



U.S. Department of Justice

United States Attorney  
Southern District of New York

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

July 26, 2021

Ralph M. Levene, Esq.  
David B. Anders, Esq.  
Wachtell, Lipton, Rosen & Katz LLP  
51 West 52nd St.  
New York, NY 10019

Re: The Bank of N.T. Butterfield & Son Limited Non-Prosecution Agreement

Dear Messrs. Levene and Anders:

The agreement set forth herein (the "Agreement") has been approved by the Tax Division, Department of Justice (the "Tax Division").

Subject to the terms, conditions, and understandings set forth herein, the Office of the United States Attorney for the Southern District of New York ("this Office") and the Tax Division will not criminally prosecute The Bank of N.T. Butterfield & Son Limited ("Butterfield" or "the Bank"), a Bermuda-based bank and wealth management firm, for its participation in a conspiracy to (1) defraud the Internal Revenue Service ("IRS"), (2) file false federal income tax returns, and (3) evade federal income taxes in connection with services that it provided to U.S. taxpayers from in or about 2001 through in or about 2013.

The criminal conduct of Butterfield (the "Conduct") is described more fully in the Statement of Facts, attached hereto as Exhibit A, which Butterfield acknowledges and accepts as accurate and which is incorporated by reference herein. This Agreement does not provide any protection against prosecution for any crimes except as set forth above. This Agreement applies only to Butterfield and its subsidiaries, and does not apply to any other entities or any individuals. Pursuant to a resolution of the Board of Directors of Butterfield, A. Shaun Morris, Butterfield's General Counsel, is authorized to enter this agreement on behalf of Butterfield and bind Butterfield to the obligations set forth herein.

In entering into this Agreement, this Office has considered, among other things: (i) Butterfield's voluntary and extraordinary cooperation with this Office and the Tax Division, including Butterfield's efforts that resulted in the production of approximately 386 unredacted account files relating to the U.S. taxpayer-clients who maintained undeclared accounts overseas with the assistance of Butterfield, including documents that provide the identities of these U.S. taxpayer-clients; (ii) Butterfield's voluntary implementation of various remedial measures beginning in or about 2013; (iii) Butterfield's willingness to continue to cooperate with this Office, the Tax Division, and the IRS to the extent permitted by applicable laws and regulations; and (iv) Butterfield's representation, based on an internal investigation, the results of which have been

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shared with this Office, that the Conduct did not, and does not, extend beyond that described in the Statement of Facts.

It is understood that Butterfield: (a) shall truthfully and completely disclose all information with respect to the activities of Butterfield, its officers and employees, and others concerning all such matters about which this Office or the Tax Division inquires related to this Office and the Tax Division's investigation, which information can be used for any purpose, except as limited by this Agreement or by applicable laws or regulations; (b) shall cooperate fully with this Office, the Tax Division, the IRS, and any other law enforcement agency so designated by this Office or the Tax Division, except as limited by applicable laws or regulations; (c) shall consent to the production to the Department of Justice of any document, record, or other tangible evidence, except as limited by applicable laws or regulations; (d) specifically provide, as soon as practicable upon request, all items, assistance, information and documents required to be produced by Swiss banks participating in the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Program") as set forth specifically in Parts II.D.1, 2 and 4 and Part II.F of the Program, and with respect to Part II.D.2, for accounts closed in the period from January 1, 2008 through December 31, 2020, in the format requested by this Office; (e) implement the closure of recalcitrant accounts and related procedures, to the extent that it has not already done so, as set forth in Part II.G of the Program; and (f) shall commit no violations of the federal criminal law of the United States. Unless otherwise specified below, Butterfield's obligations under subsections (a) through (f) of this paragraph shall continue for a period of three years from the date this Agreement is executed (the "NPA Period").

Notwithstanding the NPA Period, Butterfield shall also, subject to applicable laws or regulations, continue to cooperate with this Office, the Tax Division, the IRS, and any other federal law enforcement agency designated by the Office regarding any and all matters related to the Conduct until the date on which all civil or criminal examinations, investigations, or proceedings, including all appeals, are concluded, whether or not those examinations, investigations, or proceedings are commenced or concluded within the NPA Period, including: (a) cooperate fully with this Office, the Tax Division, the IRS, and any other federal law enforcement agency designated by this Office regarding all matters related to the Conduct; (b) undertake the retention of records as set forth in Parts II.D.5 and II.E of the Program; (c) provide all necessary information and assist the United States with the drafting of treaty requests seeking information related to the Conduct, and collect and maintain all records that are potentially responsive to such treaty requests in order to facilitate a prompt response; (d) assist this Office or any designated federal law enforcement agency in any investigation, prosecution, or civil proceeding arising out of or related to the Conduct by providing logistical and technical support for any meeting, interview, federal grand jury proceeding, or any federal trial or other federal court proceeding; (e) use its best efforts promptly to secure the attendance and truthful statements or testimony of any officer, director, employee, agent, or consultant of Butterfield 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; (f) provide testimony of a competent witness as needed to enable this Office and any designated federal law enforcement agency to use the information and evidence obtained pursuant to Butterfield's cooperation with this Office; (g) provide this Office, upon request, consistent with applicable laws and regulations, all information, documents, records, or other

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tangible evidence not protected by a valid claim of privilege or work product regarding matters arising out of or related to the Conduct about which this Office or any designated federal law enforcement agency inquires, including the translation of significant documents at the expense of Butterfield; and (h) 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.

It is further understood that Butterfield will bring to this Office and the Tax Division's attention all criminal conduct by, and criminal investigations of, Butterfield or its employees related to any violations of the federal laws of the United States that come to the attention of Butterfield's senior management, as well as any administrative proceeding, civil action or other proceeding brought by any U.S. governmental authority in which Butterfield is a party, related to the operation or management of Butterfield's business, and excluding routine proceedings. Butterfield's obligations under this paragraph shall continue until the end of the NPA Period.

As a result of the conduct described in this Agreement and in the attached Statement of Facts, Butterfield agrees, pursuant to Title 18, United States Code, Section 981(a)(1)(C) that it will forfeit to the United States \$4,896,000 (the "Forfeiture Amount"), representing certain gross fees paid to Butterfield by U.S. taxpayers with undeclared accounts with Butterfield from January 1, 2001 through approximately December 31, 2013. The United States contends, and Butterfield agrees not to contest, that the facts contained in this Agreement, the civil forfeiture complaint to be filed against the Forfeiture Amount ("Civil Forfeiture Complaint"), and the Statement of Facts are sufficient to establish that the Forfeiture Amount being paid by Butterfield to the United States is subject to civil forfeiture to the United States and that this Agreement, and the accompanying Statement of Facts, may be attached to and incorporated into the Civil Forfeiture Complaint. By this Agreement, Butterfield specifically waives service of said Civil Forfeiture Complaint and agrees to entry of a Final Order of Forfeiture against the Forfeiture Amount. Upon payment of the Forfeiture Amount, Butterfield shall release any and all claims it may have to such funds and execute such documents as are necessary to accomplish the same, including the release of its claim to said funds in a civil forfeiture proceeding brought against said funds.

Butterfield further agrees to make a restitution payment to the United States in the amount of \$704,000 (the "Tax Restitution Amount"). Butterfield admits that the Tax Restitution Amount represents the approximate unpaid pecuniary loss to the United States as a result of the conduct described in the Statement of Facts. The Tax Restitution Amount shall not be reduced by payments that have been made or may be made to the United States by U.S. taxpayers through the Offshore Voluntary Disclosure Initiative and similar programs (collectively, "OVDI") before or after the date of this Agreement.

Payment of the Forfeiture Amount shall be by wire transfer to a seized asset deposit account maintained by the United States Department of the Treasury, and payment of the Tax Restitution Amount shall be by wire transfer to the IRS. Other than the total sum of \$5,600,000 (the Forfeiture

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Amount plus the Tax Restitution Amount) that Butterfield is required to pay under this Agreement, this Agreement does not require Butterfield to pay any other fines or financial penalties.

Butterfield agrees that it shall not file any petitions for remission, restoration, or any other assertion of ownership or request for return relating to the Forfeiture Amount or the Tax Restitution Amount, or any other action or motion seeking to collaterally attack the seizure, restraint, forfeiture, or conveyance of the Forfeiture Amount or the Tax Restitution Amount. Nor shall Butterfield assist any others in filing any such claims, petitions, actions, or motions. Butterfield further agrees that the Forfeiture Amount and the Tax Restitution Amount shall be paid separately to the United States, with no offset between the two amounts.

It is understood that, should the Office in its sole discretion determine that: (a) Butterfield committed any violation of U.S. criminal law during the term of this Agreement; (b) Butterfield or any of its representatives have given false, incomplete, or misleading testimony or information; (c) the misconduct extended beyond that described in the Statement of Facts; or (d) Butterfield has otherwise violated any provision of this Agreement, then: (i) Butterfield shall thereafter be subject to prosecution for any federal offense of which this Office or the Tax Division has knowledge, including perjury and obstruction of justice; (ii) all statements made by Butterfield's representatives to this Office, the Tax Division, or other designated law enforcement agents, including but not limited to the appended Statement of Facts, and any testimony given by Butterfield's representatives before a grand jury or other tribunal whether prior to or subsequent to the signing of this Agreement, and any leads therefrom, shall be admissible in evidence in any criminal proceeding brought against Butterfield and relied upon as evidence to support any penalty imposed on Butterfield; and (iii) Butterfield 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 any leads therefrom should be suppressed. In addition, any such prosecution that is not time-barred by the applicable statute of limitations on the date of the execution of this Agreement may be commenced against Butterfield, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date when this Agreement is signed. It is the intent of this Agreement to waive all rights in the foregoing respects.

It is further understood that this Agreement does not bind any other federal, state, or local prosecuting authorities other than this Office and the Tax Division. If requested by Butterfield, this Office and the Tax Division will, however, bring the cooperation of Butterfield to the attention of such other prosecuting offices or regulatory agencies.

It is understood that this Agreement and the Statement of Facts appended hereto are public documents and may be provided to any person by this Office and Butterfield.

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This Agreement supersedes all prior understandings, promises and/or conditions between this Office and the Tax Division, and Butterfield. 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.

Very truly yours,

AUDREY STRAUSS  
United States Attorney

By:   
Kiersten A. Fletcher  
Assistant United States Attorney  
(212) 637-2238

APPROVED:

  
Laura Grossfield Birger  
Chief, Criminal Division


AGREED AND CONSENTED TO:


The Bank of N.Y. Butterfield & Son Limited

By:   
A. Shaun Morris  
General Counsel  
Authorized Signatory by Resolution  
of the Board of Directors

  
DATE

APPROVED:

  
Ralph M. Levene, Esq.  
David B. Anders, Esq.  
Attorneys for Butterfield

  
DATE

## Exhibit A to Non-Prosecution Agreement with Bank of N.T. Butterfield & Son Limited

### Statement of Facts

#### I. Background

The Bank of N.T. Butterfield & Son Limited (“Butterfield” or “the Bank”) is a bank and wealth manager headquartered in Hamilton, Bermuda. The Bank was founded as a private community bank in 1858 and was later incorporated under the laws of Bermuda by a private act of Parliament in 1904. Butterfield specializes in providing banking services, including deposit, cash-management, and lending solutions to individual, business, and institutional clients. Butterfield also offers select wealth-management services, including trust, private-banking, asset-management, and custody services.

From January 1, 2001 through December 31, 2013 (the “Applicable Period”), the Bank’s principal operations measured by assets under management (*i.e.*, deposit and investment accounts) and personnel were based out of its Bermuda and Cayman Islands operations.<sup>1</sup> Butterfield has never had a U.S. office or branch.

In addition to providing banking and wealth-management services to citizens and businesses based in Bermuda and the Cayman Islands, at all relevant times, Butterfield also provided banking and wealth-management services to “U.S. taxpayer-clients”, some of whom were residents of Bermuda or the Cayman Islands and some of whom were resident in the United States. At the end of the Applicable Period, the Bank’s Bermuda and Cayman operations respectively held approximately \$6.3 billion and \$2.8 billion in assets under management. Of this \$9.1 billion in total assets under management, accounts open at the Bank’s Bermuda and Cayman Islands operations that were held or beneficially owned by one or more U.S. taxpayer-clients accounted for approximately \$433 million in assets under management.

#### II. The Offense Conduct

As set forth in this Statement of Facts, from at least 2001 through 2013, Butterfield assisted certain U.S. taxpayer-clients, including one or more taxpayers living in the Southern District of New York, to evade their U.S. tax obligations, which led them to file false federal tax returns with the Internal Revenue Service (the “IRS”), and to otherwise hide from the IRS assets maintained in accounts opened for these U.S. taxpayer-clients (hereinafter, “undeclared accounts”). Overall, during the Applicable Period, the Bank’s Bermuda and Cayman operations had up to approximately 300 noncompliant U.S.-related accounts at any one time. As of December 31, 2013, the Bank’s Bermuda and Cayman operations together had approximately 1,520 accounts that were held and/or beneficially owned by one or more U.S. taxpayers, representing approximately \$433 million in assets under management, of which some 296 accounts and approximately \$61.1 million in assets under management were deemed non-compliant in connection with the Bank’s internal review – *i.e.*, the Bank’s account files did not reflect documentation of historical U.S. tax compliance. An additional 65 accounts open as of December 31, 2013 were held and/or beneficially owned by one or more U.S. taxpayers who had participated in the IRS’s Offshore Voluntary Disclosure Program

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<sup>1</sup> In addition, during the Applicable Period, Butterfield also maintained offices in a number of other jurisdictions, including in the Bahamas, Guernsey, and the United Kingdom.

("OVDP"), indicating that these U.S. clients had not historically complied with their U.S. tax obligations with respect to their Butterfield accounts.

In particular, Butterfield assisted certain U.S. taxpayer-clients in opening and maintaining accounts at the Bank designed to conceal from the IRS their beneficial ownership of undeclared assets maintained in their Butterfield accounts. Butterfield knew or should have known that such U.S. taxpayer clients were using their Butterfield accounts to evade their U.S. tax obligations. Specifically, in furtherance of these efforts to hide assets from the IRS and evade taxes, Butterfield did the following:

- Butterfield maintained undeclared accounts for certain U.S. taxpayer-clients that were held by sham entities (or "structures"). These structures, which had no legitimate business purpose, served as the nominal account holders of accounts that, in reality, belonged to the U.S. taxpayer-clients. Butterfield maintained such U.S. taxpayer-clients' accounts in this fashion even when Bank personnel knew, or should have known, that the structures were being used by U.S. taxpayers to conceal the identities of the true beneficial owners of the accounts held by these entities.
- In certain instances, Bank personnel ignored obvious red flags of wrongful intent on the part of the prospective or actual U.S. clients from which Bank personnel knew or should have known that the U.S. clients were using their Butterfield accounts to maintain undeclared assets or otherwise engage in tax evasion. For example:
  - In 1996, a U.S. person ("Client 1") opened several accounts at Butterfield in the Cayman Islands for offshore structures beneficially owned by Client 1. In 2007 and 2008, and while still a client of the Bank, Client 1 engineered a series of sham contracts in order to funnel money between Client 1's U.S. and Cayman bank accounts. Client 1's relationship manager at the Bank knew or should have known that these transactions were illegitimate but nonetheless assisted Client 1 in carrying out these transactions. In April 2016, Client 1 pleaded guilty to tax-related offenses in connection with Client 1's accounts held at the Bank.
  - In 2002, two U.S. business partners ("Clients 2 and 3") established an account at Butterfield in the Cayman Islands for the stated purpose of having funds available when visiting the Islands on vacation. Subsequent transfers from Clients 2 and 3 were flagged by the Bank, because they were much higher than needed for vacation spending money. Rather than investigate further or pursue closure of the accounts, Bank employees accepted false and inconsistent explanations from the clients, including that the funds were intended for a real estate purchase. Further, Bank employees did not require the individuals to submit satisfactory documentation of the transaction, did not require the clients to adequately demonstrate their U.S. tax compliance, and did not close the accounts.
  - In 2012, two Butterfield employees in Bermuda sought proof of U.S. tax compliance from a U.S. client ("Client 4") who held an account through an offshore structure beneficially owned by Client 4. Despite Client 4's admission to the Bank employees that he had little or no personal connection to Bermuda, and his ambiguous statement that he wanted to get his tax affairs in order, the Bank employees took no further action, did not raise concerns of

possible tax non-compliance with their supervisors, and did not close Client 4's account.

- In addition, while the Bank had a long-standing practice of requiring clients to demonstrate a local connection to Bermuda or the Cayman Islands in order to open or maintain an account at those operations, Bank employees did not strictly enforce Butterfield's long-standing practice, which resulted in the opening or maintaining of undeclared accounts for U.S. persons. For example:
  - In one instance in or about 2002, a U.S. client ("Client 5") who had an existing relationship with the Bank dating back to the 1990s, opened a new account in the Cayman Islands for the purpose of holding his savings from his salary as a physician. Client 5 had no connection to the Cayman Islands and had no particular reason for banking in the jurisdiction. Despite this fact, the Bank opened and maintained the new account for Client 5. The Bank understands that Client 5 entered into OVDP in or about 2014.
  - On another occasion, the Bank accepted transfers from an existing Cayman Bank account into a new account at the Bank for two related U.S. person account holders, a mother and a daughter ("Clients 6 and 7"). The existing Cayman Bank account had been held jointly with a late family member. Despite the fact that Clients 6 and 7 had no connection to the Cayman Islands, in 2010, Bank personnel allowed the client to maintain their funds with the Bank without documenting the reason for holding an account in the Cayman Islands or the clients' U.S. tax-compliance status. Clients 6 and 7 entered into OVDP in or about August 2014.

At all relevant times, Butterfield 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 Butterfield in Bermuda, the Cayman Islands and elsewhere. Despite being aware of this legal duty, Butterfield opened and maintained undeclared accounts for U.S. taxpayer-clients although the Bank knew, or should have known, that doing so allowed U.S. taxpayers to evade their U.S. tax obligations. As a result of this conduct, the number of undeclared U.S. taxpayer accounts at Butterfield increased, thereby increasing the fees it earned.