

**PROTOCOL**

**AMENDING THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA  
AND THE SWISS CONFEDERATION**

**on the request for information from the Internal Revenue Service of the United States of America regarding UBS AG, a corporation established under the laws of the Swiss Confederation, signed at Washington on August 19, 2009**

THE UNITED STATES OF AMERICA

and

THE SWISS CONFEDERATION

hereinafter referred to as "the Contracting Parties",

WHEREAS,

to date the Contracting Parties have complied with their obligations under the Agreement between the United States of America and the Swiss Confederation on the request for information from the Internal Revenue Service of the United States of America regarding UBS AG, a corporation established under the laws of the Swiss Confederation, signed at Washington on August 19, 2009 (hereinafter referred to as the "Agreement"); and

the Contracting Parties desire to conclude a Protocol to reassure the continuing implementation of the Agreement by amending certain of its provisions and reaffirming its obligations in a manner that can be approved by the Swiss Parliament;

The Contracting Parties, pursuant to Article 9 of the Agreement, have agreed as follows:

**Article 1**

1. The last recital of the preamble of the Agreement is deleted and replaced by the following:

“the Contracting Parties wish to avoid future disputes regarding requests for information;”

2. The last clause of the preamble of the Agreement is deleted and replaced by the following:

“NOW, THEREFORE, with regard to Article 26 of the Tax Treaty, the Contracting Parties have agreed as follows:”

3. Paragraph 1 of Article 1 of the Agreement is deleted and replaced by the following:

“The Swiss Confederation shall process a request by the United States for information regarding US clients of UBS AG, incorporating the criteria set forth in the Annex to this Agreement (the “Treaty Request”). Based on the criteria set forth in the Annex, the Contracting Parties estimate and expect that the number of open or closed accounts falling under the Treaty Request is approximately 4,450.<sup>1</sup>”

4. The following new Article 7a (Conflicting Provisions) is added to the Agreement:

“For purposes of processing the Treaty Request, this Agreement and its Annex shall prevail over the existing Tax Treaty, its Protocol and the Mutual Agreement in case of conflicting provisions.”

5. Article 9 is deleted and replaced by the following:

“This Agreement may be amended by written agreement between the Contracting Parties. Where amendments require further approval according to Swiss domestic law, the Contracting Parties can agree to implement amendments provisionally pending such approvals.”

6. The first section of paragraph 1 of the Annex to the Agreement is deleted and replaced by the following:

“It is understood that a request for exchange of information generally requires the clear identification of the person(s) concerned. However, in light of (i) the identified specific wrongful conduct by certain individual US taxpayers who maintained non-W-9 accounts at UBS AG Switzerland (UBS) in their name or in

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<sup>1</sup> For these accounts UBS will provide a notice to accountholders under the Treaty Request. They will (i) be subject to a final decision of the SFTA under the treaty process, or (ii) be transmitted to the IRS as a result of the accountholder having provided UBS or the SFTA with a waiver to submit such account information directly, or (iii) fall out of the treaty process after the accountholders have provided consent to the SFTA to request copies of the taxpayer’s FBAR returns from the IRS for the relevant years as described in the Annex under paragraph 2.A.b. and 2.B.b.

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the name of an offshore non-operating company of which they were a beneficial owner and (ii) the specificity of the concerned group of individuals as described in paragraph 4 of the Statement of Facts of the Deferred Prosecution Agreement between the United States of America and UBS of February 18, 2009 (the "DPA"), the names of the UBS United States clients do not need to be mentioned in this request for information exchange."

7. The first section of paragraph 2 of the Annex to the Agreement is deleted and replaced by the following:

"The agreed-upon criteria for determining "tax fraud or the like" for this request with regard to the existing Tax Treaty are set forth as follows:"

8. The following terms in brackets in the Annex to the Agreement are deleted:

- "(as described in paragraph 10, subparagraph 2, first sentence of the Protocol)" (in paragraph 2.A.a.)
- "(as described in paragraph 10, subparagraph 2, third sentence of the Protocol)" (in paragraph 2.A.b.)
- "(as described in paragraph 10, subparagraph 2, first sentence of the Protocol)" (in paragraph 2.B.a.)
- "(as described in paragraph 10, subparagraph 2, third sentence of the Protocol)" (in paragraph 2.B.b.)

## Article 2

The Contracting Parties agree not to publicly discuss or publish this Protocol before March [ ], 2010 at 9:30 a.m. Eastern Daylight Savings Time and the corresponding time in Central European Summer Time (3:30 p.m. Central European Summer Time).

## Article 3

1. The treaty request, all decisions rendered and all legal and factual measures taken under the Agreement by UBS and SFTA will remain valid under the amended Agreement.

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2. This Protocol shall provisionally apply upon signature and shall enter into force on the date the Swiss Confederation notifies the United States in writing that the Swiss Confederation has completed its domestic procedures for entry into force.

IN WITNESS THEREOF, the undersigned, duly authorized thereto by their respective governments, have signed this Protocol.

Done at Washington, DC this \_\_\_\_ day of March 2010, in duplicate, in English.

For the  
United States of America:

For the  
Swiss Confederation:

by: \_\_\_\_\_

by: \_\_\_\_\_

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