U.S. Department of Justice

United States Attorney
Eastern District of New York

HDM/GK/TBM
F. #2021R00026

271 Cadman Plaza East
Brooklyn, New York 11201

January 16, 2025

By E-mail

Courtney Dankworth
David Sarratt
Debevoise & Plimpton LLP
66 Hudson Blvd E
New York, NY 10001

Re: American Express Company

Dear Counsel:

The United States Attorney's Office for the Eastern District of New York ("USAO-EDNY" or the "Office") and American Express Company ("AMEX" or the "Company"), pursuant to authority granted by a resolution of the Board of AMEX as reflected in Attachment B, enter into this Non-Prosecution Agreement ("Agreement").

AMEX was a global services company headquartered in New York, New York. The Company provided financial products and services, including charge and credit card products to consumers and businesses. The Company had employees and customers in the Eastern District of New York, and its websites and online services were accessible through an internet connection, including in the Eastern District of New York. On the understandings specified below, the Office will not criminally prosecute the Company or any of its employees, officers, directors, subsidiaries, branches, direct and indirect affiliates, or group and parent companies for any violations of 18 U.S.C. §§ 1343 and 1349 occurring between April 1, 2018, and November 30, 2021, relating to: (1) any of the conduct described in the Statement of Facts attached hereto as Attachment A ("Statement of Facts"); or (2) any information that the Company disclosed prior to the Agreement pertaining to (i) the Office's investigation of the Company's sales and marketing of Payroll Rewards and Premium Wire ("PR/PW"); and (ii) any failure to adequately disclose such activities or properly oversee and prevent such activities. To the extent there was conduct disclosed by the Company that is not described in the preceding sentence, such conduct will not be exempt from prosecution and is not within the scope of, or relevant to, the Agreement. The Company also agrees to the terms and obligations of the Agreement described below.

The Office enters into the Agreement based on the individual facts and circumstances presented by this case and as summarized in the attachments to this Agreement,

including, among other things: (i) AMEX voluntarily took a number of substantial remedial measures to mitigate and correct the effects of the practices described in the Statements of Facts, including terminating numerous employees and stopping all sales and marketing of PR/PW and overhauling its compliance and audit functions; (ii) the nature and seriousness of the offense conduct; (iii) the lack of any criminal resolutions for AMEX in the past 18 years; (iv) the lack of customer harm or intent to harm customers by AMEX employees; (v) AMEX readily cooperated with the Office in its investigation; and (vi) AMEX has agreed to continue to cooperate with the Office in any ongoing investigation of the conduct of AMEX and its officers, directors, employees, and agents relating to violations of U.S. federal criminal laws for the period defined below.

AMEX represents that since 2021, it has made significant enhancements to ensure its own compliance with federal and state legal and regulatory requirements. In particular, AMEX represents that it (1) terminated numerous employees involved in the conduct described in the Statement of Facts; (2) hired additional compliance and audit professionals; (3) voluntarily ceased the sales and marketing of PR/PW; (4) revamped the process by which new products are approved internally; and (5) improved U.S. sales and training practices by, among other things, requiring all customer-facing interaction materials to be approved internally, requiring sales to be primarily conducted over recorded lines, and providing training on prohibiting tax advice to customers.

After considering (i) through (vi) above, the Office believes that an appropriate resolution of this case is an NPA for the Company; a fine of $77,696,000.00, with an aggregate 20 percent discount taken from the fine amount from the lower end of the Guidelines; and forfeiture in the amount of $60,700,000.00. In light of the significant remedial measures that the Company has taken to date, its voluntary cessation of the marketing and sale of PR/PW, and its agreement that it will continue to cooperate with the Office, the Office has determined that an independent compliance monitor is unnecessary.

AMEX admits, accepts, and acknowledges that it is responsible under U.S. law for the past acts of its former officers, directors, employees, and agents as set forth in the attached Statement of Facts, and that the facts described in the Statement of Facts are true and accurate and constitute potential violations of law, specifically material misrepresentations to customers and potential customers in connection with PR/PW, in violation of 18 U.S.C. §§ 1343 and 1349. AMEX expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for AMEX, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by AMEX set forth above or the facts described in the attached Statement of Facts. AMEX agrees that if it or any of its direct or indirect subsidiaries or affiliates issues a written press release or holds a press conference in connection with this Agreement, AMEX shall first consult the Office to determine: (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Office and AMEX; and (b) whether the Office has any objection to the release.

AMEX's obligations under the Agreement shall have a term of three years from the date on which the Agreement is executed (the "Term"). AMEX agrees, however, that, in the event the Office determines, in its sole discretion, that AMEX, or any of its subsidiaries, branches, or affiliates, has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of AMEX's obligations under this Agreement, an extension or extensions of

the Term may be imposed by the Office, in its sole discretion, for up to a total additional time period of one year, without prejudice to the Office's right to proceed as provided in the breach provisions of this Agreement below. Any extension of the Agreement extends all terms of this Agreement for an equivalent period.

AMEX shall cooperate fully with the Office in any and all matters relating to the conduct described in the Agreement and the attached Statement of Facts and other conduct under investigation by the Office at any time during the Term, until the latter of (a) the date upon which all investigations and prosecutions arising out of such conduct are concluded or (b) the conclusion of the Term. At the request of the Office, AMEX shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies in any investigation of AMEX, its present or former subsidiaries or affiliates, or any of its present or former officers, directors, employees, agents, consultants, external asset managers, or any other party, in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct under investigation by the Office at any time during the Term.

During the Term of the Agreement, should the Company learn of any evidence or allegations of a violation of U.S. federal law, AMEX shall promptly report such evidence or allegation to the Office. No later than thirty (30) days after the expiration of the Term, the Company, by its Chief Executive Officer and Chief Financial Officer, shall certify to the Office via the document attached at Attachment C to this Agreement that AMEX has met its disclosure obligations pursuant to this Agreement. Such certification will be deemed a material statement and representation by the Company to the executive branch of the United States for the purposes of 18 U.S.C. § 1001.

Within seven days of the date of this Agreement, AMEX agrees to pay forfeiture in the amount of $30,350,000.00 (the "Forfeiture Amount"), which includes a forfeiture total of $60,700,000.00 minus a credit to the Department of Justice's Civil Frauds Division of $30,350,000.00, and a monetary penalty of $77,696,000.00 (the "Monetary Penalty") to the United States. The forfeiture total of $60,700,000.00 is based on the amount of net revenue that could be reasonably attributed to the sale of PR/PW. AMEX agrees that the Office could institute a civil and/or criminal forfeiture action against funds held by AMEX in the amount of the Forfeiture Amount, and that such funds would be forfeitable pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), which requires any person to forfeit any property, real or personal, constituting, or derived from, proceeds obtained directly or indirectly as the result of AMEX's violations of 18 U.S.C. §§ 1343 and 1349. The Forfeiture Amount and Monetary Penalty shall be paid in accordance with payment instructions provided by the government. The Monetary Penalty is also based on the amount of net revenue that could be reasonably attributed to the sale of PR/PW, and takes into account an aggregate 20 percent discount from the lower end of the Guidelines due to AMEX's timely cooperation in this investigation.

AMEX releases any and all claims it may have to the Forfeiture Amount, agrees that the forfeiture of such funds may be accomplished either administratively or judicially at the Office's election, and waives the requirements of any applicable laws, rules, or regulations governing the forfeiture of assets, including notice of the forfeiture. If the Office seeks to forfeit the Forfeiture Amount judicially, AMEX consents to entry of an order of forfeiture directed to such funds. If the Office seeks to forfeit the Forfeiture Amount administratively, AMEX consents

to the entry of a declaration of administrative forfeiture or order of forfeiture, and waives the requirements of 18 U.S.C. § 983 regarding notice of seizure in non-judicial forfeiture matters. AMEX agrees to sign any additional documents necessary to complete forfeiture of the Forfeiture Amount. AMEX also agrees that it shall not file any petitions for remission or restoration; any other assertion of ownership or request for return relating to the Forfeiture Amount; or any other action or motion seeking to collaterally attack the seizure, restraint, forfeiture, or conveyance of the Forfeiture Amount, nor shall it assist any others in filing any such claims, petitions, actions, or motions.

AMEX agrees that it shall not claim, assert, or apply for, either directly or indirectly, any tax deduction, tax credit, or any other offset with regard to any U.S. federal, state, or local tax or taxable income in connection with the payment of any part of the Monetary Penalty or Forfeiture Amount. AMEX shall not seek or accept directly or indirectly reimbursement or indemnification from any source with regard to the Monetary Penalty or Forfeiture Amount that AMEX pays pursuant to the Agreement or any other agreement entered into with an enforcement authority or regulator concerning the facts set forth in the attached Statement of Facts. This provision is not intended to relate to derivative claims that have been or may be brought on behalf of AMEX.

The Monetary Penalty and Forfeiture Amount paid are final and shall not be refunded should the Office later determine that AMEX has breached this Agreement and commence a prosecution against AMEX. In the event of a breach of this Agreement and subsequent prosecution, the Office is not limited to the Monetary Penalty and Forfeiture Amount. The Office agrees that in the event of a subsequent breach and prosecution, they will recommend to the Court that the amounts paid pursuant to this Agreement be offset against whatever forfeiture or fine the Court shall impose as part of its judgment. AMEX understands that such a recommendation will not be binding on the Court.

The Office may use any information related to the conduct described in the attached Statement of Facts against AMEX: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Agreement does not provide any protection against prosecution for any future conduct by AMEX or any of its present or former subsidiaries or affiliates. In addition, the Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with AMEX, or any of its present or former subsidiaries or affiliates.

If, during the Term of the Agreement: (a) AMEX commits any felony under U.S. federal law; (b) AMEX provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (c) AMEX fails to cooperate as set forth in the Agreement; or (d) AMEX otherwise fails to completely perform or fulfill each of its obligations under the Agreement, regardless of whether the Office becomes aware of such a breach after the Term is complete, AMEX shall thereafter be subject to prosecution for any federal criminal violation of which the Office has knowledge, including, but not limited to, the conduct described in the attached Statement of Facts, which may be pursued by the Office in the Eastern District of New York, or

any other appropriate venue. Determination of whether AMEX has breached the Agreement and whether to pursue prosecution of AMEX shall be in the Office's sole discretion. Any such prosecution may be premised on information provided by AMEX, its subsidiaries or affiliates, or its personnel, among others. The decision as to whether conduct or statements of any current director, officer, or employee or any person acting on behalf of, or at the direction of, AMEX will be imputed to AMEX for the purpose of determining whether AMEX has violated any provision of this Agreement shall be in the sole discretion of the Office.

Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Office prior to the date on which the Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of the Agreement, may be commenced against AMEX, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing the Agreement, AMEX agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, AMEX agrees that the statute of limitations as to any violation of U.S. federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the Office is made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

In the event the Office determines that AMEX has breached this Agreement, the Office agrees to provide AMEX written notice of such breach prior to instituting any prosecution resulting from such breach. AMEX shall have thirty (30) days upon receipt of notice of a breach to respond to the Office in writing to explain the nature and circumstances of such breach, as well as the actions taken to address and remediate the situation, which explanation the Office shall consider in determining whether to pursue prosecution of AMEX.

In the event that the Office determines that AMEX has breached the Agreement: (a) all statements made by or on behalf of AMEX to the Office or to a court, including the attached Statement of Facts, and any testimony given by AMEX before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, as well as any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Office against AMEX; and (b) AMEX shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of AMEX prior or subsequent to the Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible.

Except as may otherwise be agreed by the parties in connection with a particular transaction, and excluding the dissolution of AMEX and related asset sales and/or liquidations, AMEX agrees that in the event that, during the Term, it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to AMEX's consolidated operations or to the operations of any subsidiaries or affiliates involved in the conduct described in the attached Statement of Facts as they exist as of the date of the Agreement, whether such change is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the

purchaser or any successor in interest thereto to the obligations described in this Agreement and provide an acknowledgment that the Office's ability to determine that there has been a breach under this Agreement is applicable in full force to that acquiring or successor entity. AMEX agrees that the failure to include the Agreement's breach provisions in the transaction will make any such transaction null and void. AMEX shall provide notice to the Office at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form and the Office shall notify AMEX within that thirty (30) day period if it determines that the transaction(s) will have the effect of circumventing or frustrating the enforcement purposes of this Agreement. In addition, if at any time during the Term, AMEX has not provided notice to the Office at least thirty (30) days prior to undertaking such transaction(s), and the Office determines in their sole discretion that AMEX has engaged in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of the Agreement, it may deem it a breach of the Agreement pursuant to the breach provisions of the Agreement. In the event that the Office determines that the transaction(s) would have the effect of circumventing or frustrating the Agreement, the Office shall notify AMEX and provide AMEX with an opportunity to address the Office's concerns within thirty (30) days. Nothing herein shall restrict AMEX from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of the Agreement, as determined by the Office.

AMEX shall take all steps necessary to ensure that, regardless of the dissolution of AMEX, AMEX's relevant records and information will be preserved and remain accessible in order to comply with its obligations under the Agreement.

This Agreement is binding on AMEX and the Office but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local, or foreign law enforcement or regulatory agencies, or any other authorities, although the Office will bring the cooperation of AMEX and its compliance with its other obligations under the Agreement to the attention of such agencies and authorities if requested to do so by AMEX.

It is further understood that AMEX and the Office may disclose this Agreement to the public. Nothing in the Agreement shall require AMEX to violate any applicable law or regulation.

The Agreement sets forth all the terms of the agreement between AMEX and the Office. No amendments, modifications, or additions to this Agreement shall be valid unless they

are in writing and signed by the Office, the attorneys for AMEX, and a duly authorized representative of AMEX.

Sincerely,

JUDY PHILIPS
Acting Attorney for the United States
Acting under Authority Conferred by 28 U.S.C. § 515
Eastern District of New York

HIRAL MEHTA
Digitally signed by HIRAL MEHTA
Date: 2025.01.15 21:54:01 -05'00'

Hiral D. Mehta
Gillian Kassner
Tara McGrath
Assistant United States Attorneys

AGREED AND CONSENTED TO:

Date: 1/15/2025

By: Bernadette Miragliotta
Bernadette Miragliotta
Executive Vice President and Managing Counsel
American Express Company

Date: 1/15/2025

By: Courtney Dankworth
Courtney Dankworth
David Sarratt
Debevoise & Plimpton LLP

Attachment A
STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the Non-Prosecution Agreement ("Agreement") between the United States Attorney's Office for the Eastern District of New York (the "United States") and the defendant American Express Company (the "Company"). The Company hereby agrees and stipulates that the following facts and conclusions are true and accurate. Certain of the facts herein are based on information obtained from third parties by the United States through its investigation and were described to the Company. The Company admits, accepts and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as set forth below. If the United States determines that the Company has breached the Agreement and commences a prosecution of the Company, the Company agrees that it will neither contest the admissibility of, nor contradict, the Statement of Facts in any such proceeding. The following took place in or about and between April 1, 2018 and November 30, 2021 (the "Relevant Period").

The Company

1. The Company was a global services company headquartered in New York, New York. The Company provided financial products and services, including charge and credit card products to consumers and businesses. The Company had employees and customers in the Eastern District of New York, and its websites and online services were accessible through an internet connection, including in the Eastern District of New York.

2. Global Commercial Services ("GCS") was a division within the Company that offered, among other things, corporate credit cards and financial services.

3. U.S. Small & Mid-Size Enterprise ("USSME") was a subdivision within GCS that offered, among other things, credit cards and financial services to small and mid-size business customers within the United States.

4. FX International payments ("FXIP") was a subdivision within GCS offering foreign and domestic wire transfer payments to business customers.

5. The Field Sales Team ("Field Sales") was a sales group within USSME that sold card products and other financial services to small and mid-size business customers.

6. "Sales Employees" were employees within FXIP and Field Sales who sold the products Payroll Rewards and Premium Wire (together, "PR/PW"), discussed further below, among other products.

Relevant Individuals & Definitions

7. Individual-1 was an Executive Vice President of GCS from February 2019 through the remainder of the Relevant Period.

8. Individual-2 was the Executive Vice President and General Manager of USSME at the beginning of the Relevant Period, until March 2021.

9. Individual-3 was a Senior Vice President and General Manager of GCS at the beginning of the Relevant Period, until March 2021 when he replaced Individual-2 as the Executive Vice President and General Manager of USSME, which role he maintained throughout the remainder of the Relevant Period.

10. Individual-4 was the Vice President and General Manager of FXIP at the beginning of the Relevant Period, until April 2021, after which she assumed a different role within the Company.

11. S Corporations were companies that were taxed as pass-through entities, with corporate income taxed at an individual level by shareholders under whatever marginal income tax rate applied to the respective shareholder.

12. A tax-deductible business expense was defined by the Internal Revenue Service ("IRS") as one that was "ordinary" and "necessary." An ordinary expense was one that was common and accepted in the relevant field of business. A necessary expense was one that was helpful and appropriate in the relevant field of business.

The Fraudulent Scheme

A. Background

13. From approximately 2015 to 2017, GCS partnered with an outside entity to allow customers to pay their payroll expenses with a Company credit card for a fee. Customers could earn the Company's Membership Rewards ("MR") on the fee and were afforded a "float"—the delay between the date of the credit card charge and the date the credit card had to be paid off.

14. In or about April 2018, GCS created its own offering under FXIP, titled Payroll Rewards, whereby customers could use GCS to pay their payroll expenses. Payroll Rewards was effected through a direct payment, and thus offered the customer no float. Additionally, customers were charged a percentage-based fee by GCS based on the size of the transaction. The fees ranged between approximately 1.77% to 3.5%. By contrast, during the Relevant Period most banks charged a nominal fee for wire transfers, ranging between $0 to $50, irrespective of the amount of the wire. However, with Payroll Rewards, customers received 1 MR point for each $1 of the transaction. Customers' MR could be redeemed through any linked

personal or business account at the Company. Payroll Rewards went through the Company's internal product review process before being offered to customers.

15. In May 2019, Payroll Rewards was expanded to permit wire payments other than those for payroll under the title Premium Wire. Because Premium Wire was deemed a spin-off of Payroll Rewards, Premium Wire went through an abbreviated version of the Company's internal product review process.

16. Additionally, during the Relevant Period, the Company offered a credit card in partnership with a financial services company ("FS-1"), through which customers could redeem MR points into an FS-1 brokerage account. The Company offered redemptions at $1.25 per 1 MR point, which was lowered to $1.10 per 1 MR point in September 2021. The Company did not report to the IRS customer earnings in FS-1 brokerage accounts.

B. <u>The Pitch</u>

17. The Company's official marketing material for PR/PW listed benefits of the products as being, chiefly, the ability to earn MR and utilize GCS's white-glove services in connection with customer wiring needs. The official marketing material also contained the disclaimer: "The value of the [MR] may be taxable income to the Card Member and the Card Member is responsible for any federal or state taxes resulting from the [MR]."

18. In practice, PR/PW was marketed to customers as offering purported tax benefits—the ability to incur deductible business expenses for personal gain (the "Pitch"). Specifically, Sales Employees advised customers: first, that the fee on PR/PW was tax-deductible as a business expense, and thereby had the effect of lowering the customers' overall profit and taxable income; second, that the true cost of the fee was lower than the amount being paid, because the customer would otherwise have paid a portion of that fee to the IRS in taxes;

and third, that MR received in exchange for the transaction was not taxable, and thereby afforded the customer tax-free benefits. As a result, the value of MR—whether redeemed in an FS-1 brokerage account, through travel redemptions, or otherwise—outweighed the true cost of the fee adjusted to account for the tax savings it generated. PR/PW was pitched primarily to S Corporations, who valued a reduced tax burden over increased taxability. Unofficial training materials were circulated within GCS and FXIP to teach employees the Pitch and educate employees about target customers. For example:

a. On May 11, 2018, a Director of FXIP ("FXIP Director-1") circulated a training prepared by a Vice President of GCS ("GCS Vice President-1") on "Selling Payroll Rewards." The training provided the example of a customer at a 35% tax rate incurring a 1.77% fee on Payroll Rewards, the true cost of which he calculated to be 1.15%. It next explained that MR could be redeemed in an FS-1 brokerage account at 1.25% per MR point. Accordingly, the net benefit to the customer was the 1.25% redemption minus the "Net Fee" of 1.15%, which resulted in an apparent realized gain of 0.10%.

b. On August 9, 2019, a Director of GCS ("GCS Director-1") circulated a training to all Field Sales southeast region staff on "Financial Fluency." The training explained, "If you pay a fee to use [PR/PW], we are taking cash out of the business and putting it into your personal account, tax free." With respect to the fee, it noted, "The cost of the fee is NOT the true cost to the business." It provided the example of a business paying a $100,000 invoice with a 2% vendor fee, reducing profitability by an additional $2,000. "Of that $2,000, 37% of that would have gone to the IRS. . . . The client saves 37% of the 2% fee. With a Marginal Tax rate of 37%, the true cost of that fee becomes 1.26%."

c. On February 24, 2020, another Director of GCS ("GCS Director-2") emailed colleagues a PowerPoint on "FX[IP] Strategy," which posed the following question as part of the Pitch: "Would it make sense for the business to pay a small business expense which is a tax write off for you as an owner or an officer of the business to earn after tax benefit?"

d. Likewise, on March 5, 2020, GCS Director-1 circulated a training titled "Paying the Fee: Payroll Rewards and Premium Wire." Regarding the target customers, it noted: "A transaction fee is an increase in costs of goods which lowers profit. [An S Corporation's] goal is typically to drive as much personal value to themselves that is not on paper! (MR points)." And under the heading "Paying a fee for points," it provided the example of a company making a $10 million Payroll Rewards payment at a 1.77% fee, resulting in a $177,000 cost to the business, in exchange for 10 million MR. At a marginal tax rate of 47.75%, the customer would benefit from "Tax Savings" of $84,517.50 and, accordingly, a total "Net Gain" of $32,517.50 by using Payroll Rewards.

19. In support of the Pitch, Sales Employees created "calculators" that allowed them to input relevant details about their customers—including marginal tax rate and transaction size—to calculate the perceived net value of PR/PW in any given circumstance. For example:

a. As one FXIP salesperson ("FXIP Salesperson-1") described it to the government, calculators were "ubiquitous" as part of the Pitch.

b. A Manager of GCS ("GCS Manager-1") informed the government that calculators were distributed by a Vice President as part of a mandatory, hours-long Field Sales training.

c. On September 10, 2019, a Manager of GCS ("GCS Manager-2") emailed Individual-4, "At present the GCS sales organization is using a variety of 'homemade' calculators, talk tracks and email follow up to introduce [PR/PW], show clients the value of MR, explain the tax deductions and at times the transfer to [the FS-1 brokerage] option (see attached example)." GCS Manager-2 proposed creating a Company-wide calculator for use, and advised that he had pitched the idea to Individual-3 who approved the idea.

d. On May 14, 2020, another GCS Director ("GCS Director-3") emailed GCS Vice President-1 and another GCS Vice President ("GCS Vice President-2") asking if he could share a calculator with a customer. GCS Director-3 attached the calculator showing the customer's "Net Benefit" to using PR/PW with the purported tax savings offered. Neither GCS Vice President-1 nor -2 expressed concern about the use of the calculator or the Pitch, but rather were concerned about sharing the calculator with the customer. As GCS Vice President-1 wrote in reply, "If we had absolute confidence that everyone could use a tool like this without leaving it with the client then that would be great, but unfortunately that's not the case. I see the calculators as a great internal tool to use for educating our folks, but even that sometimes leaks into the field."

20. In separate interviews with the government, GCS Vice President-2, GCS Director-1, and FXIP Salesperson-1 advised that they could not conceive of a way to explain PR/PW to a customer as making financial sense without the Pitch, given the significant fees charged by GCS. Put otherwise, without the reported tax benefits, the fee charged on PR/PW would virtually always exceed the value of any MR gained.

21. At no time did Company management consult tax professionals to discern whether the Pitch relied on accurate tax advice. The Pitch did not. The wiring fee—which was

far in excess of that offered by competitors in the marketplace—was not deductible as an ordinary and necessary business expense insofar as it was incurred by a customer solely for the purpose of generating a personal benefit.

22. USSME incentivized Field Sales to sell PR/PW using the Pitch. The products formed part of employees' "scorecards" for performance reviews; salespeople were advised that selling PR/PW was the fastest means to reach their target "booked charge volume" metrics; salespeople with low sales numbers were required to participate in additional training with GCS Director-1 to learn the principles behind the Pitch; and high performers were financially compensated and lauded for "wins." For example:

a. On April 9, 2020, a Director of GCS ("GCS Director-4") emailed Field Sales distribution lists with a PowerPoint titled, "Sampling of PW Wins Q1." The wins included customers who were "[s]old on lowering taxable income" and who "understood and valued the fee as a way to lower tax burden."

b. On September 16, 2020, a Vice President of GCS ("GCS Vice President-3") circulated a PowerPoint of "Wednesday Wins" to the entire Field Sales distribution list. Among others, the PowerPoint highlighted a win wherein the salesperson "[s]old client on utilizing Premium Wire to drive personal net worth off W2 by investing with points with Charles Schwab." Individual-3 reviewed the PowerPoint and, while he criticized certain "wins," he expressed no concerns on the use of the Pitch.

23. At times, Sales Employees coupled the Pitch with a disclaimer that they were not tax advisors and that the customer should consult with their own tax advisors. And some customer tax advisors concurred with the advice offered as part of the Pitch. Others did not. To overcome this, Sales Employees would at times offer to introduce customers to new

Certified Public Accountants ("CPA") or would ask third party CPAs to join them when making the Pitch to customers. For example:

a. An FXIP Salesperson ("FXIP Salesperson-2") advised the government that when a customer's CPA pushed back on the Pitch, she offered to introduce the customer to a new CPA. She recalled traveling with a customer to Scottsdale, Arizona to introduce that customer to a CPA who endorsed PR/PW and the Pitch.

b. A Vice President of GCS ("GCS Vice President-4") informed the government she recalled attending a sales call with a major supermarket chain wherein the Field Sales employee brought a third party CPA to participate in the discussion.

c. On May 14, 2020, GCS Director-3 emailed GCS Vice Presidents-1 and -2 regarding a "Trusted Financial Advisor who we leverage to help close Premium Wire deals." In their email responses, neither GCS Vice President-1 nor -2 expressed concern with the practice.

24. Moreover, no checks were put in place to ensure PR/PW was being used for legitimate business purposes. To the contrary, some customers were told that they could (and in fact did) engage in "churn"—wiring money between their own accounts simply for the reported tax savings and financial benefits. For example:

a. On November 25, 2019, the Controller of a family restaurant group sent an email advising FXIP, "The plan is to go back and forth from [Account-1] to [Account-2] every week. So one week I will do [Account-1] to [Account-2]. The next week I will do [Account-2] to [Account-1]." He offered no business purpose for the transactions. Within FXIP, no concerns appear to have been raised regarding the customer's activities. To the contrary, a request was made to "rush" the customer's Premium Wire application.

b. On March 4, 2020, FXIP Salesperson-2 emailed a customer pitching PR/PW and advised, "I have multiple owners utilizing this platform purely to gain millions in points per month."

25. Throughout the Relevant Period, Sales Employees requested guidance on the Pitch and circulated customer concerns, but guidance was not forthcoming. For example:

a. On October 14, 2019, FXIP Salesperson-1 emailed his supervisor and others requesting "an assurance from leadership that no Derogatory Actions be taken against [Company] employees for conversations regarding the tax implications of the [FS-1] co-branded card relationship."

b. On November 6, 2019, GCS Director-2 emailed GCS Vice President-2 and another Vice President of GCS ("GCS Vice President-5"), "We really need to have the business help us answer the following 3 questions": (1) "Can business owners write off the processing fee . . . as a business expense?"; (2) "Are points taxable?"; and (3) "Can points limit the business owners['] tax deductions?"

c. On August 13, 2020, a customer advised the Company regarding the Pitch: "After talking with our accountant we are going to pass on this. . . . you can't get tax free money and then get a tax deduction from that money . . . . I understand some clients are willing to take the risk but it isn't something we are comfortable with after discussing with our accountant this afternoon."

d. On September 16, 2020, an anonymous employee complaint was forwarded to Individual-3 stating: "I have had clients say to me that our Premium Wire Service program is a form of money laundering. . . . Since there is no float or actual service being provided besides points, we are not providing an actual service and instead providing a way to

write off expenses as a business expense and benefit personally." Individual-3 dismissed the complaint as being the product of the salesperson failing to "properly explain and provide the correct context to the client."

e. On October 19, 2020, an anonymous employee complaint was forwarded to Individual-3 stating: "Premium wire is a very questionable product. . . . the value of the product is in the bank fee and the points which do not match the cost of the fee. We are not providing any legitimate service besides points and a fee."

f. An FXIP Director ("FXIP Director-2") informed the United States that in the Spring of 2021 he raised concerns to his supervisor, and then to Individual-1, that PR/PW was being used for tax evasion. Individual-1 instructed FXIP Director-2 not to put anything in writing. Individual-1 indicated he would discuss the concerns with the Company's commercial team, but did not offer to speak to the Company's compliance.

26. As concerns increased concerning PR/PW, supervisors within GCS and FXIP nonetheless continued to endorse the Pitch and devised mechanisms to evade detection. For example:

a. In an interview with the government, FXIP Salesperson-1 recalled Individual-4 fostering a culture of pushing boundaries, and specifically advising him, "You need to live in the grey in order to advance." He also recalled Individual-4 using the refrain, "Say it, forget it; write it, regret it."

b. Consistent with the foregoing, in an interview with the government, FXIP Salesperson-2 recalled FXIP Director-2 instructing her not to commit the Pitch to writing.

c. In an interview with the government, FXIP Salesperson-1 further recalled a different FXIP Director ("FXIP Director-3") instructed FXIP employees that if they were copied on an email with Field Sales and a customer discussing the Pitch, they should simply start a new email chain with the customer.

C. The Company's Knowledge

27. Former GCS executives—including Individuals-1, -2, -3, and -4—were aware that PR/PW was being sold using the Pitch. In addition to the examples discussed above at paragraphs 19(c), 22(b), 25(d)-(f):

a. On June 6, 2019, FXIP Salesperson-1 forwarded Individual-4 and FXIP Director-1 another salesperson's email to a customer using the Pitch, providing, in FXIP Salesperson-1's words, "'clear line' tax advice." In the underlying email to the customer, the salesperson offered, "The fee is a business expense so it can be written off reducing your tax burden . . . . The funds invested are tax free as they have been paid with Membership Rewards which the IRS considers a rebate and is not taxed personally."

b. On January 7, 2020, Individual-2's executive assistant emailed GCS Director-1 requesting copies of "the great trainings we heard so much about" on PR/PW, so Individual-2 could "reference them when needed for senior leadership presentations on how the Field is keeping on top of this topic." GCS Director-1 then shared a training with slides outlining the Pitch, including, "If you pay a fee to use Amex, we are taking cash out of the business and putting it into your personal account, tax free."

c. On May 29, 2020, GCS Vice President-4 emailed Individual-3 and GCS Vice President-2, among others, with a draft "video learning series we created," in which Field Sales employees roleplayed a salesperson using the Pitch on a customer. Individual-3

described the video as "awesome" and "amazing." GCS Vice President-2 echoed the sentiment, "all I can say is AWESOME!!!!!!" The video was not disseminated to Sales Employees.

d. On October 30, 2020, Individual-1 and Individual-2 exchanged internal chat messages, in which Individual-2 recommended focusing FXIP on cross-border wire transactions and away from Premium Wire, noting "[I] fear the 'gold rush' of premium to the field." Individual-1 replied, "I believe premium wire is our highest margin product[in FXIP,] so, would like to sell more of that . . ." Individual-2 commented, "it's just so easy [for sales] to make a fortune by getting one or two huge payroll deals – because it's MR/tax arbitrage." Individual-1 replied, "my only pause is the obvious – I think you're saying: sell less of our higher margin product and more of a lesser margin product." Individual-1 did not comment on the claim that PR/PW was "MR/tax arbitrage."

e. In or about March 2021, a senior executive within the Company learned that PR/PW was being sold using the Pitch and an internal investigation commenced within the Company. As discussed below, while sales were curbed, the products were not discontinued until November 2021.

D. <u>Discontinuing the Products</u>

28. In or about January 2021, an internal investigation commenced within the Company regarding the sale of PR/PW.

29. In or about June 2021, GCS stopped enrolling new customers in PR/PW. Existing customers could continue using PR/PW notwithstanding that they had been marketing the products as being for the purpose of generating tax benefits.

30. In or about the summer of 2021, a news outlet ("News Outlet") shared information with the Company about an article it was drafting discussing the Pitch unfavorably.

31. In or about September 2021, GCS instituted a cap of $280,000 per wire on PR/PW. However, there was no limit on how many wires a customer could send, nor were there controls put in place to enforce the cap.

32. On or about November 15, 2021, the Company discontinued PR/PW entirely.

33. On or about November 22, 2021, the News Outlet published an article discussing PR/PW and the Pitch, including that customers were advised they could "earn rewards on the transaction that can be converted into untaxed cash, while also deducting the transaction fees for tax purposes."

34. Between 2019 to 2021, the Company earned approximately $182.4 million in gross revenue on PR/PW, and approximately $60.7 million in net revenue on PR/PW.

Attachment B

Unanimous Resolution of the Board of Directors of American Express Company ("AMEX")

The Board of Directors of AMEX, which is headquartered in New York, has agreed by a unanimous decision as follows:

1. Courtney Dankworth and David Sarratt of Debevoise & Plimpton LLP are attorneys for AMEX in this matter.

2. Each Member of the Board has read the entire Agreement dated January 16, 2025, between AMEX and the United States, including the Statement of Facts attached as Attachment A; understands and agrees to the terms of the Agreement; and acknowledges the accuracy of the Statement of Facts to the best of each Member's knowledge and belief;

3. Stephen J. Squeri, the Designated Representative of the Board of Directors, is authorized to sign the Agreement on behalf of AMEX;

4. AMEX is fully satisfied with the performance of its attorneys in relation to their performance during the investigation and negotiation of the Agreement in this matter;

5. AMEX's agreement to enter into this Agreement is voluntary and is not the subject of force, threats, or promise (other than the promises contained in this Agreement); and

6. The Board Member signing below acknowledges the Board's unanimous approval of the Agreement and has the authorization to bind AMEX under U.S. law and under AMEX's Memorandum and By-laws, and any other instruments relevant to the governance of AMEX.

Signed by:

83091D27F1A84AB...

Name: Stephen J. Squeri
Title: Designated Representative

Attachment C

To: United States Attorney's Office
Eastern District of New York
Attention: Chief, Business & Securities Fraud Unit

Re: Non-Prosecution Agreement Disclosure Certification

The undersigned certify, pursuant to the Non-Prosecution Agreement ("Agreement") executed on January 16, 2025, by and between the United States Attorney's Office for the Eastern District of New York (the "Office") and American Express Company (the "Company"), that the undersigned are aware of the Company's disclosure obligations under the Agreement and that, to the best of the undersigned's knowledge and belief (including belief based on representations from others), the Company has complied with its disclosure obligations, as described in the Agreement, which includes disclosure of evidence or allegations that may constitute a violation of U.S. federal law ("Disclosable Information"). This obligation to disclose information extends to any and all Disclosable Information that has been identified through the Company's anti-money laundering program, whistleblower channel, internal audit reports, due diligence procedures, investigation process, or other programs or processes. The undersigned further acknowledge and agree that the reporting requirement contained in the Agreement and the representations contained in this Certification constitute a significant and important component of the Agreement and the Office's determination of whether the Company has satisfied its obligations under the Agreement.

The undersigned hereby certify that they are respectively the Chief Executive Officer of the Company and Chief Financial Officer of the Company or otherwise an executive officer substantively responsible for the Company's operations and that each has been duly authorized by the Company to sign this Certification on behalf of the Company.

This Certification shall constitute a material statement and representation by the undersigned and by, on behalf of, and for the benefit of, the Company to the executive branch of the United States for purposes of 18 U.S.C. § 1001, and such material statement and representation shall be deemed to have been made in the Eastern District of New York. This Certification shall also constitute a record, document, or tangible object in connection with a matter within the jurisdiction of a department and agency of the United States for purposes of 18 U.S.C. § 1519, and such record, document, or tangible object shall be deemed to have been made in the Eastern District of New York.

By: _____ Dated: _____
Chief Executive Officer
American Express Company

_____
Signature

By: _____ Dated: _____
Chief Financial Officer
American Express Company

_____
Signature