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Swiss Bank Pleads Guilty In Manhattan Federal Court To Conspiracy To Evade Taxes

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In First-Ever Guilty Plea to Tax Law Violations by a Foreign Bank, Wegelin & Co. Agrees to Pay \$74 Million to the United States

Preet Bharara, the United States Attorney for the Southern District of New York, Kathryn Keneally, the Assistant Attorney General for the Tax Division of the Department of Justice, and Richard Weber, the Chief of the Internal Revenue Service, Criminal Investigation (“IRS-CI”), announced today the guilty plea of WEGELIN & CO. (“WEGELIN”), a Swiss private bank, for conspiring with U.S. taxpayers and others to hide more than \$1.2 billion in secret Swiss bank accounts and the income generated in these accounts from the Internal Revenue Service (the “IRS”). One of the managing partners of WEGELIN, Otto Bruderer, appeared on behalf of the bank to enter the guilty plea before U.S. District Judge Jed S. Rakoff. This case represents the first time that a foreign bank has been indicted for facilitating tax evasion by U.S. taxpayers and the first guilty plea by a foreign bank to tax charges.

As part of its guilty plea, WEGELIN agreed to pay approximately \$20 million in restitution to the IRS and to pay a \$22.05 million fine. In addition, WEGELIN agreed to the civil forfeiture of an additional \$15.8 million, representing the gross fees earned by the bank on the undeclared accounts of U.S. taxpayers. Together with the April 2012 forfeiture of over \$16.2 million from WEGELIN’s correspondent bank account, this amounts to a total recovery to the United States of approximately \$74 million.

Manhattan U.S. Attorney Preet Bharara said: “There is no excuse for wealthy Americans flouting their responsibilities as citizens of this great country to pay their taxes, and there is no excuse for foreign financial institutions helping them to do so. Wegelin became a haven for U.S. taxpayers seeking to circumvent the tax code by hiding their money in secret off-shore accounts, and the bank willfully and aggressively jumped in to fill a void that was left when other Swiss banks abandoned the practice due to pressure from U.S. law enforcement. Today’s guilty plea is a watershed moment in our efforts to hold to account both the individuals and the banks – wherever they may be in the world – who are engaging in unlawful conduct that deprives the U.S. Treasury of billions of dollars of tax revenue. We will continue our efforts until this practice is eliminated in its entirety.”

Assistant Attorney General Keneally said: “Today, Wegelin was held responsible for unlawfully helping U.S. taxpayers who had fled from UBS and other banks hide their income and assets from the IRS. As I have said, it is a high priority of the Department of Justice to find those who continue to shirk their tax obligations, as well as those who would profit by helping them do so. The best deal now for these folks is to come in and “get right” with the I.R.S., before either the I.R.S. or the Justice Department finds them.”

IRS-CI Chief Richard Weber said: “Today, we witnessed another historic event in the enforcement of offshore tax evasion and foreign banks. Wegelin & Co., Switzerland’s oldest bank, pleaded guilty to tax charges. Banks who facilitate tax evasion face serious consequences, including criminal charges, steep fines and restitution. IRS-CI continues to be vigilant in the investigation of offshore tax evasion.”

According to the Superseding Indictment, the February 2012 civil forfeiture Complaint filed against the funds in WEGELIN’s correspondent bank account, and statements made during WEGELIN’s guilty plea today:

Founded in 1741, WEGELIN is Switzerland’s oldest bank. It provided private banking, asset management, and other services to clients around the world, including U.S. taxpayers living in the Southern District of New York. WEGELIN had no branches outside Switzerland, but it directly accessed the U.S. banking system through a correspondent bank account that it held at UBS AG (“UBS”) in Stamford, Connecticut. As of December 2010, WEGELIN had approximately \$25 billion in assets under management.

From 2002 through 2011, WEGELIN conspired with various U.S. taxpayers and others, to hide from the IRS the existence of bank accounts held at WEGELIN, and the income generated in those secret accounts. WEGELIN carried out this scheme through among others, client advisers Michael Berlinka (“Berlinka”), Urs Frei (“Frei”), and Roger Keller (“Keller”), who began working at WEGELIN in 2008, 2006, and 2007, respectively.

In 2008 and 2009, WEGELIN opened and serviced dozens of new undeclared accounts for U.S. taxpayers in an effort to capture clients lost by UBS in the wake of widespread news reports that UBS was being investigated by U.S. authorities for helping U.S. taxpayers evade taxes and hide assets in Swiss bank accounts. By mid-2008, UBS had stopped servicing undeclared accounts for U.S. taxpayers.

In the wake of the U.S. investigation of UBS, members of WEGELIN’s senior management decided to take steps to capture the illegal business that UBS had exited. To capitalize on the business opportunity this presented and to increase its assets under management, and the fees earned from managing those assets, WEGELIN employees told various U.S. taxpayer-clients that their undeclared accounts would not be disclosed to the United States authorities because the bank had a long tradition of secrecy. They also persuaded U.S. taxpayer-clients to transfer assets from UBS to WEGELIN by emphasizing that, unlike UBS, WEGELIN did not have offices outside of Switzerland and was therefore less vulnerable to United States law enforcement pressure. Members of WEGELIN’s senior management approved efforts to capture the clients who were leaving UBS and also participated in some meetings with U.S. taxpayer-clients who were fleeing UBS.

In February 2009, UBS entered into a deferred prosecution agreement with the Department of Justice on charges of conspiring to defraud the United States by impeding the IRS. As part of the deferred prosecution agreement, UBS paid \$780 million in fines, penalties, interest, and restitution.

To further the goals of the conspiracy from 2002 through 2011, WEGELIN took steps that included the following:

- Opening and servicing undeclared accounts for U.S. taxpayer-clients in the names of sham corporations and foundations formed under the laws of Liechtenstein, Panama, Hong Kong, and other jurisdictions for the purpose of concealing some clients’ identities from the IRS;
- Accepting documents that falsely declared that the sham entities were the beneficial owners of certain accounts, when in fact the accounts were beneficially owned by U.S. taxpayers, and making them part of WEGELIN’s client files;
- Permitting certain U.S. taxpayer-clients to open and maintain undeclared accounts at WEGELIN using code names and numbers to minimize references to the actual names of the U.S. taxpayers on Swiss bank documents;
- Ensuring that account statements and other mail for U.S. taxpayer-clients were not mailed to them in the United States;
- Communicating with some U.S. taxpayer-clients using their personal email accounts to reduce the risk of detection by law enforcement; and

- Issuing checks drawn on, and executing wire transfers through, its U.S. correspondent bank account for the benefit of U.S. taxpayers with undeclared accounts at WEGELIN and at least two other Swiss banks. In so doing, WEGELIN sometimes separated the transactions into batches of checks or multiple wire transfers in amounts that were less than \$10,000 to reduce the risk that the IRS would detect the undeclared accounts.

U.S. taxpayers are required to report the existence of any foreign bank account on their federal income tax returns if it holds more than \$10,000 at any time during a given year, as well as any income it earns.

By 2010, the collective maximum value of the assets in undeclared accounts beneficially owned by U.S. taxpayer-clients of WEGELIN was more than \$1.2 billion, with many accounts holding more than \$10,000 in any one year.

The April 2012 forfeiture of approximately \$16.2 million from WEGELIN's correspondent bank account was the result of a civil forfeiture Complaint filed in February 2012. As alleged in the Complaint, WEGELIN used its correspondent bank account at UBS to help U.S. taxpayers with undeclared accounts repatriate money that they had hidden at WEGELIN. This was often done in a manner designed to evade detection by U.S. authorities. For example, U.S. taxpayers routinely asked WEGELIN to issue and send them checks, which were drawn on WEGELIN'S correspondent bank account, and that represented funds held in their secret accounts at the bank. Further, WEGELIN permitted at least two other Swiss banks to issue checks drawn on its correspondent bank account for the benefit of U.S. taxpayers holding undeclared accounts at these other banks. The sheer volume of transactions in WEGELIN's correspondent bank account served to conceal the repatriation of money from U.S. taxpayers' undeclared accounts at WEGELIN and the other banks. On April 24, 2012, U.S. District Judge Laura Taylor Swain entered an order forfeiting over \$16.2 million seized from the U.S. correspondent account of WEGELIN. As part of its plea agreement, WEGELIN agreed not to contest the April 2012 forfeiture.

By entering its guilty plea in this case, WEGELIN waived any objections to service of the summons and the Superseding Indictment in this case and agreed, as part of its plea agreement, not to contest service of process in this case in the future.

In entering the guilty plea on WEGELIN's behalf, Bruderer admitted, among other things, that "[f]rom about 2002 through about 2010, Wegelin agreed with certain U.S. taxpayers to evade the U.S. tax obligations of these U.S. taxpayer clients, who, among other things, filed false tax returns with the IRS." Bruderer also admitted that "[i]n furtherance of its agreement to assist U.S. taxpayers to commit tax evasion in the United States, Wegelin, among other things, opened and maintained accounts at Wegelin in Switzerland for U.S. taxpayers who did not complete W-9 tax disclosure forms." A W-9 is an IRS form used through which U.S. taxpayers can identify themselves as such to a bank, thereby causing the bank to report income generated in the U.S. taxpayers' account to the IRS.

Bruderer further admitted that "Wegelin knew that certain U.S. taxpayers were maintaining non-W-9 accounts at Wegelin in order to evade their U.S. tax obligations, in violation of U.S. law, and Wegelin knew of the high probability that other U.S. taxpayers who held non-W-9 accounts at Wegelin also did so for the same unlawful purpose." Bruderer also admitted that "Wegelin intentionally opened and maintained non W-9 accounts for [certain U.S.] taxpayers with the knowledge that, by doing so, Wegelin was assisting these taxpayers in violating their legal duties" and that "Wegelin was aware that this conduct was wrong."

* * *

WEGELIN is headquartered in St. Gallen, Switzerland, and, in addition to the payment of restitution, faces a fine of up to approximately \$40,000,000, representing twice the gross pecuniary loss to the IRS.

Berlinka, 42, Frei, 52, and Keller, 48 – who all reside in Switzerland – were charged in the Indictment in January 2012 and the Superseding Indictment in February 2012. They each face a maximum term of five years in prison, a maximum term of three years of supervised release, and a fine of the greatest of \$250,000, or twice the gross

pecuniary gain derived from the offense or twice the gross pecuniary loss to the victims. Berlinka, Frei, and Keller have not been arrested.

WEGELIN is scheduled to be sentenced by Judge Rakoff on March 4, 2013, at 4:00 p.m.

Mr. Bharara praised the outstanding efforts of IRS-CI in the investigation. He also thanked the U.S. Department of Justice's Tax Division and the U.S. Immigration and Customs Enforcement's Homeland Security Investigations Miami Foreign Corruption Investigations Group for their significant assistance in the investigation.

This criminal case is being handled by the Office's Complex Frauds Unit and the civil forfeiture proceedings are being handled by the Office's Asset Forfeiture Unit. Assistant U.S. Attorneys David B. Massey, Daniel W. Levy, and Jason H. Cowley are in charge of the prosecution and civil forfeiture proceedings.

The charges and allegations contained in the Indictment and Superseding Indictment as against the remaining defendants – Berlinka, Frei, and Keller – are merely accusations, and those defendants are presumed innocent unless and until proven guilty.

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