



U.S. Department of Justice

Tax Division

CDC:TJS:LLBellamy
DJ 5-16-4738
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November 12, 2015

Justin J. DeCamp, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498

Re: Standard Chartered Bank (Switzerland) SA, en liquidation
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Mr. DeCamp:

Standard Chartered Bank (Switzerland) SA, en liquidation (“Standard Chartered Bank (Switzerland) SA”) submitted a 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 Standard Chartered Bank (Switzerland) SA in its Letter of Intent and information provided by Standard Chartered Bank (Switzerland) SA 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 Standard Chartered Bank (Switzerland) SA of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute Standard Chartered Bank (Switzerland) SA 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 Standard Chartered Bank (Switzerland) SA during the Applicable Period (the “conduct”). Standard Chartered Bank (Switzerland) SA 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

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

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 Standard Chartered Bank (Switzerland) SA and does not apply to any other entities or to any individuals. Standard Chartered Bank (Switzerland) SA 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. Standard Chartered Bank (Switzerland) SA 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, Standard Chartered Bank (Switzerland) SA agrees to pay the sum of \$6,337,000 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 Standard Chartered Bank (Switzerland) SA. This payment is in lieu of restitution, forfeiture, or criminal fine against Standard Chartered Bank (Switzerland) SA for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Standard Chartered Bank (Switzerland) SA with respect to the conduct described in this Agreement, unless the Tax Division determines Standard Chartered Bank (Switzerland) SA has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Standard Chartered Bank (Switzerland) SA 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 Standard Chartered Bank (Switzerland) SA has violated any provision of this Agreement. Standard Chartered Bank (Switzerland) SA 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. Standard Chartered Bank (Switzerland) SA agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Standard Chartered Bank (Switzerland) SA further agrees that no portion of the penalty that Standard Chartered Bank (Switzerland) SA has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Standard Chartered Bank (Switzerland) SA 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) Standard Chartered Bank (Switzerland) SA'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 Standard Chartered Bank (Switzerland) SA 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) Standard Chartered Bank (Switzerland) SA'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) Standard Chartered Bank (Switzerland) SA'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 Standard Chartered Bank (Switzerland) SA 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) Standard Chartered Bank (Switzerland) SA's retention of a qualified independent examiner who has verified the information Standard Chartered Bank (Switzerland) SA disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Standard Chartered Bank (Switzerland) SA 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 Standard Chartered Bank (Switzerland) SA, 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, Standard Chartered Bank (Switzerland) SA 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 Standard Chartered Bank (Switzerland) SA 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 Standard Chartered Bank (Switzerland) SA'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 Standard Chartered Bank (Switzerland) SA; 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.

Standard Chartered Bank (Switzerland) SA further agrees to undertake the following:

1. Standard Chartered Bank (Switzerland) SA agrees, to the extent it has not provided complete transaction information pursuant to Part II.D.2.b.vi of the

Swiss Bank Program, because the Tax Division has agreed to specific dollar threshold limitations for the initial production, as set forth in subparagraph (c) on pages 2-3 of this Agreement, it will promptly provide the entirety of the transaction information upon request of the Tax Division.

2. Standard Chartered Bank (Switzerland) SA 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 Standard Chartered Bank (Switzerland) SA.
3. Standard Chartered Bank (Switzerland) SA 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. Standard Chartered Bank (Switzerland) SA 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, Standard Chartered Bank (Switzerland) SA will promptly proceed to follow the procedures described above in paragraph 2.
4. Standard Chartered Bank (Switzerland) SA 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.

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

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 Standard Chartered Bank (Switzerland) SA, notwithstanding the expiration of the statute of limitations between such date and the commencement of such prosecution. For any such prosecutions, Standard Chartered

Bank (Switzerland) SA 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 Standard Chartered Bank (Switzerland) SA'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 Standard Chartered Bank (Switzerland) SA, the Tax Division will, however, bring the cooperation of Standard Chartered Bank (Switzerland) SA 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 Standard Chartered Bank (Switzerland) SA consistent with Part V.B of the Swiss Bank Program.

Standard Chartered Bank (Switzerland) SA and the Department recognize and acknowledge that: (a) Standard Chartered Bank (Switzerland) SA is the subject of a Swiss liquidation and Deloitte AG, Zurich, is currently serving as the Liquidator; (b) Deloitte AG may at any time cease to be the Liquidator, in which case Standard Chartered Bank (Switzerland) SA will appoint one or more other persons or entities as Liquidator(s), including, as the case may be, members of its own Board of Directors; (c) Standard Chartered Bank (Switzerland) SA will, during the period in which this Agreement remains in force, complete the liquidation process and thereupon, but no earlier than 2019, cease to exist as a legally recognized entity. The obligations set forth in this Agreement as they apply to Standard Chartered Bank (Switzerland) SA will remain in force for as long as Standard Chartered Bank (Switzerland) SA remains a legally recognized entity under Swiss law. At least ten days before Standard Chartered Bank (Switzerland) SA will cease to exist, Standard Chartered Bank (Switzerland) SA shall (a) provide notice of this upcoming event to the Department, (b) indicate the particulars of the person(s) or entity(ies) (which may include an entity pertaining to the Standard Chartered Group) who will maintain the records required to be maintained under this Agreement for ten years from the date of this Agreement and/or otherwise comply with the ongoing obligations set forth in this Agreement, consistent with Swiss law, (c) certify that all relevant records have been delivered to the relevant person or entity, and (d) provide a written undertaking by such person(s) or entity(ies) towards the Department to maintain such records and/or to otherwise comply with the ongoing obligations set forth in this Agreement, consistent with Swiss law. The Department will not undertake legal action against any such person(s) or entity(ies) based on their good-faith inability to comply with any still operative provision of this Agreement.

This Agreement supersedes all prior understandings, promises and/or conditions between the Department and Standard Chartered Bank (Switzerland) SA. 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.

AGREED AND ACCEPTED:
UNITED STATES DEPARTMENT OF JUSTICE, TAX DIVISION

Caroline D. Ciraolo
CAROLINE D. CIRAOLO
Acting Assistant Attorney General

11/13/2015
DATE

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

13 November 2015
DATE

Lisa L. Bellamy
LISA L. BELLAMY
Trial Attorney

11/13/2015
DATE

AGREED AND CONSENTED TO:
STANDARD CHARTERED BANK (SWITZERLAND) SA, EN LIQUIDATION

By: *William Richard Holmes*
WILLIAM RICHARD HOLMES
Chairman of the Board

12th November 2015
DATE

By: *Mark Hirst*
MARK HIRST
Chief Executive Officer

12th NOVEMBER 2015
DATE

APPROVED:
Jan Dominik Remmen
JAN DOMINIK REMMEN
Deloitte AG as Liquidator of Standard Chartered Bank (Switzerland) SA, en liquidation

November 12th 2015
DATE

Marc Raggenbass
MARC RAGGENBASS
Deloitte AG as Liquidator of Standard Chartered Bank (Switzerland) SA, en liquidation

November 12/2015
DATE

Justin J. DeCamp
JUSTIN J. DECAMP
SULLIVAN & CROMWELL LLP

11/12/15
DATE

**EXHIBIT A TO
STANDARD CHARTERED BANK (SWITZERLAND) SA, EN LIQUIDATION
NON-PROSECUTION AGREEMENT**

STATEMENT OF FACTS

INTRODUCTION

1. Standard Chartered Bank (Switzerland) SA, en liquidation, ("SCB (Switzerland)" or the "Bank") is a private bank with a single office located in Geneva, Switzerland. It is a wholly owned subsidiary of Standard Chartered PLC, a British multinational banking and financial services company headquartered in London. The Bank joined the Standard Chartered group of entities (the "Standard Chartered Group") in May 2008 when Standard Chartered PLC acquired American Express Bank Ltd. As part of that acquisition, Standard Chartered Group acquired American Express Bank (Switzerland) SA, a private bank incorporated in Switzerland in 1987, which thereafter operated under the name SCB (Switzerland) SA.
2. At the end of 2013, the Bank had approximately \$2.4 billion in assets under management, with approximately 500 accounts and about 60 employees. In early 2014, the Standard Chartered Group decided to cease its Swiss private banking operations for commercial reasons. The Bank is now in voluntary formal liquidation. Subject to Swiss regulatory approval, the Bank expects to return its banking license at the end of 2015, and then the entity will continue to exist as a corporation in liquidation until at least the end of 2018, without banking status or FINMA supervision, and with no operations other than completing the wind down.
3. At all relevant times, SCB (Switzerland) provided private banking services to high net worth customers. Its target markets were the Middle East, Asia and Africa, although the Bank inherited a number of Latin American accounts through American Express Bank and sold most of those accounts in 2011 to another private bank.

U.S. INCOME TAX & 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. 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.
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 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.

6. 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.
7. "U.S. Related Accounts" means accounts which exceeded \$50,000 in value at any time during the Applicable Period, and as to which indicia exist that a U.S. person or entity has or had a financial or beneficial interest in, ownership of, or signature authority (with or direct or indirect) or other authority over the account.¹
8. Since 1935, Switzerland has maintained criminal laws that ensure the secrecy of client relationships at Swiss banks. While Swiss law permits the exchange of information in response to administrative requests made pursuant to a tax treaty with the United States and certain legal requests in cases of tax fraud, Swiss law otherwise prohibits the disclosure of identifying information without client authorization. Because of the secrecy guarantee that they created, these Swiss criminal provisions have historically enabled U.S. clients to conceal their Swiss bank accounts from U.S. authorities.
9. In or about 2008, Swiss bank UBS AG ("UBS") publicly announced that it was the target of a criminal investigation by the 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 accounts and maintaining undeclared assets and income from the IRS. Since the UBS investigation became public, 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 SCB (Switzerland), since at least August of 2008.

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

**SCB (SWITZERLAND)'S POLICIES AND PRACTICES
RELEVANT TO U.S. CLIENTS**

10. The Bank adopted the Advisory Center/Booking Center Model from American Express Bank. This method allowed clients to book and hold accounts in any of Standard Chartered Group's booking centers, including Geneva, while working with relationship managers at other locations throughout the world. The Group also acquired a trust center from American Express Bank. Trust services were available to eligible clients who wished to set up trusts or private investment companies. The trust centers were located in Guernsey, Singapore, and the Cayman Islands. A client could create a trust structure in any one of the trust centers while opening an account in another booking center and working with a relationship manager in another advisory center. Fiduciary services were offered by the Bank and the Bank's Head of Fiduciary Services worked with relationship managers to identify clients advised by Geneva relationship managers to devise appropriate structures to meet the wealth planning needs of those clients.
11. Since joining the Standard Chartered Group, SCB (Switzerland) has had a policy prohibiting opening accounts for U.S. residents (as did American Express Bank (Switzerland) prior to the 2008 acquisition) and, in practice, generally did not acquire U.S. clients. In most cases, when the Bank became aware that a client was a citizen or resident of the U.S. (a "U.S. person"), it took steps to close the account (or block it pending clarification of the client's U.S. status). SCB (Switzerland) has never had any U.S. desk or employee dedicated to targeting or servicing the U.S. market or clients.
12. Upon its acquisition by the Standard Chartered Group, the Bank conducted a review to ensure that the Bank's accounts were in line with the Bank's and Standard Chartered Group's strategy and client due diligence policies. In connection with that review, the Bank attempted to identify all U.S. clients with accounts at the Bank and closed the accounts that were identified.
13. In addition, at all relevant times, the Bank implemented a client due diligence policy, whereby accounts were categorized by risk level and reviewed regularly to ensure that the accounts complied with Bank policies.
14. American Express Bank (Switzerland) entered into a Qualified Intermediary Agreement (the "QI Agreement") with the IRS in 2001, and SCB (Switzerland) continued to operate under the QI Agreement following the 2008 acquisition. The Qualified Intermediary ("QI") regime provides a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution that acts as a QI with respect to customer accounts held by non-U.S. persons and by U.S. persons. The QI Agreement is designed to help ensure that non-U.S. persons are subject to the proper U.S. withholding tax rates and that U.S. persons are properly paying U.S. tax, in each case, with respect to U.S. securities held in an account with the QI. The QI Agreement expressly recognizes

that a non-U.S. financial institution such as SCB (Switzerland) may be prohibited by foreign law, such as Swiss law, from disclosing an account holder's name or other identifying information. In general, a QI subject to such foreign-law restrictions must request that its U.S. clients either (a) grant the QI authority to disclose the client's identity or disclose himself by mandating the QI to provide an IRS Form W-9 completed by the account holder, or (b) grant the QI authority to sell all U.S. securities of the account holder (in the case of accounts opened before January 1, 2001) or to exclude all U.S. securities from the account (in the case of accounts opened on or after January 1, 2001). Following the effective date of the QI Agreement, a sale of U.S. securities, if any, held by a U.S. person who chose not to provide a QI with an IRS Form W-9 was subject to tax information reporting on an anonymous basis and backup withholding.

15. Under its QI Agreement, for accounts investing in U.S. securities, the Bank was required to obtain IRS Forms W-9 (or equivalent forms) for U.S. persons and Forms W-8BEN (or equivalent forms) for non-U.S. persons. In practice, however, the Bank generally required all new account holders to provide IRS Forms W-8 and W-9 or their equivalent, regardless of whether those account holders were going to invest in U.S. securities. In March 2009, this practice was formalized into Bank policy. The Bank's policy did not, however, require such documentation for beneficial owners of accounts held by non-U.S. PICs, corporations, foundations, trusts, or other legal entities (collectively, "structures").

THE OFFENSE CONDUCT

16. Notwithstanding these policies and practices, at times in the past, SCB (Switzerland) established and maintained accounts for U.S. Persons, including individuals who were dual nationals. The Bank held 22 U.S. Related Accounts, comprising a peak of aggregated assets under management of \$33.1 million, between August 1, 2008 and April 17, 2014, 16 of which were held or beneficially owned by U.S. citizens or residents. Fifteen of the 22 U.S. Related Accounts were originally opened by American Express Bank (Switzerland) prior to the Applicable Period, and another six were originally opened by an affiliate of American Express Bank (Switzerland) prior to the Applicable Period and then transferred to the Bank during the Applicable Period. All but two were closed by the Bank prior to the announcement of the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Swiss Bank Program"). The two accounts that are currently open are blocked accounts, which the Bank is unable to close due to pending litigation relating to the assets in those accounts.
17. Private bankers, known as "relationship managers," served as the primary contact for clients at SCB (Switzerland). The relationship managers were responsible for attracting new clients and communicating with and advising current clients with regards to their accounts. Their responsibilities included obtaining and reviewing required account documentation and corroborating information about the account holder.
18. Through its employees and/or others, SCB (Switzerland) knew or should have known that some of the U.S. persons who opened or maintained accounts at the Bank may not have complied with their U.S. income tax and reporting obligations. By

establishing and maintaining such accounts, the Bank provided assistance to certain U.S. Persons in evading their U.S. tax obligations. Specifically, SCB (Switzerland), among other things:

- Opened and maintained accounts for certain U.S. persons in the name of structures, including trusts created by American Express and inherited and maintained by affiliates of the Bank, which served as the nominal account holders of bank accounts that held assets that, in reality, belonged to U.S. persons. Eleven of the 22 U.S. Related Accounts were held in the names of structures but beneficially owned by U.S. citizens or residents, or individuals with a U.S. place of birth. Such accounts aided and abetted the clients' ability to conceal their undeclared accounts from the IRS.
- Although the Bank prohibited the use of hold mail for accounts with assets under management greater than \$3 million, it agreed to hold account statements and other mail relating to five U.S. Related Accounts at SCB (Switzerland), thus ensuring that documents reflecting the existence of the account remained outside the United States. For at least a part of the Applicable Period, the Bank was aware that the beneficial owner of one of these accounts resided in the United States.
- Provided account statements and other documentation to the account holder which contained only the account number in order to further insure the secrecy of the identity of the account holder.
- Did not consistently obtain documentation to establish whether an account holder was a U.S. person or non-U.S. person for accounts with no intention to hold U.S. securities.
- The Bank accepted and included in its account records IRS Forms W-8BEN (or equivalent documents) provided by the directors of the offshore companies that falsely represented that such companies were the beneficial owners of the assets in those account for U.S. federal income tax purposes. Of the 13 U.S. Related Accounts that were held in the names of private investment companies or trust accounts, only one such account's file contained a Form W-8BEN for all of the beneficial owners of the account.
- Maintained three accounts beneficially owned by persons whose passports identified a U.S. place of birth without obtaining proper documentation to establish whether such persons were U.S. persons or non-U.S. persons.
 - One such account was held by a PIC incorporated in the British Virgin Islands. The beneficial owner's foreign passport was issued in the United States and identifies a U.S. place of birth. During a periodic compliance review, a compliance officer at the Bank discovered this, and, after the Bank tried unsuccessfully to obtain documentation of renunciation of U.S. citizenship, the beneficial owner sought to close the account. Because the account contains distressed assets due to pending litigation, however, the

Bank was unable to close the account and it remains open and blocked.

- Another of these accounts was opened by a private investment company incorporated in the Netherlands and was beneficially owned by three individuals, one of whom held a foreign passport identifying a U.S. place of birth. The account was closed in 2012.
 - Maintained one account held by a British Virgin Islands private investment company, of which the beneficial owner was a U.S. citizen. The beneficial owner had provided the Bank with a false W-8BEN and the Bank was unaware of the U.S. citizenship of the beneficial owner until 2010. In 2010, a compliance officer discovered the beneficial owner's U.S. citizenship through a periodic review of the account that included an internet search. Nevertheless, the Bank maintained the account for approximately two years after discovering that the beneficial owner was a U.S. citizen.
 - Maintained a joint account where the account file contained a U.S. passport for one of the beneficial owners of the account. After acknowledging that the account was owned by a U.S. citizen, the Bank maintained the account after a compliance officer determined that it held no U.S. securities and was scheduled to close in two years. The account ultimately closed four months later.
 - Maintained an account with a holder of a power of attorney who was a relative of the beneficial owner and who resided in the United States, when a memorandum in the account file indicated that the beneficial owner and power of attorney were joint "owners" of the account and an email noted that the beneficial owner resided with the power of attorney in the United States.
19. In addition, the Bank opened seven U.S. Related Accounts after the acquisition of American Express Bank (Switzerland) and after taking efforts in 2008 to close all U.S. accounts. One of these accounts was held by a British Virgin Islands private investment company with Latin American beneficial owners, but had a U.S. mailing address.
20. Five of the remaining accounts were associated with the same family and were originally opened at an affiliate outside of Switzerland. One of the accounts was held by an insurance trust containing the life insurance policy of the settlor, who passed away before the accounts were transferred. Two of the beneficiaries of the trust (who were children of the settlor) were born in the United States. The Bank was aware of the two U.S. citizen beneficiaries, and raised the issue with the affiliate from which the accounts were being transferred, as well as the Group, noting a concern about the possibility of U.S. tax evasion by the two beneficiaries. Ultimately, after receiving approval from Group Private Bank Compliance, the Bank decided that it was permissible to open the trust account because once the disbursements from the life insurance policy were made, the two U.S. persons would exit the bank and transfer their money out. The trust account was closed three months after it was opened. After the trust account was opened, however, the affiliate at which the accounts originated sought to transfer four additional accounts

involving the same family. These were held by private investment companies owned in whole or in part by a Panamanian foundation. The two U.S. persons who were beneficiaries of the insurance trust were also beneficiaries of the Panamanian foundation. The Bank sought and obtained approval from the Group for the additional accounts and the accounts were subsequently opened. Shortly thereafter, the Bank realized that it should have obtained Forms W-9 from the two U.S. persons in connection with one of the accounts and all of the accounts were closed.

21. SCB (Switzerland) was aware that U.S. persons had a legal duty to report to the IRS, and pay taxes on the basis of, all of their income, including income earned in accounts that these U.S. persons maintained at the Bank. Despite being aware of this legal duty, the Bank opened and maintained accounts for these U.S. persons without proof that such accounts were declared to the IRS.

SCB (SWITZERLAND)'S COOPERATION

22. Since December 2013, when it informed the Tax Division of its intent to participate in the Swiss Bank Program as a Category 2 Bank, the Bank has cooperated with the Tax Division and the requirements of the Swiss Bank Program, including by conducting a thorough review to identify its U.S. Related Accounts and understand how those accounts came to exist at the Bank.
23. The Bank retained U.S. and Swiss counsel to advise the Bank in conducting its review under the Program, and engaged an accounting firm to assist in data extraction, management and analysis. The Bank has worked with its counsel and accounting firm to identify the Bank's U.S. Related Accounts through electronic and paper record searches, and compile information about those accounts. The Bank devoted one of its compliance officers to assist full-time in fulfilling the requirements of the Program and other Bank personnel, including senior management, have also committed substantial time to the Program. In consultation with its accounting firm and counsel, the Bank reviewed the account files of over 1,700 different accounts, reviewed emails, and conducted interviews of Bank personnel.
24. SCB (Switzerland) complied with the terms set forth in the Swiss Bank Program that apply to Category 2 Banks including providing information concerning four U.S. client accounts held at SCB (Switzerland) since August of 2008 to make treaty requests to the Swiss competent authority for U.S. client account records. The Bank has been forthcoming in its discussions with the Tax Division, and sought to be fully transparent about its interaction with U.S. persons during the Applicable Period. Since identifying accounts with U.S. indicia, the Bank has been contacting former and current U.S. account holders and beneficial owners, notifying them of the IRS's Offshore Voluntary

Disclosure Program or Initiative and has continued to follow up with those account holders to encourage their participation in the program or to provide waivers of Swiss bank secrecy. However, none of the account holders have entered into the IRS's Offshore Voluntary Disclosure Program or Initiative program or executed waivers enabling the Bank to disclose their identities to the IRS.

Exhibit B to Non-Prosecution Agreement

RESOLUTION OF THE BOARD OF DIRECTORS OF STANDARD CHARTERED BANK (SWITZERLAND) SA, EN LIQUIDATION

At a duly held meeting held on November 12, 2015, the Board of Directors (the "**Board**") of Standard Chartered Bank (Switzerland) SA, en liquidation (the "**Bank**") resolved as follows:

- **WHEREAS**, the Bank has been engaged in discussions with the United States Department of Justice (the "**DOJ**") arising out of the Bank's participation in Category 2 of the DOJ's Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks; and
- **WHEREAS**, in order to resolve such discussions, the DOJ has proposed that the Bank enter into a non-prosecution agreement with the DOJ substantially in the form attached hereto (the "**Agreement**"); and
- **WHEREAS**, the Bank's U.S. and Swiss counsel have advised the Board of Directors of the Bank's rights, possible defenses, the terms of the Agreement, and the consequences of entering into the Agreement;

The Board hereby **RESOLVES** that:

1. The Board of the Bank has reviewed the entire Agreement attached hereto, including the Statement of Facts attached as Exhibit A to the Agreement, consulted with Swiss and U.S. counsel, as well as with the Bank's liquidator, Deloitte SA (the "**Liquidator**"), in connection with this matter and voted to enter into the Agreement, including to pay a sum of US\$ 6,337,000.- pursuant to the Agreement and to perform the obligations described in the Agreement consistent with, and subject to, Swiss law;
2. William Richard Holmes, Chairman of the Board, and Mark Hirst, Chief Executive Officer, acting jointly, are hereby authorized on behalf of the Bank to execute the Agreement (the "**Authorized Signatories**") substantially in such form as reviewed by this Board with such non-material changes as they may approve;
3. Justin J. DeCamp and Sharon L. Nelles, of Sullivan & Cromwell LLP, acting individually, as well as Jan-Dominik Remmen and Marc Raggenbass as members of the Liquidator, acting jointly, are entitled to sign the Agreement as additional signatories (the "**Additional Signatories**");
4. The Board hereby authorizes, empowers and directs the Authorized Signatories to take, on behalf of the Bank, any and all actions as may be necessary or appropriate, and to approve and execute the forms, terms, or provisions of any agreement

or other document, as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions; and

5. All of the actions of the Authorized Signatories and the Additional Signatories, are hereby severally ratified, confirmed, approved and adopted as actions on behalf of the Bank.

IN WITNESS WHEREOF, the Board of Directors of the Bank has executed this Resolution.



William Richard Holmes
Chairman of the Board



Georg von Segesser
Vice-Chairman of the Board