



U.S. Department of Justice

Tax Division

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William M. Sharp, Sr.
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Alan W. Granwell.
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Washington, D.C. 20006

Robert Katzberg
Kaplan & Katzberg
767 Third Avenue, 26th Floor
New York, N.Y. 10017

Re: Bank EKI Genossenschaft
DOJ Swiss Bank Program – Category 2
Non-Prosecution Agreement

Dear Mr. Sharp, Mr. Granwell, and Mr. Katzberg:

Bank EKI Genossenschaft (“Bank EKI”) submitted a Letter of Intent on December 27, 2013, to participate in Category 2 of the Department of Justice’s Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks, as announced on August 29, 2013 (hereafter “Swiss Bank Program”). This Non-Prosecution Agreement (“Agreement”) is entered into based on the representations of Bank EKI in its Letter of Intent and information provided by Bank EKI pursuant to the terms of the Swiss Bank Program. The Swiss Bank Program is incorporated by reference herein in its entirety in this Agreement.¹ Any violation by Bank EKI of the Swiss Bank Program will constitute a breach of this Agreement.

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

On the understandings specified below, the Department of Justice will not prosecute Bank EKI for any tax-related offenses under Titles 18 or 26, United States Code, or for any monetary transaction offenses under Title 31, United States Code, Sections 5314 and 5322, in connection with undeclared U.S. Related Accounts held by Bank EKI during the Applicable Period (the “conduct”). Bank EKI admits, accepts, and acknowledges responsibility for the conduct set forth in the Statement of Facts attached hereto as Exhibit A and agrees not to make any public statement contradicting the Statement of Facts. This Agreement does not provide any protection against prosecution for any offenses except as set forth above, and applies only to Bank EKI and does not apply to any other entities or to any individuals. Bank EKI expressly understands that the protections provided under this Agreement shall not apply to any acquirer or successor entity unless and until such acquirer or successor formally adopts and executes this Agreement. Bank EKI enters into this Agreement pursuant to the authority granted by its Board of Directors in the form of a Board Resolution (a copy of which is attached hereto as Exhibit B).

In recognition of the conduct described in this Agreement and in accordance with the terms of the Swiss Bank Program, Bank EKI agrees to pay the sum of \$400,000 as a penalty to the Department of Justice (“the Department”). This shall be paid directly to the United States within seven (7) days of the execution of this Agreement pursuant to payment instructions provided to Bank EKI. This payment is in lieu of restitution, forfeiture, or criminal fine against Bank EKI for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Bank EKI with respect to the conduct described in this Agreement, unless the Tax Division determines Bank EKI has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Bank EKI acknowledges that this penalty payment is a final payment and no portion of the payment will be refunded or returned under any circumstance, including a determination by the Tax Division that Bank EKI has violated any provision of this Agreement. Bank EKI agrees that it shall not file any petitions for remission, restoration, or any other assertion of ownership or request for return relating to the penalty amount or the calculation thereof, or file any other action or motion, or make any request or claim whatsoever, seeking to collaterally attack the payment or calculation of the penalty. Bank EKI agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Bank EKI further agrees that no portion of the penalty that Bank EKI has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Bank EKI to claim, assert, or apply for, either directly or indirectly, any tax deduction, any tax credit, or any other offset against any U.S. federal, state, or local tax or taxable income.

The Department enters into this Agreement based, in part, on the following Swiss Bank Program factors:

- (a) Bank EKI’s timely, voluntary, and thorough disclosure of its conduct, including:
 - how its cross-border business for U.S. Related Accounts was structured, operated, and supervised (including internal reporting and other communications with and among management);
 - the name and function of the individuals who structured, operated, or supervised the cross-border business for U.S. Related Accounts during the Applicable Period;

- how Bank EKI attracted and serviced account holders; and
- an in-person presentation and documentation, properly translated, supporting the disclosure of the above information and other information that was requested by the Tax Division;

(b) Bank EKI's cooperation with the Tax Division, including conducting an internal investigation and making presentations to the Tax Division on the status and findings of the internal investigation;

(c) Bank EKI's production of information about its U.S. Related Accounts, including:

- the total number of U.S. Related Accounts and the maximum dollar value, in the aggregate, of the U.S. Related Accounts that (i) existed on August 1, 2008; (ii) were opened between August 1, 2008, and February 28, 2009; and (iii) were opened after February 28, 2009;
- the total number of accounts that were closed during the Applicable Period; and
- upon execution of the Agreement, as to each account that was closed during the Applicable Period, (i) the maximum value, in dollars, of each account, during the Applicable Period; (ii) the number of U.S. persons or entities affiliated or potentially affiliated with each account, and further noting the nature of the relationship to the account of each such U.S. person or entity or potential U.S. person or entity (e.g., a financial interest, beneficial interest, ownership, or signature authority, whether directly or indirectly, or other authority); (iii) whether it was held in the name of an individual or an entity; (iv) whether it held U.S. securities at any time during the Applicable Period; (v) the name and function of any relationship manager, client advisor, asset manager, financial advisor, trustee, fiduciary, nominee, attorney, accountant, or other individual or entity functioning in a similar capacity known by Bank EKI to be affiliated with said account at any time during the Applicable Period; and (vi) information concerning the transfer of funds into and out of the account during the Applicable Period, including (a) whether funds were deposited or withdrawn in cash; (b) whether funds were transferred through an intermediary (including but not limited to an asset manager, financial advisor, trustee, fiduciary, nominee, attorney, accountant, or other third party functioning in a similar capacity) and the name and function of any such intermediary; (c) identification of any financial institution and domicile of any financial institution that transferred funds into or received funds from the account; and (d) identification of any country to or from which funds were transferred; and

(d) Bank EKI's retention of a qualified independent examiner who has verified the information Bank EKI disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Bank EKI shall: (a) commit no U.S. federal offenses; and (b) truthfully and completely disclose, and continue to disclose during the term of this Agreement, consistent with applicable law and regulations, all material information described in

Part II.D.1 of the Swiss Bank Program that is not protected by a valid claim of privilege or work product with respect to the activities of Bank EKI, those of its parent company and its affiliates, and its officers, directors, employees, agents, consultants, and others, which information can be used for any purpose, except as otherwise limited in this Agreement.

Notwithstanding the term of this Agreement, Bank EKI shall also, subject to applicable laws or regulations: (a) cooperate fully with the Department, the Internal Revenue Service, and any other federal law enforcement agency designated by the Department regarding all matters related to the conduct described in this Agreement; (b) provide all necessary information and assist the United States with the drafting of treaty requests seeking account information of U.S. Related Accounts, whether open or closed, and collect and maintain all records that are potentially responsive to such treaty requests in order to facilitate a prompt response; (c) assist the Department or any designated federal law enforcement agency in any investigation, prosecution, or civil proceeding arising out of or related to the conduct covered by this Agreement by providing logistical and technical support for any meeting, interview, federal grand jury proceeding, or any federal trial or other federal court proceeding; (d) use its best efforts promptly to secure the attendance and truthful statements or testimony of any officer, director, employee, agent, or consultant of Bank EKI at any meeting or interview or before a federal grand jury or at any federal trial or other federal court proceeding regarding matters arising out of or related to the conduct covered by this Agreement; (e) provide testimony of a competent witness as needed to enable the Department and any designated federal law enforcement agency to use the information and evidence obtained pursuant to Bank EKI's participation in the Swiss Bank Program; (f) provide the Department, upon request, consistent with applicable law and regulations, all information, documents, records, or other tangible evidence not protected by a valid claim of privilege or work product regarding matters arising out of or related to the conduct covered by this Agreement about which the Department or any designated federal law enforcement agency inquires, including the translation of significant documents at the expense of Bank EKI; and (g) provide to any state law enforcement agency such assistance as may reasonably be requested in order to establish the basis for admission into evidence of documents already in the possession of such state law enforcement agency in connection with any state civil or criminal tax proceedings brought by such state law enforcement agency against an individual arising out of or related to the conduct described in this Agreement.

Bank EKI further agrees to undertake the following:

1. Bank EKI agrees, to the extent it has not provided complete transaction information pursuant to Part II.D.2.b.vi of the Swiss Bank Program, and set forth in subparagraph (c) on pages 2-3 of this Agreement, because the Tax Division has agreed to specific dollar threshold limitations for the initial production, Bank EKI will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. Bank EKI agrees to close as soon as practicable, and in no event later than two years from the date of this Agreement, any and all accounts of recalcitrant account holders, as defined in Section 1471(d)(6) of the Internal Revenue Code; has implemented, or will implement, procedures to prevent its employees from

assisting recalcitrant account holders to engage in acts of further concealment in connection with closing any account or transferring any funds; and will not open any U.S. Related Accounts except on conditions that ensure that the account will be declared to the United States and will be subject to disclosure by Bank EKI.

3. Bank EKI agrees to use best efforts to close as soon as practicable, and in no event later than the four-year term of this Agreement, any and all U.S. Related Accounts classified as "dormant" in accordance with applicable laws, regulations and guidelines, and will provide periodic reporting upon request of the Tax Division if unable to close any dormant accounts within that time period. Bank EKI will only provide banking or securities services in connection with any such "dormant" account to the extent that such services are required pursuant to applicable laws, regulations and guidelines. If at any point contact with the account holder(s) (or other person(s) with authority over the account) is re-established, Bank EKI will promptly proceed to follow the procedures described above in paragraph 2.
4. Bank EKI agrees to retain all records relating to its U.S. cross-border business, including records relating to all U.S. Related Accounts closed during the Applicable Period, for a period of ten (10) years from the termination date of this Agreement.

With respect to any information, testimony, documents, records or other tangible evidence provided to the Tax Division pursuant to this Agreement, the Tax Division provides notice that it may, subject to applicable law and regulations, disclose such information or materials to other domestic governmental authorities for purposes of law enforcement or regulatory action as the Tax Division, in its sole discretion, shall deem appropriate.

Bank EKI's obligations under this Agreement shall continue for a period of four (4) years from the date this Agreement is fully executed. Bank EKI, however, shall cooperate fully with the Department in any and all matters relating to the conduct described in this Agreement, until the date on which all civil or criminal examinations, investigations, or proceedings, including all appeals, are concluded, whether those examinations, investigations, or proceedings are concluded within the four-year term of this Agreement.

It is understood that if the Tax Division determines, in its sole discretion, that: (a) Bank EKI committed any U.S. federal offenses during the term of this Agreement; (b) Bank EKI or any of its representatives have given materially false, incomplete, or misleading testimony or information; (c) the misconduct extended beyond that described in the Statement of Facts or disclosed to the Tax Division pursuant to Part II.D.1 of the Swiss Bank Program; or (d) Bank EKI has otherwise materially violated any provision of this Agreement or the terms of the Swiss Bank Program, then (i) Bank EKI shall thereafter be subject to prosecution and any applicable penalty, including restitution, forfeiture, or criminal fine, for any federal offense of which the Department has knowledge, including perjury and obstruction of justice; (ii) all statements made by Bank EKI's representatives to the Tax Division or other designated law enforcement agents, including but not limited to the appended Statement of Facts, any testimony given by Bank EKI's representatives before a grand jury or other tribunal whether prior to or subsequent to the

signing of this Agreement, and any leads therefrom, and any documents provided to the Department, the Internal Revenue Service, or designated law enforcement authority by Bank EKI shall be admissible in evidence in any criminal proceeding brought against Bank EKI and relied upon as evidence to support any penalty on Bank EKI; and (iii) Bank EKI shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or documents or any leads therefrom should be suppressed.

Determination of whether Bank EKI has breached this Agreement and whether to pursue prosecution of Bank EKI shall be in the Tax Division's sole discretion. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, Bank EKI, will be imputed to Bank EKI for the purpose of determining whether Bank EKI has materially violated any provision of this Agreement shall be in the sole discretion of the Tax Division.

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

In addition, any prosecution for any offense referred to on page 1 of this Agreement that is not time-barred by the applicable statute of limitations on the date of the announcement of the Swiss Bank Program (August 29, 2013) may be commenced against Bank EKI, notwithstanding the expiration of the statute of limitations between such date and the commencement of such prosecution. For any such prosecutions, Bank EKI waives any defenses premised upon the expiration of the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay and agrees that such waiver is knowing, voluntary, and in express reliance upon the advice of Bank EKI's counsel.

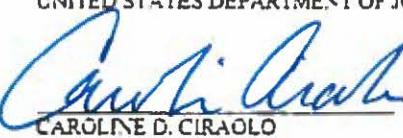
It is understood that the terms of this Agreement, do not bind any other federal, state, or local prosecuting authorities other than the Department. If requested by Bank EKI, the Tax Division will, however, bring the cooperation of Bank EKI to the attention of such other prosecuting offices or regulatory agencies.

It is further understood that this Agreement and the Statement of Facts attached hereto may be disclosed to the public by the Department and Bank EKI consistent with Part V.B of the Swiss Bank Program.

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

AGREED AND ACCEPTED

UNITED STATES DEPARTMENT OF JUSTICE, TAX DIVISION

 Caroline D. Ciraolo
CAROLINE D. CIRAOLO

DATE

Acting Assistant Attorney General

 Thomas J. Sawyer
THOMAS J. SAWYER

DATE

Senior Counsel for International Tax Matters

 Dara B. O'Phant
DARA B. O'IPHANT

DATE

Trial Attorney

8/3/2015

DATE

BANK EKI GENOSSENSCHAFT

By:  Kurt Zwahlen
Chairman, Board of Directors

07/27/2015
DATE

By:  Felix Hofstetter
Chief Executive Officer

07/27/2015
DATE

APPROVED:

 William M. Sharp, Sr.
Sharp Partners, P.A.

July 27, 2015
DATE

Alan W. Granwell
Alan W. Granwell
Sharp Partners, P.A.

7/27/15
DATE


Robert F. Katzberg
Kaplan & Katzberg

July 27, 2015
DATE

**EXHIBIT A TO BANK EKI GENOSSENSCHAFT'S
NON-PROSECUTION AGREEMENT**

STATEMENT OF FACTS

INTRODUCTION AND BACKGROUND

1. Bank EKI Genossenschaft ("Bank EKI" or the "Bank") is a small regional cooperative bank. It was founded in 1852 as Ersparniskasse des Amtsbezirks Interlaken, and changed its name in 2008.
2. Bank EKI is located in the Jungfrau region of Switzerland, with headquarters in the tourist resort town of Interlaken. The Bank also operates small branch offices in Bönigen, Wilderswil, Grindelwald, and Lauterbrunnen.
3. Bank EKI is a retail bank whose principal financial services business focuses on savings and loans. The Bank also serves private clients and provides investment advisory, asset management, pension advice, and financial planning services.
4. Bank EKI has always required that banking relationships be entered only with clients that had a relationship to the Jungfrau region or the Bank. Because the Jungfrau region is a premier tourist area, many individuals acquire vacation homes there, often financed through local banks, including Bank EKI.
5. As of December 31, 2013, Bank EKI had balance sheet assets of approximately \$1.037 billion and a net profit of approximately \$2.27 million. The Bank has 50 full-time employees, and approximately 15,500 customers with one or more financial accounts with the Bank.

U.S. INCOME TAX AND REPORTING OBLIGATIONS

6. U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income. Since tax year 1976, U.S. citizens, resident aliens, and legal permanent residents have had an obligation to report to the Internal Revenue Service ("IRS") on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking "Yes" or "No" in the appropriate box and identifying the country where the account is maintained.
7. Moreover, since 1970, U.S. citizens, resident aliens, and legal permanent residents who have had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any time during a particular year are required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114, formerly known as Form TD F 90-22.1 (the "FBAR").

8. An “undisclosed account” is a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that had not been reported by the individual account owner to the U.S. government on an income tax return and an FBAR.
9. Since 1935, Switzerland has maintained criminal laws that ensure the secrecy of client relationships at Swiss banks. While Swiss law permits the exchange of information in response to administrative requests made pursuant to a tax treaty with the United States and certain legal requests in cases of tax fraud, Swiss law otherwise prohibits the disclosure of identifying information without client authorization. Because of the secrecy guarantee that they created, these Swiss criminal provisions have historically enabled U.S. clients to conceal their Swiss bank accounts from U.S. authorities.
10. In 2008, Swiss bank UBS AG publicly announced that it was the target of a criminal investigation by the IRS and the United States Department of Justice and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the Department of Justice and UBS filed a deferred prosecution agreement in the Southern District of New York in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undisclosed accounts that helped conceal assets and income from the IRS. Since UBS, several other Swiss banks have publicly announced that they were or are the targets of similar criminal tax investigations and that they would likewise be exiting and not accepting certain U.S. clients. These cases have been closely monitored by banks operating in Switzerland, including Bank EKI, since at least August of 2008.

OVERVIEW OF BANK EKI'S U.S. CROSS-BORDER BUSINESS

11. During the Applicable Period,¹ Bank EKI provided private banking and asset management services to U.S. taxpayers through private bankers based in Switzerland. During the Applicable Period, the Bank held a total of 64 U.S. Related Accounts with just over \$21 million in aggregate assets. The 64 U.S. Related Accounts comprised approximately 0.4% of Bank EKI's business.
12. Of Bank EKI's 64 U.S. Related Accounts, approximately 57 of the account holders were U.S. citizens. Of those, 40 held joint U.S. and Swiss citizenship, and approximately 35 were domiciled in Switzerland.

¹ Capitalized terms not otherwise defined in this Statement of Facts have the meanings set forth in the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks, issued on August 29, 2013 (the “Swiss Bank Program”) or in the Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA, dated February 14, 2013 (the “FATCA Agreement”).

13. During the Applicable Period, Bank EKI became aware that U.S. taxpayers living outside of the United States 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 Bank EKI.
14. Bank EKI did not have a specific program or team designed to pursue or acquire U.S. business, and it did not maintain a U.S. desk or market its services in the United States or to U.S. taxpayers. However, through referrals, pre-existing relationships, and the Bank's longstanding policy of opening accounts for individuals with ties to the region, the Bank accepted, opened, and maintained accounts for U.S. clients.
15. All of Bank EKI's clients were and are serviced by relationship managers from the department that manages the product in which the client is interested. For example, a client who initially engages the Bank to make an investment will be assigned to a relationship manager from the investment department; a client who seeks a mortgage will be assigned to a relationship manager from the mortgage division; and a client who wants to open a savings account will be assigned a relationship manager from the savings department. The Bank currently employs 22 relationship managers, six of whom handled U.S. related accounts during the Applicable Period.
16. Bank EKI opened, serviced, and profited from accounts for U.S. clients with the knowledge that many were likely not complying with their tax obligations. Although Bank EKI did not seek to attract U.S. persons being exited from other Swiss banks, including UBS and Credit Suisse, the Bank opened 24 of its 64 U.S. Related Accounts after August 1, 2008. Many of these accounts were transferred from other Swiss financial institutions that were closing such accounts, and the Bank knew or had reason to know that a portion of these accounts were likely undeclared. After October 2009, all new U.S. related account holders living outside of Switzerland were required to sign a sworn confirmation of tax compliance.
17. Bank EKI did not sufficiently implement an effective system of supervisory policies, procedures, or controls over its relationship managers to increase tax compliance by its U.S. related clients. Moreover, Bank EKI's relationship managers too readily accepted representations and directions from the account holders without adequate investigation of questionable information.
18. During the Applicable Period, Bank EKI provided traditional Swiss banking services that it knew could assist, and that did in fact assist, certain U.S. taxpayers in concealing their Bank EKI accounts from the IRS (hereinafter "undeclared accounts"). One such service was hold mail. For a fee, Bank EKI would hold all mail correspondence for a particular client at the bank. By accepting and maintaining such accounts, the Bank thus ensured that documents reflecting the existence of the accounts remained outside the United States, beyond the reach of U.S. tax authorities, and protected by Swiss banking secrecy laws. At least two of the Bank's U.S. clients had hold mail instructions on their accounts during the applicable period.

19. Bank EKI also provided several of its U.S. clients with the ability to access their accounts from anywhere in the world using credit cards and e-banking services. At least four of the Bank's U.S. clients had access to these services during the Applicable Period.
20. Due in part to the means provided by Bank EKI and its personnel, and with the knowledge that Swiss banking secrecy laws would prevent Bank EKI from disclosing their identities to the IRS, many of the U.S. clients of Bank EKI filed false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, that failed to report their respective interests in their undeclared accounts and the related income. Moreover, many of the U.S. clients of Bank EKI also failed to file and otherwise report their undeclared accounts on FBARs.
21. In one case, an external asset manager based in Interlaken entered into a cooperation agreement with Bank EKI. Under the agreement, the Bank paid the asset manager 30% of the net commissions earned; in exchange, the asset manager brought two clients to the Bank, one of whom was a U.S. person. At the account opening, the U.S. client signed the Bank's "Confirmation of Taxation" form, certifying that he was tax compliant in the United States. The form states that it is a criminal offense under Swiss law to deliberately provide false information on the form, and under the Bank's procedures, the account opening process would have been stopped if the client would have refused to sign this form. At opening, the client transferred approximately 250,000 in Swiss francs from his account at UBS. Shortly thereafter, the client transferred cash and securities worth over 1.4 million Swiss francs from a bank that ceased activities in Switzerland, and then, several months later, the client transferred over 3.5 million Swiss francs from Credit Suisse, claiming that he had experienced difficulties with that bank following his instructions. At this visit, the client again signed the Bank's "Confirmation of Taxation Form" under Swiss penalty of perjury, affirming that these new assets were properly declared in the United States. When this client closed his account in June 2014, he transferred the assets to several other banks in Switzerland, the United States, and Hong Kong. The Bank only became aware that the client lied on each of the executed Confirmation of Taxation forms when the client informed them that he had entered the Offshore Voluntary Disclosure Program.
22. In another case, in 2010, a former Bank EKI employee referred his cousin, a U.S. citizen residing in the United States, to the Bank. The U.S. cousin wanted to transfer his assets from a Swiss cantonal bank to Bank EKI. The account was opened in the individual's own name, and the client executed a "Form A" signifying beneficial ownership and signed the Bank's Confirmation of Taxation form. The U.S. client initially invested his money in Swiss and European securities. In meetings with the Bank in 2012, the client expressed concerns about the stability of global financial markets and informed the Bank that he intended to shift his investments from securities to gold or Swiss real estate. The client purchased gold, but then two days later, instructed the Bank that he wanted to gift his account to his Swiss cousin. The transfer was made without the Bank's representatives questioning why the client wanted to make a gift to his cousin. Subsequently, the account was closed in June 2012. A year and a half later, when the Bank was contacting clients about the Swiss Bank Program, the client admitted that he was not U.S. tax compliant and that he had lied on the Bank "Confirmation of Taxation

Form.” The client then informed the Bank that he continued to be the owner of the assets that had been transferred to the Swiss cousin as a “gift,” and the cousin corroborated the client’s statement through execution of the “Form A” signifying beneficial ownership under Swiss banking practices.

23. A third case involves a family and a number of accounts. In this case, a Swiss national who emigrated to the United States about 30 years ago opened an account with the Bank in 2000, transferring the proceeds from an inheritance he had received. A Swiss notary living in the region who handled the estate had referred the client to the Bank. The client died in 2003 and his wife, a U.S. citizen, inherited the account. The client had two sons, each of whom is a U.S. citizen. The sons, at the time of their father’s death, opened “hold mail” accounts with the Bank. In 2011, the mother, due to age and failing health, closed her account, transferring the account assets to the U.S. sons’ accounts because she wanted her sons to handle her banking relationships. At the time of the transfer of the mother’s account to her sons, her account included the proceeds from another account that had been transferred to Bank EKI from another Swiss bank; that bank had required that their U.S. clients fill out a Form W-9 or close the account. When a representative of the Bank discussed the possible transfer of that other bank’s account to Bank EKI earlier that year, the sons were informed that FATCA would come into effect soon and that the Bank would have to disclose U.S. clients to U.S. authorities. Later that year and immediately after the funds had been transferred from the other bank to Bank EKI, the sons informed the Bank that it was their wish that their Swiss cousin should open a banking relationship with the Bank and receive, as a gift from the two sons, the assets in the sons’ accounts. In response to this request, the Bank explained that by making a gift of their accounts to the Swiss cousin, the accounts no longer would be U.S. related accounts, but that the Swiss cousin would have to pay Swiss direct taxes. The sons instead decided that they would grant an interest-free loan to their cousin in order to keep ownership of the assets, and the bank executed the order. The Swiss cousin maintained the account but did not make any payments to the sons. The sons and the cousins closed all of their accounts with the Bank in late 2014.
24. The fourth case involves a joint account of a couple with dual citizenship in Switzerland and Canada residing in the United States. The account was opened as a result of a Swiss inheritance, and was mainly used to cover living expenses during vacations and a world trip. The client instructed Bank EKI to make three wire transfers below \$10,000 to his U.S. account at UBS, which the Bank did without question. The account was closed in June 2014, and the funds were transferred to a different bank in New York.

VOLUNTARY REMEDIAL MEASURES

25. Prior to 2008, Bank EKI had established some procedures to limit its non-Swiss business. The Bank did not market its services to customers living abroad and did not permit its bankers to travel outside of Switzerland to solicit business.
26. In the wake of UBS, beginning in 2009, Bank EKI voluntarily implemented measures that it believed would stop helping U.S. taxpayers evade U.S. taxes.

27. On May 20, 2009, the Chief Executive Officer of Bank EKI sent an email to Bank personnel limiting the circumstances under which new accounts for U.S. persons would be permitted:
 - a. No accounts were permitted to be opened by natural persons where the funds were transferred via a financial intermediary -- for example, the Bank could not accept assets of offshore companies from U.S. individuals;
 - b. No new banking relationships were permitted where tax evasion is known or assumed; and
 - c. The Bank could only accept wire-transferred assets.
28. On July 2, 2009, Bank EKI's management board adopted an official policy that the Bank would not accept new accounts for U.S. persons residing abroad, and that bank employees were not permitted to provide any cross-border advice, whether by phone or email.
29. On October 15, 2009, Bank EKI adopted a directive reaffirming that the Bank's business was primarily focused on customers in the Jungfrau region and taking steps to control its cross-border business. Those steps included:
 - a. Prohibiting the recruitment of customers outside of Switzerland;
 - b. Prohibiting the rendering of cross-border advice;
 - c. Requiring that all new customers with tax obligations outside of Switzerland confirm, under Swiss "penalty of perjury" that they are tax compliant in their home jurisdiction with respect to their assets and income therefrom deposited with the Bank;
 - d. Prohibiting the opening of new customer relationships by correspondence;
 - e. Permitting new U.S.-related accounts only if the customer physically opened the account in Switzerland;
 - f. Requiring U.S. resident clients to designate a representative with power of attorney in Switzerland and to specify shipping instructions outside of the U.S.; and
 - g. Prohibiting U.S. resident clients from using e-banking services.
30. On April 1, 2010, Bank EKI updated its tax compliance form by translating it into English.
31. On June 28, 2010, Bank EKI's Board of Directors approved the "tax declared money only strategy." Under this strategy, the account opening process would cease when doubts arose about a customer's tax compliance. Further, the strategy required that the

Bank close existing banking relationships within 12 months after discovering that the account holder was not tax compliant.

32. On April 7, 2011, Bank EKI's management issued a policy providing that the Bank would not open new relationships for U.S. persons who were resident in the United States due to uncertainty with respect to the application of FATCA. However, the Bank permitted the opening of new relationship with a U.S. person resident outside of the United States subject to the approval of the Management Board.
33. On December 1, 2011, Bank EKI issued a policy providing that no new numbered accounts would be approved and that the only two then-existing numbered accounts (held by non-U.S. persons) were required to be closed no later than December 31, 2012.
34. On March 1, 2012, Bank EKI management issued a policy to personnel providing that the Bank would no longer provide e-banking, e-mail contact, travel cash cards, or prepaid cards for customers residing in the United States. Later that month, the Bank adopted standard language responding to requests from abroad, stating that "as a local bank under Swiss law, we do not give any advice abroad, neither by e-mail nor by phone."
35. On October 22, 2012, Bank EKI issued a policy stating that it would no longer open new banking relationships with customers whose residence or nationality was in the United States. Subsequently, the Bank adopted a fee system for customers living abroad to cover rising compliance costs. On November 1, 2012, Bank EKI's Board of Directors confirmed that, so long as the FATCA rules remained unclear, the Bank would not accept new customers residing in the United States.
36. On March 25, 2013, Bank EKI's management issued a policy requiring that all existing customers living abroad who have not signed the Bank's "tax-confirmation" form complete the form.
37. On May 30, 2013, Bank EKI issued a policy providing that the Bank would not: (i) open a safe deposit box for customers resident in the United States, (ii) open any new relationships or change custody accounts into current accounts, (iii) ship documents to the United States, or (iv) receive payment orders placed from within the United States. The policy did allow accounts, mortgages, and credit cards to be extended to U.S. persons resident in the Switzerland. Subsequently, Bank EKI established a special unit to handle its U.S. business because of increasing regulatory requirements. The Bank transferred approximately 50 U.S. resident customers to a special team of three relationship managers called "KTA," for "customer team abroad." The Bank no longer has U.S. resident accounts.
38. In September 2013, Bank EKI issued a series of policies concerning U.S. Related customers:
 - a. The Bank adopted new forms for all new customers, asking whether the customer is a U.S. related person.

- b. The Bank would no longer open accounts for U.S. related customers, accept additional assets from U.S. customers, or accept any new powers of attorney that designate a U.S. person.
 - c. Bank management asked its relationship managers to identify U.S. customers and required that the Bank send those customers a letter. The letter informed the customers about the Swiss Bank Program, and requested that they complete a form and sign a confirmation about their tax compliance and their participation in Offshore Disclosure Programs. The form also requested that the customer authorize the Bank to disclose information to the Department of Justice and the Internal Revenue Service and expressly release the Bank EKI from the terms of the Swiss banking secrecy act as set forth in the banking act.
39. On December 16, 2013, Bank EKI adopted a policy that, as of January 1, 2014, they would no longer accept new customers with a domicile abroad. On March 14, 2014, Bank EKI decided to become a Registered-Deemed Compliant Financial Institution, a Financial Institution with Local Client Base for purposes of the FATCA Agreement.
40. Taken as a whole, the policies that Bank EKI implemented beginning in 2008 greatly reduced its U.S. business. Between August 1, 2008 and April 2015, the bank closed 36 of its 64 U.S. Related Accounts.
41. As of May 2015, Bank EKI maintained 28 U.S. Related Accounts.

COOPERATION AND PARTICIPATION IN THE SWISS BANK PROGRAM

42. On December 27, 2013, Bank EKI notified the Department of Justice, Tax Division of its intent to request a Non-Prosecution Agreement as a Category 2 Bank in the Swiss Bank Program.
43. Prior to and throughout its participation in the Swiss Bank Program, Bank EKI has committed to providing full cooperation to the U.S. government and has made timely and comprehensive disclosures regarding its U.S. cross-border business. Specifically, the Bank, with the assistance of its U.S. and Swiss counsel and in consultation with its forensic investigators, has:
- a. conducted an expansive internal investigation which included but was not limited to: (1) interviews of key relationship managers and members of management; (2) reviews of client account files and correspondence; (3) analysis of relevant management policies; and (4) email searches;
 - b. described in detail the structure of its banking business, including, but not limited to: (1) the Bank's management and supervisory structure; and (2) the names of management and legal and compliance officials, in compliance with Swiss privacy law;
 - c. provided detailed and specific information related to the structuring, operation, and supervision of its U.S. cross-border business, including, but not limited to the

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- d. names of the relationship managers overseeing the Bank's U.S. related business, in compliance with Swiss privacy law; and
- d. brought key bank managers in from Switzerland to the United States on several occasions to meet with the Department of Justice to provide detailed information about the Bank's conduct and related matters.

EXHIBIT B TO NON-PROSECUTION AGREEMENT

**CERTIFICATE OF CORPORATE RESOLUTION OF THE BOARD OF DIRECTORS
OF BANK EKI GENOSSENSCHAFT**

We, Kurt Zwahlen, acting as Chairman of the Board of Directors, and Felix Hofstetter, acting as Secretary of the Board of Directors of Bank EKI Genossenschaft (the Bank), a corporation duly organized and existing under the laws of Switzerland, do hereby certify, that the following is a complete and accurate copy of a resolution adopted by the Board of Directors of the Bank at a meeting held on July 27, 2015, at which a quorum was present and resolved as follows:

- That the Board of Directors has (i) reviewed the entire Non-Prosecution Agreement attached hereto, including the Statement of Facts attached as Exhibit A to the Non-Prosecution Agreement, (ii) consulted with Swiss and U.S. counsel in connection with this matter, and (iii) unanimously voted to enter into the Non-Prosecution Agreement, including to pay a sum of USD 400,000 to the U.S. Department of Justice in connection with the Non-Prosecution Agreement; and
- That Kurt Zwahlen, Chairman of the Board of Directors, and Felix Hofstetter, Chief Executive Officer, both registered in the Commercial Register of the Canton of Bern as having joint signature authority, are hereby authorized (i) to jointly execute the Non-Prosecution Agreement on behalf of the Bank substantially in such form as reviewed by the Board of Directors with such non-material changes as each of they may approve, and (ii) to take, on behalf of the Bank, all actions as may be necessary or advisable in order to carry out the foregoing; and
- That William M. Sharp, Sr. and Alan W. Granwell of Sharp Partners, P.A. and Robert F. Katzberg of Kapian & Katzberg, are hereby authorized to sign the Non-Prosecution Agreement in their capacity as the Bank's U.S. counsels.

We further certify that the above resolution has not been amended or revoked in any respect and remains in full force and effect.

IN WITNESS WHEREOF, we have executed this Certification this 27th day of July 2015.



Kurt Zwahlen
Chairman of the Board of Directors



Felix Hofstetter
CEO / Secretary of the Board of Directors