

October 1, 2021

**BY E-MAIL**

The Honorable Ron Wyden  
Chairman  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Wyden:

We write on behalf of our client, Mirabaud & Cie Ltd. (“Mirabaud” or the “Bank”), in response to your letter dated September 15, 2021, relating to Robert T. Brockman (“Brockman”).

Before responding to your specific questions, we think it is important to address the letter’s references to “Brockman’s accounts” at the Bank and to “Brockman’s time as a Mirabaud client.” As the U.S. Department of Justice’s (“DOJ”) indictment of Brockman and related materials establish, Mirabaud was not aware that Brockman had an interest in the accounts at the Bank that he allegedly owned or controlled (the “Accounts”), which were held by legal entities and were not in Brockman’s name. Accordingly, Brockman was never a “client” of the Bank.

Indeed, the DOJ and the Internal Revenue Service (“IRS”) have detailed the great lengths to which Brockman went to conceal his interest in the Accounts. In its indictment of Brockman, the DOJ highlights in particular Brockman’s use of “nominees” to create “false paper trails” to disguise Brockman’s ownership interest in the various entities, accounts and transactions used to carry out his tax evasion scheme. *See, e.g.*, Brockman Indictment at ¶¶ 31-33.<sup>1</sup> In addition to the DOJ’s indictment, an IRS Special Agent’s affidavit in support of a related government seizure action (the “Affidavit”) details the deceptive actions taken by Evatt Tamine, formerly a key nominee used by Brockman to carry out his criminal schemes and, currently, a cooperating witness. *See Affidavit in Support of Application for a Warrant to Seize Property Subject to Forfeiture.*<sup>2</sup> As an example, the Affidavit explains that, while concealing Brockman’s involvement, Tamine opened a Bank account at Mirabaud for an entity involved in Brockman’s

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<sup>1</sup> *United States v. Brockman*, No. 3:20-cr-00371 WHA (N.D. Cal. Oct. 1, 2020).

<sup>2</sup> *In re Seizure of All Funds up to \$77,888,782.62 in Mirabaud Bank Account #509951 in the Name of Edge Capital Invs., Ltd., Located in Switz.*, No. 1:20-mc-00183-MEH (D. Colo. Oct. 22, 2020).

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tax evasion and other schemes. *Id.* at ¶¶172-176; *id.* at ¶175 (“Tamine stated that he intentionally withheld information from Mirabaud Bank in setting up this account. Specifically, Tamine excluded the fact that he took direction from Brockman on what would happen with the funds in this account.”).<sup>3</sup>

Only after the indictment was made public did Mirabaud learn about Brockman’s alleged interest in or control over the Accounts. Subsequently, certain assets were frozen in the Bank’s books at the request of the U.S. and Swiss authorities. Mirabaud has also fully cooperated with all information requests made by the U.S. government through international mutual legal assistance channels, in connection with its prosecution of Brockman. Such requests also make clear that the Bank was unaware of Brockman’s involvement in the Accounts.

\* \* \*

### Questions and Answers

1. *At any point while Robert Brockman maintained accounts at Mirabaud, did Mirabaud report the existence of Brockman's accounts to the IRS? If so, did Mirabaud also report account numbers and account balances or values to the IRS?*

As described above, Brockman intentionally hid any interest in the Accounts from the Bank. Accordingly, because the Bank was unaware that Brockman was behind the Accounts, it was not in a position to report Brockman as having an interest in them.

2. *Please describe what steps were taken while Brockman was a client at Mirabaud to ensure compliance with FATCA, including efforts to disclose Brockman's accounts to the IRS as part of any FATCA agreements Mirabaud or its subsidiaries entered into with the IRS.*

As described above, Brockman intentionally hid any interest in the Accounts from the Bank. Because Brockman was never a Mirabaud client, the Bank was not in a position to disclose the Accounts as Brockman’s to the IRS pursuant to FATCA.

- a. *Please also describe what steps were taken to verify Brockman's status as a U.S. citizen and taxpayer, including requesting forms W-9, W-8 or any other documentation as appropriate.*

The Bank never had occasion to document Brockman’s status as a U.S. citizen and taxpayer, because it never had any contact with Brockman and

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<sup>3</sup> Copies of the referenced indictment and affidavit are enclosed with this letter.

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was unaware of his interest in or control over the Accounts until the indictment was made public.

3. *During Brockman's time as a Mirabaud client, did any Mirabaud representatives ever seek to verify with Brockman if he had filed foreign bank account registrations (FBAR) as he was required to by U.S. law? If so, please describe what documentation, if any, Mirabaud representatives requested from Brockman to confirm that he had in fact filed the requisite FBARs.*

As described above, Brockman intentionally hid any interest in the Accounts from the Bank. Because Brockman was never a client of the Bank, the Bank was not in a position to verify or request any information from him.

4. *Please describe what steps Mirabaud takes to ensure that accounts where U.S. taxpayers hold a substantial ownership interest are FATCA compliant, including the type of information Mirabaud requests from clients that are U.S. persons.*

The Bank complies with FATCA in accordance with the Intergovernmental Agreement entered into between the U.S. and Swiss governments (the "Swiss IGA"), and has adopted policies and procedures to ensure its compliance with the Swiss IGA. The Bank's FATCA compliance program is subject to periodic audits that have not identified any issues.

5. *Please describe any FATCA agreements Mirabaud and any of its subsidiaries have entered into with the IRS. Please also include steps Mirabaud takes to ensure that all accounts where U.S. taxpayers hold a substantial ownership interest are properly reported to the IRS.*

As indicated above, the Bank and its Swiss subsidiaries have implemented a FATCA compliance program and signed in March 2014 and July 2017 the respective agreements with the Internal Revenue Service (IRS) to be treated as a participating FFI under section 1471(b) of the Internal Revenue Code and §1.1471-4 of the Income Tax Regulations under the applicable Model 2 intergovernmental agreement (IGA, reporting Model 2 FFIs).

6. *Please provide a detailed explanation related to Mirabaud's decision to not participate in the DOJ's Swiss Bank Program.*

The Bank performed a detailed assessment of its involvement with U.S. taxpayers at the time the DOJ's Swiss Bank Program was announced in 2013. Based on this assessment, the Bank (like many other Swiss banks) decided not to participate in the Swiss Bank Program.

7. *Has Mirabaud declared all accounts involving U.S. persons to the IRS as required by FATCA? What actions has Mirabaud taken to ensure that all accounts required to be*

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*declared have been declared? Please also describe efforts being taken by Mirabaud to close recalcitrant accounts where account holders are refusing to fully come into compliance and disclose all required information to U.S. authorities.*

As explained above in response to question 4, Mirabaud has adopted policies and procedures to ensure compliance with FATCA, in accordance with the requirements of the Swiss IGA, including the appropriate identification, documentation and reporting of its U.S. accounts. Pursuant to the Swiss IGA, the Bank has complied with its annual reporting obligations of “recalcitrant accounts” where the Bank has reported such accounts on an aggregate basis to the IRS, as well as complied with IRS group requests conveyed to it via the Swiss tax authorities.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'MRC', is positioned above the printed name.

Marc R. Cohen

Enclosures