



U.S. Department of Justice

Tax Division

Washington, D.C. 20530

CDC:LJW:TJS:KELyon  
5-16-4691  
2014200699

September 8, 2015

Robert W. Kent  
Baker & McKenzie LLP  
300 East Randolph St., Suite 5000  
Chicago, IL 60601

Re: E. Gutzwiller & Cie, Banquiers  
DOJ Swiss Bank AG Program – Category 2  
Non-Prosecution Agreement

Dear Mr. Kent:

E. Gutzwiller & Cie, Banquiers (“Gutzwiller”) submitted a Letter of Intent on December 23, 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 Gutzwiller in its Letter of Intent and information provided by Gutzwiller pursuant to the terms of the Swiss Bank Program. The Swiss Bank Program is incorporated by reference herein in its entirety in this Agreement.<sup>1</sup> Any violation by Gutzwiller of the Swiss Bank Program will constitute a breach of this Agreement.

On the understandings specified below, the Department of Justice will not prosecute Gutzwiller 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 Gutzwiller during the Applicable Period (the “conduct”). Gutzwiller 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 Gutzwiller and does not apply to any other entities or to any individuals. Gutzwiller expressly understands that the protections provided under this Agreement shall not apply to any acquirer or

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<sup>1</sup> Capitalized terms shall have the meaning ascribed to them in the Swiss Bank Program.

successor entity unless and until such acquirer or successor formally adopts and executes this Agreement.

In recognition of the conduct described in this Agreement and in accordance with the terms of the Swiss Bank Program, Gutzwiller agrees to pay the sum of \$1,556,000 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 Gutzwiller. This payment is in lieu of restitution, forfeiture, or criminal fine against Gutzwiller for the conduct described in this Agreement. The Department will take no further action to collect any additional criminal penalty from Gutzwiller with respect to the conduct described in this Agreement, unless the Tax Division determines Gutzwiller has materially violated the terms of this Agreement or the Swiss Bank Program as described on pages 5-6 below. Gutzwiller 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 Gutzwiller has violated any provision of this Agreement. Gutzwiller 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. Gutzwiller agrees that it shall not assist any others in filing any such claims, petitions, actions, or motions. Gutzwiller further agrees that no portion of the penalty that Gutzwiller has agreed to pay to the Department under the terms of this Agreement will serve as a basis for Gutzwiller 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) Gutzwiller'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 Gutzwiller 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) Gutzwiller'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) Gutzwiller'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 Gutzwiller 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) Gutzwiller's retention of a qualified independent examiner who has verified the information Gutzwiller disclosed pursuant to II.D.2 of the Swiss Bank Program.

Under the terms of this Agreement, Gutzwiller 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 Gutzwiller, 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, Gutzwiller 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 Gutzwiller 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 Gutzwiller'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 Gutzwiller; 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.

Gutzwiller further agrees to undertake the following:

1. Gutzwiller 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, Gutzwiller will promptly provide the entirety of the transaction information upon request of the Tax Division.
2. Gutzwiller 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 Gutzwiller.
3. Gutzwiller 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. Gutzwiller 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, Gutzwiller will promptly proceed to follow the procedures described above in paragraph 2.

4. Gutzwiller 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 the 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.

Gutzwiller's obligations under this Agreement shall continue for a period of four (4) years from the date this Agreement is fully executed. Gutzwiller, 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) Gutzwiller committed any U.S. federal offenses during the term of this Agreement;
- (b) Gutzwiller 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) Gutzwiller has otherwise materially violated any provision of this Agreement or the terms of the Swiss Bank Program, then (i) Gutzwiller 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 Gutzwiller'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 Gutzwiller'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 Gutzwiller shall be admissible in evidence in any criminal proceeding brought against Gutzwiller and relied upon as evidence to support any penalty on Gutzwiller; and (iii) Gutzwiller 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 Gutzwiller has breached this Agreement and whether to pursue prosecution of Gutzwiller 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, Gutzwiller, will be imputed to Gutzwiller for the purpose of determining whether Gutzwiller 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 Gutzwiller has breached this Agreement, the Tax Division agrees to provide Gutzwiller with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, Gutzwiller may respond to the Tax Division in writing to explain the nature and circumstances of such breach, as well as the actions that Gutzwiller has taken to address and remediate the situation, which explanation the Tax Division shall consider in determining whether to pursue prosecution of Gutzwiller.

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 Gutzwiller, notwithstanding the expiration of the statute of limitations between such date and the commencement of such prosecution. For any such prosecutions, Gutzwiller 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 Gutzwiller's counsel.

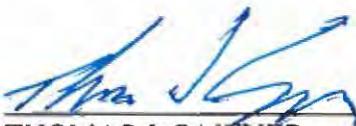
It is understood that the terms of this Agreement do not bind any other federal, state, or local prosecuting authorities other than the Department. If requested by Gutzwiller, the Tax Division will, however, bring the cooperation of Gutzwiller to the attention of such other prosecuting offices or regulatory 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 Gutzwiller consistent with Part V.B of the Swiss Bank Program.

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

  
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CAROLINE D. CIRAOLO  
Acting Assistant Attorney General

9/17/2015  
DATE

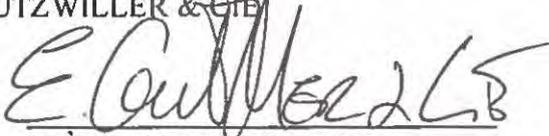
  
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THOMAS J. SAWYER  
Senior Counsel for International Tax Matters

16 September 2015  
DATE

  
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KATHLEEN E. LYON  
Trial Attorney  
Tax Division, U.S. Department of Justice

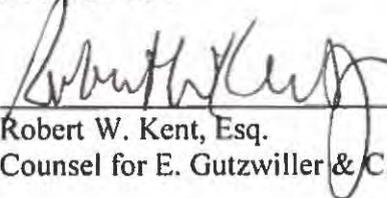
Sept. 17, 2015  
DATE

AGREED AND CONSENTED TO:  
E. GUTZWILLER & CIE

By:   
\_\_\_\_\_  
STÉPHANE GUTZWILLER  
General Partner

08/08/2015  
DATE

APPROVED:

  
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Robert W. Kent, Esq.  
Counsel for E. Gutzwiller & Cie

Sept. 11, 2015  
DATE

**EXHIBIT A TO E. GUTZWILLER & CIE, BANQUIERS  
NON-PROSECUTION AGREEMENT**

**STATEMENT OF FACTS**

**INTRODUCTION**

1. E. Gutzwiller & Cie, Banquiers, a small private bank that specializes exclusively in wealth management by providing advisory services and asset management for private clients, was founded in 1886 and is headquartered in Basel, Switzerland (“Gutzwiller Basel”). Since 1992, Gutzwiller Basel has been owned as a general partnership by four individuals, acting as general partners. As of January 1, 2014, Gutzwiller had approximately 3,000 open accounts.
2. Gutzwiller Basel has affiliated asset managing entities in Geneva and Zurich, Switzerland (Gutzwiller SA Geneve and Gutzwiller AG Zurich, respectively). Gutzwiller Basel owns 100% of the entity in Geneva, and 60% of the entity in Zurich. The remaining 40% of the Zurich affiliate is owned by the head relationship manager at the Zurich affiliate. The three Gutzwiller entities are collectively referred to as “Gutzwiller” or the “Bank.”

**U.S. INCOME TAX & REPORTING OBLIGATIONS**

3. 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 was maintained.
4. 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 were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114 (the “FBAR,” formerly known as Form TD F 90-22.1). The FBAR must be filed on or before June 30 of the following year.
5. An “undeclared account” is a financial account owned or beneficially 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 or beneficial owner to the U.S. government on an income tax return or other form and an FBAR as required.
6. Since 1935, Switzerland has maintained criminal laws that ensure the secrecy of client relationships at Swiss banks. While Swiss law permits the exchange of information in

response to administrative requests made pursuant to a tax treaty with the United States and certain legal requests in cases of tax fraud, Swiss law otherwise prohibits the disclosure of identifying information without client authorization. Because of the secrecy guarantee that they created, these Swiss criminal provisions have historically enabled U.S. clients to conceal their Swiss bank accounts from U.S. authorities.

7. In or about 2008, Swiss Bank UBS AG (“UBS”) publicly announced that it was the target of a criminal investigation by the 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 Florida in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared assets and income from the IRS. Since UBS, several other Swiss banks have publicly announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients (UBS and the other targeted Swiss banks are collectively referred to as “Category 1 Banks”). These cases have been closely monitored by banks operating in Switzerland, including Gutzwiller, since at least August of 2008.

#### **THE QUALIFIED INTERMEDIARY AGREEMENT AND ITS ROLE IN NON-COMPLIANT U.S. RELATED ACCOUNTS**

8. In 2000, Gutzwiller signed a Qualified Intermediary Agreement with the IRS. The Qualified Intermediary regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution with respect to U.S. securities. The Qualified Intermediary Agreement was designed to help ensure that, with respect to U.S. securities held in an account at the Bank, non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons were properly paying U.S. tax.
9. The Qualified Intermediary Agreement took account of the fact that Gutzwiller, like other Swiss banks, was prohibited by Swiss law from disclosing the identity of an account holder. In general, if an account holder wanted to trade in U.S. securities and avoid mandatory U.S. tax withholding, the agreement required Gutzwiller to obtain the consent of the account holder to disclose the client’s identity to the IRS.
10. Despite the QI Agreement, the Bank assisted U.S. clients in executing forms that directed the Bank not to acquire U.S. securities in their accounts. The Bank’s account-opening process required U.S. persons to state whether they wished to abstain from holding U.S. securities or whether they were willing to execute an IRS Form W-9 and accept disclosure of their identity to the IRS. One purpose of the Bank’s account-opening forms was to avoid having to disclose the identities of U.S. clients to the IRS under its Qualified Intermediary Agreement. Most U.S. clients at the Bank chose not to hold U.S. securities in their accounts rather than authorize disclosure of their identity to the IRS. During the Applicable Period, at least eight U.S. Related Accounts held U.S. securities.

## OVERVIEW OF THE U.S. CROSS-BORDER BUSINESS

11. During the Applicable Period,<sup>1</sup> Gutzwiller held a total of 128 U.S. Related Accounts with a high value of approximately \$271 million. Of the Bank's 128 U.S. Related Accounts, approximately 15 accounts with U.S. person beneficial owners were opened during the Applicable Period, and most of those U.S. persons resided in Switzerland. Approximately 60 U.S. Related Accounts are now closed.
12. During the Applicable Period, Gutzwiller had approximately 60 employees, 21 of whom were relationship managers with responsibility for client relationship management. Relationship managers at the Bank serve as the primary contact for clients at the bank. Relationship managers were not assigned to teams based on geography and no single relationship manager was designated to have responsibility for U.S.-related accounts.
13. Gutzwiller has never focused its marketing efforts on U.S. clients. The Bank has never operated a U.S. desk, targeted U.S. clients, or allowed business travel to the United States. Gutzwiller never sent representatives to the U.S. or advertised its financial services there.
14. Notwithstanding its lack of focus on U.S. clients, Gutzwiller has always had a small number of U.S. related accounts, held mostly by Swiss and European citizens with dual U.S. nationality living in Switzerland or Europe. However, at least 33 U.S. Related Accounts at the Bank had a U.S. citizen and resident as the beneficial owner of assets in the account.
15. Gutzwiller does not use finders or introducers with respect to U.S. persons, but it does maintain accounts brought to the bank by external asset managers. During the Applicable Period, ten external asset managers brought a total of 38 U.S. Related Accounts to the Bank. In some instances, the Bank compensated the external asset manager directly through a percentage of the custody fee or broker's commission.
16. Through its managers, employees and/or others, Gutzwiller knew or should have known that some U.S. account holders who had opened and maintained accounts at the Bank were not complying with their U.S. income tax and reporting obligations. During all relevant times, Gutzwiller knew or should have known that certain U.S. taxpayers maintained accounts at the Bank to evade their U.S. tax obligations.
17. Despite being aware that U.S. taxpayers had a legal duty to report to the IRS and pay taxes on the basis of all their income, including income earned in accounts maintained

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<sup>1</sup> Capitalized terms not otherwise defined in this Statement of Facts have the meanings set forth in the Program for Non-Prosecution Agreement or Non-Target Letters for Swiss Banks issued on August 29, 2013 ("the 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").

at the bank, the Bank opened and maintained undeclared accounts for these taxpayers with the knowledge that, by doing so, the Bank was helping these U.S. taxpayers violate their legal duties in the United States.

18. Gutzwiller offered a variety of traditional Swiss banking services that it knew could assist, and that did assist, U.S. clients in the concealment of assets and income from the IRS. One such service was hold mail. For a fee, Gutzwiller would hold all mail correspondence for a particular client at the Bank, which meant that the bank retained periodic statements and communications to its clients at Gutzwiller for client review. The Bank offered this service to ensure that documents reflecting the existence of the accounts stayed outside the U.S. and beyond the reach of U.S. tax authorities, given Switzerland's bank secrecy laws. Of the 128 U.S. Related Accounts at the Bank, approximately 96 used hold mail services.
19. Gutzwiller opened and maintained 11 U.S. Related Accounts held by non-U.S. entities, such as a Panama foundation or a British Virgin Islands corporation, with the knowledge that a U.S. person was the true beneficial owner of assets. With respect to some but not all of those 11 accounts, the entity properly identified the U.S. beneficial owners of the assets for Swiss "Know Your Customer" rules, but the Bank's IRS Forms W-8BEN falsely declared that the beneficial owner of the account was not a U.S. person. The false Forms W-8BEN thus allowed the true ownership of the accounts to be concealed. With respect to two of these entity accounts, the Bank referred the accounts' respective U.S. persons to a Swiss fiduciary agent who created structures to hold the U.S. person's assets at the Bank. The referrals were made by the Bank upon the request of the U.S. person for services provided by the fiduciary agent. Three of the 11 accounts were held in the name of the same Panama corporation, and have been dormant for over 15 years.
20. In addition, the Bank accepted an account from a U.S. citizen and resident who presented a U.S. passport at the account opening in 1992. At various times, the U.S. client refused to sign a Form W-9, prohibited anything relating to the account being reported to the IRS or other U.S. governmental authority, and refused to respond to the Bank's questions about whether the account was declared to the IRS. Although the Bank did not use code names or numbers to communicate with clients, the U.S. client communicated with the Bank by signing communications with an identifying number. Beginning in 2009, the Bank began to urge the U.S. client to close the account. Over approximately the next year, the U.S. client began liquidating the account by withdrawing large amounts of cash in person in the form of U.S. dollars, Swiss francs, Euros, and U.S. travelers checks. The Bank also honored the U.S. client's requests that it prepare numerous checks written in amounts below \$10,000, which the U.S. client then picked up at the Bank. In late 2010, the Bank declined a request to liquidate remaining funds in the account in a similar manner and informed the U.S. client that it would only close the account through a single payment in the form of a cash withdrawal, a single check, or a wire transfer. The account was closed in 2011 with a wire transfer of over \$3 million to another Swiss bank, without the U.S. client coming into compliance with U.S. tax obligations. The U.S. client later voluntarily disclosed the account at Gutzwiller and the other Swiss bank to the IRS.

21. In 1997, the Bank allowed a U.S. person to open an account under the name of his father, a non-U.S. person, to hold the U.S. person's assets. The U.S. person met with bank employees, including an executive of the bank, to open the account. At the time of the opening of the account, the non-U.S. person executed a Form A, identifying himself as the beneficial owner, and gave his son, the U.S. person, and the son's Swiss cousin, power of attorney over the account. The Form A has never been amended and the Bank's files continue to reflect the non-U.S. person as the beneficial owner. In 2000, after the Bank entered into a Qualified Intermediary Agreement with the IRS, the non-U.S. person executed a "Declaration of Non-U.S. Status" form in which he declared that he was neither a U.S. citizen, a U.S. resident alien, nor, for any other reason, a U.S. taxpayer, and again represented that he was the beneficial owner of all account assets and income. Formally, while the U.S. person had power of attorney authority on the account (along with his Swiss cousin), the Bank knew that the assets belonged to him. The U.S. person obtained updates on the status of the account and at one point had discussions with a relationship manager about moving the funds because of the fees being charged. The U.S. person also made one withdrawal of funds in person. In 2013, the U.S. person's power of attorney on the account was revoked, prompting a complaint by the U.S. person to the Bank in which the U.S. person told the Bank that the account funds were his money. Thereafter, the Bank required approval by the father for fund withdrawals by the Swiss cousin who had power of attorney on the account.
22. Over the course of several years during the Applicable Period, a relationship manager with responsibility for a U.S. Related Account used means outside the bank's phone and e-mail systems to communicate with at least one U.S. person in the United States who had an interest in the account, which was held in the name of an entity and was undeclared. Those communications included making arrangements for payments from the account to third parties in the United States.
23. Another relationship manager at the Bank ("RM-1") was a Swiss citizen and resident for nearly his entire life, but was born in the United States. In 2009, RM-1 reduced his time at the Bank from full-time to 20 percent part-time relationship manager work and otherwise served as an external asset manager. With respect to RM-1, the following facts are pertinent:
- a. Twenty-seven U.S. Related Accounts with an aggregate value of approximately \$170 million, or 76 percent of the Bank's U.S. assets under management, were associated with RM-1. RM-1 was the account holder or beneficial owner of six of the 27 U.S. Related Accounts, and had either power of attorney authority or signature authority on the remaining 21 accounts.
  - b. In connection with his own accounts, RM-1 signed a Declaration of Non-U.S. Status form on three occasions, each time falsely denying that he was a U.S. citizen. The Bank learned about RM-1's status as a U.S. citizen in 2010 and understood RM-1 to be in the process of renouncing his U.S. citizenship at that time. After the Swiss Bank Program was announced, the Bank learned

that RM-1 had not renounced his U.S. citizenship and urged him to disclose the accounts through an IRS disclosure program, which he thereafter did.

- c. RM-1 brought to the Bank three other accounts (not included in the 27 accounts noted above) belonging to RM-1's relative who was a U.S. citizen and resident at the time the first account was opened. The Bank knowingly waived its policy against accepting new U.S. domiciled customers because of the family relationship. RM-1 served as the relationship manager for his relative's accounts. Relationship managers at the bank generally were responsible for approving standing orders at the Bank. During 2008 and 2009, when RM-1's relative was living in the United States, a standing order was in effect instructing that checks in a fixed amount below \$10,000 be sent to the relative in the United States on a bi-monthly basis, with a smaller amount sent by check on a yearly basis in December. The relative's accounts were later voluntarily disclosed to the IRS.

#### **GUTZWILLER'S EFFORTS TO IMPROVE CROSS-BORDER TAX COMPLIANCE**

24. Although Gutzwiller had policies restricting activities related to U.S.-domiciled clients, there was no strict policy. The Bank did not set up any formalized reporting regarding U.S. clients and did not adopt any procedures to ascertain or monitor clients' compliance with their tax obligations, including U.S. clients. Further, the Bank had an oral culture, which resulted in a non-uniform understanding among relationship managers of the Bank's policies regarding U.S. customers.
25. Although the Bank generally did not have effective policies to prevent U.S. clients from using their accounts to conceal assets from the U.S. authorities, in 2009, as a result of the UBS investigation becoming public and with the implementation of the Foreign Account Tax Compliance Act (FATCA) on the horizon, the Board of Directors decided that the Bank no longer had an interest in opening accounts for U.S. clients.
26. Around this time, the Bank began to identify U.S. accounts with reference to FATCA indicia and attempted to find solutions to bring the accounts into compliance. In or about late 2009, the Bank began informing its U.S. customers that they should either provide evidence of U.S. tax compliance or leave for another bank.
27. In April 2011, the Bank asked all relationship managers to review their files to assess the client's country of residence and country of birth, and directed that clients as well as signatories should have no relation with the United States. Thereafter, relationship managers, during communications in the normal course of business with clients, began to request evidence of tax compliance and to inform clients that without such evidence, their account would have to be closed.

28. Although the Bank's efforts to close U.S. clients' accounts were uneven, more than 50 U.S. Related Accounts were closed after the Bank undertook efforts to identify and close accounts belonging to U.S. persons.

**GUTZWILLER'S COOPERATION THROUGHOUT  
THE SWISS BANK PROGRAM**

29. Gutzwiller has fully cooperated with the Department of Justice in relation to the Swiss Bank Program by, among other things, providing all relevant and requested information and documents to the Department of Justice relating to Gutzwiller's U.S. business.
30. The Bank has also taken actions to encourage U.S. persons to disclose their accounts to U.S. authorities. Gutzwiller dedicated significant time and effort to convince certain U.S. taxpayers to participate in the IRS voluntary disclosure programs, including numerous follow-up discussions to ensure that these individuals followed through on the commitment to enter the Offshore Voluntary Disclosure Program. Based on those efforts, many of its former and current U.S. clients disclosed their accounts at the Bank to the IRS. The Bank also secured waivers of Swiss bank secrecy from several of its U.S. clients permitting the disclosure of their information to the IRS.
31. Gutzwiller has provided certain account information related to U.S. taxpayers, which will enable the Government to make requests under the 1996 Convention between the U.S. and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income for, among other things, the identities of U.S. account holders.