



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:TLGostyla
5-16-4707
2014200718

December 30, 2015

Stephen B. Huttler, Esq.
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washington, DC 20036

Re: Bank Lombard Odier & Co Ltd
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Mr. Huttler:

Bank Lombard Odier & Co Ltd (“Lombard Odier”) submitted a Letter of Intent on December 26, 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 Lombard Odier in its Letter of Intent and information provided by Lombard Odier 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 Lombard Odier of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute Lombard Odier 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 Lombard Odier during the Applicable Period (the “conduct”). Lombard Odier 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 Lombard Odier and does not apply to any other entities or to any individuals. Lombard Odier 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

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

adopts and executes this Agreement. Lombard Odier 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, Lombard Odier agrees to pay the sum of \$99,809,000 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 Lombard Odier. This payment is in lieu of restitution, forfeiture, or criminal fine against Lombard Odier for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Lombard Odier with respect to the conduct described in this Agreement, unless the Tax Division determines Lombard Odier has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Lombard Odier 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 Lombard Odier has violated any provision of this Agreement. Lombard Odier 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. Lombard Odier agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Lombard Odier further agrees that no portion of the penalty that Lombard Odier has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Lombard Odier 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) Lombard Odier'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 Lombard Odier 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) Lombard Odier'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) Lombard Odier'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 Lombard Odier 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) Lombard Odier's retention of a qualified independent examiner who has verified the information Lombard Odier disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Lombard Odier 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 Lombard Odier, 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, Lombard Odier 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 Lombard Odier 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 Lombard Odier'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 Lombard Odier; 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.

Lombard Odier further agrees to undertake the following:

1. Lombard Odier 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, Lombard Odier will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. Lombard Odier 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 Lombard Odier.

3. Lombard Odier 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. Lombard Odier 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, Lombard Odier will promptly proceed to follow the procedures described above in paragraph 2.
4. Lombard Odier 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 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.

Lombard Odier's obligations under this Agreement shall continue for a period of four (4) years from the date this Agreement is fully executed. Lombard Odier, 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) Lombard Odier committed any U.S. federal offenses during the term of this Agreement;
- (b) Lombard Odier 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) Lombard Odier has otherwise materially violated any provision of this Agreement or the terms of the Swiss Bank Program,

then (i) Lombard Odier 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 Lombard Odier'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 Lombard Odier'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 Lombard Odier shall be admissible in evidence in any criminal proceeding brought against Lombard Odier and relied upon as evidence to support any penalty on Lombard Odier; and (iii) Lombard Odier 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 Lombard Odier has breached this Agreement and whether to pursue prosecution of Lombard Odier 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, Lombard Odier, will be imputed to Lombard Odier for the purpose of determining whether Lombard Odier 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 Lombard Odier has breached this Agreement, the Tax Division agrees to provide Lombard Odier with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, Lombard Odier may respond to the Tax Division in writing to explain the nature and circumstances of such breach, as well as the actions that Lombard Odier has taken to address and remediate the situation, which explanation the Tax Division shall consider in determining whether to pursue prosecution of Lombard Odier.

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

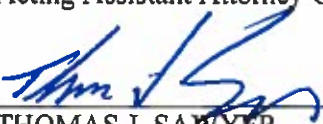
This Agreement supersedes all prior understandings, promises and/or conditions between the Department and Lombard Odier. No additional promises, agreements, and conditions have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by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

AGREED AND ACCEPTED:

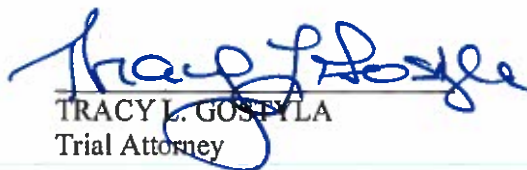
UNITED STATES DEPARTMENT OF JUSTICE, TAX DIVISION

By: 
CAROLINE D. CIRAOLLO
Acting Assistant Attorney General

12/31/2015
DATE



THOMAS J. SAWYER
Senior Counsel for International Tax Matters

12/31/2015
DATE


TRACY L. GOSTYLA
Trial Attorney

12-31-15
DATE

BANK LOMBARD ODIER & CO LTD

By: 
PATRICK ODIER
Chairman of the Board

12.30.15
DATE


DENIS PITET
General Counsel

12-30-15
DATE

APPROVED:

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: 
STEPHEN B. HUTLER
Senior Partner

12-30-15
DATE

**EXHIBIT A TO BANK LOMBARD ODIER & CO LTD
NON-PROSECUTION AGREEMENT**

STATEMENT OF FACTS

INTRODUCTION

1. Bank Lombard Odier & Co Ltd (“Lombard Odier” or the “Bank”) is a partner-owned private bank that was founded in 1796 and is based in Geneva, Switzerland. It is organized under the laws of Switzerland and is part of the Lombard Odier Group, which consists of 23 operating entities owned by LO Holding S.A., a Swiss holding company. The Lombard Odier Group is headquartered in Geneva, and has 25 offices in addition to its headquarters. None of the offices are located in the United States except for an institutional asset management affiliate, Lombard Odier Asset Management (USA) Corp, which is located in New York City. Like Lombard Odier, this entity is part of the Lombard Odier Group. However, it operates independently of the Bank and does not engage in private banking.
2. During the Applicable Period,¹ Lombard Odier had approximately 33,000 accounts, for aggregated assets under management of approximately \$107 billion as of the end of 2009, and 29,000 accounts, for aggregated assets under management of approximately \$137 billion as of the end of 2014. During the Applicable Period, Lombard Odier had an average of approximately 32,000 accounts and approximately \$121 billion in assets under management.

U.S. INCOME TAX & REPORTING OBLIGATIONS

3. 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 Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether they 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.
4. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any time during a particular year have been required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114 (the “FBAR,” formerly known

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”).

as Form TD F 90-22.1). The FBAR must be filed on or before June 30 of the following year.

5. 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 or other form and an FBAR as required.
6. “U.S. Related Accounts” mean accounts which exceeded \$50,000 in value at any time during the Applicable Period, and as to which indicia exist that a U.S. person or entity has or had a financial or beneficial interest in, ownership of, or signature authority (whether direct or indirect) or other authority over the account.
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. In or about 2008, Swiss bank UBS AG (“UBS”) publicly announced that it was the target of a criminal investigation by the IRS and the United States Department of Justice and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department of Justice and UBS filed a deferred prosecution agreement in the Southern District of Florida in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening accounts and maintaining undeclared assets and income from the IRS. Since the UBS investigation became public, several other Swiss banks have publicly announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients (UBS and the other targeted Swiss banks are collectively referred to as “Category 1 banks”). These cases have been closely monitored by banks operating in Switzerland, including Lombard Odier, since at least June of 2008.

OVERVIEW OF LOMBARD ODIER’S U.S. CROSS-BORDER BUSINESS

9. Lombard Odier provides private banking, asset management, and technology and business infrastructure services to individuals and entities located inside and outside Switzerland. The private banking business line is mostly composed of private bankers, known as “relationship managers,” who serve as the primary contacts for clients with accounts at Lombard Odier and who are responsible for opening and managing client accounts at the Bank. Since 2008, Lombard Odier’s private banking business line has been divided into five “markets,” each of which focuses on a different geographic region. While the Bank’s primary focus has been on the Swiss market, as well as other markets in Europe, Asia, Latin America, and the Middle East, it has long had U.S. clients.

10. During the Applicable Period through December 31, 2014, Lombard Odier had 1,121 U.S. Related Accounts, comprising maximum assets under management of approximately \$4.45 billion (including assets of declared accounts). Most of the accounts held by U.S. clients were obtained through referrals, or when existing non-U.S. clients moved to the United States or acquired U.S. citizenship. In some cases, individual relationship managers brought U.S. clients with them when they joined Lombard Odier from other banks.
11. Lombard Odier did not have a dedicated U.S. desk and the management of U.S. Related Accounts was not centralized. Rather, the Bank's U.S. Related Accounts were widely dispersed throughout the Bank. During the Applicable Period, approximately 112 relationship managers were responsible for managing at least one U.S. Related Account at Lombard Odier.
12. In addition, approximately 42 external asset managers were responsible for managing at least one U.S. Related Account at Lombard Odier. The Bank paid commissions and finder's fees to most of its external asset managers. These fees were generally computed as a percentage of the transaction fees earned by the Bank in connection with the external asset managers' assets under management that were custodied at the Bank.
13. Two third-party sources that referred U.S. Related Accounts to Lombard Odier were a Zurich-based law firm ("Zurich Firm"), which referred six U.S. Related Accounts with aggregate assets under management of over \$40 million, and a Zurich-based lawyer ("Zurich Lawyer"), who referred ten U.S. Related Accounts with aggregate assets under management of over \$23 million. Zurich Lawyer was the account holder and had signature authority and/or power of attorney over all ten of the U.S. Related Accounts he referred. He was also a director of the Panama corporation that was the account holder of one of those accounts.
14. In some instances, Zurich Firm and Zurich Lawyer operated in cooperation with an attorney in New York City ("U.S. Lawyer"). Zurich Firm and Zurich Lawyer referred 13 accounts to Lombard Odier that were beneficially owned by U.S. Lawyer or by friends or family members of U.S. Lawyer. In 2013, U.S. Lawyer disclosed his interest in a Lombard Odier account held in the name of a Turks and Caicos trust through the IRS's Offshore Voluntary Disclosure Program.
15. The 16 U.S. accounts that Zurich Firm and Zurich Lawyer referred to Lombard Odier were referred to a former relationship manager ("RM-1"), who was employed by Lombard Odier from January 1991 until December 2012, and who held an equity interest in Lombard Odier from July 2002 until December 2014. All of these accounts were allocated to the Bank's German-speaking market. In addition, U.S. Lawyer directly referred two such accounts to RM-1, and RM-1 obtained an additional 11 U.S. client accounts for the Bank as a result of his personal and professional relationships. From the beginning of 2008 until December 2012, RM-1 was head of Lombard Odier's German-speaking market. Since January 2013, RM-1 has been the general (managing) partner of a Swiss limited partnership that provides asset management and investment advisory

services ("Swiss LP"). Lombard Odier is a limited partner of Swiss LP. Like Lombard Odier, Swiss LP is a member of the Lombard Odier Group.

16. Zurich Firm also established and administered through a Swiss corporate affiliate five corporate structures, each of which held a Lombard Odier account that was beneficially owned by a U.S. person. These five accounts, which had total assets under management of over \$40.2 million, were managed by RM-1.
17. Lombard Odier was aware that U.S. taxpayers had a legal duty to report to the IRS and pay taxes on all of their income, including income earned in accounts that these U.S. taxpayers maintained at the Bank. Notwithstanding, the Bank opened, maintained, and serviced accounts for U.S. persons that it knew or had reason to know were likely not declared to the IRS or the U.S. Department of the Treasury, as required by U.S. law.
18. With respect to at least 173 U.S. Related Accounts, Lombard Odier assisted U.S. clients in concealing their assets and income by opening and maintaining accounts in the names of non-U.S. corporations, foundations, trusts, or other entities (collectively, "entities") that it knew were beneficially owned by U.S. persons. The non-U.S. jurisdictions in which the entities were incorporated or formed included Liechtenstein, Panama, and the British Virgin Islands.
19. In some instances, the Bank referred clients to its Swiss-based affiliate, Favona SA ("Favona"), which is also part of the Lombard Odier Group, to set up entity structures. Favona established entity structures for at least eight U.S. clients referred by the Bank. The Lombard Odier accounts held by these entities contained assets under management of approximately \$43.2 million. In addition, Favona provided administrative services, including accounting services and supplying corporate directors, for five additional U.S. Related Accounts representing assets under management of approximately \$18 million.
20. Lombard Odier maintained at least 32 entity accounts that were operated without compliance with the requisite corporate formalities ("sham entities"). In 12 instances, accounts owned by sham entities held U.S. securities during the Applicable Period (with total assets under management of \$67 million). In servicing accounts held by these sham entities, the relationship managers sometimes took instructions from the U.S. beneficial owners rather than from the entities' authorized representatives, and, in two cases, permitted the U.S. beneficial owner to pay for personal expenses using a travel cash card linked to the entity's Lombard Odier account.
21. In at least six instances, Lombard Odier maintained accounts as non-U.S. accounts even though they were beneficially owned by U.S. taxpayers. At least three such accounts were held in the names of non-U.S. Persons, but were beneficially owned by U.S. relatives of the account holders, who held powers of attorney over the accounts. Lombard Odier communicated directly with, and accepted instructions from, the U.S. powers of attorney with respect to these accounts. For one account, the Bank, at the direction of the U.S. power of attorney/beneficial owner, transferred approximately \$530,000 to an account in the United States via two wire transfers.

22. Lombard Odier also offered traditional Swiss banking services that assisted U.S. clients in the concealment of assets and income from the IRS. The Bank held bank statements and other mail related to at least 186 U.S. Related Accounts at its offices in Switzerland rather than sending them to U.S. taxpayers in the United States. As a consequence, documents reflecting the existence of the accounts remained outside of the United States.
23. In addition, for a fee, Lombard Odier provided numbered accounts for at least 169 U.S. Related Accounts, whereby the Bank replaced the account holder's identity with a code name or number on bank statements and other documentation sent to him or her. Lombard Odier's internal records reflected the clients' identities, in compliance with Swiss law. The combination of hold mail instructions and numbered accounts significantly reduced the ability of the IRS to learn the identities of the U.S. taxpayers.
24. During the Applicable Period, Lombard Odier maintained at least three accounts, comprising an aggregate value of more than \$24 million, that were owned by insurance companies, and which held assets relating to insurance products that were issued to U.S. taxpayer clients of the respective insurance companies. Such accounts, commonly known as "insurance wrappers," were titled in the names of insurance companies, but were funded with assets that were transferred to the accounts for the beneficial owners of the insurance products (the "policy holders"). The assets in these accounts, while titled in the names of insurance companies, were managed for the ultimate benefit of the policy holders, through powers of investment that were given by the insurance companies to the relationship managers or external asset managers managing the accounts.

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

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

27. As a consequence of Lombard Odier entering into a QI Agreement with the IRS, certain relationship managers and supervisory relationship managers opened accounts for U.S. clients in the names of sham offshore entities. In connection with these accounts, Lombard Odier employees knowingly accepted and included in its account records IRS Forms W-8BEN, Certificates of Foreign Status of Beneficial Owners for United States Tax Withholding and Reporting (Individuals) (each, a "Form W-8BEN") (or Lombard Odier's substitute forms) provided by the directors of the offshore companies that falsely represented under penalty of perjury that such companies were the beneficial owners of the assets in the accounts for U.S. federal income tax purposes.
28. Certain relationship managers, supervisory relationship managers, and others caused Lombard Odier to certify compliance with the QI Agreement even though the true beneficial owners were not reflected in the Forms W-8BEN in the account files.

LOMBARD ODIER'S FLAWED EXIT OF ITS U.S. CROSS-BORDER BUSINESS

29. In response to the April 2008 news reports on the IRS investigation of UBS, Lombard Odier's senior management decided, in June 2008, to prohibit new U.S. taxpayer clients coming from UBS and to refrain from hiring UBS relationship managers with U.S. taxpayer clients.
30. Shortly thereafter, Lombard Odier implemented a Regularize or Leave Action Plan (the "RLAP"), the tenets of which were described in a written policy, dated October 8, 2008 (the "RLAP Policy Document"), to be communicated *verbally* to the group heads of Lombard Odier's private banking business unit. Pursuant to the RLAP, the Bank's management required that relationship managers instruct each of their U.S. clients to sign a Form W-9, voluntarily disclose their accounts to the IRS, or close their accounts. According to the RLAP Policy Document, relationship managers were to propose that U.S. clients who wished to close their accounts do so via withdrawal of cash, checks, or gold, transfers to another bank, or donations to non-U.S. relatives or charitable institutions.
31. In connection with the RLAP, Lombard Odier closed 50 U.S. Related Accounts with cash withdrawals exceeding \$51 million. At least 13 of these accounts were closed with five or more cash withdrawals, including one account that was closed with 28 cash withdrawals exceeding \$460,000 in total. In 2009 alone, the Bank processed 14 cash withdrawals, exceeding \$1 million each, for U.S. taxpayers closing 11 accounts. RM-1 was associated with at least four of the U.S. Related Accounts that were closed using cash withdrawals.
32. In addition, in late 2009, Lombard Odier closed one U.S. Related Account via a withdrawal of over \$3 million in gold. These withdrawals of cash and/precious metals enabled U.S. persons to sever the paper trail for their assets and further conceal their income and assets from U.S. authorities.

33. Lombard Odier also closed at least 12 U.S. Related Accounts via fictitious donations, whereby the clients transferred the funds in their accounts to other accounts at the Bank, or to external accounts, that were held by non-U.S. relatives or associates of the U.S. clients but controlled by the U.S. clients. Those accounts comprised an aggregate of approximately \$15.7 million. With respect to at least seven such accounts, the relationship managers managed both the originating accounts in the names of the U.S. clients and the non-U.S. accounts into which the funds were transferred.
34. In order to ensure that new U.S. clients were in compliance with their U.S. tax obligations, in 2009, Lombard Odier implemented a policy to prohibit the opening of new U.S. taxpayer accounts unless the account holders provided Forms W-9 and bank secrecy waivers authorizing the Bank to disclose the account holders' identification information. The Bank transmitted all Forms W-9 to its U.S. custodian in New York City. Entities were also required to certify that their U.S. beneficial owners were compliant with U.S. tax reporting obligations.
35. In 2010, Lombard Odier's management began to require that all new U.S. resident taxpayer clients provide copies of FBARs filed with U.S. authorities. In 2011, the Bank expanded this mandate to require that all U.S. taxpayer clients, both resident and non-resident, provide copies of FBARs filed with U.S. authorities.
36. As a result of the RLAP, by the end of 2009, Lombard Odier had closed 242 U.S. Related Accounts. By the end of 2014, Lombard Odier had closed a total of 265 U.S. Related Accounts, comprising an aggregate \$441 million in assets under management.

LOMBARD ODIER'S PARTICIPATION IN THE SWISS BANK PROGRAM

37. Lombard Odier determined to participate in the Swiss Bank Program as a Category 2 bank. In connection with the Swiss Bank Program, the Bank disclosed the names of over 750 U.S. clients and former clients to the IRS. Additionally, Lombard Odier undertook efforts to encourage non-tax compliant U.S. clients (both former and current) to participate in the IRS's Offshore Voluntary Disclosure programs. Lombard Odier has also provided full cooperation to assist the United States in obtaining the bank files of non-tax compliant U.S. persons through treaties. This will result in the United States receiving files identifying U.S. persons who previously held undeclared accounts at Lombard Odier, either directly or through entities.
38. However, Lombard Odier did not adequately address the exit policies contained within the RLAP Policy Document with the Department of Justice in its conduct presentations during the Swiss Bank Program. In its conduct presentations, the Bank admitted that some relationship managers permitted U.S. clients to close their accounts with cash withdrawals or fictitious donations. Although Lombard Odier advised the Department of Justice that such fictitious donations and large cash exits were "shortcomings" of the implementation of the RLAP, the Bank maintained, both orally and in written presentations, that management encouraged relationship managers to suggest that U.S. clients close their accounts using traceable withdrawal methods, and that relationship managers who permitted or structured fictitious donation closures did so in violation of

Bank policy. To the contrary, however, Lombard Odier's RLAP Policy Document, described in paragraph 30, authorized cash or gold withdrawals, or donations to non-U.S. relatives or charitable institutions, as among the methods by which U.S. clients might close their accounts as part of the RLAP.

39. In addition, early in the Swiss Bank Program, Lombard Odier was aware that RM-1 may have engaged in significant misconduct with respect to the referral of U.S. Related Accounts to the Bank, and that he was the main point of contact at the Bank for Zurich Firm and Zurich Lawyer. In October 2014, the Bank identified RM-1 to the Department of Justice, using a coded identifier, as a relationship manager with a large number of U.S. Related Accounts. The Bank also identified Swiss LP as an external asset manager that was a part of the Lombard Odier Group. However, during its conduct presentations to the Department of Justice, Lombard Odier did not disclose RM-1's identity, his equity interest in the Bank, his affiliation with Swiss LP, or the extent of his conduct with respect to his U.S. clients. In fact, the Bank did not disclose this information until May 2015, which was several months after RM-1's equity interest in the Bank terminated in December 2014.
40. Moreover, Lombard Odier knew that U.S. Lawyer had engaged in the referral of U.S. Related Accounts to the Bank, both independently and in conjunction with RM-1, Zurich Firm, and Zurich Lawyer. However, it did not disclose his involvement in making such referrals to the Department of Justice until May 2015, and did not disclose his identity to the Department of Justice until November 2015.

EXHIBIT B TO THE NON-PROSECUTION AGREEMENT

BANK LOMBARD ODIER & CO LTD

RESOLUTION OF THE BOARD OF DIRECTORS

At a duly convened meeting held on December 30, 2015, the Board of Directors (the "Board") of Bank Lombard Odier & Co Ltd (the "Bank") resolves as follows:

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

The Board hereby resolves that:

1. The Board has reviewed the entire Agreement attached hereto, including the Statement of Facts attached as Exhibit A to the Agreement, consulted with the U.S. and Swiss counsel in connection with this matter and voted to enter into the Agreement, including to pay a sum of USD 99,809,000 to the Department in connection with the Agreement;
2. Patrick Odier, Chairman, and Denis Pittet, General Counsel, are hereby jointly authorized to execute the Agreement on behalf of the Bank (the "Authorized Signatories") substantially in such form as reviewed by this Board with non-material changes as the Authorized Signatories may approve;
3. Stephen B. Huttler, Pillsbury Winthrop Shaw Pittman LLP, U.S. Counsel to the Bank, is entitled to sign the Agreement as additional signatory (the "Additional Signatory");
4. The Board hereby authorizes, empowers and directs the Authorized Signatories and the Additional Signatory to take, on behalf of the Bank, any and all actions as may be necessary or appropriate, and to approve and execute the forms, terms or provisions of any agreement or other document as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions; and

5. All of the actions of the Authorized Signatories and the Additional Signatory which have or will be taken in connection with the Agreement are hereby ratified, confirmed, approved and adopted as actions on behalf of the Bank.

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



Patrick Odier
Chairman of the Board of Directors



Patrick Hauri
Executive Vice-President