person qualified as taxable under U.S. law.
15. During the Applicable Period, the Bank opened two accounts which subsequently became U.S.-related accounts. One account, opened in August of 2009, was for a German citizen, resident in Germany, who later moved to the United States. The other account, opened in January of 2010, was for a Brazilian and Italian dual citizen, resident in Nigeria, who later moved to the United States.
16. The remaining 42 U.S.-related accounts were transferred to Zweiplus from Bank Sarasin or AIG Privatbank when Zweiplus opened in July of 2008. The transfer of these 42 U.S.-related accounts occurred in violation of Zweiplus's policies to prevent the migration of any U.S. clients from these other institutions. In total, approximately 250,000 accounts were transferred to Zweiplus in July of 2008.
17. Zweiplus was aware that U.S. taxpayers have a legal duty to report to the IRS their ownership of bank accounts outside the United States and to pay taxes on income earned in such accounts. Nevertheless, in disregard of U.S. laws, the Bank provided a variety of traditional Swiss banking services that assisted some U.S. taxpayers in concealing their undeclared accounts, including by:
  - a) maintaining approximately ten accounts for U.S. taxpayers who failed to provide the Bank requested documentary evidence of their tax compliance;
  - b) maintaining two "numbered accounts" for U.S. taxpayers;
  - c) maintaining three accounts held in the name of structures which were effectively owned or controlled by U.S. persons; two of these accounts were held in the name of a British Virgin Islands company and one account was held in the name of a Bahamian company; and
  - d) allowing the beneficial owner of a "numbered account" to order eight checks between June of 2011 and August of 2013, totaling \$33,000.

## MITIGATING FACTORS

18. Since its founding in 2008, it has been an explicit element of Zweiplus's business model not to accept or service any U.S. clients. Of the 44 U.S.-related accounts it maintained during the Applicable Period, Zweiplus received 42 U.S.-related accounts as transfers from Bank Sarasin or AIG Privatbank when Zweiplus initiated operations. With respect to the two U.S.-related accounts Zweiplus opened during the Applicable Period, these clients were not U.S. citizens or residents at account opening; they only later moved to the United States. Zweiplus has consistently endeavored to close any U.S.-related accounts that it did receive or maintain. At this time, 32 of the 44 U.S.-related accounts have been closed.
  
19. Zweiplus has fully cooperated with the Department of Justice during its participation in the Swiss Bank Program. In addition, Zweiplus has informed clients about and encouraged clients to enter the IRS's offshore voluntary disclosure program. Based on the Bank's efforts, some of its former U.S. clients entered the IRS's voluntary disclosure program and paid back taxes, penalties, and interest in connection with failing to report their undeclared accounts. In addition, the Bank obtained waivers from some of its former U.S. clients, and provided their names to the U.S. government.

**EXHIBIT B TO NON-PROSECUTION AGREEMENT**

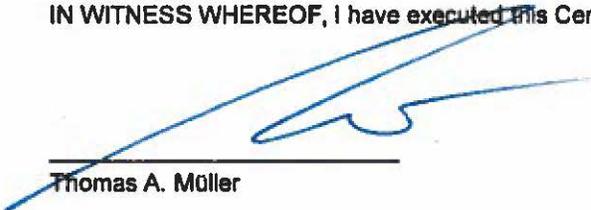
**CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS  
OF BANK ZWEIPLUS AG**

I, Thomas A. Müller, acting as Chairman of bank zweiplus 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 on August 19, 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 counsel in connection with this matter; and (iii) unanimously voted to enter into the Non-Prosecution Agreement, including to pay a sum of USD 1,089,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Fabian Zeier, Chief Operating Officer/Member of the Executive Committee, and Pascal Agustoni, Head of Legal, Compliance & OP Risk, both registered in the Commercial Register of the Canton of Zuerich as having joint signatory authority, are hereby authorized (i) to jointly execute the Non-Prosecution Agreement on behalf of the Bank substantially in such form as reviewed by the Board with such non-material changes as each of them may approve; and (ii) to take, on behalf of the Bank, all actions as may be necessary or advisable in order to carry out the foregoing; and
- That Timothy J. Coleman from Freshfields Bruckhaus Deringer US LLP, is hereby authorized to sign the Non-Prosecution Agreement in his capacity as the Bank's U.S. counsel.

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

IN WITNESS WHEREOF, I have executed this Certification this 19 day of August 2015.



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Thomas A. Müller

Chairman