



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:GEVanHoey  
5-16-4683  
2014200691

November 30, 2015

Thomas C. Green  
Sidley Austin LLP  
1501 K Street NW  
Washington, DC 20005

Re: Cornèr Banca SA  
DOJ Swiss Bank Program – Category 2  
Non-Prosecution Agreement

Dear Mr. Green:

Cornèr Banca SA submitted a Letter of Intent on December 20, 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 Cornèr Banca in its Letter of Intent and information provided by Cornèr Banca pursuant to the terms of the Swiss Bank Program. The Swiss Bank Program is incorporated by reference herein in its entirety in this Agreement.<sup>1</sup> Any violation by Cornèr Banca of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute Cornèr Banca 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 Cornèr Banca during the Applicable Period (the "conduct"). Cornèr Banca 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 Cornèr Banca and does not apply to any other entities or to any individuals. Cornèr Banca 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. Cornèr Banca enters into this Agreement pursuant to the authority

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

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, Cornèr Banca agrees to pay the sum of \$5,068,000 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 Cornèr Banca. This payment is in lieu of restitution, forfeiture, or criminal fine against Cornèr Banca for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Cornèr Banca with respect to the conduct described in this Agreement, unless the Tax Division determines Cornèr Banca has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Cornèr Banca 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 Cornèr Banca has violated any provision of this Agreement. Cornèr Banca 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. Cornèr Banca agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Cornèr Banca further agrees that no portion of the penalty that Cornèr Banca has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Cornèr Banca 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) Cornèr Banca'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 Cornèr Banca 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) Cornèr Banca'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) Cornèr Banca'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 Cornèr Banca 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) Cornèr Banca's retention of a qualified independent examiner who has verified the information Cornèr Banca disclosed pursuant to Part II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Cornèr Banca 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 Cornèr Banca, 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, Cornèr Banca 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

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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 Cornèr Banca 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 Cornèr Banca'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 Cornèr Banca; 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.

Cornèr Banca further agrees to undertake the following:

1. The Tax Division has agreed to specific dollar threshold limitations for the initial production of transaction information pursuant to Part II.D.2.b.vi of the Swiss Bank Program, as set forth in subparagraph (c) on pages 2-3 of this Agreement. Cornèr Banca agrees that, to the extent it has not provided complete transaction information, it will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. Cornèr Banca 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 Cornèr Banca.
3. Cornèr Banca 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

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and guidelines, and will provide periodic reporting upon request of the Tax Division if unable to close any dormant accounts within that time period. Cornèr Banca 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, Cornèr Banca will promptly proceed to follow the procedures described above in paragraph 2.

4. Cornèr Banca 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.

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

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

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

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*Caroline D. Ciruolo*  
for CAROLINE D. CIRAOLO  
Acting Assistant Attorney General  
Tax Division

12.10.15  
DATE

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

10 December 2015  
DATE

*Gregory E. Van Hoey*  
GREGORY E. VAN HOEY  
Trial Attorney

12-10-2015  
DATE

*Gregory E. Van Hoey*  
for MICHAEL G. PAHL  
Trial Attorney

12-10-2015  
DATE

AGREED AND CONSENTED TO:  
CORNÈR BANCA SA

By: *Paolo Cornaro*  
PAOLO CORNARO  
Chief Executive Officer

03.12.2015  
DATE

By: *Christian Torriani*  
CHRISTIAN TORRIANI  
Executive Vice President

3.12.2015  
DATE

APPROVED:  
*Thomas C. Green*  
THOMAS C. GREEN  
Sidley Austin LLP

December 7, 2015  
DATE

**EXHIBIT A TO CORNÈR BANCA SA  
NON-PROSECUTION AGREEMENT**

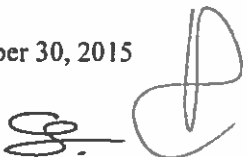
**STATEMENT OF FACTS**

**INTRODUCTION**

1. Cornèr Banca SA ("Cornèr" or the "Bank") is a corporation organized under the laws of Switzerland. Founded in 1952, the Bank is headquartered in Lugano, Switzerland, with branch offices in Chiasso, Geneva, Locarno, and Zurich. As of December 31, 2014, Cornèr had over 1,000 employees, over 28,000 active accounts worldwide, and assets under management of approximately 6.5 billion Swiss francs.
2. Cornèr offers a full range of traditional banking services, but it specializes in private banking, payment cards, and securities trading. For 40 years, the Bank has offered both credit cards and prepaid debit cards under its "CornèrCard" brand name to its clients and clients of other financial institutions.
3. Cornèr has two wholly owned affiliates: Cornèr Banque (Luxembourg) SA, based in Luxembourg, and Cornèr Bank (Overseas) Ltd., based in the Bahamas. Cornèr established Cornèr Banque (Luxembourg) in 1989 primarily to serve that local market and manage the Bank's group treasury, in order to segregate fiduciary deposits. Cornèr established Cornèr Bank (Overseas) in 1996 primarily to serve European and Swiss private banking clients.
4. Since at least 1962, Cornèr has provided financial accounts to U.S. citizens, U.S. permanent legal residents, and U.S. resident aliens (collectively, "U.S. persons").

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

5. U.S. persons have an obligation to report to the Internal Revenue Service ("IRS") all income earned from foreign financial accounts on their U.S. Individual Income Tax Returns (IRS Form 1040) and to pay the taxes due on that income. Since 1976, U.S. persons have also had an obligation to report on Schedule B of Form 1040 whether they have a financial interest in, or signature authority over, a foreign financial account by checking "Yes" or "No" in the appropriate box and identifying the country where they maintain the account.
6. Since 1970, U.S. persons with a financial interest in, or signature authority over, one or more foreign financial accounts with an aggregate value of more than \$10,000 at any time during a particular year have been required to file, with the U.S. Department of the Treasury, a Report of Foreign Bank and Financial Accounts (FinCen Form 114, formerly known as Form TD F 90-22.1), also known as an "FBAR."
7. Since 1935, Switzerland has maintained criminal laws that ensure the secrecy of client relationships at Swiss banks. While Swiss law permits the exchange of information in response to administrative requests made pursuant to a tax treaty with the United States and certain legal requests in cases of tax fraud, Swiss law otherwise prohibits the disclosure of identifying information without client authorization. Because of the





secrecy guarantee that they created, these Swiss criminal provisions have historically enabled U.S. clients to conceal their Swiss bank accounts from U.S. authorities.

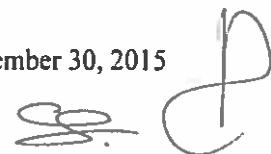
8. On December 20, 2013, Cornèr entered the United States Department of Justice's Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Swiss Bank Program") as a Category 2 bank.

#### THE BANK'S U.S. CROSS-BORDER BUSINESS

9. From August 1, 2008 through December 31, 2014 (the "Applicable Period"), Cornèr held 383 U.S. Related Accounts<sup>1</sup> with over \$351 million in assets.
10. Cornèr assisted certain of its U.S. clients to evade their U.S. tax obligations, file false federal tax returns with the IRS, and hide overseas assets from the IRS.
11. Cornèr knew that U.S. persons had a duty under U.S. law to report their income to the IRS and to pay taxes on that income, including all income earned in accounts maintained by Cornèr in Switzerland. Despite this knowledge, Cornèr opened, maintained, and serviced accounts for U.S. persons that it knew were likely not declared to the IRS or the U.S. Department of the Treasury as required by U.S. law.
12. Many accounts that Cornèr opened for U.S. persons were not, in fact, timely declared on Forms 1040 or FBARs, often for multiple years.
13. Prior to 2008, when deciding whether to accept U.S. persons as clients, Cornèr applied the same procedures that it applied to all of its prospective clients. These procedures were based on Swiss banking laws and regulations, including know-your-client ("KYC") and anti-money laundering ("AML") rules. These procedures also included a "seniority principle" that required a private banker to obtain the approval of his or her direct supervisor in order to open a new account.
14. During the Applicable Period, 59 private bankers or "relationship managers" were responsible for managing at least one U.S. Related Account at Cornèr. These individuals served as the primary contact persons for the Bank's U.S. clients or their external asset managers. Most of these relationship managers ceased handling U.S. Related Accounts after March 2009.
15. U.S. Related Accounts were widely dispersed throughout Cornèr's headquarters and branch offices. In most cases, U.S. clients were assigned to a relationship manager upon arrival. But in some cases U.S. clients came to Cornèr because of a personal relationship with a specific relationship manager.
16. During the Applicable Period, Cornèr provided its U.S. clients with the option to request that the Bank retain all mail related to their financial accounts in exchange for a standard service fee. Cornèr understood that providing such "hold-mail" agreements allowed U.S. persons to keep evidence of their accounts outside of the

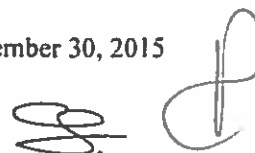
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<sup>1</sup> Capitalized terms not otherwise defined in this Statement of Facts have the meanings set forth in the Swiss Bank Program issued on August 29, 2013.

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United States in order to conceal assets and income from the IRS. During the Applicable Period, there were 158 U.S. Related Accounts with hold-mail agreements at Cornèr.

17. During the Applicable Period, Cornèr provided its U.S. clients with the option to request "numbered" accounts (including "conventional-name" or "code-name" accounts) in exchange for a standard service fee. Holders of these accounts were permitted to use code names in all of their correspondence addressed to the Bank and agreed that correspondence from the Bank addressed to the code names would be considered as addressed to the clients. For these accounts, the account holder's name was not visible to most employees on the Bank's electronic records system, but rather only to a limited number of Bank officials.
18. Examples of code names used by U.S. persons for their numbered accounts at Cornèr include "Dumbledore," "Windstopper," "Rocking," and "Anticipation."
19. Cornèr understood that providing numbered accounts and permitting code-name correspondence allowed U.S. persons to keep their identities secret from U.S. authorities in order to conceal assets and income from the IRS. During the Applicable Period, there were 96 numbered or code-name U.S. Related Accounts at Cornèr.
20. Until 2009, Cornèr communicated with its U.S. clients most often by telephone, but also by fax and e-mail. Absent a hold-mail agreement, Cornèr also sent bank statements and other paper correspondence to its U.S. clients.
21. Beginning in 2001, Cornèr provided e-banking services to its private banking and commercial clients, including U.S. clients, which allowed them to view their account information over the internet from computers located worldwide. In 2005, Cornèr expanded those services to include online payment execution and funds transfers. In March 2009, Cornèr terminated all e-banking services for its U.S.-resident clients.
22. During the Applicable Period, Cornèr maintained correspondent accounts at a U.S. bank to facilitate certain transactions for its clients – namely, conducting wire transfers in U.S. dollars and collecting checks issued in U.S. dollars. During the Applicable Period, such transfers included transactions involving U.S. Related Accounts.
23. During the Applicable Period, U.S. persons held 1,312 CornèrCard accounts at the Bank. Twenty-four of those qualified as U.S. Related Accounts by having a balance exceeding \$50,000 at the end of any month, and the total of the transactions on those 24 cards was approximately \$5 million during the Applicable Period. The Bank ceased issuing CornèrCards to U.S. residents after April 2009. Use of CornèrCards by U.S. persons facilitated their access to and use of any undeclared funds on deposit at the Bank and at other Swiss banks.
24. As of August 1, 2008, Cornèr had 19 U.S. Related Accounts held in the names of "structures" – that is, entities such as corporations, foundations, or trusts – but beneficially owned by U.S. persons. During the Applicable Period, an additional 38 such accounts were opened at Cornèr. The Bank knew, or had reason to know, that many of these structures were used by U.S. clients to help conceal their identities

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from the IRS. The structures were organized under the laws of various jurisdictions, including the Bahamas, Belize, British Virgin Islands, Jersey, Liberia, Liechtenstein, Marshall Islands, Netherlands Antilles, Panama, St. Kitts and Nevis, St. Vincent and the Grenadines, and Uruguay.

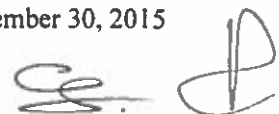
25. The Bank itself did not assist U.S. persons in creating structures. However, Cornèr Bank (Overseas), the Bank's Bahamian affiliate, created International Business Corporations (IBCs) organized under the laws of the Bahamas. Although these IBCs were created primarily for European and Swiss private banking clients, before 2008 Cornèr Bank (Overseas) created four IBCs that opened four accounts at Cornèr that were beneficially owned, in whole or in part, by three U.S. persons.

#### **TRAVEL BY BANK PERSONNEL TO VISIT U.S. CLIENTS**

26. Between 2001 and 2008, Cornèr relationship managers traveled to the United States on at least ten occasions to visit existing Bank clients. Most of these trips were to New York City, including regular visits to a U.S. client with maximum account values at the Bank totaling approximately \$80 million during the Applicable Period.
27. All of the U.S. client visits were approved by Cornèr management. Bank executives accompanied relationship managers on several of the trips to the United States and also visited with U.S. clients.
28. Matters discussed during these client visits included account performance, account fees, account investment positions, alternative investments, increasing client deposits at the Bank, client satisfaction with Cornèr, how to send account funds to the United States to purchase assets, and referrals of new clients to the Bank by existing clients.
29. Cornèr relationship managers also met with holders of U.S. Related Accounts in countries other than the United States and Switzerland – for example, in Italy.

#### **THE BANK'S COLLABORATION WITH THIRD-PARTY REFERRAL SOURCES**

30. During the Applicable Period, Cornèr maintained 69 U.S. Related Accounts for U.S. persons who had been referred to the Bank by several third parties, including attorneys and external asset managers, who were professionally engaged in referring clients to financial institutions. In return for the referrals, Cornèr paid fees to these third-party referral sources. The fee arrangements were based on a percentage, generally between 25% to 50%, of the revenues generated by an account from commissions on trading of securities and other investments, custody charges on assets held, and commissions related to the volume of account transactions.
31. Of these 69 accounts, 49 were opened during the Applicable Period, 51 were held by structures, and 35 were referred to Cornèr by two particular third parties.
32. One of these third parties referred 14 accounts to Cornèr during the Applicable Period. All of these accounts were held by Panamanian foundations but beneficially owned by U.S. persons, were opened at Cornèr in autumn 2009, and were initially funded via wire transfers from accounts held at another Swiss bank.



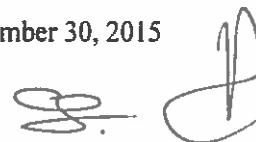
33. In June 2011, Cornèr sent letters to all of its U.S. clients who had not previously provided the Bank with Forms W-9 requesting that the clients provide those forms. Cornèr did not receive Forms W-9 for any of these 14 accounts. In autumn 2011, an attorney associated with this third-party referral source closed all of those accounts via wire transfers to an account at Swiss bank UBS AG.

#### **THE BANK'S SUBVERSION OF ITS QI AGREEMENT WITH THE IRS**

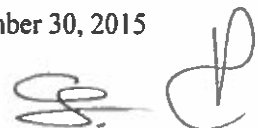
34. In January 2001, Cornèr entered into a Qualified Intermediary ("QI") Agreement with the IRS. The QI regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution regarding U.S. securities. The QI Agreement was designed to help ensure that non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons were properly paying U.S. tax – in each case, with respect to U.S. securities held in an account with the QI.
35. The QI Agreement expressly recognized that a non-U.S. financial institution (such as Cornèr) 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 had to 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), in which case the client's identity would remain undisclosed. 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.
36. From 2001 until April 2011, Cornèr relationship managers assisted U.S. persons in executing waiver forms that directed the Bank not to acquire U.S. securities in their accounts. On these forms, these U.S. persons checked a box, in connection with U.S. withholding and reporting regulations, declaring "I do not authorize disclosure of my name" rather than a box declaring "I shall provide you with a validly signed Form W-9. I authorize you to deliver said Form W-9 to your U.S. custodian."
37. Cornèr knew that the purpose and effect of these forms was to avoid disclosing the identities of the U.S. persons to the IRS under the QI Agreement.

#### **THE BANK'S FLAWED RESPONSE TO THE U.S. GOVERNMENT'S INVESTIGATION OF UBS AG**

38. In 2008, UBS AG publicly announced that it was the target of a criminal investigation by the IRS and the U.S. Department of Justice. UBS also announced that it would be exiting its U.S. cross-border business and no longer accepting U.S. clients.
39. Cornèr became aware of the UBS investigation in or around June 2008.

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40. In August 2008, Cornèr's executive board decided that there would be no changes to the Bank's existing U.S. Related Accounts at that time, based on the board's assessment that the Bank had not engaged in the same type of conduct as had UBS. The board also decided that the Bank would continue accepting new U.S. clients, but only after review by the Bank's compliance department and approval by an executive board member. The board also decided at that time that the Bank would not accept any new U.S. clients coming from UBS.
41. However, after August 2008, Cornèr accepted five new U.S. Related Accounts from UBS. The Bank had reason to know that some of these accounts were undeclared. Also, after August 2008, the Bank accepted seven new U.S. Related Accounts (including one of the above-mentioned UBS accounts) without approval by an executive board member.
42. Since 2008, several Swiss banks besides UBS have publicly announced that they were or are the targets of similar criminal investigations. UBS and these other targeted Swiss banks are collectively called "Category 1 banks" in the Swiss Bank Program.
43. After August 1, 2008, Cornèr accepted 24 new U.S. Related Accounts that were funded by transfers from Category 1 banks other than UBS. The Bank knew or had reason to know that some of these accounts were undeclared.
44. On February 18, 2009, the U.S. Department of Justice and UBS filed a deferred prosecution agreement in the U.S. District Court for the Southern District of Florida in which UBS admitted that its U.S. cross-border business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared financial accounts. On the same day, the Swiss Financial Markets Supervisory Authority ("FINMA") also published a report on its investigation into the U.S. cross-border business of UBS.
45. Following these events, Cornèr reviewed its procedures to ensure that there was no investment advice or other communications with U.S. clients in the United States by so-called "jurisdictional means."
46. In March 2009, Cornèr's executive board prohibited Bank employees from contacting U.S.-resident clients by any means, including telephone, e-mail, and e-banking. The board also ordered that all accounts managed at the Lugano headquarters office that were beneficially owned by U.S. residents would be transferred to one relationship manager on the Bank's "international team" who spoke English and had been instructed by the Bank on the regulatory requirements of the U.S. Securities and Exchange Commission ("SEC").
47. However, in order to satisfy clients who wished to maintain relationships with their existing relationship managers, the Bank did not transfer all U.S.-resident accounts at the Lugano office to this relationship manager, and U.S. Related Accounts managed at the Bank's other offices were not transferred to that relationship manager.
48. In sum, Cornèr accepted 29 new U.S. Related Accounts between August 1, 2008, and February 28, 2009, and 141 new U.S. Related Accounts after February 28, 2009.

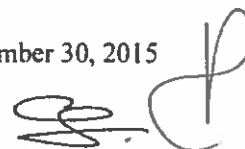
Handwritten signatures in black ink, appearing to be initials or a name, located at the bottom right of the page.

### THE BANK'S SUBSEQUENT REMEDIAL MEASURES

49. In April 2011, Cornèr's executive board decided to maintain existing U.S. Related Accounts and accept new U.S. Related Accounts only if the U.S. client provided the Bank with a signed Form W-9.
50. In June 2011, Cornèr sent letters to all of its U.S. clients who had not previously provided Forms W-9 and requested that they do so. These letters also alerted the clients to the existence of the 2011 IRS Offshore Voluntary Disclosure Initiative. In September 2011, Cornèr sent follow-up letters to all of the U.S. clients who had still not provided Forms W-9 or closed their accounts.
51. For those U.S. clients who did not provide a Form W-9 by the end of 2011, the Bank either closed the account or placed it into dormant status.
52. In December 2011, Cornèr's executive board decided that CornèrCards would only be offered to existing and new U.S. clients who provided the Bank with a signed Form W-9. The Bank subsequently sent letters to its U.S. holders of CornèrCards requesting Forms W-9, and the Bank closed the 532 CornèrCard accounts of those clients who did not provide Forms W-9.
53. In July 2012, Cornèr's executive board decided that, absent the board's approval, the Bank would not accept any new accounts for U.S.-resident clients.
54. In October 2013, after the announcement of the Swiss Bank Program, Cornèr's executive board decided to suspend the opening of any new U.S. Related Accounts at the Bank until further notice.
55. In November and December 2013, after the announcement of the Swiss Bank Program, Cornèr ensured that all of its U.S. Related Accounts held at least one U.S. security so that the accounts would be reported to the IRS on Forms 1099.

### SUSPICIOUS ACCOUNT CLOSURES

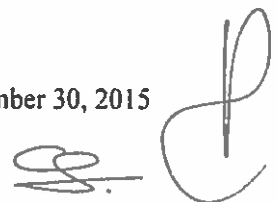
56. Until August 2013, Cornèr did not have a specific policy regarding transferring funds upon the closing of U.S. Related Accounts, though in 2011 Bank management had informally instructed relationship managers not to close accounts in ways that would conceal funds. After August 2013, Cornèr refused to release funds from U.S. Related Accounts without evidence that the account was declared to the IRS.
57. Although many closures of U.S. Related Accounts were uncontroversial, a number of U.S. clients exited the Bank under circumstances that likely facilitated the continued concealment of the assets from the IRS. These instances included cash withdrawals, transfers to other Swiss or non-U.S. banks, and transfers to non-U.S. Related Accounts at Cornèr.
58. In one instance, after Cornèr sent a letter of the type described in paragraph 50 to the U.S.-resident holders of a U.S. Related Account, the account holders did not provide Forms W-9 to the Bank. Instead, they closed the account by withdrawing approximately 55,000 British pounds in cash over the course of three days in August 2011.



59. In two instances, clients closed U.S. Related Accounts they held at the Bank by transferring funds to accounts they held at Comèr Bank (Overseas), the Bank's Bahamian affiliate. The clients' status as U.S. persons was not clear at the times of the transfers.
60. In another instance, after Comèr sent a letter of the type described in paragraph 50 to the holder of a U.S. Related Account, the account holder did not provide a Form W-9 to the Bank. Instead, the account holder closed the account in July 2011 by transferring over \$180,000 to a non-U.S. Related Account at Comèr held by the account holder's family member.

#### **THE BANK'S COOPERATION THROUGH THE SWISS BANK PROGRAM**

61. Throughout its participation in the Swiss Bank Program, Comèr has committed to providing full cooperation to the U.S. government and has made timely and comprehensive disclosures regarding its U.S. cross-border business. Specifically, the Bank, with the assistance of U.S. and Swiss counsel, and in compliance with Swiss privacy laws, has:
  - a. conducted an internal investigation that included, among other things, interviews of key current and former Bank personnel; review of client account files, relationship manager notes, and correspondence; analysis of relevant management policies, employee directives, and board meeting minutes; and searches of e-mail accounts;
  - b. described in detail the structure, operation, and supervision of its U.S. cross-border business, including the names of relevant individuals and entities;
  - c. provided information concerning U.S. Related Accounts held at the Bank during the Applicable Period sufficient to make treaty requests to the Swiss government for the account records;
  - d. sought and obtained client waivers of Swiss bank secrecy for U.S. Related Accounts; and
  - e. encouraged existing and prior holders of U.S. Related Accounts to disclose their accounts to the IRS through the Offshore Voluntary Disclosure Program that began in January 2012.

A handwritten signature in black ink, consisting of a stylized 'S' followed by a large, looping flourish.

## EXHIBIT B TO NON-PROSECUTION AGREEMENT


### Certificate of Corporate Resolution of the Board of Directors of Cornèr Banca SA

We, Giancarlo Viscardi and Alberto Cameroni, acting as Chairman and Secretary of the Board, respectively, of Cornèr Banca 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 an extraordinary meeting held on Thursday, December 3, 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 and U.S. counsel in connection with this matter; and (iii) unanimously voted to enter into the Non-Prosecution Agreement, including to pay the sum of USD 5,068,000 (Five Million Sixty-eight Thousand US Dollars) to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Paolo Comaro, Chief Executive Officer, and Christian Torriani, Executive Vice President, both registered in the Commercial Register of the Canton of Ticino as having joint signatory authority, are hereby authorized (i) to jointly execute the Non-Prosecution Agreement on behalf of the Bank in such form as reviewed by the Board of Directors; 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 Thomas C. Green, Sidley Austin LLP, is hereby authorized to sign the Non-Prosecution Agreement in his capacity as the Bank's U.S. counsel.

We 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, we have executed this Certification this 3<sup>rd</sup> day of December 2015.

  
\_\_\_\_\_  
Giancarlo Viscardi  
Chairman

  
\_\_\_\_\_  
Alberto Cameroni  
Secretary of the Board