



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

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5-16-4676
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Keith Krakaur, Esq.
Gary DiBianco, Esq.
Skadden, Arps, Slate, Meagher & Flom, LLP
Four Times Square
New York, NY 10036

December 3, 2015

Re: Baumann & Cie, Banquiers
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Messrs. Krakaur and DiBianco:

On December 23, 2013, Baumann & Cie, Banquiers (“Baumann”) submitted a Letter of Intent 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 Baumann in its Letter of Intent and information provided by Baumann 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 Baumann of the Swiss Bank Program will constitute a breach of this Agreement.

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

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

Agreement. Baumann 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, Baumann agrees to pay the sum of \$7,700,000.00 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 Baumann. This payment is in lieu of restitution, forfeiture, or criminal fine against Baumann for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Baumann with respect to the conduct described in this Agreement, unless the Tax Division determines Baumann has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Baumann 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 Baumann has violated any provision of this Agreement. Baumann 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. Baumann agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Baumann further agrees that no portion of the penalty that Baumann has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Baumann 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) Baumann'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 Baumann 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) Baumann'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) Baumann'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 Baumann 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) Baumann's retention of a qualified independent examiner who has verified the information Baumann disclosed pursuant to II.D.2 of the Swiss Bank Program.

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

Baumann further agrees to undertake the following:

1. The Tax Division has agreed to specific dollar threshold limitations for the initial production of 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. Baumann agrees that, to the extent it has not provided complete transaction information, it will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. Baumann 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 Baumann.
3. Baumann 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. Baumann 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, Baumann will promptly proceed to follow the procedures described above in paragraph 2.

4. Baumann 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.

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

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


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

12-15-15
Date


THOMAS J. SAWYER
Senior Counsel for International Tax Matters

15 December 2015
Date


CARL D. WASSERMAN
Trial Attorney

Dec. 15, '15
Date

AGREED AND CONSENTED TO:
BAUMANN & CIE, BANQUIERS

By: 
MATTHIAS PREISWERK
Chairman of the Executive Board

15.12.15
Date

APPROVED:


KEITH D. KRAKAUR, ESQ.

December 15, 2015
Date


GARY DiBIANCO, ESQ.
Skadden, Aps, Slate, Meagher & Flom LLP

Dec 15 2015
Date

Counsel for Baumann & Cie, Banquiers

EXHIBIT A TO BAUMANN & CIE, BANQUIERS NON-PROSECUTION AGREEMENT

STATEMENT OF FACTS

BACKGROUND

1. Baumann & Cie, Banquiers (“Baumann” or the “Bank”) is a traditional private bank founded in 1920, headquartered in Basel, Switzerland. As of October 15, 2015, the Bank has 58 employees. For the last ten years, the Bank has had a separate business line devoted to equity and venture investments in Swiss companies. Baumann is a partnership, and so the Bank’s current four individual partners have unlimited liability. Baumann’s core client base consists of individuals and businesses mainly from Switzerland. Approximately 70% of the Bank’s clients in Basel are from Switzerland. The United States was never a target market for the Bank.
2. In June 2009, the Bank opened a branch in Zurich (“Zurich Branch”), dedicated purely to private banking. The initial team at the Zurich Branch came from the Zurich branch of another Swiss bank. As of October 15, 2015, the Zurich Branch has seven employees. The former head of the Zurich Branch became a partner of the Bank in 2012. In August 2014, this Zurich-based partner left the Bank. As discussed below, this partner introduced the majority of undeclared U.S. clients to the Bank since his employment in 2009.
3. During the Applicable Period,¹ Baumann had no offices or branches outside of Switzerland, and the Bank engaged in traditional private banking business. During the Applicable Period, the Bank’s client base included a limited number of citizens or residents of the United States with U.S. tax liabilities (“U.S. taxpayers”), as well as U.S. taxpayers domiciled in Switzerland and elsewhere outside of the United States.

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 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.
5. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who 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

¹ Capitalized terms not otherwise defined in this Statement of Facts have the meanings set forth in the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks, issued on August 29, 2013 (the “Swiss Bank Program”).

Accounts, FinCEN Form 114, formerly known as Form TD F 90-22.1 (the "FBAR"). The FBAR for the applicable year was due by 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 ("the Department") and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department 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 Baumann, since at least August 2008.

9. Baumann was aware that U.S. taxpayers had a legal duty to report to the IRS, and pay taxes on the basis of, all of their income, including income earned in accounts that these U.S. taxpayers maintained at the Bank.

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

10. In 2001, the Bank entered into 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 holding U.S. securities were properly paying U.S. tax.

11. The QI Agreement took account of the fact that Baumann, 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 Baumann to obtain the consent of the account holder to disclose the client's identity to the IRS.

12. With the knowledge that Swiss banking secrecy laws would prevent Baumann from disclosing their identities to the IRS absent any client or statutory authorization, certain U.S. clients of Baumann filed false U.S. Individual Income Tax Returns, Forms 1040, which failed to report their respective interest in their undeclared accounts and the related income. Certain U.S. clients also failed to file and otherwise report their undeclared accounts on FBARs.

13. The Bank considered terminating the QI agreement at the end of 2010, and in an email dated September 16, 2010, the head of the Bank's Zurich branch mistakenly asserted that Baumann "will therefore not be subject to US information requirements under FATCA. . . ." In the meantime, the Bank explored ways to permit clients to maintain their non-U.S. securities assets at Baumann, and yet continue to allow Baumann to manage the same clients' U.S. securities elsewhere, through the opening of separate accounts at third-party institutions that would be subject to QI reporting. The Bank would then provide the customer with a single accounting record of the clients' assets. This procedure was ultimately never implemented.

14. In a memorandum dated August 15, 2012 discussing an internal audit, one of the Bank's partners wrote: "In the wake of the UBS tax affair and the proceedings engaged by the USA against 11 banks, primarily accusations and procedures regarding the banks having assisted U.S.-domiciled persons to commit tax evasion, the bank's [Baumann's] major risks lie in the field of business relationships with account holders and/or beneficial owners domiciled in the USA. It must be assumed that the bank can no longer blindly trust in a US-domiciled person not holding US securities if he or she has a so-called 'non-W-9 status.' On the contrary, it must actively endeavor to determine the tax status of all US-domiciled clients by means of the form W-9."

BAUMANN'S U.S. CROSS-BORDER BUSINESS

15. During the Applicable Period, Baumann maintained a total of 167 U.S. Related Accounts, with an aggregate peak value of \$514.1 million. As of August 1, 2008, Baumann had 33 U.S. Related Accounts, with an aggregate value of approximately \$75.5 million. The Bank opened 134 additional accounts with an aggregate value of approximately \$438.6 million during the Applicable Period.

16. The Bank provided its services principally by customer relationship managers, who served as the primary contact persons for the Bank's U.S. clients or their advisors. Baumann did not provide any incentive structures for relationship managers to solicit or acquire U.S. Related Accounts. The four relationship managers at Baumann's Zurich branch managed 98 U.S. Related Accounts.

17. U.S. persons were never part of the Bank's marketing strategy and focus. Baumann never marketed its services in the United States and its relationship managers never traveled to the United States in order to solicit or acquire clients or to market services. The majority of the Bank's additional U.S. clients came to the Bank through referrals and pre-existing relationships with relationship managers, in particular at the Zurich Branch. As indicated above, these referrals primarily came from local lawyers known to the relationship managers of the Zurich Branch.

18. The Bank acted as a custodian of assets for certain accounts that were managed by approximately 25 external asset managers, 24 of which are based in Switzerland. Of the 167 U.S. clients of the Bank, 60 were managed by 25 different external asset managers. During the Applicable Period, irrespective of a client's nationality, domicile, or tax status, Baumann compensated external asset managers through retrocession commissions (based on a percentage of certain fees debited by Baumann from their client), and discounts in fees paid by clients who provided discretionary mandates to their external asset managers.

19. The majority of Baumann's U.S. clients 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 undeclared accounts from the IRS. Baumann was not involved in setting up these entities, but those entities were generally created or serviced by a few Zurich-based lawyers with whom the relationship managers in Baumann's Zurich branch were personally acquainted. The Bank itself did not provide tax or structuring advice to U.S. clients during the Applicable Period.

20. During the Applicable Period, Baumann opened 75 U.S. Related Accounts for non-U.S. structures, such as offshore corporations or trusts. Those 75 U.S. Related Accounts comprised an aggregate value of approximately \$253.4 million. These offshore entities included Panama, British Virgin Islands, Seychelles, and British West Indies corporations, as well as Liechtenstein foundations, all of which were established by external law firms. In total, 94 of the Bank's 167 U.S. Related Accounts were entity accounts, 69 of which were opened at the Zurich branch. Of these, 30 were Panama entities, 12 were from Liechtenstein, and eight were U.S. entity accounts.

21. As one example, Baumann opened an account in February 2009 in Basel (closed March 2014) for a Liechtenstein foundation established in 1989. The client was introduced by a Basel-based external asset manager. The beneficial owners, according to Form A, were two U.S. citizens living in the United States. According to their intake letter, employees of the fiduciary company and the external asset manager met the beneficial owners in the United States. At the account opening, the account holder refused to waive Swiss banking secrecy and did not permit the bank to hold or invest in U.S. securities. Several cash withdrawals were made by the beneficial owners in breach of corporate governance to likely avoid taxation: in June 2009, \$30,000 were withdrawn; in March 2010, \$9,000; and in April 2011 \$20,000 and 100,000 euros.

22. As another example, Baumann opened an account in June 2009 at the Zurich branch for a Panama corporation, established in 2000, where the beneficial owner as listed on Form A was a U.S. citizen domiciled in the U.S. (a retired lawyer living in Las Vegas). The beneficial owner provided a U.S. passport upon opening the account, which was funded by \$27 million from the account holder's account at a Category 1 bank. The account holder signed the bank's QI compliance form indicating that the Panama corporation was in fact the beneficial owner of the assets for U.S. tax withholding purposes when the Bank knew or should have known this was untrue.

23. During the Applicable Period, Baumann also offered a variety of traditional Swiss banking services that, though available to all its clients, it knew could assist, and did assist, its U.S. clients in concealing their undeclared assets and income. More specifically, the Bank:

- Established accounts for approximately 105 U.S. taxpayers leaving other Swiss banks, including Category 1 banks. Such accounts comprised an aggregate peak value of \$417.2 million;
- Opened numbered accounts for ten U.S. taxpayers, whereby Baumann 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, Baumann's internal records reflected the identity of the U.S. clients associated with these accounts, in compliance with Swiss law. The Bank knew or should have known that the anonymity associated with those accounts would further tax evasion on the part of those account holders;
- Held bank statements and other mail relating to 19 U.S. Related Accounts opened during the Applicable Period at the Bank's offices in Switzerland rather than sending them to the U.S. taxpayers in the United States. In a limited number of instances, correspondence was also sent to Swiss law firms which acted as directors of entities that held accounts at the Bank. Such a service helped U.S. clients to eliminate the paper trail associated with the undeclared assets and income they held at Baumann in Switzerland. By accepting and maintaining such accounts, the Bank assisted some U.S. taxpayers in evading their U.S. tax obligations, such as the following account holder:
 - Regarding one such numbered account, the clients transferred \$2 million to the account from an account at Credit Suisse in July 2010. The taxpayers were American horse breeders who had granted a power of attorney to an external asset management company based in Zurich. That external asset manager introduced the clients to the Bank. The Bank was instructed to retain the correspondence and to send copies to the clients' external asset manager, and not to invest in U.S. securities. In 2010 and 2011, the Bank was instructed to make repeated payments of under \$10,000 to a U.S. bank account in the name of a U.S.-based coin dealer. From June to August 2011, the clients instructed the Bank to buy 2,279 pieces of Krugerrand gold coins at that time worth approximately \$3.7 Million. In September 2011, the clients instructed the Bank to close the account. The remaining assets were withdrawn in cash and the account closed in 2011.
- Opened at least one U.S. Related Account held by a Liechtenstein insurance company and associated with a life insurance policy issued to one of its clients in August 2009. For accounts opened prior to January 1, 2011, insurance companies were not required by Swiss regulations to disclose to the Bank the identity of the insured person. As a result, the Bank had no information on the policy holder associated with this account, although it knew or should have known it was likely an undeclared account. On June 20, 2014, when the Bank refused to execute a transaction on the account via a Western Union account, the Bank was informed by the insurance company that the policy holder was a U.S. resident.
- Processed in a limited number of instances requests from U.S. taxpayer-clients transfers to foreign entity accounts in Singapore and Liechtenstein in connection with account closures by U.S. clients, who were either undeclared or who failed to provide the Bank the requested documentary evidence of their tax compliance. As one example:

- the Bank opened an account in the name of Panama corporation in June 2009 at the Zurich branch, with \$3 million transferred from a Category 1 bank. The account was introduced by a lawyer of a Zurich-based law firm who was, together with a partner of his firm, also the director of the corporation. The account holder signed the Bank's Q1 compliance form, declaring that the Panama corporation was the account holder, stating that the client would not waive Swiss banking secrecy, and agreeing that the Bank would not invest in U.S. securities. The true beneficial owner according to Form A was a U.S. citizen living in Los Angeles. In November 2011, the beneficial owner sought to dissolve the corporation and instructed the Bank (through the client's attorney), to sell 75,000 ounces of silver, 20 kilos of gold, and \$1.5 million, and transfer the proceeds, denominated in Swiss francs, to an entity account held by the client in a Singapore bank, serviced through a company providing trust services. The client asked the Bank to withdraw the remaining 1.5 million Swiss francs, and pick up 21 kilos of gold to be held in custody for the client. The account was closed in February 2012.
- Provided travel cash cards to its clients, including U.S. persons, and processed in a limited number of instances requests by U.S. clients to load substantial amounts onto their travel cash cards from entity accounts, knowingly allowing them access to undeclared funds. For example:
 - In May 2009, the Bank opened an account in the Zurich branch in the name of a Panama corporation. Two Zurich-based lawyers acted as directors, and the beneficial owner was a U.S. citizen domiciled in the United States. A third Swiss attorney was added, together with a British Virgin Islands company, as having signatory authority in May 2011. Between June 2009 and February 2012, \$1 million was debited from the account through the use of a travel charge card. The account was initially funded with over \$7 million from a UBS account via the lawyers' own account. In May 2012, approximately \$1 million was transferred to an entity account with a Liechtenstein bank.
- Maintained records in its files related to the renunciation of investments in U.S. securities for U.S. clients in which clients requested that the Bank not invest in U.S. securities for them, respect client confidentiality and not disclose their identity to the IRS.
- Processed substantial cash withdrawals in connection with account closures by U.S. clients, who failed to provide the Bank the requested documentary evidence of their tax compliance.

**BAUMANN'S POLICIES WITH RESPECT TO U.S. CLIENTS
DURING THE APPLICABLE PERIOD**

24. In June 2008, in response to the UBS case, the Bank resolved not to accept new undeclared U.S. taxpayers. New client relationships with declared U.S. clients would be reviewed on a case-by-case basis and required the approval of the Bank's executive board or one of the partners.

25. In accepting new clients, the Bank conducted diligence that met the standards set by Swiss law and regulations and complied with the duties of the QI Agreement. As required by Swiss regulations, the Bank identified on Forms A and T the beneficial owners of accounts opened in the name of legal entities. The Bank monitored on-boarding of new clients, including clients who were moving their business to the Bank from other banks.

26. In August 2009, given concerns about Baumann's liability for inheritance taxes owed by non-U.S. persons on U.S. securities, the Bank decided to stop investing in U.S. securities for the Bank's and all of its clients' accounts, and to begin to withdraw from the U.S. investment market for its clients and its own account. Starting in the third quarter of 2009, to implement this decision, the Bank sought and obtained agreements from clients to cease holding and trading U.S. securities in their accounts.

27. As recorded in August 26, 2009 board meeting minutes, the Bank was nevertheless aware that "[b]anking business with a U.S. reference bears incalculable legal risks for us as well as for our clients. Therefore, for us, as private bankers, this simultaneously entails immeasurable liability risks, because false declarations are unavoidable and can be made without our knowledge (if, for instance, a non-U.S. person's status changes to that of a U.S. person because of a period of study in the U.S.A. of several months)."

28. At this same meeting, one of the Bank's senior partners continued that "the bank absolutely has to withdraw from [the] U.S. jurisdiction because of the unlimited liability of the general partners." He also stated that he expected "that the bank will have more and more clients (residents and non-residents) who will pay tax on their assets. Bank secrecy does not play a role anymore." But at that very time the Bank's Zurich branch, which had opened only in June 2009, began acquiring significant numbers of undeclared U.S. Related Accounts.

29. The rapid growth of the Zurich branch pleased the Bank's partners. As of February 2010, they noted that the head of the Zurich branch was attracting new assets to the tune of 100 to 150 million Swiss francs per year. "The Zurich assets mainly come from referrals from law firms, which [the Zurich manager] knows personally or from asset managers. The fact that the clients of the Zurich bank are managed by the whole team and all team members are informed on the clients is another great advantage."

30. In 2011, the Bank decided not to on-board any new U.S. domiciled clients and beneficial owners. In January 2011, the Bank adopted additional provisional measures regarding the U.S. cross-border business, which (i) prohibited opening accounts for U.S. residents, subject to limited exceptions approved by the executive board, and (ii) required that existing business relationships with U.S. clients be conducted pursuant to an asset management mandate with the Bank or an external asset manager. In February 2011, these measures were formalized in a working directive ("Directive 19"), which confirmed the Bank's pre-existing practice in relation to U.S. clients and prohibited: (1) provision of tax advice or advice on structures to U.S. clients; (2) setting up or providing structures to U.S. clients; (3) accepting standing orders or making frequent payments to the U.S.; (4) mailing documents to U.S. clients; and (5) visiting U.S. clients in the United States.

31. The Bank's management was fully aware that the Zurich branch in particular had on-boarded numerous structured accounts, and openly discussed its ramifications at a February 2012

board meeting after an internal audit by an outside accounting group. The independent report stated: "The Zurich branch serves mainly foreign private clients. The range of clients of the Zurich branch includes U.S. clients. However, pursuant to the bank's strategy, these clients are not among the target group of the bank." The report contained a breakdown of various categories of U.S. Related Accounts by branch, demonstrating that Zurich controlled nearly 75% of the Bank's U.S. Related Accounts in terms of assets under management.

32. At that February 2012 board meeting, one partner noted that others in the banking community were aware that Baumann had on-boarded U.S.-related accounts that were exited by other banks: "When the rumor was mentioned that B&Cie had accepted U.S. clients that other banks had rejected in 2008, [a board member] explained that he knows the U.S. domiciled clients, including their background, in Basel and that the bank carries out the tax reporting for these clients." That comment ignored the increase in U.S. Related Accounts in Zurich. Moreover, the Basel office itself maintained a limited number of undeclared U.S. Related Accounts.

33. The Bank also assessed whether U.S. law enforcement would be able to seize Baumann's U.S. clearing account, which was held at UBS. At the above-mentioned partner meeting, a senior partner and then head of compliance informed the attendees that the Bank had received a confirmation from UBS that Baumann's U.S. dollar correspondent bank account was "managed at UBS in Zurich and not in Stamford, [Connecticut] U.S.A. Consequently and in the worst case (contrary to Wegelin), the U.S. authorities would not be able to block any funds."

34. In February 2012, the Bank instituted a directive concerning cross-border financial services ("Directive 4.8") providing for the drafting by the Bank of a list of target markets ("Target Market"). Directive 4.8 confirmed the existing practice that the U.S. was not a Target Market, and accordingly accounts for U.S. clients could only be opened with the written approval from all of the Bank's partners. Furthermore, the Bank could only hold consultations within Switzerland in relation to asset investments and investment recommendations with existing non-Target Market clients.

35. In March 2012, the Bank initiated a review of U.S. client accounts to identify any clients who had not filed a Form W-9 (or W-8BEN or W-8IMY as appropriate) in instances where a Form W-9 was not required by the QI Agreement. Baumann then requested that all U.S. domiciled clients and entities with U.S.-domiciled beneficial owners needed to: (1) provide an applicable IRS form; (2) confirm in writing that the beneficial owners were in compliance with their individual reporting requirements; and (3) provide written consent to allow the Bank to report their accounts to the IRS pursuant to FATCA.

36. In September 2012, the Bank sent letters to all U.S.-domiciled clients requesting the provision of this documentation to the Bank by October 31, 2012. Clients who failed to provide the above documentation by the end of 2012 had to terminate their relationship with the Bank.

37. In mid-2013, the Bank began contacting its clients and asking them to provide copies of their FBARs, Forms 1040 (Schedule B) or other evidence of their tax compliance, and – where appropriate and not already done previously – encouraging clients to participate in OVDI. In November 2013, the Bank sent letters to all of its U.S. clients and encouraged them to consult

with a tax adviser and participate in OVDI if their accounts had not yet been properly and timely disclosed to the IRS.

38. The Bank was concerned about whether or not it might be subject to sanctions by the U.S. government. In a board meeting held in 2013, one of the partners noted: "the bank has no knowledge as to whether it is on the radar of the U.S. or not. This cannot be excluded with 100% certainty, but since the bank never carried out any acquisitions on U.S. territory and never sought actively to acquire U.S. clients, the risk can be considered to be minor." At an executive board meeting held in July 2013, it was reported that "B&Cie was informed by other banks about its place on the so-called 'leaver-lists'."

MITIGATING FACTORS

39. The Bank has cooperated with the Department of Justice and provided information to the U.S. government about its U.S. cross-border business. Given its small size and limited employee resources, Baumann has allocated a significant amount of time and effort to ensure compliance with the requirements set out in the Program.

40. Baumann made extensive efforts to encourage account holders to participate in the IRS's offshore voluntary disclosure programs. It hired a Swiss law firm to reach out to U.S. account holders to persuade them to come into compliance with U.S. tax law. A significant number of the Bank's U.S. Related Accounts have entered into a voluntary disclosure program. Moreover, the Bank has obtained waivers of Swiss bank secrecy for over 100 of its U.S. Related Accounts, and provided customer names and other identifying information for those accounts to the U.S. Government.

EXHIBIT B TO NON-PROSECUTION AGREEMENT


**CERTIFICATE OF RESOLUTION OF THE PARTNERS
OF BAUMANN & CIE., BANQUIERS**

I, Alexandra Schilter, acting secretary of Baumann & Cie., Banquiers (the Bank), a limited partnership duly organized and existing under the laws of Switzerland, do hereby certify that the following is a complete and accurate copy of a resolution adopted by the partners of the Bank at a meeting held on 15th December, 2015, at which all partners were present and resolved as follows:

- That the partners have (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 counsel in connection with this matter; and (iii) unanimously voted to enter into the Non-Prosecution Agreement, including to pay a sum of USD 7,700,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Matthias Preiswerk, Chairman of the executive board, registered in the Commercial Register of the Canton of Basel-Stadt as having individual signatory authority, is hereby authorized (i) to execute the Non-Prosecution Agreement on behalf of the Bank substantially in such form as reviewed by the partners with such non-material changes as each of them may approve; and (ii) to take, on behalf of the Bank, all actions as may be necessary or advisable in order to carry out the foregoing; and
- That Gary DiBianco and Keith Krakaur, Skadden, Arps, Slate, Meagher & Flom LLP, are hereby authorized to sign the Non-Prosecution Agreement in their capacity as the Bank'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 15th day of December, 2015.



Alexandra Schilter
Secretary