



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

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5-16-4729
2014200740

August 31, 2015

Keith D. Krakaur
Stephen C. Robinson
Skadden, Arps, Slate, Meagher & Lom LLP
Four Times Square
New York, NY 10036

Re: St. Galler Kantonalbank AG
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Mr. Robinson:

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

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

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

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, SGKKB agrees to pay the sum of \$9,481,000 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 SGKKB. This payment is in lieu of restitution, forfeiture, or criminal fine against SGKKB for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from SGKKB with respect to the conduct described in this Agreement, unless the Tax Division determines SGKKB has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. SGKKB 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 SGKKB has violated any provision of this Agreement. SGKKB 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. SGKKB agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. SGKKB further agrees that no portion of the penalty that SGKKB has agreed to pay to the Department under the terms of this Agreement will serve as a basis for SGKKB 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) SGKKB'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 SGKKB 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) SGKKB'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) SGKB'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 SGKB 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) SGKB's retention of a qualified independent examiner who has verified the information SGKB disclosed pursuant to Part II.D.2 of the Swiss Bank Program.

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

SGKB further agrees to undertake the following:

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

4. SGKB 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.

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

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

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 SGK B, notwithstanding the expiration of the statute of limitations between such date and the commencement of such prosecution. For any such prosecutions, SGK B waives any defenses promised 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 SGK B's counsel.

It is understood that SGK B contends that it has jurisdictional arguments and defenses that it could raise to support a claim that it is not subject to prosecution for any criminal offense in the courts of the United States. By entering into this Agreement, SGK B does not prospectively waive these arguments or defenses and it reserves the right to assert any applicable jurisdictional argument or defense in any future prosecution or civil action by the United States.

It is understood that the terms of this Agreement do not bind any other federal, state, or local prosecuting authorities other than the Department. If requested by SGK B, the Tax Division will, however, bring the cooperation of SGK B 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 SGK B consistent with Part V.B of the Swiss Bank Program.

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

[Signatures to Follow on Next Page]

Caroli Ciralo
CAROLINE D. CIRAOLO
Acting Assistant Attorney General
Tax Division

9/17/2015
DATE

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

16 September 2015
DATE

Kimberly E. Dodd
KIMBERLY E. DODD
Trial Attorney

17 September 2015
DATE

AGREED AND CONSENTED TO:
ST. GALLER KANTONALBANK AG

By: U. Ledergerber
ROLAND LEDERGERBER
Chief Executive Officer

15.9.2015
DATE

By: R. Dornier
ROGER DORNIER
Head of Legal & Compliance

15.9.2015
DATE

APPROVED:

Keith Krakaur
KEITH D. KRAKAUR
Skadden, Arps, Slate, Mcagher & Flom LLP

September 15, 2015
DATE

Stephen C. Robinson
STEPHEN C. ROBINSON
Skadden, Arps, Slate, Meagher & Flom LLP

September 15, 2015
DATE

**EXHIBIT A TO ST.GALLER KANTONALBANK AG
NON-PROSECUTION AGREEMENT**

STATEMENT OF FACTS

INTRODUCTION

1. St. Galler Kantonbank AG ("SGKB" or the "Bank") is a regional bank with approximately 1,000 employees. Its headquarters are in the Canton of St. Gallen, Switzerland. SGKB currently has 35 branches in the Canton of St. Gallen, two branches in the Canton of Appenzell Auser Rhoden, and one branch in Zurich.
2. The Bank was founded in 1868 to provide credit services to Cantonal residents and to assist in the development of the regional economy. By Cantonal law, the Canton of St. Gallen is SGKB's majority shareholder, owning 54.8% of the Bank's shares. The Canton has to guarantee all of the Bank's liabilities, and a representative of the Cantonal government must sit on the Bank's board, a seat that is currently occupied by the St. Gallen Finance Minister. By the Bank's charter, SGKB is obliged to focus its business on the territory of the Canton of St. Gallen.
3. SGKB was the parent company of Hyposwiss Private Bank Geneva SA ("Hyposwiss Geneva") and Hyposwiss Privatbank AG (now HSZII Verwaltungs AG, "Hyposwiss Zurich"), both participating as Category 2 banks in the Swiss Bank Program. SGKB acquired Hyposwiss Zurich from UHS in 2002, and SGKB acquired Hyposwiss Geneva from Anglo Irish Bank Corporation Ltd. in 2008. SGKB announced on June 27, 2013 that it was divesting Hyposwiss Geneva and the Eastern European and Latin American business of Hyposwiss Zurich. SGKB acquired for 38 million Swiss francs the Swiss/German team, the FAM desk, and the "senior partner" team from Hyposwiss Zurich. Hyposwiss Zurich is currently in the process of winding down the company.
4. In August 2014, SGKB agreed to acquire Category 2 bank Vadian Bank AG from the Citizen's Community of St. Gallen. SGKB's participation in the Swiss Bank Program is independent of Vadian Bank AG's participation.

U.S. INCOME TAX AND 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. For the tax year 1976 forward, U.S. citizens, resident aliens, and legal permanent residents 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 have been required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114, formerly known as Form TD F 90-22.1 (the "FBAR"). The FBAR for the applicable year was due on June 30 of the following year.
7. Since 1935, Switzerland has maintained criminal laws that ensure the secrecy of client relationships at Swiss banks. While Swiss law permits the exchange of information in response to administrative requests made pursuant to a tax treaty with the United States and certain legal requests in cases of tax fraud, Swiss law otherwise prohibits the disclosure of identifying information without client authorization. Because of the secrecy guarantee that they created, these Swiss criminal provisions have historically enabled U.S. clients to conceal their Swiss bank accounts from U.S. authorities.
8. In or about 2008, Swiss bank UBS AG ("UBS") publicly announced that it was the target of a criminal investigation by the 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 SGK, since at least August of 2008.

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

9. In 2001, SGK entered into a Qualified Intermediary Agreement ("QI 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 QI Agreement was designed to help ensure that, with respect to U.S. securities held in an account at the bank, non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons holding U.S. securities were properly paying U.S. tax.
10. The QI Agreement took account of the fact that SGK, 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 SGK to obtain the consent of the account holder to

disclose the client's identity to the IRS. The QI Agreement required SGKH to obtain IRS Forms W-9 and to undertake IRS Form 1099 reporting for new and existing U.S. clients engaged in U.S. securities transactions.

11. But SGKB chose to continue to service U.S. clients without disclosing their identity to the IRS and without considering the impact of U.S. criminal law on that decision.
12. SGKB believed it could continue to accept and service U.S. account holders, even if it knew or had reason to believe they were engaged in tax evasion so long as it complied with the QI Agreement, which on a technical interpretation did not apply to account holders who were not trading in U.S. based securities or to accounts that were nominally structured in the name of a non-U.S. based entity. Prior to February 2012, SGKB requested but did not require its U.S. clients to provide a signed IRS Form W-9 and to confirm whether their accounts were disclosed to the IRS.
13. As a result of the Bank's actions, prior to August 1, 2008 and thereafter, U.S. taxpayers were able to continue depositing funds into accounts at SGKB because of the nature of Swiss banking secrecy laws. SGKB was aware that some of its U.S. clients wanted to conceal their accounts from U.S. authorities.
14. Although it was subject to a QI Agreement, SGKB's actions subverted the terms of the Qualified Intermediary Agreement by failing to fully comply with both its withholding and reporting obligations to the IRS, thus enabling U.S. account holders to avoid reporting their accounts to the U.S. authorities.

OVERVIEW OF SGKB'S BUSINESS WITH U.S. RELATED ACCOUNTS

15. In the Applicable Period, SGKB held a total of 626 U.S. Related Accounts with approximately \$303 million in assets under management. As of August 1, 2008, SGKB had 468 U.S. Related Accounts,¹ with aggregate assets of approximately \$162.3 million. During the Applicable Period, the Bank opened 158 additional U.S. Related Accounts, with an aggregate value of approximately \$141 million. Of the 340,000 clients SGKB has served since August 2008, less than 0.2% were U.S. clients (including U.S. persons living in Switzerland).
16. The above figures include 29 accounts with aggregate assets of approximately \$85.5 million that were part of the acquisition of HypoSwiss Zurich, which began in 2012 and closed on January 1, 2014. SGKH acquired the accounts on the condition that all were compliant with their U.S. reporting and disclosure obligations. Some of these accounts, however, were later discovered by SGKB to be non-compliant with their U.S. reporting and disclosure obligations. SGKB terminated the relationship with such account holders

¹ Capitalized terms not otherwise defined in this Statement of Facts have the meanings set forth in the Program for Non-Prosecution or Non-Target Letters for Swiss Banks, issued on August 29, 2013 (the "Swiss Bank Program").

who refused to provide a FATCA waiver and a declaration of tax compliance to the Bank.

17. During the Applicable Period, the Bank held accounts for 41 entities or structured accounts. Eight came to SGKB as part of the acquisition of business from Hyposwiss Zurich, seven structured accounts were U.S. domiciled entities, six were Swiss-based real estate companies, and one was a Swiss-based family trust. Nineteen U.S. Related Accounts were held by a non-U.S. structure, such as an offshore corporation or trust, which facilitated the clients' ability to conceal their undeclared accounts from the IRS. Those 19 accounts comprised approximately \$24.3 million in assets under management.
18. Fifteen of the 33 entities (excluding the entities acquired from Hyposwiss) were incorporated more than one year prior to the opening of the account at SGKB. SGKB was not involved in setting up these entities.
19. Eighteen of the 33 entities were incorporated at or around the time their SGKB account was opened. The entities were incorporated as follows:² (1) five companies and one partnership in Switzerland (\$4.6 million), (2) four foundations in Liechtenstein (\$2.3 million), (3) two companies in St. Vincent and the Grenadines (\$6.3 million), (4) one trust and one company in the United States (\$420,000), and (5) one company each in Ireland, Panama, Haiti, and Belize (\$750,000). SGKB was not involved in establishing the entities and has not found any evidence that its employees advised or assisted clients with respect to such entities. SGKB relationship managers occasionally referred clients to service providers for assistance in setting up structured accounts. SGKB and its employees, however, did not receive a fee for making such referrals.
20. SGKB discovered, as a result of the Swiss Bank Program, that four of the 26 U.S. Related Accounts thought to be held by genuine operating entities were in fact structured accounts held by entities that should be treated as domiciliary companies. These four accounts were held by entities incorporated as follows: (1) two Swiss corporations (\$1.27 million), and (2) two U.S. LLCs (\$124,000).
21. The U.S. Related Accounts at SGKB were serviced by 268 different relationship managers. Twenty-nine different relationship managers worked with the 41 entity accounts. Most SGKB relationship managers only worked with one or two U.S. Related Accounts. Relationship Manager #49 had the greatest number of U.S. Related Accounts: 19 accounts with approximately \$4.6 million in assets under management.
22. SGKB did not provide any financial incentives to its relationship managers to solicit or acquire U.S. Related Accounts.
23. SGKB also had 25 U.S. Related Accounts managed by 17 external asset managers, with an approximate value of \$101.7 million. While SGKB did pay a finder's fee or

² The figures provided for each group of entities reflect the approximate aggregate value of the accounts within each group of entities pursuant to I.D.1.c of the Swiss Bank Program.

commission to some of the external asset managers, the fee or commission remained the same, regardless of the client's nationality.

24. Until approximately December 2009, SGKB purchased external asset management services from its subsidiary, Hyposwiss Zurich. One Hyposwiss Zurich employee managed all 5 SGKB externally-managed U.S. Related Accounts. In exchange, SGKB received 40% of the net revenue for all SGKB external asset managers' clients.
25. Starting in December 2008, SGKB decided to reintegrate the servicing of externally-managed accounts at SGKB. After December 2008, SGKB was assured by its external asset managers that they were only taking on new U.S. clients with declared assets. The amount of due diligence taken to confirm the assets were declared varied depending upon the external asset manager. Some external asset managers required clients to commit to clearing up any tax issues and then never confirmed that the tax issues immediately had been resolved. Other external asset managers required all of their U.S. account holders to sign contracts stipulating that their assets were declared.
26. SGKB has represented to the Department that U.S. persons were never part of the Bank's marketing strategy and focus. SGKB has represented that it never marketed its services in the United States and its relationship managers never traveled to the United States in order to solicit or acquire clients or to market services.

SGKB'S U.S. RELATED ACCOUNTS

27. Of SGKB's 626 U.S. Related Accounts, approximately 15 accounts with an aggregate value of approximately \$14 million held U.S. securities and were timely disclosed to the Internal Revenue Service through Form 1099 reporting. More than 31 percent of these accounts with an aggregate value of more than \$111 million were undeclared.
28. Through its managers, employees and/or others, SGKB knew that it was probable that some U.S. taxpayers who had opened and maintained accounts at the Bank were not complying with their U.S. income tax and reporting obligations.
29. SGKB also offered a variety of traditional Swiss banking services that it knew could assist, and that did in fact assist, U.S. clients in the concealment of assets and income from the IRS. One such service was hold mail. For a quarterly fee, SGKB would hold all mail correspondence for a particular client at the Bank. SGKB also offered code name or numbered account services. For a quarterly fee, the Bank would allow the account holder to replace his or her identity with a code name or number on bank statements and other documentation sent to the client. These services helped U.S. clients to eliminate the paper trail associated with the undeclared assets and income they held at SGKB in Switzerland. By accepting and maintaining such accounts, the Bank assisted some U.S. taxpayers in evading their U.S. tax obligations.

30. Among other things, SGKB specifically:

- Agreed to open accounts for at least 58 U.S. taxpayers (\$33.1 million) who had left other banks being investigated by the U.S. Department of Justice without ensuring that each such account was compliant with U.S. tax law from their inception at SGKB. Some of these U.S. taxpayers have since participated in an IRS Offshore Voluntary Disclosure Program or Initiative;
- Held accounts for at least three U.S. Related Accounts (\$940,000) who held U.S. securities but did not sign an IRS Form W-9;
- Accepted instructions on a standard Qualified Intermediary form in connection with U.S. Related Accounts not to invest in U.S. securities and not to disclose the names of U.S. clients to U.S. tax authorities, including the IRS;
- Entered into numbered account agreements for at least 16 U.S. Related Accounts (\$8.1 million), even though the Bank knew, or had reason to know, that a portion of these accounts were or may have been undeclared;
 - For example, SGKB allowed a U.S. taxpayer to set up a numbered or code name account for his account valued at 4.4 million Swiss francs, even though SGKB knew that the taxpayer had moved his funds from UBS to SGKB on June 20, 2008;
- Issued checks, including series of checks, in amounts of less than \$10,000 that were drawn on accounts of U.S. taxpayers or structures, in at least 9 cases (\$3 million), even though the Bank knew, or had reason to know, that the withdrawals were made to avoid triggering scrutiny under the United States currency transaction reporting requirements;
 - For example, one U.S. taxpayer made 31 wire transfers for just less than \$10,000 between June 2012 and December 2012; 15 of the transfers were made to accounts held by the taxpayer's family members, and 16 were made to an account held in the name of the account's beneficial owner with a bank in the United States;
- Processed large cash withdrawals totaling approximately \$5.8 million for at least 14 U.S. taxpayers at or around the time the clients' accounts were closed, even though SGKB knew, or had reason to know, the accounts contained undeclared assets;
 - For example, SGKB permitted at least one U.S. taxpayer who was a former UBS client that held an account at SGKB in the name of a Liechtenstein foundation to withdraw 1 million Swiss francs in cash in September 2009 to close the account but then used approximately 400,000 Swiss francs of those funds to purchase gold. Both the gold and some of the cash were subsequently deposited in a safety deposit box held at the Bank for a non-U.S. relative of the client. The relationship manager who enabled the cash withdrawal voluntarily brought his conduct to the Bank's attention in December 2009.

which was three months after the account was closed. The client has since participated in the IRS Offshore Voluntary Disclosure Program; and

- o In 2011, SGKB allowed a U.S. taxpayer to withdraw 500,000 Swiss francs and \$200,000 in cash from his account when it was closed by the Bank because the taxpayer refused to sign an IRS Form W-9;
 - Held statements and other mail relating to at least 133 U.S. Related Accounts where the account holder was located in the United States, rather than send the documents to the U.S. taxpayers in the United States, thus causing documents reflecting the existence of at least 133 potentially undeclared accounts to remain outside the United States; and
 - Opened and maintained at least 16 potentially undeclared accounts in the names of structures that were beneficially owned by U.S. taxpayers, while knowing, or having reason to know that, those structures were, or may have been, used by U.S. clients to help conceal their identities from the IRS.
31. Due in part to the assistance of SGKB and with the knowledge that Swiss banking secrecy laws would prevent SGKB from disclosing their identities to the IRS absent any client or statutory authorization, certain U.S. clients of SGKB filed false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, that failed to report their respective interest in their SGKB accounts and the related income. Certain U.S. clients also failed to file and otherwise report their SGKB accounts on FBARs.
32. SGKB was aware that U.S. taxpayers had a legal duty to report to the IRS and pay taxes on the basis of all their income, including income earned in accounts that the U.S. taxpayers maintained at SGKB. Despite being aware of this legal duty, the Bank opened, serviced, and profited from accounts for U.S. clients who SGKB knew or had reason to know were not complying with their U.S. income tax obligations.

MITIGATING FACTORS

33. SGKB recognizes that its opening of undeclared U.S. Related Accounts beginning in 2008, as described above, was inappropriate. The Bank has cooperated with the Department and provided information to the U.S. Government about its cross-border business with U.S. Related Accounts, including customer names for approximately 27 percent of those accounts where clients authorized the Bank to disclose their names and other identifying information. To do so, SGKB has, among other things, conducted email searches and interviews with relationship managers and members of management, reviewed client dossiers, and analyzed relevant internal documents. The Bank also has provided information for the Department and the IRS to make treaty requests to the Swiss competent authority for specific U.S. Related Accounts.
34. Beginning in August 2008, SGKB adopted measures to avoid facilitating U.S. tax evasion, and obliged its staff to avoid a number of specific practices in light of these

concerns. At first, however, the measures were ineffective and inconsistently enforced, particularly at Hyposwiss Zurich.

35. In August 2008, SGKB mandated that no new funds would be accepted from U.S. residents without a signed IRS Form W-9. Division Heads at SGKB, and the Chief Executive Officers of Hyposwiss Geneva and Hyposwiss Zurich had full discretion and authority to make exceptions to this policy, in keeping with SGKB's general bank policy of permitting flexibility in its directives. The Chief Executive Officer of Hyposwiss Zurich first requested the authority to make a specific exception because he already had agreed to accept a "pipeline" of problematic U.S. related accounts from UBS and wanted to keep his word to his former UBS colleague. This "pipeline" consisted of six U.S. Related Accounts with approximately \$9.2 million in assets under management. Another significant exception granted by the Chief Executive Officer of Hyposwiss Zurich from this policy was in connection with clients of an external asset manager. At least 72 accounts with assets under management of approximately \$150 million were opened at Hyposwiss Zurich between late October and December 2008 without a Form W-9 as an exception to SGKB's policy. The majority of these accounts also were transferred from UBS.
36. Between August 20, 2008 and April 30, 2009, SGKB Division Heads approved five exceptions to the policy described in Paragraph 35. In addition, without any documented approval of SGKB Division Heads, SGKB opened at least 14 additional U.S. Related Accounts during this same period, even though the U.S. resident had not signed an IRS Form W-9. In other words, of the 54 U.S. Related Accounts opened at SGKB between August 2008 and April 30, 2009, 19 new accounts were opened without requiring a client to sign an IRS Form W-9. The size of these 19 accounts ranged from \$0 to \$3.4 million assets under management, of which 13 were less than \$300,000 assets under management.
37. In the spring of 2009, the Bank adopted additional precautions. SGKB banned written and telephonic communications with clients in the United States, and all e-banking contacts with U.S.-domiciled persons. The Bank also agreed to only accept new U.S. persons, regardless of domicile, with an IRS Form W-9 and a connection to Eastern Switzerland. On paper, SGKB mandated that there would be no exceptions to this policy. With some exceptions, the policy was enforced and monitored for compliance. After April 2009, in violation of this policy, SGKB opened six U.S. Related Accounts without requiring the client to first sign an IRS Form W-9, even though SGKB knew or had to reason to know that the new clients were domiciled in the United States or were U.S. citizens. In two of these cases, the account holder did not disclose its U.S. nexus at the account opening, and with two other accounts, an IRS Form W-9 was signed by the client but turned out to be invalid.
38. In March 2010, the Bank decided to ask all existing U.S. clients to either provide an IRS Form W-9 or withdraw their funds from the Bank. However, in part because SGKB was awaiting the implementation date of FATCA, this policy was not effectuated until the

spring of 2011, when SGKKB started to send letters to account holders with an identified U.S. nexus and request that they provide a signed IRS Form W-9.

39. Beginning in November 2011, the Bank further tightened its compliance policies. In general, SGKKB decided not to accept any new U.S. domiciled clients, even if they provided an IRS Form W-9 or other evidence of tax compliance. SGKKB also decided to exit most, but not all, of its U.S. domiciled clients. Exceptions were made for clients who signed an IRS Form W-9 "as well as a declaration of tax honesty." The area head of SGKKB was responsible for deciding upon exceptions, and the policies required that "[a]t least every 3 years, a fresh assessment of the individual exceptions must be carried out."
40. In February 2012, the Bank started to terminate its relationships with U.S. domiciled clients by sending a letter to almost all of its account holders with an identified U.S. nexus that requested they provide a signed IRS Form W-9 by June 30, 2012. The letter stated that, if the customer did not provide the requested documentation, the Bank would terminate the relationship.
41. Following SGKKB's efforts, at least 58 of its U.S. Related Accounts have thus far entered into an IRS Voluntary Disclosure Program or Initiative. Moreover, the Bank has obtained waivers of Swiss bank secrecy for approximately 27 percent of its U.S. Related Accounts and has provided customer names for those accounts to the U.S. Government.

EXHIBIT B TO NON-PROSECUTION AGREEMENT

**CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS
OF ST.GALLER KANTONALBANK AG**

I, Adrian Kunz, acting corporate secretary of St.Galler Kantonalbank AG (the Bank), a corporation duly organized and existing under the laws of Switzerland, do hereby certify that the following is a complete and accurate copy of a resolution adopted by the board of directors of the Bank at a meeting held on September 14, 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 9,481,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Roland Ledergerber, Chief Executive Officer, and Roger Dornier, Head of Legal & Compliance, both registered in the Commercial Register of the Canton of St. Gallen as having joint signatory authority, are hereby authorized (i) to jointly execute the Non-Prosecution Agreement on behalf of the Bank substantially in such form as reviewed by the Board with such non-material changes as each of them may approve; and (ii) to take, on behalf of the Bank, all actions as may be necessary or advisable in order to carry out the foregoing; and
- That Keith D. Krakaur and Stephen C. Robinson, Skadden, Arps, Slate Meagher & Flom LLP, are hereby authorized to sign the Non-Prosecution in their 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 14th day of September 2015.



Adrian Kunz
Secretary