



**U.S. Department of Justice**

**Tax Division**

*Washington, D.C. 20530*

REZ:LJW:NLDavis  
DJ: 5-23-19243  
CMN: 2011201324

June 22, 2018

Via Email

Martine Beamon, Esq.  
Matthew Weinberg, Esq.  
Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017

Eric Stupp, att. of law  
Bär & Karrer Ltd.  
Brandschenkestr. 90  
CH-8024 Zurich

Dear Ms. Beamon and Mr. Stupp:

On the understandings specified below, the Department of Justice will not prosecute NPB Neue Privat Bank AG ("NPB"), a Swiss-based private bank, 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 NPB from 2008 through 2016 (the "Conduct"). NPB admits, accepts, and acknowledges responsibility for the Conduct as 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 NPB and does not apply to any other entities or to any individuals. NPB enters into this Agreement pursuant to the authority granted by the Board of Directors of NPB (a copy of which is attached hereto as Exhibit B). NPB expressly understands that the protections provided under this Agreement shall not apply to any acquirer or successor entity unless and until such acquirer or successor formally adopts and executes this Agreement. In the event of any change in ownership or management whether by asset or stock sale, merger or any other similar business combination or transaction, NPB agrees that it will require as an express condition of any such change in ownership or management that the acquirer or successor entity agree to be bound by the terms of this Agreement, as evidenced by a

A handwritten signature in black ink, appearing to be a stylized 'A' or similar character, located in the bottom right corner of the page.

resolution of the Board of Directors, a copy of which will be provided to the Department of Justice ("the Department").

In recognition of the Conduct, NPB agrees to pay the sum of \$5,000,000 as a penalty to 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 NPB. This payment is in lieu of restitution, forfeiture, or criminal fine against NPB for the Conduct. The Department will take no further action to collect any additional criminal penalty from NPB with respect to the Conduct, unless the Tax Division determines NPB has materially violated the terms of this Agreement as described on page 5 below. NPB 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 NPB has violated any provision of this Agreement. Moreover, if, after the execution of this Agreement, the Tax Division or NPB identifies additional U.S. Related Accounts not previously disclosed to the Tax Division about which NPB knew, or should have known, prior to this Agreement, the Tax Division may impose an additional penalty in connection with such accounts during the term of this Agreement. NPB 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. NPB agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. NPB further agrees that no portion of the penalty that NPB has agreed to pay to the Department under the terms of this Agreement will serve as a basis for NPB 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 factors:

(a) NPB's thorough disclosure of the Conduct, including:

- how its cross-border business for U.S. Related Accounts was structured, operated, and supervised;
- how NPB attracted and serviced account holders; and
- interviews of executives and directors, in-person presentations, and documentation, properly translated, supporting the disclosure of the above information, and other information that was requested by the Department;

(b) NPB's cooperation with the Department, including conducting an internal investigation and making presentations to the Department on the status and findings of the internal investigation;



(c) NPB's production of information about its U.S. Related Accounts, including the number of accounts, opening and closing dates for each account, maximum value for each account; and

(d) NPB's representations regarding its present and future financial condition.

Under the terms of this Agreement, NPB 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 relating to the Conduct that is not protected by a valid claim of privilege or work product with respect to the activities of NPB and its officers, directors, employees, agents, consultants, and others, which information can be used for any purpose, except as otherwise limited in this Agreement. NPB shall disclose to the Tax Division any information required to be disclosed pursuant to this paragraph within one month of discovery.

Notwithstanding the term of this Agreement, NPB 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; (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 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 NPB 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; (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 NPB's cooperation with the Department; (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 about which the Department or any designated federal law enforcement agency inquires, including the translation of significant documents at the expense of NPB; 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.

NPB further agrees to undertake the following:

1. NPB agrees to provide transaction information pursuant to Part II.D.2.b.vi of the Department of Justice Tax Division's Swiss Bank Program, for all accounts closed in the period from January 1, 2009 through December 31, 2017, as soon as



practicable, including an initial production of information by October 31, 2018. The Tax Division has agreed to specific dollar threshold limitations for the production of transaction information pursuant to Part II.D.2.b.vi of the Department of Justice Tax Division's Swiss Bank Program. NPB 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. NPB 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. NPB 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 NPB.
3. NPB 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. NPB 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, NPB will promptly proceed to follow the procedures described above in paragraph 2.
4. NPB 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.

NPB's obligations under this Agreement shall continue for a period of four (4) years from the date this Agreement is fully executed. NPB, however, shall cooperate fully with the Department in any and all matters relating to the Conduct, 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.

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It is understood that if the Tax Division determines, in its sole discretion, that: (a) NPB committed any U.S. federal offenses during the term of this Agreement; (b) NPB or any of its representatives have given materially false, incomplete, or misleading testimony or information; (c) the Conduct extended beyond that described in the Statement of Facts or disclosed to the Department in the course of the investigation; or (d) NPB has otherwise materially violated any provision of this Agreement, then (i) NPB 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 NPB's representatives to the Department or other designated law enforcement agents, including but not limited to the appended Statement of Facts, any testimony given by NPB'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 NPB shall be admissible in evidence in any criminal proceeding brought against NPB and relied upon as evidence to support any penalty on NPB; and (iii) NPB 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 NPB has breached this Agreement and whether to pursue prosecution of NPB 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, NPB, will be imputed to NPB for the purpose of determining whether NPB 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 NPB has breached this Agreement, the Tax Division agrees to provide NPB with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, NPB may respond to the Tax Division in writing to explain the nature and circumstances of such breach, as well as the actions that NPB has taken to address and remediate the situation, which explanation the Tax Division shall consider in determining whether to pursue prosecution of NPB.

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 execution of this Agreement may be commenced against NPB, notwithstanding the expiration of the statute of limitations between such date and the commencement of such prosecution. For any such prosecutions, NPB 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 NPB'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 NPB, the Tax Division



will, however, bring the cooperation of NPB 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 NPB.

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


  
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RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General  
Tax Division

7/18/18  
DATE

  
\_\_\_\_\_  
NANETTE L. DAVIS  
Senior Litigation Counsel

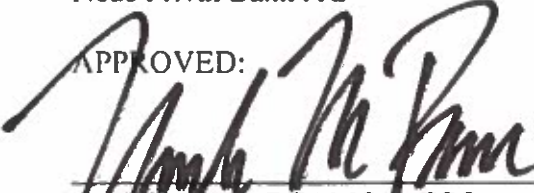
7/16/18  
DATE

AGREED AND CONSENTED TO:  
NPB PRIVATE BANK

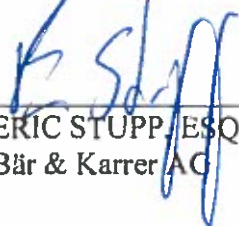
  
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MICHAEL HUNZIKER  
Chairman, Board of Directors  
Neue Privat Bank AG

25<sup>th</sup> June 2018  
DATE

APPROVED:

  
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MARTINE M. BEAMON, ESQ.  
MATTHEW WEINBERG, ESQ.  
Davis Polk & Wardwell LLP

9 July 2018  
DATE

  
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ERIC STUPP, ESQ.  
Bär & Karrer AG

25<sup>th</sup> June 2018  
DATE