

MEMORANDUM OF UNDERSTANDING

With regard to the Agreement Between Switzerland and the United States of America for Cooperation to Facilitate the Implementation of FATCA (hereinafter the “Agreement”) signed on 14 February 2013 in Bern, the representatives of Switzerland and the United States of America wish to confirm their understanding of the following:

1. With regard to subparagraph (1)(23) of Article 2 of the Agreement, defining an “FFI Agreement,” and subparagraph (1)(a) of Article 3 of the Agreement, it is understood that the scope of requirements of an FFI Agreement will relate to (A) obtaining such information regarding account holders as is necessary to determine whether the accounts held by a Reporting Swiss Financial Institution are U.S. accounts; (B) complying with such verification and due diligence procedures as may be required by the applicable U.S. Treasury Regulations and the Agreement relating to the identification of U.S. accounts; and (C) reporting on an annual basis the information described in relevant U.S. Treasury Regulations about the account; (D) deducting and withholding on payments to recalcitrant account holders and nonparticipating financial institutions as prescribed by the relevant U.S. Treasury Regulations, subject to the terms and conditions of the Agreement; (E) closing accounts of recalcitrant account holders as prescribed by the relevant U.S. Treasury Regulations, subject to the terms and conditions of the Agreement. It is understood that the terms of such FFI Agreement that relate to minor and administrative errors will not be inconsistent with paragraph 1 of Article 11 of the Agreement. It is further understood that paragraph 2 of Article 11 of the Agreement concerning the verification and enforcement of an FFI Agreement describes the procedures related to significant non-compliance.
2. With respect to the reporting and withholding obligations imposed in the FFI Agreement and in the Agreement, it is understood that relevant U.S. Treasury Regulations coordinate the obligations of reporting and withholding under chapter 3 and 61 of the Internal Revenue Code with the obligations to report and withhold under chapter 4 of the Internal Revenue Code to avoid duplicative withholding and reporting.
3. The Parties confirm that the discussions leading to and the result reflected in Annex II of the Agreement are meant to substitute the self-certification process required from Non-Reporting Swiss Financial Institutions identified as such in Annex II of the Agreement and in any case from exempt beneficial owners defined in that Annex. Therefore, with respect to subparagraph (1)(16) of Article 2 of the Agreement, it is understood that the existence of an intergovernmental agreement in prescribing the self-certification requirements for Non-Reporting Swiss Financial Institutions is duly reflected in the form of self-certification for exempt beneficial owners or related withholding certificates to the extent that

such certificates solely relate to withholding under Chapter 4 of the Internal Revenue Code.

4. It is understood that Swiss Financial Institutions may apply definitions in applicable U.S. Treasury Regulations in lieu of corresponding definitions in the Agreement, provided that such application would not frustrate the purposes of the Agreement. It is further understood that the purposes of the Agreement are generally those set forth in Article 1 of the Agreement.

This Memorandum of Understanding becomes operative on the date of the entry into force of the Agreement. The Parties to the Agreement confirm their understanding that any outstanding issue can lead to further consultations.

DONE at Washington in duplicate, this seventh day of June, 2013, in the English and German languages, each text being equally authentic.

FOR SWITZERLAND:

FOR THE UNITED STATES
OF AMERICA:

Manuel Sager

Mark J. Mazur