## Annex

## Criteria for Granting Assistance Pursuant to the Treaty Request

1. 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 the name of an offshore non-operating company of which they were a beneficial owner, (ii) the specificity of the concerned group of individuals as described in paragraph 4 of the Statement of Facts to the Deferred Prosecution Agreement between the United States of America and UBS of February 18, 2009 (the "DPA"), and (iii) consistent with the conditions set by the judgment of the Swiss Federal Administrative Court on March 5, 2009, the names of the UBS United States clients do not need to be mentioned in this request for information exchange.

   Thus, consistent with paragraph 4 of the Statement of Facts to the DPA, the general requirement to identify the persons subject to the request for information exchange is considered to be satisfied for the following individuals:

   A. US domiciled clients of UBS who directly held and beneficially owned "undisclosed (non-W-9) custody accounts" and "banking deposit accounts" in excess of CHF 1 million (at any point in time during the period of years 2001 through 2008) with UBS and for which a reasonable suspicion of "tax fraud or the like" can be demonstrated, or

   B. US persons (irrespective of their domicile) who beneficially owned "offshore company accounts" that have been established or maintained during the period of years 2001 through 2008 and for which a reasonable suspicion of "tax fraud or the like" can be demonstrated.

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

   A. For "undisclosed (non-W-9) custody accounts" and "banking deposit accounts" (as described in paragraph 1.A of this Annex) where there is a reasonable suspicion that the US domiciled taxpayers engaged in the following:

      a. Activities presumed to be fraudulent conduct (as described in paragraph 10, subparagraph 2, first sentence of the Protocol) including such activities that led to a concealment of assets and

underreporting of income based on a "scheme of lies"[1] or submission of incorrect and false documents. Where such conduct has been established, persons with accounts of less than CHF 1 million in assets (except those accounts holding assets below CHF 250,000) during the relevant period would also be included in the group of US persons subject to this request; or

b. Acts of continued and serious tax offense for which the Swiss Confederation may obtain information under its laws and practices (as described in paragraph 10, subparagraph 2, third sentence of the Protocol), which based on the legal interpretation of the Contracting Parties includes cases where (i) the US-domiciled taxpayer has failed to provide a Form W-9[2] for a period of at least 3 years (including at least 1 year covered by the request) and (ii) the UBS account generated revenues of more than CHF 100,000 on average per annum for any 3-year period that includes at least 1 year covered by the request. For the purpose of this analysis, revenues are defined as gross income (interest and dividends) and capital gains (which for the purpose of assessing the merits of this administrative information request are calculated as 50% of the gross sales proceeds generated by the accounts during the relevant period).

B. For "offshore company accounts" (as described in paragraph 1.B of this Annex) where there is a reasonable suspicion that the US beneficial owners engaged in the following:

a. Activities presumed to be fraudulent conduct (as described in paragraph 10, subparagraph 2, first sentence of the Protocol) including such activities that led to a concealment of assets and underreporting of income based on a "scheme of lies"[3] or

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1 Such "scheme of lies" may exist where, based on the Bank's records, beneficial owners (i) used false documents; (ii) engaged in a fact pattern that has been set out in the "hypothetical case studies" in the appendix to the Mutual Agreement concerning Art. 26 of the Tax Treaty (for example, by using related entities or persons as conduits or nominees to repatriate or otherwise transfer funds in the offshore accounts); or (iii) used calling cards to disguise the source of trading. These examples are not exhaustive, and depending on the applicable facts and circumstances, certain further activities may be considered by the SFTA as a "scheme of lies".

2 For "banking deposit accounts" based on the Contracting Parties' legal interpretation a reasonable suspicion for such tax offence would be met if the US persons failed to prove upon notification by the Swiss Federal Tax Administration that they have met their statutory tax reporting requirements in respect of their interests in such accounts (i.e., by providing consent to the SFTA to request copies of the taxpayer's FBAR returns from the IRS for the relevant years).

3 Such "scheme of lies" may exist where the Bank's records show that beneficial owners continued to direct and control, in full or in part, the management and disposition of the assets held in the offshore company account or otherwise disregarded the formalities or substance of the purported corporate ownership (i.e., the offshore corporation functioned as nominee, sham entity or alter ego of the US

submission of incorrect or false documents, other than US beneficial owners of offshore company accounts holding assets below CHF 250,000 during the relevant period; or

b. Acts of continued and serious tax offense for which the Swiss Confederation may obtain information under its laws and practices (as described in paragraph 10, subparagraph 2, third sentence of the Protocol), which based on the legal interpretation of the Contracting Parties includes cases where the US person failed to prove upon notification by the Swiss Federal Tax Administration that the person has met his or her statutory tax reporting requirements in respect of their interests in such offshore company accounts (i.e., by providing consent to the SFTA to request copies of the taxpayer's FBAR returns from the IRS for the relevant years). Absent such confirmation, the Swiss Federal Tax Administration would grant information exchange where (i) the offshore company account has been in existence over a prolonged period of time (i.e., at least 3 years including one year covered by the request), and (ii) generated revenues of more than CHF 100'000 on average per annum for any 3-year period that includes at least 1 year covered by the request. For the purpose of this analysis, revenues are defined as gross income (interest and dividends) and capital gains (which for the purpose of assessing the merits of this administrative information request are calculated as 50% of the gross sales proceeds generated by the accounts during the relevant period).

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beneficial owner) by: (i) making investment decisions contrary to the representations made in the account documentation or in respect to the tax forms submitted to the IRS and the Bank; (ii) using calling cards / special mobile phones to disguise the source of trading; (iii) using debit or credit cards to enable them to deceptively repatriate or otherwise transfer funds for the payment of personal expenses or for making routine payments of credit card invoices for personal expenses using assets in the offshore company account; (iv) conducting wire transfer activity or other payments from the offshore company's account to accounts in the United States or elsewhere that were held or controlled by the US beneficial owner or a related party with a view to disguising the true source of the person originating such wire transfer payments; (v) using related entities or persons as conduits or nominees to repatriate or otherwise transfer funds in the offshore company's account; or (vi) obtaining "loans" to the US beneficial owner or a related party directly from, secured by, or paid by assets in the offshore company's account. These examples are not exhaustive, and depending on the applicable facts and circumstances, certain further activities may be considered by the SFTA as a "scheme of lies".