



# PRESS RELEASE

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## **Justice Department Announces Schaffhauser Kantonalbank Reaches Resolution Under Swiss Bank Program**

The Department of Justice announced today that Schaffhauser Kantonalbank (SHKB) 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, SHKB 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.

SHKB is a regional Swiss bank that was founded in 1883 and operates out of its headquarters in Schaffhausen, Switzerland. All seven of SHKB's locations are within the Canton of Schaffhausen, and all branches are within a radius of 10 miles of its headquarters. As a cantonal bank, SHKB is obliged to service primarily the residents of the Canton of Schaffhausen and the surrounding areas.

Through its managers, employees and others, SHKB knew or had reason to know that some U.S. taxpayers who had opened and maintained accounts at SHKB were not complying with their U.S. income tax and reporting obligations. SHKB offered a variety of traditional Swiss banking services that it knew could assist, and that did in fact assist, U.S. clients in the concealment of assets and income from the Internal Revenue Service (IRS). One such service was hold mail, through which SHKB would hold all mail correspondence for a particular client at SHKB. It also offered code name or numbered account services, where SHKB would allow the accountholder to replace his or her identity with a code name or number on bank statements and other documentation sent to the client. These services helped U.S. clients to eliminate the paper trail associated with the undeclared assets and income they held at SHKB in Switzerland. By accepting and maintaining such accounts, SHKB assisted some U.S. taxpayers in evading their U.S. tax obligations.

SHKB opened and maintained accounts for U.S. taxpayers who had left other banks being investigated by the department without ensuring that each such account was compliant with U.S. tax law from the account's inception at SHKB. SHKB also arranged for the issuance of credit, debit or travel cards to the beneficial owners of some U.S.-related accounts, and offered travel cash cards, on which a client could load up to 10,000 Swiss francs, U.S. dollars or euros from his or her SHKB bank account by instructing SHKB by telephone, mail or e-mail. The client could then use the card for purchases or remit unused balances back to the SHKB account. Use of these cards by U.S. persons facilitated their access to or use of undeclared funds on deposit at SHKB.

SHKB issued checks, including series of checks, in amounts of less than \$10,000 that were drawn on accounts of U.S. taxpayers, even though SHKB knew, or had reason to know, that the withdrawals were made to avoid triggering scrutiny under the U.S. currency transaction reporting requirements. Furthermore, since Aug. 1, 2008, SHKB processed significant cash withdrawals for at least 15 U.S. taxpayers at or around the time the clients' accounts were closed, even though SHKB knew, or had reason to know, the accounts contained undeclared assets. For example, in November 2009, SHKB processed a U.S. taxpayer's cash withdrawal of more than 400,000 euros when SHKB closed the account.

In the period since Aug. 1, 2008, SHKB held one structured account that was a U.S.-related account with maximum assets under management of approximately \$11.5 million. The nominal accountholder was a foundation in Liechtenstein, but the true

owner was a U.S. person, which aided and abetted the client's ability to conceal an undeclared account from the IRS.

In 2001, SHKB entered into a Qualified Intermediary Agreement (QI Agreement) with the IRS. The QI Agreement was designed to help ensure that, with respect to U.S. securities held in an account at SHKB, non-U.S. persons were subject to the proper U.S. withholding tax rates and that U.S. persons holding U.S. securities were properly paying U.S. tax. In general, if an accountholder wanted to trade in U.S. securities and avoid mandatory U.S. tax withholding, the QI Agreement required SHKB to obtain the consent of the accountholder to disclose the client's identity to the IRS. The QI Agreement required SHKB to obtain IRS Forms W-9 and to undertake IRS Form 1099 reporting for new and existing U.S. clients engaged in U.S. securities transactions.

In 2002, SHKB forbade the purchasing or holding of U.S. securities for U.S. persons, and it also required all U.S.-domiciled persons to provide a hold-mail instruction to SHKB. As a practical matter, this policy allowed SHKB to avoid having to disclose the identities of U.S. clients to the IRS under its QI Agreement. SHKB chose to continue to service U.S. clients without disclosing their identities to the IRS and without considering the impact of U.S. criminal law on that decision. Until May 2012, SHKB did not require all of its U.S. clients to provide a signed IRS Form W-9 and to confirm whether their accounts were disclosed to the IRS.

Through the Swiss Bank Program, SHKB has cooperated with the department and provided information to the U.S. government about its cross-border business with U.S.-related accounts. Following SHKB's efforts, approximately 24 of its U.S.-related accounts have thus far entered into an IRS Voluntary Disclosure Program or Initiative. Moreover, SHKB has obtained waivers of Swiss bank secrecy for approximately 87 percent of its U.S.-related accounts and has provided customer names for those accounts to the U.S. government.

Since Aug. 1, 2008, SHKB held a total of 182 U.S.-related accounts with approximately \$84.5 million in assets under management. SHKB will pay a penalty of \$1.613 million.

While U.S. accountholders at SHKB 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 SHKB 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 Caroline D. Ciraolo of the Justice Department's Tax Division thanked the IRS, and in particular, IRS-Criminal Investigation and the IRS Large Business & International Division for their substantial assistance. Ciraolo also thanked Kimberle E. Dodd, 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 and Senior Litigation Counsel Nanette L. Davis of the Tax Division.

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