



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:TJS:KEDodd
5-16-4701
2014200712

December 30, 2015

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

Re: HSZH Verwaltungs AG
(Formerly known as Hyposwiss Privatbank AG)
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Mr. Hecker:

Hyposwiss Privatbank AG, which now is known as HSZH Verwaltungs AG, (“HSZH”) submitted an initial Letter of Intent on December 31, 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 HSZH in its Letter of Intent and information provided by HSZH pursuant to the terms of the Swiss Bank Program. The Swiss Bank Program is incorporated by reference herein in its entirety in this Agreement.¹ Any violation by HSZH of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute HSZH 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 HSZH during the Applicable Period (the “conduct”). HSZH 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 HSZH and does not apply to any other entities or to any individuals. HSZH expressly understands that the protections provided under this Agreement shall not apply to any acquirer or successor entity

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

unless and until such acquirer or successor formally adopts and executes this Agreement. HSZH 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, HSZH agrees to pay the sum of \$49,757,000 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 HSZH. This payment is in lieu of restitution, forfeiture, or criminal fine against HSZH for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from HSZH with respect to the conduct described in this Agreement, unless the Tax Division determines HSZH has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. HSZH 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 HSZH has violated any provision of this Agreement. HSZH 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. HSZH agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. HSZH further agrees that no portion of the penalty that HSZH has agreed to pay to the Department under the terms of this Agreement will serve as a basis for HSZH 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) HSZH'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 HSZH 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) HSZH'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) HSZH'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 HSZH 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) HSZH's retention of a qualified independent examiner who has verified the information HSZH disclosed pursuant to Part II.D.2 of the Swiss Bank Program.

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

HSZH further agrees to undertake the following:

1. HSZH agrees, to the extent it has not provided complete transaction information pursuant to Part II.D.2.b.vi of the Swiss Bank Program, and set forth in subparagraph (c) on page 3 of this Agreement because the Tax Division has agreed to specific dollar threshold limitations for the initial production, HSZH will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. HSZH 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 HSZH.
3. HSZH 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. HSZH 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, HSZH will promptly proceed to follow the procedures described above in paragraph 2.

4. HSZH 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.

HSZH's obligations under this Agreement shall continue for a period of four (4) years from the date this Agreement is fully executed. HSZH, 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) HSZH committed any U.S. federal offenses during the term of this Agreement; (b) HSZH 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) HSZH has otherwise materially violated any provision of this Agreement or the terms of the Swiss Bank Program, then (i) HSZH 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 HSZH'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 HSZH'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 HSZH shall be admissible in evidence in any criminal proceeding brought against HSZH and relied upon as evidence to support any penalty on HSZH; and (iii) HSZH 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 HSZH has breached this Agreement and whether to pursue prosecution of HSZH 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, HSZH, will be imputed to HSZH for the purpose of determining

whether HSZH 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 HSZH has breached this Agreement, the Tax Division agrees to provide HSZH with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, HSZH may respond to the Tax Division in writing to explain the nature and circumstances of such breach, as well as the actions that HSZH has taken to address and remediate the situation, which explanation the Tax Division shall consider in determining whether to pursue prosecution of HSZH.

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

HSZH Verwaltungs AG and the Department recognize and acknowledge that: (a) HSZH Verwaltungs AG is winding down its business operations but has not yet entered formal liquidation proceedings to cease its legal existence, and (b) HSZH Verwaltungs AG expects to complete the liquidation process during the period in which this Agreement remains in force and thereupon cease to exist as a legally recognized entity. HSZH Verwaltungs AG shall only enter formal liquidation proceedings, however, provided that at least 45 days before entering formal liquidation proceedings (based on a shareholders' resolution), HSZH Verwaltungs AG (a) provides written notice of this upcoming event to the Department, (b) indicates the particulars of the person(s) or entity(ies) who will serve as the Liquidator, (c) provides notice to the Liquidator that, as a condition of their engagement as Liquidator, they will need to review and sign as having approved this Agreement within ten days of being appointed Liquidator, and (d) does not receive a written notice of objection from the Department within 30 days of its receipt of the complete information required pursuant to (a) through (c) above. At least ten days before HSZH Verwaltungs AG will cease to exist, HSZH Verwaltungs AG shall (a) provide written notice of this upcoming event to the Department, (b) indicate the particulars of the person(s) or entity(ies) (which may include an entity pertaining to the St. Galler Kantonalbank Group) who will, upon formal liquidation of HSZH Verwaltungs AG, maintain the records required to be maintained under this Agreement for ten years from the termination date of this Agreement and otherwise

comply with the ongoing obligations set forth in this Agreement, consistent with Swiss law, (c) certify that all relevant records have been delivered to or made accessible to the relevant person or entity, and (d) provide a written undertaking by such person(s) or entity(ies) towards the Department to maintain such records and to otherwise comply, upon formal liquidation of HSZH Verwaltungs AG, with the ongoing obligations set forth in this Agreement, consistent with Swiss law. The Department will not undertake legal action against any such person(s) or entity(ies) based on their good-faith inability to comply with any still operative provision of this Agreement.

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

UNITED STATES DEPARTMENT OF JUSTICE, TAX DIVISION



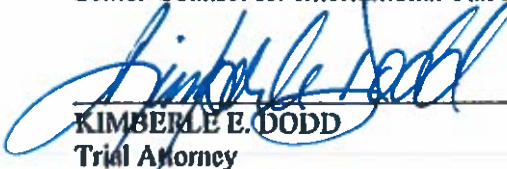
CAROLINE D. CIRAOLO
Acting Assistant Attorney General
Tax Division

1/27/2016
DATE



THOMAS J. SAWYER
Senior Counsel for International Tax Matters

1/27/2016
DATE



KIMBERLE E. DODD
Trial Attorney

1/27/2016
DATE

AGREED AND CONSENTED TO:
HSZH VERWALTUNGS AG

By: 

CHRISTIAN BEUTTER
Member of the Board of Directors

January 20, 2016
DATE

[Signatures Continue on Next Page]

By: W. Wuethrich
WILLI WUETHRICH
Manager

January 20, 2016
DATE

APPROVED:

Sean Hecker
SEAN HECKER
DEBEVOISE & PLIMPTON LLP

1/20/2016
DATE

**EXHIBIT A TO HSZH VERWALTUNGS AG
NON-PROSECUTION AGREEMENT**

STATEMENT OF FACTS

INTRODUCTION

1. HSZH Verwaltungs AG (“HSZH” or the “Bank”), previously known as Hyposwiss Privatbank AG, was founded in 1889 in Solothurn, Switzerland. In 1988, Schweizerische Bankgesellschaft AG, which was later merged into UBS AG (“UBS”), acquired the Bank and renamed it Hyposwiss Privatbank AG, and the Bank increasingly focused on private banking activities, servicing both domestic and international clients. In 2002, the Bank was acquired from UBS by the state-owned cantonal bank of St. Gallen (“St. Galler Kantonalbank” or “SGKB”).¹ In January 2014, the Bank changed its name to HSZH Verwaltungs AG. At all times, HSZH solely operated on Swiss territory.
2. Since the 1990s and throughout the Applicable Period,² the Bank was a boutique private bank in Zurich, providing private banking, wealth management, financial planning, and investment advisory services. Its target markets were Switzerland, Germany, Central and Eastern Europe, and Latin America. The Private Banking division was organized along business lines that matched each of these target markets.
3. In 2012, SGKB decided to pursue a new strategy and to focus on the local markets of Eastern Switzerland and Germany. Consequently, HSZH entered into several transactions in 2013 to sell its units serving the Latin American, the Eastern Europe and the German and Swiss client base to three separate buyers. The Latin American and Eastern European lines of business were sold to two unrelated Swiss banks. SGKB purchased the remaining business of HSZH and integrated it into SGKB’s own private banking operations. As part of this purchase and integration, SGKB paid HSZH 38 million Swiss francs to acquire the Swiss/German line of business in addition to the Bank’s External Asset Management Desk (“EAM Desk”) team that consisted of private bankers and the Bank’s “senior partner” team. In connection with this acquisition, SGKB hired some of HSZH’s employees, including certain private bankers and members of HSZH’s management team, and opened accounts for clients from HSZH. Of the accounts acquired from HSZH, at least 29 were U.S. Related Accounts with approximately \$85.5 million in assets under management.
4. In 2014, HSZH unwound its residual banking operations under the supervision of FINMA, the Swiss banking regulator. On January 6, 2014 and in connection with the wind-down, the Bank changed its name to HSZH Verwaltungs AG. In the course of the wind-down, the Bank terminated the few remaining banking relationships it had with clients not previously transferred to the three buyers. The Bank returned its banking license, and FINMA released the Bank from its supervision on November 27, 2014.

¹ SGKB was the parent company of Hyposwiss Private Bank Genève S.A. (“Hyposwiss Geneva”) and HSZH; however, all three banks are separate legal entities and have participated independently in Category 2 of the Swiss Bank Program.

² Capitalized terms not otherwise defined in this Statement of Facts have the meanings set forth in the Program for Non-Prosecution or Non-Target Letters for Swiss Banks, issued on August 29, 2013 (the “Swiss Bank Program”).

5. At its peak in 2009, HSZH had 175 employees and held assets under management totaling approximately 9.1 billion Swiss francs, and since August 2008, clients with a U.S. nexus held a peak of approximately \$1.12 billion.

U.S. INCOME TAX AND REPORTING OBLIGATIONS

6. 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. For the tax year 1976 forward, U.S. citizens, resident aliens, and legal permanent residents 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 “No” in the appropriate box and identifying the country where the account was maintained.
7. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any time during a particular year have been required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114, formerly known as Form TD F 90-22.1 (the “FBAR”). The FBAR for the applicable year was due on June 30 of the following year.
8. Since 1935, Switzerland has maintained criminal laws that ensure the secrecy of client relationships at Swiss banks. While Swiss law permits the exchange of information in response to administrative requests made pursuant to a tax treaty with the United States and certain legal requests in cases of tax fraud, Swiss law otherwise prohibits the disclosure of identifying information without client authorization. Because of the secrecy guarantee that they created, these Swiss criminal provisions have historically enabled U.S. clients to conceal their Swiss bank accounts from U.S. authorities.
9. In or about 2008, Swiss bank UBS publicly announced that it was the target of a criminal investigation by the Internal Revenue Service and the United States Department of Justice and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department of Justice and UBS filed a deferred prosecution agreement in the Southern District of Florida in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared assets and income from the IRS. Since UBS, several other Swiss banks have publicly announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients (UBS and the other targeted Swiss banks are collectively referred to as “Category 1 banks”). These cases have been closely monitored by banks operating in Switzerland, including HSZH, since at least August of 2008.

HSZH SUBVERTED ITS QUALIFIED INTERMEDIARY AGREEMENT

10. In 2001, HSZH entered into a Qualified Intermediary Agreement (“QI Agreement”) with the IRS. The Qualified Intermediary regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution with respect to U.S. securities. The QI Agreement was designed to help ensure that, with respect to U.S. securities held in an account at

the bank, non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons holding U.S. securities were properly paying U.S. tax.

11. The QI Agreement took account of the fact that HSZH, like other Swiss banks, was prohibited by Swiss law from disclosing the identity of an account holder. In general, if an account holder wanted to trade in U.S. securities and avoid mandatory U.S. tax withholding, the agreement required HSZH to obtain the consent of the account holder to disclose the client's identity to the IRS. The QI Agreement required HSZH to obtain IRS Forms W-9 and to undertake IRS Form 1099 reporting for new and existing U.S. clients engaged in U.S. securities transactions.
12. Notwithstanding this requirement, HSZH chose to continue to service U.S. clients without disclosing their identity to the IRS and without considering the impact of U.S. criminal law on that decision. HSZH believed it could continue to accept and service U.S. account holders, even if it knew or had reason to believe they were engaged in tax evasion so long as it complied with the QI Agreement, which in the Bank's view did not apply to account holders who were not trading in U.S.-based securities or to accounts that were nominally structured in the name of a non-U.S.-based entity.
13. For example, HSZH maintained and serviced a numbered account open from February 2001 until October 2012 held by two beneficial owners who were U.S. citizens and residents who did not sign a Form W-9, did not trade in U.S.-based securities, and ordered repeated transactions structured below \$10,000 on a monthly basis between April 2009 and September 2012. HSZH did not undertake Form 1099 reporting for these U.S. clients. Another example is an account nominally held by a British Virgin Islands entity open from December 2005 until February 2013 with assets of more than \$13 million that were beneficially owned by two individuals, one of whom was a U.S. resident who did not sign a Form W-9. This account traded in U.S.-based securities, but HSZH did not undertake Form 1099 reporting for this U.S. client.
14. After HSZH entered into a QI Agreement with the IRS, certain HSZH private bankers and supervising employees allowed some U.S. clients to create and open accounts in the name of sham offshore entities. In connection with some of these accounts, certain HSZH employees accepted and included in HSZH's account records IRS Forms W-8BEN (or HSZH's substitute forms) provided by the directors of the offshore companies that falsely represented under penalty of perjury that such companies were the beneficial owners of the assets in the accounts, for U.S. federal income tax purposes. These false Forms W-8BEN were obtained at the same time as the Swiss Forms A that accurately and truthfully represented the true beneficial owners of the assets in the accounts.
15. While HSZH technically complied with its QI Agreement by undertaking IRS Form 1099 reporting for U.S. clients with accounts held in their own individual names that were engaged in U.S. securities transactions, certain HSZH employees and others assisted U.S. clients in executing forms that directed HSZH not to acquire U.S. securities in their accounts. The purpose of such forms was to avoid HSZH having to disclose the identities of U.S. clients to the IRS under its QI Agreement. Additionally, the Bank maintained records in its files in which certain U.S. taxpayers expressly instructed HSZH not to disclose their names to the IRS.
16. In October and November 2008, the senior management of HSZH acknowledged and discussed the QI compliance risks associated with the Bank's U.S. business. On November 11, 2008, the Bank's

general counsel raised specific concerns with the HSZH Chief Executive Officer (“CEO #2”) and an executive board member of HSZH regarding “Offshore Companies with ‘US Person’ as operating organization” and said: “Compliance is still receiving from time to time openings of an offshore company (mostly Panama), in which the operating organization is a U.S. person. If we are consistent, we should no longer accept such openings without the U.S. operating person being revealed to the IRS, thus producing a W9.”

17. In April 2009, a U.S. citizen client, who held an HSZH account jointly with his wife with more than \$2 million in assets, informed an HSZH private banker that he had not closed his securities account held with another Swiss bank. The client explained that instead he had “donated” the securities account to his wife, who was a non-U.S. person, in order to avoid the disclosure of his identity to the U.S. authorities. In June 2009, the existing joint account at HSZH was converted into a single account held solely in the name of the wife. In March 2010, an HSZH private banker requested that the QI status of the account be changed to “Non-US-Person.”
18. Until February 2012, HSZH requested but did not require all of its existing U.S. clients to provide a signed IRS Form W-9 and to confirm whether their accounts were disclosed to the IRS.
19. As a result of the Bank’s actions, prior to August 1, 2008 and thereafter, U.S. taxpayers were able to continue depositing funds into accounts at HSZH. HSZH was aware that some of its U.S. clients wanted to conceal their accounts from U.S. authorities, and HSZH assisted some of those U.S. clients in the concealment of their accounts.
20. Although it was subject to a QI Agreement, HSZH subverted the terms of the Qualified Intermediary Agreement by failing to fully comply with its reporting obligations to the IRS, thus enabling U.S. account holders to avoid reporting their accounts to the U.S. authorities.

OVERVIEW OF HSZH’S U.S. CROSS-BORDER BUSINESS

21. In the Applicable Period, HSZH held a total of 605 U.S. Related Accounts, which included both declared and undeclared accounts, with an aggregate peak of approximately \$1.12 billion in assets under management. All of these 605 U.S. Related Accounts had U.S. account holders or U.S. beneficial owners. As of August 1, 2008, HSZH had 247 U.S. Related Accounts, with an aggregate peak asset value of approximately \$650 million. During the Applicable Period, the Bank opened 358 additional U.S. Related Accounts, with an aggregate peak asset value of approximately \$466 million. Approximately 102 of HSZH’s 605 U.S. Related Accounts, comprising approximately \$274 million in assets under management, held U.S. securities and were timely disclosed to the IRS through Form 1099 reporting.
22. Through its managers, employees and/or others, HSZH knew or had reason to know that some U.S. taxpayers who had opened and maintained accounts at the Bank were not complying with their U.S. income tax and reporting obligations. Until 2013, HSZH conducted a U.S. cross-border banking business that aided and assisted certain of its U.S. clients in opening and maintaining undeclared accounts in Switzerland and concealing the assets and income they held in these accounts from the U.S. government.

23. As discussed in detail below, the senior management of HSZH viewed the exit of U.S. clients by the targeted Swiss banks as a business opportunity to be seized immediately rather than a warning to be heeded. Other than the 83 U.S. Related Accounts opened through the two pipelines described in paragraphs 38 – 77 below, HSZH opened at least 275 additional U.S. Related Accounts since August 2008, and at least 46 of those 275 U.S. Related Accounts were undeclared at account opening. Additionally, internal bank notes indicate that in September and October 2008 certain external asset managers with whom HSZH entered into agreements were expected to have “many former UBS clients” and would introduce U.S. clients to the Bank.
24. HSZH offered a variety of traditional Swiss banking services that it knew could assist, and did in fact assist, U.S. clients in the concealment of assets and income from the IRS. One such service was hold mail, where the Bank would hold all correspondence for a particular client at the Bank, rather than send the correspondence to the client. The Bank’s fee for hold mail service was included in the management fee charged to clients.
25. HSZH also offered numbered account services. Upon request of the client, the Bank allowed the account holder to replace his or her identity with a number on bank statements and other documentation sent to the client. These U.S. clients would enter into a code word agreement with the Bank pursuant to which the U.S. clients would use a pseudonym signature for correspondence with the Bank. HSZH entered into code name or numbered account agreements with at least 197 U.S. Related Accounts that held an aggregate peak asset value of approximately \$281 million. By accepting and maintaining such accounts, the Bank assisted some U.S. taxpayers in evading their U.S. tax obligations.
26. HSZH opened and maintained at least 117 accounts (with an aggregate peak asset value of approximately \$185 million) belonging to U.S. taxpayers who had left other banks being investigated by the U.S. Department of Justice without ensuring that each such account was compliant with U.S. tax law from its inception at HSZH. Ninety-one of these accounts provided a signed Form W-9 at account opening; 26 did not. Fourteen of the 26 accounts opened without a signed Form W-9 were structured accounts. Some of these U.S. taxpayers have since participated in an IRS Offshore Voluntary Disclosure Program or Initiative.
27. HSZH arranged for the issuance of credit, debit, or travel cards to the beneficial owners of at least 99 U.S. Related Accounts. A client could instruct the Bank by telephone, mail, or e-mail to load Swiss francs, U.S. dollars, or euros onto a travel cash card from his HSZH bank account. A client could then use the card for purchases or remit unused balances back to his HSZH account. During the Applicable Period, the holders of at least 16 U.S. Related Accounts withdrew a total of approximately \$1 million from their accounts in more than 150 separate transactions by use of travel cash cards without any funds passing through correspondent bank accounts located in the United States. Also during the Applicable Period, the holders of at least 69 U.S. Related Accounts used debit cards in more than 1,600 transactions totaling more than \$300,000, and the holders of at least 37 U.S. Related Accounts used credit cards in more than 600 transactions totaling more than \$2 million. Use of these cards by U.S. persons facilitated their access to or use of undeclared funds on deposit at the Bank.

28. HSZH processed wire transfers or issued checks in amounts of less than \$10,000 that were drawn on accounts of U.S. taxpayers or structures in at least 113 cases (for a total value of approximately \$877,000), even though the Bank knew, or had reason to know, that the withdrawals were made to avoid triggering scrutiny under the United States currency transaction reporting requirements.
29. HSZH delivered cash in person to U.S. taxpayers outside of Switzerland on numerous occasions and regularly for certain U.S. clients. HSZH also provided U.S. clients with internet-based access to their accounts, which was used by U.S. clients to place payment orders from their HSZH accounts.
30. HSZH opened and maintained more than 75 undeclared accounts in the names of sham structures that were beneficially owned by U.S. taxpayers, while knowing, or having reason to know that, these structures were used by U.S. clients to help conceal their identities from the IRS. These accounts comprised a total aggregate peak asset value of more than \$266 million.
31. HSZH did not maintain a U.S. desk or other unit with a particular focus on U.S. clients. The Bank acquired U.S. client accounts from client and third-party referrals, previous clients that became U.S. persons or U.S. persons who inherited accounts from non-U.S. persons, from external asset managers, from unsolicited walk-ins, and through a portfolio transfer from a subsidiary of its previous corporate parent (UBS) in 1992. HSZH senior management did, however, solicit and approve two pipelines of new undeclared U.S. client accounts predominantly from UBS (83 U.S. Related Accounts in total) as described in greater detail below.
32. HSZH's private bankers served as the primary contact for U.S. clients with accounts at HSZH unless the U.S. client was managed by an external asset manager. Approximately 47 private bankers were responsible for managing at least one U.S. client account since August 2008; 42 of these private bankers were on the private client desks and five were on the EAM Desk. During the Applicable Period, 90 percent of the Bank's U.S. Related Accounts in terms of assets under management were managed by seven private bankers. Those seven private bankers each managed collective assets for U.S. clients of more than \$50 million, and five of those seven private bankers each managed collective assets for U.S. clients of more than \$100 million, in part as a result of the Bank's centralization efforts. HSZH hired six private bankers from UBS during the Applicable Period (none of whom worked for UBS's North American desk), and each of these six private bankers managed at least one U.S. Related Account. In connection with the asset sale to SGKB in 2013 described in greater detail above, six of the top seven private bankers (in terms of assets under management) were transferred to SGKB and are currently employed by SGKB, and 18 of the 47 HSZH private bankers responsible for managing U.S. client accounts are currently employed by SGKB.
33. HSZH maintained and serviced at least 334 U.S. Related Accounts managed by 51 external asset managers (more than 50% of the Bank's U.S. Related Accounts and approximately 66% of the total assets under management), with an approximate value of at least \$731 million during the Applicable Period.
34. Eighteen of these 51 external asset managers each managed more than \$10 million in assets held by U.S. Related Accounts at HSZH. The fees paid by HSZH to the external asset managers were

generally calculated as a percentage of the custodial and brokerage fees. The compensation remained the same regardless of the client's nationality.

35. HSZH's private bankers typically communicated via telephone or business email with their clients in the United States. Some HSZH private bankers received written instructions from U.S. clients, including payment orders, at the HSZH private banker's personal home address.
36. Certain HSZH private bankers traveled to the United States several times per year until at least May 2008. The purpose of these visits was to maintain existing relationships with U.S. clients. Until May 12, 2009, when SGKB introduced a group-wide policy prohibiting contacting clients in the United States, HSZH had no written policy regarding business travel. In June 2009, HSZH adopted restrictions prohibiting business travel to the United States by its private bankers.
37. Meetings between HSZH private bankers and U.S. clients took place in multiple locations within the United States, including Florida, New York, Pennsylvania, Virginia, and Washington, D.C. Some U.S. clients asked for cash on a regular basis, so at times the HSZH private banker for that U.S. client would personally deliver cash in amounts below \$10,000 to avoid the reporting requirements every time he traveled to the United States to meet with the client. For example, one HSZH private banker traveled to Washington, D.C. on May 19, 2008 and personally delivered \$8,500 in cash to his U.S. client who signed a receipt for the cash using a pseudonym signature for the account. This U.S. client opened his account as a hold mail account, instructed the Bank not to invest in U.S. securities, made multiple cash withdrawals from his account, and requested to use a pseudonym.

THE FIRST PIPELINE OF UNDECLARED UBS CLIENTS APPROVED BY SENIOR MANAGEMENT OF HSZH

38. The first pipeline of undeclared U.S. clients transferred from UBS was brought by a UBS private banker who was an acquaintance of the Chief Executive Officer of HSZH ("CEO #1"). Between September 19, 2008 and January 26, 2009, HSZH knowingly opened six undeclared accounts for U.S. clients with an aggregate total of peak assets under management of approximately \$9.2 million. All six of these undeclared U.S. clients previously had been with UBS.
39. In July 2008, UBS announced that it was exiting its business with U.S.-domiciled clients and would no longer provide such clients with private banking services through its non-U.S. regulated banking units. Shortly after this announcement, CEO #1 contacted an acquaintance at UBS who worked for a former UBS vice president and communicated that HSZH was interested in opening accounts for such U.S. clients with accounts at UBS. This was done at the suggestion of a member of the Executive Board of HSZH ("HSZH EB #1").
40. After this senior UBS manager declined HSZH's offer in August 2008, CEO #1 then reached out to two former colleagues from UBS regarding the potential transfer of their UBS clients, including U.S. clients, to HSZH. CEO #1 knew that these two former colleagues, who managed Canadian and U.S. clients as well as other clients, were planning to retire from UBS in the near future. On August 12, 2008, CEO #1 met UBS Banker #1 for a lunch meeting during which they discussed UBS Banker #1's client asset portfolio of approximately 600,000,000 Swiss francs, his upcoming retirement from UBS in June 2009, and his desire to be paid a finder's fee but not until after his retirement. Also on August 12, 2008, CEO #1 and UBS Banker #1 agreed to an introductory meeting with HSZH EB #1

and the HSZH private banker (“HSZH Private Banker #1”) who would be responsible for the transferred accounts.

41. CEO #1’s internal memorandum regarding the lunch meeting notes that “We agreed that he may introduce American clients with immediate effect to [HSZH Private Banker #1]. However, we will only pay him his finder’s fee after his retirement. I held out the prospect of 0.75% for ‘normal’ clients. For clients who have exclusively or mostly fiduciary character, 0.5%.” The memorandum concludes by noting that contact and correspondence should be directed only to UBS Banker #1’s private address and private telephone. The formal finder application and finder’s agreement with UBS Banker #1 are dated February 2011 after UBS Banker #1 had left UBS; the new head of private banking, who also served as a member of the Bank’s Executive Board from 2011 to 2013 and was the former head of the Swiss/German team and the EAM desk, and the head of compliance signed on behalf of HSZH.
42. Despite a policy that was discussed contemporaneously and formally adopted in August 2008 requiring all new clients with a U.S. domicile to provide an IRS Form W-9, HSZH knowingly opened the accounts for these six UBS Banker #1 clients without Forms W-9.
43. CEO #1 expressed reservations about this new W-9 policy after receiving a draft and sent an email on August 14, 2008 to the president of the board of directors of HSZH who also was the president of the Executive Board of SGKB, the new incoming chief executive officer of HSZH (CEO #2), and HSZH EB #1, noting that the opportunity to transfer U.S. clients from UBS was “unanimously agreed to and specifically recorded” during “the management meeting of 22 July [2008].”
44. CEO #2 replied to the message sent by CEO #1 the following day on August 15, 2008 and said: “Thank you for the information. I share your opinion. In my opinion it is important that such matters are discussed verbally with [President of the HSZH board of directors and president of the Executive Board of SGKB]. The last thing we need is a ‘paper trail’ + ‘broadcast’ throughout the SGKB organization.”
45. Also on August 15, 2008, the general counsel of HSZH sent CEO #1 an email containing his views on the W-9 policy for CEO #1’s review and discussion before sending to SGKB: “In my opinion this policy should be a clarification of the already existing practice in connection with U.S. persons. The actual situation in the US (UBS, Birkenfeld, etc.) has nothing to do with [HSZH] [redacted] or SGKB. . . . Why should we freely throw away a good business opportunity? The possible changes of the QI agreement in the near future are a different issue and should be discussed separately.”
46. The general counsel of HSZH sent those views on the W-9 policy to the Head of Legal & Compliance for SGKB approximately two hours after sending them to CEO #1. The Head of Legal & Compliance of SGKB replied shortly thereafter stating: “Thanks for your estimation. I share this opinion basically; nevertheless we have to discuss our policy as [redacted third party] has wished. I phoned with [redacted third party] today. Who wants for ‘security reasons’ that we do not formulate a written policy. I told him that it is not my aim to communicate this policy to a greater ‘public’ within the bank.”

47. At an August 19-20, 2008 meeting, SGKB's Executive Board formally adopted the new policy, which stated that no funds shall be accepted from U.S. residents without a signed W-9 form and applied to new U.S. resident clients. The policy also provided that the "Division Heads at the parent bank or the chairpersons of the Executive Board of Hyposwiss Zurich [redacted] shall decide on justified exceptions." On August 27, 2008, the management of HSZH formally introduced the new policy to bank personnel.
48. HSZH's Executive Board simultaneously implemented an exception to the policy for these six clients of UBS Banker #1 because "they have already received our consent to open a business relationship with them." Beginning in September 2008, for each account opened in this pipeline, an exception form to the W-9 policy was signed by senior executives, including in one case by CEO #2 (the new chief executive officer of HSZH). These exception forms expressly stated that the account opening was for a U.S. client without a Form W-9 and noted that the assets were undeclared. CEO #2 served as the chief executive officer of HSZH from September 2008 until 2013.
49. Consequently, HSZH knew that the clients' assets were undeclared when it approved the exception to the policy and opened the accounts, and this knowledge is reflected in the account opening documentation for each account.
50. On September 30, 2008, CEO #2 inquired of an incoming SGKB senior executive with an active SGKB email account: "How are your undeclared US new clients treated? Are you 'pragmatic' and accept such?" The SGKB executive replied: "Yes, if we are within the guidelines of QI; also pragmatically with enhanced management attention relating to origin of funds, rational, sign-off documents, etc. Have you already received the cases of [CEO #1]?" CEO #2 then forwarded the email discussion to HSZH EB #1 stating: "Attached for your information. Take up the issue of [president of the board of directors of HSZH and president of the Executive Board of SGKB] again. In my opinion, we proceed until further notice in a 'pragmatic' way, that is, we take extra business 'on board'. Your opinion?" HSZH EB #1 responded on October 1, 2008: "With current knowledge, I am clearly of the opinion we should play this niche."
51. On January 26, 2009, CEO #2 reconsidered the ongoing acceptance of clients from UBS Banker #1 and wrote in an email to CEO #1 and the general counsel of HSZH: "As you know, we still accept clients that are introduced by UBS Banker #1. The situation in the coming months in relation to such clients will not get any easier! I want to avoid having an 'open-ended carte blanche' with this agreement. From the bank's perspective, it would certainly be helpful if we would get an indication from [UBS Banker #1] about how many clients (that is, openings) what volume we can expect and when. It would be in my opinion also helpful to agree on an 'expiration date.' I think it would not be a wise policy if we applied the same 'modus operandi' next year as we do today."
52. One day later, on January 27, 2009, HSZH EB #1 proposed to the Executive Board in an email that the Bank "continue this pragmatic cooperation with [UBS Banker #1] without amount or time limitation" and explained that "[UBS Banker #1] has introduced 7 US clients to us thus far. Approximately CHF 7.5 million have been received for these so far and advised transfers of CHF 3.5 million are still pending. The further potential for this type of client is still about 1-2 times more than we already have. In addition, [UBS Banker #1] will retire in June 2009 and will no longer

operate client transfers or acquisitions.” In responses sent to this message on the same day, the HSZH general counsel and CEO #2 approved the recommendation.

53. All six of the UBS Banker #1 pipeline accounts were managed by HSZH Private Banker #1, who in 2014 was transferred to SGKB. More than 100 of his 192 U.S. Related Accounts at HSZH were undeclared with undeclared assets under management of \$192 million out of an aggregated total of \$216 million. HSZH centralized U.S. clients with this private banker for purposes of their exit from the Bank.
54. On April 15, 2009, the Executive Board of HSZH changed course and decided to formally close the UBS Banker #1 pipeline of undeclared UBS clients. In addition to the six U.S. clients obtained through this pipeline, the Bank also received approximately 20 million Swiss francs in assets associated with non-U.S. Related Accounts from the UBS Banker #1 pipeline for a collective total of approximately 30 million Swiss francs.

A SECOND PIPELINE OF UNDECLARED UBS CLIENTS IS APPROVED BY SENIOR MANAGEMENT OF HSZH

55. The second pipeline of undeclared U.S. clients predominantly from UBS were all introduced and managed by an external asset management firm in Zurich whose head of private banking was formerly in charge of UBS's North America International business (“EAM #1”). Between October 2008 and August 2009, HSZH opened 77 accounts for U.S. clients with an aggregate total of peak assets under management of approximately \$165 million. As with the first pipeline, the majority of these clients also had been with UBS prior to opening accounts at the Bank.
56. The EAM #1 pipeline accounts constituted approximately 35 percent of the Bank's U.S. Related Accounts opened during the Applicable Period in terms of assets under management, and these accounts comprised at least 74 percent of the undeclared U.S. Related Accounts at HSZH.
57. In July 2008, HSZH's head of the EAM Desk (“HSZH Private Banker #2), who had a prior relationship with EAM #1 before joining HSZH in December 2007, had a lunch meeting planned with the head of private banking of EAM #1 after having provided EAM #1 with HSZH's “pitch” or marketing materials in June 2008 (the month before UBS announced it was exiting U.S. clients). HSZH Private Banker #2 had maintained contact with this person and other employees of EAM #1 after being hired by HSZH. Approximately 100 of his 220 U.S. Related Accounts at HSZH were potentially undeclared with undeclared assets under management of more than \$180 million out of an aggregated total of more than \$318 million. HSZH Private Banker #2 transferred to SGKB when it purchased the EAM Desk effective January 1, 2014.
58. The July meeting was postponed; however, the head of private banking for EAM #1 contacted HSZH Private Banker #2 on August 5, 2008 asking whether the Bank would still open accounts for U.S. clients because three other banks decided not to establish any more business relationships for U.S. clients and EAM #1 was looking for another bank as an alternative for securities accounts.
59. On August 7, 2008, HSZH Private Banker #2 met with the head of private banking of EAM #1 to discuss whether HSZH would open accounts for U.S. clients of EAM #1 with an average account size of 1.5 million Swiss francs and total expected assets of approximately 30 to 50 million Swiss

francs within a 12-month period. The discussion addressed that the assets would be transferred mainly from UBS, and from which EAM #1 had hired five new employees formerly on its North America Desk with the first of these employees starting on September 1, 2008.

60. The memorandum prepared by HSZH Private Banker #2 summarizing the August 7, 2008 meeting was forwarded from HSZH EB #1 to CEO #2, who was expected to start in September 2008, and asked him to make a decision regarding the potential new U.S. client accounts from EAM #1 noting that EAM #1 wanted a decision by the end of the next week. The message was forwarded the same day as the meeting and noted to CEO #2 that HSZH Private Banker #2 “took care of these clients with [another Swiss bank]” and cautioned that HSZH Private Banker #2 “is trying to defuse the problematic [sic] with US clients, since we are only a clearing bank and [EAM #1] the client’s bank.” HSZH EB #1 goes on to note that: “I think that’s naïve. Since I like the people at [EAM #1] and the volume of around CHF 50 million is attractive, I’m a little split.”
61. CEO #2 replied less than fifteen minutes later on August 7, 2008 and said: “As discussed: no. I believe the ‘risk/reward’ is not proportional.” This response then was forwarded promptly from HSZH EB #1 to HSZH Private Banker #2 informing him that: “I was able to speak more about it with [CEO #2], but I have to (and can) give a negative response to your summary below. I ask you to inform [EAM #1] in an appropriate form and with our regret. In plain language, our bank does not want any new American clients.”
62. One day later, on August 8, 2008, HSZH Private Banker #2 sent a message to his superior, the head of private banking for HSZH of the Swiss/German team and the EAM desk, who had been out of the office on holiday, attaching a note summarizing information for his return to business. Within that note under “to be discussed,” HSZH Private Banker #2 addressed the August 7, 2008 meeting with EAM #1 and stated: [EAM #1] is looking for a new custodian, which still takes US clients. He would see us as an alternative to [redacted third party]. [HSZH EB #1] knows about this. However: management decision about US clients is pending.” HSZH Private Banker #2 then advised his superior, the head of private banking for HSZH of the Swiss/German team and the EAM desk, of the decision not to accept EAM #1’s clients.
63. In September 2008, CEO #2 and the senior management of HSZH reversed the decision already made regarding this pipeline and opted instead to enter into a business relationship with EAM #1. HSZH Private Banker #2 had a lunch meeting with the head of private banking from EAM #1 on September 3, 2008. Then, on September 11, 2008, an appointment was made for a meeting with HSZH executives, including CEO #2, HSZH EB #1 and HSZH Private Banker #2, and the head of private banking of EAM #1. This meeting took place on September 16, 2008 in the offices of HSZH.
64. On September 24, 2008, the Executive Board of HSZH unanimously approved a new business relationship with EAM #1. The motion for the new application of EAM #1 noted that EAM #1 managed approximately 1.5 billion Swiss francs and that the assets under management potential for the coming twelve months was approximately 30 to 50 million Swiss francs. Neither the opening request nor the board minutes contained any statements about the tax status of EAM #1’s clients to be transferred to HSZH.

65. CEO #2 and HSZH EB #1 agreed on October 1, 2008 in an email exchange to take a pragmatic approach to accepting EAM #1's pipeline clients. On October 14, 2008, CEO #2 sent another email message to HSZH EB #1 requesting "an estimate of the 'US Assets' which are in the pipeline today" and attaching a memorandum setting out options regarding the Bank's U.S. business. The four options identified in the memorandum were: 1) maintaining the status quo with pros that included "profitable business," "good profit contribution, ties up no new resources," and cons that stated "potential for 'compliance risks'; QI problematic, especially in the case of new regulation;" 2) sale of the "US client portfolios" to a third party with pros that stated "all 'compliance issues' removed from the table and cons that included "all purchasers require 'high risk premium' (lower sale price)" and "difficulty of finding purchaser & possible handling/logistics, hardly feasible;" 3) liquidation of the business with pros that stated "potential compliance issues were resolved" and cons that included "negative effect on P&L [profit & loss], reputation risk vs. existing clients;" and 4) new positioning with 'active acquisition' with pros that stated "at the moment 'growth business' for niche providers, NNM [net new money] & profit growth" and cons that included "creation of an additional/heightened concentration of credit risk, later possible 'compliance problems.'" The memorandum also contained figures of the Bank's existing U.S. business for 2007 and as of September 2008: 1) 2007 U.S. client assets under management were approximately 297 million Swiss francs and gross income was approximately 3.6 million Swiss francs; and 2) September 2008 U.S. client assets under management were approximately 245 million Swiss francs and gross income was approximately 2.2 million Swiss francs. These figures did not include the EAM #1 pipeline accounts.
66. The requests for EAM #1 account openings as exceptions to the policy were signed by an HSZH senior executive, the head of private banking for the Swiss/German team and the EAM Desk, on behalf of HSZH EB #1, but in contrast to the opening requests for the UBS Banker #1 accounts, the opening requests for the EAM #1 accounts did not explicitly state that the account assets were undeclared. They did, however, state that the client had U.S. nationality, the Form W-9 was not signed, and it was a client who was managed by EAM #1.
67. On November 11, 2008, the Bank's general counsel raised concerns about the EAM #1 pipeline in an email to CEO #2 and HSZH EB #1 in which he stated: "Hopefully for the last time I am asking you for decisions, respectively, clarifications in the question of 'behaviour with respect to U.S. clients.' As we are currently inundated in compliance with [EAM #1] openings, I wonder how long the 'pipeline' will remain open to this client group. In my view we cannot maintain this exception in good conscience over the long-term that is, we must give [EAM #1] an end date for when we will open only those US clients – including from them – with W9. My suggestion would be to set the end of January 2009 as this end date."
68. At a meeting of the Bank's board of directors on November 26, 2008, a presentation was made by CEO #2 regarding the handling of U.S. clients, and the board decided "that the previously defined 'pipeline' will end by year end, and thus, from 2009 on, only disclosed US clients without exceptions (form W9 signed) will be accepted as new clients."
69. Between December 2008 and August 2009, 33 new EAM #1 pipeline accounts were approved and opened by HSZH; five of these were opened in 2009. The EAM Desk's net new money target for 2008 was 30 million Swiss francs; however, the EAM Desk achieved 294 million Swiss francs, in part due to this second pipeline of clients.

70. On June 10, 2009, the head of private banking for EAM #1 informed HSZH Private Banker #2 that EAM #1 had decided to separate from its asset management business with U.S. clients due to risk considerations. HSZH Private Banker #2 memorialized the information in a memorandum to CEO #2 and three others within the Bank in which he noted that: “[EAM #1] will now inform all affected clients about this step and ask the clients to submit themselves to the [IRS] ‘Voluntary Disclosure’ by September 23, 2009. If a client is not willing to do so, [EAM #1] will terminate the respective asset management mandate.” The memorandum also described how the head of private banking for EAM #1, along with the remaining private bankers of EAM #1 who were managing U.S. clients, would then establish a new asset management company that will assume its activities on October 1, 2009. This new company would focus on the management of U.S. clients – exclusively with W-9 – and Swiss and German clients. With respect to the volumes at HSZH, the memorandum identified approximately 80 clients that were affected with approximately 150 million Swiss francs in assets under management. The memorandum concluded by identifying four possible issues for the Bank: 1) “What is going to happen with the clients who do not disclose? Who will in future manage such clients?” 2) “What is going to happen with the powers of administration if [EAM #1] terminates its asset management mandates with non-disclosed clients?” 3) “How do we behave towards other EAMs who have a similar clientele?” 4) “What does this mean in general for our bank?”
71. On August 18, 2009, the last EAM #1 pipeline account was opened by the Bank. On August 20, 2009, the head of private banking for EAM #1 was indicted by the U.S. Attorney’s Office for the Southern District of Florida.
72. On September 3, 2009, HSZH informed EAM #1 that it would no longer accept non-disclosed U.S. clients without a power of administration held by an external asset manager, and would close accounts for which it did not receive disclosure declarations by November 30, 2009.
73. In a letter dated September 7, 2009, EAM #1 explained to HSZH that EAM #1 decided in spring 2009 to discontinue its private banking for U.S. clients, and intended to no longer manage any U.S. clients in private banking as of October 2009. EAM #1 also noted that several private bankers would be leaving EAM #1 but that their future employers were not subsidiaries of EAM #1, and EAM #1 was “striv[ing] to terminate its asset management mandates with U.S. clients in accordance with the interests of the custodian banks.”
74. Once the relationship with EAM #1 was terminated, management of the clients previously managed by EAM #1 was transferred to other external asset managers, most of whom were spin-off companies from EAM #1. For the most part, an individual private banker who had been managing the clients first at UBS and later at EAM #1 moved to another external asset manager, or established his or her own external asset management company, and continued to manage the relationship of these clients with accounts at HSZH.
75. A substantial amount of the EAM #1 client assets were transferred to two other external asset managers, both of which were comprised of former EAM #1 officers, and EAM #1’s finder’s fees for these accounts also were assigned to these two other external asset managers. The Bank established a relationship with these two external asset managers in October 2009, and these external asset managers received up to 50% of the Bank’s fees (retrocessions) and a finder’s fee of 1.25% on

net new money. At least six external asset management companies arose as spin-off companies after EAM #1 exited its private banking business with U.S. clients.

76. Despite the policy adopted in August 2008 that required all new clients with a U.S. domicile to provide an IRS Form W-9 and despite the November 26, 2008 decision of the HSZH board of directors to require a signed Form W-9 for all new U.S. clients without exceptions beginning in 2009, the accounts for all but three of the 77 clients of EAM #1 were opened without Forms W-9. Between October and December 2008, 72 accounts were opened without Forms W-9 for U.S. clients of EAM #1 as an exception to the Bank's policy implemented by CEO #2. Between February and August 2009, five more accounts were opened for U.S. clients of EAM #1, and of these five accounts, two were opened in breach of the Bank's policy.
77. Ultimately, 71 of the 77 EAM #1 pipeline accounts held assets that were transferred from UBS to HSZH, and six of the 77 EAM #1 pipeline accounts held assets that were transferred from other accounts already open at HSZH. Some of these 77 EAM #1 pipeline accounts held assets transferred from more than one bank, and those banks included other Swiss banks, Greek banks, and two U.S. banks.

HSZH'S ASSISTANCE TO U.S. CLIENTS USING SHAM ENTITIES

78. Of the more than 160 accounts maintained for U.S. taxpayers in the names of structures, both U.S. and non-U.S. structures, at least eight undeclared structured accounts were U.S. domiciled entities. Those eight accounts comprised an aggregate peak value of approximately \$13 million in assets under management.
79. HSZH serviced approximately 103 U.S. clients who structured their accounts so that they appeared as if they were held by a non-U.S. legal structure, such as an offshore corporation or trust, which aided and abetted the clients' ability to conceal their accounts from the IRS. At least 75 of HSZH's U.S. Related Accounts (approximately 12 percent) were held in the name of structures beneficially owned by U.S. taxpayers who failed to declare these accounts, and at least 26 of these structured accounts held U.S. securities.
80. Approximately 65 undeclared structured accounts were non-U.S. domiciled entities, such as an offshore corporation or trust, which aided and abetted the clients' ability to conceal their undeclared accounts from the IRS. In certain instances, HSZH assisted with or was involved in establishing the entities. Those 65 accounts comprised an aggregate peak value of approximately \$247 million.
81. While the Bank did not provide direct structuring services to U.S. clients, HSZH private bankers and members of HSZH's management suggested the use of structures in some instances for the Bank's U.S. clients and provided referrals to third-party service providers. External trust companies created and administered offshore structures incorporated or based in offshore locations such as Panama (36 U.S. Related Accounts with \$49 million in assets), Liechtenstein (27 U.S. Related Accounts with \$201 million in assets), and the British Virgin Islands (12 U.S. Related Accounts with \$69 million in assets) for certain of the Bank's U.S. clients.
82. At least two HSZH private bankers, one of which was HSZH Private Banker #1, served as board members for three of the structures with U.S. beneficial owners maintained at the Bank. Mandates

as director of a client structure required approval of the head of the branch, chief of staff and general management; the Bank created a special form for this approval. HSZH stopped this practice in 2009 due to the risk of conflicts of interest; however, HSZH Private Banker #1 remained a member of an offshore foundation's board until 2011.

83. HSZH assisted at least two U.S. taxpayers (with assets totaling approximately 485,000 Swiss francs) in further concealing their undeclared funds from the IRS by transferring those funds from UBS in August 2010 through an HSZH account held by a Swiss attorney to an HSZH account held by a sham entity domiciled in Panama that was beneficially owned by the two U.S. taxpayers. In connection with this transfer, HSZH received a revised Form A from the Swiss attorney listing the two U.S. taxpayers as beneficial owners for one transaction only along with instructions from the Swiss attorney to HSZH that his clients' funds should be transferred from UBS to HSZH through his account, due to the "understandable interests of his clients, that the target account would not be visible." The Bank's anti-money laundering documentation dated one day after this August 2010 transfer states "Since this [sic] are U.S. clients, the transfer was made over the account holder's account due to understandable reasons. Sender and recipient are identical."

ADDITIONAL METHODS AND MEANS OF CONCEALMENT

84. The Bank opened and maintained at least one U.S. client account as a non-U.S. client account despite indications that the client was actually a U.S. person.
85. HSZH private bankers met with U.S. clients outside of the United States to provide banking services and investment advice related to their accounts, which included undeclared accounts. For example, one HSZH private banker regularly met with a U.S. client, who resided in the United States and had assets of more than \$90 million in an account at HSZH held by a Liechtenstein foundation, in a Swiss hotel, at the Bank, or in London, England. When meeting in London, the HSZH private banker usually delivered cash amounts of 10,000 to 50,000 Swiss francs or U.S. dollars to the U.S. client; the funds were wired to the custodian bank for HSZH in London where the HSZH private banker would withdraw the cash and personally deliver it to the U.S. client in a London hotel. The U.S. client had a preference to receive used U.S. dollar banknotes.
86. HSZH made changes to clients' information in connection with at least three undeclared U.S. Related Accounts by removing the previously recorded U.S. attribute information relating to the account holders or beneficial owners of these undeclared accounts from the Bank's records.
87. All of HSZH's 605 U.S. Related Accounts were closed by the Bank between August 1, 2008 and June 10, 2014, and the majorities of the assets in those accounts were variously transferred to another Swiss bank, to an account at SGKB, to other non-U.S. Related Accounts at HSZH, to the United States, to banks in countries other than Switzerland, or were withdrawn in cash or precious metals. HSZH selected three SEC-registered service providers to which they would refer U.S. client accounts, and it was each client's decision whether to opt for any of those three service providers. Certain accounts were closed in such a way that HSZH assisted its U.S. clients in continuing to conceal the assets and income they held at HSZH in Switzerland from the IRS. With respect to assets transferred to accounts in countries other than the United States and Switzerland upon account closure, significant amounts were transferred to Germany, Belgium, Liechtenstein and approximately 19 other countries.

88. HSZH also assisted at least four U.S. taxpayers (with four accounts totaling approximately \$800,000 in aggregate peak asset value) in closing their undeclared accounts by “donating” a portion or all of the funds in the accounts to other non-U.S. clients of HSZH. For example, in January 2013, a U.S. domiciled client instructed the Bank to transfer all assets in his account to the account of his mother, who was a non-U.S. person with her own accounts at HSZH. HSZH transferred all assets in the client’s U.S. Related Account to the mother’s account on January 31, 2013.
89. The Bank assisted at least 60 U.S. taxpayers (with accounts totaling approximately \$70 million in aggregate peak asset value) in closing their undeclared accounts by means that further concealed the undeclared funds from the IRS, including by transferring funds to third parties at other banks in Switzerland and in foreign countries.
90. HSZH processed significant cash and precious metals withdrawals (exceeding \$100,000) totaling approximately \$30 million (\$26 million in cash and \$4 million in precious metals) for at least 17 U.S. Related Accounts at or around the time the clients’ accounts were closed, even though HSZH knew, or had reason to know, that some of the accounts contained undeclared assets. For example, a U.S. couple that owned more than \$24 million in assets in an account nominally held by a Liechtenstein foundation and known by the Bank to be undeclared regularly withdrew cash amounts between \$10,000 and \$30,000 (they requested used bank notes) and repeatedly withdrew gold bars (five instances in 2010 involved 15 kilograms of gold bars). When this U.S. couple closed their HSZH account in 2012, they withdrew large cash amounts each ranging from 2 million Swiss francs to 10 million Swiss francs totaling more than 19 million Swiss francs and 55 kilograms in gold bars totaling more than 3 million Swiss francs during five visits to the Bank.
91. HSZH opened, serviced, and profited from accounts for U.S. clients with the knowledge that some were likely not complying with their U.S. tax obligations. Due in part to the assistance of HSZH and certain of its personnel, and with the knowledge that Swiss banking secrecy laws would prevent HSZH from disclosing their identities to the IRS absent any client or statutory authorization, some U.S. clients of HSZH filed false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, that failed to report their respective interest in their undeclared HSZH accounts and the related income. Some U.S. clients of HSZH also failed to file and otherwise report their undeclared HSZH accounts on FBARs.
92. HSZH was aware that U.S. taxpayers had a legal duty to report to the IRS and pay taxes on the basis of all their income, including income earned in accounts that the U.S. taxpayers maintained at HSZH. Despite being aware of this legal duty, as described above, the Bank opened, serviced, and profited from accounts for U.S. clients who HSZH knew or had reason to know were not complying with their U.S. income tax obligations.

COMPLIANCE POLICY CHANGES

93. The Chief Executive Officer of HSZH had full discretion and authority to make exceptions to the August 2008 IRS Form W-9 policy for new account holders. As described above, two pipelines of undeclared U.S. clients predominantly from UBS were approved as exceptions to this policy resulting in 80 new undeclared U.S. Related Accounts being opened by the Bank as exceptions and without a Form W-9. Of the remaining 278 U.S. Related Accounts opened at HSZH after August 2008, 51 new accounts were opened without requiring a U.S. client or beneficial owner to sign an

IRS Form W-9. Thirty-one of these 51 accounts also were approved as exceptions to the W-9 policy and 20 were opened without an approved exception and in violation of the W-9 policy. In total, 111 new U.S. Related Accounts were approved by HSZH as exceptions to the W-9 policy, and 22 new U.S. Related Accounts were opened in violation of the W-9 policy without an approved exception.

94. In the spring of 2009, the Bank adopted additional precautions again at the direction of SGKB. HSZH banned written and telephonic communications with clients in the United States, and all e-banking contacts with U.S.-domiciled persons. HSZH also required all new clients with U.S. tax obligations, regardless of domicile, to complete and sign an IRS Form W-9. HSZH generally enforced the spring 2009 policy, but as discussed above, new U.S. Related Accounts were opened without an IRS Form W-9 after spring 2009 as exceptions to, or in breach of, the new policy.
95. On May 8, 2009, the general counsel of HSZH informed CEO #2 that the general counsel had been asked to make a proposal as to how the SGKB Group should “deal with non-disclosed U.S. persons in the future.” The HSZH general counsel then described his proposal “for further steps with regard to non-disclosed U.S. persons” as follows: “Volume: approx. CHF 500 mio. 1. Contact clients (it is still to be discussed as to what the best way and form is to contact them in order not to violate the deemed sales rule) and propose the following options: a) Client makes a voluntary disclosure by June 30, 2009, since the client declares his assets but has so far failed to sign a W9. b) Draw client’s attention to the ‘Voluntary Disclosure Program’ (deadline September 23, 2009) and offer help through [U.S. law firm]. c) Clients without W9 who are not willing to make a disclosure or to participate in the Voluntary Disclosure Program may remain with Hyposwiss according to the requirements of the QI Agreement (no holding of U.S. titles). However, a risk premium of 1% of the existing assets will be charged to such clients as of July 1, 2009.” The HSZH general counsel then explained to CEO #2 that the proposal was based on the following considerations: 1) “Hyposwiss does not have any exposure in the U.S.A.” 2) Hyposwiss “strictly complies with the QI Agreement – and has always done so in the past.” 3) A pro-active but uncalled-for relinquishment of CHF 500 mio. and the respective revenues is not advisable in the current revenue situation.”
96. On June 19, 2009, the general counsel of HSZH submitted this proposal via memorandum to the Executive Board of HSZH, and the executive board agreed with the proposal at its meeting on June 24, 2009 with the risk premium of 1% of the existing assets of undeclared clients beginning October 1, 2009 (rather than July 1, 2009). At an HSZH Executive Board meeting held on July 1, 2009, the Executive Board agreed to postpone the proposal and draft directive until the parent company, SGKB, made certain strategic decisions.
97. The HSZH Executive Board again discussed the proposal and draft directive at a meeting held on September 2, 2009 and decided that contrary to the decision made on June 24, 2009, the fee increase of 1% for non-W-9 clients was to be implemented only as of January 1, 2010 (instead of October 1, 2009).
98. In March 2010, the management board of SGKB decided that all U.S. clients were to submit a Form W-9, and if a U.S. client did not submit a Form W-9, the relationship would be terminated. This forced termination initially only applied to one category of U.S. clients: U.S. client relationships that had assets in excess of 250,000 Swiss francs and possessed no so-called “termination-aggravating

products.” These “termination-aggravating products” included, among others, structured products, safe-deposit boxes, fixed-term products and certain savings accounts. The management board of SGKB did not decide to launch this termination process until January 18, 2011, and the termination process for the second priority group, which consisted of the U.S. clients with the “termination-aggravating products,” did not begin until July 14, 2011.

99. In January 2011, HSZH was directed by SGKB to ask all existing U.S. clients who had not yet provided an IRS Form W-9 to either provide an IRS Form W-9 or withdraw their funds. This process was underway when it was decided, in November 2011, to exit from business relationships with all clients domiciled in the U.S., regardless of tax compliance and related documentation. This decision was announced within the Bank on February 15, 2012. As described in paragraph 87 above, HSZH exited nearly all of its known relationships with U.S. persons by the end of 2012, and by June 10, 2014, HSZH had closed all of its 605 U.S. Related Accounts. The exit letter recommended that clients contact a U.S. tax advisor to discuss the possibility of making a voluntary disclosure, if appropriate.
100. Some of the Bank’s U.S. clients later represented to HSZH that they had made a voluntary disclosure but refused to provide the waiver of Swiss secrecy or documentary proof requested by the Bank. For example, one former U.S. client who came to HSZH through the EAM #1 pipeline and had assets of approximately \$4 million in his HSZH account informed the Bank in May 2014 that: “You are hereby advised that we made full disclosure of our account to the IRS a couple of years ago, so you don’t have to worry about said account at all. However, I will [sic] like to avail myself of this opportunity to clear the air on a couple of issues. First, using as few words as possible, there was a time not too long ago that I shared the then common view that Swiss were the most trustworthy bankers in the whole world. Not anymore. [UBS] started the landslide and [sic] of treachery to cover the butts of its US-based executives, and all the other banks and the government followed suit. But that is spilled milk.” In a letter sent to the Bank one month later by the same former U.S. client, the former U.S. client again asserted that a voluntary disclosure had been made: “Your letter really is a let down. I am in a tough spot because the Swiss ‘bs’ (banking system) led me to believe in their offer of secret banking and at the first showdown, they (the Swiss ‘bs’) backed out and left everybody exposed, and now, when I tell you I am facing my tax responsibility with the USA, you tell me that you don’t believe me. It is preposterous. How dare you of all people. I repeat, I am under the voluntary disclosure program and will face the penalties for having trusted once your bs. The world is not changing, people is [sic] changing.” Another former U.S. client who came to HSZH through the UBS Banker #1 pipeline and closed his HSZH account worth more than \$2 million in 2012 also informed the Bank in 2014 that he was tax compliant: “I have no intentions to send you any of my personal documents that you requested. I can assure you that I am in full compliance with American income declarations. I have complied with my responsibilities to the American government, to the IRS, and to all other agencies associated with off-shore income declarations. I have no responsibilities to respond to you or to the Swiss government after your betrayal to your investors who trusted a promised secure relationship. It should not be necessary to remind you of the high cost your disclosures were to my assets.”

HSZH'S PARTICIPATION IN THE SWISS BANK PROGRAM

101. On December 31, 2013, HSZH entered the Swiss Bank Program as a Category 2 bank. The Bank has cooperated with the Department and provided information to the U.S. Government about its cross-border business with U.S. Related Accounts. To do so, HSZH has, among other things, conducted database searches and interviews with relationship managers and members of management, reviewed client dossiers, and analyzed relevant internal documents. The Bank also provided information for the Department and the IRS to make treaty requests to the Swiss competent authority for certain U.S. Related Accounts.
102. Following HSZH's efforts, at least 84 of its U.S. Related Accounts have thus far entered into an IRS Voluntary Disclosure Program or Initiative. Moreover, the Bank has obtained waivers of Swiss bank secrecy, or already had an implicit waiver of Swiss bank secrecy, for approximately 37 percent of its U.S. Related Accounts and has provided customer names for those accounts to the U.S. government.

EXHIBIT B TO NON-PROSECUTION AGREEMENT

**CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS
OF HSZH Verwaltungs AG**

I, Willi Wüthrich, acting corporate secretary of HSZH Verwaltungs AG (HSZH), a corporation duly organized and existing under the laws of Switzerland, do hereby certify that the following is a complete and accurate copy of a circular resolution of the board of directors of HSZH dated January 20, 2016, by which the following was resolved:

- That the board of directors has (i) reviewed the entire Non-Prosecution Agreement attached hereto, including the Statement of Facts attached as Exhibit A to the Non-Prosecution Agreement; (ii) consulted with Swiss and U.S. counsel in connection with this matter; and (iii) unanimously voted to enter into the Non-Prosecution Agreement, including to pay a sum of USD 49,757,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Christian Beutter, member of the board of directors and Willi Wüthrich, manager (collectively, the Appointed Representatives), both registered in the Commercial Register of the Canton of Zurich as having joint and individual signatory authority respectively, are hereby authorized (i) to jointly execute the Non-Prosecution Agreement on behalf of HSZH substantially in such form as reviewed by the Board with such non-material changes as each of them may approve; and (ii) to take, on behalf of HSZH, all actions as may be necessary or advisable in order to carry out the foregoing; and
- That Sean Hecker, Debevoise & Plimpton.LLP, is hereby authorized to sign the Non-Prosecution Agreement in his capacity as HSZH's U.S. counsel.

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

IN WITNESS WHEREOF, I have executed this Certification this 20th day of January 2016.



Willi Wüthrich
Secretary

HSZH Verwaltungs AG

mit Sitz in Zürich

Zirkularbeschluss des Verwaltungsrates

HSZH Verwaltungs AG (HSZH) nimmt am "U.S. Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks" vom 29. August 2013 (Program) in der Kategorie 2 teil. Das U.S. Department of Justice (DOJ) ist bereit, mit der HSZH ein Non-Prosecution Agreement (NPA) abzuschliessen, und hat der HSZH in diesem Zusammenhang ein NPA übermittelt. Der Verwaltungsrat der HSZH hat das NPA sowie das dazugehörige Statement of Facts gemäss Anhang zu diesem Zirkularbeschluss geprüft.


Die Unterzeichneten, sämtliche Mitglieder des Verwaltungsrates der HSZH, fassen hiermit folgende Beschlüsse auf dem Zirkularweg:

1. Der Verwaltungsrat genehmigt die Unterzeichnung des NPA sowie das Statement of Facts gemäss Anhang und eine Zahlung der HSZH an das DOJ in diesem Zusammenhang in Höhe von USD 49,757,000.
2. Der Verwaltungsrat ermächtigt Christian Beutter und Willi Wüthrich das NPA gemäss Anhang gemeinsam im Namen und für die HSZH zu unterzeichnen sowie geringfügigen unwesentlichen Änderungen des NPA inklusive des Statements of Facts zuzustimmen.
3. Der Verwaltungsrat ermächtigt Sean Hecker, Debevoise & Plimpton LLP, in seiner Funktion als US-Anwalt der HSZH das NPA zu unterzeichnen.
4. Der Verwaltungsrat ernennt Willi Wüthrich zum Sekretär und ermächtigt ihn das Certificate of Corporate Resolution of the Board of Directors of HSZH Verwaltungs AG, welches obengenannte Beschlüsse bestätigt, zu unterzeichnen.

St. Gallen, 20.01.2014
Ort und Datum


Christian Beutter

Vaduz, 20.1.2016
Ort und Datum



Adolf E. Real

Anhang: NPA und Statement of Facts vom 20. Januar 2016