



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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

August 14, 2017

Michael C. Durney, Esq.  
Law Offices of Michael C. Durney  
1000 Potomac Street N.W.  
Suite 200  
Washington, D.C. 20007

Re: Prime Partners Non-Prosecution Agreement

Dear Mr. Durney:

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

Based on the extraordinary cooperation and voluntary implementation of remedial measures, and strictly 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 Prime Partners SA ("Prime Partners"), a Switzerland-based asset 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 2010.

The criminal conduct of Prime Partners is described more fully in the Statement of Facts, attached hereto as Exhibit A, which Prime Partners 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 Prime Partners and does not apply to any other entities or any individuals. Pursuant to a resolution of the Board of Directors of Prime Partners, Norbert Fuchs, a member of the Board of Directors of Prime Partners, is authorized to enter this agreement on behalf of Prime Partners and bind Prime Partners to the obligations set forth herein.

This Office has entered into this Agreement based on: (i) Prime Partners' voluntary and extraordinary cooperation with this Office and the Tax Division, including Prime Partners' production of approximately 175 unredacted account files relating to the U.S. taxpayer-clients who maintained undeclared assets overseas with the assistance of Prime Partners, including documents that provide the identities of these U.S. taxpayer-clients; (ii) Prime Partners' voluntary implementation of various remedial measures beginning in or about early 2009; (iii) Prime Partners' willingness to continue to cooperate with this Office, the Tax Division, and the IRS to

the extent permitted by applicable law; and (iv) Prime Partners' representation, based on an internal investigation, the results of which have been shared with this Office, that the misconduct under investigation did not, and does not, extend beyond that described in the Statement of Facts.

It is understood that Prime Partners: (a) shall truthfully and completely disclose all information with respect to the activities of Prime Partners, 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 law; (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 law; (c) shall consent to the production to the Department of Justice of any document, record, or other tangible evidence, except as limited by applicable law; (d) specifically provide, 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; (e) undertake the retention of records as set forth in Parts II.D.5 and II.E of the Program; (f) 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; (g) shall, at this Office or the Tax Division's request, use its best efforts to secure the attendance and truthful statements or testimony of any officer, agent, employee, or former officer, agent or employee, at any meeting or interview or before the grand jury or at any trial or other court proceeding, to the extent permitted by applicable law; and (h) shall commit no crimes whatsoever. It is further understood that Prime Partners will bring to this Office and the Tax Division's attention all criminal conduct by, and criminal investigations of, Prime Partners or its employees that come to the attention of Prime Partners' senior management, as well as any administrative proceeding, civil action or other proceeding brought by any governmental authority in which Prime Partners is a party, related to the operation or management of Prime Partners' business, and excluding routine proceedings. Prime Partners' obligations under this paragraph shall continue until the later of: (1) a period of three years from the date this Agreement is executed, or (2) the date on which all prosecutions arising out of the conduct described in the opening paragraph of this Agreement are final.

As a result of the conduct described in this Agreement and in the attached Statement of Facts, Prime Partners agrees, pursuant to Title 18, United States Code, Section 981(a)(1)(C) that it will forfeit to the United States \$4,320,000 (the "Forfeiture Amount"), representing certain gross fees paid to Prime Partners by U.S. taxpayers with undeclared accounts with Prime Partners from January 1, 2001 through approximately December 31, 2010. The United States contends, and Prime Partners 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 Prime Partners 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, Prime Partners 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, Prime Partners 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.

Prime Partners further agrees to make a restitution payment to the United States in the amount of \$680,000 (the "Tax Restitution Amount"). Prime Partners 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. Prime Partners shall pay the full Tax Restitution Amount of \$680,000 within three days of the execution of this agreement. Prime Partners shall make payments of the Forfeiture Amount according to a payment plan, which shall consist of yearly payments of at least \$864,000, with the full Forfeiture Amount of \$4,320,000 to be paid no later than January 1, 2021. Other than the total sum of \$5,000,000 (the Forfeiture Amount plus the Tax Restitution Amount) that Prime Partners is required to pay under this Agreement, this Agreement does not require Prime Partners to pay any other fines or financial penalties.

Prime Partners 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 Prime Partners assist any others in filing any such claims, petitions, actions, or motions. Prime Partners 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 it be determined that: (a) Prime Partners committed any crimes during the term of this Agreement; (b) Prime Partners 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) Prime Partners has otherwise violated any provision of this Agreement, then: (i) Prime Partners 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 Prime Partners' 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 Prime Partners' 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 Prime Partners and relied upon as evidence to support any penalty imposed on Prime Partners; and (iii) Prime Partners 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 Prime Partners, 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 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 Prime Partners, this Office and the Tax Division will, however, bring the cooperation of Prime Partners 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 Prime Partners.

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

JOON H. KIM  
Acting United States Attorney


By:   
Sarah E. Paul/Kiersten A. Fletcher  
Assistant United States Attorneys  
(212) 637-2200

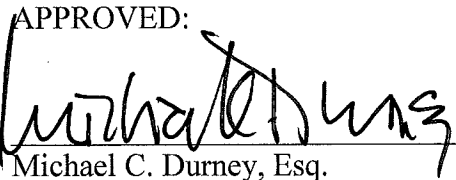
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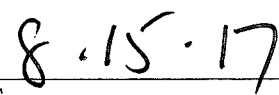
  
Lisa Zornberg  
Chief, Criminal Division

AGREED AND CONSENTED TO:  
Prime Partners SA

By:   
Norbert Fuchs  
Member, Board of Directors and  
Authorized Signatory by Resolution  
of the Board of Directors

  
DATE

APPROVED:  
  
Michael C. Durney, Esq.  
Attorney for Prime Partners

  
DATE

## **Exhibit A to Non-Prosecution Agreement with Prime Partners SA**

### **Statement of Facts**

#### **I. Background**

Prime Partners SA (“Prime Partners”) was founded in 1998 and is based in Geneva, Switzerland. Prime Partners is an independent asset management firm, and is organized as a common stock company under Swiss law that is wholly-owned by twenty shareholders (“the shareholders”) and two non-executive shareholders. As an independent asset management firm, Prime Partners offers discretionary asset management and investment advisory services to individuals and entities whose assets are held at depository financial institutions, including several Swiss banks. The services offered by Prime Partners include making day-to-day investment decisions for clients and acting as a personal investment advisor, including by selecting investment products and evaluating third-party investment proposals. At no time has Prime Partners itself operated as a depository financial institution. As of December 31, 2016, Prime Partners had approximately \$2.6 billion in assets under management (“AUM”).

In addition to providing asset management services to citizens and business based in Switzerland, at all relevant times, Prime Partners provided asset management services to individuals and entities outside of Switzerland, including citizens and residents of the United States (“U.S. taxpayer-clients”). Prime Partners provided these services to U.S. taxpayer-clients through a dedicated U.S. desk within Prime Partners, which, at all relevant times, was run primarily by three of the firm’s partners. Prime Partners’ U.S. taxpayer-clients had their assets held at several Swiss depository financial institutions, including Banque Cantonale Vaudoise, Baumann & Cie, Credit Suisse AG, Julius Bear & Cie SA, and UBS Switzerland AG. Between 2001 and 2010, the high value of AUM for Prime Partners’ U.S. taxpayer-clients was in 2008 and was approximately \$270 million.

#### **II. The Offense Conduct**

From at least 2001 through 2010, Prime Partners assisted certain U.S. taxpayer-clients, including one or more taxpayers living in the Southern District of New York, in evading 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 overseas (hereinafter, “undeclared accounts”).

In particular, Prime Partners helped U.S. taxpayer-clients conceal from the IRS their beneficial ownership of undeclared assets maintained in depository financial institutions located in various countries, including Switzerland and Singapore. Specifically, in furtherance of a scheme to help U.S. taxpayer-clients hide assets from the IRS and evade taxes, Prime Partners did the following:

- Prime Partners managed undeclared assets for U.S. taxpayer-clients that were held by sham entities (or “structures”). These structures, which had no business purpose, served as the nominal account holders of accounts that, in reality, belonged to the U.S. taxpayer-clients. Prime Partners allowed U.S. taxpayer-clients to maintain their accounts in this fashion despite knowing that the structures were being used to conceal the identities of the U.S. taxpayer-clients, who were the true beneficial owners of the assets held by these entities.
- Until 2006, Prime Partners representatives met with U.S. taxpayer-clients in the United States and, during these meetings, provided the clients with account statements to review that did not include the clients’ names or the names of the banks where their undeclared assets were deposited. Prime Partners advised the U.S. taxpayer-clients not to keep copies of these account statements because doing so would increase the risk that their undeclared assets would be discovered by the IRS.
- Prime Partners further suggested to U.S. taxpayer-clients various other means of keeping their undeclared assets a secret, including advising the clients to call Prime Partners collect from pay phones, and to destroy any faxes that they received from Prime Partners. Prime Partners also provided U.S. taxpayer-clients with prepaid debit cards, which were funded with money from the clients’ undeclared accounts, and when asked by the clients Prime Partners advised them not to use the cards as credit cards in order to avoid leaving a trail.
- Until 2005, Prime Partners facilitated cash transfers in the United States between U.S. taxpayer-clients with undeclared accounts, for the purpose of concealing deposits and withdrawals from the accounts. For instance, a particular U.S. taxpayer-client regularly met with a Prime Partners representative at a hotel in the United States and, during those meetings, provided the representative with cash to be deposited into the client’s undeclared account that ranged from \$50,000 to \$200,000 on each occasion. The Prime Partners representative indicated to the U.S. taxpayer-client that the cash provided by the client was being given to another U.S. taxpayer-client in the United States, in order to help the other client withdraw funds from that client’s undeclared account in a manner that would not be detected by the IRS.
- One or more U.S. taxpayer-clients of Prime Partners used the U.S. mails, private or commercial interstate carriers, or interstate wire communications to submit individual federal income tax returns to the IRS that were materially false and fraudulent in that these returns failed to disclose the existence of such taxpayers’ undeclared accounts and the income earned in such accounts.

At all relevant times, Prime Partners knew that certain U.S. taxpayer-clients were maintaining undeclared accounts at depository financial institutions located in various countries, including Switzerland, in order to evade their U.S. tax obligations, in violation of U.S. law.

Prime Partners 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 in Switzerland and elsewhere. Despite being aware of this legal duty, Prime Partners intentionally assisted U.S. taxpayer-clients in opening and maintaining undeclared accounts with the knowledge that, by doing so, Prime Partners was helping these U.S. taxpayers violate their legal duties. Prime Partners was aware that this conduct violated U.S. law.

The conduct of Prime Partners allowed it to increase the undeclared U.S. taxpayer assets that it managed, thereby increasing the fees it generated. In total, Prime Partners managed approximately 175 undeclared accounts for U.S. taxpayer-clients who were evading their tax obligations under U.S. law.