



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

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January 4, 2016

Sean Hecker  
Bruce Yannett  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022

Re: Union Bancaire Privée, UBP SA  
DOJ Swiss Bank Program – Category 2  
Non-Prosecution Agreement

Dear Mr. Hecker and Mr. Yannett:

Union Bancaire Privée, UBP SA (“UBP”) submitted a Letter of Intent on December 19, 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 UBP in its Letter of Intent and information provided by UBP 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 UBP of the Swiss Bank Program will constitute a breach of this Agreement.<sup>2</sup>

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

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

<sup>2</sup> As described in Exhibit A, UBP acquired assets associated with Coutts’ Swiss private banking activities in 2015. Coutts submitted a separate Letter of Intent to participate in Category 2 of the SBP. This NPA does not cover the assets that UBP acquired from Coutts in 2015.

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. UBP 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, UBP agrees to pay the sum of \$187,767,000 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 UBP. This payment is in lieu of restitution, forfeiture, or criminal fine against UBP for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from UBP with respect to the conduct described in this Agreement, unless the Tax Division determines UBP has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. UBP 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 UBP has violated any provision of this Agreement. UBP 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. UBP agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. UBP further agrees that no portion of the penalty that UBP has agreed to pay to the Department under the terms of this Agreement will serve as a basis for UBP 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) UBP'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 UBP 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) UBP'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) UBP'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 UBP 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) UBP'S retention of a qualified independent examiner who has verified the information UBP disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, UBP 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 UBP, 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, UBP 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 UBP 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 UBP'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 UBP; 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.

UBP 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, and set forth in subparagraph (c) on pages 2-3 of this Agreement. UBP 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. UBP 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 UBP.
3. UBP 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. UBP 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, UBP will promptly proceed to follow the procedures described above in paragraph 2.

4. UBP 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.

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

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

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

Caroline Ciruolo 1/6/2016  
CAROLINE D. CIRAULO  
Acting Assistant Attorney General  
Tax Division

Thomas Sawyer 6 January 2016  
THOMAS J. SAWYER  
Senior Counsel for International Tax Matters

Kevin F. Sweeney 1/6/2016  
KEVIN F. SWEENEY  
Trial Attorney

AGREED AND CONSENTED TO:  
UBP SA

By: Guy De Picciotto  
GUY DE PICCIOTTO  
Chief Executive Officer

1/5/2015  
DATE

By: Pierre Dayer  
PIERRE DAYER  
Chief Legal Officer

1/5/2015  
DATE

APPROVED:

Sean Hecker  
Sean Hecker  
Debevoise & Plimpton LLP

1/5/2015  
DATE

Bruce Yannett  
Bruce Yannett  
Debevoise & Plimpton LLP

1/5/2015  
DATE

**EXHIBIT A TO UNION BANCAIRE PRIVÉE, UBP SA  
NON-PROSECUTION AGREEMENT**

**STATEMENT OF FACTS**

**INTRODUCTION**

1. Union Bancaire Privée, UBP SA, (“UBP” or the “Bank”) is a corporation organized under the laws of Switzerland with its headquarters in Geneva, Switzerland. It was originally founded in 1969 under the name Compagnie de Banque et d’Investissements CBI (“CBI”). In 1990, CBI merged with TBD-American Express Bank. The merged entity was re-named UBP.
2. UBP operates a financial services business in Geneva, Zurich, Basel, and Lugano, Switzerland. It primarily offers private banking and wealth management services for individual clients around the world, including U.S. citizens, legal permanent residents, and resident aliens. However, the Bank also provides investment management and hedge fund services, with a focus on institutional clients.
3. Over the past two decades, UBP has made a number of acquisitions, including NordFinanz Bank (1995), Discount Bank and Trust (“DBTC”) (2002), ABN AMRO (Switzerland) AG (2011), a portion of the assets associated with Banco Santander (Switzerland) SA’s private banking business (2012), Nexar Capital Group (Luxembourg) (2012), the assets associated with Lloyds Banking Group’s international private banking business (2013), and the assets associated with Coutts’s Swiss private banking activities (2015).<sup>1</sup>
4. At the conclusion of calendar year 2014, UBP held assets under management totaling approximately \$99.3 billion, including \$66.8 billion in private banking. This made UBP one of the largest private banks in Switzerland.

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

5. United States (“U.S.”) citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income. Since tax year 1976, U.S. citizens, resident aliens, and legal permanent residents have had an obligation to report to the Internal Revenue Service (“IRS”) on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking “Yes” or

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<sup>1</sup> Coutts has separately entered into the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks, issued on August 29, 2013 (the “Swiss Bank Program”) as a Category 2 bank and is treated as a separate entity under the Swiss Bank Program.



“No” in the appropriate box and identifying the country where the account was maintained.

6. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any time during a particular year were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114, formerly known as Form TD F 90-22.1 (the “FBAR”).
7. An “undeclared account” was a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that had not been reported by the individual account owner to the U.S. government on an income tax return and an FBAR.
8. Since approximately the 1930s, Switzerland has maintained 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. These are Swiss criminal laws punishable by imprisonment. Because of the secrecy guarantee that they created, these Swiss laws enabled U.S. clients to conceal their Swiss bank accounts from U.S. authorities.
9. In or about 2008, Swiss bank UBS AG (“UBS”) publicly announced that it was the target of a criminal investigation by the IRS and the United States Department of Justice (“DOJ”) and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the DOJ 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 banking secrecy and privacy laws to aid and assist U.S. clients in opening and maintaining accounts and concealing undeclared assets and income from the IRS. Since UBS’s announcement, 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. These cases have been closely monitored by banks operating in Switzerland, including UBP, since at least the third quarter of 2008.

#### **OVERVIEW OF UBP’S U.S. CROSS-BORDER BUSINESS**

10. For decades prior to and through in or about 2013, UBP aided and assisted U.S. clients in opening and maintaining undeclared accounts in Switzerland and concealing the assets and income they held in these accounts. During the Applicable Period,<sup>2</sup> UBP

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<sup>2</sup> Capitalized terms not otherwise defined in this Statement of Facts have the meanings set forth in the Swiss Bank Program.

held and managed approximately 2,919 U.S. Related Accounts, which included both declared and undeclared accounts, with aggregate peak of assets under management of \$4.895 billion. However, 1,282 of the 2,919 U.S. Related Accounts were acquired through the acquisitions of other banks, including ABN AMRO, and bank assets.

11. UBP 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 UBP. UBP knew, or should have known, that it was likely that certain U.S. taxpayers who maintained accounts at UBP during the Applicable Period were not complying with their U.S. reporting obligations.

12. UBP used, or accepted the use, of a variety of means to assist U.S. clients in concealing their undeclared accounts, including by:

- providing traditional Swiss banking products such as hold mail, code name, and numbered account services;
- assisting clients to use sham entities such as structures and insurance wrappers as nominee beneficial owners of the undeclared accounts;
- assisting U.S. clients to repatriate undeclared funds by making remote debit or credit card withdrawals and by converting the account funds into precious metals;
- assisting U.S. clients to repatriate undeclared funds via fictitious donations;
- assisting U.S. clients to repatriate undeclared funds through nominees or by structuring transfers of funds from undeclared accounts to evade currency transaction reporting requirements;
- accepting IRS forms W-8BEN (or UBP's substitute forms) that it knew or should have known falsely stated under penalty of perjury or implied that the sham entities beneficially owned the assets in the undeclared accounts; and
- divesting U.S. securities from its undeclared U.S. accounts for the purpose of subverting its Qualified Intermediary ("QI") Agreement with the IRS.

13. Over 200 private bankers were responsible for managing at least one U.S. client account during the Applicable Period. These private bankers (referred to as "relationship managers") served as the points of contact for U.S. clients at UBP and were responsible for opening and servicing U.S. client accounts at UBP. Certain relationship managers assisted or otherwise facilitated some U.S. individual taxpayers in establishing and maintaining undeclared accounts in a manner that concealed the U.S. taxpayers' ownership or beneficial interest in said accounts. UBP acquired U.S. client accounts primarily from direct referrals, walk-ins, business arrangements with external asset managers, and intergenerational transfers.

14. Since August 2008, approximately 80 external asset managers were responsible for independently managing at least one U.S. client account held at UBP. UBP compensated certain of these external asset managers for the business they generated for the Bank based on a negotiated fee structure.
15. Relationship managers communicated via telephone, fax, business email, and mail (when clients did not request hold mail services) with certain of their clients in the United States. Certain relationship managers also met with U.S. clients outside of the United States to provide banking services and investment advice related to their undeclared accounts.

#### **METHODS USED TO CONCEAL ASSETS AND INCOME**

16. UBP offered a variety of traditional Swiss banking services that it knew could assist, and did in fact assist U.S. clients in concealing assets and income from the IRS. One such service was hold mail. For an annual fee, the Bank would hold all mail correspondence for a particular client at the Bank. At least 1,457 U.S. Related Accounts utilized UBP's hold mail services. These services allowed U.S. clients to eliminate the paper trail of undeclared assets and income held at UBP back to the United States.
17. For a fee, UBP also offered, upon client request, code name or numbered account services, which limited access to information about an account, including the identity of the account holder, to only certain employees of the Bank. Although UBP's internal records reflected the identity of the U.S. taxpayer clients associated with these accounts in accordance with Swiss law, this service option prevented persons without specific access from seeing the names of UBP clients on account records and documents, and reduced the possibility that U.S. tax authorities would learn the identities of U.S. taxpayer clients with undeclared accounts by not including the clients' names in the paperwork associated with the account. At least 1,662 U.S. Related Accounts utilized UBP's code name or numbered account services.
18. UBP assisted U.S. clients with undeclared accounts at the Bank in placing and maintaining their assets in the names of non-U.S. structures and not the actual beneficial owner of the funds. During the Applicable Period, UBP held 502 U.S. Related Accounts with assets under management of \$1.19 billion for U.S. beneficial owners in the names of non-U.S. structures formed in jurisdictions such as Panama, Lichtenstein, British Virgin Islands, and the Cayman Islands. Because Swiss law requires UBP to identify the true beneficial owner of structures on a document called a Form A, it knew or should have known that these were U.S. clients. Nonetheless, UBP accepted and included in UBP's account records IRS Forms W-8BEN (or UBP's substitute forms) provided by the directors of the offshore companies that falsely stated under penalty of perjury or implied that such companies were the beneficial owners of the assets in the UBP accounts for U.S. federal income tax purposes. This aided and assisted the U.S. clients in concealing these assets and income from the IRS.

19. Prior to 2001, UBP provided formation and administration services for offshore structures through a Geneva-based affiliate. However, in 2001, the Bank formed an internal Wealth and Estate Planning unit ("WEP Unit"), and transferred the administration of these structures to the WEP Unit. The WEP Unit did not form structures, but did administer them by liaising with entity agents such as foreign law firms, paying administrative fees, and keeping corporate documents up-to-date. The WEP Unit administered nine U.S. Client Accounts held by nine offshore structures that UBP had acquired from its acquisition of DBTC. In 2010, UBP spun-off its WEP Unit into a Geneva-based affiliate and then sold the affiliate to a Panamanian law firm.
20. UBP coordinated with external trust companies and attorneys to form and administer offshore structures for U.S. clients, e.g., with a Geneva-based consultant, a Geneva-based law firm, and a Zurich-based individual company. These companies opened numerous accounts for U.S. clients at the Bank in the names of offshore structures. For those potential and current U.S. clients interested in creating nominee offshore entities, Bank employees contacted and/or referred U.S. clients to these companies.
21. UBP maintained undeclared accounts at the Bank for U.S. clients in the nominee names of non-U.S. insurance companies. Such accounts, known commonly 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 holder"). Insurance wrappers were marketed to Swiss Banks by third-party providers in the wake of the UBS investigation as a means of disguising the beneficial ownership of U.S. clients. For example, in November 2009, UBP worked with a third-party service provider to assist a U.S. beneficial owner in restructuring three existing accounts he held at the Bank in the names of nominee Panamanian entities into three accounts owned by the insurance company. In all, the Bank assisted U.S. clients in opening and maintaining at least 11 insurance wrapper accounts with aggregate peak value of undeclared assets of approximately \$47 million.
22. UBP employees assisted U.S. clients in covertly repatriating undeclared account funds by facilitating remote withdrawals and by converting undeclared funds into precious metals. This eliminated the paper trail back to the U.S. client's undeclared accounts in Switzerland. In particular, the Bank issued Swiss travel cash cards and credit cards to at least 48 U.S. Related Accounts with U.S. beneficial owners linked to their undeclared and declared accounts and converted undeclared account funds to gold and silver for U.S. clients. For example, the Bank assisted two U.S. clients in closing their account by purchasing and withdrawing over \$50 million dollars in gold bars. The Bank also assisted another U.S. client in closing his account by executing an order to transfer \$958,000 of gold coins to another Swiss Bank.
23. UBP employees assisted numerous U.S. clients in concealing their undeclared account funds by making fictitious donations to other accounts at the Bank controlled in whole or in part by the U.S. client but held by non-U.S. persons. Typically, the former U.S.

customers either maintained signature authority over the donee's account or had the funds returned to them in the future. For example, in December 2009, the U.S. beneficial owners of a UBP bank account informed the Bank of their intent to donate their assets to the remaining non-US beneficial owner of their account. The Bank executed a new Form A reflecting sole ownership by the remaining non-US person. However, when the non-U.S. person closed the account in 2012, the Bank executed a \$491,000 transfer to the personal bank account of the former U.S. beneficial owners at another bank. During the Applicable Period, the Bank assisted at least 24 U.S. clients in concealing at least \$46.7 million of aggregate peak value of undeclared account funds using fictitious donations.

24. UBP employees assisted U.S. clients in concealing undeclared account funds by transferring these funds through nominees and by structuring transfers in amounts less than \$10,000 in an effort to avoid United States currency transaction reporting requirements. For example, in 2009, Bank employees assisted a non-U.S. client in transferring \$72,000 from his U.S. brother's undeclared Swiss bank account and by then repatriating this money to his brother's U.S. bank account with nine transfers in amounts under \$10,000. In another instance, the Bank assisted a U.S. client in transferring undeclared funds to his attorney's bank account for the purpose of transferring these funds back to the U.S. client.
25. Prior to UBP's acquisition, former ABN AMRO employees advised U.S. clients to conceal their U.S. nexuses from bank documentation. For example, in September 2011, one relationship manager sent an email to a client with dual U.S. citizenship, while she was completing her account opening documents, recommending that the client provide her non-U.S. passport and not her U.S. passport. In another instance in September 2008, a relationship manager instructed a U.S. resident client to sign bank documents using a non-U.S. place and date and to provide a utility bill reflecting a non-U.S. residence.

#### **UBP SUBVERTED ITS QUALIFIED INTERMEDIARY AGREEMENT**

26. Effective in or about January 2001, UBP 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 UBP may be prohibited by foreign law, such as Swiss law, from disclosing an account holder's name or other identifying information. In general, a QI subject to such foreign-law restrictions must request that its U.S. clients either (a) grant the QI authority to disclose the client's identity or disclose himself by mandating the QI to provide an IRS Form W-9 completed by the account holder, or (b)

grant the QI authority to sell all U.S. securities of the account holder (in the case of accounts opened before January 1, 2001) or to exclude all U.S. securities from the account (in the case of accounts opened on or after January 1, 2001). Following the effective date of the QI Agreement, a sale of U.S. securities, if any, held by a U.S. person who chose not to provide a QI with an IRS Form W-9 was subject to tax information reporting on an anonymous basis and backup withholding.

27. As a consequence of UBP entering into a QI Agreement with the IRS, the Bank allowed U.S. clients to create and open accounts in the name of sham offshore entities and insurance wrappers. In connection with these accounts, UBP accepted and included in its account records IRS Forms W-8BEN (or UBP's substitute forms) provided by the directors of the offshore companies that falsely stated under penalty of perjury or implied that such companies were the beneficial owners of the assets in the accounts for U.S. federal income tax purposes.
28. UBP maintained records in its files in which certain U.S. persons expressly instructed the Bank not to disclose their identity to the IRS. For example, UBP accepted instructions not to invest in U.S. securities which otherwise would have required disclosure to the IRS. Certain Bank employees assisted U.S. clients in executing these forms.
29. Certain Bank employees caused UBP to certify compliance with the QI Agreement even though the true beneficial owners were not reflected in the IRS Forms W-8BEN in the account files.

#### **UBP'S EXIT OF ITS U.S. CROSS-BORDER BUSINESS**

30. Beginning in mid to late 2008, in the wake of the UBS investigation and prosecution, UBP instituted policies that were intended to limit its potential criminal and civil tax liability.
31. In 2009, the Bank decided to make a first exit from its existing relationships with U.S. clients that presented the greatest risk of non-compliance with U.S. tax obligations. At this time, the Bank imposed a W-9 requirement for U.S. beneficial owners of both individual and corporate entities. In addition, the Bank encouraged U.S. beneficial owners of entity accounts to convert them into individual accounts. Clients who did not comply with these requirements were asked to terminate their relationship with the Bank. However, in limited instances, Bank employees provided exiting clients with names of other Swiss banks willing to hold undeclared U.S. assets.
32. In 2011, the Bank undertook a second exit process for certain U.S. clients who did not meet the more stringent documentation requirements, and took further steps to ensure SEC compliance. Clients who had not already done so were directed to provide a W-9 and a U.S. waiver by December 15, 2011. For clients who did not comply, the Bank's

policy was to exit the relationship.

33. As a result of these exit plans, by January 2012, the number of UBP's U.S. taxpayer clients was reduced from approximately 3 % of the Bank's clients to approximately 1%. With respect to undeclared accounts, excluding those inherited from acquisitions, the Bank reduced its U.S. taxpayer client base by over 82 in terms of the number of accounts and 87% in terms of the aggregate maximum balance.
34. In 2012, the Bank upgraded its bank secrecy waiver for U.S. clients. In addition to containing a bank secrecy waiver, this form requires clients to certify that they are tax compliant, and to agree to provide documentary evidence of such compliance.

#### **UBP'S COOPERATION THROUGHOUT THE SWISS BANK PROGRAM**

35. In December 2013, UBP entered into the Department of Justice's Swiss Bank Program as a Category 2 bank.
36. Throughout its participation in the Swiss Bank Program, UBP has made comprehensive disclosures regarding its U.S. cross-border business. Specifically, UBP, with the assistance of U.S. and Swiss counsel, forensic investigators, and in compliance with Swiss banking secrecy and privacy laws has:
  - a. Conducted an internal investigation which included but was not limited to: (i) interviewing key client relationship managers and members of management; (ii) reviewing client account files and correspondence; (iii) analyzing relevant management policies; and (iv) conducting email searches;
  - b. Provided assistance concerning numerous U.S. client accounts held at UBP since August of 2008 permitting the Department of Justice to make treaty requests to the Swiss competent authority for U.S. client account records;
  - c. Provided early disclosure of selected portions of information required under Section II.D.2 of the Swiss Bank Program;
  - d. Described in detail the structure of its U.S. cross-border business which included but was not limited to: (i) the evolution of UBP's policies over time and (ii) the names of senior management and legal compliance officials who structured, operated, or supervised the U.S. cross-border business at UBP;
  - e. Provided detailed information concerning the operation of its U.S. cross-border business which included but was not limited to: (i) its cross-border business policies; (ii) quantitative and qualitative descriptions of its U.S. Related Accounts; (iii) the misconduct committed by the Bank; (iv) descriptions of UBP's top client relationship managers and external asset managers by number of U.S. Related Accounts; (v) a summary of the top 25 U.S. Related Accounts

by assets under management; and (vi) written narrative summaries of illustrative instances of the types of misconduct described in this Statement of Facts;

- f. Conducted several in-person meetings with the Department of Justice with the participation of the Bank's Chief Executive Officer and Head of Legal; and
  - g. Provided responsive, specific, and actionable information to the Department of Justice concerning associated persons, entities, and areas of concern, including through the provision of un-redacted written narrative reports concerning certain current and former Bank employees.
37. UBP has devoted substantial effort to contacting U.S. taxpayers who were customers of the Bank to urge them to regularize their tax situation, including by participation in an IRS Offshore Voluntary Disclosure Program. UBP has collected evidence indicating that over 506 U.S. Related Accounts with U.S. beneficial owners have reported their previously undeclared bank accounts, representing an aggregate peak value of \$1.096 billion.
38. The Bank has obtained waivers of Swiss bank secrecy for 918 U.S. Related Accounts with U.S. beneficial owners and has provided them to U.S. authorities.



## **Exhibit B to Non-Prosecution Agreement**

### **Resolution of the Board of Directors of Union Bancaire Privée, UBP SA**

At a meeting duly held on December 17, 2015, the Board of Directors (the "Board") of Union Bancaire Privée, UBP SA (the "Bank") resolved as follows:

**WHEREAS**, the Bank has been engaged in voluntary discussions with the United States Department of Justice (the "DOJ") pursuant to the terms of the "PROGRAM FOR NON-PROSECUTION AGREEMENTS OR NON-TARGET LETTERS FOR SWISS BANKS (the "Program"), which was the product of an agreement entered into by the Swiss Federal Department of Finance and the DOJ on 29 August 2013, as a means of providing a path for Swiss banks that are not currently the target of a criminal investigation authorized by the DOJ, Tax Division, to obtain resolution concerning their status in connection with the DOJ's overall investigations into the conduct of the U.S. cross-border business on the part of Swiss banks;

**WHEREAS**, in order to resolve outstanding liability to the U.S. Government, the DOJ has presented and proposed to the Bank to enter into a draft Non-Prosecution Agreement (the "Agreement") that includes a proposed financial penalty;

**WHEREAS**, the Bank's U.S. and Swiss counsel have advised the Board of Directors of the Bank's rights, possible defenses, and the consequences of entering into the Agreement;

This Board hereby unanimously **RESOLVES** that:

1. The Board of the Bank has reviewed the entire Agreement attached hereto, including the Statement of Facts attached as Exhibit A to the Agreement, consulted with Swiss and U.S. counsel in connection with this matter and voted to enter into the Agreement, including to pay a sum up to \$ 187'767'000 to DOJ in connection with the Agreement;
2. Messrs Guy de Picciotto, Chief Executive Officer, and Pierre Dayer, Chief Legal Officer, by collective signature (collectively the "Authorized Signatories"), are hereby authorized on behalf of the Bank to execute the Agreement substantially in such form as reviewed by this Board with such non-material changes as the Authorized Signatories may approve;
3. The Board hereby authorizes, empowers and directs the Authorized Signatories to take, on behalf of the Bank, any and all actions as may be necessary or appropriate, and to approve and execute the forms, terms or provisions of any agreement or other document, as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions; and
4. All of the actions of the authorized Signatories of the Bank, are hereby severally ratified, confirmed, approved and adopted as actions on behalf of the Bank.

**IN WITNESS WHEREOF, the Board of Directors of Union Bancaire Privée, UBP SA, has executed this Resolution.**



Edgar de Picciotto  
Chairman



Pierre-Alain Blum



Nicolas Brunschwig



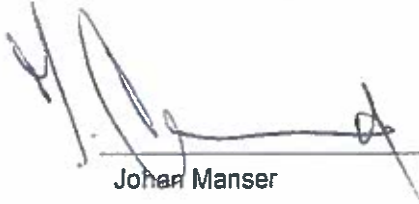
Daniel de Picciotto



Eftychia Fischer



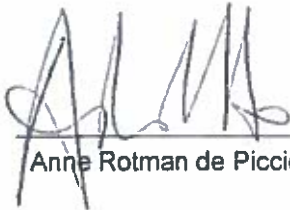
Richard Katz



Johan Manser



Marcel Rohner



Anne Rotman de Picciotto



Olivier Vodoz