



# PRESS RELEASE

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### **Justice Department Announces Maerki Baumann & Co. AG Reaches Resolution Under Swiss Bank Program**

The Department of Justice announced today that Maerki Baumann & Co. AG (Maerki Baumann) reached a resolution under the department's [Swiss Bank Program](#). Maerki Baumann will pay a penalty of more than \$23 million.

"Maerki Baumann willfully and actively helped U.S. taxpayers evade their tax obligations and cheat the American public," said Acting Assistant Attorney General Caroline D. Ciruolo of the Justice Department's Tax Division. "Today's agreement reveals the extent of such conduct and holds Maerki Baumann accountable, requiring the bank to make a detailed disclosure of its cross-border activities, pay an appropriate penalty, and provide continuing and extensive cooperation against its representatives, accountholders and other institutions."

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, Maerki Baumann 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 a penalty in return for the department's agreement not to prosecute this bank for tax-related criminal offenses.

Maerki Baumann is a family-owned private bank organized under the laws of Switzerland. It is headquartered in Zurich, Switzerland, and has a branch office in Lugano, Switzerland. In the 1990s, Maerki Baumann developed a relationship with a Swiss referral source that introduced clients to Maerki Baumann primarily from the United States. This source was affiliated with an insurance company that also deposited with Maerki Baumann pooled assets from its insurance customers. Maerki Baumann understood that most were U.S. persons. At some point in the late 1990s or early 2000s, Maerki Baumann also began receiving referrals of U.S. clients from an external asset manager based in the United States. These referrals included clients with undeclared accounts.

Although Maerki Baumann had long had U.S. clients, it had no formal U.S. desk or team until 2001, when it consolidated responsibility for U.S. clients into what had been the "Swiss team" and renamed it the "Swiss/U.S. team." Maerki Baumann increased its focus on its U.S. cross-border business from 2003 to 2005. In 2003, Maerki Baumann hired a relationship manager (RM-1) from the U.S./Canada desk at another bank.

RM-1 introduced Maerki Baumann to another relationship manager (RM-2), with whom RM-1 had previously worked at another bank and who had significant experience servicing U.S. accounts. Maerki Baumann hired RM-2 in 2005 with the expectation that RM-2 would provide expertise to the U.S. side of Maerki Baumann's Swiss/U.S. team and actively recruit additional U.S. clients. By the end of 2005, in addition to the head of the Swiss/U.S. team, the U.S. component of Maerki Baumann's Swiss/U.S. team consisted of three relationship managers, including RM-1 and RM-2. The client base of these relationship managers consisted largely of U.S. clients. Later, these relationship managers were assisted by three junior members of the Swiss/U.S. team. On approximately 35 occasions, relationship managers traveled to the United States to meet with U.S. clients for the purpose of building and maintaining relationships with these clients.

Maerki Baumann terminated RM-2's employment in 2008. In 2011, RM-2 was charged in a federal court in the United States with conspiring to impede and impair the Internal Revenue Service (IRS) in the ascertainment, computation, assessment and collection of U.S. income taxes, in connection with RM-2's activities at a bank other than Maerki Baumann.

Maerki Baumann opened, maintained and serviced accounts for U.S. persons that it knew or had reason to know were likely not declared as required by U.S. law. Maerki Baumann also offered a variety of traditional Swiss banking services, including hold mail instructions and numbered accounts, that it knew could assist, and did in fact assist, U.S. clients in the concealment of assets and income from the IRS. The combination of hold mail instructions and numbered accounts on undeclared accounts significantly reduced the ability of the IRS to learn the identities of the U.S. persons.

Maerki Baumann also allowed U.S. persons to maintain accounts held in the name of non-operating non-U.S. corporations or other legal entities that were beneficially owned by these U.S. persons. The jurisdictions in which the entities were incorporated or formed included Liechtenstein, Panama and the British Virgin Islands. On at least two occasions, relationship managers met directly with the beneficial owners of the Maerki Baumann accounts held by the entities.

Between 2004 and 2008, on approximately a monthly basis (but sometimes more often), RM-1 received from U.S. clients checks ranging from just under \$10,000 to \$85,000, which were drawn on U.S. company accounts in California, for deposit into accounts beneficially owned by those U.S. clients or their designees. The correspondence accompanying the checks stated that the checks were for "materials purchased" and instructed the relationship manager to "process the purchase orders as needed," and many of the checks themselves bore the notation "see purchase order." However, there were no purchase orders attached, and Maerki Baumann was never provided with any purchase orders. Additionally, RM-1's notes state that certain checks were for under \$10,000 "in order to avoid any unnecessary attention." Likewise, with respect to at least two U.S.-related accounts, relationship

managers knew between 2003 and 2005 that the client was structuring the transactions to avoid currency transaction reporting requirements.

Relationship managers communicated or discussed communicating with U.S. clients by confidential means. For example, in October 2006, one relationship manager advised a client that if there was a need for urgent contact, he would send the client a card stating "Greetings from [relationship manager]." In another instance, in June 2009, a client's correspondence to a relationship manager stated, "If there are any questions, please phone me on my cell phone or email me with our usual confidentiality." In some instances, the accountholders had disclosed to relationship managers that their accounts were undeclared.

Maerki Baumann and its relationship managers also:

- Permitted assets in an account held by a known U.S. person to be transferred in 2006 to a new account held by a life insurance company, known as an "insurance wrapper";
- Processed requests from U.S. taxpayers for cash or precious metal withdrawals, thus not triggering any transaction reporting requirements;
- Permitted a withdrawal of approximately one million Swiss francs from a U.S. client's account after the client refused to declare money in the account in the United States;
- Delivered cash withdrawals to U.S. clients in Switzerland; and
- Offered credit, debit or travel cash cards, which facilitated the access to or use of undeclared funds on deposit at Maerki Baumann.

By participating in the Swiss Bank Program, Maerki Baumann has committed to cooperate with the U.S. government in its efforts to identify U.S. persons who engaged in tax evasion and/or fraud. Among other actions, Maerki Baumann has provided full cooperation to allow the United States to be able to request and obtain from Switzerland through the 1996 Convention and the 2009 Protocol, once ratified, the bank files of non-tax compliant U.S. persons. This will result in the United States receiving files identifying U.S. persons who previously held undeclared accounts at Maerki Baumann, directly or through entities.

Since Aug. 1, 2008, Maerki Baumann had 571 U.S.-related accounts, comprising maximum assets under management of approximately \$790 million, including assets of declared accounts. Maerki Baumann will pay a penalty of \$23.92 million.

In accordance with the terms of the Swiss Bank Program, Maerki Baumann mitigated its penalty by encouraging U.S. accountholders to come into compliance with their U.S. tax and disclosure obligations. While U.S. accountholders at Maerki Baumann 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 Maerki Baumann must now pay that 50 percent penalty to the IRS if they wish to enter the IRS Offshore Voluntary Disclosure Program.

"Today's resolution with Maerki Baumann & Co. continues our effort to turn the corner on undisclosed offshore accounts," said acting Deputy Commissioner International David Horton of the IRS Large Business & International Division. "U.S. taxpayers cannot evade their taxes by hiding their assets in

offshore accounts. In partnership with the Department of Justice, we continue to track these taxpayers and their hidden accounts down.”

Acting Assistant Attorney General Ciraolo thanked the IRS and in particular, IRS-Criminal Investigation and the IRS Large Business & International Division for their substantial assistance. Acting Assistant Attorney General Ciraolo also thanked Tracy L. Gostyla and Kimberly M. Shartar, 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, Senior Litigation Counsel Nanette L. Davis and Attorney Kimberle E. Dodd of the Tax Division.

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