



PRESS RELEASE

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Justice Department Announces BHF-Bank (Schweiz) AG Reaches Resolution under Swiss Bank Program

The Department of Justice announced today that BHF-Bank (Schweiz) AG (BHF) has reached a resolution under the department's [Swiss Bank Program](#).

The Swiss Bank Program, which was announced on Aug. 29, 2013, provides a path for Swiss banks to resolve potential criminal liabilities in the United States. Swiss banks eligible to enter the program were required to advise the department by Dec. 31, 2013, that they had reason to believe that they had committed tax-related criminal offenses in connection with undeclared U.S.-related accounts. Banks already under criminal investigation related to their Swiss-banking activities and all individuals were expressly excluded from the program.

Under the program, banks are required to:

- Make a complete disclosure of their cross-border activities;
- Provide detailed information on an account-by-account basis for accounts in which U.S. taxpayers have a direct or indirect interest;
- Cooperate in treaty requests for account information;
- Provide detailed information as to other banks that transferred funds into secret accounts or that accepted funds when secret accounts were closed;
- Agree to close accounts of accountholders who fail to come into compliance with U.S. reporting obligations; and
- Pay appropriate penalties.

Swiss banks meeting all of the above requirements are eligible for a non-prosecution agreement.

According to the terms of the non-prosecution agreement signed today, BHF agrees to cooperate in any related criminal or civil proceedings, demonstrate its implementation of controls to stop misconduct involving undeclared U.S. accounts and pay penalties in return for the department's agreement not to prosecute this bank for tax-related criminal offenses.

BHF was established in 1974 as a wholly-owned Swiss subsidiary of BHF-BANK Aktiengesellschaft (BHF-BANK AG), a private bank located in Germany. Deutsche Bank AG purchased BHF-BANK AG in

2010, and in 2014, BHF-BANK AG was sold to a consortium of investors. BHF is headquartered in Zurich and has a branch in Geneva. The name of the group is now BHF Kleinwort Benson Group.

BHF opened and maintained undeclared accounts for U.S. taxpayers. It chose to continue to service U.S. customers without disclosing their identities to the Internal Revenue Service (IRS) or taking steps to ensure that clients were compliant with U.S. tax laws and without considering the impact of U.S. criminal law on that decision.

BHF offered a variety of traditional Swiss banking services that it knew could assist, and did assist, U.S. clients in the concealment of assets and income from the IRS, such as “hold mail” services, which minimized the paper trail between the U.S. clients and undeclared assets and income, and debit cards, which allowed U.S. clients to access their undeclared accounts without having to visit BHF.

In 1982, Plinius Management Limited, Zurich (Plinius), a trust company, was formed as a wholly-owned subsidiary of BHF to provide special services for wealthy clients, which included advice regarding trusts, foundations, fiduciary agreements and holding companies in order to protect assets and minimize tax liability. Plinius had no employees, and BHF provided it with staff and infrastructure.

Plinius also assisted with referrals to establish various types of structures, including Liechtenstein Anstalten and Stiftungen, and British Virgin Islands and Panamanian entities. Plinius did not create the structures; instead, it would contact an external trust company or law firm in Liechtenstein to set up the entity within the agreed-upon jurisdiction. While Plinius’ relationship managers did not have access to the Forms A held by BHF that identified the beneficial owners, in some cases they were aware of the ultimate beneficial owner(s) of the accounts. Four subsidiary-related structured accounts were established for U.S. persons, which improperly sheltered U.S. taxpayer-clients and hid their assets from the IRS.

U.S.-related accounts, including offshore structured accounts, came into BHF through its relationship managers, through external asset managers or otherwise. For example, one account in the name of an offshore entity was referred to a BHF manager from a U.S.-based structuring lawyer prior to 2008, and transferred to BHF from another Swiss bank. The file contained a Form W-8BEN and certification of non-U.S. persons for the offshore corporate account holder. BHF’s management approved opening the account even though the account also held U.S. securities. There was no Form W-9 completed or provided to BHF for the U.S. beneficial owner. BHF did not confirm that the U.S. beneficial owner was compliant with U.S. tax obligations.

In the fourth quarter of 2000, BHF signed a Qualified Intermediary (QI) Agreement with the IRS. The QI regime provided a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution with respect to U.S. securities. The QI Agreement was designed to help ensure that, with respect to U.S. securities held in an account at BHF, non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons were properly paying U.S. tax.

BHF implemented a policy that every client had to sign either a Form W-9 or a Declaration of Non-U.S. Person Status, which required the customer to declare whether he or she was a U.S. person for tax purposes. Some U.S. clients who did not want to have their identities disclosed to the IRS could avoid detection by declining U.S. securities. Approximately five clients refused to sign a Form W-9, but BHF nevertheless continued to service these clients’ accounts and kept them open.

While participating in the Swiss Bank Program, BHF encouraged existing and prior account holders and beneficial owners of U.S.-related accounts to provide evidence of tax compliance or of participation in any of the IRS Offshore Voluntary Disclosure Programs or Initiatives or to disclose their accounts to the IRS through such a program. BHF sought waivers of Swiss bank secrecy from all account holders and obtained waivers for more than 50 percent of its accounts. BHF has also provided certain account information related to U.S. taxpayers that will enable the government to make requests under the 1996 Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with respect to Taxes on Income for, among other things, the identities of U.S. account holders.

Since Aug. 1, 2008, BHF held a total of 125 U.S.-related accounts, comprising total assets under management of approximately \$202,964,006. BHF will pay a penalty of \$1.768 million.

While U.S. accountholders at BHF who have not yet declared their accounts to the IRS may still be eligible to participate in the [IRS Offshore Voluntary Disclosure Program](#), the price of such disclosure has increased.

Most U.S. taxpayers who enter the IRS Offshore Voluntary Disclosure Program to resolve undeclared offshore accounts will pay a penalty equal to 27.5 percent of the high value of the accounts. On Aug. 4, 2014, the IRS increased the penalty to 50 percent if, at the time the taxpayer initiated their disclosure, either a foreign financial institution at which the taxpayer had an account or a facilitator who helped the taxpayer establish or maintain an offshore arrangement had been publicly identified as being under investigation, the recipient of a John Doe summons or cooperating with a government investigation, including the execution of a deferred prosecution agreement or non-prosecution agreement. With today's announcement of this non-prosecution agreement, noncompliant U.S. accountholders at BHF must now pay that 50 percent penalty to the IRS if they wish to enter the IRS Offshore Voluntary Disclosure Program.

Acting Assistant Attorney General Ciruolo thanked the IRS, and in particular, IRS-Criminal Investigation and the IRS Large Business & International Division for their substantial assistance. Ciruolo also thanked Charles M. Duffy, who served as counsel on this matter, as well as Senior Counsel for International Tax Matters and Coordinator of the Swiss Bank Program Thomas J. Sawyer, Attorney Kimberle E. Dodd and Senior Litigation Counsel Nanette L. Davis of the Tax Division.

Additional information about the Tax Division and its enforcement efforts may be found on the division's [website](#).

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