



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

LJW:TJS:BD Bailey
5-16-4744
2014200767

September 2, 2015

Daniel W. Levy
Eric B. Halper
McKool Smith PC
One Bryant Park
New York, New York 10036

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

Dear Mr. Levy:

Valiant Bank AG (“Valiant”) submitted a Letter of Intent on December 30, 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 Valiant in its Letter of Intent and information provided by Valiant 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 Valiant of the Swiss Bank Program will constitute a breach of this Agreement.

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

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

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Valiant 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, Valiant agrees to pay the sum of \$3,304,000 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 Valiant. This payment is in lieu of restitution, forfeiture, or criminal fine against Valiant for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Valiant with respect to the conduct described in this Agreement, unless the Tax Division determines Valiant has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Valiant 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 Valiant has violated any provision of this Agreement. Valiant 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. Valiant agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Valiant further agrees that no portion of the penalty that Valiant has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Valiant 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) Valiant'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 Valiant 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) Valiant'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;

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(c) Valiant'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 Valiant 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) Valiant's retention of a qualified independent examiner who has verified the information Valiant disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Valiant 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 Valiant, 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, Valiant 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

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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 Valiant 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 Valiant'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 Valiant; 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.

Valiant further agrees to undertake the following:

1. Valiant 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, Valiant will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. Valiant 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 Valiant.
3. Valiant 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. Valiant will only

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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, Valiant will promptly proceed to follow the procedures described above in paragraph 2.

4. Valiant 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.

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

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

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

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

77 J. Wszalek
LARRY J. WSZALEK
Acting Deputy Assistant Attorney General
Tax Division

9.10.15
DATE

for 77 J. Sawyer
THOMAS J. SAWYER
Senior Counsel for International Tax Matters

9.10.15
DATE

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Brian D. Bailey
BRIAN D. BAILEY
Trial Attorney

10 Sept 2015
DATE

AGREED AND CONSENTED TO:
Valiant Bank AG

By: J. K. Q.
JÜRIG BUCHER
Chairman of the Board

8/9/15
DATE

By: [Signature]
MARKUS GYGAX
Chief Executive Officer

8.9.2015
DATE

APPROVED:

[Signature]
DANIEL W. LEVY
ERIC B. HALPER
McKool Smith PC

Sept. 8, 2015
DATE

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**EXHIBIT A TO VALIANT BANK AG
NON-PROSECUTION AGREEMENT**

STATEMENT OF FACTS

Introduction

1. Valiant Bank AG ("Valiant" or the "Bank") traces its origins to 1824. Since 1997, it has merged with numerous banks. Today, Valiant is the successor of 40 banks.
2. Valiant is headquartered in Bern, the capital of Switzerland. It has no branches in Geneva, Zurich, or outside Switzerland.
3. Valiant is a regional retail bank with a small wealth management business. Valiant's core business is providing traditional retail banking services (e.g., mortgages, savings accounts, and loans). Retail banking has been offered since 1824. In 2013, 86.5% of Valiant's revenue was derived from retail banking. As of 2013, 79% of Valiant's assets were mortgages on real property located in Switzerland.
4. Since 1997, Valiant has operated a small wealth management business, which services fewer than 2% of all of its account holders.¹ Wealth management accounts typically require assets exceeding 250,000 Swiss francs, offer more complex financial products, and are serviced by relationship managers with fewer clients, typically 100 to 200, as compared to client service officers who work in Valiant's retail banking operations, who typically handle 300 to 600 clients.
5. Valiant focuses on servicing Swiss citizens in the regions of Switzerland in which it operates. Over the Applicable Period,² 98% of its account holders lived in Switzerland.
6. As of 2013, Valiant had 885 full-time-equivalent employees.
7. Except for the policies and procedures described below, Valiant did not structure, operate, or supervise its U.S. Related Accounts in any way that was different or separate from its non-U.S. Related Accounts. Although Valiant had U.S. Related Accounts over the Applicable Period, at no time did Valiant have an organized business unit or a business strategy to attract and service non-Swiss account holders. Valiant's board of directors, executive management, and heads of various business units structured,

¹ All data, including dates and amounts, provided in this Statement of Facts are approximate.

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 "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").

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operated, and supervised the client-facing business of Valiant generally.

8. Valiant did not seek to have U.S. persons as clients. For example, Valiant did not engage in soliciting clients abroad. Valiant's non-institutional marketing and advertising were solely in German and French and strictly limited to certain regions in Switzerland in the form of advertisements, private events for Swiss citizens, and referrals from existing clients.

U.S. Income Tax & Reporting Obligations

9. 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 they 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.
10. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any time during a particular year were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114, formerly known as Form TD F 90-22 (the "FBAR").
11. 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 an FBAR.
12. "U.S. Related Accounts" means accounts that exceeded \$50,000 in value at any time during the Applicable Period, and as to which indicia exist that a U.S. person or entity has or had a financial or beneficial interest in, ownership of, or signature authority (whether direct or indirect) or other authority over the account.
13. Since 1935, Switzerland has maintained a criminal law that ensures 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.
14. 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

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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 accounts and maintaining undeclared assets and income from the IRS. After the UBS announcement, several other Swiss banks have publicly announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients (UBS and the other targeted Swiss banks are collectively referred to as "Category 1 banks"). The Category 1 banks' cases have been closely monitored by banks operating in Switzerland, including Valiant, since at least August of 2008.

Valiant's Policies with Respect to U.S. Related Accounts – 2000 through 2013

15. In 2000, Valiant entered into a Qualified Intermediary ("QI") Agreement with the IRS. Pursuant to Valiant's interpretation of the QI Agreement, an interpretation encouraged by the Swiss Bankers Association and widely adopted by Swiss banks that had entered into QI Agreements, Valiant generally required U.S. persons holding an account to either: (a) execute an IRS Form W-9 and accept disclosure of their identity to the IRS; (b) not execute an IRS Form W-9 and be subject to 30% back-up withholding on "reportable payments"; or (c) not execute an IRS Form W-9 and request from the account holder the authority to exclude from the account any assets that generate, or could generate, reportable payments. Under the QI Agreement, "reportable payments" are, in general, U.S. source income, such as dividends on U.S. securities.
16. By mid-2005, Valiant required U.S. persons holding U.S. securities to provide Valiant with a signed Form W-9. By the end of 2005, Valiant forced U.S. persons without a signed Form W-9 to sell any U.S. securities held in their accounts (subject to 30% back-up withholding taxes, which Valiant reported and paid over to the IRS) and they were blocked from investing in U.S. securities going forward. In general, Valiant's understanding was that signed Forms W-9 meant that account holders were likely properly declaring their accounts in the U.S. because the Form W-9 permitted disclosure of the account holder's identity to the IRS.
17. As a result of the disclosures concerning the investigation of UBS, as described above, Valiant reviewed and enhanced its policies and procedures with respect to U.S. persons. For example, as of mid-December 2008, Valiant would not open accounts for U.S. persons unless a signed Form W-9 was provided and U.S. persons could not be the beneficial owners of any accounts opened in the names of entities. Beginning in early May 2009, new U.S. clients were required to provide proof of U.S. tax compliance, such as providing copies of tax returns. At the same time, existing U.S. clients were, upon inquiry, to be advised of the existence of the IRS voluntary disclosure program or directed to contact a tax lawyer and no recommendations that could be construed as encouraging tax evasion were permitted. Beginning in the summer of 2011, all existing U.S. account holders holding any securities were required to sign a Form W-9. In

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February 2012, Valiant banned the opening of accounts for U.S. persons. By April 2012, all U.S. account holders were required to sign a Form W-9, regardless of whether they held any securities.

18. Beginning in summer 2012, Valiant began closing U.S. accounts without a signed Form W-9 regardless of the assets held in the accounts because of Valiant's belief that such action was required to comply with FATCA. All remaining U.S. clients who had provided a signed Form W-9 could hold only cash and were required to sell or transfer their securities to another bank.
19. Beginning in September 2012, Valiant exited most of its non-Swiss domiciled customers in response to October 2010 guidance from the Swiss Financial Market Supervisory Authority.
20. By summer 2013 and as a result of general guidance provided to the banking industry by the Swiss Financial Market Supervisory Authority, Valiant consolidated all remaining international clients into an international desk.
21. No Valiant employee ever traveled outside of Switzerland for purposes of soliciting U.S. persons or servicing U.S. Related Accounts.
22. During the Applicable Period, Valiant worked with 35 to 40 external asset managers. Four U.S. Related Accounts were managed by external asset managers. Such accounts comprised one percent of all externally managed accounts at Valiant and four percent of externally managed assets.
23. U.S. Related Accounts were not separately managed at Valiant. For example, U.S. Related Accounts were not assigned to a particular group of relationship managers or client advisers. During the Applicable Period, out of 450 total relationship managers, 275 (or 61%) serviced U.S. Related Accounts and most of these 275 relationship managers serviced one or two U.S. Related Accounts.
24. Valiant serviced 80% of the 330 U.S. Related Accounts through the retail banking side of its business, which dealt with accounts smaller than 250,000 Swiss francs and offered simpler financial products. Most of these accounts held only cash. Relationship managers in the retail banking part of Valiant functioned more like account officers who assisted with everyday banking services such as bill-paying. All relationship managers received incentive compensation based on several factors, including the amount of client assets managed, workplace behavior, and the financial performance of Valiant.

Valiant's U.S. Related Accounts

25. During the Applicable Period, Valiant had 330 U.S. Related Accounts, out of a total of 600,000 accounts. This represents 0.06% of Valiant's accounts.

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26. Of the 330 U.S. Related Accounts: 266 were opened before August 1, 2008; 21 were opened between August 1, 2008 and February 28, 2009; and 43 were opened after February 28, 2009. The last U.S. Related Account was opened in November 2011. The maximum aggregate dollar value of the U.S. Related Accounts was \$147.4 million. This represents 0.23% of Valiant's total client assets of \$63.2 billion (the aggregate maximum value of all accounts at the Bank during the Applicable Period).
27. During the Applicable Period, Valiant charged a fixed fee that amounted to an annual amount of 48 Swiss francs to maintain any account and assessed an additional fee for any account with securities. This additional fee amounted to an annual amount of between 0.12% and 0.33% of the market value of the securities held in the account. U.S. Related Accounts did not receive any distinct treatment, such as a different fee structure.
28. From May 2009, Valiant sought to establish that prospective U.S. account holders had a close connection to Switzerland. Among the U.S. Related Accounts during the Applicable Period, 33% were held by Swiss residents and 61% were held by Swiss citizens. Most of the remaining six percent of U.S. Related Account holders were employed in Switzerland, owned property in Switzerland (e.g., a vacation home), or were related to an existing account holder at Valiant.

Valiant's Servicing of U.S. Related Accounts

29. Valiant 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. During the Applicable Period and at the request of clients, Valiant did not send periodic statements or communications to its clients and, instead, retained correspondence at Valiant for later client review. Of the 330 U.S. Related Accounts, 76 had hold mail service.
30. Valiant offered "numbered" accounts to its clients, that is, a service by which access to information about an account, including the identity of the account holder, was limited to only certain employees of Valiant. The identifying information obtained from the prospective account holder to open a numbered account and the information maintained by Valiant about a numbered account are the same as that obtained to open and maintain a named account. Of the 330 U.S. Related Accounts, 16 were numbered accounts.
31. In a small number of instances, Valiant provided numbered accounts and hold mail services to U.S. clients who had not provided Valiant with a Form W-9. The account holders of nine U.S. Related Accounts utilized numbered accounts and hold mail services at Valiant, but had not provided Valiant with a Form W-9. Also, the account holders of an additional 22 U.S. Related Accounts utilized hold mail services at Valiant, but had not provided Valiant with a Form W-9. For 31 account holders who had refused to sign a Form W-9 and, thus, authorize disclosures to the IRS, the bank provided numbered accounts, hold-mail services, or both.

32. For 26 account holders who refused to sign a Form W-9, the bank cashed out or converted into gold hundreds of thousands (and even millions) of dollars in account balances. Eleven such U.S. clients made a series of withdrawals during the six months prior to the account closing dates. The remaining 15 U.S. clients closed their accounts with single cash withdrawals. For example, one account holder in late November 2011 withdrew over one million Swiss francs in various currencies and 114,000 Swiss francs in gold coins, gold bars, and precious metal. Another account holder withdrew \$2 million in cash and wired 400,000 Swiss francs to a U.S. bank. In both instances, the account holders refused to sign a Form W-9.
33. At least seven account holders, while their accounts were open at Valiant, withdrew only amounts under \$10,000 either by U.S. dollar cash withdrawals or by check or wire transfer to the United States. Specifically, four of these account holders made two or more wire transfers within the same year, or a shorter time frame, of less than \$10,000 to the U.S. The sole withdrawals for two of the seven account holders were cash withdrawals of under \$10,000 within the same year. The remaining account holder of the seven caused Valiant to issue two checks within one year of amounts under \$10,000.
34. In addition, an account holder made multiple wire transfers to the U.S. of amounts less than \$10,000 and often in short periods of time. That account holder refused to sign a Form W-9 and told the relationship manager that there would not be a problem if the withdrawal amounts were less than \$10,000.
35. At least 52 account holders of 330 U.S. Related Accounts were not identified as U.S. persons until Valiant began its search for U.S. Related Accounts under the terms of the Swiss Bank Program. For example, one such account holder, a dual U.S.-German citizen, originally provided Valiant only with identification as a German citizen when opening the account and, when asked again years later about nationality, the account holder admitted to also being a U.S. citizen. Another account holder previously indicated that the account holder was not a U.S. person, but Valiant discovered otherwise in late 2013 as part of its participation in the Swiss Bank Program.
36. Valiant did not encourage or suggest the creation of "structures" to hold accounts, for example, Liechtenstein foundations or corporations formed under the laws of Hong Kong, Panama, or the British Virgin Islands. Four U.S. Related Accounts were held in the name of non-U.S. entities with one or more U.S. beneficial owners. All of the accounts were opened before September 2008.
37. For example, a British Virgin Islands entity opened an account at Valiant through a third-party Swiss entity assigned to manage the account. The account holding entity designated four U.S. persons as beneficial owners, but signed a Valiant form declaring that the account was for the benefit of non-U.S. persons. One of the designated U.S. beneficial owners previously opened an individual account at Valiant. In 2009, the relationship manager identified several withdrawals from Valiant as "high-risk" because they totaled at least \$250,000 and the primary U.S. beneficial owner had arranged for a

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third party (a Swiss national and resident of Switzerland) to: (a) travel to the U.S. with \$9,000 in cash and deliver it to the primary U.S. beneficial owner; and (b) withdraw sums from the account, load such money onto six pre-paid currency cards, and send them to the primary U.S. beneficial owner. The relationship manager warned the account holder that such conduct was unacceptable at Valiant, but did not close the account. The account holder discontinued such activity thereafter. Between 2007 and 2012, the third party, a close friend of the primary U.S. beneficial owner, regularly made withdrawals from the account either at the specific request of the beneficial owner of the account or together with a representative of the entity that managed the account.

38. Some U.S. account holders transferred large sums to non-U.S. institutions. One account holder transferred over 435,000 euros to France and \$350,000 to Luxembourg. Two other account holders each transferred 75,000 Swiss francs to Dubai and closed their accounts with cash withdrawals of over 300,000 Swiss francs.
39. In 2009, another account holder refused to sign a Form W-9 and requested that Valiant ignore the account holder's U.S. status. Thereafter, the account holder's non-U.S. spouse opened a separate account at Valiant and the account holder transferred over \$1 million into that account. According to an "Agreement of Donation" between the account holder and the account holder's non-U.S. spouse, the purpose of the transfer was "to make a donation" and "without any consideration." The agreement provided that the donation was "irrevocable." The non-U.S. spouse then transferred the funds to UBS and instructed Valiant to close the account
40. Valiant did not seek to attract as account holders U.S. persons who, starting in or about 2008, left various Swiss banks, such as UBS AG ("UBS") and Credit Suisse AG. For example, in 2011, Valiant declined an opportunity to take over a team of relationship managers that managed assets for foreign clients at a large Swiss bank. But the bank accepted funds from 19 UBS account holders who exited UBS. Eleven of the 19 U.S. persons provided a signed Form W-9. The remaining eight U.S. persons who did not were later forced to close their Valiant accounts.

Valiant's Cooperation Throughout The Swiss Bank Program

41. Throughout its participation in the Swiss Bank Program, Valiant committed to providing full cooperation to the U.S. government and has made timely and comprehensive disclosures regarding its business with U.S. Persons. Specifically, Valiant, with the assistance of U.S. and Swiss counsel, and in compliance with Swiss law has:
 - (a) conducted an internal investigation, which included but is not limited to: (1) interviews of relationship managers, members of management, and members of the board of directors; (2) reviews of client account files, relationship manager notes, and correspondence; (3) analysis of relevant management policies and board meeting minutes; and (4) review of e-mail;

- (b) reviewed U.S. Related Accounts held at Valiant since August of 2008 to determine whether any accounts would support treaty requests to the Swiss competent authority for U.S. client account records;
- (c) described in detail the structure of its business with U.S. persons, which included, but is not limited to the policies concerning U.S. account holders effective during the Applicable Period and a description of activity in various accounts;
- (d) provided a list of the names and functions of 25 individuals who structured, operated, or supervised the client-facing business at Valiant, including the part of Valiant's business that dealt with U.S. persons. These individuals served as the chairman of the board of directors, members of the executive board, heads of departments, and heads of divisions;
- (e) provided information concerning its relationship managers;
- (f) sought and obtained waivers of Swiss bank secrecy from the holders of U.S. Related Accounts; and
- (g) encouraged existing and prior holders of U.S. Related Accounts to provide evidence of tax compliance or participation in an announced Offshore Voluntary Disclosure Program or Initiative, or to disclose their accounts to the IRS through such a program.



**RESOLUTION OF THE BOARD OF DIRECTORS
OF VALIANT BANK AG**

At a duly held meeting held on September 8, 2015, the Board of Directors (the "Board") of Valiant Bank AG (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, dated September 2, 2015, 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 dated September 2, 2015, and attached to the Agreement, consulted with U.S. and Swiss counsel in connection with this matter, and unanimously voted to enter into the Agreement, including to pay to the Department the amount set forth in the Agreement;

The Board hereby RESOLVES that:

1. Jürg Bucher, Chairman of the Board, and Markus Gygax, Chief Executive Officer, 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. Daniel W. Levy and Eric B. Halper, of McKool Smith P.C., 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\$3,304,000.00 (three million three hundred and four thousand U.S. dollars) 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 Jürg Bucher and Markus Gygax, 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

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Exhibit B to Non-Prosecution Agreement, dated September 2, 2015

5. All of the actions of Jürg Bucher and Markus Gygax, 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 September 8, 2015.



Beat Michel-Risse
Secretary of the Board of
Directors of Valiant Bank AG