



PRESS RELEASE

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Justice Department Announces Two Banks Reach Resolutions under Swiss Bank Program

The Department of Justice announced today that Bank Lombard Odier & Co Ltd (Lombard Odier) and DZ Privatbank (Schweiz) AG (DZ Privatbank) reached resolutions under the department's [Swiss Bank Program](#). These banks collectively will pay penalties of more than \$107 million.

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 agreements signed today, each bank 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 these banks for tax-related criminal offenses.

Lombard Odier is a partner-owned private bank that was founded in 1796 and is based in Geneva, Switzerland. It is organized under the laws of Switzerland and is part of the Lombard Odier Group, which consists of 23 operating entities owned by LO Holding S.A., a Swiss holding company. Lombard Odier provides private banking, asset management and technology and business infrastructure services to individuals and entities located inside and outside Switzerland.

Lombard Odier was aware that U.S. taxpayers had a legal duty to report to the Internal Revenue Service (IRS) and pay taxes on all of their income, including income earned in accounts that these U.S. taxpayers maintained at Lombard Odier. Lombard Odier nonetheless opened, maintained and serviced accounts for U.S. persons that it knew or had reason to know were likely not declared to the IRS or the Treasury Department, as required by U.S. law.

Lombard Odier offered traditional Swiss banking services, such as numbered accounts and holding clients' mail, that assisted U.S. clients in the concealment of assets and income from the IRS. Lombard Odier also assisted U.S. clients in concealing their assets and income by opening and maintaining accounts in the names of non-U.S. corporations, foundations, trusts or other entities that it knew were beneficially owned by U.S. persons. Lombard Odier maintained at least 32 entity accounts that were operated without compliance with the requisite corporate formalities. The non-U.S. jurisdictions in which the entities were incorporated or formed included the British Virgin Islands, Liechtenstein and Panama. In some instances, Lombard Odier referred clients to its Swiss-based affiliate, Favona SA, which is also part of the Lombard Odier Group, to set up entity structures. In addition, Favona provided administrative services, including accounting services and supplying corporate directors.

A Zurich-based law firm (the Zurich firm) and a Zurich-based lawyer (the Zurich lawyer) referred U.S.-related accounts to Lombard Odier with aggregate assets under management of over \$63 million. The Zurich lawyer was the accountholder and had signature authority and/or power of attorney over all of the U.S.-related accounts that he referred, and was also a director of the Panama corporation that was the accountholder of one of those accounts. In some instances, the Zurich firm and Zurich lawyer operated in cooperation with a U.S. lawyer in New York, New York. The Zurich firm and Zurich lawyer referred 13 accounts to Lombard Odier that the U.S. lawyer – or that person's friends or family members – beneficially owned.

Effective in or about January 2001, Lombard Odier entered into a Qualified Intermediary (QI) Agreement with the IRS. The QI Agreement was designed to help ensure that 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 with respect to U.S. securities held in an account with Lombard Odier. As a consequence of Lombard Odier entering into a QI Agreement with the IRS, certain relationship managers and supervisory relationship managers opened accounts for U.S. clients in the names of sham offshore entities. In connection with these accounts, Lombard Odier employees knowingly accepted and included in its account records IRS Forms W-8BEN or Lombard Odier's substitute forms provided by the directors of the offshore companies that falsely represented under penalty of perjury that such companies were the beneficial owners of the assets in the accounts for U.S. federal income tax purposes. Certain relationship managers, supervisory relationship managers and others caused Lombard Odier to certify compliance with the QI Agreement even though the true beneficial owners were not reflected in the Forms W-8BEN in the account files.

Since Aug. 1, 2008, Lombard Odier maintained accounts with an aggregate value of more than \$24 million that were owned by insurance companies and which held assets relating to insurance products that were issued to U.S. taxpayer clients of the respective insurance companies. Such accounts, commonly known as "insurance wrappers," were titled in the names of insurance companies, but were funded with assets that were transferred to the accounts for the beneficial owners of the insurance products.

Lombard Odier's senior management decided, in June 2008, to prohibit new U.S. taxpayer clients coming from UBS and to refrain from hiring UBS relationship managers with U.S. taxpayer clients. Shortly thereafter, Lombard Odier implemented a Regularize or Leave Action Plan, the tenets of which were described in a written policy, dated Oct. 8, 2008, to be communicated verbally to the group heads of Lombard Odier's private banking business unit. Pursuant to the plan, Lombard Odier's management required that relationship managers instruct each of their U.S. clients to sign a Form W-9, voluntarily

disclose their accounts to the IRS or close their accounts. According to the written policy, relationship managers were to propose that U.S. clients who wished to close their accounts do so via withdrawal of cash, checks or gold; transfers to another bank; or donations to non-U.S. relatives or charitable institutions. In connection with the plan, Lombard Odier closed 50 U.S.-related accounts with cash withdrawals exceeding \$51 million. Lombard Odier also closed at least 12 U.S.-related accounts via fictitious donations, where the clients transferred the funds in their accounts to other accounts at Lombard Odier, or to external accounts that were controlled by the U.S. clients but held by their non-U.S. relatives or associates.

Since Aug. 1, 2008, Lombard Odier had 1,121 U.S.-related accounts, comprising maximum assets under management of approximately \$4.45 billion, including assets of declared accounts. Lombard Odier will pay a penalty of \$99.809 million.

DZ Privatbank was founded in 1975 as BEG Bank Europäischer Genossenschaftsbanken, a public limited liability company under Swiss law. In early 2006, following several internal reorganizations and name changes, its name was changed to DZ Privatbank (Schweiz) AG. DZ Privatbank's sole office is in Zurich, Switzerland. DZ Privatbank's ultimate owners are regionally-based German cooperative banks, whose customers are primarily individuals and small- to medium-sized companies. DZ Privatbank's primary business focus has always been to provide private banking services in Switzerland for customers of the German cooperative banks, and it has always defined and marketed itself as the "Germany specialist in Switzerland."

Through its managers, employees and/or others, DZ Privatbank knew or had reason to know that some U.S. taxpayers who had opened and maintained accounts at DZ Privatbank were not complying with their U.S. income tax and reporting obligations. During much of the time after Aug. 1, 2008, DZ Privatbank conducted a U.S. cross-border banking business that aided and assisted certain of its U.S. clients in opening and maintaining undeclared accounts in Switzerland and concealing the assets and income they held in these accounts from the U.S. government. DZ Privatbank offered a variety of traditional Swiss banking services that it knew could assist, and did in fact assist, U.S. clients in the concealment of assets and income from the IRS. These services included numbered accounts, the ability for customers to have their mail held at DZ Privatbank and the use of a post office box held in the name of a DZ Privatbank employee.

In 2008, DZ Privatbank decided to expand its international business operations. DZ Privatbank's international expansion plan focused on customers domiciled in various countries, including Great Britain, Hungary, Poland, Russia, Turkey and the United States. DZ Privatbank opened 222 new U.S.-related accounts with maximum aggregate assets under management of approximately \$106 million between Jan. 1 and Oct. 31, 2009. Prior to that period, DZ Privatbank had approximately 110 U.S.-related accounts with maximum aggregate assets under management of \$133 million.

In May 2009, DZ Privatbank began accepting customers from Credit Suisse who had either terminated their relationship with Credit Suisse or whom Credit Suisse had terminated. In addition to Credit Suisse, since Aug. 1, 2008, DZ Privatbank accepted the transfer of more than two dozen U.S.-related accounts from other Swiss banks under investigation by the department. DZ Privatbank knew or should have known that some clients who transferred assets from these banks during this period were undeclared to the IRS. By opening these U.S.-related accounts, DZ Privatbank aided and abetted those U.S. clients in concealing income and assets from the IRS.

DZ Privatbank employees corresponded and met with Credit Suisse personnel in connection with the transfer of accounts to DZ Privatbank. In an email dated Dec. 17, 2009, one Credit Suisse relationship manager notified a client that the account had to be closed before the end of December 2009, but indicated "DZ PRIVATBANK . . . will probably be an option for you." This email was forwarded to DZ Privatbank's general email address by Credit Suisse. In another email dated May 6, 2010, the head relationship manager for U.S. accounts at Credit Suisse contacted an employee of DZ Privatbank regarding the transfer of an account to DZ Privatbank: "I'm away during his stay. I have now ordered the gold so he can take it physically and can carry it 'over the road.' After I give him some cash, we will then close the relationship. [A third Credit Suisse relationship manager] has reviewed the documents and will supervise the case."

Credit Suisse personnel also provided advice to DZ Privatbank personnel related to clients' potential participation in the IRS's offshore voluntary disclosure programs (OVDP) to DZ Privatbank personnel. For example, in or about April 2011, a DZ Privatbank relationship manager who had learned that some legal advisors were recommending a "quiet OVDP" filing sought the views of a Credit Suisse relationship manager on that topic and was informed it was "really dangerous," tantamount to "giv[ing] [the customer] the rope (to hang themselves)," and should never be recommended.

As a result of the inflow of customers from Credit Suisse, a preliminary, interim protocol for U.S. customers was developed by several DZ Privatbank employees that, in part, incorporated the recommendations of the head relationship manager for U.S. accounts at Credit Suisse, mentioned above. This was effective beginning in or about November 2009 and remained effective until February 2010, when portions of it were incorporated in a Cross-Border Handbook, which noted: "The bank has the following aims" listing first, "The bank wants – in the meaning of a side-business (Nebensegment) – [to] start business relations with U.S.-Customers." The handbook continued that "U.S. clients need to be treated due to several regulatory requirements with extreme caution and reluctance."

In or about July 2010, DZ Privatbank accepted a U.S.-related account from Credit Suisse where the customer may have been concealing the existence of the account from U.S. authorities and was likely actively attempting to conceal his account from the IRS. This customer and a former DZ Privatbank relationship manager engaged in discussions related to various ways in which the customer could withdraw money from his account at DZ Privatbank, with the stated intention of not "attracting attention." It was ultimately agreed that checks would be sent monthly to the customer in an amount set by him. The customer failed to provide forms required by DZ Privatbank when it began its program to implement the Foreign Account Tax Compliance Act (FATCA), and as a result, the account was blocked and ultimately closed for non-compliance. Nevertheless, DZ Privatbank unblocked the account several times through November 2012, against DZ Privatbank's internal guidelines, so that the customer could continue to receive monthly checks.

Since Aug. 1, 2008, DZ Privatbank had a total of 691 U.S.-related accounts with aggregated assets under management of approximately \$498 million. DZ Privatbank will pay a penalty of \$7.452 million.

In accordance with the terms of the Swiss Bank Program, each bank 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 these banks 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 these non-prosecution agreements, noncompliant U.S. accountholders at these banks 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. Ciruolo 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. Acting Assistant Attorney General Ciruolo also thanked Tracy L. Gostyla, Kimberly M. Shartar and Carl D. Wasserman, who served as counsel on these matters, 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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