

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60033-CR-COHN

UNITED STATES OF AMERICA

vs.

UBS AG

Defendant.

DEFERRED PROSECUTION AGREEMENT

The United States Department of Justice Tax Division and the United States Attorney's Office for the Southern District of Florida (the "Government") and the defendant UBS AG ("UBS"), by its Group General Counsel and undersigned attorneys, pursuant to the authority granted to them by its Board of Directors in the form of a Board Resolution, attached hereto as Exhibit A, hereby enter into this Deferred Prosecution Agreement (the "Agreement").

The Criminal Information

1. UBS will waive indictment and consent to the filing of a one-count Information (the "Information") in the United States District Court for the Southern District of Florida (the "Court") charging UBS with participating in a conspiracy to defraud the United States and its agency the Internal Revenue Service ("IRS") in violation of 18 U.S.C. § 371. A copy of the Information is attached hereto as Exhibit B.

Acceptance of Responsibility for Violation of Law

2. UBS acknowledges and accepts that, as set forth in the Statement of Facts, attached hereto as Exhibit C:

Beginning in 2000 and continuing until 2007, UBS, through certain private bankers and managers in the United States cross-border business, participated in a scheme to defraud the United States and its agency, the IRS, by actively assisting or otherwise facilitating a number of United States individual taxpayers in establishing accounts at UBS in a manner designed to conceal the United States taxpayers' ownership or beneficial interest in these accounts. In this regard, these private bankers and managers facilitated the creation of accounts in the names of offshore companies, allowing United States taxpayers to evade reporting requirements and to trade in securities as well as other financial transactions (including making loans for the benefit of, or other asset transfers directed by, the United States taxpayers, and using credit or debit cards linked to the offshore company accounts).

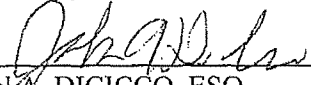
In connection with the establishment of these offshore company accounts, UBS private bankers and managers accepted and included in UBS's account records IRS Forms W-8BEN (or UBS's substitute forms) provided by the directors of the offshore companies which represented under penalty of perjury that these companies were the beneficial owners, for United States federal income tax purposes, of the assets in the UBS accounts. In certain cases, the IRS Forms W-8BEN (or UBS's substitute forms) were false or misleading in that the United States taxpayer who owned the offshore company actually directed and controlled the management and disposition of the assets in the company accounts and/or otherwise functioned as the beneficial owner of the assets in disregard of the formalities of the purported corporate ownership.

Additionally, these private bankers and managers would actively assist or otherwise facilitate certain undeclared United States taxpayers, who these private bankers and managers knew or should have known were evading United States taxes, by meeting with these clients in the United States and communicating with them via United States jurisdictional means on a regular and recurring basis with respect to their UBS undeclared accounts. This enabled the United States clients to conceal from the IRS the active trading of securities held in these accounts and/or the making of payments and/or asset transfers to or from these accounts. Certain UBS executives and managers who knew of the conduct described in this paragraph continued to operate and expand the United States cross-border business because of its profitability. It was not until August 2007 that executives and managers made a decision to wind down the United States cross-border business. Executives and managers delayed this decision due to concerns that it would be costly, that it was not likely a third party buyer of the business could be found, and it could damage UBS's business reputation.

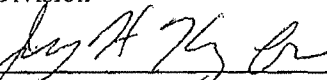
3. Pursuant to this Agreement, UBS agrees that it shall pay to the United States a total of \$780,000,000 (the "Settlement Amount"), which includes (i) \$380,000,000 in disgorgement of the profits from maintaining the United States cross-border business from 2001 through 2008, of which \$200,000,000 will be separately paid to the United States Securities and Exchange Commission (the "SEC") pursuant to a payment schedule set forth in the Consent Order and Final Judgment, and (ii) \$400,000,000 for: federal backup withholding tax required to be withheld by UBS with respect to the Disclosed Accounts for calendar years 2001 through 2008; interest and penalties; and restitution for unpaid taxes, together with interest thereon, for undeclared United States taxpayers who were actively assisted or facilitated by UBS private bankers who met with these clients in the United States and communicated with them via United States jurisdictional means on a regular and recurring basis as described in paragraph 4 of the Statement of Facts (as agreed to more fully in a separate letter between the IRS and UBS). In recognition of the current international financial crisis and after consultation with the Federal Reserve Bank of New York, the Government will forgo additional penalties. In addition to the \$200,000,000 to be paid to the SEC pursuant to the Consent Order and Final Judgment as noted above, the balance of the Settlement Amount shall be paid to DOJ/IRS in installments as follows: within 30 days of the Court's approval of this Agreement (the "Approval Date"), \$115,000,000; six months after the Approval Date, \$40,000,000; at the one-year anniversary of the Approval Date, \$180,000,000; and at the one and one-half year anniversary of the Approval Date, \$245,000,000. UBS shall have the option to accelerate all payments due under this Agreement. Further UBS has the option, as needed, at any time before the one and one-half year anniversary of the Approval Date, of extending the final payment by up to the four-year anniversary of the Approval Date by providing written notice to the Government.

27. This Agreement sets forth all of the terms of the Deferred Prosecution Agreement between UBS and the Government. No modifications or additions to this Agreement, in whole or in part, shall be valid unless they are set forth in writing and signed by the Government, UBS's attorneys, and a duly authorized representative of UBS.

Respectfully submitted,



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Acting Assistant Attorney General
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Tax Division



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MICHAEL P. BEN'ARY, ESQ.
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United States Attorney
Southern District of Florida

JEFFREY A. NEIMAN, ESQ.
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UBS AG
Defendant

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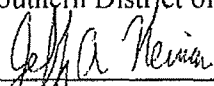
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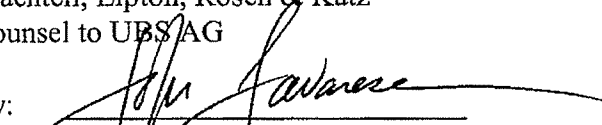
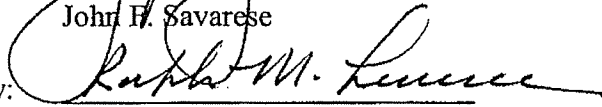
By: 
John H. Savarese
By: 
Ralph M. Levene

EXHIBIT C

**EXHIBIT C TO DEFERRED
PROSECUTION AGREEMENT**

STATEMENT OF FACTS

1. UBS AG, a corporation organized under the laws of Switzerland (“UBS”), directly and through its subsidiaries, operates a global financial services business. As one of the biggest banks in Switzerland and largest wealth managers in the world, UBS provides banking, wealth management, asset management and investment banking services, among other services, around the globe, including through branches located in the United States (including the Southern District of Florida).
2. Effective January 1, 2001, UBS entered into a Qualified Intermediary Agreement (the “QI Agreement”) with the Internal Revenue Service (“IRS”). The Qualified Intermediary (“QI”) regime provides a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution that acts as a QI with respect to customer accounts held by non-U.S. persons and by U.S. persons. The QI Agreement is designed to help ensure that non-U.S. persons are subject to the proper U.S. withholding tax rates and that U.S. persons are properly paying U.S. tax, in each case, with respect to U.S. securities held in an account with the QI. QI agreements were subject to a “documentation transition period” announced by the IRS in Notice 2001-4 (Jan. 8, 2001) that gave QIs until the end of 2002 to achieve “substantial compliance” with the provisions of the QI Agreement. The QI Agreement expressly recognizes that a non-U.S. financial institution such as UBS may be prohibited by foreign law, such as Swiss law, from disclosing an account holder’s name or other identifying information. In general, a QI subject to such foreign-law restrictions must request that its U.S. clients either (a) grant the QI authority to disclose the client’s identity or disclose himself by mandating the QI to provide an IRS Form W-9 completed by the account holder, or (b) grant the QI authority to sell all U.S. securities of the account holder (in the case of accounts opened before January 1, 2001) or to exclude all U.S. securities from the account (in the case of accounts opened on or after January 1, 2001). Following the effective date of the QI Agreement, a sale of U.S. securities, if any, held by a U.S. person who chose not to provide a QI with an IRS Form W-9 was subject to tax information reporting on an anonymous basis and backup withholding.
3. For some time, UBS has operated a U.S. cross-border business through which its private bankers have provided cross-border securities-related and investment advisory services to U.S.-resident private clients who maintained accounts at UBS in Switzerland and other locations outside the United States. UBS was not registered as a broker-dealer or an investment adviser pursuant to the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940, and the private bankers and managers engaged in this U.S. cross-border business were not affiliated with a registered broker-dealer or investment adviser. The Securities Exchange Act and Investment Advisers Act restricted the activities that UBS (and the private bankers and managers engaged in the U.S. cross-border business), absent

registration, could engage in with such U.S. private clients either while in the United States or by using U.S. jurisdictional means such as telephone, fax, mail or e-mail, including the provision of investment advice and the soliciting of securities orders. During the relevant time period from 2001 through 2007, UBS private bankers in this U.S. cross-border business traveled to the United States to meet with certain U.S. private clients, and communicated by telephone, fax, mail and/or e-mail with such U.S. private clients while those clients were in the United States. Certain of these U.S. clients had chosen not to provide UBS with an IRS Form W-9 with respect to their UBS accounts and thereby concealed such accounts from the IRS.

- 4.A. Beginning in 2000 and continuing until 2007, UBS, through certain private bankers and managers in the U.S. cross-border business, participated in a scheme to defraud the United States and its agency, the IRS, by actively assisting or otherwise facilitating a number of U.S. individual taxpayers in establishing accounts at UBS in a manner designed to conceal the U.S. taxpayers' ownership or beneficial interest in said accounts. In this regard, said private bankers and managers facilitated the creation of such accounts in the names of offshore companies, allowing such U.S. taxpayers to evade reporting requirements and to trade in securities as well as other financial transactions (including making loans for the benefit of, or other asset transfers directed by, the U.S. taxpayers, and using credit or debit cards linked to the offshore company accounts).
- 4.B. In connection with the establishment of such offshore company accounts, UBS private bankers and managers accepted and included in UBS's account records IRS Forms W-8BEN (or UBS's substitute forms) provided by the directors of the offshore companies which represented under penalty of perjury that such companies were the beneficial owners, for U.S. federal income tax purposes, of the assets in the UBS accounts. In certain cases, the IRS Forms W-8BEN (or UBS's substitute forms) were false or misleading in that the U.S. taxpayer who owned the offshore company actually directed and controlled the management and disposition of the assets in the company accounts and/or otherwise functioned as the beneficial owner of such assets in disregard of the formalities of the purported corporate ownership.
- 4.C. Additionally, said private bankers and managers would actively assist or otherwise facilitate certain undeclared U.S. taxpayers, who such private bankers and managers knew or should have known were evading United States taxes, by meeting with such clients in the United States and communicating with them via U.S. jurisdictional means on a regular and recurring basis with respect to their UBS undeclared accounts. This enabled the U.S. clients to conceal from the IRS the active trading of securities held in such accounts and/or the making of payments and/or asset transfers to or from such accounts. Certain UBS executives and managers who knew of the conduct described in this paragraph continued to operate and expand the U.S. cross-border business because of its profitability. It was not until August 2007 that executives and managers made a decision to wind down the U.S. cross-border business. Executives and managers delayed this decision due to concerns that it would be costly, that it was not likely a third party buyer of the business could be found, and it could damage UBS's business reputation.

5. In or about 2004, the UBS Wealth Management International business changed its compensation approach to take account of a number of factors, including net new money, return on assets, net revenue, direct costs and assets under management, with weightings varying depending on the particular geographic market involved. Thereafter, the managers of the U.S. cross-border business implemented this new compensation structure in a way that provided incentives for U.S. cross-border private bankers to expand the size of the U.S. cross-border business. This encouraged those private bankers to have increased contacts in the United States with U.S.-resident private clients via travel to the United States and contact with U.S. clients via telephone, fax, mail and/or e-mail.

The U.S. Cross-Border Business

6. U.S. private clients often visited their private bankers in Switzerland and otherwise communicated with their private bankers from outside the United States. However, during the relevant period, Swiss-based UBS private bankers also traveled to the United States to meet with certain of their U.S. private clients, including U.S. persons who were beneficial owners of offshore companies that maintained accounts at UBS. This U.S. cross-border business was serviced primarily from service desks located in Zurich, Geneva, and Lugano, which employed about 45 to 60 Swiss-based private bankers or client advisors who specialized in servicing U.S. clients. These private bankers traveled to the United States an average of two to three times per year, in trips that generally varied in duration from one to three weeks, and generally tried to meet with about three to five clients per day. An internal UBS document estimated that U.S. cross-border business private bankers had made approximately 3,800 visits with clients in the United States during 2004. In addition, while in Switzerland, these private bankers would communicate via telephone, fax, mail and/or e-mail with certain of their private clients in the United States about their account relationships, including on occasion to take securities transaction orders in respect of offshore company accounts. Private bankers in the U.S. cross-border business typically traveled to the United States with encrypted laptop computers to maintain client confidentiality and received training on how to avoid detection by U.S. authorities while traveling to the United States.
7. In response to concerns expressed in 2002 by some clients of the U.S. cross-border business regarding the effect of UBS's then-recent acquisition of U.S.-based brokerage firm PaineWebber on UBS's ability to keep client information confidential, UBS sought to reassure such clients that Swiss bank secrecy restrictions would continue to protect the confidentiality of their identities. Thus, on or about November 4, 2002, two managers in the U.S. cross-border business sent a form letter to U.S. clients of UBS, noting that UBS had been exposed to, and successfully challenged, attempts by U.S. authorities to assert jurisdiction over assets in accounts maintained abroad since it opened offices in the U.S. in 1939, and that the QI Agreement fully respected client confidentiality and thus UBS would be able to maintain the confidentiality of client information.
8. During the relevant period, UBS's U.S. cross-border business provided securities-related and investment advisory services to accounts of approximately 11,000 to approximately 14,000 U.S.-domiciled U.S. private clients who had chosen not to provide an IRS Form W-9 (or UBS's substitute form) to UBS or who were the underlying beneficial owners of

offshore companies that maintained accounts with UBS. The U.S. cross-border business generated approximately \$120 million - \$140 million in annual revenues for UBS and was relatively a very small part of UBS's global wealth management business: in 2007, for example, all of NAM (the business sector that included, among other businesses, the U.S. cross-border business) represented only approximately 0.3% of all client advisors; 0.7% of invested assets; 1.03% of clients; and 0.3% of net new money.

The QI Agreement

9. In 2000, UBS decided to apply to become a QI because operating as a QI would enable UBS to continue handling U.S. securities transactions for non-U.S. persons in accordance with the requirements of the QI Agreement at reduced U.S. withholding tax rates and to handle QI-compliant accounts for U.S. persons. Also in 2000, UBS began communicating with its U.S. clients about the requirements of the QI Agreement. On July 14, 2000, managers in the U.S. cross-border business, with the approval of UBS's QI Coordination Committee, which was made up of various groups, including the U.S. cross-border business and UBS's Group Tax, Legal, Compliance, Operations and Financial Planning departments, changed the wording on a UBS form letter that was sent to U.S. clients entitled "Declaration for US Taxable Persons" from "I would like to avoid disclosure of my identity to the US Internal Revenue Service under the new tax regulations" to "I am aware of the new tax regulations" after U.S. clients expressed concern that the form as originally drafted could be considered an admission of tax evasion by such U.S. clients.
10. In advance of the January 1, 2001 effective date of the QI Agreement, UBS undertook substantial implementation efforts designed to address its obligations under the QI Agreement, including through a global program to communicate the new QI requirements to all affected clients, new policies, procedures and IT systems, and training. As part of those QI compliance efforts, UBS obtained authorizations from U.S. clients holding U.S. securities to sell, or required sales by such U.S. clients, totaling approximately \$530 million of U.S. securities prior to the January 1, 2001 effective date of the QI Agreement. As a result of these efforts, the vast majority of UBS's U.S. person client accounts no longer held U.S. securities by the effective date of the QI Agreement and had executed waivers agreeing not to invest in U.S. securities in the future.

The Offshore Company Scheme

11. Some U.S. clients, however, indicated that they wanted to continue to maintain their U.S. securities holdings and not provide UBS with an IRS Form W-9 (or UBS's substitute form), thereby concealing their U.S. securities holdings from the IRS. As part of its QI compliance efforts, UBS had issued written guidelines advising U.S. cross-border managers and private bankers not to actively assist U.S. taxpayers who may seek to establish offshore companies, and that any such companies should respect corporate formalities and not be operated as a sham, conduit or nominee entity. Internal UBS documents also noted that active assistance by private bankers to help U.S. private clients set up offshore companies to evade the U.S. securities investment restrictions in the QI Agreement might be viewed as actively helping such clients to engage in tax evasion. Notwithstanding those warnings, certain managers in the U.S. cross-border business thereafter authorized UBS private

bankers to refer those U.S. clients who did not wish to comply with the new requirements of the QI Agreement to certain outside lawyers and consultants, and did so with the understanding that these outside advisors would help such U.S. clients form offshore companies in order to enable such clients to evade the U.S. securities investment restrictions in the QI Agreement. Thus, rather than risk losing these clients, UBS, through such referrals to outside advisors made by certain private bankers and managers in the U.S. cross-border business, assisted such U.S. clients in creating and maintaining sham, nominee or conduit offshore companies in jurisdictions like Panama, Hong Kong, and the British Virgin Islands, that enabled such clients to conceal their investments in U.S. securities, and thereby evade UBS's obligation to provide tax information reporting on an anonymous basis and to backup withhold with respect to certain payments made to such accounts.

12. Also as part of the offshore company scheme, such offshore structures continued to be established after the January 1, 2001 effective date of the QI Agreement. For example, on August 17, 2004, certain managers in the U.S. cross-border business organized a meeting in Switzerland for certain UBS private bankers with outside lawyers and consultants to review options for the establishment of offshore entity structures in various tax-haven jurisdictions, including recommendations to U.S. clients who did not appear to declare income/capital gains to the IRS.

Inadequate Compliance Systems

13. During the period from 2000 through 2007, UBS adopted a series of compliance initiatives that were intended to improve compliance by the U.S. cross-border business with UBS policies, the QI Agreement and U.S. laws. For example, UBS adopted written policies regarding the proper handling of accounts for offshore companies beneficially owned by U.S. persons, including prohibitions on actively assisting undeclared U.S. private clients in setting up legal entity structures to evade QI Agreement restrictions against U.S. persons holding U.S. securities, and advisory guidelines which stated that offshore companies beneficially owned by U.S. persons should follow corporate formalities and should not be operated as sham, conduit or nominee entities. In addition, UBS adopted written policies designed to prevent UBS private bankers from providing securities-related and investment advisory services to U.S. private clients, including prohibitions on taking securities orders from or furnishing securities investment advice to U.S. clients, while those clients were in the United States, or by using U.S. jurisdictional means, as well as, among other things, instituting written internal guidelines, IT system changes, training, and centralizing the cross-border servicing of U.S. clients at desks in Zurich, Geneva and Lugano.
14. However, during the relevant time period, UBS did not develop and implement an effective system of supervisory and compliance controls over the private bankers in the U.S. cross-border business to prevent and detect violations of UBS policies regarding the proper handling of accounts for offshore companies beneficially owned by U.S. persons, and regarding restrictions on providing securities-related and investment advisory services to U.S. clients while those clients were in the United States or by using U.S. jurisdictional means. UBS failed to monitor and control the activities of certain private bankers and managers in the U.S. cross-border business, and, as a result, some private bankers and their managers came to believe that a certain degree of non-compliance with UBS policy was

acceptable in connection with operating the U.S. cross-border business. Also, despite the above-described policies prohibiting certain contacts with U.S. persons, UBS did not have an effective system to capture and record instances when private bankers in the U.S. cross-border business may have violated U.S. laws. As a result, UBS did not monitor such activity and thus was not able to determine whether or not such activity may have required tax information reporting and backup withholding for certain payments made to the accounts of such clients.

15. Following a March 2006 whistleblower letter by a former Geneva-based UBS private banker alleging that the actual practices of UBS private bankers ran contrary to an internal legal document posted on UBS's intranet that outlined what business practices were forbidden by UBS and further alleging that the actual practices were actively encouraged by managers in the U.S. cross-border business, UBS conducted a limited internal investigation of the U.S. cross-border business. That investigation did not examine or follow up on available evidence of private banker communications with U.S. clients and, as a result, it found only "isolated instances" of non-compliance. A thorough investigation would have uncovered violations of U.S. law as described in this statement of facts.