U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:KEDodd
5-16-4702
2014200713

October 23, 2015

Richard M. Asche
Litman, Asche & Gioiella LLP
140 Broadway
New York, NY 10005

Re: Hyposwiss Private Bank Genève S.A.
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Mr. Asche:

Hyposwiss Private Bank Genève S.A. ("Hyposwiss Geneva") submitted an initial Letter of Intent on December 23, 2013 and a revised Letter of Intent on December 30, 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 Hyposwiss Geneva in its Letter of Intent and information provided by Hyposwiss Geneva 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 Hyposwiss Geneva of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute Hyposwiss Geneva 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 Hyposwiss Geneva during the Applicable Period (the "conduct"). Hyposwiss Geneva 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 Hyposwiss Geneva and does not apply to any other entities or to any individuals. Hyposwiss Geneva expressly understands that the protections provided under this Agreement shall not apply to any acquirer or successor entity unless and until such acquirer or

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

successor formally adopts and executes this Agreement. Hyposwiss Geneva 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, Hyposwiss Geneva agrees to pay the sum of $1,109,000 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 Hyposwiss Geneva. This payment is in lieu of restitution, forfeiture, or criminal fine against Hyposwiss Geneva for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Hyposwiss Geneva with respect to the conduct described in this Agreement, unless the Tax Division determines Hyposwiss Geneva has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Hyposwiss Geneva 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 Hyposwiss Geneva has violated any provision of this Agreement. Hyposwiss Geneva 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. Hyposwiss Geneva agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Hyposwiss Geneva further agrees that no portion of the penalty that Hyposwiss Geneva has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Hyposwiss Geneva 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) Hyposwiss Geneva'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 Hyposwiss Geneva 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) Hyposwiss Geneva'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) Hyposwiss Geneva'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 Hyposwiss Geneva 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) Hyposwiss Geneva's retention of a qualified independent examiner who has verified the information Hyposwiss Geneva disclosed pursuant to Part II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Hyposwiss Geneva 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 Hyposwiss Geneva, 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, Hyposwiss Geneva 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 Hyposwiss Geneva 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 Hyposwiss Geneva'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 Hyposwiss Geneva; 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.

Hyposwiss Geneva further agrees to undertake the following:

1. Hyposwiss Geneva 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 page 3 of this Agreement because the Tax Division has agreed to specific dollar threshold limitations for the initial production, Hyposwiss Geneva will promptly provide the entirety of the transaction information upon request of the Tax Division.

2. Hyposwiss Geneva 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 Hyposwiss Geneva.

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

4. Hyposwiss Geneva 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.

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

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

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

CAROLINE D. CIRAOLO
Acting Assistant Attorney General
Tax Division

10/29/2015
DATE

THOMAS J. SAWYER
Senior Counsel for International Tax Matters

29 October 2015
DATE

KIMBERLE E. DODD
Trial Attorney

10/29/2015
DATE

AGREED AND CONSENTED TO:
HYPOSWISS PRIVATE BANK GENÈVE S.A.

By:
NIELS BOM OLESEN
Chief Executive Officer

27-10-2015
DATE

By:
SÉBASTIEN KLEIN
General Secretary

27.10.2015
DATE

APPROVED:

RICHARD M. ASCHE
Litman, Asche & Gioiella LLP

October 27, 2015
DATE

EXHIBIT A TO HYPOSWISS PRIVATE BANK GENÈVE S.A. NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

INTRODUCTION

1. Hyposwiss Private Bank Genève S.A. ("Hyposwiss Geneva" or the "Bank") is a private bank based in Geneva, Switzerland that was founded in 1997 as Marcuard Cook & Cie S.A. The Bank was acquired by Anglo Irish Bank Corporation Ltd. in 2001 and then by Category 2 bank[1] St. Galler Kantonalbank AG in early 2008.

2. Prior to 2014, Hyposwiss Geneva managed total assets of approximately $2 billion, and it employed approximately 59 people. The Bank has maintained an average of 2,000 clients for the past several years, and since August 2008, approximately 5% were clients with a U.S. nexus. Hyposwiss Geneva targeted primarily a European, South African, and South American clientele.

3. St. Galler Kantonalbank AG announced on June 27, 2013 that it was divesting Hyposwiss Geneva and that Mirelis InvesTrust S.A. would become the new shareholders of Hyposwiss Geneva at the beginning of 2014.[2]

U.S. INCOME TAX AND REPORTING OBLIGATIONS

4. 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.

5. 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

[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").

[2] St. Galler Kantonalbank AG was the parent company of Hyposwiss Geneva and Hyposwiss Privatbank AG (now HSZH Verwaltungs AG, "Hyposwiss Zurich"); however, all three banks are separate legal entities. St. Galler Kantonalbank AG acquired Hyposwiss Zurich from UBS in 2002, and St. Galler Kantonalbank AG announced on June 27, 2013 that it was divesting the Eastern European and Latin American business of Hyposwiss Zurich in addition to Hyposwiss Geneva.

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.

6. 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.

7. 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 Hyposwiss Geneva, since at least August of 2008.

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

8. In 2001, Hyposwiss Geneva 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.

9. The QI Agreement took account of the fact that Hyposwiss Geneva, 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 Hyposwiss Geneva to obtain the consent of the account holder to disclose the client's identity to the IRS. The QI Agreement required Hyposwiss Geneva 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.

10. But Hyposwiss Geneva 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.

11. Hyposwiss Geneva 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 under the Bank's 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, Hyposwiss Geneva 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.

12. 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 Hyposwiss Geneva because of the nature of Swiss banking secrecy laws. Hyposwiss Geneva was aware that some of its U.S. clients wanted to conceal their accounts from U.S. authorities.

13. Although it was subject to a QI Agreement, Hyposwiss Geneva subverted the terms of the QI 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 HYPOSWISS GENEVA'S U.S. CROSS-BORDER BUSINESS

14. In the Applicable Period, Hyposwiss Geneva held a total of 91 U.S. Related Accounts with approximately $74.9 million in assets under management. As of August 1, 2008, Hyposwiss Geneva had 71 U.S. Related Accounts, with aggregate assets of approximately $53.6 million. During the Applicable Period, the Bank opened 20 additional U.S. Related Accounts, with an aggregate value of approximately $21.3 million.

15. Since 2002, any new account opening had to be approved by the General Manager or by the Deputy General Manager of the Bank. Additionally, no opening of a new account was permitted unless the client had been met by two executives of Hyposwiss Geneva and had been subjected to a search through databases Worldcheck and Factiva. Following receipt of complete documentation signed by the prospective client, the Central Filing Department of Hyposwiss Geneva verified the completeness of the client documentation, the Compliance Officer of the Bank reviewed the file; then formal approval to open the new account had to be granted by the General Manager or the Deputy General Manager of Hyposwiss Geneva.

16. Of the 2,000 clients Hyposwiss Geneva has served since August 2008, less than 5% were U.S. clients (including U.S. persons living in Switzerland). The Bank's U.S. Related Accounts in most instances were opened by European account holders who had dual citizenships, who resided temporarily in the United States, or who devised their accounts to U.S. persons.

17. The U.S. Related Accounts at Hyposwiss Geneva were serviced by 11 different relationship managers, and during the Applicable Period, only five relationship managers managed an aggregated total of ten or more U.S. Related Accounts. None of the Bank's relationship managers primarily serviced U.S. clients.

18. The Bank's relationship managers worked in teams composed of two to four relationship managers, and the teams were structured and organized based upon the language and cultural affinity of the clients. The relationship managers with respect to cross-border business were divided among a Swiss team, a French-speaking team, a United Kingdom team, and an Iberian-South American team, which represented the areas of origin of the clientele of the Bank. Each team was supervised by a team head who reported to the General Manager. Accounts with a U.S. nexus were distributed among the relationship manager teams based on the origin of the client relationship, the client's language, and the client's cultural affinity. Hyposwiss Geneva did not provide any specific financial incentives to its relationship managers to solicit or acquire U.S. Related Accounts

19. Each relationship manager at Hyposwiss Geneva was required to prepare a visit report documenting client contacts whenever they communicated with, or had a visit from, a client. Once a week, the Central Filing department of the Bank submitted to the General Manager a package of all visit reports for review.

20. Hyposwiss Geneva maintained and serviced seven U.S. Related Accounts managed by three external asset managers, with an approximate value of $8.1 million during the Applicable Period. While Hyposwiss Geneva did pay a finder's fee or commission to some of the external asset managers, the fee or commission remained the same regardless of the client's nationality. The fee payable to the external asset managers was calculated as an agreed-upon percentage of the revenues generated by each account managed by them.

21. Hyposwiss Geneva did not specifically market its services to U.S. persons and did not operate a U.S. desk. Its relationship managers never traveled to the United States during the Applicable Period in order to solicit or acquire clients or to market services.

HYPOSWISS GENEVA'S U.S. RELATED ACCOUNTS IN FOCUS

22. Of Hyposwiss Geneva's 91 U.S. Related Accounts, ten accounts with an aggregate value of approximately $17.7 million held U.S. securities and were timely disclosed to the Internal Revenue Service through Form 1099 reporting.

23. Through its managers, employees and/or others, Hyposwiss Geneva knew or had reason to know 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.

24. During the Applicable Period, the Bank opened and maintained at least 21 undeclared accounts in the names of structures that were beneficially owned by U.S. taxpayers,

while knowing, or having reason to know that, these structures were used by U.S. clients to help conceal their identities from the IRS. One structured account was a U.S. trust, two were Swiss-based operating companies, and 21 U.S. Related Accounts were held by a non-U.S. structure, such as an offshore corporation or trust, which aided and abetted the clients' ability to conceal their undeclared accounts from the IRS. Those 24 accounts comprised approximately $22.7 million in assets under management.

25. Eight of the 20 non-U.S. structures (one held two accounts) were incorporated at or around the time their Hyposwiss Geneva account was opened. The entities were incorporated as follows:[3] (i) ten companies in the British Virgin Islands ($13.1 million), (ii) five companies in Panama ($4.9 million), (iii) one trust in the Cook Islands ($3.1 million), and (iv) one each in Liberia, St. Vincent & the Grenadines, the Marshall Islands, and the Cayman Islands (collectively $0.8 million). Hyposwiss Geneva was not involved in establishing the entities. More specifically, as examples:

    a. Hyposwiss Geneva opened in 2005 and serviced until 2011 an undeclared account held by a British Virgin Islands company with an Italian citizen beneficial owner residing and working as a medical doctor in the United States;

    b. Hyposwiss Geneva also opened an undeclared account in 2008 held by another British Virgin Islands company with a United States citizen beneficial owner residing and working as a consultant for a Swiss company in Switzerland, and the Bank serviced this account until 2012;

    c. Another undeclared account held by a Panama corporation but beneficially owned by a French citizen that resided in the United States during the Applicable Period was opened by the Bank in 1998 and serviced until 2011; and

    d. Hyposwiss Geneva opened an undeclared account in 2009 that was held by a company from St. Vincent and the Grenadines with a United States beneficial owner that the Bank serviced until 2012.

26. Hyposwiss Geneva also offered a variety of traditional Swiss banking services that it knew could assist, and did in fact assist, U.S. clients in the concealment of assets and income from the IRS. One such service was hold mail. Hyposwiss Geneva would hold all mail correspondence for a particular client at the Bank. Hyposwiss Geneva also offered code name or numbered account services. 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 Hyposwiss Geneva in Switzerland. While the Bank did not charge a separate fee for these services, it did include these services in the general service fee Hyposwiss Geneva charged its clients. By accepting and maintaining such accounts, the Bank assisted some U.S. taxpayers in evading their U.S. tax obligations.

[3] The figures provided for each group of entities reflect the approximate aggregate value of the accounts within each group of entities pursuant to II.D.1.e of the Swiss Bank Program.

27. Among other things, Hyposwiss Geneva specifically:

- Opened and maintained accounts for at least five U.S. taxpayers ($9.8 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 Hyposwiss Geneva. These accounts were referred variously by a lawyer, an accounting firm, a former board member, and two relationship managers who had prior relationships with the clients. Two of these accounts provided a signed Form W-9 at account opening; three did not. The three accounts opened without a signed Form W-9 were all structured accounts. Some of these U.S. taxpayers have since participated in an IRS Offshore Voluntary Disclosure Program or Initiative;
- Held accounts for at least seven U.S. Related Accounts ($30.6 million) who held U.S. securities but did not sign an IRS Form W-9; and
- Accepted instructions in connection with at least 22 U.S. Related Accounts ($7.9 million) 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.
- Processed wire transfers in amounts of less than $10,000 that were drawn on accounts of U.S. taxpayers or structures, in at least one case with a maximum account value of $557,000 and at least three transfers of amounts between $9,000 and $10,000, 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;
- Processed large cash and gold withdrawals totaling approximately $3.4 million for at least nine U.S. taxpayers at or around the time the clients' accounts were closed, even though Hyposwiss Geneva knew, or had reason to know, the accounts contained undeclared assets;
- Held statements and other mail relating to at least 17 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 17 potentially undeclared accounts to remain outside the United States; and
- Failed to enforce bank policy and as a result, assisted at least one U.S. taxpayer client in concealing his identity from the IRS by titling securities in the name of the U.S. taxpayer's Hyposwiss Geneva relationship manager as a nominee of the U.S. taxpayer by depositing the securities in the relationship manager's personal account with another Swiss bank. This nominee arrangement continued for approximately ten years until the securities were completely liquidated in 2011.

28. Due in part to the assistance of Hyposwiss Geneva and with the knowledge that Swiss banking secrecy laws would prevent Hyposwiss Geneva from disclosing their identities to the IRS absent any client or statutory authorization, certain U.S. clients of Hyposwiss Geneva filed false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, that failed to report their respective interest in their Hyposwiss Geneva

accounts and the related income. Certain U.S. clients also failed to file and otherwise report their Hyposwiss Geneva accounts on FBARs.

29. Hyposwiss Geneva 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 Hyposwiss Geneva. Despite being aware of this legal duty, the Bank opened, serviced, and profited from accounts for U.S. clients who Hyposwiss Geneva knew or had reason to know were not complying with their U.S. income tax obligations.

COMPLIANCE POLICY CHANGES AND MITIGATING FACTORS

30. Beginning in August 2008, Hyposwiss Geneva adopted measures to avoid facilitating U.S. tax evasion by requiring that all new U.S. account holders complete and sign an IRS Form W-9 consistent with the Bank's mandate from St. Galler Kantonalbank AG. The Bank did not, however, require all existing clients to sign a Form W-9 until January 2011.

31. The Chief Executive Officer of Hyposwiss Geneva had full discretion and authority to make exceptions to the August 2008 IRS Form W-9 policy for new account holders; however, no new U.S. Related Accounts for individuals were opened by the Bank after August 2008 in the absence of a signed Form W-9. Hyposwiss Geneva did, however, open at least five additional U.S. Related Accounts in the name of structures after the August 2008 policy was issued even though the U.S. beneficial owner had not signed an IRS Form W-9. In other words, of the 11 U.S. Related Accounts opened at Hyposwiss Geneva after August 2008, five new accounts were opened without requiring a U.S. client or beneficial owner to sign an IRS Form W-9. The size of these five accounts ranged from $394,000 to $2.2 million assets under management, of which four were less than $0.75 million assets under management.

32. In the spring of 2009, the Bank adopted additional precautions again at the direction of St. Galler Kantonalbank AG. Hyposwiss Geneva banned written and telephonic communications with clients in the United States, and all e-banking contacts with U.S.-domiciled persons.

33. In 2011, Hyposwiss Geneva was directed by St. Galler Kantonalbank AG to ask all existing U.S. clients who had not yet provided an IRS Form W-9 to either provide an IRS Form W-9 or withdraw their funds.

34. Between August 1, 2008 and October 2015, Hyposwiss Geneva closed 81 of its 91 U.S. Related Accounts. As of October 2015, the Bank maintains only ten U.S. Related Accounts.

35. 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. To do so, Hyposwiss Geneva has, among other things, conducted database searches and interviews with relationship managers and members of management, reviewed client

dossiers, and analyzed relevant internal documents. The Bank also provided information for the Department and the IRS to make treaty requests to the Swiss competent authority for certain U.S. Related Accounts.

36. Following Hyposwiss Geneva's efforts, approximately 11 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 37 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 HYPOSWISS PRIVATE BANK GENEVE SA

I, Alain Bruno Lévy, Secretary to the board of directors of Hyposwiss Private Bank Genève SA (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 26 October 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 1'109'000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and

- That Niels Bom Olesen, Chief Executive Officer, and Sébastien Klein, General Secretary, both registered in the Commercial Register of the Canton of Geneva 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 Richard M. Asche, Litman, Asche & Gioiella LLP, is hereby authorized to sign the Non-Prosecution 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 26th day of October 2015.

Alain Bruno Lévy
Secretary