

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 19-60359-CR-ALTMAN/HUNT
18 U.S.C. § 371**

UNITED STATES OF AMERICA

v.

HSBC PRIVATE BANK (SUISSE) SA,

Defendant.

DEFERRED PROSECUTION AGREEMENT

The Tax Division of the United States Department of Justice and the United States Attorney's Office for the Southern District of Florida (collectively, the "Office") and defendant HSBC Private Bank (Suisse) SA ("HSBC Switzerland" or the "Bank"), under authority granted by its Board of Directors in the form of a Board Resolution (a copy of which is attached hereto as Exhibit A), hereby enter into this Deferred Prosecution Agreement (the "Agreement").

This Agreement shall take effect upon its execution by both parties.

THE CRIMINAL INFORMATION

1. HSBC Switzerland waives indictment and consents to the filing of a one-count Information (the "Information") in the United States District Court for the Southern District of Florida (the "Court"), charging HSBC Switzerland with conspiring with others, including U.S. persons, in violation of Title 18, United States Code, Section 371, to (1) defraud the United States and an agency thereof, to wit, the United States Internal Revenue Service (the "IRS"), (2) to file false federal income tax returns in violation of Title 26, United States Code, Section 7206(1), and (3) to evade federal income taxes in violation of Title 26, United States Code, Section 7201. A copy of the Information is attached hereto as Exhibit B.

ACCEPTANCE OF RESPONSIBILITY

2. HSBC Switzerland admits and stipulates that the facts set forth in the Statement of Facts, attached hereto as Exhibit C and incorporated herein, are true and accurate. HSBC Switzerland further admits and stipulates that the acts labeled "overt acts" in Paragraph 13 of the Information in fact took place. In sum, HSBC Switzerland admits that it is responsible under United States law for the acts of its officers, employees, and agents and that the allegations of

federal criminal violations charged in the Information and set forth in the Statement of Facts as a result of those acts are true and accurate.

RESTITUTION, FORFEITURE, AND PENALTY OBLIGATIONS

3. As a result of the conduct described in the Information and the Statement of Facts, HSBC Switzerland agrees to make payments in total of \$192,350,000 to the United States. Specifically, HSBC Switzerland agrees to (1) make a payment of restitution in the amount of \$60,600,000 (the "Tax Restitution Amount"), (2) forfeit \$71,850,000 (the "Forfeiture Amount") to the United States, and (3) pay a penalty of \$59,900,000 (the "Penalty Amount") to the U.S. Department of Justice (the "Department"), as set forth below.

Restitution

4. In regard to the Tax Restitution Amount, HSBC Switzerland admits that the Tax Restitution Amount represents the approximate unpaid pecuniary loss to the United States as a result of the conduct described in the Statement of Facts. The Tax Restitution Amount shall not be further reduced by payments that have been made or may be made to the United States by U.S. taxpayers through the Offshore Voluntary Disclosure Initiative and similar programs (collectively, "OVDI") before or after the date of this Agreement. HSBC Switzerland agrees to pay the Tax Restitution Amount to the IRS by wire transfer within fourteen (14) days of the date of the execution of this Agreement. If HSBC Switzerland fails to timely make the payment required under this paragraph, interest (at the rate specified in 28 U.S.C. § 1961) shall accrue on the unpaid balance through the date of payment, unless the Office, in its sole discretion, chooses to reinstate prosecution pursuant to Paragraphs 20 and 21, below.

Forfeiture

5. The Forfeiture Amount of \$71,850,000 represents approximate gross fees paid to HSBC Switzerland by U.S. taxpayers with undeclared accounts at HSBC Switzerland from 2002 through December 31, 2009. HSBC Switzerland agrees, pursuant to Title 18, United States Code, Section 981(a)(1)(C) that it will forfeit to the United States the Forfeiture Amount.

6. The Forfeiture Amount shall be sent by wire transfer to a seized asset deposit account maintained by the United States Department of the Treasury within fourteen (14) days of the execution of this Agreement. If HSBC Switzerland fails to timely make the payment required under this paragraph, interest (at the rate specified in 28 U.S.C. § 1961) shall accrue on the unpaid balance through the date of payment, unless the Office, in its sole discretion, chooses to reinstate prosecution pursuant to Paragraphs 20 and 21, below.

7. Upon payment of the Forfeiture Amount, HSBC Switzerland shall release any and all claims it may have to such funds and execute such documents as necessary to accomplish the forfeiture of the funds. HSBC Switzerland agrees that it will not file a claim with the Court or otherwise contest the civil forfeiture of the Forfeiture Amount or the payment of the Penalty Amount and will not assist a third party in asserting any claim to the Forfeiture Amount or the Penalty Amount.

8. HSBC Switzerland agrees this Agreement, the Information, and the Statement of Facts may be attached and incorporated into a civil forfeiture complaint (the "Civil Forfeiture Complaint"), a copy of which is attached hereto as Exhibit D, that will be filed against the Forfeiture Amount. By this Agreement, HSBC Switzerland expressly waives service of that Civil Forfeiture Complaint and agrees that a Final Order of Forfeiture may be entered against the Forfeiture Amount. HSBC Switzerland also agrees that the facts contained in the Information and Statement of Facts are sufficient to establish that the Forfeiture Amount is subject to civil forfeiture to the United States.

Penalty

9. The Office and HSBC Switzerland agree that, consistent with the factors set forth in 18 U.S.C. § 3553(a) and 18 U.S.C. § 3572(a), and in light of the Forfeiture Amount and the Tax Restitution Amount, the Penalty Amount of \$59,900,000 is an appropriate penalty. HSBC Switzerland agrees to pay the Penalty Amount as directed by the Office within fourteen (14) business days of the date of the execution of this Agreement. The Penalty Amount represents a reduction of approximately 50% from the low end of the fine range that the parties agree would be applicable under the United States Sentencing Guidelines if HSBC Switzerland had been convicted and sentenced for its criminal conduct. The Office and HSBC Switzerland agree that the Penalty Amount is appropriate given the facts and circumstances of this case, including the nature and seriousness of HSBC Switzerland's conduct as set forth in the Statement of Facts, and also, in mitigation of a higher penalty, among other things, HSBC Switzerland's self-reporting its conduct to the Office, performing a thorough internal investigation, providing client identifying information to the Office and extensively cooperating in a series of investigations and prosecutions, as well as the facts set forth in Paragraphs 38 through 45 of the Statement of Facts. The Office and HSBC Switzerland further agree that the Penalty Amount is final and shall not be refunded, that nothing in this Agreement shall be deemed an agreement by the Office that the Penalty Amount is the maximum penalty that may be imposed in any future prosecution, and that the Office is not precluded from arguing in any future prosecution that the Court should impose a higher penalty. Under those circumstances, the Office agrees that it will recommend to the Court that HSBC Switzerland's payment of the Penalty Amount, pursuant to the Agreement, should be credited toward any fine ordered by the Court as part of a future judgment.

Non-Deductibility

10. HSBC Switzerland agrees that the Tax Restitution Amount, the Forfeiture Amount and the Penalty Amount shall be treated as non-tax-deductible amounts paid to the United States government for all tax purposes under United States law. HSBC Switzerland agrees that it will not claim, assert, or apply for, either directly or indirectly, a tax deduction, tax credit, or any other offset with regard to any United States federal, state, or local tax, for any portion of the \$192,350,000 that HSBC Switzerland has paid to the United States pursuant to this Agreement.

TERM OF THE AGREEMENT

11. HSBC Switzerland agrees that its obligations pursuant to this Agreement, which shall commence upon the signing of this Agreement, will continue for three years from the date

thereof, unless otherwise extended pursuant to Paragraph 12 below (the "Deferral Period"). HSBC Switzerland's obligation to cooperate is not intended to apply in the event that a prosecution against HSBC Switzerland by this Office is pursued and not deferred.

12. HSBC Switzerland agrees that, in the event that the Office determines during the Deferral Period described in Paragraph 11 above (or any extensions thereof) that HSBC Switzerland has violated any provision of this Agreement, an extension of the period of the Deferral Period may be imposed in the sole discretion of the Office, up to an additional 1 year, but in no event shall the total term of the deferral-of-prosecution period of this Agreement exceed four years.

DEFERRAL OF PROSECUTION

13. HSBC Switzerland has made a commitment to: (a) accept and acknowledge responsibility for its conduct, as described in the Statement of Facts and the Information; (b) cooperate with the Office and the IRS (as provided herein in Paragraphs 15 through 17); (c) make the payments specified in this Agreement; (d) comply with the federal criminal laws of the United States (as provided herein in Paragraph 15(f)); and (e) otherwise comply with all of the terms of this Agreement. In consideration of the foregoing, the Office shall recommend to the Court that prosecution of HSBC Switzerland on the Information be deferred for three years. HSBC Switzerland shall expressly waive indictment and all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the Southern District of Florida for the period during which this Agreement is in effect.

14. The Office agrees that if HSBC Switzerland is in compliance with all of its obligations under this Agreement, the Office will, at the expiration of the Deferral Period (including any extensions thereof), seek dismissal with prejudice of the Information filed against HSBC Switzerland pursuant to this Agreement. Except in the event of a violation by HSBC Switzerland of any term of this Agreement or as otherwise provided in Paragraph 20, the Office will bring no additional charges or other civil action against HSBC Switzerland relating to its conduct as described in the Information or Statement of Facts. This Agreement does not provide any protection against prosecution for any crimes except as set forth above and does not apply to any individual nor entity other than HSBC Switzerland, its predecessors such as HSBC Guyerzeller AG, and its subsidiaries, or its affiliated entities that provide banking services in Switzerland. HSBC Switzerland and the Office understand that the Court must approve deferral under the Speedy Trial Act, in accordance with 18 U.S.C. § 3161(h)(2). Should the Court decline to defer prosecution for any reason: (a) both the Office and HSBC Switzerland are released from any obligation imposed upon them by this Agreement; (b) this Agreement shall be null and void, except for the tolling provision set forth in Paragraph 20, below; and (c) if they have already been transferred to the United States, the Tax Restitution Amount, Forfeiture Amount and Penalty Amount shall be returned to HSBC Switzerland.

COOPERATION

15. During the Deferral Period, HSBC Switzerland shall cooperate fully, subject to applicable laws and regulations, with the Office, the IRS, and any other federal law enforcement agency designated by the Office regarding all matters related to the Office's investigation into U.S.-related accounts banking in Switzerland at HSBC Switzerland (the "Office's Investigation") about which HSBC Switzerland has information or knowledge, including:

(a) truthfully and completely disclose all information with respect to the activities of HSBC Switzerland, its officers and employees, and others concerning all such matters about which this Office inquires related to this Office's Investigation, which information can be used for any purpose, except as limited by this Agreement or by applicable law;

(b) specifically provide, upon request, all items, assistance, information and documents required to be produced by Swiss banks participating in the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Swiss Bank Program") as set forth specifically in Parts II.D.1(a)-(d) and 2 of the Program;

(c) expand, as soon as practicable, transaction information previously produced in response to requests based on Part II.D.2.b.vi of the Swiss Bank Program, by six months to include accounts closed in the period from January 1, 2009 through December 31, 2017;

(d) make reasonable efforts to bring accounts of recalcitrant account holders, as defined in Title 26, United States Code, Section 1471(d)(6), into tax compliance, and, if such reasonable efforts are unsuccessful, then to implement the closure of recalcitrant accounts and related procedures, to the extent that it has not already done so, as set forth in Part II.G of the Swiss Bank Program;

(e) truthfully and completely disclose, and continue to disclose during the Deferral Period, consistent with applicable law and regulations, all information described in Part II.D.1(a)-(d) of the Swiss Bank Program with respect to U.S.-related accounts held by HSBC Switzerland and any statistical data that would have been relevant to the calculation of Forfeiture and Tax Restitution Amounts from 2002 through 2009 that is not protected by a valid claim of privilege or work product with respect to the activities of HSBC Switzerland and its officers, directors, employees, agents, consultants, and others, which information can be used for any purpose, except as otherwise limited in this Agreement. Subject to applicable laws and regulations, HSBC Switzerland shall disclose to the Tax Division that it has discovered new information required to be disclosed under this Agreement, including pursuant to this paragraph and paragraph 15(b) and (c), no later than thirty days from discovery and provide such information, including information as described in Part II.D.1(a)-(d) of the Program and information pursuant to paragraph 15(b) and (c) of this Agreement, no later than ninety days from discovery. All other terms of this Agreement shall apply with respect to any newly disclosed information; and

(f) HSBC Switzerland shall commit no violations of the federal criminal laws of the United States.

16. It is further understood that during the Deferral Period, HSBC Switzerland will bring, consistent with applicable laws or regulations, to this Office's attention: (a) all criminal conduct by, and criminal investigations of, HSBC Switzerland or its employees related to any violations of the federal laws of the United States that come to the attention of HSBC Switzerland's board of directors, executive committee, or senior management, and (b) any investigation conducted by, or any civil, administrative, or regulatory proceeding brought by, any U.S. governmental authority that alleges fraud by HSBC Switzerland or any other violations of the federal laws of the United States in the operation or management of HSBC Switzerland's business.

17. Notwithstanding the Deferral Period, HSBC Switzerland shall also, subject to applicable laws or regulations, continue to cooperate with the Office, the IRS, and any other federal law enforcement agency designated by the Office regarding any and all matters related to the Office's Investigation 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 Deferral Period, including:

(a) cooperate fully with the Office, the IRS, and any other federal law enforcement agency designated by the Office regarding all matters related to the Office's Investigation;

(b) retain all records relating to the Office's Investigation, for a period of 10 years from the end of the Deferral Period;

(c) provide all necessary information and assist the United States with the drafting of treaty requests seeking account information for accounts owned and/or controlled by U.S. persons, and collect and maintain all records that are potentially responsive to such treaty requests in order to facilitate a prompt response;

(d) assist the Office or any designated federal law enforcement agency in any investigation, prosecution, or civil proceeding arising out of or related to the Office's Investigation by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding;

(e) use its best efforts promptly to secure the attendance and truthful statements or testimony or information of any current or former officer, director, employee, agent, or consultant of HSBC Switzerland at any meeting or interview or before any grand jury or at any trial or other court proceeding regarding matters arising out of or related to the Office's Investigation;

(f) provide testimony of a competent witness as needed to enable the Office and any designated federal law enforcement agency to use the information and evidence obtained pursuant to HSBC Switzerland's cooperation with the Office before a grand

jury or at any trial or other court proceeding regarding matters arising out of or related to the Office's Investigation;

(g) provide the Office, 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 Office's Investigation about which the Office or any designated federal law enforcement agency inquires, including the translation of significant documents at the expense of HSBC Switzerland; and

(h) 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 Office's Investigation.

18. HSBC Switzerland agrees to use best efforts to close, as soon as practicable, and in no event later than the end of the Deferral Period, any and all accounts owned and/or controlled by U.S. persons that have been classified as "dormant" in accordance with applicable Swiss laws, regulations and guidelines, and will provide periodic reporting upon request of the Office if unable to close any dormant accounts within that time period. HSBC Switzerland 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 Swiss laws, regulations and guidelines. If at any point contact with the account holder(s) (or other persons(s) with authority over the account) is re-established, HSBC Switzerland will promptly proceed to follow the procedures described above in Paragraph 15(d).

19. Nothing in this Agreement shall require HSBC Switzerland to waive any protections of the attorney-client privilege, attorney work-product doctrine, or any other applicable privilege unless HSBC Switzerland voluntarily chooses to waive any such privilege. Nothing in this Agreement shall require HSBC Switzerland to violate the law of any jurisdiction in which it operates.

BREACH OF THE AGREEMENT

20. It is understood that should the Office in its sole discretion determine during the Deferral Period that HSBC Switzerland: (a) has knowingly given materially false, incomplete or misleading information either during the Deferral Period or in connection with the Office's Investigation of the conduct described in the Information or Statement of Facts; (b) committed any crime under the federal laws of the United States subsequent to the execution of this Agreement; or (c) otherwise knowingly violated any provision of this Agreement, HSBC Switzerland shall, in the Office's sole discretion, thereafter be subject to prosecution for any federal criminal violation, or suit for any civil cause of action, including but not limited to a prosecution or civil action based on the Information, the Statement of Facts, the conduct described therein, or perjury and obstruction of justice. Any such prosecution or civil action may be premised on any information provided by or on behalf of HSBC Switzerland to the Department or the IRS at any time. In any prosecution or civil action based on the Information,

the Statement of Facts, or the conduct described therein, it is understood that: (a) no charge would be time-barred provided that such prosecution is brought within the applicable statute of limitations period (subject to any prior tolling agreements between the Office and HSBC Switzerland), and excluding the period from the execution of this Agreement until its termination; and (b) HSBC Switzerland agrees to toll, and exclude from any calculation of time, the running of the statute of limitations for the length of this Agreement starting from the date of the execution of this Agreement and including any extension of the period of deferral of prosecution pursuant to Paragraph 12 above. By this Agreement, HSBC Switzerland expressly intends to and hereby does waive its rights in the foregoing respects, including any right to make a claim premised on the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay. Such waivers are knowing, voluntary, and in express reliance on the advice of HSBC Switzerland's counsel.

21. It is further agreed that in the event that the Office, in its sole discretion, determines that HSBC Switzerland has knowingly violated any provision of this Agreement, including by failure to meet its obligations under this Agreement: (a) all statements made by or on behalf of HSBC Switzerland to the Office, the Department, or the IRS, including but not limited to the Statement of Facts, or any testimony given by HSBC Switzerland or by any agent of HSBC Switzerland before a grand jury, or elsewhere, whether before or after the date of this Agreement, or any leads from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings hereinafter brought by the Office against HSBC Switzerland; and (b) HSBC Switzerland shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by or on behalf of HSBC Switzerland before or after the date of this Agreement, or any leads derived therefrom, should be suppressed or otherwise excluded from evidence. It is the intent of this Agreement to waive any and all rights in the foregoing respects.

22. HSBC Switzerland, having admitted to the facts in the Statement of Facts, agrees that it shall not, through its attorneys, agents, or employees, make any public statement, in litigation or otherwise, contradicting the Statement of Facts or its representations in this Agreement. Any such contradictory statement by HSBC Switzerland, through its present or future attorneys, agents, or employees, shall constitute a violation of this Agreement, and HSBC Switzerland thereafter shall be subject to prosecution as specified in Paragraphs 20 and 21, above, or the Deferral Period shall be extended pursuant to Paragraph 12, above. The decision as to whether any such contradictory statement will be imputed to HSBC Switzerland for the purpose of determining whether HSBC Switzerland has violated this Agreement shall be within the sole discretion of the Office. Upon the Office's notifying HSBC Switzerland of any such contradictory statement, HSBC Switzerland may avoid a finding of violation of this Agreement by repudiating such statement both to the recipient of such statement and to the Office within forty-eight (48) hours after having been provided notice by the Office. HSBC Switzerland consents to the public release by the Office, in its sole discretion, of any such repudiation. The Office agrees that nothing in this Agreement in any way prevents HSBC Switzerland from taking good faith positions, raising defenses, or asserting affirmative claims that are not inconsistent with the Statement of Facts in any civil proceedings, investigations, or litigation involving private parties or government entities, including non-U.S. litigations or non-U.S. investigations. Nothing in this Agreement is meant to affect the obligation of HSBC

Switzerland or its officers, directors, agents or employees to testify truthfully to the best of their personal knowledge and belief in any proceeding.

23. HSBC Switzerland agrees that it is within the Office's sole discretion to choose, in the event of a violation, the remedies contained in Paragraphs 20 and 21 above, or instead to choose to extend the period of deferral of prosecution pursuant to Paragraph 12. HSBC Switzerland understands and agrees that the exercise of the Office's discretion under this Agreement is unreviewable by any court. Should the Office determine that HSBC Switzerland has violated this Agreement, the Office shall provide prompt written notice to HSBC Switzerland of that determination and provide HSBC Switzerland with a 30-day period from the date of receipt of notice in which to make a presentation to the Office to demonstrate that no violation occurred, or, to the extent applicable, that the violation should not result in the exercise of those remedies or in an extension of the period of deferral of prosecution, including because the violation has been cured by HSBC Switzerland.

ADDITIONAL PROVISIONS

Limits of the Agreement

24. It is understood that this Agreement is binding on the Office but does not bind any other components of the Department, any other Federal agencies, any state or local law enforcement agencies, any licensing authorities, or any regulatory authorities. However, if requested by HSBC Switzerland or its attorneys, the Office will bring to the attention of any such agencies, including but not limited to any regulators, as applicable, this Agreement, the cooperation of HSBC Switzerland, and HSBC Switzerland's compliance with its obligations under this Agreement.

Public Filing

25. The Office and HSBC Switzerland agree that, upon the submission of this Agreement (including the Statement of Facts and other attachments) to the Court, this Agreement and its attachments shall be filed publicly in the proceedings in the United States District Court for the Southern District of Florida.

26. The parties understand that this Agreement reflects the unique facts of this case and is not intended as precedent for other cases.

Execution in Counterparts

27. This Agreement may be executed in one or more counterparts, each of which shall be considered effective as an original signature.

Integration Clause

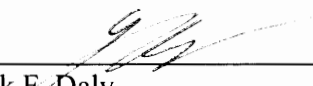
28. This Agreement sets forth all the terms of the Deferred Prosecution Agreement between HSBC Switzerland and the Office. This Agreement supersedes all prior understandings or promises between the Office and HSBC Switzerland. No modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Office, HSBC Switzerland's attorneys, and a duly authorized representative of HSBC Switzerland.

Agreed and accepted to:

For the United States of America:

STUART M. GOLDBERG

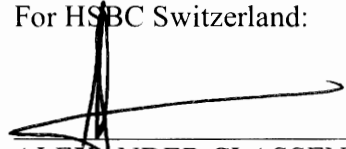
Acting Deputy Assistant Attorney General for Criminal Matters
Tax Division

By: 

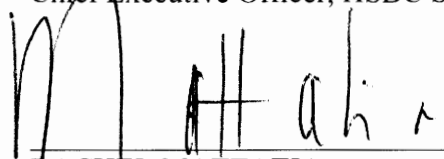
Mark F. Daly
Senior Litigation Counsel
Jason H. Poole
Assistant Chief
Grace Albinson
Trial Attorney

12/10/19
Date

For HSBC Switzerland:


ALEXANDER CLASSEN
Chief Executive Officer, HSBC Switzerland

12/10/19
Date


RACHEL MATTATIA
General Counsel, HSBC Switzerland

12/10/19
Date


MATTHEW B. HOLMWOOD
WilmerHale LLP
Attorney for HSBC Switzerland

12/10/19
Date