



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

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5-16-4652
CMN 2014200654

December 1, 2015

Aaron R. Marcu, Esquire
Freshfields Bruckhaus Deringer LLP
601 Lexington Avenue
56th Floor
New York, New York 10022

Re: Bank Coop AG.
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Mr. Marcu:

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

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

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

successor entity unless and until such acquirer or successor formally adopts and executes this Agreement. Bank Coop 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, Bank Coop agrees to pay the sum of \$3,223,000 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 Bank Coop. This payment is in lieu of restitution, forfeiture, or criminal fine against Bank Coop for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Bank Coop with respect to the conduct described in this Agreement, unless the Tax Division determines Bank Coop has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Bank Coop 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 Bank Coop has violated any provision of this Agreement. Bank Coop 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. Bank Coop agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Bank Coop further agrees that no portion of the penalty that Bank Coop has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Bank Coop 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) Bank Coop'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 Bank Coop attracted and serviced account holders; and
- in-person presentations and documentation, properly translated, supporting the disclosure of the above information and other information that was requested by the Tax Division;

(b) Bank Coop'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) Bank Coop'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 Bank Coop 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) Bank Coop's retention of a qualified independent examiner who has verified the information Bank Coop disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Bank Coop 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 Bank Coop, 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, Bank Coop 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 Bank Coop's 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 Bank Coop'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 Bank Coop; 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.

Bank Coop further agrees to undertake the following:

1. Bank Coop 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, Bank Coop will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. Bank Coop 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 Bank Coop.
3. Bank Coop 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. Bank

Coop 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, Bank Coop will promptly proceed to follow the procedures described above in paragraph 2.

4. Bank Coop 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.

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

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

This Agreement supersedes all prior understandings, promises and/or conditions between the Department and Bank Coop. No additional promises, agreements, and conditions have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by both parties.

UNITED STATES DEPARTMENT OF JUSTICE
TAX DIVISION

for 
CAROLINE D. CIRAOLO
Acting Assistant Attorney General
Tax Division

12-10-15
DATE


THOMAS J. SAWYER
Senior Counsel for International Tax Matters

10 December 2015
DATE


MICHAEL N. WILCOVE
Trial Attorney

Dec-10, 2015
DATE

AGREED AND CONSENTED TO:

BANK COOP AG.

By: 
HANSPETER ACKERMANN
Chief Executive Officer

December 9, 2015
DATE

By: 
KARL SCHMID
Head, Legal & Compliance

December 9, 2015
DATE

APPROVED:


AARON R. MARCU
Freshfields Bruckhaus Deringer US LLP

December 9, 2015
DATE

**EXHIBIT A TO BANK COOP AG
NON-PROSECUTION AGREEMENT**

STATEMENT OF FACTS

I. Introduction

1. Bank Coop AG ("Bank Coop" or "the Bank") is a Swiss retail bank headquartered in Basel. The Bank was founded in 1927, when the Swiss Confederation of Trade Unions and the Federation of Swiss Consumer Associations established it as a cooperative society under the name Cooperative Central Bank. Today, Bank Coop is a publicly-traded company listed on the SIX Swiss Exchange. Basler Kantonalbank has been Bank Coop's majority shareholder since December 1999.
2. Bank Coop has traditionally focused on providing retail banking and advisory services to middle- and lower-income individuals as well as small businesses. Roughly 90 percent of the Bank's customer accounts are valued at less than \$100,000, and its principal lines of business include providing savings accounts, mortgages and small business loans. As of October 2015, the Bank had a total of approximately 530 employees.
3. Bank Coop has 32 branches throughout Switzerland. It has never had offices, branches, or subsidiaries outside the country. As of October 2015, the Bank had approximately 252,000 customers, of which the vast majority (approximately 96.6 percent) live in Switzerland. Another approximately 2.8 percent live in the surrounding countries of Germany, France and Italy; many of these customers work in Switzerland.
4. During the Applicable Period, Bank Coop's total assets under management had a maximum value of approximately \$20.4 billion.¹

II. 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. 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.
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

¹ Capitalized terms not otherwise defined in this Statement of Facts have the meanings 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").

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.

7. An "undeclared account" was a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that had not been reported by the individual account owner to the U.S. government on an income tax return and an FBAR.
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 foreign clients to conceal their Swiss bank accounts from their home country 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 and maintaining undeclared assets and income from the IRS. Since UBS, several other Swiss banks have publically announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients. These cases have been closely monitored by banks operating in Switzerland, including Bank Coop, since at least August of 2008.

III. The Role of the Qualified Intermediary Agreement

10. In 2001, Bank Coop entered into a Qualified Intermediary ("QI") Agreement with the IRS. The QI regime provided a comprehensive framework for U.S. securities-related information reporting and tax withholding by a non-U.S. financial institution. 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 appropriate U.S. withholding tax rates and that U.S. persons holding U.S. securities were meeting their U.S. tax obligations.
11. The QI Agreement took account of the fact that Bank Coop, 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 Bank Coop to obtain the consent of the account holder to disclose the client's identity to the IRS.

12. Bank Coop continued to service certain U.S. customers without disclosing their identity to the IRS and without considering the impact of U.S. criminal law on that decision.
13. Bank Coop's position was that it could continue to accept and service U.S. account holders that it knew or had reason to believe were engaged in tax evasion so long as (a) its account holders were prohibited from trading in U.S. based securities, or (b) the account was nominally structured in the name of a non-U.S. based entity.
14. With the knowledge that, absent their authorization, Swiss banking secrecy laws would prevent Bank Coop from disclosing their identities to the IRS, certain U.S. clients of the Bank filed false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, which failed to report their interest in their respective accounts and their related income. Certain U.S. clients also failed to file or otherwise report their accounts on FBARs.

IV. The Bank's U.S. Cross-Border Business

15. During the Applicable Period, the Bank maintained 385 U.S. Related Accounts, with an aggregate maximum balance of approximately \$71.4 million, a figure representing approximately 0.35% of the Bank's total assets under management during the Applicable Period.
16. Except for the policies and procedures described below, the Bank did not structure, operate, or supervise its U.S. Related Accounts in any way differently or separately from its non-U.S. Related Accounts. In particular, the Bank never had a separate organizational structure for serving its U.S. clients and it never had a strategy to market its services to U.S. citizens or U.S. residents, and did not specifically target U.S. persons as potential clients. Rather, most of the Bank's U.S. clients have or had personal or family ties to Switzerland (e.g., dual U.S.-Swiss citizens, clients with primary residence in Switzerland and temporary residence in the United States, and U.S. citizens domiciled in Switzerland). Bank Coop did not create incentives for relationship managers to solicit or acquire U.S. Related Accounts and did not pay any finder's fee or other fee to external asset managers specifically for the acquisition or maintenance of U.S. clients. Bank Coop did not offer special products or services, such as tax advisory or structuring services, to U.S. clients.
17. Nevertheless, Bank Coop did open and maintain financial accounts for U.S. citizens, U.S. resident aliens, and other individuals considered U.S. persons under the Swiss Bank Program. As of August 1, 2008, Bank Coop held 330 U.S. Related Accounts with an aggregate maximum value of \$52.9 million. During the Applicable Period, the Bank opened 55 U.S. Related Accounts with an aggregate maximum value of approximately \$18.5 million.
18. Most of Bank Coop's clients were serviced by a pool of customer service representatives. Bank Coop, however, offered designated relationship managers to account holders whose account balances were 25,000 Swiss francs or higher. Bank Coop estimates that 90% of U.S. Related Accounts with balances over 100,000 Swiss francs were serviced by designated relationship managers and 50% of U.S. Related

Accounts with balances between 25,000 and 100,000 Swiss francs were serviced by designated relationship managers.

19. Eleven U.S. Related Accounts were serviced by five different external asset managers. The five external asset managers were primarily compensated by their clients; however, four of these five external asset managers received retrocession fees from the Bank until 2011.
20. Generally, Bank Coop did not send employees to the United States for the purpose of soliciting or serving clients. Once, in 2001, a relationship manager, after winning a contest sponsored by Bank Coop, visited the United States. During the visit he secured from an account holder a "Declaration of U.S. Taxable Persons," in which the account holder declared that she did not authorize Bank Coop to disclose her name to the U.S. tax authorities and instructed the Bank to sell her U.S. securities. According to the relationship manager, the visit was social in nature because the account holder was a close friend of a member of the relationship manager's family.
21. Bank Coop offered a variety of traditional Swiss banking services that it knew could assist, and did assist, U.S. clients in concealing their undeclared assets and income. For example, Bank Coop provided "hold mail" services, when requested by U.S. clients, whereby the Bank held statements and other mail in Switzerland rather than sending the documents to the United States. Bank Coop understood that providing hold mail services could allow U.S. persons to keep evidence of their accounts outside of the United States in order to conceal assets and income from the IRS.
22. For approximately 15 U.S. Related Accounts, Bank Coop provided numbered account services for a fee, whereby bank statements and correspondence would not reflect the account holder's name. By accepting and maintaining such accounts, Bank Coop knew or should have known that it was assisting U.S. taxpayers who sought to evade their U.S. tax obligations. These services allowed U.S. clients to minimize the paper trail associated with the undeclared assets and income they held at Bank Coop.
23. Bank Coop arranged for at least one U.S. client to obtain travel cash cards issued by a Swiss third-party provider. Use of travel cash cards by U.S. persons facilitated their access to and use of any undeclared funds on deposit at the Bank.
24. Bank Coop accepted regular instructions from one client who is a U.S. citizen and resident to transfer approximately \$9,500 to his account in the United States each month. The Bank made eight transfers of approximately \$9,500 each to U.S. banks (approximately \$76,000 in total) for this client during the Applicable Period. Before the Applicable Period, the client, on a less regular basis, authorized several transfers of approximately \$9,500 each to U.S. banks.
25. Bank Coop processed substantial cash withdrawals in connection with the closure of some U.S. Related Accounts. For example, in connection with the closure of one account, the Bank processed cash withdrawals of 550,000 Swiss francs and approximately 340,000 euros. In another instance, a client in February 2012 visited the Bank three times and withdrew \$30,000, 30,000 in euros, and 25,000 in euros, respectively, on those visits. At that time, the client informed the Bank that he

decided to close the account, expressing concern about recent developments regarding Swiss bank secrecy and disclosure requests by U.S. and EU authorities. In March 2012, the client withdrew approximately 30,000 in Swiss francs and, upon closing the account in June 2012, withdrew the remaining balance of approximately 5,000 euros.

26. In April 2010, one client visited the Bank and requested that the Bank purchase one kilogram of gold, which the client stored in his safety deposit box at the Bank. In August 2010, the client instructed the Bank to purchase another kilogram of gold, which was collected by the client's daughter. In March 2011, the client instructed the Bank to purchase another kilogram of gold, which the client stored in his safety deposit box. In September 2012, after being advised by the Bank that his account would be closed on account of his U.S. residence, the client instructed the Bank to sell the gold in his safety deposit box and credit the proceeds to his account at the Bank. In October 2012, the client instructed the Bank to close the account and send a "crossed" check of approximately \$335,000 to a Swiss law firm.²
27. In January 2009, the account holder described in paragraph 24 instructed the Bank to purchase six kilograms of gold. Two weeks later, the client collected the gold from the Bank. In September 2012, after the Bank advised him that it was exiting U.S. domiciled clients and beneficial owners, the client instructed the Bank to sell two kilograms of gold held in his safety deposit box. The proceeds were credited to his account at the Bank. In addition, this account holder, in the course of closing his account, instructed the Bank to transfer approximately 62,000 euros to his account in Italy and \$218,000 to his account in the United States. The account was closed in October 2012.
28. Bank Coop opened and maintained 15 accounts held in the name of 14 non-U.S. entities, including a Panama corporation and a Hong Kong corporation, while knowing that U.S. taxpayers were the true beneficial owners of the accounts held by these non-U.S. entities.
29. Of those 15 accounts, seven were handled by the same external asset manager, which was based in the United States. In or about 2009, the director of the firm moved to Switzerland and established a Swiss-based asset management firm. Four accounts were Swiss limited liability corporations ("LLC"), beneficially owned by a single U.S. LLC. These four accounts were all handled by the same designated relationship manager. Two of the 15 accounts were held by the same structure with the same beneficial owner and serviced by the same relationship manager.
30. In at least one instance, the Bank was aware that a U.S. person was the true beneficial owner of an account held by a Panama entity, but accepted from the entities' directors an IRS Form W-8BEN, signed by a director of the entity, that falsely declared that the beneficial owner was not a U.S. taxpayer. The director who signed the Form W-8

² A crossed check can only be deposited in a bank account and (unlike a bearer check) cannot be cashed over a bank's counter.

BEN was also the director of the external asset manager that introduced the client to the Bank.

31. Up through July 2009, Bank Coop accepted instructions from at least 30 U.S. taxpayer clients not to invest in U.S. securities and not to disclose their names to U.S. tax authorities.
32. In one instance, married U.S. citizens and residents, upon opening a numbered account in August 2006, specifically declined to authorize the Bank to disclose their names to U.S. tax authorities and, in so doing, acknowledged to the Bank that they would not hold or invest in U.S. securities. The account was closed in December 2010. Between January 2009 and December 2010, the Bank, at the clients' request, transferred \$1,055,500 in cash and securities to accounts held at the Bank by two relatives. During that same time frame, the Bank, again at the clients' request, transferred \$2,100,000 to an account held at the Bank by a Liechtenstein foundation, of which a third relative was the beneficial owner.
33. In another instance, a client, who was a dual Croatian and U.S. citizen, in 2000 specifically declined to authorize the Bank to disclose her name to U.S. tax authorities and, in so doing, acknowledged to the Bank that she would not hold or invest in U.S. securities. In 2003, the client explained to her relationship manager that she would not sign a Form W-9 because her account was not declared in the United States. In April 2009, the client visited the Bank and expressed concern that her Swiss assets might be disclosed to the United States tax authorities. Her relationship manager told her that he would inform her if there were any news related to Swiss bank secrecy. In September 2009, the client transferred \$330,000 and securities with a value of approximately \$135,000 from a Category 1 bank to her account at Bank Coop. In August 2011, the client signed a U.S. person waiver acknowledging that the Bank had the right to disclose her account to the IRS. At the same time, she instructed her relationship manager to sell her securities and transfer the proceeds (\$210,000) to a U.S. Related Account held by her brother at the Bank.
34. During the Applicable Period, the Bank opened accounts for approximately eight U.S. residents who transferred assets from other Swiss financial institutions, including UBS and Credit Suisse AG, knowing that it was likely that the assets were undeclared.

V. Bank Coop's Cooperation and Other Mitigating Factors

35. Prior to and throughout the Applicable Period, Bank Coop undertook a series of measures and reforms specifically intended to ensure that its clients complied with their applicable U.S. tax and reporting obligations.
36. In early 2009, Bank Coop's executive committee imposed restrictions on U.S. customer accounts. The Bank's policy was to prohibit new accounts for customers domiciled in the United States. Further, any customer who permanently relocated to the United States was required to close his or her account. After March 2009, the Bank unwittingly opened approximately ten accounts for U.S.-domiciled clients. The Bank was unaware that these accounts related to U.S.-domiciled clients when they

were opened because none of the clients declared on his or her account opening forms the existence of a domicile in the United States. Another account was opened for a client domiciled in Germany who relocated to the United States after the account was opened.

37. In April 2012, the Bank's executive committee decided that all existing U.S. - domiciled clients would be exited, with the exception of U.S.-domiciled clients with mortgages for real estate properties located in Switzerland or clients who only temporarily resided in the United States. U.S. clients domiciled outside the United States were not exited, but had to provide a Form W-9 and a written confirmation that they were in compliance with their U.S. tax obligations.
38. The Bank has successfully closed nearly all of its accounts held by U.S.-domiciled clients and U.S. clients who did not provide the documentation required by the Bank's policy.
39. Bank Coop has fully cooperated with the Department of Justice, providing all relevant and requested information and documents as part of its participation in the Swiss Bank Program. In addition, the Bank's employees and board members have not objected to the disclosure of their names and roles at the Bank.
40. Specifically, Bank Coop, with the assistance of its counsel and forensic investigators, and in compliance with Swiss privacy laws has:
 - a. conducted an internal investigation which included reviews of customer account files and correspondence, analysis of relevant policies, and email searches;
 - b. described the structure, operation, and supervision of its U.S. cross-border business, including the names of relevant individuals and entities;
 - c. identified additional accounts held by U.S. taxpayer clients and, where appropriate, encouraged them to declare their accounts to the IRS, leading to over 100 U.S. clients entering into an announced IRS Offshore Voluntary Disclosure Program; and
 - d. sought and obtained Swiss bank secrecy waivers for 221, or approximately 60 percent, of its U.S. Related Accounts, and has provided customer names for those accounts to the U.S. authorities.

EXHIBIT B TO NON-PROSECUTION AGREEMENT

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

I, Brigitte Matti, acting corporate secretary of Bank Coop 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 December 8, 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 Swiss counsel in connection with this matter; and (iii) unanimously voted to enter into the Non-Prosecution Agreement, including to pay a sum of USD 3,223,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Hanspeter Ackermann, CEO, and Kari Schmid, Head Legal & Compliance, both registered in the Commercial Register of the Canton of Basel 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 of directors 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 Aaron R. Marcu, Freshfields Bruckhaus Deringer US LLP is hereby authorized to sign the Non-Prosecution Agreement in his capacity as the Bank's U.S. counsel.

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

IN WITNESS WHEREOF, I have executed this Certification this 9th day of December 2015.



Brigitte Matti
Secretary