



PRESS RELEASE

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Justice Department Announces Three Banks Reach Resolutions Under Swiss Bank Program

The Department of Justice announced today that Bordier & Cie Switzerland (Bordier), PBZ Verwaltungs AG (PBZ) and PostFinance AG reached resolutions under the department's [Swiss Bank Program](#). These banks collectively will pay penalties of more than \$15 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.

Bordier was founded in 1844 in Geneva, Switzerland, where it maintains its headquarters. Five generations of the Bordier family have run the bank over the subsequent 170 years. Bordier has three additional Swiss offices in Zurich, Bern and Nyon, and outside of Switzerland, Bordier has two asset management companies – one in London and one in Paris. Additionally, Bordier is affiliated with two independent entities with local banking licenses: Bordier Bank (TCI) Ltd., established in 1986 under the laws of the Turks and Caicos, and Bordier & Cie (Singapore) Ltd., established in 2011 under the laws of Singapore. Structurally, Bordier is led by its

“Comité de Direction,” which is composed of the partners, the chief financial/administrative officer, the General Counsel, the communications director and two senior wealth managers.

Bordier was aware that some of its U.S. clients were using their accounts at Bordier to evade U.S. taxes and reporting requirements. In certain account files, Bordier had notes stating, “Declared: No.” In other instances, the U.S. taxpayer-client informed Bordier that he or she did not plan to declare his or her account in the United States. For one account, a U.S. taxpayer-client refused to provide a copy of his passport, despite repeated requests from Bordier, and in 1998, this client signed bank forms with a fake signature to avoid potential recognition. This accountholder eventually told Bordier that he did not want to declare the account in the United States because he was a lawyer and would be disbarred. In 2000, one U.S. taxpayer-client informed Bordier, “I am glad to know that there are no U.S. securities subject to U.S. withholding tax. I do not intend to declare this account to the U.S. authorities.” For one account where the ultimate beneficial owner was a U.S. person, Bordier noted in the files, “Client will introduce a South African friend domiciled in Monaco who will invest in USA and transfer funds to the client.”

In a limited number of instances, Bordier actively facilitated the evasion of U.S. taxes and reporting requirements for some of its U.S. accountholders. For example, Bordier made repeated transfers of undeclared assets under \$10,000 to the Montreal bank account of a U.S. taxpayer-client in Canada in order to help the client avoid U.S. tax and reporting obligations and keep the undeclared assets hidden. For one such transfer, the U.S. taxpayer-client requested his “usual order of chocolate” from Bordier in order to institute these transfers. Bordier was aware that the U.S. taxpayer-client withdrew the amounts in cash: “Telephone [call from U.S. taxpayer-client]. Please transfer US\$8,000 to Montreal as usual. He will pick up the cash. . . .” In 2002, according to file notes made by the former relationship manager, Bordier transmitted undeclared assets to a U.S. taxpayer-client in a hidden manner (“sous forme cache” in French). Bordier’s conduct allowed the bank to increase the undeclared U.S. taxpayer assets that it managed, thereby increasing the fees it generated.

Another U.S. taxpayer-client refused to sign Bordier’s Declaration of Non-U.S. Status form, which would have indicated that she was a U.S. person, despite it being required as part of Bordier’s account opening procedures. When the U.S. taxpayer-client asked Bordier about the impact of the UBS investigation, Bordier told the U.S. taxpayer-client that she “cannot call, that her capital is protected and that she multiplies her risks by calling the bank often. She should only call once a year when she is in Europe.”

From 2008 to the present, Bordier maintained approximately 292 U.S.-related accounts with a total of \$440.8 million in assets under management. Bordier will pay a penalty of \$7.827 million.

PBZ was a private bank operating in Zurich. From 2001 to November 2013, PBZ Verwaltungs AG operated as AKB Privatbank Zürich AG and was a subsidiary of Aargauische Kantonalbank. Prior to 2001, PBZ operated as BFZ Bankfinanz AG, a bank founded in 1988 and headquartered in Zurich. In November 2013, Aargauische Kantonalbank sold AKB Privatbank to Privatbank IHAG Zürich AG, and since July 2014 it has operated as PBZ Verwaltungs AG. PBZ Verwaltungs AG has ceased its banking activities and had its banking license revoked by Aug. 29, 2014.

As early as 2008, PBZ knew that some U.S.-related accounts held untaxed funds, which were described within PBZ in one instance as “Schwarzgeld” or “black money.” PBZ knew that U.S. persons had a duty under U.S. law to report their income to the Internal Revenue Service (IRS) and to pay taxes on that income, including all income earned in accounts maintained by PBZ in Switzerland. Despite this knowledge, PBZ 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 U.S. Department of the Treasury, as U.S. law required. As of Feb. 19, 2010, PBZ formally renounced its previous practice of accepting “manifestly untaxed assets from foreign clients.”

In 2001, PBZ entered into a Qualified Intermediary (QI) agreement with the IRS. As a QI, PBZ agreed to supply the IRS with information and to withhold tax in connection with trades in U.S. securities. The agreement’s purpose was to ensure that, with respect to U.S. securities held in an account at PBZ, non-U.S. accountholders would be subject to the proper U.S. tax rates on withholding and that U.S. accountholders would properly pay U.S. taxes. As a practical matter, PBZ reported income pursuant to the QI agreement on only one of its U.S.-related accounts. For each U.S. client who did not provide a W-9, PBZ blocked any trading in U.S. securities, which, in PBZ’s view, obviated any payment or reporting obligation under the QI agreement.

PBZ opened accounts for foundations and other entities set up in Panama, Liechtenstein and any of several island countries – the Bahamas, the British Virgin Islands, the Cayman Islands, the Marshall Islands, St. Kitts and Nevis and the Turks and Caicos Islands – that PBZ knew were beneficially owned by U.S. persons. For instance, accounts were opened for three British Virgin Islands corporations that really belonged to a single U.S. person as the beneficial owner. In another instance, a U.S. resident beneficial owner of a Marshall

Islands corporation gave instructions on an account nominally held by a domiciliary entity that resulted in the transfer of the account to the beneficial owner's brother, who lived abroad.

PBZ also offered a variety of traditional Swiss banking services – including hold mail and numbered accounts – that it knew could assist, and did assist, U.S. taxpayers in concealing their identity from the IRS by minimizing the paper trail associated with their undeclared assets and income. From time to time, PBZ assisted its U.S. clients in sending money to themselves, relatives, business partners or other businesses in the United States by issuing checks drawn on PBZ's own bank account. Issuing such checks is a service routinely provided by banks to clients and is similar to cashier's checks in the United States. But under the circumstances present with respect to the U.S. clients, because these checks listed only PBZ as the accountholder, they did not reveal that the funds were ultimately paid out of the U.S. clients' Swiss bank account. One such check issued was in the amount of \$301,000. U.S. clients were thus able to utilize this technique to conceal their ownership of a Swiss bank account.

From at least 2008 through 2014, PBZ maintained and serviced 171 U.S.-related accounts having a maximum aggregate value of more than \$101 million. PBZ will pay a penalty of \$5.57 million.

PostFinance, headquartered in Bern, is a wholly-owned subsidiary of Swiss Post, the Swiss state-owned enterprise responsible for Swiss postal and other essential public infrastructure services. The Swiss parliament established PostFinance's predecessor in 1906 to provide payment services to retail customers. PostFinance operated as a division of Swiss Post until June 26, 2013, when it became a bank under Swiss law.

For decades, PostFinance has provided the predominant means of payment in Switzerland. Customers pay bills and receive payments, electronically or in person, at post offices in Switzerland through PostFinance accounts. PostFinance has 45 branch offices, all in Switzerland, and roughly 40 percent of Swiss residents have an account with PostFinance. Until 2008, the names of PostFinance's customers were publicly available. PostFinance was not subject to Swiss bank secrecy laws until June 26, 2013, when it received its license to operate as a bank under Swiss law.

Before and since Aug. 1, 2008, PostFinance was required by Swiss law and government mandate to provide accounts to persons living in Switzerland, regardless of nationality, and to Swiss nationals living outside of Switzerland. Consequently, PostFinance provided accounts to U.S. taxpayers living in Switzerland, as well as to Swiss nationals living in the United States, including U.S.-related accountholders who transferred assets to PostFinance from UBS or other banks under investigation by the department.

PostFinance has never offered private banking or wealth management services to any of its customers. Instead, PostFinance engaged in basic consumer retail banking and payment services. U.S. taxpayers resident in Switzerland, as well as U.S.-Swiss dual nationals, may obtain "current" accounts, which are comparable to checking accounts in the United States. Savings accounts, fixed income retirement accounts and credit cards may be obtained only by Swiss residents.

PostFinance was aware that citizens and resident aliens of the United States had a legal duty to report their assets and income to the IRS and to pay taxes on the basis of all their income, including income earned from accounts that PostFinance maintained on their behalf. Largely due to its obligations under Swiss law, however, PostFinance nevertheless opened and maintained undeclared accounts belonging to customers who were subject to U.S. tax and were not complying with their U.S. tax obligations.

Since Aug. 1, 2008, PostFinance maintained a total of 2,731 U.S.-related accounts having a maximum aggregate value of approximately \$290 million. PostFinance will pay a penalty of \$2 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. 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. Acting Assistant Attorney General Ciraolo also thanked Kaycee M. Sullivan, Brian D. Bailey and Paul G. Galindo, 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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