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CENTRAL DIST. OF CALIF.  
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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

19CR00150-VAP

No. CR 19-

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIZRAHI-TEFAHOT BANK LTD.;  
UNITED MIZRAHI BANK  
(SWITZERLAND) LTD.; MIZRAHI  
TEFAHOT TRUST COMPANY LTD.;

Defendants.

DEFERRED PROSECUTION AGREEMENT  
FOR DEFENDANTS  
MIZRAHI-TEFAHOT BANK LTD.;  
UNITED MIZRAHI BANK  
(SWITZERLAND) LTD.;  
MIZRAHI TEFAHOT TRUST COMPANY LTD

1 The United States Department of Justice, Tax Division, by  
2 and through Richard E. Zuckerman, Principal Deputy Assistant  
3 Attorney General, Tax Division, U.S. Department of Justice; Larry  
4 J. Wszalek, Section Chief, and Melissa S. Grinberg, and Lisa L.  
5 Bellamy, Trial Attorneys, Tax Division, United States Department  
6 of Justice; and the United States Attorney's Office for the  
7 Central District of California, (collectively, the "Government"),  
8 and the defendants Mizrahi-Tefahot Bank Ltd., which includes  
9 branches in Israel, London, and Los Angeles, CA ("MTB"); United  
10 Mizrahi Bank (Switzerland) Ltd. ("UMBS"); and Mizrahi Tefahot  
11 Trust Company Ltd. (Mizrahi Trust Company) (collectively "MTB  
12 ENTITIES"), by the Chief Legal Advisor of MTB ENTITIES and their  
13 undersigned attorneys, pursuant to the authority granted by MTB  
14 ENTITIES' Boards of Directors in the form of a Board Resolution,  
15 attached hereto as Exhibit A, hereby enter into this Deferred  
16 Prosecution Agreement (the "Agreement"). The Agreement: (a) is  
17 entered into pursuant to the laws and regulations of the United  
18 States, and (b) does not bind and shall not apply to any individual  
19 or entity other than MTB ENTITIES as set forth herein.

20 **THE CRIMINAL INFORMATION AND CERTAIN DEFINITIONS**

21 1. MTB ENTITIES shall waive indictment and consent to the  
22 filing of a one-count Information (the "Information") in the United  
23 States District Court for the Central District of California,  
24 Western Division (the "Court") charging that certain employees of  
25 MTB ENTITIES agreed with U.S. taxpayer-customers, and with others  
26 known and unknown to the Government, to defraud the United States  
27 and a government agency thereof, namely, the Internal Revenue  
28

1 Service ("IRS"), in violation of 18 U.S.C. § 371. A copy of the  
2 Information is attached hereto as Exhibit B.

3 2. The Entry Date is the date that the Court enters the  
4 Speedy Trial Act Order (the "Entry Date").

5 **ACCEPTANCE OF RESPONSIBILITY**

6 3. MTB ENTITIES acknowledge and accept that, among other  
7 acts, as set forth more fully in the Statement of Facts, attached  
8 hereto as Exhibit C, certain private bankers, relationship  
9 managers, and other employees of MTB ENTITIES with similar levels  
10 of responsibility did the following:

11 A. Beginning in 2002 and continuing until 2012,  
12 assisted or otherwise facilitated a number of U.S. taxpayers in  
13 maintaining undeclared accounts at one or more of the MTB ENTITIES'  
14 branches by: (1) opening and/or maintaining foreign nominee bank  
15 accounts for certain U.S. clients holding U.S. securities, which  
16 enabled those U.S. taxpayers to evade U.S. reporting requirements  
17 on earnings from securities, in violation of MTB's Qualified  
18 Intermediary Agreement ("QI Agreement") with the IRS; and (2)  
19 referring U.S. beneficial owners of accounts to outside advisors to  
20 set up offshore entities to act as nominee account holders, which  
21 enabled those U.S. taxpayers to conceal their beneficial ownership  
22 in the accounts;

23 B. Opened accounts for known U.S. customers using non-  
24 U.S. forms of identification, which enabled U.S. taxpayers to avoid  
25 being identified as U.S. persons;

26 C. Maintained customer accounts without copies of the  
27 required identification and account opening documents, in violation  
28

1 of MTB internal bank policy, which enabled their U.S. customers to  
2 avoid being identified as U.S. persons;

3 D. Entered into "hold mail" agreements with U.S.  
4 customers whereby MTB and UMBS employees held bank statements and  
5 other account-related mail in their offices in Israel and  
6 Switzerland, and by doing so enabled documents reflecting the  
7 existence of the offshore accounts to remain outside the U.S.;

8 E. Failed to block, in a timely manner, trading in U.S.  
9 securities in certain non-compliant accounts controlled by U.S.  
10 customers without obtaining the proper IRS Forms W-8BEN and/or W-9  
11 per MTB's QI Agreement with the IRS; and

12 F. Until 2008, provided U.S. customers at MTB-Los  
13 Angeles access to and use of their funds held in non-U.S. MTB and  
14 UMBS accounts through back-to-back loans, while excluding any  
15 record of the U.S. customer's offshore pledge accounts at MTB or  
16 UMBS, which allowed certain U.S. customers to take advantage of  
17 Israeli and Swiss privacy laws and not disclose their pledge  
18 accounts to U.S. tax authorities.

19 4. MTB ENTITIES admit, accept, and acknowledge that they are  
20 responsible under U.S. law for the acts and omissions of their  
21 employees, as set forth in the Statement of Facts and herein.

22 5. MTB ENTITIES represent to the Government that the  
23 Agreement, the Information, the Statement of Facts, and all other  
24 exhibits to the Agreement were reviewed by their respective Boards  
25 of Directors and any officer, employee or agent, whose review was  
26 deemed necessary by MTB ENTITIES to enter into the Agreement.

27 6. MTB ENTITIES admit and stipulate that the facts set forth  
28 in the Statement of Facts, attached hereto as Exhibit C and

1 incorporated herein, are true and accurate based upon MTB ENTITIES'  
2 internal investigation and information provided to MTB ENTITIES by  
3 the Government. In sum, MTB ENTITIES admit that they are  
4 responsible under United States *respondeat superior* law for the  
5 acts of their employees.

6 **RESTITUTION, DISGORGEMENT AND PENALTY OBLIGATIONS**

7 7. As a result of the conduct described in the Statement of  
8 Facts, MTB ENTITIES agree to make payments in total of \$195,000,000  
9 to the United States. Specifically, MTB ENTITIES agree to (1) make  
10 a payment of restitution in the amount of \$53,000,000 (the "Tax  
11 Restitution Amount"), (2) pay disgorgement to the United States of  
12 \$24,000,000 (the "Disgorgement Amount"), and (3) pay a penalty of  
13 \$118,000,000 (the "Penalty Amount") to the United States, as set  
14 forth below.

15 8. In regard to the Tax Restitution Amount, MTB ENTITIES  
16 admit that the Tax Restitution Amount represents the approximate  
17 unpaid pecuniary loss to the United States as a result of the  
18 conduct described in the Statement of Facts. The Tax Restitution  
19 Amount shall not be further reduced by payments that have been made  
20 or may be made to the United States by U.S. taxpayers through the  
21 Offshore Voluntary Disclosure Initiative and similar programs  
22 (collectively, "OVDI"), existing before or if subsequently  
23 promulgated after the date of the Agreement. MTB ENTITIES agree to  
24 pay the Tax Restitution Amount to the IRS by wire transfer within  
25 thirty (30) days of the Entry Date. If MTB ENTITIES fail to timely  
26 make the payment required under this paragraph, interest, at the  
27 rate specified in 28 U.S.C. § 1961, shall accrue on the unpaid  
28 balance through the date of payment, unless the Government, in its

1 sole discretion, chooses to reinstate prosecution pursuant to  
2 Paragraphs 29 and 30, below. The failure to timely make payment  
3 constitutes a material breach of the Agreement.

4 9. In regard to the Disgorgement Amount, MTB ENTITIES agree  
5 that the Disgorgement Amount of \$24,000,000 represents the  
6 approximate gross fees paid to MTB ENTITIES by U.S. taxpayers with  
7 undeclared accounts at MTB ENTITIES from 2002 through 2012. The  
8 Disgorgement Amount shall be sent by wire transfer to a seized  
9 asset deposit account maintained by the United States Department of  
10 the Treasury within thirty (30) days of the Entry Date. If MTB  
11 ENTITIES fail to timely make the payment required under this  
12 paragraph, interest, at the rate specified in 28 U.S.C. § 1961,  
13 shall accrue on the unpaid balance through the date of payment,  
14 unless the Government, in its sole discretion, chooses to reinstate  
15 prosecution pursuant to Paragraphs 29 and 30, below. The failure to  
16 timely make payment constitutes a material breach of the Agreement.

17 10. MTB ENTITIES agree to pay the Penalty Amount of  
18 \$118,000,000 as directed by the Government within thirty (30)  
19 business days of the Entry Date. The failure to timely make payment  
20 constitutes a material breach of the Agreement. In mitigation of a  
21 higher penalty, MTB ENTITIES represented that they conducted an  
22 internal investigation and engaged in concomitant efforts to  
23 provide information and materials, consistent with applicable laws  
24 and regulations, derived from that investigation to U.S.  
25 authorities. The Penalty Amount is final and shall not be  
26 refunded. Furthermore, Nothing in the Agreement shall be deemed an  
27 agreement by the Government that the Penalty Amount is the maximum  
28 penalty that may be imposed in any future prosecution, and the

1 Government is not precluded from arguing in any future prosecution  
2 that the Court should impose a higher penalty. The Government  
3 agrees, however, that in the event of a material breach of the  
4 Agreement and a subsequent prosecution against MTB ENTITIES, the  
5 Government shall recommend to the Court that MTB ENTITIES' payment  
6 of the Penalty Amount, pursuant to the Agreement, be credited  
7 toward any payment ordered by the Court as part of any judgment.

8 11. Upon payment of the Disgorgement Amount, MTB ENTITIES  
9 shall release any and all claims they may have to such funds and  
10 execute such documents as necessary to accomplish the transfer of  
11 the funds. MTB ENTITIES agree that they will not file a claim with  
12 any court or otherwise contest the payment of the Disgorgement  
13 Amount or the Penalty Amount and will not assist a third party in  
14 asserting any claim to the Disgorgement Amount or the Penalty  
15 Amount.

16 12. MTB ENTITIES agree that the Tax Restitution Amount, the  
17 Disgorgement Amount, and the Penalty Amount shall be treated as  
18 non-tax-deductible amounts, for all tax purposes under United  
19 States law. MTB ENTITIES agree that they will not claim, assert, or  
20 apply for, either directly or indirectly - such as through a  
21 subsidiary or affiliate, foreign or domestic, a tax deduction, tax  
22 credit, or any other offset with regard to any United States  
23 federal, state, or local tax, for any portion of the \$195,000,000  
24 that MTB ENTITIES have agreed to pay to the United States pursuant  
25 to the Agreement.

HEIGHTENED STANDARDS FOR FATCA COMPLIANCE

1  
2 13. MTB agrees to ensure that: (a) all of its "subsidiaries  
3 and affiliates," defined as overseas branches and other companies  
4 majority owned and controlled by MTB, that provide financial  
5 services to customers and are covered by the Foreign Account Tax  
6 Compliance Act, 26 U.S.C. §§ 1471-1474 ("FATCA"), to the extent  
7 required by FATCA, (other than MTB-Los Angeles), have entered or  
8 shall enter into a foreign financial institution agreement ("FFI")  
9 pursuant to the implementation of FATCA; and (b) all of its  
10 majority owned and controlled subsidiaries and affiliates that  
11 provide financial services to customers and are covered by FATCA  
12 shall continue to implement and maintain an effective program of  
13 internal controls with respect to compliance with FATCA in their  
14 affiliates and subsidiaries (the "FATCA Compliance Program"). MTB  
15 shall ensure that the FATCA Compliance Program includes, but is not  
16 necessarily limited to, the following measures, a number of which  
17 MTB ENTITIES have represented to the Government have already been  
18 implemented:

19 A. The appointment of a Chief Compliance Officer as  
20 the Global Head of Cross-Border Compliance, reporting directly to  
21 the Chief Risk Officer or Deputy Chief Executive Officer of MTB,  
22 who shall make periodic reports on FATCA to the Audit Committee of  
23 MTB's Board of Directors;

24 B. The employment of a designated FATCA Coordinator at  
25 MTB ENTITIES, who reports to MTB's Chief Compliance Officer;

26 C. The appointment of a FATCA Compliance Officer at  
27 each affiliate and subsidiary, who shall be responsible for  
28 compliance with FATCA and shall report to each subsidiary's or



1 affiliate's Compliance Officer (if not the same employee), who  
2 shall in turn report directly to the Audit Committee of the Board  
3 of Directors of each affiliate or subsidiary or directly to the  
4 Board of Directors, in entities which do not have an Audit  
5 Committee. Each affiliate and subsidiary's Compliance Officer shall  
6 in turn report its FATCA compliance to MTB's Chief Compliance  
7 Officer, who shall in turn report to the Audit Committee of MTB.

8 D. The continued development and implementation of  
9 enhanced controls to identify, prevent, detect, and correct any  
10 material failures regarding MTB ENTITIES' compliance with FATCA;

11 E. The continued development and implementation of  
12 periodic training of relevant personnel with respect to FATCA  
13 compliance; and

14 F. The continued development and implementation of  
15 policies and procedures for receiving and investigating allegations  
16 of material failures of FATCA-related internal controls.

17 14. In addition to the FATCA Compliance Program, MTB shall  
18 implement a revised governance structure for the compliance  
19 functions. Within this new framework, the Chief Risk Officer shall  
20 have professional responsibility and authority over the compliance  
21 functions that advise the different business divisions, including  
22 the International Activities & Private Banking Sector. The Chief  
23 Risk Officer shall also have authority to address issues of  
24 importance to MTB ENTITIES, and shall have substantial input with  
25 respect to compensation and promotion matters for divisional level  
26 compliance personnel within the framework established by the  
27 compensation policies of MTB and its subsidiaries and affiliates.

28

1           15. MTB ENTITIES agree to close or block any and all accounts  
2 of "Recalcitrant Account Holders" as defined in 26 U.S.C.  
3 § 1471(d)(6), to the extent permitted under the applicable law in  
4 the relevant jurisdiction. The development and implementation of  
5 the FATCA-related measures described in Paragraphs 13 and 14 of the  
6 Agreement shall include procedures designed to prevent any of MTB  
7 ENTITIES' employees from assisting Recalcitrant Account Holders to  
8 engage in acts of concealment of assets and income in connection  
9 with closing any account or transferring any funds. MTB ENTITIES  
10 shall design and implement measures to ensure that MTB ENTITIES  
11 shall not open any U.S. Related Accounts except on conditions that  
12 ensure that the accounts shall be declared to the United States and  
13 shall be subject to disclosure to the United States by MTB ENTITIES  
14 to the extent required by FATCA.

15           16. With respect to MTB-Los Angeles, MTB-Los Angeles agrees  
16 to provide the Government with periodic reports identifying how  
17 many loans, if any, issued by MTB-Los Angeles that are  
18 collateralized by offshore MTB ENTITIES' accounts, or accounts of  
19 any foreign affiliate of the MTB ENTITIES. The periodic reports  
20 shall further affirm that MTB-Los Angeles is fully compliant with  
21 applicable anti-money laundering regulations regarding such loans  
22 and that the relevant foreign affiliate has confirmed that the  
23 related foreign account is FATCA-compliant. The periodic reports  
24 shall be due on the two-month anniversary of the Entry Date, and  
25 every one hundred eighty (180) days thereafter until the end of the  
26 Deferral Period. The "Deferral Period" is defined as beginning on  
27 the Entry Date and ending on the date of dismissal of the  
28

1 Indictment, a period of two (2) years, subject to extension as set  
2 forth in the Agreement.

3 **OBLIGATIONS TO COOPERATE**

4 17. MTB ENTITIES agree, subject to applicable laws and  
5 regulations, that during the Deferral Period (including such  
6 additional time as necessary pursuant to the provisions of  
7 paragraph 27), they shall fully cooperate with the Government, the  
8 IRS, and any other U.S. governmental agency designated by the  
9 Government regarding any investigation relating to the conduct  
10 described in the Statement of Facts ("Government Investigation")  
11 about which MTB ENTITIES have information or knowledge.

12 18. MTB ENTITIES agree and understand that during the  
13 Deferral Period, MTB ENTITIES shall, subject to applicable laws and  
14 regulations and upon request, with regard to a Government  
15 Investigation:

16 A. Truthfully and completely disclose all information in  
17 their possession, custody, and control with respect to the  
18 activities of MTB ENTITIES, their employees, and others concerning  
19 all such matters about which the Government inquires related to the  
20 Government Investigation, which information can be used for any  
21 purpose, except as limited by the Agreement;

22 B. Cooperate fully with the Government, the IRS, and any  
23 other law enforcement agency so designated by the Government in  
24 connection with any investigation, criminal prosecution, or civil  
25 proceeding brought by the Government arising out of the conduct set  
26 forth in the Information or the Statement of Facts or relating in  
27 any way to the Government Investigation of the cross-border  
28 business of MTB ENTITIES;

1 C. Consent to the production to the Government of any  
2 document, record, or other tangible evidence relating to conduct  
3 that is the subject of the Government Investigation;

4 D. Specifically provide, upon request, all items,  
5 assistance, information and documents required to be produced by  
6 Swiss banks participating in the Program for Non-Prosecution  
7 Agreements or Non-Target Letters for Swiss Banks (the "Program") as  
8 set forth specifically in Parts II.D.1,2 and 4 and Part II.F of the  
9 Program;

10 E. With respect to transaction information pursuant to Part  
11 II.D.2.b.vi of the Program shall additionally produce such  
12 information, as soon as practicable, for all accounts closed in the  
13 period from January 1, 2009 through October 2017;

14 F. Undertake the retention of records as set forth in Parts  
15 II.D.5 and II.E of the Program;

16 G. Implement the closure or blockage of recalcitrant  
17 accounts and related procedures, to the extent that they have not  
18 already done so, as set forth in Part II.G of the Program and as  
19 otherwise consistent with Israeli law;

20 H. Shall, at the Government's request, use their best  
21 efforts to secure the attendance and truthful statements or  
22 testimony of any employee, or former employee, at any meeting or  
23 interview or before the grand jury or at any trial or other court  
24 proceeding, to the extent permitted by applicable law; and

25 I. Shall commit no violations of the federal criminal laws  
26 of the United States.

27 19. Under the terms of the Agreement, MTB ENTITIES shall  
28 truthfully and completely disclose, and continue to disclose during

1 the term of the Agreement, consistent with applicable law and  
2 regulations, all material information described in Part II.D.1 of  
3 the Swiss Bank Program with respect to U.S. Related Accounts held  
4 by MTB ENTITIES from 2002 through 2012 (as those terms are defined  
5 in the Program) that is not protected by a valid claim of privilege  
6 or work product with respect to the activities of MTB ENTITIES and  
7 their employees, consultants, and others, which information can be  
8 used for any purpose, except as otherwise limited in the Agreement.  
9 Subject to applicable laws and regulations, MTB ENTITIES shall  
10 disclose to the Government that it has discovered new material  
11 information required to be disclosed under the Agreement, including  
12 pursuant to this paragraph and Paragraph 20, within thirty (30)  
13 days of discovery and provide the material information required to  
14 be disclosed pursuant to the Agreement, including information as  
15 described in Part II.D.1 of the Program and information pursuant to  
16 Paragraph 18(d) and (e) of the Agreement, within ninety (90) days  
17 of discovery to the Government. All other terms of the Agreement  
18 shall apply with respect to any newly disclosed account.

19 20. It is further understood that during the Deferral Period  
20 MTB ENTITIES will bring to the Government's attention:

21 A. All criminal conduct by, and criminal investigations  
22 of, MTB ENTITIES or their employees, officers, or directors acting  
23 within the scope of their employment, related to any violations of  
24 the federal laws of the United States that come to the attention of  
25 MTB ENTITIES; its Boards of Directors; Executive Boards; or Senior  
26 Management; and

27 B. Any administrative or regulatory proceeding  
28 (excluding routine proceedings) or civil action brought or

1 investigation conducted by any U.S. governmental authority that  
2 alleges fraud by MTB ENTITIES or any other violations of the  
3 federal laws of the United States in the operation or management of  
4 MTB ENTITIES' business.

5 21. Nothing in this Agreement shall require MTB ENTITIES to  
6 waive any of the protections of the attorney-client privilege,  
7 attorney work-product doctrine, or any other applicable privilege  
8 unless MTB ENTITIES voluntarily chooses to waive any such  
9 privilege. Nothing in this Agreement shall require MTB ENTITIES to  
10 violate the law of any jurisdiction in which they operate.

11 **COOPERATION, DEFERRAL OF PROSECUTION, AND DURATION OF THE**  
12 **AGREEMENT**

13 22. The Government acknowledges that MTB ENTITIES have  
14 provided cooperation concerning the Government's investigation of  
15 MTB ENTITIES' cross-border business with U.S. taxpayers, and that  
16 these actions demonstrate acceptance of responsibility for the  
17 conduct set forth herein and set forth in the Statement of Facts,  
18 including, among other actions:

19 A. Conducted an extensive internal investigation of MTB  
20 ENTITIES' conduct, including the collection and review of thousands  
21 of documents and millions of e-mails from three countries, and  
22 produced over 560,000 pages of documents to the Government.

23 B. Provided translations of many documents, conducted  
24 internal interviews, and through counsel, proffered the substance  
25 of internal interviews conducted by counsel with MTB ENTITIES'  
26 employees and management, and made presentations to the Government  
27 regarding the results of their internal investigation.

28

1 C. Coordinated the interviews of two bank employees  
2 located in Israel and various MTB ENTITIES' employees available for  
3 in-person and telephonic interviews and produced a custodial  
4 witness from Israel to testify at the trial of a former MTB  
5 employee in the United States.

6 D. Engaged KPMG LLP ("KPMG") as an independent forensic  
7 and accounting expert to review and validate a database created by  
8 the MTB ENTITIES that consolidated 1.5 billion records from eight  
9 separate systems within MTB ENTITIES to analyze data regarding the  
10 U.S. Related Accounts.

11 E. Had KPMG make multiple in-person presentations to  
12 the Government supporting KPMG's data collection and analysis of  
13 U.S. Related Accounts and cooperated in providing the production of  
14 additional explanatory materials at the Government's request.

15 F. Assisted the Government in connection with requests  
16 under the Tax Treaty and the Mutual Legal Assistance Treaty request  
17 to Israel. MTB ENTITIES also provided account summaries for each of  
18 the U.S. Related Accounts at UMBS.

19 G. Litigated and appealed in the Swiss courts in an  
20 attempt to obtain permission to disclose two UMBS employee  
21 identities and documents for production to the Government.

22 23. MTB ENTITIES have also made a commitment to:

23 A. Accept and acknowledge responsibility for their  
24 employees' conduct, as described in the Statement of Facts;

25 B. Cooperate with the Government and the IRS;

26 C. Make the payments specified in the Agreement;

27 D. Comply with the federal criminal laws of the United  
28 States (as provided herein in Paragraph 18); and

1           E.     Otherwise comply with all of the terms of the  
2 Agreement. In consideration of the foregoing, the Government shall  
3 recommend to the Court that prosecution of MTB ENTITIES on the  
4 Information be deferred for two (2) years from the Entry Date, (the  
5 "Deferral Period"). MTB ENTITIES shall expressly waive indictment  
6 and all rights to a speedy trial pursuant to the Sixth Amendment of  
7 the United States Constitution, Title 18, United States Code,  
8 Section 3161, Federal Rule of Criminal Procedure 48(b), and any  
9 applicable Local Rules of the United States District Court for the  
10 Central District of California for the Deferral Period. MTB  
11 ENTITIES also hereby agree to waive all rights, whether asserted  
12 directly or by a representative, legal or otherwise, to request or  
13 receive from any department or agency of the United States any  
14 records pertaining to the investigation or prosecution of this  
15 case, including without limitation any records that may be sought  
16 under the Freedom of Information Act, Title 5, United States Code,  
17 Section 552, or the Privacy Act, Title 5, United States Code,  
18 Section 552, except as provided by Fed. R. Crim. P. 16, Fed. R.  
19 Crim. P. 26, or 18 U.S.C. § 3500. MTB ENTITIES' agreement to the  
20 provisions of this paragraph shall expire upon any further  
21 prosecution of any of the MTB ENTITIES by the Government in  
22 connection with this matter, but in no event earlier than two (2)  
23 years from the Entry Date of the Agreement.

24           24. MTB ENTITIES agree that their obligations pursuant to the  
25 Agreement, which shall commence upon the Entry Date, will continue  
26 for the Deferral Period, unless otherwise extended pursuant to  
27 Paragraph 27 below. MTB ENTITIES' obligation to cooperate  
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1 terminates in the event the Government files a prosecution against  
2 MTB ENTITIES.

3 25. The Government agrees that if MTB ENTITIES are in  
4 substantial compliance with all of their obligations under the  
5 Agreement, the Government shall, at the expiration of the Deferral  
6 Period (including any extensions thereof), seek dismissal with  
7 prejudice of the Information filed against MTB ENTITIES pursuant to  
8 the Agreement. Except in the event of a material breach by MTB  
9 ENTITIES of any term of the Agreement or as otherwise provided in  
10 Paragraphs 28, 29 and 30, the Government will bring no additional  
11 charges or other civil action against MTB ENTITIES relating to  
12 their conduct as described in the Statement of Facts. The  
13 Agreement does not provide any protection against prosecution for  
14 any crimes except as set forth above and does not apply to any  
15 individual or entity other than MTB ENTITIES.

16 26. MTB ENTITIES and the Government understand that the  
17 Agreement to defer prosecution of MTB ENTITIES must be approved as  
18 to waiver of the requirements of the Speedy Trial Act by the Court,  
19 in accordance with 18 U.S.C. § 3161(h)(2). Should the Court  
20 decline to approve the Agreement to defer prosecution for any  
21 reason: (a) both the Government and MTB ENTITIES are released from  
22 any obligation imposed upon them by the Agreement; (b) the  
23 Agreement shall be null and void, except for the tolling provision  
24 set forth in Paragraphs 30, 31 and 32, below; and (c) if they have  
25 already been transferred to the United States, the Tax Restitution  
26 Amount, the Disgorgement Amount and the Penalty Amount shall be  
27 returned to MTB ENTITIES within 30 business days.

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1 shall, in the Government's sole discretion, thereafter be subject  
2 to prosecution for any federal criminal violation, or suit for any  
3 civil cause of action, of which the Government has knowledge,  
4 including but not limited to a prosecution or civil action based on  
5 the Information, the Statement of Facts, the conduct described  
6 therein, or perjury and obstruction of justice. Any such  
7 prosecution or civil action may be premised on any information  
8 provided by or on behalf of MTB ENTITIES to the Government or the  
9 IRS at any time.

10 30. In any prosecution or civil action based on the  
11 Information, the Statement of Facts, or the conduct described  
12 therein, it is understood that:

13 A. no charge would be time-barred provided that such  
14 prosecution is brought within the applicable statute of limitations  
15 period (subject to any prior tolling agreements between the  
16 Government and MTB ENTITIES), and excluding the period from the  
17 execution of the Agreement, the Execution Date, until its  
18 termination; and

19 B. MTB ENTITIES agree to tolling, and exclusion from  
20 any calculation of time, the running of the statute of limitations  
21 for the length of the Agreement starting from the date of the  
22 execution of the Agreement, the Execution Date, and including any  
23 extension of the period of deferral of prosecution pursuant to  
24 Paragraph 27 above. By the Agreement, MTB ENTITIES expressly  
25 intend to and hereby do waive their rights in the foregoing  
26 respects, including any right to make a claim premised on the  
27 statute of limitations, as well as any constitutional, statutory,  
28 or other claim concerning pre-indictment delay. Such waivers are

1 knowing, voluntary, and in express reliance on the advice of MTB  
2 ENTITIES' counsel.

3 31. It is further agreed that in the event that the  
4 Government, in its sole discretion, determines that MTB ENTITIES  
5 have knowingly violated any material provision of the Agreement in  
6 a material respect, including by failure to meet their obligations  
7 under the Agreement:

8 A. all statements made by or on behalf of MTB ENTITIES  
9 to the Government or the IRS, including but not limited to the  
10 Statement of Facts, or any testimony given by MTB ENTITIES, their  
11 employees, or by any agent of MTB ENTITIES before a grand jury or  
12 elsewhere, whether before or after the date of the Agreement, or  
13 any leads from such statements or testimony, shall be admissible in  
14 evidence in any and all criminal proceedings hereinafter brought by  
15 the Government against MTB ENTITIES; and

16 B. MTB ENTITIES shall not assert any claim under the  
17 United States Constitution, Rule 11(f) of the Federal Rules of  
18 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or  
19 any other federal rule, that statements made by or on behalf of MTB  
20 ENTITIES before or after the date of the Agreement, or any leads  
21 derived therefrom, should be suppressed or otherwise excluded from  
22 evidence.

23 32. It is the intent of the Agreement to waive any and all  
24 rights in the foregoing respects.

25 33. MTB ENTITIES, having admitted to the facts in the  
26 Statement of Facts, agree that they shall not, through their  
27 attorneys, or employees, make any public statement, in litigation  
28 or otherwise, contradicting the Statement of Facts or their

1 representations in the Agreement; provided, however, that the  
2 restrictions set forth in this paragraph are not intended to and  
3 shall not apply to any current or former employee of MTB ENTITIES,  
4 or any other individual, in the course of any non-U.S. criminal,  
5 regulatory, or civil case, investigation, or other proceeding, as  
6 long as the individual does not speak on behalf of any of MTB  
7 ENTITIES in such proceedings. However, nothing in this paragraph  
8 or this Agreement is meant to affect the obligation of MTB ENTITIES  
9 or their employees to testify or respond truthfully to the best of  
10 their personal knowledge and belief in any proceeding or in  
11 response to questions from a non-U.S. government entity. Any such  
12 contradictory statement by MTB ENTITIES, their present or future  
13 attorney(s) or authorized employees shall constitute a material  
14 breach of the Agreement and MTB ENTITIES thereafter shall be  
15 subject to prosecution as specified in Paragraphs 29, 30, and 31,  
16 above, or the deferral-of-prosecution period shall be extended  
17 pursuant to Paragraph 27, above. The decision as to whether any  
18 such contradictory statement will be imputed to MTB ENTITIES for  
19 the purpose of determining whether MTB ENTITIES has violated the  
20 Agreement shall be within the sole discretion of the Government.  
21 Upon the Government's notifying MTB ENTITIES of any such  
22 contradictory statement, MTB ENTITIES may avoid a finding of a  
23 material breach of the Agreement by repudiating such statement both  
24 to the recipient of such statement and to the Government within  
25 three (3) calendar days after having been provided notice by the  
26 Government. MTB ENTITIES consent to the public release by the  
27 Government, in its sole discretion, of any such repudiation. The  
28 Government agrees that nothing in this Agreement in any way

1 prevents MTB ENTITIES from taking good faith positions in non-U.S.  
2 investigations or non-U.S. litigation involving private parties or  
3 foreign government entities (including class actions and derivative  
4 actions), including asserting defenses and affirmative defenses.

5 34. MTB ENTITIES agree that it is within the Government's  
6 sole discretion to choose, in the event of a material breach, the  
7 remedies contained in Paragraphs 29 and 30 above, or instead to  
8 choose to extend the period of deferral of prosecution pursuant to  
9 Paragraph 27. MTB ENTITIES understand and agree that the exercise  
10 of the Government's discretion under the Agreement is unreviewable  
11 by any court. Should the Government determine that MTB ENTITIES  
12 have committed a material breach of this Agreement, the Government  
13 shall provide prompt written notice to MTB ENTITIES addressed to  
14 their Chief Legal Advisor, and to MTB ENTITIES' counsel, John F.  
15 Libby, Esq. of Manatt, Phelps & Phillips, LLP, 11355 W. Olympic  
16 Blvd., Los Angeles, California, 90064, and F. Joseph Warin, Esq.,  
17 of Gibson, Dunn & Crutcher LLP, 1050 Connecticut Ave., NW,  
18 Washington, District of Columbia, 20036, or to any successor MTB  
19 ENTITIES may designate, of the alleged material violation and  
20 provide MTB ENTITIES with a forty-five-day period from the date of  
21 receipt of notice in which to make a presentation to the  
22 Government, to demonstrate that no material breach occurred, or, to  
23 the extent applicable, that the material breach should not result  
24 in the exercise of those remedies or in an extension of the period  
25 of deferral of prosecution, including because the material breach  
26 has been cured by MTB ENTITIES.

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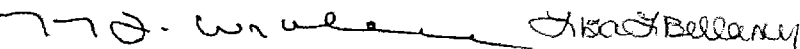
INTEGRATION CLAUSE

39. The Agreement sets forth all the terms of the Deferred Prosecution Agreement between MTB ENTITIES and the Government. The Agreement supersedes all prior understandings or promises between the Government and MTB ENTITIES. No modifications or additions to the Agreement shall be valid unless they are in writing and signed by the Government, MTB ENTITIES' attorneys, and a duly authorized representative of MTB ENTITIES.

AGREED AND ACCEPTED

Respectfully submitted,

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant  
Attorney General  
Tax Division



\_\_\_\_\_  
LARRY J. WSZALEK  
Chief  
MELISSA S. GRINBERG  
LISA L. BELLAMY  
Trial Attorneys  
U.S. Department of Justice  
Tax Division

TRACY L. WILKERSON  
Attorney For United States  
Acting Under Authority Conferred  
By 28 U.S.C. Section 515  
THOMAS D. COKER  
Assistant United States Attorney  
Chief, Tax Division

//  
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1 MIZRAHI-TEFAHOT BANK LTD.;  
2 UNITED MIZRAHI BANK (SWITZERLAND) LTD.;  
3 MIZRAHI TEFAHOT TRUST COMPANY LTD.,  
4 Defendants

5 By: *P. Friedman*

3-12-2019

6 CHIEF LEGAL ADVISOR  
7 MIZRAHI-TEFAHOT BANK LTD.

Date

8 *John F. Libby*

3-12-2019

9 JOHN F. LIBBY, Esq.  
10 Counsel for Defendants  
11 MIZRAHI-TEFAHOT BANK LTD.;  
12 UNITED MIZRAHI BANK (SWITZERLAND) LTD.;  
13 MIZRAHI TEFAHOT TRUST COMPANY LTD.

Date

14 *Michael J. Warren*

3-12-2019

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EXHIBIT A TO DEFERRED PROSECUTION AGREEMENT

**RESOLUTION OF THE BOARD OF DIRECTORS OF MIZRAHI TEFAHOT BANK LTD.**

At a duly held meeting held on March 12, 2019, the Board of Directors of Mizrahi Tefahot Bank Ltd. (the "Bank") resolved as follows:

**WHEREAS**, the Bank; United Mizrahi Bank (Switzerland) Ltd.; and Mizrahi Tefahot Trust Company Ltd. (collectively, "MTB Entities") have been engaged in discussions with the United States Department of Justice ("DOJ") regarding certain tax-related issues arising out of, in connection with, or otherwise relating to the conduct of the U.S. cross-border business by the MTB Entities;

**WHEREAS**, in order to resolve such discussions, it is proposed that the MTB Entities enter into a certain deferred prosecution agreement with the DOJ ("Agreement");

**WHEREAS**, the Bank's outside counsel have advised the Board of Directors of the Bank's rights, possible defenses, and the consequences of entering into such Agreement with the DOJ, and have further recommended entry into the Agreement with the DOJ; and

**WHEREAS**, an Independent Committee of the Board has exercised its own judgment and recommended to the Board that it approve the Agreement with the DOJ;

This Board hereby **RESOLVES** that:

1. The Board of Directors of the Bank has reviewed the Agreement including the Statement of Facts (attached as Exhibit C to the Agreement) and the Information (attached as Exhibit B to the Agreement) and voted to enter into the Agreement;
2. The Bank (i) consents to the filing in the United States District Court for the Central District of California of an Information charging the MTB Entities with one count of conspiracy in violation of 18 U.S.C. § 371 to defraud the United States and its agency the Internal Revenue Service in connection with the conduct of its U.S. cross-border business as set forth more fully in the Information, through the actions of certain of their private bankers, relationship managers, and other employees with similar levels of responsibility, and (ii) together with the other MTB Entities, agrees to pay an amount no greater than \$195,000,000 in connection with the execution of the Agreement described in paragraph 3 below and to execute the ongoing obligations described therein;
3. The Chief Legal Advisor, or her delegate, hereby is authorized on behalf of the Bank to execute the Agreement substantially in such form as reviewed by this Board of Directors at this meeting with such non-material changes as the Chief Legal Advisor, or her delegate, may approve; and
4. All of the actions of the Chief Legal Advisor of the Bank, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the

adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Bank.

5. The Board takes note that the Chief Legal Advisor of the Bank was also authorized by the Boards of Directors of the other MTB Entities to execute the Agreement on their behalf, after each board reviewed the Agreement including the Statement of Facts and the Information, and voted to enter into the Agreement.

**IN WITNESS WHEREOF**, the Board of Directors of the Bank has executed this Resolution effective as of the day and year first written above.

M. Feller

Corporate Secretary

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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIZRAHI-TEFAHOT BANK, LTD.;  
UNITED MIZRAHI BANK  
(SWITZERLAND) LTD.; and  
MIZRAHI TEFAHOT TRUST COMPANY,  
LTD.,

Defendants.

No. Case No. CR 19-

I N F O R M A T I O N

[18 U.S.C. § 371: Conspiracy to  
Defraud the United States]

The United States Attorney charges:

COUNT ONE

[18 U.S.C. §371]

At all times relevant to this Information:

A. INTRODUCTORY ALLEGATIONS

1. Defendant MIZRAHI-TEFAHOT BANK, LTD. ("MTB") was a public company, registered with the Registrar of Companies in Israel and traded on the Tel-Aviv Stock Exchange.

EXHIBIT B

1           2. Defendant MTB was headquartered in Israel and had non-  
2 Israeli branches in London, the Cayman Islands, and Los Angeles.  
3 Defendant MTB wholly owned and controlled subsidiary MIZRAHI  
4 INTERNATIONAL HOLDING COMPANY LTD., which in turn wholly owned  
5 and controlled defendant UNITED MIZRAHI BANK (SWITZERLAND) LTD.  
6 ("UMBS") with one location in Zurich, Switzerland. Defendant MTB  
7 wholly owned and controlled defendant MIZRAHI TEFAHOT TRUST  
8 COMPANY LTD. ("Mizrahi Trust Company").

9           3. The Internal Revenue Service ("IRS") was an agency of  
10 the United States Department of Treasury responsible for  
11 administering and enforcing the tax laws of the United States  
12 and collecting the taxes owed to the Treasury of the United  
13 States.

14           4. United States citizens, resident aliens, and legal  
15 permanent residents had an obligation to report the following  
16 information to the IRS on Form 1040, Schedule B, Part III, Line  
17 7a, by checking a "Yes" or "No" box: "At any time during [the  
18 calendar year], did you have an interest in or a signature or  
19 other authority over a financial account in a foreign country,  
20 such as a bank account, securities account, or other financial  
21 account?" If the answer to Line 7a was "Yes," then Line 7b  
22 required the taxpayer to enter the name of the foreign country  
23 in which the financial account was located.

24           5. United States citizens, resident aliens, and legal  
25 permanent residents had an obligation to report all income  
earned from foreign financial accounts on their tax returns and  
to pay the taxes due on that income.

1           6. United States citizens, resident aliens, and legal  
2 permanent residents, who had a financial interest in, or  
3 signature authority over, one or more financial accounts in a  
4 foreign country with an aggregate value of more than \$10,000 at  
5 any time during a particular year were required to file with the  
6 Department of the Treasury a Report of Foreign Bank and  
7 Financial Accounts ("FBAR"). Generally, prior to 2016, the FBAR  
8 for the applicable year was due by June 30 of the following  
9 year.

10           7. On January 21, 2001, defendant UMBS entered into a  
11 Qualified Intermediary ("QI") Agreement with the IRS. On June 6,  
12 2001, defendant MTB entered into a QI Agreement with the IRS.  
13 The QI Agreements required defendants MTB and UMBS to implement  
14 certain documentary procedures to identify clients who invested  
15 in U.S. securities, distinguish between customers who were U.S.  
16 persons and non-U.S. persons, and properly withhold U.S. taxes.

17           8. On December 20, 2000, in anticipation of executing the  
18 QI Agreement, defendant MTB entered into a Private Arrangement  
19 Intermediate ("PAI") Agreement with defendant Mizrahi Trust  
20 Company. Under the PAI Agreement, Mizrahi Trust Company agreed  
21 to implement and comply with the same documentary procedures as  
22 MTB and be subject to the same review as MTB. MTB, as the QI,  
23 retained all of the withholding and documentary responsibility  
24 for payments made to Mizrahi Trust Company's clients.

25           9. Defendant MTB, through its Board of Directors and  
executives, issued and authorized internal policies and  
procedures to implement the QI Agreement, which required MTB to

1 follow the laws and regulations governing the requirements of  
2 the QI Agreement.

3 10. Audits from 2002-2012 described deficiencies with  
4 defendants MTB's and Mizrahi Trust Company's compliance with the  
5 QI and PAI Agreements and internal bank policies, including lack  
6 of proper account opening documents, failure to secure required  
7 IRS Forms W8-BEN and W9, missing identification documents, lack  
8 of information regarding beneficial owners of accounts,  
9 inadequate reporting, and failure to block trading in U.S.  
10 securities for accounts not in compliance with the QI Agreement  
11 requirements.

12 11. An "undeclared account" was a financial account, owned  
13 by an individual subject to U.S. tax and maintained in a country  
14 other than the U.S., not reported by the individual account  
15 owner to the U.S. government on an income tax return and an  
16 FBAR.

17 12. A "back-to-back loan" was a loan offered by MTB-Los  
18 Angeles to U.S. customers secured by funds in an offshore MTB  
19 account generally held by the same U.S. beneficial owner (the  
20 "pledged account"). Defendant MTB typically charged a 1% to 2%  
21 higher rate of interest on the back-to-back loan than the  
22 interest rate paid on the pledged account.

23 13. On December 18, 2007, MTB Roving Representative Joseph  
24 "Yossie" Roth ("Roth") was indicted in the Central District of  
25 California (Case No. CR 06-775(A)) for conspiracy to defraud the  
U.S. by impairing and impeding the IRS, mail fraud, conspiracy  
to commit money laundering, and international money laundering.  
Roth's specific conduct, as alleged in the indictment and a

1 subsequent superseding indictment, included assisting a U.S.  
2 customer to conceal MTB offshore accounts by opening MTB  
3 offshore accounts under the names of nominee entities;  
4 facilitating financial transactions for a U.S. customer through  
5 MTB offshore accounts; and causing MTB to issue "back-to-back  
6 loans" to enable U.S. customers' ready access to funds deposited  
7 in their undeclared MTB offshore accounts.

8 14. On December 18, 2007, Israeli attorney Jacob Ivan  
9 Kantor ("Kantor") was indicted with Roth in the Central District  
10 of California (Case No. CR 06-775(A)) for conspiracy to defraud  
11 the U.S. by impairing and impeding the IRS, conspiracy to commit  
12 money laundering, and international money laundering. Kantor's  
13 specific conduct, as alleged in the indictment and a subsequent  
14 superseding indictment, included creating a Nevis nominee entity  
15 and arranging for the use of a New Zealand trust company to  
16 conceal an MTB U.S. customer's ownership of an offshore MTB  
17 account.

18 15. On June 27, 2008, Roth pleaded guilty to conspiring  
19 with Kantor and others to defraud the U.S. by impairing and  
20 impeding the IRS, in violation of 18 U.S.C. § 371.

21 B. OBJECT OF THE CONSPIRACY

22 16. Beginning in or about 2002, and continuing thereafter  
23 up to at least in or about 2012, in Los Angeles County, within  
24 the Central District of California, and elsewhere, defendants  
25 MTB, UMBS, and Mizrahi Trust Company, through the actions of  
their private bankers, relationship managers, and other  
employees of MTB, UMBS, and Mizrahi Trust Company with similar



1 levels of responsibility, did unlawfully, voluntarily,  
2 intentionally and knowingly combine, conspire, and agree, with  
3 each other and with others known and unknown to the United  
4 States Attorney, to defraud the United States, by deceitful and  
5 dishonest means, for the purpose of impeding, impairing,  
6 obstructing, and defeating the lawful government functions of a  
7 government agency, namely, the IRS, in the ascertainment,  
8 computation, assessment, and collection of revenue, namely,  
9 income taxes.

10 C. MANNER AND MEANS OF THE CONSPIRACY

11 17. Certain private bankers, relationship managers, and  
12 other employees of MTB, UMBS, and Mizrahi Trust Company with  
13 similar levels of responsibility ("employees"), and their co-  
14 conspirators, as the manner and means to carry out the object of  
15 the conspiracy and to act for the purpose of concealing  
16 undeclared accounts from the United States government and the  
17 IRS would and did the following, among other actions:

18 a. Assisted U.S. customers to open undeclared accounts  
19 at MTB and UMBS;

20 b. Used foreign nominee entities, pseudonyms and code  
21 names to open and maintain undeclared accounts for U.S.  
22 customers at MTB and UMBS;

23 c. Referred U.S. customers to attorneys to set up nominee  
24 entities in offshore locations such as Nevis, Liberia, Turks &  
25 Caicos, and the British Virgin Islands (BVI), which enabled U.S.  
customers to open offshore undeclared MTB and UMBS accounts in  
the names of these nominee entities;

1 d. Established undeclared accounts for U.S. customers  
2 that listed defendant Mizrahi Trust Company as the nominee  
3 account holder, which enabled the concealing of the identities  
4 of the U.S. beneficial owners of those accounts at MTB;

5 e. Opened undeclared accounts at MTB and UMBS for known  
6 U.S. customers using non-U.S. forms of identification to avoid  
7 identifying the customers as U.S. persons;

8 f. Opened and maintain MTB customer accounts without  
9 obtaining the required identification and account opening  
10 documents, in violation of MTB internal bank policy and MTB's QI  
11 Agreement with the IRS;

12 g. Failed to secure, in a timely manner, and keep IRS  
13 Forms W8-BEN and W9 in certain MTB account files holding  
14 securities, and failed to block, in a timely manner, trading in  
15 U.S. securities in non-compliant accounts, in violation of MTB's  
16 QI Agreement with the IRS;

17 h. Failed to correct deficiencies in MTB's compliance  
18 with its internal policies and MTB's QI Agreement with the IRS,  
19 despite audits from 2002-2012 highlighting MTB's compliance  
20 failures;

21 i. Entered into "hold mail" agreements with U.S.  
22 customers by which defendants MTB and UMBS held bank statements  
23 and other account-related mail in their offices in Israel and  
24 Switzerland rather than send them to U.S. customers in the U.S.,  
25 enabling documents reflecting the existence of the undeclared  
MTB and UMBS accounts to remain outside the U.S. and beyond the  
reach of U.S. tax authorities;

1 j. Entered into agreements with certain U.S. customers to  
2 send account statements for undeclared MTB and UMBS accounts to  
3 MTB-Los Angeles rather than mail the offshore account statements  
4 directly to U.S. customers;

5 k. Until 2008, enabled U.S. customers to access and use  
6 funds in undeclared accounts by issuing "back-to-back" loans at  
7 MTB-Los Angeles to U.S. customers secured by funds in the U.S.  
8 customers' undeclared MTB and UMBS accounts;

9 l. Deliberately excluded documentation from MTB-Los  
10 Angeles loan records, identifying the beneficial owners of  
11 undeclared MTB accounts used as collateral for back-to-back  
12 loans at MTB-Los Angeles, which enabled documents reflecting the  
13 existence of the offshore accounts to remain outside the U.S.  
14 and beyond the reach of U.S. taxing authorities;

15 m. Purposely excluded identifying information on MTB  
16 SWIFT messages from MTB to MTB-Los Angeles confirming funds in  
17 undeclared MTB accounts collateralizing the "back-to-back"  
18 loans;

19 n. Until 2008, periodically sent "Roving  
20 Representatives," one from MTB and one from UMBS, to travel to  
21 the United States and meet with U.S. customers in Los Angeles,  
22 California, New York, and other locations in the U.S. in order  
23 to solicit new clients to open accounts, review existing  
24 clients' undeclared MTB account statements, and discuss existing  
25 clients' undeclared MTB accounts;

o. Redacted the names of the U.S. customers reflected on  
copies of MTB bank statements for undeclared MTB and UMBS  
accounts taken by the MTB Roving Representative when he traveled

1 to the United States, which preserved the secrecy of those  
2 accounts from U.S. taxing authorities;

3 p. Communicated with a U.S. customer holding an  
4 undeclared UMBS account using coded language to describe banking  
5 activities;

6 q. Engaged in e-mail communications that excluded the  
7 names of U.S. customers in e-mail communications with third  
8 party service providers handling offshore undeclared MTB  
9 accounts on behalf of U.S. customers in order to preserve the  
10 secrecy of those accounts from U.S. taxing authorities;

11 r. Advised U.S. customers to avoid investing in U.S.  
12 securities to avoid disclosure of their account information to  
13 U.S. Tax Authorities;

14 s. Despite the December 2007 indictment and June 2008  
15 guilty plea of MTB Roving Representative Roth for conspiring to  
16 defraud the U.S. by impairing and impeding the IRS by assisting  
17 a U.S. taxpayer in concealing MTB offshore accounts, failed to  
18 take sufficient corrective action to address Roth's conduct,  
19 failed to undertake an examination of all Roth's U.S. client  
20 accounts, and continued to assist U.S. customers to open and  
21 maintain MTB offshore undeclared accounts;

22 t. Despite the December 2007 indictment of attorney  
23 Kantor for assisting a U.S. customer of MTB in the concealment  
24 of his ownership of an MTB account by creating a Nevis nominee  
25 entity and arranging the use of a New Zealand trust company, and  
Kantor's continuing failure to appear in the United States,  
failed to conduct an examination of all MTB accounts connected  
to Kantor, continued to allow Kantor to appear on MTB accounts,

1 and continued to assist U.S. customers to open and maintain  
2 offshore undeclared MTB accounts in the name of offshore nominee  
3 entities.

4 D. OVERT ACTS

5 18. In furtherance of the conspiracy, and to accomplish  
6 its objects, certain employees of defendants MTB, UMBS, Mizrahi  
7 Trust Company, and others known and unknown to the United States  
8 Department of Justice and the United States Attorney, committed  
9 and caused others to commit the following overt acts, among  
10 others, in the Central District of California and elsewhere:

11 MTB:

12 U.S. Customer G.K.

13 19. Overt Act No. 1: In or about 2001, an MTB banker  
14 advised U.S. Customer G.K. to change the name of G.K.'s account  
15 at MTB to code name "G. Shad" in order to keep it secret from  
16 the United States government.

17 20. Overt Act No. 2: From in or about 1997 through in or  
18 about 2008, MTB sent U.S. Customer G.K.'s account statements to  
19 MTB-Los Angeles, which were either hand delivered to G.K. or  
20 were picked up personally by G.K.

21 21. Overt Act No. 3: On or about February 23, 2006, an  
22 MTB banker assisted G.K. with opening documents for an account  
23 in the name of "Persol" in which G.K. was a signatory. The  
24 opening documents included a "hold mail" designation for the  
25 delivery of bank statements.

22. Overt Act No. 4: Beginning in or about 1997 through  
in or about 2008, MTB-Los Angeles approved multiple back-to-back

1 loans for G.K., using the funds in G.K.'s MTB account as  
2 collateral.

3 23. Overt Act No. 5: U.S. Customer G.K. filed false  
4 individual U.S. Individual Income Tax Returns with the IRS for  
5 2005-2011 that failed to report the existence of, and related  
6 income from, G.K.'s undeclared bank accounts at MTB and UMBS.  
7 U.S. Customer Z.S.

8 24. Overt Act No. 6: In or about 2001, MTB Roving  
9 Representative Roth met with U.S. Customer Z.S. in Beverly  
10 Hills, California and discussed opening a secret bank account at  
11 defendant MTB and utilizing back-to-back loans from defendant  
12 MTB-Los Angeles to access the offshore funds.

13 25. Overt Act No. 7: On or about December 27, 2001,  
14 Israeli attorney Kantor assisted U.S. Customer Z.S. in creating  
15 a Nevis foreign nominee entity.

16 26. Overt Act No. 8: On or about January 6, 2002, U.S.  
17 Customer Z.S. opened an account at defendant MTB in the name of  
18 the foreign nominee entity.

19 27. Overt Act No. 9: On or about January 28, 2002, MTB  
20 accepted a transfer by Z.S. from an account in China of at least  
21 \$100,000 into Z.S.'s MTB account.

22 28. Overt Act No. 10: Beginning in or about 2003, and  
23 continuing through in or about 2008, MTB-Los Angeles approved  
24 multiple back-to-back loans to Z.S. with principal balances of  
25 up to \$2.5 million, using funds in Z.S.'s MTB account as  
collateral.

29. Overt Act No. 11: U.S. Customer Z.S. filed false  
individual U.S. Individual Income Tax Returns with the IRS that

1 failed to report the existence of, and related income from,  
2 Z.S.'s undeclared bank accounts at defendant MTB.

3 U.S. Customer J.F.:

4 30. Overt Act No. 12: In or about December 1989, an MTB  
5 Banker opened an account for known U.S. customer J.F. in the  
6 name of a Liberian corporation, with Israeli attorneys as  
7 signatories.

8 31. Overt Act No. 13: In or about July 2003, an MTB  
9 banker, well knowing that J.F. was a controlling shareholder of  
10 the entity account holder, accepted an attorney's "Declaration  
11 With Respect to the Beneficiary in an Account" for J.F.'s  
12 account that stated there were no beneficiaries of the account  
13 other than the offshore corporation.

14 32. Overt Act No. 14: In or about September 2003, an MTB  
15 banker accepted a passport for J.F. and a form signed by an  
16 attorney for J.F. stating that J.F. was a controlling  
17 shareholder of the foreign entity accountholder.

18 33. Overt Act No. 15: On or about December 19, 2007, Roth  
19 met with J.F. in Los Angeles, California.

20 34. Overt Act No. 16: In or about December 2007, an MTB  
21 banker renewed J.F.'s pledge of \$5 million for a back-to-back  
22 loan in Los Angeles.

23 35. Overt Act No. 17: On or about December 21, 2007, an  
24 MTB relationship manager sent an e-mail to J.F.'s attorney  
25 requesting a completed Form W-8BEN because the account held U.S.  
securities.

36. Overt Act No. 18: On or about January 9, 2008, MTB  
bank employees exchanged e-mails stating that: 1) they had sent

1 three e-mails to J.F.'s attorney requesting a Form W-8BEN; 2) a  
2 Form W-8BEN was never received; 3) it would be necessary to  
3 withhold 28% of the overall proceeds of the U.S. securities in  
4 the account; and 4) not providing the requested documentation  
5 could negatively affect the Bank's status with U.S. taxing  
6 authorities.

7 37. Overt Act No. 19: On or about February 11, 2011, an  
8 MTB banker sent an e-mail stating that the Form W-8BEN was  
9 missing from the account because J.F. had refused to sign the  
10 Form W-8BEN.

11 38. Overt Act No. 20: From 2007 to 2009, MTB, well  
12 knowing that J.F. was a U.S. customer, allowed J.F. to hold U.S.  
13 securities without a Form W-8BEN in the account file and without  
14 withholding 28% of the proceeds of the securities or freezing  
15 the account, as required by the 2001 MTB QI Agreement with the  
16 IRS.

17 U.S. Customer R.S.:

18 39. Overt Act No. 21: On or about April 2, 2001, MTB  
19 bankers opened an account for R.S., a known U.S. Customer, under  
20 the code name "Lulu."

21 40. Overt Act No. 22: On or about May 7, 2011, MTB  
22 bankers removed R.S.'s U.S. address from the account at R.S.'s  
23 request and replaced the address with an Israeli address.

24 U.S. Customer L.D.:

25 41. Overt Act No. 23: On or about November 25, 1999, MTB  
bankers opened an account for L.D., a known U.S. customer, in  
the name of an offshore entity incorporated in the British  
Virgin Islands.



1           42. Overt Act No. 24: On or about November 25, 1999,  
2 account-opening documents were forwarded to the MTB legal  
3 department for approval.

4           43. Overt Act No. 25: Until at least December 2013, MTB,  
5 well knowing that L.D. was a U.S. customer, permitted L.D. to  
6 trade in U.S. securities without withholding 28% of the proceeds  
7 of the trades or freezing the account, as required by the 2001  
8 MTB QI Agreement with the IRS.

9           U.S. Customer S.M.:

10           44. Overt Act No. 26: On or about August 16, 2006, MTB  
11 bankers opened an account for S.M., a known U.S. customer, in  
12 the name of a Nevis offshore company.

13           45. Overt Act No. 27: On or about August 30, 2006, MTB  
14 bankers, well knowing that S.M. was a controlling shareholder of  
15 the entity account holder, accepted an attorney's "Declaration  
16 with Respect to Beneficiaries in an Account" that stated that  
17 there were no beneficiaries of the account other than the  
18 offshore corporation.

19           Mizrahi Trust Company:

20           U.S. Customer S.E.:

21           46. Overt Act No. 28: On or about July 26, 2005, an MTB  
22 banker opened an account for S.E., a known U.S. customer, in the  
23 name of Mizrahi Trust Company, with the named beneficial owner a  
24 Nevis offshore entity created by Israeli attorney Kantor.

25           47. Overt Act No. 29: On or about May 11, 2006, MTB  
granted S.E. a \$550,000 line of credit in the name of Mizrahi  
Trust Company in order to trade securities.

1           48. Overt Act No. 30: In or about September 2008, a MTB  
2 banker closed the account and transferred all of the money to  
3 bank accounts in China.

4 MTB-Cayman Islands:

5 U.S. Customer A.C.

6           49. Overt Act No. 31: On or about January 6, 1995, MTB  
7 assisted U.S. Customer A.C. in creating a foreign nominee entity  
8 incorporated in the British Virgin Islands.

9           50. Overt Act No. 32: In or around late 2002 or early  
10 2003, MTB contacted U.S. Customer A.C. in Los Angeles,  
11 California, and informed A.C. that he needed to close his MTB  
12 account because it was risky to maintain an account in the name  
13 of a British Virgin Islands entity.

14           51. Overt Act No. 33: On or about February 28, 2003, an  
15 MTB banker assisted U.S. Customer A.C. in opening a new bank  
16 account in the name of a Cayman Island entity at MTB-Cayman  
17 Islands.

18           52. Overt Act No. 34: On or about April 8, 2003, in Los  
19 Angeles, California, an MTB banker provided U.S. Customer A.C. a  
20 letter instructing MTB-Cayman Islands to transfer all the  
21 existing funds in A.C.'s old MTB-Cayman Islands account to  
22 A.C.'s new MTB-Cayman Islands account, and to then close the old  
23 account.

24           53. Overt Act No. 35: From in or about 2002 through in or  
25 about 2007, U.S. Customer A.C. met MTB Roving Representative  
Roth once or twice a year in Los Angeles, California to review  
bank statements relating to A.C.'s undeclared accounts at MTB-  
Cayman Islands.

1           54. Overt Act No. 36: Between on or about January 19,  
2 2006 and on or about January 4, 2008, in Los Angeles,  
3 California, MTB-Los Angeles approved three back-to-back loans  
4 for A.C. totaling over \$3.3 million.

5           55. Overt Act No. 37: On or about October 14, 2009, in  
6 Los Angeles, California, U.S. Customer A.C. filed a U.S.  
7 Individual Income Tax Return, Form 1040, for tax year 2008 with  
8 the IRS that failed to report the existence of, and related  
9 income from, A.C.'s undeclared bank accounts at defendant MTB-  
Cayman Islands.

10 MTB-UMBS:

11 UMBS Customer #1

12           56. Overt Act No. 38: On or about April 8, 2010, a UMBS  
13 banker opened an account with a Russian passport with transfers  
14 from an account previously opened by the same client using a  
15 U.S. passport.

16           57. Overt Act No. 39: On or about April 9, 2010, after the  
17 transfers were made to the account opened with a Russian  
18 passport, an MTB banker closed the U.S. related account opened  
19 with a U.S. passport.

20           58. Overt Act No. 40: On or about April 8, 2010, a UMBS  
21 banker accepted a form from the U.S. person, who opened the  
22 account with a Russian passport, stating that the customer was  
23 not a U.S. person even though the UMBS banker knew that the  
account holder was a U.S. person.

24           59. Overt Act No. 41: On or about April 8, 2010, a UMBS  
25 banker noted in the file that the account holder was going to  
renew his Russian passport because of the "U.S. problem."

1 UMBS Customer #2

2 60. Overt Act No. 42: On or about June 22, 2010, a UMBS  
3 banker opened a non-U.S. related account with transfers from a  
4 U.S. related account.

5 61. Overt Act No. 43: On or about June 23, 2010, a UMBS  
6 banker closed the U.S. related account that transferred the  
7 money to the non-U.S. related account.

8 62. Overt Act No. 44: On or about June 22, 2010, a UMBS  
9 banker accepted documents from the U.S. person, who transferred  
10 the money from the U.S. related account to the non-U.S. related  
11 account, appointing the U.S. person to be the Power of Attorney  
on the non-U.S. related account.

12 UMBS Customer #3

13 63. Overt Act No. 45: On or about June 22, 2010, a UMBS  
14 banker noted in the account file that the account holder wanted  
15 to break U.S. contact and to transfer all funds to a new account  
16 and close the old one.

17 Coded e-mails

18 64. Overt Act No. 46: Between on or about October 4, 2011  
19 and January 23, 2012, a UMBS banker exchanged multiple e-mails  
20 with a U.S. customer using the code words "shoes" to refer to  
21 offshore funds and the phrase "shoes in the right box" to refer  
to transferring offshore funds to another account.

22 65. Overt Act No. 47: On or about January 22, 2010, a  
23 UMBS banker sent an e-mail to another MTB banker stating  
24 "[c]ould you contact the gentleman again who "lives with you"  
25


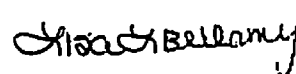
1 and "does not have a passport"? We are expecting a package of  
2 70 Mickey Mice for him at the end of the week."  
3  
4

5 TRACY L. WILKISON  
6 Attorney for United States  
7 Acting Under Authority Conferred  
8 By 28 U.S.C. Section 515

8 

9 LAWRENCE S. MIDDLETON  
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16 MELISSA S. GRINBERG  
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**STATEMENT OF FACTS**

The conduct discussed in this Statement of Facts occurred from in or about 2002 through in or about 2012.

**ENTITIES INVOLVED IN THE OFFENSE**

1. Mizrahi-Tefahot Bank Limited (MTB) was a public company, registered with the Registrar of Companies in Israel and traded on the Tel-Aviv Stock Exchange. MTB was one of Israel's largest banks. Throughout the relevant period, MTB had approximately 4400 employees, the majority working in its consumer lending and retail banking operations within Israel. MTB was regulated by the Bank of Israel. As of December 31, 2017, MTB had approximately \$69.1 billion in assets.

A. The Los Angeles, California, branch of MTB (MTB-LA) was established in 1981 and was regulated by the Federal Deposit Insurance Corporation (FDIC), the California Department of Business Organizations, Division of Financial Institutions, and the Bank of Israel. A branch manager in Los Angeles, California, operated MTB-LA, which throughout the relevant period had no more than thirty-two (32) employees.

B. The Cayman Islands branch of MTB (MTB-Cayman Islands) was established in 1978 and was regulated by the Cayman Islands Monetary Authority (CIMA) and the Bank of Israel. The back office operations of the branch were handled by the Cayman Islands Operations Unit in Tel Aviv, Israel, overseen by a manager and no more than three (3) employees. In 2014, MTB-Cayman Islands surrendered its license to CIMA and was closed.

1 C. The London branch of MTB (MTB-London) was established  
2 in 1983 and was regulated by the Prudential Regulation  
3 Authority (PRA) of the Bank of England, the UK  
4 Financial Conduct Authority (FCA), and the Bank of  
5 Israel. MTB-London was operated by a branch manager in  
6 London, England, and had approximately forty-five (45)  
7 employees during the relevant period.

8 2. The Trust Company of Mizrahi Bank (Mizrahi Trust  
9 Company) was a subsidiary fully owned by MTB. Mizrahi Trust  
10 Company was regulated by the Bank of Israel. Mizrahi Trust  
11 Company was founded in 1964. It had approximately eleven (11)  
12 employees during the relevant period.

13 3. United Mizrahi Bank (Switzerland) Ltd. (UMBS),  
14 established in 1980, was a subsidiary fully owned by a subsidiary  
15 holding company of MTB, and operated as one branch in Zurich,  
16 Switzerland. It had approximately fifteen (15) employees during  
17 the relevant period.

18 4. MTB, Mizrahi Trust Company, and UMBS provided private  
19 banking, wealth management, and other related financial services  
20 to high-net-worth individuals and entities around the world,  
21 including citizens, resident aliens, and permanent residents of  
22 the United States located in the Central District of California  
23 and elsewhere.

24 5. MTB, Mizrahi Trust Company, and UMBS were responsible  
25 under U.S. law for the acts and omissions of their employees as  
26 described in this Statement of Facts.

27

28

1                                   **U.S. INCOME TAX AND REPORTING OBLIGATIONS**

2           6.    U.S. citizens, resident aliens, and legal permanent  
3 residents had an obligation to report all income earned from  
4 foreign bank accounts on their tax returns and to pay the taxes  
5 due on that income. Since at least 1980, U.S. citizens, resident  
6 aliens, and legal permanent residents had an obligation to report  
7 to the Internal Revenue Service (IRS) on Schedule B of a U.S.  
8 Individual Income Tax Return, Form 1040, whether they had a  
9 financial interest in, or signature authority over, a financial  
10 account in a foreign country in a particular year by checking  
11 "Yes" or "No" in the appropriate box and identifying the country  
12 where the account was maintained.

13           7.    Since 1970, U.S. persons (citizens, residents, and  
14 entities) who had a financial interest in, or signature authority  
15 over, one or more financial accounts in a foreign country with an  
16 aggregate value of more than \$10,000 at any time during a  
17 particular year were required to file a yearly Report of Foreign  
18 Bank and Financial Accounts (FBAR) with the Department of the  
19 Treasury.

20           8.    An IRS Form W-8BEN, Certificate of Foreign Status of  
21 Beneficial Owner for United States Tax Withholding and Reporting,  
22 was used by a non-U.S. person to establish foreign status and  
23 beneficial ownership, and to claim the benefits of exemption or  
24 reduction of tax withholding as a resident of a foreign country  
25 with which the United States has an income tax treaty. U.S.  
26 citizens and U.S. residents were not eligible to file a Form W8-  
27 BEN.



1 9. An IRS Form W-9, Request for Taxpayer Identification  
2 Number and Certification, was used by a U.S. person to provide a  
3 correct Taxpayer Identification Number to a financial institution  
4 required to report to the IRS interest, dividends, and other  
5 interest earned.

6 **QUALIFIED INTERMEDIARY AGREEMENTS**

7 10. Beginning in 2000, MTB implemented KYC policies and  
8 procedures designed to comply with Israel's AML, KYC and Anti-  
9 Terrorism laws and regulations. The KYC procedures required MTB  
10 to identify and document the true beneficial owner of a bank  
11 account, enter the details of identification into a computerized  
12 database, implement an account opening approval process for high-  
13 risk accounts, maintain customer files with proper KYC  
14 documentation, and meet its reporting obligations per Israeli  
15 laws and regulations.

16 11. On January 21, 2001, defendant UMBS entered into a  
17 Qualified Intermediary (QI) Agreement with the IRS.

18 12. On June 6, 2001, defendant MTB entered into a QI  
19 Agreement with the IRS. MTB applied its existing KYC policies in  
20 its QI Agreement with the IRS. MTB advised its employees that,  
21 "It is of great importance to stringently follow these provisions  
22 since they constitute the basis to granting 'Qualified  
23 Intermediary' status to Bank Mizrahi on behalf of the American  
24 Internal Revenue Service."

25 13. Additionally, Mizrahi Trust Company entered into a  
26 companion Private Arrangement Intermediary (PAI) Agreement with  
27 MTB, whereby Mizrahi Trust Company agreed to implement and comply  
28 with the same documentary procedures as MTB and be subject to the

1 same review as MTB. MTB, as the QI, retained all of the  
2 withholding and documentary responsibility for payments made to  
3 Mizrahi Trust Company's customers.

4 14. The QI and PAI Agreements required defendants MTB,  
5 UMBS, and Mizrahi Trust Company to implement certain documentary  
6 procedures to identify customers who invested in U.S. securities,  
7 distinguish between customers who were U.S. persons and non-U.S.  
8 persons, obtain the proper IRS Forms W8-BEN and W-9 (or  
9 equivalent forms) from customers, and properly withhold U.S.  
10 taxes.

11 15. The purpose of the QI and PAI Agreements was to allow  
12 MTB, UMBS, and Mizrahi Trust Company to assume responsibilities  
13 for the withholding of U.S. federal income taxes on gross income  
14 from U.S. sources, including interest, dividends, royalties and  
15 capital gains on accounts that held U.S. securities. The  
16 Agreements required MTB, UMBS, and Mizrahi Trust Company to: (i)  
17 implement adequate procedures, accounting systems, and internal  
18 controls to ensure compliance; (ii) document any accounts that  
19 were lacking the proper information in the account files; (iii)  
20 timely file the proper forms with the IRS including information  
21 about the account holders; and (iv) report all accounts that  
22 could generate reportable payments to the IRS.

23 16. MTB (and by adoption Mizrahi Trust Company) and UMBS  
24 established bank policies and procedures for complying with the  
25 QI and PAI Agreements. These policies required U.S. customers,  
26 who held U.S. securities in MTB and UMBS accounts, to either sign  
27 an IRS Form W-9 or authorize MTB or UMBS to withhold and remit  
28

1 31% of any income received from U.S. securities dividends,  
2 interest, and gains to the IRS.

3 17. These bank policies also required foreign corporations,  
4 holding U.S. securities, to sign an IRS Form W-8BEN to establish  
5 both the foreign status and beneficial owner of the account, and  
6 to claim an exemption or income tax treaty benefits for income  
7 received from U.S. securities dividends, interest and gains.  
8 Existing U.S. customers and foreign corporations who refused to  
9 sign IRS Forms W-9 or W-8BEN were to have their accounts blocked  
10 from transacting in U.S. securities by January 1, 2001.

11 18. These policies further barred the opening of any new  
12 accounts holding U.S. securities if the U.S. customer or foreign  
13 corporation refused to sign an IRS Form W-9 or Form W-8BEN.

14 19. Despite MTB policy and procedures, for years following  
15 the QI and PAI Agreements, certain MTB employees failed to  
16 identify customers holding U.S. securities as U.S. persons, and  
17 repeatedly failed to fully comply with MTB KYC policy requiring  
18 proper documentation for opening and maintaining accounts holding  
19 U.S. securities. MTB employees also failed to block in a timely  
20 manner U.S. securities-related activity in accounts for U.S.  
21 customers and foreign corporations, who refused to sign an IRS  
22 Form W-9 or W-8BEN.

23 20. Even after entering into the QI and PAI Agreements in  
24 2000 and 2001, MTB, UMBS, and Mizrahi Trust Company employees  
25 enabled certain U.S. customers to transfer assets from their  
26 individual accounts at MTB and UMBS to accounts in the name of  
27 foreign nominee corporations and avoid filing the proper IRS Form  
28 W-9. Instead, the foreign nominee corporation submitted an IRS

1 Form W-8BEN, claiming the beneficial owner of the account was an  
2 exempt foreign person not subject to U.S. tax withholdings.

3 **THE OFFENSE CONDUCT - OVERVIEW**

4 21. Certain private bankers, relationship managers, and  
5 other employees of MTB Entities with similar levels of  
6 responsibility acted in disregard of MTB's policies and  
7 procedures and assisted U.S. customer-taxpayers in concealing  
8 their ownership and control of assets and funds held in MTB and  
9 UMBS bank accounts, which enabled those U.S. taxpayers to evade  
10 their U.S. tax obligations. MTB and UMBS are accepting  
11 responsibility under U.S. *respondeat superior* law for the  
12 following actions of these employees:

- 13 a. Assisted and referred U.S. customers to professionals to  
14 open and maintain accounts at MTB and UMBS in the names of  
15 pseudonyms, code names, Mizrahi Trust Company, and foreign  
16 nominee entities in offshore locations, such as St. Kitts  
17 and Nevis (Nevis), Liberia, Turks & Caicos, and the British  
18 Virgin Islands (BVI), and by doing so, enabled those U.S.  
19 taxpayers to conceal their beneficial ownership in the  
20 accounts and maintain undeclared accounts at MTB and UMBS;
- 21 b. Opened and maintained customer accounts at MTB and UMBS for  
22 known U.S. customers using non-U.S. forms of identification,  
23 and in some instances failed to maintain copies of the  
24 required identification and account opening documents, which  
25 enabled U.S. taxpayers to avoid being identified as U.S.  
26 persons in violation of MTB internal bank policy and QI  
27 Agreement with the IRS;

1 c. Entered into "hold mail" agreements with U.S. customers  
2 whereby MTB and UMBS employees held bank statements and  
3 other account-related mail in their offices in Israel and  
4 Switzerland, and by doing so enabled documents reflecting  
5 the existence of the offshore accounts to remain outside the  
6 U.S.;

7 d. Communicated with U.S. customers holding undeclared UMBS  
8 accounts using coded language and excluded the names of U.S.  
9 customers in e-mail communications regarding UMBS customers  
10 in order to preserve the secrecy of those accounts;

11 e. Until 2008, provided U.S. customers at MTB-Los Angeles  
12 access to and use of their funds held in non-U.S. MTB and  
13 UMBS accounts through back-to-back loans, while excluding  
14 any record of the U.S. customer's offshore pledge accounts  
15 at MTB or UMBS, which allowed certain U.S. customers to take  
16 advantage of Israeli and Swiss privacy laws and not disclose  
17 their pledge accounts to U.S. tax authorities;

18 f. Failed to adhere to the requirements of MTB's QI Agreement  
19 by (i) permitting U.S. customers who had not provided MTB  
20 with the proper IRS Forms W-8BEN and/or W-9 to continue  
21 trading in accounts holding U.S. securities, (ii)  
22 transferring assets to foreign entity accounts controlled by  
23 U.S. customers to avoid the proper QI reporting  
24 requirements, and (iii) failing to timely address compliance  
25 deficiencies in U.S. customer accounts holding U.S.  
26 securities;

27 g. Until 2008, periodically sent "Roving Representatives," one  
28 from MTB and one from UMBS, to the United States to solicit

1 new customers and to meet with existing U.S. customers in  
2 Los Angeles, California, New York, and other locations in  
3 the U.S. for the purposes of opening accounts and  
4 surreptitiously reviewing and managing existing customers'  
5 offshore accounts by, among other things, redacting the  
6 names of both the bank and the U.S. customers from the bank  
7 statements under review.

#### 8 **U.S. CUSTOMER ACCOUNT OPENINGS**

9  
10 22. Certain MTB employees assisted U.S. customers in  
11 concealing their accounts and identities from U.S. tax  
12 authorities by utilizing certain account features that they knew,  
13 or should have known, would assist U.S. customers in maintaining  
14 undeclared accounts. For example, MTB employees opened accounts  
15 for U.S. customers using pseudonyms or code names; opened  
16 accounts in the name of Mizrahi Trust Company; opened accounts  
17 in the names of offshore companies and entities that purported to  
18 be non-U.S. persons exempt from U.S. tax laws; advised U.S.  
19 customers to avoid investing in U.S. securities to avoid  
20 disclosure of their account information to U.S. Tax Authorities;  
21 and failed to adhere to MTB's Know Your Customer (KYC) policy by  
22 not keeping copies of passports or account opening documents in  
23 account files.

24 23. In 2010 and 2011, a UMBS employee knowingly assisted  
25 U.S. customers in maintaining their anonymity from the IRS by:  
26 (1) transferring U.S. customer funds to a non-U.S. account in the  
27 same U.S. customer's name but using solely a non-U.S. passport;  
28 (2) transferring U.S. customer funds to a non-U.S. account where

1 the U.S. customer then had power of attorney authority over the  
2 account; (3) enabling a U.S. customer to open an account with a  
3 non-U.S. beneficial owner, in the name of a foreign nominee  
4 entity, and where the U.S. customer had power of attorney;  
5 (4) communicating with a U.S. customer in code by referring to  
6 the transfer of that U.S. customer's funds as sending the "shoes"  
7 to the "right box."

8 24. In 2012 and later, an MTB employee knowingly assisted a  
9 few U.S. customers with maintaining their anonymity from the IRS  
10 by, for example, (1) advising a customer seeking to transfer  
11 funds to an MTB account in the name of a family member, following  
12 communications from the customer that he sought to effectuate  
13 such a transfer "due to limitations on U.S. residents"; (2)  
14 informing an existing U.S. citizen and Israeli resident client  
15 that he could sign on a W-8 form rather than a W-9; and (3)  
16 assisting the transfer of funds from a jointly owned MTB account  
17 in the name of a U.S./non-U.S. couple to an individually owned  
18 account in the name of solely the non-U.S. spouse thereby  
19 enabling the couple to avoid payment of taxes to the IRS.

#### 20 **BACK-TO-BACK LOANS**

21 25. Until 2008, MTB, through its employees, agreed to  
22 offer, market and service back-to-back loans that U.S. taxpayers  
23 used to access their funds in the offshore accounts and continue  
24 to conceal their assets and evade their U.S. tax obligations.

25 26. A "back-to-back loan" was a loan issued by MTB-LA that  
26 was secured or collateralized by funds held in an account at MTB  
27 (pledge account). The loan applicant (borrower) at MTB-LA and the  
28 owner of the pledge account at MTB were the same person. MTB

1 employees who prepared the loan documents and approved the back-  
2 to-back loan were aware in some cases that the borrower and owner  
3 of the pledge account were the same person.

4 27. MTB paid interest on the pledged accounts that was  
5 generally above the market rate until at least 2004 and continued  
6 this practice for select customers until at least 2008. MTB-LA  
7 issued loans to the borrower that charged interest rates 1% to 2%  
8 per annum above the interest paid on the pledged account.

9 28. In 2002, MTB requested legal advice regarding the use  
10 of back-to-back loans by U.S. customers, specifically, "whether  
11 such loans raise any tax avoidance concerns under United States  
12 law." The legal advice stated that both the loan interest rate  
13 and interest earned on the pledge account must be set at  
14 established market rates, and that the back-to-back loans would  
15 not be viewed as being used for tax avoidance provided the  
16 borrower took into account interest paid on the pledge account  
17 for United States tax purposes. MTB neither distributed this  
18 legal advice to MTB-LA employees, who managed or serviced back-  
19 to-back loans that offered above-market interest rates, nor to  
20 MTB employees in Israel, who serviced or managed the pledge  
21 accounts that offered above-market interest rates.

22 29. In 2004, an audit found that MTB Cayman Islands'  
23 practice of granting back-to-back loans to Single Purpose Vehicle  
24 Companies ("SPVs") was so deficient that the bank assumed  
25 additional risks "that may expose it to ... potential reputational  
26 damage." The 2004 audit referring to the years 2002-2003  
27 examined MTB-Cayman Islands' documentation located in the  
28 Operations Unit in Tel Aviv for granting loans for customers, and



1 found "no identifying details of the owners of companies  
2 receiving back-to-back loans" and no "evidence that the Cayman  
3 Branch took measures to determine the real identity of the  
4 account holders and the beneficiaries responsible for it." The  
5 audit report further opined that payment of interest on a foreign  
6 currency deposit at the rate of Libor +3% per annum while  
7 interbank interest at the time of the deposits was at the rate of  
8 Libor represented "an exceptional payment lacking any connection  
9 to the market interest on deposits of the same type." This  
10 deficiency was corrected in 2004.

11 30. MTB-LA kept no documentation, account records, or  
12 information that identified the owner of the pledged account.  
13 Likewise, MTB did not identify the person who owned the pledged  
14 account by name or account number. For example, the "SWIFT  
15 message" that confirmed the collateral account for the back- to-  
16 back loan would generally refer to the pledged account by an  
17 unassociated reference number and would not identify either the  
18 name of the pledged account or the beneficial owner of the  
19 pledged account.

20 31. MTB required very little financial information from the  
21 borrower applying for the back-to-back loan. U.S. customers  
22 submitted personal financial statements that did not disclose the  
23 existence of their foreign bank accounts, including the pledged  
24 account, and often submitted their personal tax returns to MTB-LA  
25 that omitted ownership of the pledged account. Likewise, MTB-LA  
26 loan officers prepared memoranda for MTB-LA's credit committee  
27 that did not identify the pledged account. Instead, the credit  
28 memoranda referenced an "off balance sheet" deposit or pledge;

1 noted that the U.S. customer had a "positive history" with the  
2 bank; and/or only identified the pledged account for the loan as  
3 "pledged collateral in UMTB system."

4 32. In 2007, the Federal Deposit Insurance Corporation  
5 (FDIC) conducted a review of MTB-LA's compliance with the Bank  
6 Secrecy Act (BSA), including the branch's Anti-Money Laundering  
7 program. In August 2008, the FDIC issued a Cease and Desist Order  
8 requiring MTB-LA not to make or renew any back-to-back loans or  
9 any other similar extensions of credit unless MTB-LA reviewed and  
10 maintained copies of all records concerning collateral, including  
11 records documenting the owner of a foreign pledged account. MTB  
12 ceased offering back-to-back loans to U.S. customers in 2008 and  
13 called all existing back- to-back loans.

14 33. MTB and UMBS employees enabled U.S. customers to  
15 conceal their foreign accounts and enabled U.S. customers to  
16 access those accounts in the U.S. through back- to-back loans.  
17 Five of MTB's U.S. customers pleaded guilty in 2013 and 2014 to  
18 U.S. felony criminal tax charges, which in the case of four of  
19 the five included admissions to conspiracy to defraud the IRS and  
20 filing false federal income tax returns. Each of the five U.S.  
21 customers who pleaded guilty opened an account in the name of a  
22 foreign nominee entity in order to conceal the account from the  
23 U.S. government, and each of the U.S. customers accessed those  
24 funds by taking out a back-to-back loan at MTB-Los Angeles using  
25 his or her MTB foreign account as collateral. All five of the  
26 U.S. customers, who pleaded guilty to tax crimes, met with MTB  
27 Roving Representative Roth, and three of the U.S. customers'  
28 entities were created by Israeli attorney Kantor.

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**MTB'S COMPLIANCE PRACTICE**

34. Based on audit reports, MTB's failure to fully comply with its KYC policies and procedures persisted for the entirety of the relevant time period from 2002 through 2012.

35. During the relevant period, from 2002 through 2012, various audits of all three entities, MTB, Mizrahi Trust Company, and UMBS, disclosed numerous and persistent deficiencies regarding compliance with both KYC and Anti-Money Laundering policies and procedures.

36. In 2004, an audit found that the compliance failures by MTB-Cayman Islands were such that it became necessary to consider whether to discontinue operations in MTB-Cayman Islands due to the deficiencies and the exposure to the risks inherent to its activity.

37. In 2005, an audit found that Mizrahi Trust Company did not take sufficient steps required for preparing for the implementation of the provisions of the Bank of Israel's Anti-Money Laundering Order and therefore "blatantly violated" the legal obligations imposed upon it by the law, the order, and the regulations. The audit found that Mizrahi Trust Company made no decisions of any kind on the issue. An audit report found that "[Mizrahi Trust Company's] insufficient investment in manpower in the money laundering prohibition area is the cause for the failings."

38. In 2009, an audit found that the MTB-Cayman Island's computer system did not block U.S. securities activity by corporations that did not execute the required IRS Form W8-BEN, thus enabling a few customers trading in U.S. securities to

1 continue without the required documentation required by the terms  
2 of the QI.

3 39. In 2010, an audit of MTB-Cayman Islands noted that of  
4 paramount concern is MTB-Cayman Islands failure to correct  
5 irregularities with the identity of the beneficiary in private  
6 accounts and the controlling shareholder in corporate accounts  
7 that had been flagged as an issue previously in June 2008.

8 40. In 2012, the Bank of Israel imposed a \$975,000 civil  
9 money penalty against MTB for AML compliance failures.

10 41. Another audit covering the period 2007 to 2010 noted  
11 MTB's compliance failures in concluding that, due to the volume  
12 and nature of the deficiencies, there existed problems with MTB's  
13 corporate culture and sensitivity to risks inherent in the  
14 subject of Anti-Money Laundering.

15 42. These compliance failures by certain MTB employees,  
16 which enabled U.S. customers to avoid their U.S. tax obligations,  
17 are illustrated in the cases detailed below. All of the above  
18 compliance deficiencies either have been remediated or are in the  
19 process of being remediated in the normal course and ongoing  
20 compliance actions of MTB.

21 43. In 1989, an MTB employee opened an account for a U.S.  
22 customer in the name of a foreign corporation incorporated in  
23 Liberia, the incorporation of which was transferred to the  
24 Marshall Islands in 2001. The U.S. customer had a longstanding  
25 pre-existing relationship with MTB and this account had a year-  
26 end high value of approximately \$75 million. MTB employees  
27 permitted the account to trade in U.S. securities, in violation  
28 of the QIA, despite numerous failed attempts as late as 2010 to

1 have the client complete an IRS Form W-8BEN or W-9, during which  
2 they noted that the "client refuses to sign."

3 44. In 2004, an MTB employee advised a longstanding U.S.  
4 customer that it was dangerous to continue to hold funds in his  
5 current undeclared account at MTB-Cayman Islands in the name of a  
6 BVI entity due to increased scrutiny. The MTB employee  
7 suggested transferring the funds to a different entity and  
8 assisted the U.S. customer with opening a new, hold-mail account  
9 at MTB-Cayman Islands in the name of a Turks and Caicos Island  
10 entity. One to two times per year, the U.S. customer received  
11 visits at his office in the United States from MTB Roving  
12 Representative Roth to review his MTB-Cayman Islands bank  
13 statements.

14 45. Even after the indictment of Roth and Kantor and the  
15 five guilty pleas of MTB U.S. customers, MTB took insufficient  
16 steps to investigate accounts managed by Roth and Kantor. MTB  
17 only reviewed the account that appeared in Roth's indictment to  
18 determine whether to take corrective action. MTB did not audit  
19 the entirety of accounts with which Roth and Kantor were  
20 associated.

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