

**EXHIBIT A TO NPB NEUE PRIVAT BANK AG  
NON-PROSECUTION AGREEMENT**

**STATEMENT OF FACTS**

**INTRODUCTION**

1. NPB Neue Privat Bank AG (“NPB” or the “Bank”) is a small private bank founded in 2001 with one office in Zurich, Switzerland. It is organized as a corporation owned by private shareholders. NPB focuses on providing asset management services to individual and institutional clients. The Bank currently employs 18 people.
2. As of December 31, 2015, NPB held assets under management totaling approximately \$1.3 billion and had a total of approximately 1,070 clients. These clients may have one or more financial accounts with NPB. From August 1, 2008 through December 31, 2015 (the “Applicable Period”), clients with a U.S. nexus held a peak year-end value of approximately \$400 million of total assets under management.
3. During the Applicable Period, NPB had only one office, and never employed more than 25 employees. Many of NPB’s employees, including its senior leadership, held multiple positions at NPB during the relevant period.

**U.S. INCOME TAX AND 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. For the tax year 1976 forward, U.S. citizens, resident aliens, and legal permanent residents had an obligation to report to the 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 have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any time during a particular year have been required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114, formerly known as Form TD F 90-22.1 (the “FBAR”). At all relevant times, the FBAR for the applicable year was due on June 30 of the following year.
6. 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.



7. In or about 2008, Swiss bank UBS AG (“UBS”) publicly announced that it was the target of a criminal investigation by the Internal Revenue Service and the United States Department of Justice and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department of Justice and UBS filed a deferred prosecution agreement in the Southern District of Florida in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared assets and income from the IRS. Since UBS, several other Swiss banks have publicly announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients. These cases have been closely monitored by banks operating in Switzerland, including NPB, since at least August of 2008.

**NPB’S QUALIFIED INTERMEDIARY AGREEMENT  
AND ITS ROLE IN NONCOMPLIANT U.S. RELATED ACCOUNTS**

8. In 2001, NPB entered into a Qualified Intermediary Agreement with the IRS. The Qualified Intermediary (“QI”) 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 insure that, with respect to U.S. securities held in an account at NPB, 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.

9. The QI Agreement took account of the fact that NPB, 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 NPB to obtain the consent of the account holder to disclose the client’s identity to the IRS. The QI Agreement required NPB to obtain IRS Forms W-9<sup>1</sup> and to undertake IRS Form 1099<sup>2</sup> reporting for new and existing U.S. clients engaged in U.S. securities transactions.

10. Notwithstanding this requirement, NPB chose to continue to service U.S. clients without disclosing their identity to the IRS and without considering the impact of U.S. criminal law on that decision.

11. NPB’s view was that it could continue to accept and service U.S. account holders, even if it knew or had reason to believe they were engaged in tax evasion, so long as it complied with the QI Agreement, which in NPB’s view did not apply to account holders who were not trading in U.S.-based securities or to accounts that were nominally

---

<sup>1</sup> The IRS Form W-9 is a tax form that identifies an individual or an entity as a U.S. taxpayer required to file an informational tax return.

<sup>2</sup> The IRS Form 1099 is a tax form that reports to the IRS income paid to a taxpayer, including income from interest and dividends. A Form 1099 is filed by the entity paying the income; in this case, the Bank was responsible for filing Forms 1099 for income earned by U.S. taxpayers from their possession and sale of U.S. securities.

structured in the name of a non-U.S.-based entity. NPB formed this view without consulting legal counsel.

12. Until at least August 2010, NPB did not require all of its U.S. clients to provide a signed IRS Form W-9 to open an account. Instead, NPB presented customers with a form entitled "Declaration Options for US Taxpayers." The form notes that "The bank does not and has not provided advice on taxation, in particular the taxation of the client and its shareholders or beneficial owners." On that form, there are two options:

- a. "The customer provides the Bank together with this statement with a validly signed form W-9. The customer authorizes the bank to deliver the form W-9 to its US custodian. The customer notes that through the handing over of the form W-9, his identity will be revealed to the Internal Revenue Service" or
- b. "The customer does not authorize the Bank to disclose his name. The customer notes that therefore he cannot invest in US securities or other securities through a US custodian."

13. NPB did not require the completion of Forms W-9 for existing U.S. customers until approximately summer of 2011.

14. While NPB technically complied with its QI Agreement by undertaking IRS Form 1099 reporting for U.S. clients with accounts held in their own individual names that were engaged in U.S. securities transactions, certain NPB bankers and others assisted U.S. clients in executing forms that directed NPB not to acquire U.S. securities in their accounts. More specifically, NPB utilized a form entitled "Purchase of US Securities" where U.S. customers were asked whether or not they would be purchasing U.S. securities; if the client indicated they would "refrain[]" from purchasing U.S. securities, no Form W-9 was completed. The purpose of such forms was to avoid NPB having to disclose the identities of U.S. clients to the IRS under its QI Agreement.

15. As a result of NPB's actions, U.S. taxpayers were able to continue depositing funds into accounts at NPB because of the nature of Swiss banking secrecy laws. NPB was aware that some of its U.S. clients wanted to conceal their accounts from U.S. authorities, and NPB assisted some of those U.S. clients in the concealment of their accounts.

## **NPB'S U.S. CROSS-BORDER BUSINESS**

### **Introduction**

16. Between August 1, 2008 and December 31, 2015, NPB held a total of 353 U.S. Related Accounts,<sup>3</sup> which included both declared and undeclared accounts, with a peak

---

<sup>3</sup> "U.S. Related Accounts" are defined as any accounts that exceed \$50,000 from August 1, 2008 and December 31, 2015, to which indicia exist that a U.S. citizen or resident, or an entity beneficially owned by a U.S. citizen or resident, had a financial or beneficial interest in, (...continued)

year-end value of approximately \$400 million in assets under management. All of these 353 U.S. Related Accounts had U.S. account holders or U.S. beneficial owners, and 307 of these U.S. Related accounts were opened after February 18, 2009, the date of the UBS AG settlement.

17. Through its managers, employees and/or others, NPB knew or had reason to know that some U.S. taxpayers who had opened and maintained accounts at NPB were not complying with their U.S. income tax and reporting obligations.

18. Until tax year 2012, NPB conducted a U.S. cross-border banking business that aided and assisted certain of its U.S. clients in opening and maintaining undeclared accounts in Switzerland and concealing the assets and income they held in these accounts from the U.S. government. Through the opening and maintaining of these accounts, NPB participated in a scheme to defraud the United States and its agency, the Internal Revenue Service. NPB and its employees knew or should have known that some of their U.S. clients were evading United States taxes.

19. NPB signed agreements with individual external asset managers or external asset management firms, whereby clients of the external asset manager could open and maintain accounts at NPB, with account management services being provided by the external asset manager. Almost all of NPB's U.S. accounts were managed by external asset managers, for whom it provided custodial and limited banking services. In such cases, NPB generally did not contact the clients directly once they had opened their account. The Bank required an external asset manager mandate, so that communication about asset management and investment decisions were done between the U.S. customer and their external asset manager(s). In a few circumstances, NPB managed U.S. customers directly without an external asset manager. In those cases, the Bank required the U.S. customer to sign a direct asset management mandate, allowing the Bank to make investment decisions for the account.

20. According to the agreements that NPB had with external asset managers, NPB would pay external asset managers a fee, calculated as a percentage of assets under management. The fee was the same regardless of the customer's nationality.

## 2009

21. Prior to 2009, NPB had few U.S. clients. At the close of 2008, U.S. Related Accounts held approximately 8 million Swiss francs in assets.

22. In 2008, NPB became aware of the UBS AG investigation, and was aware of UBS AG's deferred prosecution agreement in early 2009. NPB understood that, around the

---

(continued...)

ownership of, or signature or other authority over the account. Because the amount in these accounts exceeded \$10,000, the U.S. citizen or resident would have been required to report these accounts on an FBAR form each year the account was open.



time that UBS publicly announced its investigation, several large Swiss banks began terminating their relationships with U.S. taxpayers, regardless of the tax status of those taxpayers and/or their willingness to become tax compliant. Many of the U.S. taxpayers that were exited from larger Swiss banks during this period had existing relationships with external asset managers who were responsible for servicing and managing their accounts.

23. In early 2009, NPB was also aware of the IRS's Offshore Voluntary Disclosure Program ("OVDP"). The OVDP allowed U.S. taxpayers to voluntarily disclose previously undeclared offshore accounts to the IRS and to pay a monetary penalty in exchange for an agreement that the IRS would not recommend that criminal charges be pursued.

24. In approximately early 2009, NPB was approached by certain external asset managers who managed accounts on behalf of U.S. taxpayers and were seeking a replacement custodian bank for accounts for U.S. taxpayers that were being closed by other Swiss banks, including UBS AG. Some of these external asset managers and NPB discussed the long-term trend towards tax compliance in Switzerland and that eventually the external asset managers would only be able to manage accounts that were declared to the U.S. government. Those external asset managers told NPB that they were telling their clients to become tax compliant. However, the external asset managers also made clear to NPB that many of their clients who wished to onboard accounts at the Bank had not yet declared their accounts to the U.S. government. The external asset managers did not promise, and NPB did not require, that all accounts onboarded to NPB would become compliant within a specific period of time. In one instance, however, an external asset manager onboarded accounts from other Swiss banks that the Bank knew were undeclared with no discussion of tax compliance until 2011.

25. The Bank viewed the taking of clients from other banks that were exiting U.S. taxpayers as a business opportunity. During a board of directors meeting held on March 9, 2009, the board unanimously resolved that it would allow U.S. taxpayers to open accounts at NPB, including customers who were forced to exit other banks. The board also resolved that accounts for such taxpayers would be opened only if an asset management mandate was in place, where the U.S. customer agreed that the assets would be managed by the Bank or an external asset manager, including by making investment decisions for the account funds. The meeting minutes further state that "in the context of compliance, all relevant regulatory rules have to be strictly abided by (inter alia CDB and AML)," referencing anti-money laundering and "know-your-client" regulations, and that the Bank "will not provide any services in the area of tax advice, which also extends to offshore-banking." There is no explicit mention in the March 9, 2009 board meeting minutes that any discussion of the tax status of the U.S. customers took place.

26. Following the March 2009 board meeting, a management board meeting was held on March 13, 2009, where the management board discussed opening accounts for U.S. taxpayers. Executive #1 noted that "[b]ased on current law the Board is giving us the green light to continue reviewing potential US clients (including ex-UBS) according to NPB-internal guidelines, in accordance with the rules currently in force, and to accept

such clients as the case may be.” Executive #1 relayed a number of guidelines to the management board, including that the accounts must have asset management mandates, that there would be no contacts by phone with the clients or orders directly from clients, and that NPB preferred accounts with assets of over 1 million Swiss Francs. The meeting minutes further state that “[p]ossible ambiguities” to the guidelines “are to be discussed with [Executive #1].” There is no explicit mention in the March 13, 2009 management board meeting minutes that any discussion of the tax status of the U.S. customers took place.

27. During the 2009 and 2010 years, the written agreements between NPB and external asset managers made no mention of U.S. tax compliance. For example, an agreement between NPB and an external asset management firm, EAM #1, signed July 30, 2009, confirms that EAM #1 has knowledge of various Swiss laws, including anti-money laundering laws, and also contains an agreement that EAM #1 will not introduce to the Bank any clients whose assets originate from a crime or a criminal organization. However, there is no mention of tax compliance.

28. NPB allowed U.S. customers who held accounts in the name of nominee entities at other Swiss banks to open accounts at NPB in the names of those entities. According to the management board meeting minutes dated March 13, 2009, Executive #1 told the board that NPB would not allow customers to create new entities, and would require that any structures utilized by U.S. customers have been in place for a few years before an account could be opened in the name of that structure. However, notwithstanding this statement to the board, Executive #1 approved NPB’s opening of an account for U.S. Customer #1 in the name of a newly created structure in September of 2009.

29. Prior to deciding to allow U.S. customers to open accounts at NPB, including those who had been asked to leave other banks, NPB did not seek any outside legal advice about whether or not their conduct would further assist U.S. customers in evading United States taxes. According to NPB executives, they did not believe outside legal advice was necessary, because, in their view, the Bank could open accounts for U.S. taxpayers to give them a place to park their undeclared assets while they went through the OVDP.

30. NPB’s executives hoped that their U.S. customers would eventually fully declare their accounts and keep their money at the Bank after becoming compliant. However, NPB created no written or formal policies to encourage or mandate tax compliance and, in fact, continued to acquire and service non-compliant U.S. taxpayers.

31. On May 6, 2009, Executive #1 warned the management board that the acquisition of U.S. clients “ha[d] to be handled with utmost discretion!” (translated from German).

32. On May 11, 2009, Executive #1 reported in a board of directors meeting that he expected an influx of approximately 50 million Swiss francs in assets from U.S. clients, and that NPB’s goal was to receive non-U.S. assets in the same amount.



33. On June 4, 2009, Executive #3 reported to the management board about a presentation he attended by a global accounting firm about potential developments in U.S. law aimed at “limit[ing] the use of tax havens” which “would represent the biggest change of course for the United States in several decades.” In the context of discussing these potential developments, Executive #3 noted to the management board that NPB’s Qualified Intermediary status “has to be kept at all costs” (translated from German).

34. On July 13, 2009, Executive #1 reported in a board of directors meeting that NPB had many contacts with “asset managers, lawyers, banks, and insurance companies concerning the acquisition of new clients. Among others, this also includes U.S. clients who are no longer welcome elsewhere” (translated from German). The Bank knew that many of the U.S. related accounts that were opened at NPB were beneficially owned by U.S. customers who were forced to exit other banks, including UBS and Credit Suisse, and the Bank made a decision to onboard the funds of these customers.

35. On August 20, 2009, an external asset manager who had begun servicing U.S. customers with accounts at NPB in or about July 2009, Hansruedi Schumacher, was indicted in the United States<sup>4</sup> and charged with conspiring to defraud the United States by assisting U.S. customers in opening and maintaining Swiss bank accounts that were not declared to the United States Treasury. Shortly before indictment, on July 30, 2009, Schumacher had signed as one of two signatories for an external asset management firm, EAM #1, on an agreement with NPB, which firm provided management services to U.S. customers who had accounts at NPB. After the indictment, NPB met with Schumacher and required Schumacher to guarantee and prove that his customers were tax compliant. Around the time of the indictment, Schumacher established a separate external asset management firm with which NPB continued to work after his indictment. The U.S. clients of that second firm at NPB were or became tax compliant.

36. Around the end of 2009, NPB decided to provide end-of-year tax statements to U.S. customers who wanted such statements, and contracted with an outside firm to help create the tax statements that would provide information needed for a customer to complete their tax return. NPB charged the U.S. customer an average fee of approximately \$500 for the generation of such a report to recover part of the costs it expended in order to prepare the report, and only created reports for U.S. customers who requested the report. NPB was aware that not all U.S. customers requested a 2009 tax statement and knew or should have known that some of the customers who did not request a statement were not reporting their account(s) and income from their account(s) on their 2009 tax returns.

37. During calendar year 2009, NPB had no written policies in place about the tax status of the U.S. customers who were joining the Bank.

38. During calendar year 2009, NPB signed a number of written asset manager agreements with external asset managers. The written agreements made no mention of

---

<sup>4</sup> United States v. Hansruedi Schumacher et al., 09-CR-60210 (S.D. FL). On April 2, 2015, Schumacher pleaded guilty.



tax compliance, and the external asset managers made no written promises about working to ensure their customers complied with U.S. tax laws.

39. By the end of 2009, NPB had approximately 450 million Swiss francs under management in accounts owned or beneficially owned by U.S. taxpayers, an influx of approximately 442 million Swiss Francs. NPB knew or should have known that some of these accounts were not reported to the United States government.

40. Approximately 69% of the U.S.-related assets held by the Bank at the end of 2009 were reported to the U.S. government by the account holder in or before the 2009 tax year.

## 2010

41. According to NPB, at the end of 2009, the Bank asked the external asset managers for a list of which customers were tax compliant and which were not. NPB's request and the responses they received were not documented in a written format but, according to an internal report prepared for the board of directors in February 2010, the Bank estimated that 80% of the assets onboarded by U.S. customers had become compliant during 2009. NPB did not ask any of the non-tax-compliant customers to leave in 2010.

42. During the calendar year 2010, board of directors meeting minutes and management board meeting minutes discuss the U.S. customers as a "risk," but there is no mention of the specific procedures NPB would follow to ensure compliance in the future.

43. In March 2010, the U.S. government passed the Foreign Account Tax Compliance Act ("FATCA"). Following the passage of FATCA, NPB informed external asset managers that it intended to be FATCA compliant in advance of its effective date, and took steps to procure the information systems necessary for such compliance.

44. In approximately June 2010, NPB opened an account for U.S. Customer #2 without requiring a signed Form W-9.

45. On or about June 4, 2010, NPB opened a numbered account for U.S. Customers #3 and #4 without requiring a signed Form W-9. Instead, U.S. Customers #3 and #4 signed documents on or about August 2, 2010 that stated "The Client confirms that he refrains from purchasing US securities."

46. According to NPB executives, beginning in August 2010, NPB decided not to open any new accounts for U.S. customers who were not tax-compliant. NPB did not memorialize this decision in any written policy nor in any executive board or management board meeting minutes. NPB knew in August 2010 that some of its existing U.S. customers were not tax-compliant, but continued to service those accounts.

47. Approximately 69% of the U.S.-related assets held by the Bank at the end of 2010 were reported to the United States government by the account holder in or before the 2010 tax year.



2011

48. In 2011, NPB was aware that the IRS was offering another voluntary disclosure program similar to the OVDP, known as the Offshore Voluntary Disclosure Initiative (“OVDI”).

49. During that year, as the deadline for the OVDI approached, NPB increased its efforts to encourage external asset managers to bring their customers into compliance. The management board meeting minutes dated June 7, 2011 state that measures needed to be taken regarding U.S. customers whose accounts could not be regarded as “tax compliant beyond a doubt” (translated from German).

50. On or about June 30, 2011, Executive #1 drafted a document entitled “Risk Assessment NPB Cross-Border Transactions with US Clients” (translated from German). This document was the first written risk assessment of the U.S. cross-border business that was completed by NPB and was provided to the Bank’s board of directors. In that document, Executive #1 wrote that after the expiration of the first OVDP on October 15, 2009 “only US clients who were ready to sign the W9 form were accepted.” This representation was not accurate because NPB did not require U.S. customers to sign a Form W-9 until some point after August of 2010. However, Executive #1 included statistics as part of this risk assessment that made clear that many U.S. accounts without signed Forms W-9 also remained at the Bank.

51. In the risk assessment, Executive #1 wrote that “US clients who have not signed a W9 form so far will be informed that they must sign such form or otherwise leave the bank.”

52. The minutes from the July 8, 2011 management board meeting state that the board discussed NPB’s need to come up with a strategy for eliminating U.S. accounts where the customer has not signed a Form W-9. Notwithstanding the recognition of this need, NPB did not successfully exit (or in some cases freeze) all non-compliant U.S. accounts until in or about the end of 2011.

53. On July 21, 2011, external asset manager Andreas Bachmann was indicted in the United States<sup>5</sup> and charged with conspiracy to defraud the United States by assisting U.S. taxpayers in opening and maintaining undeclared accounts in Switzerland. At the time of the indictment, as referenced above in paragraph 35, NPB had an external asset manager agreement with EAM #1, the asset management company of which Bachmann was a minority shareholder. Within a few days of indictment, Bachmann became the majority shareholder of EAM #1. At the time of indictment, NPB knew that some of Bachmann’s U.S. taxpayer clients who held accounts at NPB were not reporting those accounts to the United States government. After the indictment, NPB did not force Bachmann or EAM #1’s customers to exit the Bank. NPB executives met with Bachmann and told him that he needed to ensure his clients became compliant or exit them from the Bank. However,

---

<sup>5</sup> United States v. Markus Walder et al., 11-CR-00095 (E.D. VA). Bachmann pleaded guilty on March 12, 2014.

NPB continued to allow Bachmann to service accounts at the Bank. With one exception, all of Bachmann's clients provided a signed Form W-9 or exit instructions to NPB by the end of 2011. The final client provided NPB with an IRS Voluntary Disclosure Program intake letter in early February 2012.

54. In August 2011, after Bachmann's indictment, NPB sent letters to all external asset managers requesting that the external asset managers work with their U.S. customers to become tax-compliant. Late 2011 was the first time NPB sent written correspondence to all of their external asset managers requesting tax compliance.

55. On September 8, 2011, Executive #1 told the management board that the review of undeclared U.S. customers was "well advanced" and continued "rigorously" (translated from German).

56. In late 2011, NPB knew that it still had a number of undeclared U.S. customers, including a number of customers serviced by EAM #2, who had a signed external asset manager agreement with NPB since 2009. On November 18, 2011, the minutes of the meeting of the management board state that Executive #1 told the board that the "clearing up" of EAM #2's accounts has to be "pushed" with "utmost priority" (translated from German).

57. Approximately 77% of the U.S.-related assets held by the Bank at the end of 2011 were reported to the United States government by the account holder in or before the 2011 tax year.

## 2012

58. During the first half of 2012, NPB continued to service U.S. customers with undeclared accounts while it encouraged their external asset managers to bring their clients into compliance. On June 25, 2012, the minutes of the meeting of the management board state that all U.S. client accounts with "unclear tax status still existing on 25 June 2012" – all of which had been frozen since the end of 2011 – will be closed on June 28, 2012. (translated from German).

59. Approximately 88% of the U.S.-related assets held by the Bank at the end of 2012 were reported to the United States government by the account holder in or before the 2012 tax year.

## NPB's Servicing of U.S. Accounts from 2009-2012

60. When an external asset manager wanted to bring a U.S. customer to NPB, typically the external asset manager, the new customer, and Executive #2 would meet at NPB's office and fill out account opening paperwork, including Forms A showing the beneficial owner(s) of the account. At times, Executive #1 would also meet with U.S. customers. During at least some of those meetings, Executive #1, Executive #2, and/or other Bank employees assisted U.S. customers in opening accounts in a manner to further hide their assets, including the following examples:

6

a. On or about February 23, 2010, U.S. Customer #5 opened a numbered account at NPB. On that same date, U.S. Customer #5 signed a form stating that he would “refrain[] from purchasing US securities” and did not sign a Form W-9. After account opening, NPB was aware that U.S. Customer #5 transferred assets from his previous account at UBS to NPB.

b. During the summer of 2010, U.S. Customers #3 and #4, husband and wife, met with Executive #2 to open an account at NPB after Credit Suisse was closing their account. During the meeting, U.S. Customers #3 and #4 expressed concern that NPB would disclose their account to the United States government. Executive #2 assured U.S. Customers #3 and #4 that NPB had no ties to the United States, and that no information would be given to the United States government as long as U.S. Customers #3 and #4 did not invest in United States securities. U.S. Customers #3 and #4 opened a numbered account and were not required to sign a Form W-9.

61. NPB serviced some U.S. customers who structured their accounts so that they appeared as if they were held by a non-U.S. legal structure, such as an offshore corporation or trust, which aided and abetted the clients’ ability to conceal their undeclared accounts from the IRS. At least 89 of NPB’s U.S. Related Accounts, both declared and undeclared, were held in the name of offshore structures, including trusts or corporations purportedly domiciled in Panama, Liechtenstein, the British Virgin Islands, Hong Kong, and Belize. NPB never assisted customers in setting up such offshore structures. For accounts held in non-U.S. legal structures opened in 2009 and prior to Summer 2010, NPB did not require the signing of either a Form W-9 or Form W-8BEN.<sup>6</sup>

62. NPB offered a variety of traditional Swiss banking services that it knew could assist, and did in fact assist, U.S. clients in the concealment of assets and income from the IRS. One such service was hold mail, where the Bank would hold all correspondence for a particular client at the Bank, rather than send the correspondence to the client. As a general matter, NPB’s U.S. Related Accounts, including both declared and undeclared U.S. customers, used hold mail service, which the Bank understood was necessary not to violate U.S. laws and regulations relating to the provision of investment advice. When a U.S. customer opened an account, NPB required a “hold mail” form, which would instruct the Bank not to mail any correspondence to the U.S. customer in the United States. NPB understood that some of its U.S. customers were assisted in concealing the opening and maintenance of the account from the United States government by not receiving any correspondence in the United States.

63. NPB also offered code name or numbered account services. Upon request of the customer, the Bank would allow the account holder to replace his or her identity with a code name or number on bank statements and other documentation sent to the client. These services helped U.S. clients to eliminate the paper trail associated with the

---

<sup>6</sup> IRS Form W-8BEN, “Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals),” is a form that identifies the non-U.S. taxpayers or entities who are beneficial owners of an entity.



undeclared assets and income they held at NPB in Switzerland. By accepting and maintaining such accounts, the Bank assisted some U.S. taxpayers in evading their U.S. tax obligations. More than 35% of NPB's U.S. Related Accounts (approximately 127 accounts), including both declared and undeclared U.S. customers, maintained coded or numbered accounts.

64. Upon request by a U.S. customer, NPB arranged for the issuance of debit cards that could be used to access funds in the customer's account at NPB. NPB provided one customer with a travel debit card that was unmarked, meaning it had neither the Bank's nor the customer's name on the card. NPB instructed the U.S. customer not to use this card in the United States. In 2010, this U.S. customer requested to reload the travel card approximately five or six times within a six month period, withdrawing approximately \$40,000 to \$80,000 in cash. After realizing the amount and frequency of withdrawals, NPB asked the customer to exit the Bank. The use of a travel card by this U.S. customer facilitated his access to or use of undeclared funds on deposit at NPB.

65. Upon request by a U.S. customer, NPB arranged for cash withdrawals or withdrawals by check. Between October 4, 2010 and September 1, 2011, by circumventing NPB's normal processes, an NPB customer received approximately ten to twelve checks under \$10,000 and deposited them in the United States. Upon learning of the circumvention in or about September 2011, NPB immediately took action to close the account. Withdrawals by cash or check helped to facilitate access by U.S. customers to undeclared funds on deposit at NPB.

66. U.S. customers serviced by external asset managers were discouraged from contacting NPB directly. For example, while opening an account for U.S. Customer #6 in 2009, Executive #2 handed U.S. Customer #6 a business card and told her to "lose it" and to "forget [his] name and don't call [him]."

67. NPB never went to the United States to solicit clients, never had operations in the United States, and never operated a U.S. desk. No NPB employee ever traveled to the United States for any purpose connected to NPB's business.

#### **THE IMPACT OF UNDECLARED ACCOUNTS ON NPB'S AUM, FEES, AND PROFIT**

68. NPB's conduct allowed it to increase the undeclared U.S. taxpayer assets that it held, thereby increasing its fees and profits. The following table shows the approximate number of undeclared accounts held by U.S. taxpayers from 2008 through 2015, including accounts held through structures; the approximate total assets under management for such undeclared accounts; and the total gross fees earned by NPB from undeclared accounts held by U.S. persons.



Date	Total Number of Undeclared Accounts held by NPB for U.S. Taxpayers	Total Undeclared AUM held for U.S. Persons (in millions of U.S. dollars)	Total Revenue in Fees from Undeclared Accounts Held by NPB for U.S. Persons (in U.S. dollars)
12/31/2008	20	21	28,395
12/31/2009	107	158	617,720
12/31/2010	132	133	1,335,067
12/31/2011	72	74	736,846
12/31/2012	26	41	159,141
12/31/2013	14	28	116,879
12/31/2014	11	22	100,204
12/31/2015	8	18	65,071

### COOPERATION

69. NPB has cooperated with the Department of Justice in this investigation, including by producing information relating to the U.S. taxpayer clients who maintained assets overseas, including the identities of the account holders and/or beneficial owners of more than 88% of assets, and by making multiple executives available for interview by the Department of Justice.

70. NPB has expended significant resources to encourage U.S. persons to disclose their accounts to the IRS. NPB dedicated extensive time and effort to convince certain U.S. taxpayers to participate in the OVDP, including numerous follow-up discussions to ensure that these individuals followed through on the commitment to enter the OVDP.