



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:LJW:TJS:KELyon
5-16-4717
2014200728

July 6, 2015

Robert W. Kent
Baker & McKenzie LLP
300 East Randolph St., Suite 5000
Chicago, IL 60601

Re: Nidwaldner Kantonalbank
DOJ Swiss Bank AG Program – Category 2
Non-Prosecution Agreement

Dear Mr. Kent:

Nidwaldner Kantonalbank (“NKB”) submitted a Letter of Intent on December 23, 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 NKB in its Letter of Intent and information provided by NKB 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 NKB of the Swiss Bank Program will constitute a breach of this Agreement.

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

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

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, NKB agrees to pay the sum of \$856,000 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 NKB. This payment is in lieu of restitution, forfeiture, or criminal fine against NKB for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from NKB with respect to the conduct described in this Agreement, unless the Tax Division determines NKB has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. NKB 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 NKB has violated any provision of this Agreement. NKB 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. NKB agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. NKB further agrees that no portion of the penalty that NKB has agreed to pay to the Department under the terms of this Agreement will serve as a basis for NKB 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) NKB'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 NKB 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) NKB'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) NKB'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 NKB 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) NKB's retention of a qualified independent examiner who has verified the information NKB disclosed pursuant to II.D.2 of the Swiss Bank Program.

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

NKB further agrees to undertake the following:

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

4. NKB 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.

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

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


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


CAROLINE D. CIRAOLO
Acting Assistant Attorney General

7/16/2015
DATE

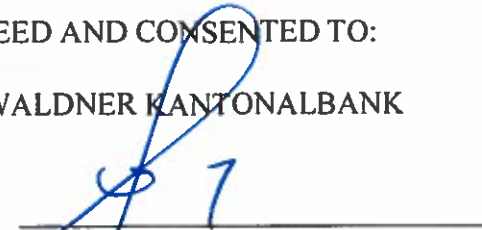

THOMAS J. SAWYER
Senior Counsel for International Tax Matters

16 July 2015
DATE

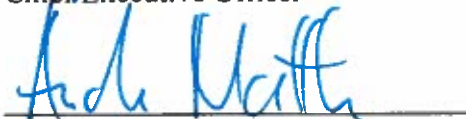

KATHLEEN E. LYON
Trial Attorney
Tax Division, U.S. Department of Justice

7/16/15
DATE


AGREED AND CONSENTED TO:
NIDWALDNER KANTONALBANK

By: 
HEINRICH LEUTHARD
Chief Executive Officer

8 July 2015
DATE

By: 
ANDREAS MATTLE
Executive Vice President

8 JULY 2015
DATE

APPROVED:

ROBERT W. KENT, JR.
Baker & McKenzie LLP

July 10, 2015
DATE


JAMES J. DRIES
Baker & McKenzie LLP

July 10, 2015
DATE

**EXHIBIT A TO NIDWALDNER KANTONALBANK
NON-PROSECUTION AGREEMENT**

STATEMENT OF FACTS

INTRODUCTION

1. Nidwaldner Kantonalbank (“NKB” or the “Bank”) is a public and registered cantonal bank in Switzerland owned by the canton of Nidwalden. The Bank was established in 1879. As a cantonal-owned bank, the people of Nidwalden are the ultimate guarantors of any debts of the Bank. NKB is headquartered in Stans, and has eight branches with approximately 127 full-time employees in the canton of Nidwalden.
2. NKB is a retail bank dedicated to serving the banking needs of the people of Nidwalden. NKB has no operations outside the canton of Nidwalden and has focused its marketing efforts on Nidwalden, without significant marketing outside the canton. To the extent there has been any effort to seek business outside of Switzerland it has been limited to three predominately German-speaking countries, Germany, Austria and Liechtenstein, consistent with its core business in Nidwalden.
3. As of September 2013, shortly after the Department of Justice announced the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (referred to as the “Swiss Bank Program”),¹ the Bank had approximately 42,000 total accounts, of which approximately 14,500 had a value greater than \$50,000. The total value of the accounts under management by the Bank was approximately 4.1 billion Swiss francs.

U.S. INCOME TAX & REPORTING OBLIGATIONS

4. U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign Bank accounts on their tax returns and to pay the taxes due on that income. Since tax year 1976, U.S. citizens, resident aliens, and legal permanent residents have had an obligation to report to the Internal Revenue Service (“IRS”) on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking “Yes” or “No” in the appropriate box and identifying the country where the account was maintained.

¹ Capitalized terms not otherwise defined in this Statement of Facts have the meanings set forth in the Program for Non-Prosecution Agreement or Non-Target Letters for Swiss Banks issued on August 29, 2013 (“the Swiss Bank Program”) or in the Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA, dated February 14, 2013 (the “FATCA Agreement”).

5. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any time during a particular year were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114 (the "FBAR," formerly known as Form TD F 90-22.1). The FBAR must be filed on or before June 30 of the following year.
6. An "undeclared account" was a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that had not been reported by the individual account owner to the U.S. government on an income tax return or other form and an FBAR as required.
7. Since 1935, Switzerland has maintained criminal laws that ensure the secrecy of client relationships at Swiss banks. While Swiss law permits the exchange of information in response to administrative requests made pursuant to a tax treaty with the United States and certain legal requests in cases of tax fraud, Swiss law otherwise prohibits the disclosure of identifying information without client authorization. Because of the secrecy guarantee that they created, these Swiss criminal provisions have historically enabled U.S. clients to conceal their Swiss bank accounts from U.S. authorities.
8. In or about 2008, Swiss Bank UBS AG ("UBS") publicly announced that it was the target of a criminal investigation by the 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 Nidwaldner Kantonalbank, since at least August of 2008.

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

9. In the first quarter of 2001, NKB signed a Qualified Intermediary ("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 were properly paying U.S. tax.

10. The QI Agreement took account of the fact that NKB, 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 NKB to obtain the consent of the account holder to disclose the client's identity to the IRS. The QI Agreement required NKB 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.
11. The Bank used forms that required customers to declare whether they were U.S. persons for tax purposes. U.S. clients were also required to either sign a Form W-9 or state that U.S. securities would not be purchased for the account. In this way, U.S. clients who did not want to have their identities disclosed to the IRS could avoid detection by declining U.S. securities, thereby allowing them to avoid signing a Form W-9. NKB's computer system prevented the purchase of U.S. securities for existing U.S. customers unless they were compliant with the QI Agreement's requirements.
12. Despite the QI Agreement, NKB chose to continue to service U.S. clients without disclosing their identity to the IRS and without regard for the impact of U.S. criminal law on that decision. In several instances, QI requirements, in particular with respect to requiring Forms W-9 from U.S. clients, were either not followed or were waived by the Bank. The Bank's failure to comply with its reporting and withholding obligations allowed certain U.S. account holders to conceal their accounts from U.S. authorities.

NKB'S POLICIES WITH RESPECT TO U.S. PERSONS

13. Other than the QI Agreement, Nidwaldner Kantonalbank did not have a policy with respect to U.S. persons until late 2008, after the UBS investigation became public. At that time, the Bank began revising its policies with respect to U.S. customers to reaffirm its primary focus as a regional bank with clients within the canton. In late November 2008, the Bank adopted a new policy requiring all U.S. clients to sign a Form W-9, whether the account held U.S. securities or not. The Bank also determined that the United States was a "high risk" country for banking purposes and that new U.S. clients would be accepted only under "exceptional circumstances."
14. In November 2009, NKB adopted a new policy, effective January 1, 2010, that covered both new and existing U.S. clients. With respect to new customers, NKB would no longer accept any new U.S.-domiciled customers except through inheritance. With respect to current U.S.-domiciled customers, the new policy prohibited regular mail, email, or e-banking services.
15. Effective July 2012, the Bank established a "Transnational Financial Services Business Policy," which emphasized controls that apply to almost all countries, including the United States. This policy memorialized existing Bank practices with respect to doing business outside Switzerland and confirmed that NKB did not encourage marketing outside Switzerland. To this end, relationships with German speakers with a connection to the canton of Nidwalden were prioritized, employees were prohibited from sending

mailings to or sponsoring events in foreign countries, and client visits and recruitment abroad were prohibited. The policy also expressly stated that employees could not consult with clients to evade taxes, especially with respect to transferring money abroad.

OVERVIEW OF THE U.S. CROSS BORDER BUSINESS

16. During the Applicable Period, Nidwaldner Kantonalbank held a total of 95 U.S. Related Accounts with a peak value of assets under management of approximately \$30.5 million. Of the 95 U.S. Related Accounts, 57 are now closed.
17. As a retail bank focused on the canton of Nidwalden, NKB predominantly attracts customers through walk-ins at its physical offices within the canton, some local sponsoring events, and local advertisements. The Bank also obtains canton residents as customers when they call the Bank to open investment accounts.
18. Approximately 53 relationship managers at the Bank were responsible for one or more of the 95 U.S. Related Accounts at the bank. No relationship manager was dedicated to, or specialized in, U.S. Related Accounts. The responsibilities of relationship managers are the same with respect to U.S. Related Accounts and other accounts, that is, to open the account and maintain the client relationship. A typical relationship manager at the Bank is responsible for approximately 1,000 accounts. Relationship managers are salaried employees and are paid bonuses on the same profit-sharing basis as other employees. The Board of Directors sets aside a certain amount of money each year for bonuses based on the gross profit of the bank. From those funds, individual employee bonuses are calculated based on a certain percentage of the employee's yearly salary and are adjusted in part based on individual performance. Bonuses are not allocated according to client-related financial performance.
19. NKB has never had a U.S. desk or any other separate structure or organization for U.S. clients. NKB never utilized a strategy to market its services to U.S. citizens. With the exception of limited efforts directed at Germany, Austria and Liechtenstein, the Bank had no organized group seeking business beyond the borders of Switzerland.
20. No one from the bank, relationship managers or otherwise, has ever traveled to the United States to either solicit clients or to provide clients with investment advice.
21. Most of the U.S. Related Accounts at the Bank have a close connection to Switzerland and the canton of Nidwalden. Nevertheless, the Bank allowed U.S. nationals with Swiss relatives to open accounts even in circumstances where the Bank was or should have been aware that the accounts were not declared in the United States.
22. Despite understanding that U.S. taxpayers had a legal duty to report to the IRS and to pay taxes on income earned in accounts maintained in Switzerland, the Bank opened and maintained undeclared accounts for U.S. taxpayers.
23. NKB offered a variety of traditional Swiss banking services that it knew could assist, and that did assist, U.S. clients in the concealment of assets and income from the IRS. One

such service was hold mail. For a fee, NKB would hold all mail correspondence for a particular client at the Bank, which meant that the Bank retained periodic statements and communications to its clients at NKB for client review. As a consequence, documents reflecting the existence of the accounts remained outside the United States, allowing U.S. clients to minimize the paper trail associated with the undeclared assets and income they held at NKB in Switzerland. By accepting and maintaining such accounts, the Bank assisted some U.S. taxpayers who wished to evade their U.S. tax obligations. Of the 95 U.S. Related Accounts at the Bank, 17 used hold mail services.

24. In addition, NKB offered “numbered” account services. For a fee, the Bank would allow the account holder to replace his or her identity with a number on bank statements and other documentation sent to the client. However, the Bank’s internal records reflected the identity of the U.S. clients associated with these accounts. Of the 95 U.S. Related Accounts at the Bank, four were numbered accounts.
25. As part of its retail banking business, the bank also offers credit, debit, and travel cards to its customers, but its policy was not to provide such cards to customers domiciled outside Switzerland. This policy was violated with respect to four U.S. Related Accounts for which the bank issued credit cards to U.S. persons residing in the United States. For some of those accounts, multiple credit cards were issued, for example, to the account holder and family members of the account holder. With respect to one of those accounts, the credit cards associated with the account were cancelled before the Applicable Period began. Credit cards associated with the other three U.S. Related Accounts were cancelled in either 2012 or 2013.
26. Despite the requirements of the QI Agreement and its own policies requiring a Form W-9 from every U.S. client and allowing new U.S. Related Accounts only in “exceptional circumstances,” as explained earlier, the Bank opened new accounts for U.S. persons without obtaining a W-9 or after intentionally waiving the W-9 requirement, including for certain accounts holding U.S. securities. These instances include, but are not limited to:
 - a. an account from a Category 1 bank for which the Bank knowingly waived the W-9 requirement, allowing the account holders, both U.S. citizens and residents, to hold U.S. securities in the account without disclosure of the account to the IRS; and
 - b. an account belonging to a U.S. citizen and resident for which there is no evidence of a W-9 in the file or of management approval to open the account.
27. The Bank also accepted an account from an individual who was a foreign national and U.S. resident and who brought the account from UBS. At the time it approved the account, the Bank was aware that the client left UBS because he was concerned about the U.S. government’s activities in investigating U.S. persons with accounts at that bank. The relationship manager initially assigned to the account at NKB knew or should have known that the account was undeclared; that relationship manager is no longer with the

Bank. In 2012 and 2013, the Bank informed the account holder that the account would have to be closed and took actions to encourage disclosure of the account, but the account was closed and funds transferred out of the Bank without the U.S. person's showing proof of tax compliance.

28. NKB does not use finders or introducers to attract clients, but it does maintain a small percentage of accounts brought to the bank by external asset managers. During the Applicable Period, only one external asset manager managed U.S. Related Accounts. That external asset manager had a relationship with an NKB banker and brought five accounts to the Bank, including some from Credit Suisse. The Bank compensated the external asset manager for the business it generated for the Bank based on a negotiated fee structure, which took the form of commissions and retrocession fees. The external asset manager had authority to prepare account opening documents. While NKB reviewed the account opening documents, in certain instances the Bank did not comply with its account opening policies. For example, for one account there was no Form W-9 in the account file, and for another account the Bank waived the W-9 requirement, even though in both instances U.S. passports were presented at account opening. In addition, the external asset manager brought an insurance wrapper account to the Bank. The account held U.S. securities through a life insurance policy (an "insurance wrapper") for the benefit of a U.S. person, allowing the account to hold U.S. securities without disclosure to U.S. authorities. While the Bank initially accepted the account, it later required that the account be converted into an individual account in the U.S. person's name.

NKB'S EXIT PROCESS FOR U.S. RELATED ACCOUNTS

29. During the Applicable Period, Nidwaldner Kantonalbank took a number of steps to gradually ensure that it no longer assisted undeclared U.S. taxpayers in evading U.S. income tax. As explained above, in late 2008 and again in late 2009, the Bank adopted policies that placed increasing restrictions on the circumstances in which U.S. clients would be accepted by the Bank.
30. In 2012, as part of its efforts to come into compliance with the Foreign Account Tax Compliance Act ("FATCA"), NKB retained an outside firm to assist the Bank in identifying U.S. clients and determining what documentation the Bank had already collected on those clients. In December 2012, NKB prepared client communications explaining FATCA and NKB's intent to sign a transparency agreement with the United States, and explaining that the Bank would be obligated to identify U.S. persons and share their information with the IRS.
31. In July 2013, based on the evaluation of the outside firm, the Bank established a Cross-Border Team whose mandate included closing many foreign accounts and all U.S. Related Accounts. Foreign-domiciled account holders were retained only if they resided in Australia, New Zealand, the European Union, and Liechtenstein, and only if those account holders signed a declaration of proper taxation of their assets with the Bank and a waiver of Swiss banking secrecy. In August 2013, the Bank revised its Cross-Border

Policy to expressly state that the Bank would not open new accounts from persons in “high risk countries,” including the United States.

32. The Cross-Border Team began the process of closing U.S. Related Accounts in August 2013, when termination communications were sent to U.S. clients. In September 2013, the Bank’s Compliance Group informed U.S.-domiciled clients that their accounts would be subject to a total suspension, and in October 2013 the Bank again communicated with U.S. customers who had not responded to the initial mailing.

**NKB’S COOPERATION
THROUGHOUT THE SWISS BANK PROGRAM**

33. NKB has fully cooperated with the Department of Justice in relation to the Swiss Bank Program by, among other things, providing all relevant and requested information and documents to the Department of Justice relating to its U.S. business, subject to Swiss bank secrecy laws. The Bank has also taken actions to encourage U.S. persons to disclose their accounts to the IRS. In addition, NKB has provided certain account information related to U.S. taxpayers that will enable the Government to make requests under the 1996 Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income for, among other things, the identities of U.S. account holders.

Exhibit B to Non-Prosecution Agreement, dated July 6, 2015

RESOLUTION OF THE BOARD OF DIRECTORS OF NIDWALDNER KANTONALBANK

At a duly held meeting held on July 8, 2015, the Board of Directors (the "Board") of Nidwaldner Kantonalbank (the "Bank") resolved as follows:

WHEREAS, the Bank has been engaged in discussions with the United States Department of Justice (the "Department") arising out of the Bank's participation in Category 2 of the Department's Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks;

WHEREAS, in order to conclude such discussions, the Department has proposed that the Bank enter into a non-prosecution agreement with the Department substantially in the form attached hereto (the "Agreement"); and

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

WHEREAS, the Board has reviewed the Agreement, including the Statement of Facts attached to the Agreement, consulted with U.S. and Swiss counsel in connection with this matter, and voted to enter into the Agreement;

The Board hereby RESOLVES that:

1. Heinrich Leuthard, Chief Executive Officer, and Andreas Mattle, Executive Vice President, are hereby authorized to execute the Agreement on behalf of the Bank substantially in the form reviewed by the Board and with such non-material changes as they may approve.
2. Robert W. Kent, Jr. and James J. Dries of Baker & Mc Kenzie LLP, U.S. counsel to the Bank, are hereby authorized to execute the Agreement as additional signatories.
3. The Bank agrees to pay an amount equal to US\$ 856'000 pursuant to the Agreement and to perform the obligations described in the Agreement consistent with, and subject to, Swiss law.
4. The Board hereby authorizes, empowers, and directs Christian Waser, President of the Board of Directors and Daniel Bieri, Vice President of the Board of Directors, or their delegates, to take, on behalf of the Bank, any and all actions as may be necessary or appropriate, and to approve and execute the forms, terms, or provisions of any agreement or other documents as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions; and
5. All other actions of Heinrich Leuthard and Andreas Mattle, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Bank.

IN WITNESS WHEREOF, the Board of Directors of the Bank has executed this Resolution,
effective as of July 8, 2015.



Christian Waser
President of the Board of
Directors of Nidwaldner Kantonalbank



Daniel Bieri
Vice President of the Board of
Directors of Nidwaldner Kantonalbank