



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJSawyer
5-16-4666
2014200672

December 17, 2015

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

Re: Banque Cantonale du Valais
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Mr. Robinson:

BANQUE CANTONALE DU VALAIS 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 BANQUE CANTONALE DU VALAIS in its Letter of Intent and information provided by BANQUE CANTONALE DU VALAIS 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 BANQUE CANTONALE DU VALAIS of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute BANQUE CANTONALE DU VALAIS 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 BANQUE CANTONALE DU VALAIS during the Applicable Period (the "conduct"). BANQUE CANTONALE DU VALAIS 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 BANQUE CANTONALE DU VALAIS and does not apply to any other entities or to any

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

individuals. BANQUE CANTONALE DU VALAIS 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. BANQUE CANTONALE DU VALAIS 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, BANQUE CANTONALE DU VALAIS agrees to pay the sum of \$2,311,000 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 BANQUE CANTONALE DU VALAIS. This payment is in lieu of restitution, forfeiture, or criminal fine against BANQUE CANTONALE DU VALAIS for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from BANQUE CANTONALE DU VALAIS with respect to the conduct described in this Agreement, unless the Tax Division determines BANQUE CANTONALE DU VALAIS has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. BANQUE CANTONALE DU VALAIS 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 BANQUE CANTONALE DU VALAIS has violated any provision of this Agreement. BANQUE CANTONALE DU VALAIS 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. BANQUE CANTONALE DU VALAIS agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. BANQUE CANTONALE DU VALAIS further agrees that no portion of the penalty that BANQUE CANTONALE DU VALAIS has agreed to pay to the Department under the terms of this Agreement will serve as a basis for BANQUE CANTONALE DU VALAIS 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) BANQUE CANTONALE DU VALAIS'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 BANQUE CANTONALE DU VALAIS 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) BANQUE CANTONALE DU VALAIS'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) BANQUE CANTONALE DU VALAIS'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 BANQUE CANTONALE DU VALAIS 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) BANQUE CANTONALE DU VALAIS's retention of a qualified independent examiner who has verified the information BANQUE CANTONALE DU VALAIS disclosed pursuant to Part II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, BANQUE CANTONALE DU VALAIS 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 BANQUE CANTONALE DU VALAIS, 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, BANQUE CANTONALE DU VALAIS 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 BANQUE CANTONALE DU VALAIS 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 BANQUE CANTONALE DU VALAIS'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 BANQUE CANTONALE DU VALAIS; 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.

BANQUE CANTONALE DU VALAIS further agrees to undertake the following:

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

2. BANQUE CANTONALE DU VALAIS 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 BANQUE CANTONALE DU VALAIS.
3. BANQUE CANTONALE DU VALAIS 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. BANQUE CANTONALE DU VALAIS 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, BANQUE CANTONALE DU VALAIS will promptly proceed to follow the procedures described above in paragraph 2.
4. BANQUE CANTONALE DU VALAIS 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.

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

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 BANQUE CANTONALE DU VALAIS, notwithstanding the expiration of the statute of limitations between such date and the commencement of such prosecution. For any such prosecutions, BANQUE CANTONALE DU VALAIS 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 BANQUE CANTONALE DU VALAIS's counsel.

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

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

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

[Signatures to Follow on Next Page]



CAROLINE D. CIRAILO
Acting Assistant Attorney General
Tax Division

12/23/2015
DATE



THOMAS J. SAWYER
Senior Counsel for International Tax Matters

23 December 2015
DATE

AGREED AND CONSENTED TO:
BANQUE CANTONALE DU VALAIS

By: 

JEAN-DANIEL PAPILOUD
Chairman, Board of Directors

December 22, 2015
DATE

By: 

DANIEL ROSSI
Member of the Executive Board

December 22, 2015
DATE

APPROVED:


KEITH D. KRAKAUR
Skadden, Arps, Slate, Meagher & Flom LLP

December 22, 2015
DATE


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

December 22, 2015
DATE

**EXHIBIT A TO BANQUE CANTONALE DU VALAIS
NON-PROSECUTION AGREEMENT**

STATEMENT OF FACTS

I. Background

1. Banque Cantonale du Valais (“the Bank”), founded in 1917, is a mid-sized regional bank with approximately 517 employees headquartered in the Canton of Valais, Switzerland. It operates 67 offices and branches in the five regions of Valais.

2. The Bank was founded by the government of the Canton of Valais to provide banking services to assist in the development of the regional economy and to provide credit services to residents of the Canton of Valais. As a cantonal bank, the Canton of Valais is the Bank’s majority shareholder, and pursuant to cantonal law, the Canton of Valais guarantees all of the Bank’s liabilities. At all times during the Applicable Period,¹ Banque Cantonale du Valais had no subsidiaries, offices, or branches outside of the Canton of Valais.

3. Banque Cantonale du Valais focuses on local retail and corporate banking services, mortgages on real estate in the Canton of Valais, and commercial lending to local businesses. The Bank’s core client base consists of local residents and small and medium businesses in the Canton of Valais.

4. Banque Cantonale du Valais also provides private banking, and that service is open to clients with 200,000 Swiss francs or more in investable assets deposited with the Bank. Approximately six percent of its current active client relationships are serviced in its private banking unit.

II. United States Income Tax and Reporting Obligations

5. United States 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, United States citizens, resident aliens, and legal permanent residents have had an obligation to report to the Internal Revenue Service (“IRS”) on 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, United States 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 have been required to file with the Treasury Department a Report of Foreign Bank and Financial Accounts, FinCEN Form 114 (the "FBAR," formerly known as Form TD F 9022.1). The FBAR must be filed on or before June 30 of the following year.

7. An "undeclared account" was a financial account owned by an individual subject to United States tax and maintained in a foreign country that had not been reported by the individual account owner to the United States government on an income tax return, FBAR, or otherwise.

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 United States clients to conceal their Swiss bank accounts from United States authorities.

9. In or about 2008, Swiss bank UBS AG ("UBS") publicly announced that it was the target of a criminal investigation by the Internal Revenue Service and the Department of Justice and that it would be exiting and no longer accepting certain United States 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 United States clients in opening and maintaining undeclared assets and income from the IRS. Since that time, 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 United States clients (UBS and the other targeted Swiss banks are collectively referred to as "Category 1 banks"). The Category 1 banks' cases have been closely monitored by banks operating in Switzerland, including Banque Cantonale du Valais, since at least August 2008.

III. Qualified Intermediary Agreement and Its Role in Non-Compliant U.S. Related Accounts

10. In 2001, Banque Cantonale du Valais entered into a Qualified Intermediary Agreement with the IRS. The Qualified Intermediary regime provided a comprehensive framework for United States information reporting and tax withholding by a non-U.S. financial institution with respect to United States securities. The Qualified Intermediary Agreement was designed to help ensure that, with respect to United States securities held in an account at the Bank, non-United States persons were subject to the proper United States withholding tax rates and that United States persons properly paid United States tax.

11. The Qualified Intermediary Agreement took account of the fact that Banque Cantonale du Valais, like other Swiss banks, was prohibited by Swiss law from disclosing the identity of an account holder. If an account holder wanted to trade in United States securities

without being subjected to mandatory United States tax withholding, the agreement required the Bank to obtain the consent of the account holder to disclose the client's identity to the IRS.

12. In the years following the signing of its Qualified Intermediary Agreement, Banque Cantonale du Valais's position was that it could service United States clients that it knew or had reason to believe were non-compliant with their United States tax obligations as long as the account did not trade or hold United States securities.

13. For example, an internal memorandum written to Banque Cantonale du Valais's board of directors in October 2009 had described that the Bank had 63 American clients whose accounts traded securities. But only seven of those 63 clients submitted Forms W-9 to the Bank that authorized income generated from those securities to be reported to the IRS. The other 56 American clients had not authorized their names to be disclosed to the IRS and, because of the Qualified Intermediary Agreement, "[t]he other clients [did] not hold any American securities."

14. With the knowledge that Swiss banking secrecy laws would prevent the Bank from disclosing their identities to the IRS absent any client or statutory authorization, certain U.S. clients of Banque Cantonale du Valais filed false U.S. Individual Income Tax Returns, Forms 1040, which failed to report their respective interest in their undeclared accounts and the related income. Certain United States clients also failed to file and otherwise report their undeclared accounts on FBARs.

IV. Overview of Banque Cantonale du Valais's U.S. Cross Border Business

15. During the Applicable Period, Banque Cantonale du Valais maintained 185 U.S. Related Accounts with a maximum aggregate value of approximately \$72 million. As of August 1, 2008, the Bank maintained 140 U.S. Related Accounts, with a maximum aggregate value of approximately \$60 million. After that date, the Bank opened 45 additional U.S. Related Accounts with a maximum aggregate value of approximately \$12 million.

16. Banque Cantonale du Valais was aware that United States taxpayers had a legal duty to report to the IRS – and pay taxes on – all their worldwide income, including income earned from accounts maintained in Switzerland. Despite being aware of this legal duty, the Bank failed to ensure that its United States clients were abiding by that duty when it accepted them as customers.

17. As a result, Banque Cantonale du Valais enabled some United States taxpayers to evade their United States tax and filing obligations, resulting in the filing of false income tax returns with the Internal Revenue Service and allowing United States taxpayers to hide offshore assets from the IRS.

18. For example, Banque Cantonale du Valais's oldest relationship with a United States taxpayer involved an account that had been open for more than 25 years at the beginning of the Applicable Period with a maximum aggregate value of more than \$760,000. Prior to the time that the Bank signed its Qualified Intermediary in 2001, it requested that its account holders sign an IRS Form W-9 if they wished to continue to trade in United States securities. This accountholder, who lived in New York, signed a form declaring that "I am an American taxpayer

... [and I] prohibit the Bank from divulging my name and authorize it to sell in the course of the year 2000 all of my American securities held by the Bank. I take note of the fact that the Bank will not invest in American securities for me anymore.”

19. Banque Cantonale du Valais serviced its private banking clients with client relationship managers. Since it did not have a desk dedicated to servicing United States clients, it did not have client relationship managers who concentrated on United States clients. For example, as of December 31, 2008, the Bank’s U.S. Related Accounts were serviced by 38 different client relationship managers, and of the Bank’s largest twenty U.S. Related Accounts, twelve different client relationship managers serviced those accounts, with the exception of one account that had no dedicated client relationship manager but was instead assigned to a “service pool.” Banque Cantonale du Valais did not provide any financial incentives to its client relationship managers to solicit or acquire U.S. Related Accounts. In addition, United States persons were never part of the Bank’s marketing strategy and focus. Banque Cantonale du Valais never marketed its services in the United States, and its customer relationship managers never traveled to the United States in order to solicit or acquire clients or to market services.

V. Accounts in Focus

20. Banque Cantonale du Valais offered a variety of traditional Swiss banking services that could and did assist United States clients in concealing assets and income from the IRS. One such service was numbered or pseudonym accounts. For an annual fee, the Bank would allow the account holder to replace his or her identity with a code name or number on bank statements and other documentation sent to the client. The Bank described the target customers for this service as ones “looking for additional protection against indiscretions who wish to avoid revealing their identity and their business relations to the majority of persons working at the bank.” The Bank further noted that “a numbered relationship assures [the client] of the highest degree of discretion both inside and outside the bank.” Five U.S. Related Accounts were pseudonym accounts, and the majority of those were undeclared accounts.

21. In addition, for an annual fee, Banque Cantonale du Valais would hold all mail correspondence for a particular client at the Bank. Of the U.S. Related Accounts opened prior to the Applicable Period, 24 of them had requested hold mail services from the Bank. The overwhelming majority of these were undeclared accounts.

22. Banque Cantonale du Valais was aware of the publicity surrounding the investigation of the Swiss bank UBS and that many American clients of UBS were searching for other banks in Switzerland to hold their accounts. In August 2008, the Bank’s Head of Internal Auditing distributed a memorandum to senior management. He noted that, with respect to United States clients, “UBS is currently implementing ‘clean up’ measures,” and he warned that a number of external asset managers “are currently being requested to welcome these clients.” The Head of Internal Auditing noted that the situation presented a question for banks because these were “high-risk clients.” His memorandum advised the Bank’s senior management that Banque Cantonale du Valais “has already accepted US clients of this type or is at least in the process of accepting them.” He further questioned whether they “should accept these ex-UBS clients” and recommended that “the Bank should quickly review the strategy it intends to adopt.” In September 2008 the Bank’s legal department circulated a memorandum setting forth

conditions on which all American clients might be accepted, including those leaving UBS – namely that the Bank only open a new account if the American account holder was physically present at the Bank’s office, signed an IRS Form W-9, and confirmed that the income deposited with the Bank had been declared to the IRS. These conditions were intended to prevent the Bank from “falling into the trap of providing active assistance to tax evasion” and to ensure that the Bank “is not audited by the American authorities.”

23. After considering the warning of the Bank’s Head of Internal Auditing and the legal department memorandum, the Bank nonetheless opened 30 U.S. Related Accounts from UBS. The Bank now recognizes that the policies it implemented in 2008 were insufficient, because nearly half of those were undeclared accounts.

24. During the Applicable Period, the Bank had four U.S. Related Accounts held in the names of “structures” – that is, entities such as corporations, foundations, or trusts – but beneficially owned by United States persons. Two of those accounts were undeclared. The Bank knew, or had reason to know, that such structures were used by United States clients to help conceal their identities from the IRS. The structures were organized under the laws of various jurisdictions, including the British Virgin Islands.

25. Banque Cantonale du Valais continued to open 45 additional U.S. Related Accounts for U.S. taxpayers after the beginning of the Applicable Period, and nearly half of those were undeclared accounts.

26. Even though, as described in the next section, Banque Cantonale du Valais eventually required United States account holders to leave the bank if they had reason to believe that they were undeclared, the Bank allowed 16 of these account holders to make material cash withdrawals upon closing those accounts, all but two of which were undeclared accounts. By permitting cash withdrawals, the Bank was aware that it was facilitating the ability of these account holders to keep their assets hidden from the Internal Revenue Service. In fact, the Bank required clients making such cash withdrawals to sign an acknowledgment that the bank would not accept any responsibility for the risks encountered by such account holders. In addition to advising its clients of the risk “of an attack or theft,” Banque Cantonale du Valais required customers making such cash withdrawals to acknowledge “valid customs legislation with regard to the import and export of currency to a third country.” The Bank’s form warned that “If the undeclared currency is discovered during a check, the competent authorities will always be informed,” and the Bank required its customers to sign a statement reading, “I confirm that I have been informed that cash withdrawals may be regarded as acts of concealment in the field of money laundering or in the tax field and that I alone remain responsible for fulfilling my duties towards the tax authorities of my country of domicile.”

VI. Banque Cantonale du Valais’s Policies with Respect to Its U.S Cross-Border Business

27. Throughout the Applicable Period, the Bank implemented enhanced policies regarding United States persons. In particular, the Bank’s customer relationship managers never traveled to the United States to solicit clients or to provide clients with investment advice. Contact by Bank personnel with potential clients in the U.S. was prohibited. Since November

2009, clients domiciled in the United States were denied access to Banque Cantonale du Valais's e-banking facilities. These efforts to establish a program of compliance with United States law were undertaken in good faith.

28. In August 2008, following news of UBS exiting its United States clients, Banque Cantonale du Valais's Head of Internal Audit drafted a memo to senior management recommending that the Bank review its strategy for these clients. In September 2008, as a precaution against exited UBS clients, the Bank's legal department recommended to all employees by e-mail not to accept new United States clients unless the clients were physically present in Switzerland, provided a Form W-9 as evidence of their complying with U.S. tax laws, and provided a written confirmation that the assets held at the Bank were disclosed to the IRS.

29. In July 2009, Banque Cantonale du Valais's senior management informed all employees that no new United States clients were to be accepted, including clients who demonstrated that they complied with all of their United States reporting obligations. Moreover, the Bank set up a task force to investigate the situation and propose a way forward for its existing United States clients. The Task Force recommended actions to be taken by the Bank, and investigated whether the Bank's policies—including with regard to W-9's—were followed.

30. In November 2009, Banque Cantonale du Valais's board of directors memorialized a number of existing practices with regard to the cross-border business. The Bank refused to engage new business relationships with clients who were United States nationals or were domiciled in the United States, though it reserved the right to authorize relationships with United States persons who worked and lived in the Canton of Valais. The Bank also prohibited its client relationship managers from making telephone calls or using other means of electronic communication between Switzerland and other countries, including the United States. Further, the Bank terminated e-banking services for all existing and future clients living in the United States.

31. In September 2011, the Bank adopted an "Onshore Strategy for Switzerland," further memorializing the Bank's long-established cross-border practices. Banque Cantonale du Valais decided not to undertake any marketing or client acquisition measures abroad, nor would it undertake such measures from Switzerland. Employees were expressly forbidden to contact potential clients with a domicile abroad, and business travel to other countries was prohibited. The Bank expressly prohibited new business relationships with domiciliary companies, foundations, trusts, or other legal entities in which one or several beneficial owners were domiciled abroad.

32. In February 2012, Banque Cantonale du Valais decided to terminate its relationships with all United States clients, including those clients domiciled in Switzerland. United States clients with mortgages on property in the Canton of Valais were allowed to maintain those mortgages; however, these clients were only permitted to deposit cash up to 50,000 Swiss francs in the Bank for purposes of mortgage fees. The Bank also required its external asset managers to apply the Bank's on-shore growth strategy and adhere strictly to the "Cross-Border Banking" directives.

VII. Banque Cantonale du Valais's Cooperation with the Swiss Bank Program

33. The Bank entered the Department of Justice Swiss Bank Program and has cooperated with the Department and provided information about its United States cross-border business. Throughout its participation in the Swiss Bank Program, the Bank fully cooperated with the Department of Justice and has made comprehensive disclosures as required by the Program.

34. Following the Bank's efforts, the great majority of undeclared U.S. Related Accounts became compliant in the United States. For example, while the overwhelming majority of Banque Cantonale du Valais's hold mail customers described above in paragraph 21 were undeclared accounts, the great majority of those account holders came into compliance prior to 2015. Likewise, with respect to paragraphs 22 and 24, above, while approximately half of the former UBS clients initially had undeclared accounts, fewer than five ultimately failed to come into compliance, as did the great majority of all accounts opened after the beginning of the Applicable Period.

EXHIBIT B TO NON-PROSECUTION AGREEMENT


**CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS
OF BANQUE CANTONALE DU VALAIS**

We, Jean-Pierre Bringen, acting as Vice-Chairman of the board of directors of Banque Cantonale du Valais (the Bank), and Jean-Daniel Papilloud, Chairman of the board of directors of 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 who took their decision by way of circulation on December 21, 2015, 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, and (ii) unanimously voted to enter into the Non-Prosecution Agreement, including to pay a sum of USD 2,311,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Jean-Daniel Papilloud, Chairman of the board of directors, and Daniel Rossi, member of the executive board, both registered in the Commercial Register of the Canton of Valais as having joint signatory authority, are hereby authorized (i) to jointly execute the Non-Prosecution Agreement on behalf of the Bank substantially in such form as reviewed by the Board with such non-material changes as each of them may approve; and (ii) to take, on behalf of the Bank, all actions as may be necessary or advisable in order to carry out the foregoing; and
- That Keith D. Krakaur and Stephen C. Robinson, Skadden, Arps, Slate, Meagher & Flom LLP, are hereby authorized to sign the Non-Prosecution Agreement in their capacity as the Bank's U.S. counsel.

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

IN WITNESS WHEREOF, we have executed this Certification this 21th day of December 2015.



Jean-Pierre Bringen
Vice-Chairman of the board of directors



Jean-Daniel Papilloud
Chairman of the board of directors