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Swiss Bank Sentenced In Manhattan Federal Court For Conspiring To Evade Taxes

FOR IMMEDIATE RELEASE

Monday, March 4, 2013

In First-Ever Sentence of a Foreign Bank, Wegelin & Co. Ordered to Pay the United States Approximately \$58 Million for Conspiring to Evade Taxes

Preet Bharara, the United States Attorney for the Southern District of New York, and Kathryn Keneally, the Assistant Attorney General for the Tax Division of the Department of Justice, announced that WEGELIN & CO. ("WEGELIN"), a Swiss private bank, was sentenced today and ordered to pay approximately \$58 million to the United States for conspiring with U.S. taxpayers and others to hide approximately \$1.5 billion in secret Swiss bank accounts, and the income generated in the accounts, from the Internal Revenue Service (the "IRS"). Together with the April 2012 forfeiture of more than \$16.2 million from WEGELIN's U.S. correspondent bank account, this amounts to a total recovery to the United States of approximately \$74 million. WEGELIN pled guilty in January 2013 to one count of conspiracy to defraud the IRS, file false federal income tax returns, and evade federal income taxes before U.S. District Judge Jed S. Rakoff, who also imposed today's sentence. 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 and sentencing of such a bank.

Manhattan U.S. Attorney Preet Bharara said: "Wegelin has now paid a steep price for aiding and abetting tax fraud that should be heeded by other banks, bankers, and advisers who engage in the same conduct. U.S. taxpayers with undeclared accounts – wherever those accounts may be – should know that their bank may be next, and they should pay what they owe the IRS before we come find them."

Assistant Attorney General Keneally said: "When the IRS offered the opportunity to come into compliance through the Offshore Voluntary Disclosure Initiative, some people thought that they could beat the system by instead looking for banks that promised further concealment. We are following that money, and time is rapidly running out for taxpayers who think that they can still hide."

According to the Superseding Indictment, the forfeiture Complaint filed against the funds in WEGELIN's correspondent bank account, other court documents filed in the case, and statements made during the guilty plea and sentencing proceedings:

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 client advisers and others.

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, and WEGELIN took a number of steps to capitalize on the opportunity to assist U.S. taxpayers hide their assets from the U.S. government.

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

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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 the false documents 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.

At the time of Wegelin's guilty plea before Judge Rakoff on January 3, 2013, Wegelin managing partner Otto Bruderer admitted on behalf of Wegelin 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 opened and maintained accounts at Wegelin in Switzerland for U.S. taxpayers who did not complete W-9 tax disclosure forms," which are IRS forms U.S. taxpayers can use to 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."

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 the end of 2009, the collective maximum value of the assets in undeclared accounts beneficially owned by U.S. taxpayer-clients of WEGELIN was approximately \$1.5 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.

* * *

The components of today's order to pay approximately \$58 million to the United States include approximately \$20 million in restitution to the IRS; a fine of \$22.05 million; and forfeiture in the approximate amount of \$15.8 million, representing the gross fees earned by the bank on the undeclared accounts of U.S. taxpayers. Wegelin paid the civil forfeiture amount of \$15.8 million to the United States on January 4, 2013.

WEGELIN is headquartered in St. Gallen, Switzerland.

Mr. Bharara praised the outstanding efforts of Internal Revenue Service, Criminal Investigation 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.

Charges remain pending against client advisers Michael Berlinka, Urs Frei, and Roger Keller, who all reside in Switzerland and have not been arrested. The charges and allegations are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

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