

## **STATEMENT OF FACTS**

### **INTRODUCTION**

1. Edmond de Rothschild (Suisse) S.A. (together with its Lugano-based subsidiary, “EdR Switzerland” or the “Bank”) is a corporation organized under the laws of Switzerland with its headquarters in Geneva, Switzerland.
2. EdR Switzerland operates a financial services business in Geneva, Lausanne, Fribourg, and Lugano, Switzerland. It offers private banking and wealth management services for individual clients around the world, including a relatively small number of U.S. citizens, legal permanent residents, and resident aliens.
3. EdR Switzerland is affiliated with the Edmond de Rothschild Group, an independent, family-controlled financial group focused on asset management and private banking. Edmond de Rothschild Group was founded in 1953 and currently operates in 19 countries worldwide. EdR Switzerland is an independent Swiss legal entity, led by its own board of directors, chief executive officer, and executive committee, and is supported by its own legal and compliance functions.
4. In 2014, the Edmond de Rothschild Group held Assets under Management (“AuM”) totaling approximately \$170 billion, out of which \$44.0 billion comprised client assets managed in Switzerland.

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

5. U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their U.S. tax returns and to pay the taxes due on that income. Since the tax year 1976, U.S. citizens, resident aliens, and legal permanent residents had an obligation to report to the Internal Revenue Service (“IRS”) on the Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking “Yes” or “No” in the appropriate box and identifying the country where the account was maintained.
6. Since 1970, U.S. citizens, resident aliens, and legal permanent residents who had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any time during a particular year were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, FinCEN Form 114, formerly known as Form TD F 90-22.1 (the “FBAR”). The FBAR for a given year was due by June 30 of the following year.

7. An “undeclared account” was a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that had not been reported by the individual account owner to the U.S. government on an income tax return and an FBAR.
8. Since approximately the 1930s, Switzerland has maintained laws that ensure the secrecy of client relationships at Swiss banks. Swiss law prohibits the disclosure of identifying information without client authorization, especially to foreign government investigators. These are Swiss criminal laws punishable by imprisonment. Because of the secrecy guarantee that they created, these Swiss laws enabled U.S. clients to conceal their Swiss bank accounts from U.S. authorities.
9. In or about 2008, Swiss bank UBS AG (“UBS”) publicly announced that it was the target of a criminal investigation by the IRS and the United States Department of Justice (“DOJ”) and that it would be exiting and no longer accepting certain U.S. clients. On February 18, 2009, the DOJ and UBS filed a deferred prosecution agreement in the Southern District of Florida, in which UBS admitted that its cross-border banking business used Swiss banking secrecy and privacy laws to aid and assist U.S. clients in opening and maintaining accounts and concealing undeclared assets and income from the IRS. Since UBS’s announcement, several other Swiss banks have publicly announced that they were or are the targets of similar criminal investigations and that they would likewise be exiting and not accepting certain U.S. clients (UBS and the other targeted Swiss banks are collectively referred to as “Category 1 banks”). These cases have been closely monitored by banks operating in Switzerland, including EdR Switzerland, since at least the third quarter of 2008.

#### **ROLE OF EDR SWITZERLAND’S QUALIFIED INTERMEDIARY AGREEMENT**

10. Effective in or about January 2001, EdR Switzerland and hundreds of other Swiss banks entered into Qualified Intermediary (“QI”) Agreements with the IRS. To comply with its responsibilities as a QI, EdR Switzerland introduced a new form titled “Declaration of U.S. Status / or / Non-U.S. Status in relation to assets and income subject to United States withholding tax” (“DNUS”). EdR Switzerland required all new and existing account holders to complete a DNUS form. It required all clients to self-certify whether they were or were not U.S. persons. If the U.S. client provided EdR Switzerland with a validly signed IRS Form W-9, then the client could hold U.S. securities and EdR Switzerland would conduct Form 1099 reporting in respect of any reportable amounts, in accordance with the terms of its QI Agreement with the IRS. If the U.S. client did not provide a Form W-9, then EdR Switzerland prohibited the client from holding any U.S. investments, in accordance with the QI Agreement, and the client’s name was not provided to the IRS.
11. Beginning in 2001 and continuing into the Applicable Period, certain of EdR Switzerland’s U.S. clients instructed the Bank not to invest in U.S. securities. EdR Switzerland’s view was that it was not required under the QI Agreement to obtain a Form W-9 for U.S. clients who did not wish to hold U.S. investments. EdR Switzerland thus opened and continued to service accounts for certain U.S. clients without disclosing their

identities to the IRS and without considering the impact of U.S. criminal law on that decision.

12. For certain U.S. accounts that were nominally held in the name of a non-U.S. based entity, the directors of the offshore entity provided a certification on EdR Switzerland's form DNUS that represented that the entity was the beneficial owner, for U.S. federal income tax purposes, of the assets in the Bank's accounts. EdR Switzerland accepted and included this certification in the Bank's account records. In relation to the same accounts, however, Swiss law likewise required EdR Switzerland to identify the structure's true beneficial owner on a document called a Form A. In many instances, the Form A in the Bank's account records identified the U.S. taxpayer as the beneficial owner, while the DNUS for the very same account contained a certification that the non-U.S. entity was the beneficial owner.
13. From the inception of the QI Agreement in 2001, however, EdR Switzerland implemented a policy prohibiting U.S. clients from holding U.S. investments unless the client also provided a Form W-9. This policy applied even if the U.S. client's account was nominally held in the name of a non-U.S. based entity.

#### **OVERVIEW OF EDR SWITZERLAND'S U.S. CROSS-BORDER BUSINESS**

14. Unlike some other private banks in Switzerland, EdR never maintained a U.S. desk or business group dedicated to U.S. taxpayers, and it did not market its services in the United States nor to U.S. taxpayers. In addition, U.S. clients were not targeted in the Bank's business plans. Through referrals and pre-existing relationships, however, the Bank opened and subsequently maintained accounts for U.S. taxpayer clients.
15. EdR Switzerland was aware that U.S. taxpayers had a legal duty to report to the IRS and pay taxes on all of their income, including income earned in accounts that these U.S. taxpayers maintained at EdR Switzerland. EdR Switzerland knew that it was likely that certain U.S. taxpayers who maintained accounts at EdR Switzerland during the Applicable Period were not complying with their U.S. reporting obligations.
16. During the Applicable Period, EdR Switzerland held and managed approximately [556] U.S. client accounts, which included both declared and undeclared accounts, with a peak AuM of \$[1.3 billion]. This latter figure represented approximately [0.01%] percent of the Edmond de Rothschild Group's total assets under management during the applicable period. Approximately [83] of those accounts were opened on or after August 1, 2008, [74] (representing approximately 89%) of which have provided reliable evidence of compliance with U.S. tax obligations.
17. Approximately [101] private bankers were responsible for managing at least one U.S. client account during the Applicable Period. These private bankers (referred to as "Relationship Managers" or "RMs") served as the points of contact for U.S. clients at EdR Switzerland and were responsible for opening and servicing U.S. client accounts at EdR Switzerland. Certain RMs assisted or otherwise facilitated some U.S. individual taxpayers in establishing and maintaining undeclared accounts in a manner that concealed

the U.S. taxpayers' ownership or beneficial interest in said accounts. Although U.S. clients were never a strategic focus of the Bank, throughout its history, EdR Switzerland acquired U.S. client accounts primarily from direct referrals, walk-ins, and business arrangements with external asset managers ("EAMs").

18. Since August 2008, approximately [43] EAMs were responsible for independently managing at least one U.S. client account held at EdR Switzerland. EdR Switzerland compensated certain of these EAMs for the business they generated for the Bank based on a negotiated fee structure.
19. RMs typically communicated via telephone, fax, business email, and mail (when clients did not request hold mail services) with certain of their clients in the United States. Certain RMs also met with U.S. clients outside of the United States to provide banking services and investment advice related to their undeclared accounts. In [May 2008], EdR Switzerland prohibited all business travel to the United States for the purpose of meeting with clients. EdR Switzerland is aware that on one occasion an RM traveled to the United States after August 1, 2008 and met with an existing U.S. client to discuss the client's accounts.

#### **METHODS USED TO CONCEAL ASSETS AND INCOME**

20. EdR Switzerland offered a variety of traditional Swiss banking services that it knew would and did assist U.S. clients in concealing assets and income from the IRS. One such service was hold mail. For an annual fee, the Bank would hold all mail correspondence for a particular client at the Bank. The Bank also offered code name or numbered account services. These services allowed U.S. clients to eliminate the paper trail associated with the undeclared assets and income they held at EdR Switzerland.
21. EdR Switzerland opened and maintained accounts for some U.S. taxpayers that were nominally structured in the name of non-U.S. based entities, which assisted certain U.S. taxpayers to conceal their beneficial ownership of the assets held in the account and any related income. In total, approximately [41.9]% of the Bank's U.S. client accounts that were open on or after August 1, 2008 were nominally held in the name of offshore entities. These accounts held approximately [60.9%] of the total U.S. client assets at EdR Switzerland during the Applicable Period.
22. EdR Switzerland assisted U.S. clients in repatriating offshore funds by providing credit cards, cash cards, and debit cards linked to their undeclared accounts. These cards allowed U.S. clients to withdraw funds remotely or pay for goods and services without a paper trail back to their undeclared accounts in Switzerland.
23. A small percentage of RMs assisted U.S. clients in structuring transfers from their undeclared accounts in amounts less than \$10,000 to avoid detection by U.S. authorities. This conduct assisted U.S. clients in avoiding United States currency transaction reporting requirements.

24. In isolated instances EdR Switzerland assisted certain U.S. clients in closing their accounts at EdR Switzerland in a manner that the Bank knew was likely intended to prevent detection of the clients' undeclared accounts by U.S. authorities. As a result of an EdR Switzerland initiative beginning in 2009 requiring all U.S. clients either to provide a Form W-9 or to close their account, EdR Switzerland asked many U.S. clients who declined to provide a Form W-9 to leave the Bank. EdR Switzerland permitted a small number of these U.S. clients to close their accounts through withdrawals of large sums of cash, by taking physical possession of gold or other precious metals, or by purchasing luxury goods. In connection with the process of closing the accounts of U.S. clients who declined to provide a Form W-9, EdR Switzerland assisted certain U.S. clients in donating assets to other accounts held at EdR Switzerland by non-U.S. taxpayers, including non-U.S. relatives or friends.
25. In one instance in 2010, EdR Switzerland made an exception to its policies requiring new U.S. client accounts to be opened with a Form W-9 to permit two existing U.S. clients to open new nominative accounts without a Form W-9. These new, nominative accounts were opened to assist the U.S. clients in wiring assets to fund insurance wrapper accounts in Liechtenstein when exiting the Bank.

#### **MITIGATING FACTORS**

26. Beginning in mid to late 2008, EdR Switzerland instituted policies that were intended to: (a) close undeclared U.S. client accounts that refused to provide EdR Switzerland with evidence of U.S. tax compliance; (b) remediate certain U.S. accounts that previously were undeclared, including by encouraging U.S. clients to make a voluntary disclosure to U.S. authorities; and (c) prohibit the opening of new accounts for U.S. clients without evidence of U.S. tax compliance. EdR Switzerland undertook these efforts as part of a broader initiatives at EdR Switzerland intended to augment compliance across its private banking business through enhanced rules of conduct for businesses in many markets, including with respect to U.S. clients. With respect to the U.S. client market in particular, EdR Switzerland was aware of the DOJ's investigation of UBS AG and took it as a further reason to review and enhance its compliance with respect to the handling of U.S. clients.
27. Beginning in approximately [September 2008], EdR Switzerland instituted a formal policy prohibiting RMs from opening new accounts for U.S. clients unless the U.S. client first provided a Form W-9. This policy applied irrespective of whether the U.S. client wished to hold U.S. investments. Thereafter EdR Switzerland declined to open accounts for certain prospective U.S. clients who refused to provide a Form W-9.
28. Beginning in May 2008, EdR Switzerland's management also formally advised RMs and other Bank employees against traveling to the United States for business reasons and required employees to report to the Executive Committee any planned U.S. travel. In January 2009, EdR Switzerland formally prohibited relationship managers from making business trips to the United States.

29. Recognizing that certain accounts had been opened under prior policies without a Form W-9, EdR Switzerland instituted a legacy account remediation project beginning in [October 2008]. As of then, EdR Switzerland affirmatively required every existing U.S. client account to provide a signed, valid Form W-9, regardless of whether the U.S. client's account held U.S. securities. If the existing U.S. client did not provide a Form W-9, EdR Switzerland eventually terminated the account relationship. Although these policies did remediate most of its undeclared U.S. accounts, not all such accounts were immediately closed. With few exceptions, EdR Switzerland had successfully exited most of its undeclared U.S. client accounts by the end of [2011]. EdR Switzerland closed approximately [430] U.S. accounts between August 1, 2008 and June 30, 2014, totaling approximately [\$768 million]. Many of these U.S. account were closed in connection with EdR Switzerland's remediation efforts.
30. Also beginning in October 2008, EdR Switzerland adopted a policy of encouraging U.S. clients who had undeclared accounts to declare those accounts to the IRS. Under this policy, RMs and Bank management proactively encourage U.S. clients to make a voluntary disclosure to U.S. authorities, through the Offshore Voluntary Disclosure Program ("OVDP") or otherwise, if and when EdR Switzerland has learned of a client's non-compliance with U.S. tax obligations. However, EdR Switzerland identified one RM who violated this policy by discouraging U.S. clients from declaring their accounts.
31. In July 2012, EdR Switzerland began requiring all new and existing U.S. clients to provide a signed FBAR or other proof of U.S. tax compliance since the opening of the U.S. client account, such as evidence of participation in an IRS Offshore Voluntary Disclosure Program.
32. In December 2013, EdR Switzerland entered into the DOJ's Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (referred to as "Swiss Bank Program" or "SBP") as a Category 2 bank.
33. Since 2013, EdR Switzerland has cooperated with the DOJ to comply with the Swiss Bank Program. At the outset, EdR Switzerland formed a Steering Committee consisting of EdR Switzerland representatives and U.S. and Swiss law firm partners who, along with independent accountants, oversaw and executed each phase of Program compliance. Along with its outside advisors, EdR Switzerland established a multi-tiered review protocol to identify and analyze all U.S. accounts in accordance with the Program. Specifically, the Bank, with the assistance of U.S. and/or Swiss counsel and/or its independent accountants, performed an electronic search of U.S. indicia across all of its accounts, manually conducted a full paper record search of hundreds of physical account files, analyzed relevant management policies, interviewed dozens of current and former RMs and members of management, reviewed relevant paper and electronic communications, and contacted hundreds of current and former U.S. clients or their representatives, among other efforts.
34. EdR Switzerland's efforts to contact its current and former U.S. clients to verify that their accounts were disclosed have been extensive. Since 2008, and continuing through the Swiss Bank Program EdR Switzerland has proactively encouraged U.S. clients to make a

voluntary disclosure to U.S. authorities through the OVDP if and when EdR Switzerland has learned of a client's non-compliance with U.S. tax obligations.

35. The overwhelming majority of the Bank's outreach efforts in connection with the Swiss Bank Program concerned former clients who no longer had a relationship with EdR Switzerland. Many of those former clients left EdR Switzerland, or were asked to leave, years ago, as a result of EdR Switzerland's increasingly active compliance efforts with respect to U.S. clients. EdR Switzerland has devoted significant time and effort to convince certain U.S. clients to participate in the OVDP, including through in-person meetings and numerous follow-up discussions to ensure that those individuals follow through on the commitment to enter the OVDP. To date, approximately [131] of EdR Switzerland's U.S. clients have participated or may be in the process of participating in the OVDP as a result of the Bank's efforts. Throughout its participation in the Swiss Bank Program, EdR Switzerland also has made comprehensive disclosures regarding its U.S. cross-border business. Specifically, EdR Switzerland, with the assistance of U.S. and Swiss counsel, forensic investigators, and in compliance with Swiss banking secrecy and privacy laws has:

- a. Obtained waivers of Swiss banking secrecy and data privacy protections from [316] current and former clients, which permit EdR Switzerland to disclose account information to the DOJ;
- b. Provided actionable information concerning numerous U.S. client accounts held at EdR Switzerland since August of 2008 permitting the DOJ to make treaty requests to the Swiss competent authority for U.S. client account records;
- c. Described in detail the structure of EdR Switzerland's U.S. cross-border business, which included but is not limited to: (1) the policies or lack of policies that contributed to misconduct committed by RMs, supervisory RMs, and Bank management; (2) the supervisory chain overseeing RMs; and (3) the names of senior management and legal and compliance officials;
- d. Provided detailed information concerning the operation of its U.S. cross-border business, which included but is not limited to: (1) misconduct committed by EdR Switzerland; and (2) names of RMs who committed misconduct;
- e. Provided the names and information of key EAMs who made significant contributions to the operation of EdR Switzerland's U.S. cross-border business as well as the RMs who assisted those EAMs; and
- f. Provided responsive, specific, and actionable information to the DOJ concerning associated persons, entities, and areas of concern for use in other ongoing and potential DOJ investigations.

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