PRESS RELEASE

Internal Revenue Service - Criminal Investigation
Chief Richard Weber

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Contact: *CI-HQ-COMMUNICATIONSEDUCATION@ci.irs.gov
IRS – Criminal Investigation

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Justice Department Announces Resolution under Swiss Bank Program with Union Bancaire Privée, UBP SA

The Department of Justice announced today that Union Bancaire Privée, UBP SA (UBP), reached a resolution under the department's Swiss Bank Program. UBP will pay a penalty of more than $187 million.

"Today's agreement is significant on several fronts," said Chief Richard Weber of IRS-Criminal Investigation. "UBP, as one of the largest private banks in Switzerland, held nearly 3,000 U.S related accounts. This agreement will have far-reaching implications, expanding our understanding about the depth, breadth, tactics and techniques employed by the UBP private bankers and external asset managers who assisted U.S. taxpayers to conceal assets not only in Switzerland, but in other jurisdictions as well."

"Today's agreement marks the final resolution with UBP, which acknowledges its role in conspiring with U.S. taxpayers to evade U.S. tax through an array of sham entities, structured transactions, nominees and bank services designed to disguise the true ownership of foreign accounts and other assets," said Acting Assistant Attorney General Caroline D. Ciraolo of the Justice Department's Tax Division. "Under the terms of the agreement, UBP pays a heavy price for its criminal conduct and must cooperate fully in all matters relating to the conduct described in the agreement until all civil or criminal examinations, investigations or proceedings are concluded."

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, UBP 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 UBP for tax-related criminal offenses.

UBP is a corporation organized under the laws of Switzerland with its headquarters in Geneva, Switzerland. It was originally founded in 1969 under the name Compagnie de Banque et d'Investissements CBI. In 1990, CBI merged with TBD-American Express Bank. The merged entity was re-named UBP. UBP operates a financial services business in Geneva, Zurich, Basel and Lugano, Switzerland. It primarily offers private banking and wealth management services for individual clients around the world, including U.S. citizens, legal permanent residents and resident aliens. However, UBP also provides investment management and hedge fund services with a focus on institutional clients.

Over the past two decades, UBP has made a number of acquisitions, including NordFinanz Bank (1995), Discount Bank and Trust (2002), ABN AMRO (Switzerland) AG (2011), a portion of the assets associated with Banco Santander (Switzerland) SA's private banking business (2012), Nexar Capital Group (Luxembourg) (2012), the assets associated with Lloyds Banking Group's international private banking business (2013) and the assets associated with Coutts's Swiss private banking activities (2015).

For decades prior to and through 2013, UBP aided and assisted U.S. clients in opening and maintaining undeclared accounts in Switzerland and concealing the assets and income they held in these accounts. Over 200 private bankers were responsible for managing at least one U.S. client account during the period since Aug. 1, 2008. These private bankers, referred to as relationship managers, served as the points of contact for U.S. clients at UBP and were responsible for opening and servicing U.S. client accounts at UBP. Certain relationship managers assisted or otherwise facilitated some U.S. individual taxpayers in establishing and maintaining undeclared accounts in a manner that concealed the U.S. taxpayers' ownership or beneficial interest in said accounts.

UBP assisted U.S. clients with undeclared accounts at UBP by placing and maintaining their assets in the names of non-U.S. structures, rather than the actual beneficial owner of the funds. During the period since Aug. 1, 2008, UBP held 502 U.S.-related accounts in the names of non-U.S. structures formed in jurisdictions such as the British Virgin Islands, the Cayman Islands, Liechtenstein and Panama. Because Swiss law requires UBP to identify the true beneficial owner of structures on a document called a Form A, it knew or should have known that these were U.S. clients. Nonetheless, UBP accepted and included in UBP's account records Internal Revenue Service (IRS) Forms W-8BEN (or UBP's substitute forms) provided by the directors of the offshore companies that falsely stated under penalty of perjury or implied that such companies were the beneficial owners of the assets in the UBP accounts for U.S. federal income tax purposes. This aided and assisted the U.S. clients in concealing these assets and income from the IRS.

Prior to UBP's acquisition, former ABN AMRO employees advised U.S. clients to conceal their U.S. nexuses from bank documentation. For example, in September 2011, one relationship manager sent an email to a client with dual U.S. citizenship, while she was completing her account opening documents, recommending that the client provide her non-U.S. passport and not her U.S. passport. In another instance in September 2008, a relationship manager instructed a U.S. resident client to sign bank documents using a non-U.S. place and date and to provide a utility bill reflecting a non-U.S. residence.

Prior to 2001, UBP provided formation and administration services for offshore structures through a Geneva-based affiliate. However, in 2001, UBP formed an internal Wealth and Estate Planning unit (WEP Unit) and transferred the administration of these structures to the WEP Unit. The WEP Unit did not form structures but did administer them by liaising with entity agents such as foreign law firms, paying administrative fees and keeping corporate documents up-to-date. UBP coordinated with external trust companies and attorneys to form and administer offshore structures for U.S. clients, for example, with a Geneva-based consultant, a Geneva-based law firm and a Zurich-based individual company. These companies opened numerous accounts for U.S. clients at UBP in the names of offshore structures. For those potential and current U.S. clients interested in creating nominee offshore entities, UBP employees contacted and/or referred U.S. clients to these companies.

UBP maintained undeclared accounts at UBP for U.S. clients in the nominee names of non-U.S. insurance companies. Such accounts, known commonly 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. Insurance wrappers were marketed to Swiss Banks by third-party providers in the wake of the UBS investigation as a means of disguising the beneficial ownership of U.S. clients. For example, in November 2009, UBP worked with a third-party service provider to assist a U.S. beneficial owner in restructuring three existing accounts he held at UBP in the names of nominee Panamanian entities into three accounts owned by the insurance company.

UBP employees assisted numerous U.S. clients in concealing their undeclared account funds by making fictitious donations to other accounts at UBP controlled in whole or in part by the U.S. client but held by non-U.S. persons. Typically, the former U.S. customers either maintained signature authority over the donee's account or had the funds returned to them in the future. For example, in December 2009, the U.S. beneficial owners of a UBP bank account informed UBP of their intent to donate their assets to the remaining non-U.S. beneficial owner of their account. UBP executed a new Form A reflecting sole ownership by the remaining non-U.S. person. However, when the non-U.S. person closed the account in 2012, UBP executed a $491,000 transfer to the personal bank account of the former U.S. beneficial owners at another bank.

UBP offered a variety of other traditional Swiss banking services, including hold mail and code name or numbered accounts, that it knew could assist, and did in fact assist U.S. clients in concealing assets and income from the IRS. UBP used or accepted the use of a variety of other means to assist U.S. clients in concealing their undeclared accounts, including by assisting U.S. clients to repatriate undeclared funds via fictitious donations, by making remote debit or credit card withdrawals, by converting the account funds into precious metals, through nominees, or by structuring transfers of funds from undeclared accounts to evade currency transaction reporting requirements.

Effective January 2001, UBP entered into a Qualified Intermediary (QI) Agreement with the IRS. The QI Agreement was designed to help ensure that, with respect to U.S. securities held in an account with UBP, non-U.S. persons were subject to the proper U.S. withholding tax rates and U.S. persons were properly paying U.S. tax. As a consequence of UBP entering into a QI Agreement with the IRS, UBP allowed U.S. clients to create and open accounts in the name of sham offshore entities and insurance wrappers. Certain UBP employees caused UBP to certify compliance with the QI Agreement event though the true beneficial owners were not reflected in the IRS Forms W-8BEN in the account files. UBP also divested U.S. securities from its undeclared U.S. accounts for the purpose of subverting its QI Agreement.

During the period since Aug. 1, 2008, UBP held and managed approximately 2,919 U.S.-related accounts, which included both declared and undeclared accounts, with aggregate peak of assets under management of $4.895 billion. However, 1,282 of the 2,919 U.S.-related Accounts were acquired through the acquisitions of other banks, including ABN AMRO, and bank assets. UBP will pay a penalty of $187.767 million.

In accordance with the terms of the Swiss Bank Program, UBP 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 this non-prosecution agreement, noncompliant U.S. accountholders at UBP 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 Union Bancaire Privée, UBP SA, reflects the effectiveness of the Department of Justice's Swiss Bank Program," said acting Deputy Commissioner International David Horton of the IRS Large Business & International Division. "Financial institutions are being held accountable for their past actions and are now cooperating by providing us information that will let us track and pursue those who have not complied with the law. U.S. taxpayers who have failed to report their foreign accounts and pay their income taxes need to resolve this non-compliance or face the consequences."

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 Kevin F. Sweeney, 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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